

1 MARY ANN SMITH
Deputy Commissioner
2 TIMOTHY L. Le BAS (BAR NO. 135565)
3 Senior Corporations Counsel
Department of Corporations
4 1515 K Street, Suite 200
Sacramento, CA 95814
5 Telephone (916) 322-2050 Fax (916) 445-6985

6 Attorneys for Complainant

7 BEFORE THE DEPARTMENT OF CORPORATIONS
8 OF THE STATE OF CALIFORNIA

10 In the Matter of	)	FILE NO.: 993-5123 and 993-5067
)	
11 THE COMMISSIONER	)	CITATION INCLUDING:
12 OF CORPORATIONS OF)	
13 THE STATE OF CALIFORNIA,	)	(1) DESIST AND REFRAIN ORDER
	)	PURSUANT TO CORPORATIONS
14 Complainant,	)	CODE SECTION 31406
	)	(2) CLAIM FOR ANCILLARY RELIEF
15 v.	)	AND COSTS PURSUANT TO
)	CORPORATIONS CODE SECTION
16 SUPERSHUTTLE LOS ANGELES, INC.,)	31408
)	
17 Respondent.)	
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21 Jan Lynn Owen, the Commissioner of Corporations of the State of California
22 (“Commissioner”), of the Department of Corporations (“Department”), finds the following:

23 **I. STATEMENT OF FACTS**

- 24 1. SuperShuttle Los Angeles, Inc. (“SuperShuttle”) has been registered with the Department to
- 25 offer and sell franchises since at least 2004.
- 26 2. Under the SuperShuttle franchise agreements, which are typically ten years in length,
- 27 franchisees operate a van shuttle service in the areas of Los Angeles International Airport, John
- 28 Wayne International Airport, Ontario International Airport, and Long Beach Airport.

1 3. Pursuant to Item 19 of the guidelines adopted by the North American Securities Administrators
 2 Association, Inc., known as the 2008 Franchise Registration and Disclosure Guidelines (the
 3 “NASAA Guidelines”), franchisors including SuperShuttle may disclose specified information
 4 concerning financial performance representations in the Uniform Franchise Disclosure Document
 5 (“UFDD Disclosure Document”).

6 4. Financial performance representations are defined by the NASAA Guidelines as:

7 “...any representation, including any oral, written, or visual
 8 representation, to a prospective franchisee, including a representation
 9 in the general media, that states, expressly or by implication, a specific
 10 level or potential range of actual or potential sales, income, gross
 11 profits, or net profits. The term includes a chart, table, or
 mathematical calculation that shows possible results based on a
 combination of variables.”

12 5. Item 19 of the NASAA Guidelines, paragraph (3), provides in relevant part:

13 “(3) If the franchisor makes any financial performance representation to
 14 prospective franchisees, the franchisor must have a reasonable basis and written
 15 substantiation for the representation at the time the representation is made and
 16 must state the representation in the Item 19 disclosure. The franchisor must also
 17 disclose the following:

- 18 (i) Whether the representation is an historic financial performance
 19 representation about the franchise system’s existing outlets, or a subset of
 20 those outlets, or is a forecast of the prospective franchisee’s future
 21 financial performance.
- 22 (ii) If the representation relates to past performance of the franchise system’s
 23 existing outlets, the material bases for the representation, including:
 - 24 (A) Whether the representation relates to the performance of all of the
 25 franchise system’s existing outlets or only to a subset of outlets
 26 that share a particular set of characteristics (for example,
 27 geographic location, type of location (such as free standing vs.
 28 shopping center), degree of competition, length of time the outlets
 have operated, services or goods sold, services supplied by the
 franchisor, and whether the outlets are franchised or franchisor-
 owned or operated).
 - (B) The dates when the reported level of financial performance was
 achieved.
 - (C) The total number of outlets that existed in the relevant period and,
 if different, the number of outlets that had the described
 characteristics.

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- (D) The number of outlets with the described characteristics whose actual financial performance data were used in arriving at the representation.
- (E) Of those outlets whose data were used in arriving at the representation, the number and percent that actually attained or surpassed the stated results.
- (F) Characteristics of the included outlets, such as those characteristics noted in Instruction (3)(ii)(A) of Item 19, that may differ materially from those of the outlet that may be offered to a prospective franchisee. “[Emphasis added.]”

6. From July 1, 2008 to April 20, 2012, SuperShuttle offered and sold approximately one hundred sixty five (165) franchises. During these offers and sales, SuperShuttle made financial performance representations in Item 19 of the UFDD Disclosure Document. The financial performance representations did not comply with the NASAA Guidelines. SuperShuttle’s financial performance representations failed to include the material bases for the representations as required by paragraph (3) of the NASAA Guidelines, above. As a result, SuperShuttle omitted material information from the UFDD Disclosure Document in violation of Corporations Code sections 31122, 31200, and 31201.

7. In addition, SuperShuttle presented unclear information about shift length in Item 19 of the UFDD Disclosure Document. For example, SuperShuttle made its financial representations based on work shifts of “8 hours or more.” It is unclear what is meant by “or more.” Not only did the financial performance representations lack clarity, they also conflicted with each other. For instance, some SuperShuttle representations were based on 8-hour shifts, while other representations were based on shifts of 8 hours or more. Consequently, these unclear and inconsistent representations may make it difficult, to determine SuperShuttle’s financial performance, because it is unclear what hours (e.g., 8, 16, 24 hours) must be used to confirm past revenues of van drivers. Therefore, SuperShuttle made unclear statements of material fact in violation of Corporations Code sections 31122, 31200, and 31201.

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1 **II. VIOLATION OF CORPORATIONS CODE SECTION 31122**

2 **(Failure to File Accurate Registration Renewal Statement)**

3 8. The Commissioner is responsible for administering and enforcing the California Franchise
4 Investment Law, and registering the offer and sell of franchises in California, pursuant to Division 5
5 (commencing with section 31000) of Title 4 of the Corporations Code.

6 9. To register a franchise, a franchisor must file a UFDD Disclosure Document for review and
7 approval, in accordance with Corporations Code sections 31111, 31114, and 31122; and Title 10,
8 California Code of Regulations (“CCR”), sections 310.111, 310.114.1, and 310.122.

9 10. Title 10, CCR, section 310.111 requires franchisors to use the UFDD Disclosure Document on
10 and after July 1, 2008. This UFDD Disclosure Document sets forth material information for
11 prospective franchisees. This information provides each prospective franchisee with the
12 information necessary to make an informed decision on whether to purchase the franchise.
13 Corporations Code section 31001.

14 11. Title 10, CCR, section 310.111 requires franchisors to disclose information in the UFDD
15 Disclosure Document pursuant to the NASAA guidelines,

16 12. Corporations Code section 31122 provides:

17 “The registration renewal statement shall be in the form and content provided by
18 the Commissioner, and shall be accompanied by a proposed offering prospectus.”

19 13. Title 10, CCR, section 310.122 provides in relevant part:

20 “Application for renewal of a registration pursuant to section 31122 of the Code
21 shall be made upon the Uniform Franchise Registration Application, as defined in
22 section 310.111(b).”

23 14. Section 310.111(b) requires the application to include information specified in the NASAA
24 Guidelines. From July 1, 2008 to April 20, 2012, SuperShuttle’s financial performance
25 representations failed to include material bases for representations required by Item 19 of the
26 NASAA Guidelines. Moreover, during this time, SuperShuttle presented unclear facts concerning
27 eight-hour shifts in Item 19. SuperShuttle’s registration renewal statement was not in the form and
28 content required by Title 10, CCR, section 310.111(b); therefore, SuperShuttle violated

1 Corporations Code section 31122 and Title 10, CCR, section 310.122.

2 **III. VIOLATION OF CORPORATIONS CODE SECTION 31200**
3 **(Misrepresentations in Registration Renewal Statement)**

4 15. Corporations Code section 31200 provides:

5 “It is unlawful for any person willfully to make any untrue
6 statement of a material fact in any application, notice or report
7 filed with the commissioner under this law, or willfully to omit
8 to state in any such application, notice, or report any material
9 fact which is required to be stated therein, or fail to notify the
10 commissioner of any material change as required by Section
11 31123.”

12 16. From July 1, 2008 to April 20, 2012, SuperShuttle’s financial performance representations
13 failed to include material bases for representations required by Item 19 of the NASAA Guidelines,
14 and made unclear statements concerning eight-hour shifts in Item 19. Accordingly, SuperShuttle
15 presented unclear information in its registration renewal application, and the UFDD Disclosure
16 Document, in violation of Corporations Code section 31200.

17 **IV. VIOLATION OF CORPORATIONS CODE SECTION 31201**
18 **(Misrepresentations of Material Facts)**

19 17. Corporations Code section 31201 provides:

20 “It is unlawful for any person to offer or sell a franchise in this state by
21 means of any written or oral communication not enumerated in Section 31200
22 which includes an untrue statement of a material fact or omits to state a material
23 fact necessary in order to make the statements made, in the light of the
24 circumstances under which they were made, not misleading.”

25 18. From July 1, 2008 to April 20, 2012, Super Shuttle’s financial performance representations
26 failed to include material bases for the representation allowed by Item 19 of the NASAA Guidelines,
27 and made unclear statements concerning eight-hour shifts in Item 19. Consequently, SuperShuttle
28 made unclear statements, in violation of Corporations Code section 31201.

V. DESIST AND REFRAIN ORDER

19. Corporations Code section 31406 provides in relevant part:

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“(a) If, upon inspection or investigation, based upon a complaint or otherwise, the commissioner has cause to believe that a person is violating any provision of this division or any rule or order promulgated pursuant to this division, the commissioner may issue a citation to that person in writing describing with particularity the basis of the citation. Each citation may contain an order to desist and refrain and an assessment of an administrative penalty not to exceed two thousand five hundred dollars (\$2,500) per violation and shall contain reference to this section, including the provisions of subdivision (c). All penalties collected under this section shall be deposited in the State Corporations Fund.
(b) The sanctions authorized under this section shall be separate from, and in addition to, all other administrative, civil, or criminal remedies.
(c) If within 60 days from the receipt of the citation, the person cited fails to notify the commissioner that the person intends to request a hearing as described in subdivision (d), the citation shall be deemed final.
(d) Any hearing under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.”
(e) After the exhaustion of the review procedures provided for in this section, the commissioner may apply to the appropriate superior court for a judgment in the amount of the administrative penalty and order compelling the cited person to comply with the order of the commissioner. The application shall include a certified copy of the final order of the commissioner and shall constitute a sufficient showing to warrant the issuance of the judgment and order.”

The Commissioner has cause to believe the following:

SuperShuttle’s registration renewal statement was not in the form and content prescribed by Title 10, CCR, section 310.111(b), thereby violating Corporations Code section 31122 and Title 10, CCR, section 310.122.

SuperShuttle made unclear statements in its registration renewal statement, and the UFDD Disclosure Document, in violation of Corporations Code section 31200.

SuperShuttle offered and sold franchises by means of unclear statements concerning its financial performance representations in violation of Corporations Code section 31201.

20. Pursuant to Corporations Code section 31406:

SuperShuttle is hereby ordered to desist and refrain from filing registration renewal applications that do not conform to the form and content prescribed by rule of the Commissioner, in accordance with Corporations Code section 31122.

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1 SuperShuttle is hereby ordered to desist and refrain from filing registration renewal
2 statements that result in untrue statements of material fact and omissions of material fact, in
3 accordance with Corporations Code section 31200.

4 SuperShuttle is hereby ordered to desist and refrain from the further offer and sale of any
5 and all franchises in the State of California by means of oral or written statements containing untrue
6 statements of material fact and omissions of material fact, in accordance with Corporations Code
7 section 31201.

8 **VI. ANCILLARY RELIEF**

9 21. Corporations Code section 31408 provides in relevant part:

10 “(a) If the commissioner determines it is in the public interest, the commissioner
11 may include in any administrative action brought under this division, including a
12 stop order, a claim for ancillary relief, including, but not limited to, a claim for
13 rescission, restitution or disgorgement or damages on behalf of the persons
14 injured by the act or practice constituting the subject matter of the action, and the
15 administrative law judge shall have jurisdiction to award additional relief. The
16 person affected may be required to attend remedial education, as directed by the
17 commissioner.

18 (b) In an administrative action brought under this part the commissioner is entitled
19 to recover costs, which in the discretion of the administrative law judge may
20 include any amount representing reasonable attorney's fees and investigative
21 expenses for the services rendered, for deposit into the State Corporations Fund
22 for the use of the Department of Corporations.”

23 22. Pursuant to Corporations Code section 31408, SuperShuttle shall pay disgorgement of one
24 thousand five thousand dollars (\$1,500) for each franchise purchased by any franchisee of
25 SuperShuttle from July 1, 2008 to April 20, 2012.

26 23. The disgorgement shall be made payable and delivered to each franchisee no later than 60 days
27 from the date of the order in this matter. SuperShuttle shall file a report with Timothy L. Le Bas,
28 Senior Corporations Counsel on August 1, 2013 and December 31, 2013, to demonstrate
compliance with this order. In paying the disgorgement, SuperShuttle shall not require the
franchisee to waive any provision of the California Franchise Investment Law in accordance with
Corporations Code section 31512.

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VII. ATTORNEY’S FEES

24. Pursuant to Corporations Code section 31408, Super Shuttle shall pay attorney’s fees to the Department of Corporations in the amount of twenty-four thousand dollars (\$24,000). This amount shall be made payable to the Department of Corporations and submitted to Timothy L. Le Bas, Senior Corporations Counsel, no later than 60 days from the date of the order.

Dated: May 9, 2013
Sacramento, CA

JAN LYNN OWEN
Commissioner of Corporations

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

1 MARY ANN SMITH
Deputy Commissioner
2 TIMOTHY L. Le BAS (BAR NO. 135565)
3 Senior Corporations Counsel
Department of Corporations
4 1515 K Street, Suite 200
Sacramento, CA 95814
5 Telephone (916) 322-2050 Fax (916) 445-6985

6 Attorneys for Complainant
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8 BEFORE THE DEPARTMENT OF CORPORATIONS
9 OF THE STATE OF CALIFORNIA

10 In the Matter of)	FILE NO.: 993-5123 and 993-5067
)	
11 THE COMMISSIONER	)	STIPULATION TO ISSUANCE OF CITATION
12 OF CORPORATIONS	)	INCLUDING:
13 OF THE STATE OF CALIFORNIA,)	
	)	(1) DESIST AND REFRAIN ORDER
14 Complainant,	)	PURSUANT TO CORPORATIONS
	)	CODE SECTION 31406
15 v.	)	(2) CLAIM FOR ANCILLARY RELIEF
	)	AND COSTS PURSUANT TO
16 SUPERSHUTTLE LOS ANGELES, INC.,)	CORPORATIONS CODE SECTION
)	31408
17 Respondents.)	
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21 IT IS HEREBY STIPULATED AND AGREED between SuperShuttle Los Angeles, Inc.
22 (hereinafter "Respondent") and the Commissioner of Corporations of the State of California
23 ("Commissioner") as follows:

24 WHEREAS, Respondent, without admitting any of the findings contained within the
25 Citation, including the desist and refrain order pursuant to Corporations Code section 31406 and the
26 claim for ancillary relief and costs pursuant to section 31408 (hereinafter "Citation"), hereby
27 stipulates to the issuance of the Citation, in the form attached hereto as Exhibit A;

28 WHEREAS, Respondent agrees to the finality of the Citation, and agrees that the Citation

1 shall remain in effect and is public;

2 WHEREAS, Respondent agrees to comply with the desist and refrain order in the Citation
3 and agrees to pay disgorgement and attorney's fees as specified in the Citation, and as follows:

4 1) The disgorgement of one thousand five hundred dollars (\$1,500) for each franchise
5 purchased by any franchisee of the Respondent (approximately 165 franchises) from July 1, 2008 to
6 April 20, 2012, shall be made payable and delivered to each franchisee no later than 60 days from
7 the date of a final order in this matter;

8 2) The attorney's fees to the Department of Corporations in an amount of twenty-four
9 thousand dollars (\$24,000) shall be made payable to the Department of Corporations and submitted
10 to Timothy L. Le Bas no later than 60 days from the date of a final order in this matter;

11 3) Respondent agrees to comply with the escheat provisions of Title 10 of Part 3 of the Code
12 of Civil Procedure for payments that remain unclaimed by franchisees;

13 4) Respondent agrees to provide to Timothy L. Le Bas, within 10 days from the date of the
14 order, the name, address and telephone number of a contact person that is responsible for
15 administering payments to franchisees and responding to payment inquiries;

16 5) The Respondent agrees, in its reports due to Timothy L. Le Bas on August 1, 2013 and
17 December 31, 2013, to include a schedule of the payments made to franchisees, including a listing
18 of the franchisees' names, their current addresses, their van numbers, dates of payment, check
19 numbers associated with the payments, whether the checks are cashed or uncashed, whether any
20 checks were returned, and the reasons why any checks have been returned;

21 WHEREAS, Respondent waives all rights to any hearing of the Citation, and waives any
22 review by a court of law of the Citation;

23 WHEREAS, Respondent agrees that nothing in the Stipulation shall preclude the
24 Commissioner, or her agents or employees, to the extent authorized by law, from assisting or
25 cooperating in any investigation and/or action brought by any other federal, state, or local agency,
26 or from referring the matter to any of those agencies; and Respondent further agrees that this
27 Stipulation shall not bind or otherwise prevent any of those agencies from the performance of its
28 duties;

1 WHEREAS, Respondent agrees that the delivery by certified mail of the executed Citation
2 by the Commissioner to Respondent's counsel, Susan Grueneberg, shall constitute valid service of
3 the Citation;

4 WHEREAS, Respondent enters into this Stipulation voluntarily and without coercion and
5 acknowledges that no promises, threats, or assurances have been made by the Commissioner or any
6 officer, or agent thereof, about this Stipulation;

7 WHEREAS, Respondent agrees that this Stipulation may be executed in one or more
8 separate counterparts, each of which when so executed, shall be deemed and original; and these
9 counterparts shall together constitute and be one and the same instrument.

11 Dated: 5/9/13 JAN LYNN OWEN
12 Commissioner of Corporations

14 By _____
15 Mary Ann Smith
16 Deputy Commissioner

17 Dated: 5/2/13 SUPERSHUTTLE LOS ANGELES, INC.

20 By _____
21 R. Brian Wier, President
22 SuperShuttle Los Angeles, Inc.

23 Approved as to Form and Content

24 Dated: 5/7/13
25 By _____
26 Susan Grueneberg
27 Attorney on Behalf of SuperShuttle Los Angeles, Inc.
28