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10 BEFORE THE DEPARTMENT OF CORPORATIONS
11 OF THE STATE OF CALIFORNIA

12 In the Matter of THE CALIFORNIA)
CORPORATIONS COMMISSIONER,)

) Agency Case Nos.: 995-3725, 993-5995
) OAH Nos.: 2009060636, 2009050889

14 Complainant,)

) AMENDED STATEMENT IN SUPPORT OF:

15 vs.)

16 YAKETY YAK WIRELESS, INC. and)
17 PLAY N TRADE FRANCHISE, INC.,)

) 1) STOP ORDERS REVOKING
) EFFECTIVENESS OF UNIT FRANCHISE
) REGISTRATION AND ORDERS
) REVOKING EFFECTIVENESS OF UNIT
) FRANCHISE REGISTRATION

18 Respondents.)

) 2) STOP ORDERS DENYING
) EFFECTIVENESS OF AREA
) DEVELOPER FRANCHISE
) REGISTRATION APPLICATION AND
) ORDERS DENYING EFFECTIVENESS
) OF AREA DEVELOPER FRANCHISE
) REGISTRATION APPLICATION

) 3) CITATIONS
)

) 4) DESIST AND REFRAIN ORDERS
)

) 5) CLAIMS FOR ANCILLARY RELIEF
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1 I.

2 INTRODUCTION

3 The California Corporations Commissioner (hereafter referred to as "Complainant" or
4 "Commissioner") is informed and believes, and based upon such information and belief, finds that
5 Respondents Yakety Yak Wireless, Inc. ("Yakety Yak") and Play N Trade Franchise, Inc. ("Play N
6 Trade") (hereafter referred to as "Respondents") have violated multiple provisions of the California
7 Franchise Investment Law ("Franchise Investment Law").

8 II.

9 FACTS

10 At all relevant times, Yakety Yak was an Arizona corporation engaged in business activities
11 relating to the franchising of retail outlets offering telecommunications provider services under the
12 trade name "Yakety Yak Wireless." Yakety Yak offers and sells franchises in California as well as
13 other states. Unit franchisees are sold the right to operate Yakety Yak retail stores and/or outlets.
14 Area developer or "master" franchisees purchase the right to develop Yakety Yak retail stores in a
15 specific franchise territory. Yakety Yak's principal business address is 3400 Irvine Avenue, Suite
16 118, Newport Beach, CA 92660. Yakety Yak's parent company is San Clemente Capital ("San
17 Clemente"), an Arizona limited liability company also doing business at the same address.

18 On September 9, 2005, Yakety Yak filed its initial Uniform Franchise Registration
19 Application with the California Department of Corporations ("Department") seeking to register its
20 franchise enterprise in this state in compliance with California Corporations Code section 31111 (all
21 section references hereafter are to the California Corporations Code).

22 The franchise registration applications that Yakety Yak submitted for the unit and area
23 developer franchises were each accompanied by a Uniform Franchise Offering Circular ("UFOC")¹
24 containing the material information set forth in the application, as required by section 31114.

25 As a condition to franchise registration, the Commissioner required Yakety Yak to issue a
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28 ¹ The UFOC was replaced by the Uniform Franchise Disclosure Document ("UFDD") which was adopted by the North American Securities Administrators Association, Inc. on June 22, 2007 and became effective July 1, 2007.

1 Notice of Violation on December 23, 2005 because the franchisor had engaged in the offering and
2 selling of unregistered franchises in California in violation of section 31110. The Department
3 thereafter issued an order on January 26, 2006, approving Yakety Yak's franchise registration.

4 Item 2 of the UFOC that Yakety Yak filed with its initial application in September 2005 listed
5 the principal corporate officers as: Chief Executive Officer and President, Yuvi Shmul ("Shmul");
6 Chief Marketing Officer and Co-Chairman, James F. Kindred ("Kindred"); and Chief Operating
7 Officer and Co-Chairman, Jared Turner ("Turner").

8 The UFOC that Yakety Yak filed on March 20, 2007 disclosed that Thomas C. Bozarth
9 ("Bozarth") had since taken over as President of Yakety Yak, although Shmul remained on the Board
10 as a Director. Additionally, the 2007 UFOC listed Philip Stooksbury ("Stooksbury") as the Secretary
11 and Controller of Yakety Yak.

12 At all relevant times, Play N Trade was a Nevada corporation engaged in business activities
13 relating to the franchising of Play N Trade retail outlets offering new and used electronic video
14 games and consoles for consumer purchase. Play N Trade offers and sells both unit franchises and
15 area developer franchises in California as well as other states. Unit franchisees are sold the right to
16 operate Play N Trade retail stores and/or outlets. Area developer franchisees purchase the right to
17 develop Play N Trade retail stores in a specific franchise territory. Play N Trade conducts its primary
18 business from the same Newport Beach office building used by Yakety Yak. Play N Trade's parent
19 company is also San Clemente Capital.

20 On May 25, 2006, Play N Trade filed its initial Uniform Franchise Registration Application
21 with the Department seeking to register its franchise enterprise in this state in compliance with
22 section 31111. The franchise registration applications that Play N Trade submitted for the unit and
23 area developer franchises were each accompanied by a UFOC containing the material information set
24 forth in the application, as required by section 31114.

25 Item 2 of the initial UFOC that Play N Trade filed in May 2006 disclosed that Shmul,
26 Kindred, Turner, and Stooksbury also occupied executive positions at "Yakety Yak Holdings, Inc." .
27 The Play N Trade UFOC disclosed Shmul as the Co-Chief Executive Officer and Director, Kindred
28 as the Chief Marketing Officer and Director, Turner as Chief Operating Officer, and Stooksbury as

1 Secretary. The UFOC listed Ron Simpson (“Simpson”) as the founder and Director of Play N Trade.
2 The Co-Chief Executive Officer was identified as Roger Lloyd (“Lloyd”).

3 On June 9, 2006, the Department approved Play N Trade’s franchise registration applications
4 and issued orders permitting it to offer and sell Play N Trade unit and area developer franchise
5 opportunities in California. Franchise renewal applications were approved for both the Play N Trade
6 unit and area developer franchises in 2007.

7 At all relevant times, both the Yakety Yak and Play N Trade franchises were managed from
8 the same location by T-Street Management, Inc. (“T-Street Management”).² However, Yakety Yak
9 was not identified as an “affiliate” of Play N Trade or otherwise mentioned in Item 1 of the 2006
10 UFOC. Play N Trade did not disclose its affiliation with Yakety Yak until it filed its franchise
11 renewal application in 2008.

12 Conversely, Yakety Yak did not disclose its affiliation with Play N Trade in Item 1 of the
13 UFOC until it filed the 2008 franchise renewal application, and only did so after the issue was raised
14 by the Department. In 2007 and 2008, Yakety Yak’s franchise registration was renewed. On March
15 30, 2009, Yakety Yak again filed an application to renew the registration of the franchise.

16 On February 28, 2008, Play N Trade filed applications to renew both the unit and area
17 developer franchises. An order was issued effective April 17, 2008, renewing the Play N Trade unit
18 franchise registration only. On March 6, 2008, the Department received a letter from Play N Trade’s
19 counsel informing that Play N Trade had decided to cease offering area developer franchises in
20 California and wished to withdraw its renewal application.

21 However, on June 27, 2008, Play N Trade refiled its application to renew the area developer
22 franchise registration without providing any explanation to the Commissioner for its prior declaration
23 of intent to cease operating area developer franchises.

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28 ² T-Street Management, Inc. was registered with the California Secretary of State on May 9, 2006. Thomas C. Bozarth was listed as the agent for service of process through at least April 14, 2009.

1 On July 7, 2008, the Commissioner issued an order postponing the effectiveness of the area developer
2 franchise registration due to unresolved regulatory compliance issues that were identified during a
3 pending investigation by the Department.

4 III.

5 CALIFORNIA FRANCHISE INVESTMENT LAW VIOLATIONS

6 The Commissioner finds that Respondents Yakety Yak and Play N Trade have committed
7 multiple violations of the California Franchise Investment Law, including, but not limited to, the
8 following:

9 A. UNREGISTERED, NON-EXEMPT OFFERS TO SELL A FRANCHISE IN VIOLATION
10 OF SECTION 31110.

11 Section 31110 prohibits the offer or sale of any franchise in this state unless the offer has been
12 registered with the Department or exempted from registration pursuant to the provisions of the
13 Franchise Investment Law. Section 310.100.2 of Title 10 of the California Code of Regulations
14 (sections of Title 10 of the California Code of Regulations hereafter referred to as "CCR") exempts
15 from registration certain franchise offerings made with terms different than those of the registered
16 offer. In order for a franchise offer to be exempt from registration in California, CCR 310.100.2(a)
17 requires that all of the following conditions be met:

- 18 (1) When the prospective franchisee receives the offering circular, he or she also receives
19 copies of all Notices of Negotiated Sale of Franchise filed with the Commissioner within
20 the last 12 months, if any.
- 21 (2) Before selling another franchise, the franchisor amends its registered offer to disclose:
22 "The terms of Item(s) _____ of this Offering Circular have been negotiated with
23 other franchisees. A copy of all Negotiated Sales Notices filed in California in the last
24 twelve months is attached as Exhibit _____." This disclosure should be made in the
25 UFOC Item that was negotiated or in an appendix to the UFOC. This disclosure must be
26 made if the negotiated sale occurred within twelve months of the offering being made. An
27 amendment making only this disclosure is effective when filed.
- 28 (3) The Notice of Negotiated Sale of Franchise in the form set forth in subsection (b) is filed
with the Commissioner within 15 business days after the negotiated sale is consummated.
- (4) The franchisor certifies or declares in an appendix to its application for renewal that all
notices have been filed with the Commissioner as required by paragraph (a)(4) (see
Section 310.122 of these rules).

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1 1. UNIT FRANCHISE VIOLATIONS

2 On August 31, 2006, Yakety Yak sold a unit franchise store in Stockton, California for the
3 price of \$12,500. Item 5 of the UFOC in effect at the time of purchase disclosed that the minimum
4 purchase price for one unit store was \$15,000. At no time within 15 business days after
5 consummating the sale of the Stockton franchise did Yakety Yak file a Notice of Negotiated Sale
6 with the Commissioner as required by subdivision (3) of CCR 310.100.2(a).

7 On August 31, 2006, Play N Trade sold a unit franchise store in Stockton, California for the
8 price of \$17,500 to the same franchisee. Item 5 of the UFOC in effect at the time of purchase
9 disclosed that the minimum purchase price for one unit store was \$20,000. At no time within 15
10 business days after consummating the sale of the Stockton franchise did Play N Trade file a Notice of
11 Negotiated Sale with the Commissioner as required by subdivision (3) of CCR 310.100.2(a).

12 Additionally, on May 4, 2007, Yakety Yak entered into a unit franchise contract with a
13 Huntington Beach franchisee for the price of \$15,000. Item 5 of the UFOC in effect at the time of
14 purchase disclosed that the minimum purchase price for a unit franchise was \$20,000. At no time
15 within 15 business days after consummating the sale of the Huntington Beach franchise did Yakety
16 Yak file a Notice of Negotiated Sale with the Commissioner as required by subdivision (3) of CCR
17 310.100.2(a).

18 Respondents' negotiated offers and sales of the Stockton and Huntington Beach franchises for
19 reduced fees do not fall within the exemption under CCR 310.100.2, and thus were non-exempt,
20 unregistered offers. Accordingly, failing to file notice that Respondents had negotiated different sales
21 terms with a franchisee within the past 12 months was a direct violation of section 31110.

22 2. AREA DEVELOPER FRANCHISE VIOLATIONS

23 On or about September 9, 2005, Yakety Yak filed with the Department a UFOC setting the
24 area developer fee at \$100,000. Item 5 of the UFOC stated: "The initial master franchise fee may be
25 modified due to various subjective factors. . . [b]ut the master franchise fee under this circular will
26 not exceed \$100,000 unless the territory is larger than 4,000,000 people. "

27 On or about February 28, 2006, Yakety Yak executed a master franchise agreement with an
28 initial franchise fee of \$130,000 for a territory including the counties of Santa Clara, Alameda,

1 Contra Costa, Solano, and Napa. This same agreement provided for a term of ten years although
2 Item 17 of the registered UFOC only allowed for a term of five years.

3 On or about March 2, 2006, Yakety Yak executed an area developer franchise agreement for
4 San Diego and Imperial counties with a discounted initial franchise fee of \$60,000. Additionally,
5 Yakety Yak reduced the amount of the monthly franchise fee that the master franchisee was required
6 to pay pursuant to the "Minimum Performance" clause to only a third of the amount of fees disclosed
7 in the registered franchise agreement (e.g., from \$90,000 to \$30,000). This same agreement provided
8 for a contract term of fifteen years although Item 17 of the registered UFOC disclosed a maximum
9 term of five years. At no time within 15 business days after consummating the sale of any of these
10 franchises did Yakety Yak file a Notice of Negotiated Sale with the Commissioner as required by
11 subdivision (3) of CCR 310.100.2(a).

12 On or about June 9, 2006, Play N Trade registered with the Department a UFOC setting the
13 area developer fee at \$100,000 in "readily negotiable funds" due in full upon signing.

14 On or about June 13, 2006, Shmul contacted several Yakety Yak area developer franchisees.
15 Shmul offered the Yakety Yak area developers the opportunity to purchase a Play N Trade area
16 developer franchise for the discounted fee of \$75,000 provided they contact him no later than June
17 20, 2006.

18 On or about August 16, 2006, Shmul sent an email message to an individual Yakety Yak
19 franchisee stating, "PNT [Play N Trade] is willing to offer you a special deal due to your relationship
20 with our sister company, Yakety Yak." The "special deal" was an opportunity to buy a Play N Trade
21 area developer franchise for a fee of \$50,000 to be financed 100% with no interest and paid in full by
22 December 20, 2006. Shmul further emphasized, "This agreement is 100% confidential."

23 Later that same day, Shmul sent an email to several Yakety Yak franchisees offering the
24 opportunity to buy a Play N Trade area developer franchise. Shmul advised that if an agreement
25 were to be executed by September 31, 2006, then Play N Trade would accept a reduced franchise fee
26 of \$50,000 cash paid upon execution, or \$75,000 total with \$10,000 cash paid upon execution with
27 the balance due before December 20, 2006. In this later August 16th email communication, Shmul
28 wrote:

1 [A]ll the emails (and the offers you received in writing) that each one of you received
2 individually before this email are still in effect, and the individual offers are good until
3 August 31, 2006. . . and you know *the disclaimer story*: the actual offer is only with delivery
4 of UFOC for the specific state of interest. So call me to discuss territories. (Emphasis added.)

5 A franchisee who had received Shmul's later offer would reasonably consider the discounted
6 franchise fee and more favorable financing terms offered to other franchisees only hours earlier to be
7 information material to negotiating a franchise agreement. Any prospective franchisee would have
8 also considered this information material.

9 On or about December 18, 2006, Bozarth, who had since succeeded Shmul as president of
10 Play N Trade, sent an email to franchisees who had executed a Play N Trade franchise agreement
11 pursuant to the terms previously offered by Shmul. In his email, Bozarth wrote:

12 . . . For those of you who are bound by the 20th deadline and would like to continue a business
13 relationship with PNT, please meet the 20th of December payment deadline as stipulated in
14 your agreement or the agreement will become null and void. . . PNT may offer some other
15 deals to some of you after 1/1/07. However, PNT would like to remind you that PNT is not
16 obligated to offer deals, and if any deals are offered, such deals will definitely not be as
17 attractive as the current one. . . .

18 The offers that Yakety Yak and Play N Trade negotiated on different terms do not fall within
19 the exemption under CCR 310.100.2, and thus were non-exempt, unregistered offers. A prospective
20 franchisee considering whether to purchase a franchise would reasonably consider the franchisor's
21 willingness to negotiate discounted franchise fees and longer contract terms with other franchisees
22 within the prior 12 months to be material information. Accordingly, failing to file notice that the
23 franchisor had negotiated different sales terms with a franchisee within the past 12 months was a
24 direct violation of section 31110.

25 Yakety Yak and Play N Trade have negotiated several franchise contracts on multiple terms
26 without registering the negotiated offers with the Commissioner as required by CCR 310.100.2(a)(3).
27 These negotiated sales were not isolated incidents. The Commissioner finds that such conduct by
28 Respondents' top-level executives evidences a willful pattern and practice of disregard for the
fundamental disclosure requirements of the Franchise Investment Law and constitutes a violation of
section 31110.

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1 B. MATERIAL MISSTATEMENTS OR OMISSIONS IN A FRANCHISE
2 REGISTRATION APPLICATION FILED WITH THE COMMISSIONER IN VIOLATION
3 OF SECTION 31200.

4 Corporations Code section 31200 provides:

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

9 Respondents violated section 31200 by filing franchise applications with the Commissioner
10 which failed to disclose: (1) the identity of the franchisor's affiliate; (2) non-exempt negotiated sales;
11 (3) the termination of franchisees within the preceding 12-month period; and, (4) litigation alleging
12 material violations of a franchise law.

13 1. FRANCHISOR AFFILIATES

14 Item 1 of the UFOC requires the applicant to disclose the identity of the franchisor, its
15 predecessors, and affiliates. The initial UFOC that Play N Trade filed with the Commissioner in May
16 2006 failed to disclose in Item 1 that Yakety Yak was an affiliate company. At the time of filing, the
17 Department's *Guidelines for Franchise Registration* contained instructions for completing Item 1
18 which provided:

19 Affiliate in Item 1 means a person (other than a natural person) controlled by, controlling, or
20 under common control with the franchisor, which is offering franchises in any line of business
21 or is providing products or services to the franchisees of the franchisor.

22 When Yakety Yak filed its franchise registration renewal application on March 20, 2007, the
23 franchisor failed to disclose in Item 1 that Play N Trade was an affiliate company. The only
24 "affiliate" disclosed in Item 1 was T-Street Management, whose role was described as follows:

25 On May 9, 2006, YYW's affiliate, T-Street Management, Inc. ("TSM") was formed as a
26 California Corporation. TSM shares facilities with YYW . . . and is a management
27 organization that provides general office administrative support, accounting and bookkeeping
28 services, and franchise marketing and support services to YYW in exchange for
reimbursement of related direct expenses of TSM to do so.

In Item 2 of the Yakety Yak 2007 UFOC, which is the section containing information about

1 the prior five-year business experience of the franchisor's principal officers, it was disclosed that
2 Bozarth, Turner, Kindred, and Stooksbury all held executive positions on the board of T-Street
3 Management. There was no reference to the fact that both Bozarth and Shmul would be concurrently
4 acting as Co-Chief Executive Officers of Play N Trade. Item 2 further disclosed that Stooksbury was
5 the Corporate Secretary of T-Street Management but failed to inform that he was also named the
6 Secretary of Play N Trade in May 2006.

7 The Commissioner finds that Play N Trade should have been disclosed as an affiliate of
8 Yakety Yak in the franchise registration application filed in 2007 because both franchisors were
9 controlled by, or under the common control of, the same principals. At least five of Yakety Yak's
10 executive officers – Shmul, Bozarth, Turner, Kindred, and Stooksbury – either concurrently or
11 subsequently held executive positions with Play N Trade.

12 Additionally, the Commissioner finds that Yakety Yak should have been disclosed as an
13 affiliate of Play N Trade in the franchise registration applications filed in 2006 and 2007 because at
14 that time both franchisors were controlled by, or under the common control of, the same principals.
15 At least four of Play N Trade's executive officers – Shmul, Kindred, Turner, and Stooksbury – either
16 previously or concurrently held executive positions with Yakety Yak.

17 Further evidencing a commonality of control between the two franchisors, Yakety Yak and
18 Play N Trade operated business from the same office building and were managed by the same
19 management company, T-Street Management. Yakety Yak and Play N Trade conducted the training
20 of their franchisees at the same facility in Newport Beach, using shared personnel and resources. As
21 early as June 2006, Shmul sent official correspondence bearing dual logos to franchisees identifying
22 himself as the "Chief Executive Officer" of both Yakety Yak and Play N Trade. Finally, Shmul often
23 referred to Play N Trade as Yakety Yak's "sister company" and negotiated franchise contracts on
24 behalf of both franchisors.

25 Yakety Yak and Play N Trade are clearly affiliates that were at all relevant times under the
26 common control of Shmul, Bozarth, and/or T-Street Management. The identity of an affiliate is
27 material information required to be disclosed in the UFOC. By failing to disclose their affiliation in
28 Item 1 of the 2007 UFOC, Respondents willfully made untrue statements of material fact in the

1 franchise registration applications filed with the Commissioner, in violation of section 31200.

2 2. NEGOTIATED SALES

3 An updated version of the UFOC that Play N Trade submitted to the Commissioner on March
4 15, 2007, as part of its franchise renewal application, failed to disclose that negotiated sales had
5 occurred during the previous 12 months, in violation of CCR 310.100.2. In addition to the August
6 2006 sale of the Stockton franchise, Play N Trade had also executed a franchise contract on June 21,
7 2006, which provided financing terms more favorable than those disclosed in the UFOC then in
8 effect. Evidence obtained by the Commissioner, including but not limited to the documents
9 referenced herein, shows that Play N Trade negotiated the terms of multiple franchise contracts
10 without proper disclosure, in violation of section 31200.

11 The franchise renewal application that Yakety Yak submitted to the Commissioner on March
12 20, 2007 failed to disclose that negotiated sales, including but not limited to the August 2006 sale of
13 the Stockton franchise, had occurred during the previous 12 months. Despite this willful
14 misrepresentation or omission, Yakety Yak's president at the time, Bozarth, executed the declaration
15 to the application averring under penalty of law that the statements made in the franchise renewal
16 application and exhibits attached thereto were true and correct, in violation of section 31200.

17 3. TERMINATED FRANCHISEES

18 Play N Trade failed to identify in the UFOC it filed in 2007 that some area developers were
19 terminated on December 20, 2006 for failure to timely pay the sums set forth in franchise agreements
20 that had been executed earlier that year same year. Exhibit D of the 2007 UFOC filed with the
21 Commissioner falsely represented that no area developers left the Play N Trade system within the 12-
22 month period ended December 31, 2006, in violation of section 31200.

23 On February 28, 2008, Play N Trade falsely stated in the UFOC it filed with the
24 Commissioner that no area developers had been terminated or left the system in the 12-month period
25 ended December 31, 2007. In fact, Play N Trade was well aware that it had terminated at least three
26 California area developer franchisees in 2007.

27 Information about whether existing franchisees have been recently terminated or left the
28 franchise system would be material to a prospective franchisee that is assessing the viability of the

1 franchise model. Moreover, Exhibit D discloses the names and contact information of the terminated
2 franchisees so that a prospective franchisee may communicate directly with a terminated franchisee
3 to investigate the circumstances of the termination. The Commissioner finds that Play N Trade
4 willfully made untrue statements of material fact in both the 2007 and 2008 franchise renewal
5 applications, in violation of section 31200.

6 4. LITIGATION

7 On November 14, 2007, a civil complaint alleging breach of contract was filed in Orange
8 County Superior Court (Case No. 07CC11930) against Play N Trade, Yakety Yak, San Clemente,
9 Shmul, Bozarth, and several other alleged affiliates. The plaintiff claimed he was wrongfully
10 terminated from his position as the former Vice President of Marketing for Play N Trade. In
11 September 2008, the lawsuit was dismissed with prejudice pursuant to a confidential out-of-court
12 settlement agreement between the parties. The above-referenced defendants were jointly represented
13 by the same legal counsel.

14 Item 3 of the UFOC requires disclosure of whether the franchisor or an affiliate offering
15 franchises under the franchisor's principal trademark has a civil action pending against that person
16 that is not merely incidental to business but makes material allegations such as a violation of a
17 franchise, antitrust or securities law, fraud, unfair or deceptive practices, or comparable allegations.
18 Disclosure is required of any legal action that is significant in the context of the number of
19 franchisees and the size, nature or financial condition of the franchise system or its business
20 operations.

21 The civil suit alleged, among other things, that the principals of Play N Trade and Yakety Yak
22 had structured the corporate entities with the intent to insulate themselves from liability and thereby
23 "defraud potential creditors," including franchisees. The complaint further alleged that the two
24 companies were a "house of cards" and that the officers had "committed blatant violations of
25 franchise laws" and tax fraud.

26 In the franchise renewal applications filed in 2008 and 2009, Respondents failed to disclose
27 the Orange County lawsuit in Item 3 of the UFOC. Any prospective franchisee certainly would be
28 interested in investigating the merits of the claims that the franchisor was undercapitalized and had

1 “committed blatant violations of franchise laws.”

2 Respondents violated section 31200 by willfully misstating, or omitting to state, material facts
3 or changes when filing its franchise renewal applications with the Commissioner. Respondents
4 knew, or should have known, that representations made in the renewal applications were in fact false
5 and misleading, and the omissions material.

6 C. FAILURE TO NOTIFY THE COMMISSIONER OF MATERIAL CHANGES MADE TO
7 TERMS OF REGISTERED FRANCHISE OFFER IN VIOLATION OF SECTION 31123.

8 Corporations Code section 31123 provides in pertinent part:

9 A franchisor shall promptly notify the commissioner in writing, by an application to amend
10 the registration, of any material change in the information contained in the application as
11 originally submitted, amended or renewed. . . .

12 As established by the foregoing facts, on multiple occasions throughout 2006 and 2007,
13 Respondents materially modified the terms of its registered franchise offer without first filing an
14 amendment with the Commissioner as required under section 31125. As such, Respondents violated
15 section 31123 by failing to notify the Commissioner in writing of the changes made in the terms of its
16 registered franchise offer because a prospective franchisee would have reasonably considered the
17 new terms material to negotiating a franchise contract. Moreover, Play N Trade’s president at the
18 time, Bozarth, executed the declaration to the 2007 franchise renewal application averring under
19 penalty of law that the representations asserted in the application were true and correct, in violation of
20 section 31123.

21 D. PATTERN AND PRACTICE OF FAILURE TO COMPLY WITH THE FRANCHISE
22 INVESTMENT LAW.

23 Corporations Code section 31115 provides in pertinent part:

24 The commissioner may summarily issue a stop order denying the effectiveness of or
25 suspending or revoking effectiveness of any registration if the commissioner finds:

- 26 (a) That there has been a failure to comply with any of the provisions of this law or the rules
27 of the commissioner pertaining thereto.
- 28 (b) That the offer or sale of the franchise would constitute misrepresentation to, or deceit or
fraud of the purchasers. . . .

28 ///

1 The Commissioner finds that multiple violations of the Franchise Investment Law have been
2 committed by Yakety Yak, Play N Trade, Shmul and Bozarth, including but not limited to violations
3 of sections 31110, 31200, and 31123. Accordingly, the Commissioner is of the opinion that the offer
4 or sale of Respondents' franchises would constitute misrepresentation to, or deceit or fraud of the
5 purchasers within the meaning of subdivision (b) of section 31115.

6 IV.

7 STOP ORDERS REVOKING EFFECTIVENESS OF
8 FRANCHISE REGISTRATIONS

9 Pursuant to Corporations Code section 31115, and based on the foregoing evidence of a
10 willful pattern and practice of conducting business in violation of the California Franchise Investment
11 Law, the registration of the offer and sale of Yakety Yak Wireless, Inc. franchises, filed on April 17,
12 2008 and ordered effective through April 20, 2009, was revoked on April 14, 2009, and became final.

13 Pursuant to Corporations Code section 31115, and based on the foregoing evidence of a
14 willful pattern and practice of conducting business in violation of the California Franchise Investment
15 Law, the registration of the offer and sale of Play N Trade Franchise, Inc. franchises filed on April
16 17, 2008 and ordered effective through April 20, 2009, is hereby revoked.

17 V.

18 STOP ORDER DENYING EFFECTIVENESS OF
19 FRANCHISE REGISTRATION APPLICATIONS

20 Pursuant to Corporations Code section 31115, and based on the foregoing evidence of a
21 willful pattern and practice of conducting business in violation of the California Franchise Investment
22 Law, the registration of the offer and sale of area developer franchises filed on June 27, 2008 by Play
23 N Trade Franchise, Inc. is hereby denied.

24 VI.

25 CITATIONS

26 Corporations Code section 31406 states:

27 (a) If, upon inspection or investigation, based upon a complaint or otherwise, the
28 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

1 to that person in writing describing with particularity the basis of the citation. Each citation
2 may contain an order to desist and refrain and an assessment of an administrative penalty not
3 to exceed two thousand five hundred dollars (\$2,500.00) per violation and shall contain
4 reference to this section, including the provisions of subdivision (c). All penalties collected
5 under this section shall be deposited in the State Corporations Fund.

6 (b) The sanctions authorized under this section shall be separate from, and in addition to, all
7 other administrative, civil, or criminal remedies.

8 (c) If within 60 days from the receipt of the citation, the person cited fails to notify the
9 commissioner that the person intends to request a hearing as described in subdivision (d), the
10 citation shall be deemed final.

11 (d) Any hearing under this section shall be conducted in accordance with Chapter 5
12 (commencing with Section 11500) of Part I of Division 3 of Title 2 of the Government Code.

13 (e) After the exhaustion of the review procedures provided for this section, the commissioner
14 may apply to the appropriate superior court for a judgment in the amount of the administrative
15 penalty and order compelling the cited person to comply with the order of the commissioner.
16 The application shall include a certified copy of the final order of the commissioner and shall
17 constitute a sufficient showing to warrant the issuance of the judgment and order.

18 The foregoing facts establish that Yakety Yak Wireless, Inc. has committed multiple
19 violations of the California Franchise Investment Law in the course of conducting business with no
20 less than 30 California franchisees since the date of its initial franchise registration in California.

21 Pursuant to section 31406, Yakety Yak Wireless, Inc. is hereby ordered to pay the
22 Commissioner 30 citations of \$2,500 each in the total sum of seventy-five thousand dollars
23 (\$75,000), or according to proof. All citation payments are due and payable by 30 days after this
24 order becomes final.

25 The foregoing facts also establish that Play N Trade Franchise, Inc. has committed multiple
26 violations of the California Franchise Investment Law in the course of conducting business with no
27 less than 53 California franchisees since the date of its initial franchise registration in California.

28 Pursuant to section 31406, Play N Trade Franchise, Inc. is hereby ordered to pay the
Commissioner 53 citations of \$2,500 each in the total sum of one-hundred thirty-two thousand five-
hundred dollars (\$132,500), or according to proof. All citation payments are due and payable by 30
days after this order becomes final.

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VII.

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DESIST AND REFRAIN ORDERS

The Commissioner finds that beginning as early as June 1, 2006, Yakety Yak Wireless, Inc., Play N Trade Franchise, Inc., Yuvi Shmul, and Thomas C. Bozarth violated multiple provisions of the California Franchise Investment Law, including but not limited to Corporations Code sections 31110, 31200, and 31123, as set forth in greater detail herein.

Pursuant to section 31406 of the Corporations Code, Yakety Yak Wireless, Inc., Play N Trade Franchise, Inc., Yuvi Shmul, and Thomas C. Bozarth are hereby ordered to desist and refrain from:

- (a) Making unregistered, non-exempt offers to sell a franchise in violation of section 31110;
- (b) Making material misstatements or omissions in a franchise registration application filed with the Commissioner in violation of section 31200; and,
- (c) Failing to notify the Commissioner of material changes made to the terms of the registered franchise offer in violation of section 31123.

VIII.

CLAIMS FOR ANCILLARY RELIEF

Corporations Code section 31408 provides:

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

RESCISSION ORDERS

Due to the California Corporations Commissioner’s finding that Yakety Yak Wireless, Inc. and Play N Trade Franchise, Inc. have committed multiple violations of the California Franchise Investment Law, all Yakety Yak and Play N Trade franchisees shall be afforded the right to rescind any contract for the purchase of a California franchise.

RESTITUTION ORDERS

Yakety Yak Wireless, Inc. and Play N Trade Franchise, Inc. are hereby ordered to pay restitution to every California franchisee in the amount of the full or partial franchise fee collected

1 from each franchisee.

2 IX.

3 CONCLUSION

4 Based upon the foregoing findings, the California Corporations Commissioner is of the
5 opinion that Yakety Yak Wireless, Inc. and Play N Trade Franchise, Inc. have failed to comply with
6 multiple provisions of the California Franchise Investment Law within the meaning of sections
7 31110, 31200, 31123, and 31115(a).

8 WHEREFORE, the California Corporations Commissioner hereby issues the following orders
9 or seeks such additional relief as follows:

- 10 1. An order revoking the effectiveness of the Yakety Yak Wireless, Inc. unit franchise
11 registration pursuant to Corporations Code section 31115(a);
- 12 2. An order to revoke the effectiveness of the Play N Trade Franchise, Inc. unit franchise
13 registration pursuant to Corporations Code section 31115(a);
- 14 3. An order to deny the effectiveness of the pending Yakety Yak Wireless, Inc. franchise
15 registration renewal application pursuant to Corporations Code section 31115(a);
- 16 4. An order to deny the effectiveness of the Play N Trade Franchise, Inc. area developer
17 franchise registration application pursuant to Corporations Code section 31115(a);
- 18 5. An order issued to Yakety Yak Wireless, Inc. to pay citations in the amount of \$75,000 to
19 the State Corporations Fund within 30 days of the date this order becomes final;
- 20 6. An order issued to Play N Trade Franchise, Inc. to pay citations in the amount of \$132,500
21 to the State Corporations Fund within 30 days of the date this order becomes final;
- 22 7. Yakety Yak Wireless, Inc., Play N Trade Franchise, Inc., Yuvi Shmul, and Thomas C.
23 Bozarth are hereby ordered to desist and refrain from further violations of the California
24 Franchise Investment Law, including but not limited to violations of Corporations Code
25 sections 31110, 31200, and 31123, as specified above;
- 26 8. All franchisees of Yakety Yak Wireless, Inc. and Play N Trade Franchise, Inc. shall have
27 the right to rescind any contract for the purchase of a California franchise;
- 28

- 1 9. It is further ordered that Yakety Yak Wireless, Inc. and Play N Trade Franchise, Inc. pay
- 2 restitution in the amount of the franchise fee to each California franchisee sold a
- 3 franchise;
- 4 10. For the Complainant's costs and reasonable attorneys fees, according to proof;
- 5 11. And, for such other and further relief as the nature of the case may require and the court
- 6 deems proper.

7 Based on the foregoing facts establishing multiple violations of the California Franchise
8 Investment Law by Yakety Yak Wireless, Inc., Play N Trade Franchise, Inc., Yuvi Shmul, and
9 Thomas C. Bozarth, the issuance of the aforementioned citations and orders, and provision of
10 ancillary relief, is necessary, in the public interest, for the protection of investors, and consistent with
11 the purposes, policies, and provisions of the California Franchise Investment Law.

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13 Dated: September 21, 2009
14 Los Angeles, California

15 PRESTON DUFAUCHARD
16 California Corporations Commissioner

17
18 By: _____
19 ALAN S WEINGER
20 Deputy Commissioner
21 Enforcement Division
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