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8 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
9 OF THE STATE OF CALIFORNIA

10	In the Matter of:)	FIL ORG ID.: 92090
11	THE COMMISSIONER OF BUSINESS)	
12	OVERSIGHT,)	
13	Complainant,)	CONSENT ORDER
14	v.)	
15)	
16	AMADA FRANCHISE, INC. (a Wyoming)	
17	Corporation),)	
18	Respondent.)	
19	_____)		

20 This Consent Order (Consent Order) is entered into between Amada Franchise, Inc. (Amada)
21 and the Commissioner of Business Oversight (Commissioner) (collectively the Parties). This
22 Consent Order is made with respect to the following facts:

23 **RECITALS**

24 A. Amada is a Wyoming corporation formed on January 27, 2012 and is authorized to
25 conduct business in California. Amada’s principal business address is 901 Calle Amanecer, Suite
26 350, San Clemente, California, 92673. Amada formerly conducted business from 2463 El Toro Road,
27 Suite 205, Laguna Woods, California 92637. Amada does business under the name “Amada Senior
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1 Care”. According to documents filed with the Commissioner, the Amada Senior Care business
2 “provides and markets non-medical homemaker, companionship, personal care services, personal
3 technology services, and equipment to the elderly and others who need assistance in daily living”.

4 B. The Commissioner is the head of the Department of Business Oversight (Department)
5 and is responsible for administering and enforcing the California Franchise Investment Law (FIL)
6 (Corp. Code § 31000, et seq.),¹ and registering the offer and sale of franchises in California. To
7 register a franchise, a franchisor must file a Uniform Franchise Disclosure Document (FDD) with the
8 Department for review and approval, in accordance with sections 31111 and 31114. The FIL requires
9 franchisors to disclose certain material information which is intended to provide prospective
10 franchisees with facts upon which to make an informed decision to purchase a franchise, as stated in
11 section 31001.

12 C. On June 21, 2016 the Commissioner issued a Stop Order Denying Effectiveness of
13 Franchise Renewal Registration Application and Statement In Support of Stop Order Denying
14 Effectiveness of Franchise Renewal Registration Application filed by Amada on April 20, 2015, and
15 Citations Including: (1) Desist and Refrain Order; (2) Assessment of Administrative Penalties; and
16 (3) Claim for Ancillary Relief and Costs, captioned *In the Matter of The Commissioner of Business*
17 *Oversight v. Amada Franchise, Inc. (a Wyoming corporation) and Jared Glenn Turner (an*
18 *individual)*, FIL Org Id.: 92090, before the Department of Business Oversight (the 2016 Action).

19 D. The Parties settled the 2016 Action on August 12, 2016 (the 2016 Stipulation).

20 E. At all relevant times, Jared Turner (Turner) is and was Amada’s director, trustee,
21 general partner, principal officer, or person with management responsibility relating to the sale or
22 operation of franchises offered by the FDD.

23 F. The Commissioner subsequently learned and maintains that:
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25
26

27 _____
28 ¹ All further statutory references are to the Corporations Code unless otherwise indicated.

- 1 (1) Amada failed to disclose a civil action² against Turner alleging fraud, in each of
2 Amada’s FDDs filed with the Department from 2012 through 2016, in violation of
3 section 31200. The *Cashland* case settled in 2010 without a finding of liability;
- 4 (2) Amada failed to disclose an arbitration³ alleging violations of the FIL and fraud
5 against a former affiliate (Play N Trade Franchise, Inc. (PNT)), and Turner, in
6 Amada’s 2012 and 2013 FDDs filed with the Department, and in Turner’s Franchise
7 Seller Disclosure Forms filed therewith, in violation of section 31200. The
8 *Franchamps* case settled in 2015 without a finding of liability;
- 9 (3) Amada failed to promptly amend its FDD in 2014 in violation of sections 31123 and
10 31200, to disclose that on March 2, 2014, PNT filed a petition as a debtor under the
11 United States Bankruptcy Code. PNT subsequently voluntarily requested to dismiss
12 its bankruptcy petition before any debts were discharged. The matter was dismissed
13 on March 24, 2014; and
- 14 (4) Amada failed to promptly amend its FDD in 2014 in violation of sections 31123 and
15 31200, to disclose that on May 13, 2014, Amada’s Director of Franchise Marketing,
16 Jeremy Brooker, filed a petition as a debtor under the United States Bankruptcy Code.

17 These alleged violations of the FIL are collectively referred to in this Consent Order as the
18 “Action”.

19 G. Amada maintains that the actions discussed in Paragraph F(1) and (2) above were
20 disclosed in the PNT FDDs filed with the Department. Amada maintains that it relied on advice of its
21 prior franchise disclosure counsel (who was aware of the actions discussed in Paragraphs F(1)-(3),
22 above) in failing to disclose the matters in Amada’s FDDs filed with the Department. Amada
23 retained new, California based franchise disclosure counsel in 2016.

24 H. Amada subsequently amended its FDD to disclose the matters discussed in Paragraph
25 F.

26 I. Now, therefore, in consideration of the terms and conditions contained herein, the
27 Parties agree as follows:

28 ² *Cashland Holdings, LLC et al v. Yakety Yak Holdings, Inc. et al*, Case No. CIV-09-935-M, in the
United States District Court for the Western District of Oklahoma (the *Cashland* case).

³ *Franchamps, LLC v Play N Trade Franchise, Inc., et al*. Arbitration before Franchise Arbitration
and Mediation Services, Case No. 11A0901.

TERMS AND CONDITIONS

1
2 1. Purpose. It is the intention of the Parties to resolve this matter for the purpose of
3 judicial economy and expediency and without the uncertainty and expense of a hearing and/or other
4 litigation.

5 2. Finality of Order. Amada hereby agrees to comply with this Consent Order and
6 stipulates that this Consent Order is deemed final and enforceable.

7 3. Desist and Refrain Order. Amada stipulates that in accordance with section 31406 it
8 will desist and refrain from violating sections 31123 and 31200 (D&R Order).

9 4. Administrative Penalties. Amada agrees to pay administrative penalties in the amount
10 of \$30,000.00. Such payment shall be made by Amada within ten (10) business days of the effective
11 date of this Consent Order, as such date is defined in Paragraph 13 (Effective Date), made payable in
12 the form of a cashier’s check or Automated Clearing House deposit to the “Department of Business
13 Oversight,” and transmitted to the attention of Accounting- Enforcement Division, Department of
14 Business Oversight, 1515 K Street, Suite 200, Sacramento, California 95814. Notice of all payments
15 shall be sent to Danielle A. Stoumbos, Senior Counsel, at Danielle.Stoumbos@dbo.ca.gov.

16 5. Investigative Costs. Amada agrees to pay the Commissioner’s investigative costs in
17 the amount of \$6,000.00. Such payment shall be made by Amada within ten (10) business days of
18 the Effective Date of this Consent Order, made payable in the form of a cashier’s check or
19 Automated Clearing House deposit to the “Department of Business Oversight,” and transmitted to the
20 attention of Accounting- Enforcement Division, Department of Business Oversight, 1515 K Street,
21 Suite 200, Sacramento, California 95814. Notice of all payments shall be sent to Danielle A.
22 Stoumbos, Senior Counsel, at: Danielle.Stoumbos@dbo.ca.gov.

23 6. Waiver of Hearing Rights. Amada acknowledges that the Commissioner is ready,
24 willing, and able to proceed with the filing of an administrative enforcement action regarding the
25 Action, and Amada hereby waives the right to a hearing, and to any reconsideration, appeal, or other
26 right to review which may be afforded pursuant to the FIL, Amada further expressly waives any
27 requirement for the filing of an Accusation that may be afforded by Government Code section
28 11415.60 (b); the California Administrative Procedure Act, the California Code of Civil Procedure,

1 or any other provision of law; and by waiving such rights, Amada effectively consents to this Consent
2 Order and D&R Order becoming final.

3 7. Remedial Education. The following class of persons is required to attend remedial
4 California franchise law compliance education: (a) all principal officers, directors, trustees, and any
5 other individual who will have management responsibility relating to the sale or operation of
6 franchises offered by Amada including, but not limited to, Jared Turner and Jeremy Brooker,
7 provided Turner and Brooker fall into the class of persons described in this Paragraph 7 at the time
8 the courses are being offered; (b) all persons who assist in preparing Amada franchise materials
9 including, but not limited to, registrations, renewals, or amendments; (c) any person selling an
10 Amada franchise; and (d) the person who certifies the accuracy of Amada's FDD filed with the
11 Commissioner. Each of these persons shall attend eight hours of remedial education within one
12 year from the Effective Date of this Consent Order, in the form of franchise law training courses
13 offered by a lawyer who is designated as a certified specialist in Franchise Law by the State Bar of
14 California, or otherwise approved by the Department. Within one year of the Effective Date of this
15 Consent Order, Amada shall file proof of compliance with this Paragraph 7, in the form of sworn
16 statements given under penalty of perjury by each person required under this paragraph to complete
17 remedial education.

18 8. Franchise Disclosure Document. Within 30 calendar days of the execution of this
19 Consent Order, Amada agrees to file a pre-effective amendment to the pending franchise registration
20 application to disclose this Consent Order in Item 3 of the FDD. Amada further agrees to disclose:
21 (a) the PNT and Brooker bankruptcies, and (b) the *Cashland* case, as required by and in accordance
22 with the FIL and the State of California Department of Business Oversight Guidelines for Franchise
23 Registration.

24 9. Amended Notice of Violation.

25 (a) Approval. Amada shall submit a pre-effective amendment to the Notice of
26 Violation (an amended NOV) that Amada filed in 2016 in connection with the 2016 Stipulation.
27 The Amended NOV shall be submitted in compliance with section 31303 of the FIL and Title 10
28 of California Code of Regulations, Rule 310.303 within 30 calendar days of execution of this

1 Consent Order. Amada will submit the Amended NOV for approval to the Commissioner, care of:

2 Shohreh Aram, Esq.
3 Senior Counsel
4 Department of Business Oversight
5 320 West 4th Street, Suite 750
6 Los Angeles, CA 90013

7 Upon approval from the Commissioner, Amada will deliver the approved Amended NOV,
8 approved Franchise Registration, and a \$6,000.00 refund (for each franchise purchased) to each
9 franchisee listed in the Amended NOV. The Amended NOV will be delivered in lieu of, and not
10 in addition to, the Notice of Violation that Amada filed in 2016 in connection with the 2016
11 Stipulation, which was never approved. The Amended NOV shall be delivered to Amada Senior
12 Care franchisees (both current and former) who, from July 19, 2012 through the present: (a)
13 received a Franchise Disclosure Document from Amada which did not include the disclosures that
14 are the subject of this Consent Order; and (b) in connection with the receipt of such Franchise
15 Disclosure Document, acquired rights to own an Amada Senior Care franchise in California.

16 (b) Preservation of Franchisees Ability to Maintain a Private Action. Nothing in this
17 Consent Order prohibits franchisees from filing or maintaining a private action in accordance with
18 FIL section 31303, or any other provision of law.

19 (c) Waiver of Limitation Period under California Corporations Code section 31303.
20 Amada agrees to waive the limitation period in Corporations Code section 31303, or any other
21 provision of law, as a defense to a claim in a private action that alleges damages or seeks equitable
22 relief as a result of any of the violations described in the Amended NOV so long as any such claim
23 is filed in a private action within 90 days of delivery of the approved Amended NOV to the
24 franchisee.

25 (d) Report to Commissioner. Amada will provide the Commissioner with proof of
26 delivery of the Amended NOV and proof of payment of refunds (the Report), within 120 calendar
27 days of the Commissioner's Order approving the Amended NOV. Amada shall submit the Report to
28 Danielle A. Stoumbos, Senior Counsel, at: Danielle.Stoumbos@dbo.ca.gov.

1 10. Suspension or Denial of Registration for Failure to Comply With Consent Order.

2 Amada agrees that if it fails to comply with any of the terms of this Consent Order, the Commissioner
3 shall provide Amada with notice of the failure to comply by sending a certified letter to 901 Calle
4 Amanacer, Suite 350, San Clemente, California 92673. If Amada does not cure within 10 business
5 days of the date that the Commissioner mails notice to Amada, the Commissioner shall suspend any
6 active FIL registrations and/or deny effectiveness of any pending applications until all terms are met.
7 With exception of notice required by Paragraph 10, Amada hereby waives any notice and hearing
8 rights to contest the suspension and/or denial of effectiveness that may be afforded under the
9 California Corporations Code, the California Administrative Procedure Act, the California Code of
10 Civil Procedure, or any other legal provision.

11 11. Future Actions by the Commissioner. The Parties acknowledge and agree that

12 nothing contained in this Consent Order shall limit the ability of the Commissioner to bring any
13 action to enforce compliance with this Consent Order or to seek penalties for its violation. Further,
14 the Commissioner reserves the right to bring any future action(s) against Amada or any of its
15 partners, owners, officers, directors, shareholders, employees, or successors, for any prior violations,
16 or any future violations of the law, except for the violations alleged herein.

17 12. Third Party Actions. It is the intent and understanding between the Parties that this

18 Consent Order does not create any private rights or remedies against Amada, create any liability
19 for Amada, or limit defenses of Amada (except as stated herein) for any person or entity not a
20 Party to this Consent Order.

21 13. Effective Date. This Consent Order shall become effective when signed by all

22 Parties and delivered by the Commissioner's counsel by email to Amada's counsel, Matthew
23 Gruenberg, at: matthew.gruenberg@dlapiper.com.

24 14. Full and Final Resolution. The Parties hereby acknowledge and agree that this Consent

25 Order is intended to constitute a full, final, and complete resolution of the Action.

26 15. Commissioner's Duties. The Parties acknowledge and agree that nothing contained in

27 this Consent Order shall operate to limit the Commissioner's ability to assist any other agency (city,
28 county, state, or federal) with any prosecution, administrative, civil or criminal, brought by any

1 such agency against Amada based upon any of the conduct alleged in this Consent Order or
2 otherwise.

3 16. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
4 interest.

5 17. Independent Legal Advice. Each of the Parties represents, warrants, and agrees that
6 it has received or been advised to seek independent legal advice with respect to the advisability of
7 executing this Consent Order.

8 18. Full Integration. Each of the Parties represents, warrants, and agrees that in executing
9 this Consent Order it has relied solely on the statements set forth herein and the advice of its own
10 counsel. Each of the Parties further represents, warrants, and agrees that in executing this
11 Consent Order it has placed no reliance on any statement, representation, or promise of any other
12 party, or any other person or entity not expressly set forth herein, or upon the failure of any party or
13 any other person or entity to make any statement, representation or disclosure of anything
14 whatsoever. The Parties have included this clause: (1) to preclude any claim that any party was in
15 any way fraudulently induced to execute this Consent Order; and (2) to preclude the introduction
16 of parol evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

17 19. Waiver, Modification, and Qualified Integration. The waiver of any provision
18 of this Consent Order shall not operate to waive any other provision set forth herein. No
19 waiver, amendment, change or modification of this Consent Order shall be valid or binding to
20 any extent unless it is in writing and signed by each of the Parties.

21 20. Final Agreement. This Consent Order is the final written expression and the
22 complete and exclusive statement of all of the agreements, conditions, promises, representations,
23 and covenants between the Parties with respect to the subject matter hereof, and supersedes all
24 prior or contemporaneous agreements, negotiations, representations, understandings, and
25 discussions between and among the Parties, their respective representatives, and any other
26 person or entity, with respect to the subject matter covered hereby.

27 21. No Presumption From Drafting. In that the Parties have had the opportunity to
28 draft, review and edit the language of this Consent Order, no presumption for or against any party

1 arising out of drafting all or any part of this Consent Order will be applied in any action relating
2 to, connected to, or involving this Consent Order. Accordingly, the Parties waive the benefit of
3 Civil Code section 1654 and any successor or amended statute, providing that in cases of
4 uncertainty, language of a contract should be interpreted most strongly against the party who
5 caused the uncertainty to exist.

6 22. Signatures. A fax signature or e-mail scanned signature of this Consent Order shall
7 be as effective as an original ink signature.

8 23. Counterparts. This Consent Order may be executed by the Parties in any number
9 of counter-parts, and when each party has signed and delivered at least one such counterpart to the
10 other party, each counterpart shall be deemed an original and taken together shall constitute one
11 and the same Consent Order.

12 24. Headings and Governing Law. The headings to the paragraphs of this Consent
13 Order are inserted for convenience only and will not be deemed a part hereof or affect the
14 construction or interpretation of the provisions hereof. This Consent Order shall be construed and
15 enforced in accordance with, and governed by, the laws of the State of California.

16 25. Authority To Execute. Each signatory hereto covenants that he or she possesses all
17 necessary capacity and authority to sign and enter into this Consent Order.

18 26. Public Record. Amada acknowledges that this Consent Order is a public record.

19 27. Voluntary Agreement. Amada enters into this Consent Order voluntarily and without
20 coercion and acknowledges that no promises, threats, or assurances have been made by the
21 Commissioner or any officer, or agent thereof, about this Consent Order.

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1 IN WITNESS WHEREOF, the Parties have approved and executed this Consent Order on the
2 dates set forth opposite their respective signatures.

3 JAN LYNN OWEN
4 Commissioner of Business Oversight

5 Dated: 1/16/19 By _____
6 Mary Ann Smith
7 Deputy Commissioner

8 AMADA FRANCHISE, INC.

9 Dated: 1/15/19 By _____
10 Jared Glenn Turner
11 Executive Chairman

12
13 APPROVED AS TO FORM:

14
15 Dated: 1/15/19 By _____
16 Matthew B. Gruenberg, Esq.
17 DLA Piper LLP
18 Counsel for Amada Franchise, Inc