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Attorneys for Complainant

BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
OF THE STATE OF CALIFORNIA

In the Matter of:)	FIL ORG ID.: 293872
THE COMMISSIONER OF BUSINESS)	
OVERSIGHT,)	
)	
Complainant,)	CONSENT ORDER
v.)	
)	
SUPERGLASS WINDSHIELD REPAIR,)	
INC.,)	
)	
Respondent.)	

This Consent Order is entered into between the Commissioner of Business Oversight (Commissioner) and SuperGlass Windshield Repair, Inc. (SuperGlass) (collectively the Parties) and is made with respect to the following facts:

I.

Recitals

A. The Commissioner is the head of the Department of Business Oversight (Department) and is responsible for administering and enforcing the Franchise Investment Law (FIL) (Corp. Code, § 31000, et seq.), and registering the offer and sale of franchises in California.

B. Superglass is a Georgia corporation formed in October of 1992, and its place of business is at 6220 Hazeltine National Drive, Suite 118, Orlando, Florida 32822. SuperGlass has

1 been selling windshield repair franchises in the United States since its formation. SuperGlass grants
2 franchisees the right to operate a mobile windshield and headlight restoration business, performing
3 those services for commercial customers.

4 C. David A. Casey is SuperGlass' president, and as such, is authorized to enter into this
5 Consent Order on behalf of SuperGlass.

6 D. SuperGlass filed an application for franchise registration with the Department of
7 Business Oversight (Department) in December of 1992, and then filed a renewal application in April
8 1993. SuperGlass' registration expired in April of 1994. All franchise offers, sales and renewals in
9 California after April of 1994 would have been unregistered.

10 E. In October of 2018, the Department received an application for franchise registration
11 from SuperGlass. The application is currently pending and has not been approved by the
12 Department.

13 F. The Department discovered that SuperGlass offered and sold approximately 26
14 unregistered franchises in California since April of 1994. SuperGlass entered into franchise
15 agreements with California residents, granting them exclusive rights to operate a SuperGlass
16 franchise in multiple counties in California. A few of the California franchisees sold their franchise.
17 Four of the franchises were expired, and one franchise was abandoned.

18 G. Based upon the foregoing, the Commissioner finds that SuperGlass offered and sold
19 franchises in California without registration or exemption in violation of Corporations Code section
20 31110.

21 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set
22 forth herein, the Parties agree as follows:

23 **II.**

24 **Terms and Conditions**

25 1. Purpose. This Consent Order resolves the issues before the Commissioner set forth
26 in paragraphs A through G above in a manner that avoids the expense of a hearing and other
27 possible court proceedings, protects consumers, is in the public interest, and is consistent with the
28 purposes, policies, and provisions of the FIL.

1 2. Final Desist and Refrain Order. Pursuant to Corporations Code section 31402,
2 SuperGlass Windshield Repair, Inc. is hereby ordered to desist and refrain from the further offer or
3 sale of franchises in violation of Corporations Code section 31110, unless and until the offers have
4 been duly registered under the FIL or are otherwise exempt. This desist and refrain order is final
5 and effective from the Effective Date of this Consent Order, as defined in paragraph 26 (Effective
6 Date).

7 3. Penalties. Pursuant to Corporations Code section 31406, SuperGlass Windshield
8 Repair, Inc. is hereby ordered to pay administrative penalties in the total amount of \$65,000.00 for
9 violations of Corporations Code section 31110. The above penalty shall be paid in equal quarterly
10 installments over 6 months, and shall be due on the following dates:

- 11 i. \$11,000.00 is due within 15 days from the Effective Date of this Consent Order;
- 12 ii. \$11,000.00 is due on June 30, 2020;
- 13 iii. \$11,000.00 is due on July 31, 2020;
- 14 iv. \$11,000.00 is due on August 31, 2020;
- 15 v. \$11,000.00 is due on September 30, 2020; and
- 16 vi. \$10,000.00 is due on October 30, 2020.

17 The installment payments shall be made in the form of a cashier's check or Automated Clearing
18 House deposit to the "Department of Business Oversight," and transmitted to the attention of:
19 Accounting - Litigation, at the Department of Business Oversight, located at 1515 K Street, Suite
20 200, Sacramento, California 95814. Notice of payment shall be sent concurrently to Afsaneh
21 Eghbaldari, Counsel, Enforcement Division, by email at: affi.eghbaldari@dbo.ca.gov. In the event
22 any payment due date falls on a weekend or holiday, the payment shall be due the next business day.

23 4. Rescission and Restitution Current Franchisees. SuperGlass hereby agrees to make an
24 offer of rescission to all of its current California franchisees within 15 days from the Effective Date
25 of this Consent Order. The California franchisees that accept the offer of rescission shall receive a
26 refund of the initial franchise fees and renewal fees previously paid to SuperGlass, only to the extent
27 that those fees exceeded the total gross revenues earned by them during the term of their respective
28 franchise agreements. Within 90 days from the Effective Date of this Consent Order, SuperGlass

1 shall submit proof of rescission offer, each franchisee's response to the rescission offer, and proof of
2 payment to the franchisees that accepted the rescission offer, to Afsaneh Eghbaldari, Counsel,
3 Enforcement Division, by email at: affi.eghbaldari@dbo.ca.gov.

4 5. Restitution Former Franchisees. SuperGlass hereby agrees to pay restitution to all its
5 former California franchisees within 30 days from the Effective Date of this Consent Order. All
6 former California franchisees that sold their franchise shall receive a refund of their initial franchise
7 fees, renewal fees and transfer fees, where appropriate, to the extent that those fees exceeded the
8 proceeds received by those franchisees from the sales. All former California franchisees that ceased
9 business during the term of their franchise agreements and did not sell their franchise shall receive a
10 refund of the initial franchise fees, renewal fees and transfer fees paid to SuperGlass. Within 90 days
11 from the Effective Date of this Consent Order, SuperGlass shall submit proof of restitution to
12 Afsaneh Eghbaldari, Counsel, Enforcement Division, by email at: affi.eghbaldari@dbo.ca.gov.

13 6. Remedial Education. Within 90 days of the Effective Date of this Consent Order,
14 David A. Casey and all persons employed by SuperGlass, who will assist in preparing franchise
15 registrations or who will assist in franchise selling, are hereby ordered to attend an eight-hour, in-
16 person compliance training in the area of the FIL compliance, including but not limited to the
17 offering and selling of franchises, and preparing the Franchise Disclosure Document (Training),
18 offered by franchise law specialist instructor(s). The instructor(s) and general format of this Training
19 must be approved by the Commissioner. Within 90 days of the Effective Date of this Consent Order,
20 SuperGlass shall submit proof of compliance to: Afsaneh Eghbaldari, Counsel, Enforcement
21 Division, by email at: affi.eghbaldari@dbo.ca.gov.

22 7. Withdraw Pending Franchise Application. SuperGlass hereby withdraws all pending
23 franchise application registrations filed with the Department, including the pending registration
24 application filed in October of 2018.

25 8. Waiver of Hearing Rights. SuperGlass acknowledges the Commissioner is ready,
26 willing, and able to proceed with the filing of an administrative enforcement action on the charges
27 contained in this Consent Order. SuperGlass hereby waives the right to any hearings, and to any
28 reconsideration, appeal, or other right to review which may be afforded pursuant to the FIL, the

1 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
2 provision of law. SuperGlass further expressly waives any requirement for the filing of an
3 Accusation pursuant to Government Code section 11415.60, subdivision (b). By waiving such rights,
4 SuperGlass effectively consents to this Consent Order and the Desist and Refrain Order becoming
5 final.

6 9. Full and Final Settlement. The Parties hereby acknowledge and agree that this
7 Consent Order is intended to constitute a full, final, and complete resolution of the violations
8 described herein and that no further proceedings or actions will be brought by the Commissioner in
9 connection with these matters under the FIL or any other provision of law, excepting therefrom any
10 proceeding to enforce compliance with the terms of this Consent Order.

11 10. Failure to Comply with Consent Order. SuperGlass agrees that if it fails to comply
12 with any terms of this Consent Order or the Desist and Refrain Order, the Commissioner may,
13 summarily suspend/revoke any of SuperGlass' FIL registration and/or deny any pending registration
14 applications of SuperGlass and/or its respective affiliates, successors, and assigns, by whatever
15 names they might be known, in addition to all other available remedies it may invoke under the
16 FIL. SuperGlass waives any notice and hearing rights to contest such summary suspensions,
17 revocation or denial which may be afforded under the FIL, the California Administrative Procedure
18 Act, the California Code of Civil Procedure, or any other provision of law in connection therewith.

19 11. Information Willfully Withheld or Misrepresented. This Consent Order may be
20 revoked, and the Commissioner may pursue any and all remedies available under law against
21 SuperGlass if the Commissioner discovers that SuperGlass knowingly or willfully withheld
22 information used for and relied upon by the Commissioner in entering into this Consent Order.

23 12. Future Actions by Commissioner. If SuperGlass fails to comply with any terms of
24 this Consent Order or Desist and Refrain Order, the Commissioner may institute proceedings for
25 any and all violations otherwise resolved under this Consent Order. The Commissioner reserves the
26 right to bring any future actions against SuperGlass, or any of its partners, owners, officers,
27 shareholders, directors, employees, or successors for any and all unknown violations of the FIL.

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1 13. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner's
2 ability to assist any other government agency (city, county, state, or federal) with any prosecution,
3 administrative, civil or criminal brought by that agency against SuperGlass or any other person
4 based upon any of the activities alleged in this matter or otherwise.

5 14. Headings. The headings to the paragraphs of this Consent Order are inserted for
6 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
7 the provisions hereof.

8 15. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
9 interest.

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

19 17. Waiver, Amendments, and Modifications. No waiver, amendment, or modification
20 of this Consent Order will be valid or binding unless it is in writing and signed by each of the
21 Parties. The waiver of any provision of this Consent Order will not be deemed a waiver of any
22 other provision. No waiver by either party of any breach of, or of compliance with, any condition
23 or provision of this Consent Order by the other party will be considered a waiver of any other
24 condition or provision or of the same condition or provision at another time.

25 18. Full Integration. This Consent Order is the final written expression and the complete
26 and exclusive statement of all the agreements, conditions, promises, representations, and covenant
27 between the Parties with respect to the subject matter hereof, and supersedes all prior or
28 contemporaneous agreements, negotiations, representations, understandings, and discussions

between and among the Parties, their respective representatives, and any other person or entity with respect to the subject matter covered hereby.

19. Governing Law. This Consent Order will be governed by and construed in accordance with California law. Each of the Parties hereto consents to the jurisdiction of such court, and hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in such court.

20. Counterparts. This Consent Order may be executed in one or more separate counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall together constitute a single document.

21. Effect Upon Future Applications and Proceedings. If SuperGlass applies for any license, registration, permit, or qualification under the Commissioner’s current or future jurisdiction, or is the subject of any future action by the Commissioner to enforce this Consent Order, then the subject matter hereof shall be admitted for the purpose of such application(s) or enforcement proceeding(s).

22. Voluntary Agreement. SuperGlass enters into this Consent Order voluntarily and without coercion and acknowledges that no promises, threats, or assurances have been made by the Commissioner or any officer, or agent thereof, about this Consent Order. The Parties each represent and acknowledge that he, she, or it is executing this Consent Order completely voluntarily and without any duress or undue influence of any kind from any source.

23. Notice. Any notice required under this Consent Order shall be provided to each party at the following addresses:

To SuperGlass:	SuperGlass Windshield Repair, Inc. David A. Casey, President 6220 Hazeltine National Drive, Suite 118 Orlando, Florida 32822 david@superglass.com
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To the Commissioner:	Afsaneh Eghbaldari, Counsel Department of Business Oversight 1350 Front Street, #2034 San Diego, California 92101 affi.eghbaldari@dbo.ca.gov
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24. Signatures. A fax or electronic mail signature shall be deemed the same as an original signature.

25. Public Record. SuperGlass hereby acknowledges that this Consent Order is and will be a matter of public record.

26. Effective Date. This Consent Order shall become final and effective when signed by all Parties and delivered by the Commissioner’s agent via e-mail to SuperGlass’ outside counsel, Joseph J. Gottlieb at jgottlieb@spgattorneys.com.

27. Authority to Sign. Each signatory hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Consent Order and undertake the obligations set forth herein.

Dated: May 30, 2020

MANUEL P. ALVAREZ
Commissioner of Business Oversight

By: _____
MARY ANN SMITH
Deputy Commissioner

Dated: May 29, 2020

SUPERGLASS WINDSHIELD REPAIR, INC.

By: _____
DAVID A. CASEY
President

APPROVED AS TO FORM:

Joseph J. Gottlieb, Esq.
Shires, Peake & Gottlieb, LLC
Counsel for SuperGlass Windshield Repair, Inc.