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Attorneys for Complainant

BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
OF THE STATE OF CALIFORNIA

In the Matter of:

THE COMMISSIONER OF FINANCIAL
PROTECTION AND INNOVATION,

Complainant,

v.

WHEELMAXX, INC., doing business as
WHEELMAXX, WHEELMAXX OFF ROAD
AND AUTO REPAIR, LUBEMAXX LUBE
AND OIL, WEST COAST TIRES & AUTO
CENTER, WEST COAST TIRES & TRUCK
CENTER,

Respondent.

CONSENT ORDER

This Consent Order is entered into between the Commissioner of Financial Protection and Innovation (Commissioner), and Wheelmaxx, Inc., doing business as Wheelmaxx, Wheelmaxx Off Road and Auto Repair, Lubemaxx Lube and Oil, West Coast Tires & Auto Center, and West Coast Tires & Truck Center (WMI) (collectively, Parties) and is made with respect to the following facts:

I.

RECITALS

A. The Commissioner is the head of the Department of Financial Protection and Innovation (Department) and is responsible for administering and enforcing the Franchise

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

7 B. At all relevant times, WMI was and is a California corporation with a principal place
8 of business located at 4224 W. Shaw Avenue, Fresno California 93722. At all relevant times, WMI
9 sells franchises that provide automotive services to consumers for vehicles including, but not limited
10 to, repairs, maintenance, lube and oil changes, and customization by way of rims, tires, and
11 suspensions.

12 C. Pursuant to section 31119, it is unlawful to sell any franchise without first providing a
13 prospective franchisee with the FDD at least fourteen days prior to the execution of a franchise
14 agreement or receipt of consideration.

15 D. On August 9, 2021, WMI submitted a FDD (2021 FDD) to the Department for review
16 and renewal registration in Application No. 20997 (2021 App). In Item 5 of the 2021 FDD, WMI
17 required prospective franchisees to contact bizbuilder.com to conduct a virtual tour of the franchise
18 opportunity. If interested, prospective franchisees were required to then open an escrow account and
19 make a payment of \$5,000 as a “deposit” (Deposit) when signing a WMI franchise application.
20 However, WMI did not provide the 2021 FDD to the prospective franchisees at any time prior to the
21 collection or receipt of Deposit funds. WMI, in the 2021 FDD, does not make any reference to WMI
22 providing the 2021 FDD to prospective franchisees prior to accepting the Deposit in Item 5.

23 E. The Commissioner finds that the Deposit is consideration received by WMI from at
24 least nine (9) prospective franchisees from November 25, 2020 to at least April 13, 2021, pursuant to
25 section 31119. The Commissioner also finds that WMI failed to provide the 2021 FDD to at least
26 nine (9) franchisees at least fourteen days prior to the execution of a franchise agreement or receipt
27 of consideration, resulting in nine (9) violations of section 31119.

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

1 F. NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions
2 set forth herein, the Parties agree as follows:

3 **II.**

4 **TERMS AND CONDITIONS**

5 1. Purpose. This Consent Order resolves the issues before the Commissioner [findings
6 in paragraphs A through E above] in a manner that avoids the expense of a hearing and other
7 possible court proceedings, protects consumers, is in the public interest, and is consistent with the
8 purposes and provisions of the applicable law.

9 2. Desist and Refrain Order. Pursuant to Corporations Code section 31406,
10 Wheelmaxx, Inc., doing business as Wheelmaxx, Wheelmaxx Off Road and Auto Repair,
11 Lubemaxx Lube and Oil, West Coast Tires & Auto Center, and West Coast Tires & Truck Center,
12 is hereby ordered to desist and refrain from violations of Corporations Code section 31119 set forth
13 herein and from violating the Franchise Investment Law. The issuance of this order is necessary, in
14 the public interest, for the protection of investors, and is consistent with the purposes, policies, and
15 provisions of the Franchise Investment Law.

16 3. Cancellation and Refund Offer. WMI agrees to make offers (Cancellation Offers)
17 within thirty (30) days after the effective date of this Consent Order listed in paragraph 21 herein
18 (Effective Date) to all franchisees listed in the franchisee list (Franchisee List), attached hereto and
19 incorporated by reference herein as “Exhibit A”, to cancel their franchise agreements and obtain a
20 refund of all initial franchise fees and Deposits paid by such franchisees. The form of Cancellation
21 Offer shall be in the form approved by the Commissioner (Cancellation Form), attached hereto and
22 incorporated by reference herein as “Exhibit B” and shall be sent to franchisees on the Franchisee
23 List by certified mail. No credits or benefits paid to, or received by, a franchisee shall offset any
24 refund payment. This provision shall apply to all California franchisees who purchased a WMI
25 franchise regardless of whether they were terminated on or before the Effective Date, including any
26 that are eligible but may have been omitted from the Exhibit B, according to proof. Within sixty
27 (60) days after the Effective Date, WMI shall submit to the Commissioner satisfactory
28 documentation evidencing each franchisee’s response to the Cancellation Offer via email to Marisa

1 I. Urteaga-Watkins, Esq. at marisa.urteaga-watkins@dfpi.ca.gov. WMI is responsible for ensuring
2 that any refund payment owed to any franchisee that has not been cashed within one hundred eighty
3 (180) days of the Effective Date of this Consent Order shall escheat to the State of California in
4 accordance with the Unclaimed Property Law.

5 4. Waiver of Hearing Rights. WMI acknowledges that the Commissioner is ready,
6 willing, and able to proceed with the filing of an administrative enforcement action on the charges
7 contained in this Consent Order. WMI hereby waives the right to any hearings, and to any
8 reconsideration, appeal, or other right to review which may be afforded pursuant to the FIL, the
9 Administrative Procedure Act (APA), the Code of Civil Procedure (CCP), or any other provision of
10 law. WMI further expressly waives any requirement for the filing of an accusation pursuant to
11 Government Code section 11415.60, subdivision (b). By waiving such rights, WMI effectively
12 consents to this Consent Order becoming final.

13 5. Failure to Comply with Consent Order. WMI agrees that if it fails to comply with the
14 terms of this Consent Order, the Commissioner may, in addition to all other available remedies it
15 may invoke under the FIL, summarily suspend or revoke WMI’s franchise registration (if applicable)
16 or deny WMI’s FIL applications (if applicable), until WMI is in compliance. WMI waives any
17 notice and hearing rights to contest such summary actions by the Commissioner, which may be
18 afforded under the FIL, APA, CCP, or any other provision of law.

19 6. 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 WMI,
21 if the Commissioner discovers that WMI knowingly or willfully withheld or misrepresented
22 information used for and relied upon in this Consent Order.

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

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

5 9. 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 10. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
9 interest.

10 11. 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 12. 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 13. 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

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

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

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

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

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

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

21 To WMI: Ms. Amy R. Lovegren-Tipton, Esq.
22 Tipton Legal
23 5703 N. West Avenue, Suite 103
24 Fresno, California 93711
ATipton@TiptonLegal.com

25 To the Commissioner: Marisa I. Urteaga-Watkins, Esq.
26 Department of Financial Protection and Innovation
27 2101 Arena Blvd.
28 Sacramento, California 95834
marisa.urteaga-watkins@dfpi.ca.gov

1 19. Signatures. A fax, scanned, or electronic signature shall be deemed the same as an
2 original signature.

3 20. Public Record. WMI hereby acknowledges that this Consent Order is and will be a
4 matter of public record.

5 21. Effective Date. This Consent Order shall become final and effective when signed by
6 all Parties and delivered by the Commissioner’s agent via e-mail to WMI’s agent, Amy R.
7 Lovegren-Tipton, Esq. at ATipton@TiptonLegal.com.

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

11 Dated: 10/5/2021

CHRISTOPHER S. SHULTZ
Acting Commissioner of Financial Protection and
Innovation

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13
14 By: _____

JENNIFER RUMBERGER
Deputy Commissioner

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18 Dated:

WHEELMAXX, INC., doing business as
WHEELMAXX, WHEELMAXX OFF ROAD AND
AUTO REPAIR, LUBEMAXX LUBE AND OIL,
WEST COAST TIRES & AUTO CENTER, WEST
COAST TIRES & TRUCK CENTER

19
20
21
22 By: _____

IBRAHIM ALWAREETH
President