

1 **STATE OF WASHINGTON**  
2 **DEPARTMENT OF FINANCIAL INSTITUTIONS**  
3 **SECURITIES DIVISION**

4 IN THE MATTER OF DETERMINING ) Order No.: S-13-1304-14-SC01  
5 Whether there has been a violation of the )  
6 Franchise Investment Protection Act of ) STATEMENT OF CHARGES AND NOTICE OF INTENT  
7 Washington by: ) TO ENTER ORDER TO CEASE AND DESIST  
8 )  
9 FRESH HEALTHY VENDING, LLC )  
10 )  
11 Respondent. )

12 **THE STATE OF WASHINGTON TO: FRESH HEALTHY VENDING, LLC**

13 **STATEMENT OF CHARGES**

14 Please take notice that the Securities Administrator for the state of Washington has reason to believe that  
15 Respondent, Fresh Healthy Vending, LLC has violated the Franchise Investment Protection Act of Washington, Ch.  
16 19.100 RCW ("FIPA"), and that its violations justify the entry of an order of the Securities Administrator under RCW  
17 19.100.248 against it to cease and desist from such violations. The Securities Administrator finds as follows:

18 **TENTATIVE FINDINGS OF FACT**

19 **Respondent**

20 1. Respondent Fresh Healthy Vending, LLC ("FHV") is a California LLC with its principal place of  
21 business at 9605 Scranton Road, #801, San Diego, CA 92121. FHV offers and sells vending machine franchises that  
22 sell healthy and organic snacks and beverages.

23 **Prior Enforcement Actions**

24 2. On May 30, 2012, the Securities Division entered Consent Order No. S-11-0712-12-CO01 against FHV  
25 and its former CEO, Jolly Backer ("FHV Consent Order"). The Securities Division alleged that FHV made untrue  
statements of material fact and/or omitted material facts by failing to disclose the litigation history of its officers in the  
franchise disclosure document ("FDD") that it filed with the Securities Division.

3. In the FHV Consent Order, FHV agreed to cease and desist from violating RCW 19.100.080 and RCW  
19.100.170 of FIPA.

4. On June 5, 2012, the Securities Division entered Consent Order No. S-12-0911-12-CO01 against FHV's  
predecessor, Fresh Healthy Vending Holding Company ("FHVHC") ("FHVHC Consent Order"). The Securities  
Division alleged that FHVHC violated the Business Opportunity Fraud Act of Washington, Ch. 19.110 RCW, by  
selling unregistered business opportunities to several Washington State residents and failing to provide prospective  
purchasers with material information about the business, including a disclosure document.

**Misrepresentations and Omissions**

1           5. A franchisor is required to disclose in its FDD whether the franchisor has pending against it an  
2 administrative action alleging a violation of a franchise law or alleging fraud.

3           6. On April 9, 2012, FHV emailed its FDD to a Washington State resident who was interested in becoming  
4 a franchisee (“Offeree A”). At that time, FHV was already in discussions with the Securities Division regarding the  
5 FHV Consent Order. FHV failed to disclose this pending administrative action in the FDD that it provided to Offeree  
6 A.

7           7. A franchisor is also required to disclose in its FDD whether the franchisor or a predecessor is subject to a  
8 currently effective injunctive or restrictive order or decree resulting from a concluded action brought by a public  
9 agency and relating to the franchise or to state franchise, trade regulation or trade practice laws.

10           8. On June 16, 2012, FHV emailed a copy of its FDD to a Washington State married couple who were  
11 interested in becoming a franchisee (“Franchisee A”). On June 20, 2012, FHV emailed its FDD to another  
12 Washington State resident who was also interested in becoming a franchisee (“Offeree B”).

13           9. FHV failed to disclose the FHV and FHVHC Consent Orders in the FDDs that it provided to Franchisee  
14 A and Offeree B. In these FDDs, FHV identified FHVHC as a predecessor.

**Registration Status**

15           10. FHV was initially registered to sell its franchises in Washington State from June 1, 2010 to April 1,  
16 2012, when its registration lapsed. FHV was not registered to sell franchises again in Washington State until  
17 November 9, 2012. FHV has been registered to sell its franchises in Washington State since that date.

18           11. There was no notification of exemption on file with Washington State during the period that FHV was  
19 unregistered, between April 1, 2012 and November 9, 2012.

**Unregistered Offers and Sale of a Franchise**

20           12. FHV was unregistered when it emailed its FDD to Offeree A and Offeree B on April 9 and June 20,  
21 2012, respectively.

22           13. FHV was unregistered when it entered into a Franchise Agreement with Franchisee A on June 30, 2012.  
23 Under the Franchise Agreement, FHV granted Franchisee A the right to use FHV’s trademarks and other proprietary  
24 information in the operation of their ten vending machines, to be located in Washington State. Franchisee A agreed to  
25 operate their machines in accordance with the system developed by FHV for the ownership and operation of such  
26 machines, including maintaining compliance with FHV’s Operations Manual. Franchisee A agreed to pay FHV a  
27 franchise fee of \$10,000.

          Based upon the above Tentative Findings of Fact, the following Conclusions of Law are made:

**CONCLUSIONS OF LAW**

1 1. The offer and/or sale of franchises described above constitute the offer and/or sale of a franchise as  
2 defined in RCW 19.100.010(6), RCW 19.100.010(12), and RCW 19.100.010(17).

3 2. The offers and sale of said franchises, as described in Paragraphs 12 and 13, are in violation of RCW  
4 19.100.020 because no registration for such offers and sale by FHV was on file with the Securities Administrator of  
5 the state of Washington at the time such offers and sale were made.

6 3. The offers and sale of said franchises, as described in Paragraphs 12 and 13, are in violation of RCW  
7 19.100.170(2) because FHV made untrue statements of material facts and/or omitted material facts necessary in order  
8 to make the statements made in light of the circumstances under which they were made not misleading by failing to  
9 disclose required litigation history in the FDDs that FHV provided to Franchisee A and Offerees A and B.

10 4. The offers and sale of said franchises, as described in Paragraphs 12 and 13, are in violation of RCW  
11 19.100.170(5) because FHV violated the Consent Order that the Securities Division entered against it on May 30,  
12 2012.

**NOTICE OF INTENT TO ORDER THE RESPONDENT TO CEASE AND DESIST**

13 Based upon the above Tentative Findings of Fact and Conclusions of Law, the Securities Administrator  
14 intends to order that Fresh Healthy Vending, LLC, and its agents and employees each shall cease and desist from  
15 violations of RCW 19.100.020 and RCW 19.100.170.

**AUTHORITY AND PROCEDURE**

16 This Order is entered pursuant to the provisions of RCW 19.100.248 and is subject to the provisions of  
17 Chapter 34.05 RCW. Fresh Healthy Vending, LLC may make a written request for a hearing as set forth in the  
18 NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this order. If a  
19 respondent does not request a hearing within the allowed time, the Securities Administrator intends to adopt the above  
20 Tentative Findings of Fact and Conclusions of Law as final and enter an order to cease and desist permanent as to that  
21 respondent.

22 Signed and Entered this 11th day of February, 2014.



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William M. Beatty  
Securities Administrator

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Approved by:



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Chief of Enforcement

Presented by:



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Huong Lam  
Financial Legal Examiner

Reviewed by:



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Jack McClellan  
Financial Legal Examiner Supervisor