

1 MARY ANN SMITH  
Deputy Commissioner  
2 JENNIFER A. GRANAT (CA BAR NO. 199868)  
3 Senior Corporations Counsel  
Department of Corporations  
4 320 West 4<sup>th</sup> Street, Ste. 750  
Los Angeles, California 90013-2344  
5 Telephone: (213) 576-7518  
6 Fax: (213) 576-7181

7 Attorneys for Complainant

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BEFORE THE DEPARTMENT OF CORPORATIONS  
OF THE STATE OF CALIFORNIA

In the Matter of THE CALIFORNIA ) File No.: 993-6326  
CORPORATIONS COMMISSIONER, )  
Complainant, ) 1) STATEMENT IN SUPPORT OF ORDER  
AND ORDER REVOKING  
v. ) EFFECTIVENESS OF FRANCHISE  
REGISTRATION  
FRESH HEALTHY VENDING, LLC ) 2) STATEMENT IN SUPPORT OF ORDER  
AND ORDER DENYING  
Respondent. ) EFFECTIVENESS OF FRANCHISE  
REGISTRATION APPLICATION  
) 3) DESIST AND REFRAIN ORDER; AND  
) 4) ANCILLARY RELIEF  
)

1 The California Corporations Commissioner (“Complainant” or “Commissioner”) finds:

2 **I.**

3 **STATEMENT OF FACTS**

4 1. Fresh Healthy Vending, LLC (“FHV”) is a California limited liability company formed  
5 February 8, 2010 with a principal place of business at 9605 Scranton Road, Suite 350, San Diego,  
6 California 92121. FHV engages in the business of offering and selling franchises under the brand  
7 name “Fresh Healthy Vending.”

8 2. FHV Holdings Corp. (“FHVHC”), formerly known as YoNaturals Incorporated, is a  
9 California corporation formed April 24, 2006 with a principal place of business at 6577 Mira Mesa  
10 Blvd. #123-158, San Diego, California 92121. FHVHC is FHV’s parent and predecessor.

11 3. At all relevant times, Nicholas Yates (“Yates”) was a principal and manager of FHV, and  
12 owned sixty-five percent (65%) of FHVHC.

13 4. At all relevant times, Mark Trotter (“Trotter”) was a principal and manager of FHV.  
14 Trotter was also the President, Chief Executive Officer and Chief Financial Officer of FHVHC, and  
15 owned thirty-five percent (35%) of FHVHC.

16 5. FHV offers and sells franchises in California as well as other states pursuant to franchise  
17 agreements. The agreements grant the right to engage in the business of offering, selling and  
18 distributing healthy snacks and beverages through vending machines under FHV’s brand name and  
19 trademark.

20 6. On April 26, 2010, FHV filed its initial Uniform Franchise Registration Application with  
21 the Commissioner to offer and sell franchises in California (the “2010 Franchise Application”)  
22 pursuant to California Corporations Code Section 31111 and California Code of Regulations, Rule  
23 310.111.<sup>1</sup> FHV submitted a Uniform Franchise Disclosure Document (“UFDD”) along with its  
24 application. In Item 1 of the UFDD, FHV stated that it had no parents, predecessors or affiliates. In  
25 Item 2 of the UFDD, FHV identified four individual executives; however, neither Yates nor Trotter  
26 was listed.

27 \_\_\_\_\_  
28 <sup>1</sup> All references to “Section(s)” are to the California Corporations Code; all references to “Rule(s)” are to Title 10,  
California Code of Regulations, Chapter 3, Subchapter 2.6 (Franchises).

1           7. On or about August 20, 2010, FHVHC acquired a controlling interest in FHV. However,  
2 FHV did not notify the Commissioner of the change in ownership and control.

3           8. On March 25, 2011, FHV submitted a registration renewal statement with the  
4 Commissioner to continue to offer and sell franchises in California (the “2011 Franchise  
5 Application”) pursuant to Sections 31121, 31122 and Rule 310.122. In Item 1 of the 2011 Franchise  
6 Application, FHV again stated that it had no parents, predecessors or affiliates. In Item 2, FHV  
7 identified three individuals; however, neither Yates nor Trotter was listed.

8           9. On April 20, 2012, FHV filed a registration renewal statement with the Commissioner to  
9 continue to offer and sell franchises in California (the “2012 Franchise Application”) pursuant to  
10 Sections 31121, 31122 and Rule 310.122. In Item 1 of the 2012 Franchise Application, FHV stated  
11 that it had no parents or affiliates, but that on August 20, 2010, FHVHC “contributed certain assets  
12 to FHV in exchange for preferred ownership units with approval rights on certain actions of FHV  
13 and may be considered to be our predecessor under certain circumstances.” In Item 2, FHV  
14 identified Yates as an “Outside Advisor to the President and Chief Executive Officer” and Trotter as  
15 “Former General Manager, YoNaturals.”

16           10. After receiving FHV’s 2012 Franchise Application, the Department of Corporations  
17 requested additional information by written correspondence of May 11, 2012. FHV responded by  
18 letter dated June 27, 2012, in which it disclosed, for the first time, that Trotter and Yates were the  
19 owners of FHV’s parent, FHVHC, owning 35 and 65 percent of FHVHC, respectively.

20           11. Under separate cover of the same date, June 27, 2012, FHV also submitted a pre-effective  
21 amendment (“2012 Pre-Effective Amendment”) in which it provided further information, including  
22 that FHVHC “is our predecessor and may be considered to be our parent.”

23           12. However, since FHV failed to disclose Yates and Trotter, FHV also failed to disclose that  
24 Trotter and Yates each have litigation history involving fraud and deceptive practices, as well as  
25 bankruptcy history, all of which should also have been disclosed.

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**II.**

**CALIFORNIA FRANCHISE INVESTMENT LAW VIOLATIONS**

13. Based on the foregoing, the Commissioner finds that FHV has committed multiple violations of the California Franchise Investment Law, Section 31200, which provides:

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

14. Section 31123 provides in pertinent part, “A franchisor shall promptly notify the commissioner in writing, by an application to amend the registration, of any material change in the information contained in the application as originally submitted, amended or renewed.”

15. FHV violated Section 31200 by filing franchise applications with the Commissioner which failed to disclose: (1) the identity of its predecessor and parent, (2) the identity of two principals with management responsibility, (3) litigation history alleging fraud and deceptive practices, and (4) bankruptcy history of an officer and two principals with management responsibility.

**A. Failure to Disclose Predecessor and Parent in Violation of Section 31200**

16. Pursuant to Section 31111 and Rule 310.111 and 310.114.1, FHV was required to disclose in Item 1 of 2011 and 2012 Franchise Applications the identity of the franchisor, its parents, predecessors and affiliates. “Parent” is defined as “an entity that controls another entity directly, or indirectly through one or more subsidiaries.” “Predecessor” means a person “from whom the franchisor acquired, directly or indirectly, the major portion of the franchisor’s assets.”

17. FHV stated in Item 1 of its 2010 and 2011 Franchise Applications “no parents, predecessors or affiliates,” and in its 2012 Franchise Application that it has “no parents or affiliates.”

18. The Commissioner finds that FHV should have disclosed FHVHC in Item 1 of the 2011 and 2012 Franchise Applications as a parent, predecessor and affiliate, and should have notified the Commissioner of this material change by filing a post-effective amendment to the 2010 Franchise

1 Application. FHVHC acquired a controlling ownership interest – 100% of all outstanding preferred  
2 shares – in FHV on August 20, 2010. FHVHC also provided FVC with the major portion of FHV’s  
3 assets: \$5 million in capital contributions through the August 20, 2010 agreement. Further, FHVHC  
4 maintains control over FHV’s management and policies. For example, FHV is required to obtain the  
5 consent of FHVHC to, among other things, increase or make any change to FHV’s former CEO Jolly  
6 Backer (or his compensation package), shut down FHV’s business, borrow money, create a  
7 subsidiary, hire or terminate any employment agreement with any employee of FHV with an annual  
8 salary of more than \$100,000. Moreover, FHV admits in its 2012 Pre-Effective Amendment that  
9 FHVHC is a parent and predecessor.

10 19. The identity of parents, predecessors and affiliates is material information required to be  
11 disclosed in the Franchise Registration. FHV knew that representations made in its 2011 and 2012  
12 Franchise Application were in fact untrue and/or omitted material facts. By failing to disclose  
13 FHVHC at all in Item 1 of its 2011 Franchise Application, and failing to identify FHVHC as a parent  
14 in its 2012 Franchise Applications, FHV willfully misstated or omitted to state a material fact  
15 required to be stated therein, in violation of Section 31200. In addition, FHV failed to notify the  
16 Commissioner of this material change in the 2010 Franchise Application, also in violation of Section  
17 31200.

18 **B. Failure to Disclose Individuals Who Have Management Responsibility**

19 20. Pursuant to Section 31111 and Rule 310.111 and 310.114.1, FHV was required to  
20 disclose in Item 2 of its 2010, 2011 and 2012 Franchise Applications the identity of the franchisor’s  
21 directors, trustees, general partners, principals, officers, and any other individuals who will have  
22 management responsibility relating to the sale or operation of franchises.

23 21. FHV identified the following individuals in Item 2 of its Franchise Applications:

24 (a) 2010 Franchise Application: Jolly Backer, Chief Executive Officer; Todd  
25 Williams London, Vice President of Sale; and Maria Truong, Office Manager.

26 (b) 2011 Franchise Application: Jolly Backer, Chief Executive Officer; Terry Moore,  
27 Vice President of Sales; Michael S. Stubbs, Operations Managers; and Maria Truong, Office  
28 Manager.

1 (c) 2012 Franchise Application: Daniel W. Negroni, President and Chief Executive  
2 Officer; Jolly Backer, Vice President; Maria Truong, General Manager; Alex Kennedy, Vice  
3 President of Franchise Development; Abby Hanneman, Franchise Business Consultant. In addition,  
4 Yates was identified as “Outside Advisor to the President and Chief Executive Officer” and “former  
5 General Manager, YoNaturals Incorporated.” Trotter was identified as Former Chief Executive  
6 Officer, YoNaturals Incorporated.” The 2012 Pre-Effective amendment added that “Trotter holds an  
7 ownership interest in FHVHC and FHVHC owns a controlling interest in FHV and must consent to  
8 certain actions of FHV outside the normal course of business of FHV.” The 2012 Pre-effective  
9 Amendment also gave additional disclosures concerning Yates, including that Yates “holds an  
10 ownership interest in FHVH.”

11 22. In fact, however, at all relevant times Yates and Trotter were both principals of FHV,  
12 with management responsibilities relating to the sale or operation of franchises:

13 (a) Yates determines pricings on FHV’s vending machines and installation services,  
14 changes general delivery schedules to franchisees, reviews franchise agreements with franchisees,  
15 sets bonus amounts for employees, writes brochures and franchise manuals for potential franchisees,  
16 and hires and trains FHV employees. These responsibilities are managerial and related to the sale or  
17 operations of franchises.

18 (b) Yates owned 65% of FHVHC, which owns a controlling interest in FHV, owning  
19 100% of the preferred units in FHV.

20 (c) Trotter wrote franchise manuals, communicates with vendors regarding the FHV  
21 brand, hires new vendors, and trains FHV employees. These responsibilities are managerial and  
22 related to the sale or operations of franchises.

23 (d) Trotter owned 35% of FHVHC, which owns a controlling interest in FHV,  
24 owning 100% of the preferred units in FHV.

25 23. Yates and Trotter were principals with management responsibility relating to the sale or  
26 operations of the franchises. The identity of a principal and/or a person with management  
27 responsibility is a material fact required to be disclosed in the Franchise Registration. FHV conceded  
28 that the identities of Yates and Trotter were material when FHV identified them in Item 2 of its 2012

1 Franchise Application. FHV knew that the representations made in its 2010 and 2011 Franchise  
2 Application were in fact untrue. By failing to disclose Yates and Trotter as principals, and as  
3 individuals with management responsibility relating to the sale or operations of the franchises in Item  
4 2 of the 2010 and 2011 Franchise Application, FHV willfully misstated or omitted to state a material  
5 fact required to be stated therein, in violation of Section 31200.

6 **C. Failure to Disclose Litigation**

7 24. Pursuant to Section 31111 and Rules 310.111 and 310.114.1, FHV was required to  
8 disclose in Item 3 of its 2010 and 2011 Franchise Application whether the franchisor, a predecessor, a  
9 parent, or any person identified in Item 2:

10 has in the 10-year period immediately before disclosure document's  
11 issuance date: (B) been held liable in a civil action involving an alleged  
12 violation of a franchise, antitrust, or securities law, or involving  
13 allegations of fraud, unfair or deceptive practices or comparable  
14 allegations. "Held liable" means that, as a result of claims or  
15 counterclaims, the person must pay money or other consideration . . . or  
16 must take action adverse to its interests

17 25. FHV stated in Item 3 of its 2010 and 2011 Franchise Applications that "no litigation is  
18 required to be disclosed." However, the following litigation should have been disclosed in Item 3:

19 (a) *Australian Competition and Consumer Commission v. Global Prepaid*  
20 *Communications Pty Ltd., Nicholas Yates et. al.*, (Case No. NSD 328 of 2003), in which the  
21 Australian Federal Court in New South Wales found that Yates repeatedly engaged in misleading and  
22 deceptive conduct when dealing with the small business investors, and entered judgment against  
23 Yates and other defendants on or about February 24, 2006, enjoining Yates from breaching statutory  
24 provisions relating to trade practices and holding Yates jointly liable for \$3,538,243.94 in damages.

25 (b) *State of Texas v. Ryan Samuel Pitylak, Mark Trotter et. al.*, (Case No. 1:2005-cv-  
26 00017), in which the State of Texas alleged violations of the Controlling the Assault of Non-Solicited  
27 Pornography and Marketing Act of 2003, the Texas Electronic Mail Solicitation Act and the  
28 Deceptive Trade Practices-Consumer Protection Act in connection with sending unsolicited email  
messages containing false, misleading or deceptive information. The District Court for the Western  
District of Texas entered judgment against Trotter on June 6, 2006, including a Permanent Injunction,

1 Monetary Relief in the amount of \$40,000 as reimbursement of plaintiff's investigative costs and  
2 attorney fees, and \$1,000,000.00 in civil penalties (enforcement stayed). In addition, the court  
3 entered judgment against Trotter's fictitious business entities and other defendants, jointly and  
4 severely, in the amount of \$7,500,000.

5 26. FHV should have disclosed Yates' and Trotter's relevant litigation history because they  
6 were the sole shareholders of FHV's parent and predecessor, FHVHC, principals of FHV with  
7 management responsibilities relating to the sale and operations of franchises. Litigation history is a  
8 material fact required to be disclosed in the Franchise Application. FHV implicitly conceded that  
9 such information was material when it disclosed the civil actions described above in Item 3 of its  
10 2012 Franchise Application. FHV knew that the representations made in its 2010 and 2011 Franchise  
11 Application were in fact untrue. By failing to disclose Yates' and Trotter's litigation history, FHV  
12 willfully misstated or omitted to state a material fact required to be stated therein, in violation of  
13 Section 31200.

14 **D. Failure to Disclose Bankruptcy History**

15 27. Pursuant to the State of California Department of Corporations Guidelines for Franchise  
16 Registration (*See* Rule 310.111), FHV was required to disclose in Item 4 of its 2010 and 2011  
17 Franchise Application whether a parent, predecessor, or any other individual with management  
18 responsibility relating to the sale or operation of franchise has filed as a debtor or obtained a  
19 discharge of debts during the 10-year period immediately before the date of the UFDD.

20 28. FHV stated in its 2010 and 2011 Franchise Application "No bankruptcy information is  
21 required to be disclosed in this Item." However, on October 15, 2006, Trotter filed a petition for  
22 relief under Chapter 7 of the U.S. Bankruptcy Code in the United States District Court of the  
23 Southern District of California. In addition, on March 30, 2007, Yates filed a Debtor's Petition with  
24 the Insolvency and Trustee Service Australia to declare himself bankrupt.

25 29. FHV should have disclosed Yates' and Mark Trotter's bankruptcy history because they  
26 were the sole shareholders of FHV's parent and predecessor, FHVHC, principals of FHV with  
27 management responsibilities relating to the sale and operation of franchises. Bankruptcy history is  
28 material fact required to be disclosed in the Franchise Registration. FHV knew that the

1 representations made in its 2010 and 2011 Franchise Application were in fact untrue. By stating  
2 “no bankruptcy information is required to be disclosed,” FHV willfully misstated or omitted to  
3 state a material fact required to be stated therein, in violation of Section 31200.

4 **III.**

5 **STOP ORDER REVOKING EFFECTIVENESS OF FRANCHISE REGISTRATION**

6 30. Corporations Code Section 31115 provides in pertinent part:

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

10 (a) That there has been a failure to comply with any of the provisions of  
11 this law or the rules of the commissioner pertaining thereto.

12 31. Pursuant to Corporations Code Section 31115 and based on the foregoing evidence of a  
13 willful pattern and practice of conducting business in violation of the California Franchise Investment  
14 Law, the registration of the offer and sale of franchises filed by Fresh Healthy Vending, LLC on  
15 April 26, 2010 and effective through April 20, 2011, is hereby revoked.

16 32. Further, pursuant to Corporations Code Section 31115 and based on the foregoing  
17 evidence of a willful pattern and practice of conducting business in violation of the California  
18 Franchise Investment Law, the registration of the offer and sale of franchises filed by Fresh Healthy  
19 Vending, LLC on March 25, 2011 and effective through April 20, 2012, is hereby revoked.

20 **IV.**

21 **STOP ORDER DENYING EFFECTIVENESS OF FRANCHISE REGISTRATION**

22 33. Pursuant to Corporations Code Section 31115, and based on the foregoing evidence of a  
23 willful pattern and practice of conducting business in violation of the California Franchise Investment  
24 Law, the franchise registration renewal application of Fresh Healthy Vending, LLC., filed on March  
25 26, 2012 and Amended on June 15, 2012, is hereby denied.

26 **V.**

27 **DESIST AND REFRAIN ORDER**

28 34. The Commissioner finds that beginning as early as April 26, 2010, Fresh Healthy  
Vending, LLC violated multiple provisions of the California Franchise Investment Law, including

1 but not limited to Corporations Code sections 31200 and 31123, as set forth in greater detail herein.  
2 Pursuant to section 31406 of the Corporations Code, Fresh Healthy Vending, LLC is hereby ordered  
3 to desist and refrain from:

4 (a) Making material misstatements or omissions in a franchise registration application  
5 filed with the Commissioner in violation of Section 31200; and

6 (b) Failing to notify the Commissioner of material changes made to the terms of the  
7 registered franchise offer in violation of Corporations Code section 31123.

8 **VI.**

9 **ANCILLARY RELIEF**

10 35. Corporations Code Section 31408 provides:

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

17 **RESCISSION ORDER**

18 Due to the Commissioner's finding that Fresh Healthy Vending, LLC. has committed  
19 multiple violations of the California Franchise Investment Law, all Fresh Healthy Vending, LLC  
20 franchisees shall be afforded the right to rescind any contract for the purchase of a California  
21 franchise. Respondent agrees to comply with the terms of Corporations Code section 31303 and  
22 California Code of Regulations section 310.303 within ninety (90) days of execution of this  
23 Agreement by delivering a notice of violation to all California franchisees, in the form attached  
24 hereto as Exhibit B.

25 **RESTITUTION ORDER**

26 Fresh Healthy Vending, LLC is hereby ordered to pay restitution to every California  
27 franchisee that accepts its offer of rescission in the amount according to proof. Restitution for  
28 vending machines purchased by these California franchisees shall be limited to the initial franchise

1 fee and the depreciated value of the vending machines on the date restitution is requested. Any  
2 claims for restitution pursuant to this Order shall be made in accordance with Corporations Code  
3 sections 31300 and 31303 and California Code of Regulations section 310.303.

4 **VII.**

5 **CONCLUSION**

6 Based on the foregoing facts establishing multiple violations of the California Franchise  
7 Investment Law by Fresh Healthy Vending, LLC, the issuance of the aforementioned orders and  
8 provision of ancillary relief is necessary, in the public interest, for the protection of investors, and  
9 consistent with the purposes, policies, and provisions of the California Franchise Investment Law.

10 Dated: March 18, 2013  
11 Sacramento, California

JAN LYNN OWEN  
California Corporations Commissioner

12  
13 By: \_\_\_\_\_  
14 Mary Ann Smith  
15 Deputy Commissioner  
16 Enforcement Division  
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