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8 Attorneys for Complainant

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

11	In the Matter of:)	OAH CASE NO.: 2016081020
12	THE COMMISSIONER OF BUSINESS)	STIPULATION:
13	OVERSIGHT,)	(1) DESIST AND REFRAIN ORDER;
14	Complainant,)	(2) ASSESSMENT OF ADMINISTRATIVE
15	v.)	PENALTIES ;
16)	(3) FINAL STOP ORDER DENYING
17	MEDIA360 FRANCHISING, LLC; REID S.)	EFFECTIVENESS OF FRANCHISE
18	JOHNSON,)	RENEWAL REGISTRATION
19	Respondents.)	APPLICATION; AND
20)	(4) OTHER ANCILLARY RELIEF.

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23 This Stipulation (Agreement) is entered between the Commissioner of Business Oversight
24 (Commissioner), Reid S. Johnson (Johnson), and Media360 Franchising, LLC (Media360). The
25 Commissioner, Johnson, and Media360 shall collectively be referred to as the Parties.

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RECITALS

A. Media360 was formed on November 17, 2014 as an Arizona limited liability company. Media360’s principal business address is 8800 North Gainey Center Drive, Suite 276, Scottsdale, Arizona 85258 and 8541 E. Anderson Drive #102 Scottsdale, Arizona. The company maintains a website at http://media360.co/.

B. At all relevant times, Johnson was Media360’s sole owner, managing partner, and chief executive officer (CEO).

C. 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.)¹ and for registering the offer and sale of franchises in California.

D. On June 8, 2016, the Commissioner issued to Media360 and Johnson Citations Including: (1) Desist and Refrain Order; (2) Assessment of Administrative Penalties; and (3) Attorneys’ Fees (Citations and Desist and Refrain Order) under sections 31406 and 31408.

E. The Commissioner also issued a Stop Order Denying Effectiveness of Franchise Renewal Registration and Statement in Support of Stop Order (Stop Order) on June 8, 2016, under section 31115 (the Citations and Desist and Refrain Order and Stop Order are collectively referred to herein as the Action).

F. On June 15, 2016, Johnson was personally served with the Citations and Desist and Refrain Order and Stop Order as an individual and on behalf of Media360.

G. On or about July 12, 2016, Media360 and Johnson submitted a Notice of Defense.

H. Media360 and Johnson seek to resolve each and every aspect of the Action in consideration of the terms and conditions described below. This Agreement is entered for the purpose of judicial economy and expediency and to avoid the time and expense of a hearing and possible further court proceedings.

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

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

TERMS AND CONDITIONS

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2 1. Final Desist and Refrain Order Pursuant to Corporations Code sections 31402 and
3 31406. The Parties hereby agree that the Desist and Refrain Order included in the Citations issued on
4 June 8, 2016 is final and effective upon the execution of this Agreement (Desist and Refrain Order).

5 2. Administrative Penalties. Media360 and Johnson agree to pay to the Commissioner
6 penalties totaling \$4,000.00 (Penalties). Such Penalties shall be paid by Media360 and Johnson, jointly
7 and severally, and received by the Commissioner within 10 days of the Effective Date this Agreement
8 as defined in paragraph 9. The check shall be made payable in the form of a cashier’s check or
9 Automated Clearing House deposit to the “The Department of Business Oversight,” and transmitted to
10 the attention of:

11 ATTN: Accounting-Litigation
12 The Department of Business Oversight
13 1515 K Street, Suite 200
14 Sacramento, California 95814

15 Notice of all payments shall be sent to (hard copy and electronic mail):

16 Danielle A. Stoumbos
17 Senior Counsel, Enforcement Division
18 Department of Business Oversight
19 320 West Fourth Street, Suite 750
20 Los Angeles, California 90013
21 E-mail: Danielle.Stoumbos@dbo.ca.gov

22 In the event the payment due date falls on a weekend or holiday, the payment shall be due the
23 next business day.

24 3. Attorney’s Fees. Media360 and Johnson agree to pay the Commissioner attorney’s
25 fees totaling \$1,000.00 (Attorney’s Fees). Such Attorney’s Fees shall be paid by Media360 and
26 Johnson, jointly and severally, and received by the Commissioner within 10 days of the Execution
27 Date of this Agreement, following the instructions in paragraph 2 above.

28 4. Media360’s Waiver of Hearing Rights. Media360 acknowledges its right to a
hearing under the FIL in connection with the Citations and Desist and Refrain Order, and Stop Order
and hereby waives that right to a hearing, and to any reconsideration, appeal, or other right to review

1 which may be afforded pursuant to the FIL, the California Administrative Procedure Act, the Code of
2 Civil Procedure, or any other provision of law, and by waiving such rights, consents to the Agreement,
3 Citations and Desist and Refrain Order, and Stop Order.

4 5. Reid S. Johnson's Waiver of Hearing Rights. Johnson acknowledges his right to a
5 hearing under the FIL in connection with the Citations and Desist and Refrain Order and hereby
6 waives that right to a hearing, and to any reconsideration, appeal, or other right to review which may
7 be afforded pursuant to the FIL, the California Administrative Procedure Act, the Code of Civil
8 Procedure, or any other provision of law, and by waiving such rights, consents to the Agreement and
9 Citations and Desist and Refrain Order.

10 6. Education. Within 60 days of the Execution Date of this Agreement, Johnson and all
11 persons employed by Media360 who assist in preparing franchise registrations or who assist in
12 franchise selling are hereby required to attend eight hours of remedial education, in the form of
13 franchise law training courses offered by a franchise law specialist certified with the State Bar of
14 California. Within 90 days of the Execution Date of this Agreement, Johnson and Media360 shall
15 file proof of compliance to Danielle A. Stoumbos at the address in paragraph 2 above.

16 7. Failure to Comply with Agreement. If Media360 or Johnson fail to comply with any
17 of the terms of the Agreement, the Commissioner may institute proceedings for any and all violations
18 otherwise resolved under this Agreement, Citations and Desist and Refrain Order, and Stop Order.

19 Media360 and Johnson acknowledge that failure to comply with this Agreement shall be a
20 breach of this Agreement and shall be cause for the Commissioner to immediately revoke any
21 registrations held by, and/or deny any pending application(s) of Johnson, Media360 or its successors
22 and assigns, by whatever names they might be known. Media360 and Johnson hereby waive any
23 notice and hearing rights to contest such revocations and/or denial(s) which may be afforded under
24 the FIL, the California Administrative Procedure Act, the Code of Civil Procedure, or any other
25 provision of law in connection therewith.

26 8. Future Actions by the Commissioner. The Commissioner reserves the right to bring
27 any future action(s) against Johnson and Media360 or any of its partners, owners, officers, directors,
28 shareholders, employees, or successors for any and all unknown or future violations of the FIL. This

1 Agreement shall not serve to exculpate Johnson or Media360 or any of its partners, owners, officers,
2 directors, shareholders, employees, or successors from liability for any and all unknown or future
3 violations of the FIL. However, this Agreement resolves and discharges Media360 and Johnson of any
4 further liability, fine, discipline, or other punitive action that could have been brought by the
5 Commissioner arising out of or relating to the allegations made in the Citations and Desist and Refrain
6 Order, and Stop Order.

7 9. Effective Date. This Agreement shall not become effective until signed by all parties
8 and delivered by the Commissioner's counsel by email to the parties.

9 10. Agreement Coverage. The Parties hereby acknowledge and agree that this Agreement
10 is intended to constitute a full, final, and complete resolution of this matter. The Parties further
11 acknowledge and agree that nothing contained in this Agreement shall operate to limit the
12 Commissioner's ability to assist any other agency (city, county, state, or federal) with any
13 prosecution, administrative, civil or criminal, brought by any such agency against Media360 or
14 Johnson based upon any of the activities alleged in this matter or otherwise.

15 11. Independent Legal Advice. Each of the Parties represents, warrants, and agrees that it
16 has received or been advised to seek independent legal advice from its attorneys with respect to the
17 advisability of executing this Agreement.

18 12. No Other Representation. Each of the Parties represents, warrants, and agrees that in
19 executing this Agreement it has relied solely on the statements set forth herein and the advice of its
20 own counsel. Each of the Parties further represents, warrants, and agrees that in executing this
21 Agreement it has placed no reliance on any statement, representation, or promise of any other party, or
22 any other person or entity not expressly set forth herein, or upon the failure of any party or any other
23 person or entity to make any statement, representation, or disclosure of anything whatsoever. The
24 Parties have included this clause: (1) to preclude any claim that any party was in any way fraudulently
25 induced to execute this Agreement; and (2) to preclude the introduction of parol evidence to vary,
26 interpret, supplement, or contradict the terms of this Agreement.

1 13. Modifications and Qualified Integration. No amendment, change or modification of
2 this Agreement shall be valid or binding to any extent unless it is in writing and signed by all of
3 the parties affected by it.

4 14. Full Integration. This Agreement is the final written expression and the complete and
5 exclusive statement of all the agreements, conditions, promises, representations, and covenants
6 between the Parties with respect to the subject matter hereof, and supersedes all prior or
7 contemporaneous agreements, negotiations, representations, understandings, and discussions between
8 and among the Parties, their respective representatives, and any other person or entity, with respect to
9 the subject matter covered hereby.

10 15. No Presumption from Drafting. In that the Parties have had the opportunity to draft,
11 review and edit the language of this Agreement, no presumption for or against any party arising out of
12 drafting all or any part of this Agreement will be applied in any action relating to, connected to, or
13 involving this Agreement. Accordingly, the Parties waive the benefit of Civil Code section 1654 and
14 any successor or amended statute, providing that in cases of uncertainty, language of a contract should
15 be interpreted most strongly against the party that caused the uncertainty to exist.

16 16. Signatures. A fax signature or scanned signature of this Agreement shall be as
17 effective as an original ink signature.

18 17. Counterparts. This Agreement may be executed in any number of counterparts by the
19 Parties, and when each party has signed and delivered at least one such counterpart to the other party,
20 each counterpart shall be deemed an original and taken together shall constitute one and the same
21 Agreement.

22 18. Headings and Governing Law. The headings to the paragraphs of this Agreement are
23 inserted for convenience only and will not be deemed a part hereof or affect the construction or
24 interpretation of the provisions hereof. This Agreement shall be construed and enforced in accordance
25 with, and governed by, California law.

26 19. Settlement Authority. Each signator hereto covenants that he/she possesses all
27 necessary capacity and authority to sign and enter into this Agreement on behalf of the named
28 party.

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APPROVED AS TO FORM:

Dated: 3/6/17

By

Danielle A. Stoumbos
Senior Counsel, Commissioner of Business Oversight

Dated: 3/3/17

By

Mark Maniscalco
Maniscalco Law Firm
Counsel for Reid S. Johnson and Media360 Franchising,
LLC