

1 PRESTON DuFAUCHARD  
California Corporations Commissioner  
2 ALAN S. WEINGER (CA BAR NO. 86717)  
Acting Deputy Commissioner  
3 MARLOU de LUNA (CA BAR NO. 162259)  
Sr. Corporations Counsel  
4 320 West 4<sup>th</sup> Street, Ste. 750  
Los Angeles, California 90013-2344  
5 Telephone: (213) 576-7606  
Fax: (213) 576-7181  
6

7 Attorneys for Complainant  
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9 BEFORE THE DEPARTMENT OF CORPORATIONS  
10 OF THE STATE OF CALIFORNIA

11 In the Matter of THE CALIFORNIA ) File No.: 993-5353/266725  
12 CORPORATIONS COMMISSIONER, )  
13 ) **DESIST AND REFRAIN ORDER;**  
14 Complainant, ) **CITATIONS**  
15 vs. ) (CORPORATIONS CODE SECTIONS 31406  
16 PRS FRANCHISE SYSTEMS, LLC; DANIEL ) and 31402)  
17 S. FRAGEN; IRA T. DISTENFIELD, )  
18 Respondents. )

19 TO: PRS FRANCHISE SYSTEMS, LLC  
20 DANIEL S. FRAGEN  
21 14045 Ballantyne Corporate Place, Suite 525  
Charlotte, NC 28277

22 IRA T. DISTENFIELD  
23 3609 State Street  
24 Santa Barbara, CA 93105

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1 The California Corporations Commissioner (“Commissioner”) finds that:

2 I.

3 FACTS

4 1. At all relevant times, PRS Franchise Systems, LLC (“PRS”) is and was a North  
5 Carolina corporation incorporated on March 19, 2002 engaged in business activities providing a  
6 variety of marketing services including specialty advertising, sales brochures, letterhead, business  
7 cards, direct mail, annual reports, website development and similar services and products. PRS’  
8 principal place of business is 14045 Ballantyne Corporate Place, Suite 525, Charlotte, NC 28277.

9 2. At all relevant times, Daniel S. Fragen (“Fragen”) is and was the chief executive  
10 officer of PRS.

11 3. At all relevant times, Ira T. Distenfield (“Distenfield”) is and was a franchise sales  
12 broker of PRS, and holds an ownership interest in PRS. Distenfield also owned and operated a PRS  
13 franchise at 3609 State Street, Santa Barbara, California.

14 4. On May 26, 2005, the Commissioner issued a franchise permit to PRS. That permit  
15 was renewed on January 20, 2006 and expired on January 20, 2007. PRS subsequently filed an initial  
16 Uniform Franchise Registration Application with the California Department of Corporations, on  
17 March 6, 2007, seeking to register its franchise enterprise in this state in compliance with California  
18 Corporations Code section 31111 (“Application”). The Application submitted to the Commissioner  
19 was accompanied by a Uniform Franchise Offering Circular (“UFOC”) containing the material  
20 information set forth in the Application, as required by section 31114 of the California Corporations  
21 Code. The Commissioner has not yet granted an effective registration to PRS.

22 5. On June 6, 2007, PRS offered and sold at least one PRS franchise in the state of  
23 California without an effective registration from the California Department of Corporations. The  
24 franchise agreement granted the right to engage in the business of offering a variety of marketing  
25 services and products, including among other things, sales brochures, letterhead, business cards,  
26 direct mail and website development, in the county of Riverside, California.

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1 II.

2 CALIFORNIA FRANCHISE INVESTMENT LAW VIOLATIONS

3 A. MATERIAL MISSTATEMENTS OR OMISSIONS IN A FRANCHISE

4 REGISTRATION APPLICATION FILED WITH THE COMMISSIONER IN VIOLATION OF  
5 SECTION 31200

6 6. California Corporations Code section 31200 provides:

7 It is unlawful for any person willfully to make any untrue statement of a material fact in any  
8 application, notice or report filed with the commissioner under this law, or willfully to omit to  
9 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.

10 7. Item 19 of the Application disclosed that PRS was not providing any financial  
11 performance representations (“earnings claims”). During the review process of the Application,  
12 however, the Commissioner found that PRS was representing unauthorized earnings claims to  
13 prospective franchisees. The Department, therefore, requested in writing that PRS stop using  
14 unauthorized earnings claims. These statements include, but are not limited to the following:

15 a. On or about July 2006, Distenfield provided a franchisee, from Washington  
16 State, with revenue reports for the first months of operation of his PR store in Santa Barbara.  
17 According to these reports, during the first month of operation (which started about mid-  
18 January 2006), the Santa Barbara franchise achieved gross monthly sales of approximately  
19 \$75,000 and the subsequent months through May showed similar results. Distenfield  
20 informed the prospective franchisee that the Washington State store should generate the same  
21 amount.

22 b. On or about October 2006, Distenfield provided a franchisee from Tucson,  
23 Arizona, with the January through November 2006 unaudited financial information pertaining  
24 to his Santa Barbara franchise. Distenfield claimed gross sales in March were \$80,000 and  
25 currently \$100,000 a month for the last three months with a year to date net profit of over  
26 \$300,000.

27 c. On February 25, 2007, Fragen, through e-mail, addressed to a franchisee,  
28 provided unauthorized earnings claims in stating that new PRS stores “have ranged from a

1 couple thousand dollars during the first month to around \$60k the first month. \$10 - \$12k is  
2 pretty typical.” In the same e-mail Fragen also stated “we would expect that you should  
3 average between 10-20k per month the next 90 and over \$30k per month the balance of the  
4 year.”

5 d. A franchisee was told that he would generate between \$40,000 - \$50,000 in  
6 monthly revenue within 6 months of opening his store. The franchisee was shown un-audited  
7 financials from Distenfield’s Santa Barbara, California PRS store but was not shown a  
8 composite of all open store financials.

9 e. PRS told a franchisee “a retail store” would achieve cash flow in four months  
10 from opening and would generate \$50,000 in monthly revenue by the sixth month.

11 B. OFFER AND SALE OF AN UNREGISTERED FRANCHISE IN VIOLATION OF  
12 SECTION 31110

13 8. California Corporations Code section 31110 provides:

14 On and after April 15, 1971, it shall be unlawful for any person to offer or sell any franchise  
15 in this state unless the offer of the franchise has been registered under this part or exempted  
16 under Chapter 1 (commencing with Section 31100) of this part.

17 9. On June 6, 2007, PRS offered and sold at least one PRS franchise in the state of  
18 California without an effective registration from the California Department of Corporations. The  
19 franchise agreement granted the right to engage in the business of offering a variety of marketing  
20 services and products, including among other things, sales brochures, letterhead, business cards,  
21 direct mail and website development, in the county of Riverside, California.

22 B. MATERIAL MISSTATEMENTS OR OMISSIONS IN VIOLATION OF SECTION  
23 31201

24 10. California Corporations Code section 31201 provides:

25 It is unlawful for any person to offer or sell a franchise in this state by means of any written or  
26 oral communication not enumerated in Section 31200 which includes an untrue statement of a  
27 material fact or omits to state a material fact necessary in order to make the statements made,  
28 in the light of the circumstances under which they were made, not misleading.

1 11. PRS offered and sold at least one PRS franchise in the state of California on June 6,  
2 2007. PRS franchise PRS misrepresented and/or omitted to inform the franchisee of the numerous  
3 legal actions filed against Distenfield and/or his company, We The People, including but not limited  
4 to: Lubetzky, Richard v. Distenfield, Ira T., et al (Los Angeles/Central, BC 343800); Vihom, Charles  
5 F. v. We The People USA, Inc, Distenfield, Ira (Cook County, Illinois – 5<sup>th</sup> Municipal District, 05M5  
6 0001733); Nash, Earl v. Distenfield, Ira et al. (Santa Barbara County Superior Court, 1038274); and  
7 Tunney , Robert J. v. Distenfield, Ira et al. (Santa Barbara County Superior Court, 1035341).

8 III.

9 DESIST AND REFRAIN ORDER;

10 CITATIONS

11 12. California Corporations Code section 31406 provides:

12 (a) If, upon inspection or investigation, based upon a complaint or otherwise, the  
13 commissioner has cause to believe that a person is violating any provision of this division or  
14 any rule or order promulgated pursuant to this division, the commissioner may issue a citation  
15 to that person in writing describing with particularity the basis of the citation. Each citation  
16 may contain an order to desist and refrain and an assessment of an administrative penalty not  
17 to exceed two thousand five hundred dollars (\$2,500) per violation and shall contain reference  
18 to this section, including the provisions of subdivision (c). All penalties collected under this  
19 section shall be deposited in the State Corporations Fund.

20 (b) The sanctions authorized under this section shall be separate from, and in addition to, all  
21 other administrative, civil, or criminal remedies.

22 (c) If within 60 days from the receipt of the citation, the person cited fails to notify the  
23 commissioner that the person intends to request a hearing as described in subdivision (d), the  
24 citation shall be deemed final.

25 (d) Any hearing under this section shall be conducted in accordance with Chapter 5  
26 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

27 (e) After the exhaustion of the review procedures provided for in this section, the  
28 commissioner may apply to the appropriate superior court for a judgment in the amount of the  
administrative penalty and order compelling the cited person to comply with the order of the  
commissioner. The application shall include a certified copy of the final order of the  
commissioner and shall constitute a sufficient showing to warrant the issuance of the  
judgment and order.

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1 13. California Corporations Code section 31402 provides:

2 If, in the opinion of the commissioner, the offer of any franchise is subject to registration  
3 under this law and it is being, or it has been, offered for sale without the offer first being  
4 registered, the commissioner may order the franchisor or offeror of that franchise to desist and  
5 refrain from the further offer or sale of that franchise unless and until the offer has been duly  
6 registered under this law. If, after that order has been made, a request for a hearing is filed in  
7 writing within 60 days from the date of service of the order by the person to whom the order  
8 was directed, a hearing shall be held in accordance with Chapter 5 (commencing with Section  
9 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the commissioner shall  
10 have all of the powers granted under that chapter. Unless that hearing is commenced within  
11 15 business days after the request is made (or the person affected consents to a later date), the  
12 order shall be deemed rescinded.

13 If that person fails to file a written request for a hearing within 60 days from the date of  
14 service of the order, the order shall be deemed a final order of the commissioner and shall not  
15 be subject to review by any court or agency, notwithstanding Section 31501.

16 NOW, BASED ON THE FOREGOING, AND GOOD CAUSE APPEARING THEREFORE,  
17 the California Corporations Commissioner is of the opinion that PRS FRANCHISE SYSTEMS,  
18 LLC; DANIEL S. FRAGEN; and IRA T. DISTENFIELD made an untrue statement or willfully  
19 omitted to state a material fact in an application, notice or report filed with the Commissioner, in  
20 violation of section 31200 of the Franchise Investment Law. Pursuant to California Corporations  
21 Code section 31406, PRS FRANCHISE SYSTEMS, LLC; DANIEL S. FRAGEN; and IRA T.  
22 DISTENFIELD are ordered to desist and refrain from making any untrue statement of a material fact  
23 in any application, notice or report filed with the Commissioner or willfully omit to state in any such  
24 application, notice or report any material fact which is required to be stated therein or fail to notify  
25 the Commissioner of any material change as required by California Corporations Code section  
26 31123, including but not limited to making unauthorized earnings claims unless and until approved  
27 by the California Corporations Commissioner.

28 In addition, the California Corporations Commissioner is of the opinion that PRS  
FRANCHISE SYSTEMS, LLC; DANIEL S. FRAGEN; and IRA T. DISTENFIELD have engaged in  
the offer and sale of franchises in this state that are subject to registration under the Franchise  
Investment Law without the offers and sales first being registered, in violation of California  
Corporations Code section 31110. Pursuant to California Corporations Code sections 31402 and

1 31406, PRS FRANCHISE SYSTEMS, LLC; DANIEL S. FRAGEN; and IRA T. DISTENFIELD are  
2 hereby ordered to desist and refrain from the further offer or sale of franchises unless and until the  
3 offers have been duly registered under the Franchise Investment Law or unless exempted.

4 Moreover, the California Corporations Commissioner is of the opinion that at least one  
5 franchise was offered or sold in this state by means of written or oral communication which includes  
6 an untrue statement of a material fact or omits to state a material fact necessary in order to make the  
7 statements made, in the light of the circumstances under which they were made, not misleading, in  
8 violation of section 31201 of the Franchise Investment Law. Pursuant to California Corporations  
9 Code sections 31406, PRS FRANCHISE SYSTEMS, LLC; DANIEL S. FRAGEN; and IRA T.  
10 DISTENFIELD are hereby ordered to desist and refrain from offering or selling a franchise in this  
11 state which includes an untrue statement of a material fact or omits to state a material fact necessary  
12 in order to make the statements made, in the light of the circumstances under which they were made,  
13 not misleading, including but not limited to the misrepresentation and/or omission of the numerous  
14 legal actions against IRA T DISTENFIELD.

15 Furthermore, pursuant to California Corporations Code section 31406, PRS FRANCHISE  
16 SYSTEMS, LLC; DANIEL S. FRAGEN; and IRA DISTENFIELD are hereby ordered to pay to the  
17 Commissioner an administrative penalty in the amount of \$17,500, representing the maximum  
18 penalty of \$2,500 multiplied by five statements concerning earnings claims in violation of section  
19 31200, a violation of section 31110 and a violation of section 31201.

20 This Order and Citations are necessary, in the public interest, for the protection of franchisees  
21 and consistent with the purposes, policies, and provisions of the Franchise Investment Law.

22 Dated: June 1, 2009  
23 Los Angeles, CA

PRESTON DuFAUCHARD  
California Corporations Commissioner

24  
25 By: \_\_\_\_\_  
26 ALAN S. WEINGER  
27 Acting Deputy Commissioner  
28 Enforcement Division