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**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION**

IN THE MATTER OF DETERMINING) Order No.: S-12-1079-13-SC01
Whether there has been a violation of the)
Business Opportunity Fraud Act of) STATEMENT OF CHARGES AND NOTICE OF INTENT
Washington by:) TO ENTER ORDER TO CEASE AND DESIST
)
Nutrition Without Borders, LLC dba H.U.M.A.N.)
Healthy Vending; Sean Kelly,)
)
Respondents.)
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**THE STATE OF WASHINGTON TO: Nutrition Without Borders, LLC
dba H.U.M.A.N. Healthy Vending;
Sean Kelly.**

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STATEMENT OF CHARGES

Please take notice that the Securities Administrator for the state of Washington has reason to believe that Respondents, Nutrition Without Borders, LLC dba H.U.M.A.N. Healthy Vending and Sean Kelly, have violated the Business Opportunity Fraud Act of Washington and that their violations justify the entry of an order of the Securities Administrator under RCW 19.110.150 against the Respondent to cease and desist from such violations. The Securities Administrator finds as follows:

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TENTATIVE FINDINGS OF FACT

Respondents

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1. Nutrition Without Borders, LLC dba H.U.M.A.N. Healthy Vending (“NWB”), is a Nevada limited liability company engaged in the sale, licensing, and distribution of vending machines, advertising, and related goods and services. NWB was formed in 2008 and maintains its principal place of business in Culver City, California. NWB is the predecessor to H.U.M.A.N. Healthy Vending, LLC (“HHV”), which is a California limited liability company registered with several states to engage in the sale of vending machine franchises. HHV was formed in 2011.

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2. Sean Kelly is a co-founder, managing member, and Chief Executive Officer of NWB and HHV.

Nature of Offering

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3. Between 2008 and 2012, NWB offered and sold an opportunity to own and operate a business as a vending machine operator in Washington. Respondents sold the business opportunity to at least four Washington residents, who paid a combined total of over \$400,000. For this payment, NWB provided vending machine equipment, secured third-party locations for vending machines, provided a variety of services, and offered training on how to operate a

1 vending machine business. The cost of the business opportunity varied based on the number of machines and
2 locations purchased. NWB advertised its products and services on the internet, largely through its website
3 www.healthyvending.com. On its website, NWB represented itself as a “business opportunity.”

4 4. Respondents entered into operations and supply agreements with four Washington purchasers. Among other
5 things, the agreements provided that NWB would sell vending machines to the respective purchasers, deliver and
6 install the vending machines, provide training, and find locations for the vending machines. For one vending
7 machine, NWB charged Washington residents from \$5,999 to \$9,499. For a three-day “business building” training
8 program, NWB charged Washington residents \$1,500. For vending machine delivery and installation, NWB charged
9 Washington residents from \$500 to \$600 per machine. For location finding services, NWB had two different fee
10 structures that it applied to Washington residents. Before 2012, for location finding services, NWB charged
11 purchasers of five machines \$6,000, purchasers of ten machines \$10,000, and purchasers of twenty machines \$20,000.
12 Later, NWB charged purchasers of five or fewer machines \$7,000 and charged purchasers of more than five machines
13 an additional \$1,200 for every machine beyond the fifth.

14 *Failure to Provide Disclosure Document*

15 5. Respondents failed to provide prospective business opportunity purchasers with a disclosure document as
16 required by RCW 19.110.070.

17 Misrepresentations and Omissions

18 6. Respondents failed to provide material information regarding their business opportunity, including but not
19 limited to business opportunity disclosure documents and the information required therein, namely identification of
20 officers and related companies, identification of other persons responsible for Respondents’ business opportunity
21 activities, litigation and bankruptcy history of the officers and companies, the total number of business opportunities
22 sold, the number of failures of business opportunities sold, and financial statements.

23 7. After prospective purchasers indicated an interest in becoming vending machine operators, NWB provided
24 them with a “Profit Potential Worksheet.” In the worksheet, NWB projected that vending machine purchasers could
25 make from \$4,696 to \$11,623 per month while operating ten vending machines. NWB failed to provide detailed data
upon which the projected earnings were based or an explanation of the extent to which the data related to the actual
operations of the business opportunity.

Registration Status

8. Respondent, Nutrition Without Borders, LLC dba H.U.M.A.N. Healthy Vending, is not currently registered to
sell business opportunities in the state of Washington and has not previously been so registered.

9. Respondent, Sean Kelly, is not currently registered to sell business opportunities in the state of Washington
and has not previously been so registered.

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

CONCLUSIONS OF LAW

1. The offer or sale of vending machine businesses as described above constitutes the offer and/or sale of a business opportunity as defined in RCW 19.110.020 and RCW 19.110.030(1).
2. The offer or sale of said business opportunities was in violation of RCW 19.110.050 because no registration for such offer and/or sale is on file with the Securities Administrator, state of Washington.
3. The offer and/or sale of said business opportunities were in violation of RCW 19.110.070 because Respondents failed to provide prospective purchasers with a disclosure document.
4. The offer and/or sale of said business opportunities were in violation of RCW 19.110.120(1)(a) because Respondents made untrue or misleading statements of material fact and/or omitted to state material facts in connection with the offer, sale, or lease of a business opportunity in Washington.

NOTICE OF INTENT TO ORDER THE RESPONDENT TO CEASE AND DESIST

Based upon the above Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that Respondents, Nutrition Without Borders, LLC dba H.U.M.A.N. Healthy Vending and Sean Kelly, their agents and employees each shall cease and desist from violations of RCW 19.110.050, RCW 19.110.070, and RCW 19.110.120.

AUTHORITY AND PROCEDURE

This Order is entered pursuant to the provisions of RCW 19.110.150 and is subject to the provisions of Chapter 34.05 RCW. Respondents, Nutrition Without Borders, LLC dba H.U.M.A.N. Healthy Vending and Sean Kelly, may make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this order. If a respondent does not request a hearing within the allowed time, the Securities Administrator intends to adopt the above Tentative Findings of Fact and Conclusions of Law as final and enter an order to cease and desist permanent as to that respondent.

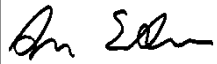
Signed and Entered this 22nd day of February 2013.



William M. Beatty
Securities Administrator

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Approved by:



Suzanne Sarason
Chief of Enforcement

Presented by:



Drew Stillman
Enforcement Attorney

Reviewed by:



Jack McClellan
Financial Legal Examiner Supervisor