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8
9 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
10 OF THE STATE OF CALIFORNIA
11

12 In the Matter of:) FIL ORG ID. 6495
13 THE COMMISSIONER OF BUSINESS)
OVERSIGHT,) CONSENT ORDER
14)
Complainant,)
15 v.)
16 BIRDSEYE VIDEO FRANCHISING, LLC and)
JOSHUA KNEIFEL,)
17 Respondents.)
18

19 This Consent Order is entered between the Department of Business Oversight (Department)
20 through the Commissioner of Business Oversight (Commissioner), on the one hand, and Birdseye
21 Video Franchising, LLC (Birdseye) and Joshua “Josh” Kneifel (Kneifel) on the other hand (hereafter,
22 the Parties), and is made with respect to the following:

23 RECITALS

24 A. At all relevant times, Birdseye was formed in Indiana with a former business address
25 of 570 Village Drive, Carmel, Indiana 46032, and current business address of 420 West Main Street,
26 Carmel, Indiana 46032. Birdseye also maintains a business website at www.BirdsiVideo.com.

27 B. At all relevant times, Kneifel, a resident of Indiana, was and is the sole owner of
28 Birdseye.

1 C. At all relevant times, Kneifel offered, through Birdseye, a franchise to sell aerial
2 videography/photography services to commercial and residential clients using drones, under the trade
3 name “BirdsiVideo.”

4 D. On or about June 7, 2016, Kneifel applied to the Department of Business Oversight
5 (DBO) for registration to offer BirdsiVideo franchises in California pursuant to Corporations Code
6 section 31111. The DBO issued an order of effectiveness of franchise registration to Birdseye. The
7 period of effectiveness of registration was from November 16, 2016 to April 20, 2017 only, meaning
8 no offer to sell BirdsiVideo franchises in California could be made outside this period.

9 E. The DBO subsequently received a complaint in December 2016 from a person who
10 operated a BirdsiVideo franchise in Southern California. Based on information provided by this
11 franchise operator, the DBO determined that Birdseye/Kneifel had offered a Birdseye franchise
12 opportunity to him in California in May 2016, whereupon the operator paid Kneifel a \$10,000 deposit
13 “to hold agreed franchise territory, initiate the required franchise training program and begin business
14 operations.” The DBO further determined that the operator had completed franchise training in July
15 2016; and that he had completed a paid job as a BirdsiVideo franchise in August 2016. All this took
16 place before Birdseye/Kneifel effectively registered any offer of franchise with the DBO.

17 F. A subsequent investigation by the DBO uncovered that Kneifel also offered to
18 franchise BirdsiVideo in California to another individual in September 2017, after the effective
19 period of registration with the DBO had expired without renewal.

20 G. Birdseye also currently advertises BirdsiVideo franchise opportunities in the state of
21 California through business webpages at <https://BirdsiVideo.com/franchise-opportunities/> and
22 <https://BirdsiVideo.com/california/>.

23 H. Based upon the foregoing, the Commissioner is of the opinion that Birdseye Video
24 Franchising, LLC and Joshua Kneifel offered franchises in this state without registration or
25 exemption in violation of Corporations Code section 31110.

26 I. Birdseye Video Franchising, LLC and Joshua Kneifel admit to paragraphs A through
27 H of this Recital, admit to the jurisdiction of the Commissioner with respect to the subject matter
28 hereof, and agree to the execution of this Consent Order as a resolution of the matter without the need

1 to initiate litigation.

2 J. The Commissioner finds this Consent Order is necessary, in the public interest, for the
3 protection of investors and franchisees and consistent with the purposes, policies, and provisions of
4 the Franchise Investment Law (Corporations Code section 31000, et seq.).

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

7 TERMS AND CONDITIONS

8 1. Purpose. The purpose of this Consent Order is to resolve the foregoing issues in a
9 manner that avoids the expense of a hearing and possible other court proceedings.

10 2. Citation and Order to Desist and Refrain. Birdseye Video Franchising, LLC and
11 Joshua Kneifel hereby stipulate to a citation issued pursuant to Corporations Code section 31406.
12 Pursuant to Corporations Code section 31406, Birdseye Video Franchising, LLC and Joshua Kneifel
13 are hereby ordered to desist and refrain from the further offer or sale of franchises in California, in
14 violation of Corporations Code section 31110, unless and until the offers have been duly registered
15 under the California Franchise Investment Law or are otherwise exempt.

16 3. Order Levying Administrative Penalties. Pursuant to Corporations Code section
17 31406, Birdseye Video Franchising, LLC and Joshua Kneifel are hereby assessed and ordered to
18 collectively pay an administrative penalty of \$5,000 to the Commissioner no later than 10 days after
19 the Effective Date of this Consent Order. The penalty payment shall be made payable in the form of
20 a cashier's check or Automated Clearing House deposit to the "Department of Business Oversight,"
21 and transmitted to the attention of:

22 ATTN: Accounting – Litigation
23 Department of Business Oversight
24 1515 K Street, Suite 200
25 Sacramento, California 95814

26 Notice of payment shall be sent to:
27 Kenny V. Nguyen
28 Senior Counsel, Enforcement Division
Department of Business Oversight
1515 K Street, Suite 200
Sacramento, California 95814

1 E-mail: Kenny.Nguyen@dbo.ca.gov

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

5 4. Ancillary Relief - Order for Remedial Education. Pursuant to Corporations Code
6 section 31408, Joshua Kneifel is hereby directed to attend and complete remedial education at least
7 thirty (30) days prior to the date he submits any new application for registration of a franchise in this
8 state. The remedial education shall be conducted by an experienced franchise attorney, shall be held
9 in-person for at least eight hours, and shall cover the area of California Franchise Investment Law
10 compliance, including but not limited to the offering and selling of franchises (Training). Kneifel
11 must obtain prior approval of the providers of the Training from the Commissioner. Proof of
12 Kneifel's attendance at the Training for eight hours shall be by affidavit by the trainer(s) and Kneifel,
13 and shall be received by the DBO with any new application for registration of any franchise in this
14 state. Failure to provide proof of completion of Training shall result in summary issuance of a stop
15 order for any new registration of franchise pursuant to Corporations Code section 31408.

16 5. Waiver of Hearing Rights. Birdseye Video Franchising, LLC and Joshua Kneifel
17 have read this Consent Order and are aware of their rights to a hearing and appeal in this matter if
18 the Commissioner had formally commenced an enforcement action to request the relief specified
19 under this Consent Order. Birdseye Video Franchising, LLC and Joshua Kneifel elect to
20 permanently waive any right to a hearing and appeal, including those rights under the Franchise
21 Investment Law, the California Administrative Procedures Act (Gov. Code, § 11400 et seq.), and
22 the Code of Civil Procedure with respect to the issuance of the Citation and Order to Desist and
23 Refrain, the Order Levying Penalty, and the Ancillary Relief- Order for Remedial Education,
24 specified in Paragraphs 2, 3, and 4, above.

25 6. Future Actions by the Commissioner. The Parties acknowledge and agree that nothing
26 contained in this Consent Order shall limit the ability of the Commissioner to bring any
27 administrative or civil action to enforce compliance with this Consent Order or to seek penalties for
28 its violation. Further, the Commissioner reserves the right to bring any future action(s) against

1 Joshua Kneifel, Birdseye Video Franchising, LLC, and or any of the managers, officers, directors,
2 shareholders or employees of Birdseye Video Franchising, LLC for all unknown or future violations
3 of the Franchise Investment Law.

4 7. Independent Legal Advice. Birdseye Video Franchising, LLC and Joshua Kneifel
5 represent, warrant, and agree that they have had the opportunity to seek independent advice from
6 legal counsel and/or representative with respect to the advisability of executing this Consent Order.

7 8. No Other Representation. Each of the Parties represents, warrants, and agrees that in
8 executing this Consent Order each has relied solely on the statements set forth herein and the advice
9 of its own counsel and/or representative. Each of the Parties further represents, warrants, and agrees
10 that in executing this Consent Order it has placed no reliance on any statement, representation, or
11 promise of any other party, or any other person or entity not expressly set forth herein, or upon the
12 failure of any party or any other person or entity to make any statement, representation or disclosure
13 of anything whatsoever. The Parties have included this clause: (1) to preclude any claim that any
14 party was in any way fraudulently induced to execute this Consent Order; and (2) to preclude the
15 introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this Consent
16 Order.

17 9. Modifications and Qualified Integration. No amendment, change, or modification to
18 this Consent Order shall be valid or binding to any extent unless it is in writing and signed by all the
19 parties affected by it.

20 10. Full Integration. This Consent Order is the final written expression and the complete
21 and exclusive statement of all the agreements, conditions, promises, representations, and covenants
22 between the parties with respect to the subject matter hereof, and supersedes all prior or
23 contemporaneous agreements, negotiations, representations, understandings, and discussions between
24 and among the Parties, their respective representatives, and any other person or entity, with respect to
25 the subject matter covered hereby.

26 11. No Presumption from Drafting. In that the Parties have had the opportunity to draft,
27 review and edit the language of this Consent Order, no presumption for or against any party arising
28 out of drafting all or any part of this Consent Order will be applied in any action relating to,

1 connected, to, or involving this Consent Order. Accordingly, the Parties waive the benefit of Civil
2 Code section 1654 and any successor or amended statute, providing that in cases of uncertainty,
3 language of a contract should be interpreted most strongly against the party who caused the
4 uncertainty to exist.

5 12. Effect Upon Future Proceedings. If either Birdseye Video Franchising, LLC or Joshua
6 Kneifel applies for any license, permit or qualification under the Commissioner's current or future
7 jurisdiction, or if either Birdseye Video Franchising, LLC or Joshua Kneifel is the subject of any
8 future action by the Commissioner to enforce this Consent Order, then the subject matter hereof shall
9 be admitted for the purpose of such application(s) or enforcement proceeding(s).

10 13. Counterparts. This Consent Order may be executed in one or more counterparts, each
11 of which shall be an original but all of which, together, shall be deemed to constitute a single
12 document.

13 14. Terms, Headings and Governing Law. All terms used, but not defined herein, shall
14 have the meaning assigned to them by the Franchise Investment Law. The headings to the
15 paragraphs of this Consent Order are inserted for convenience only and will not be deemed a part
16 hereof or affect the construction or interpretation of the provisions hereof. This Consent Order shall
17 be construed and enforced in accordance with, and governed by, the laws of the State of California.

18 15. Authority to Execute. Each party warrants and represents that such party is fully
19 entitled and duly authorized to enter into and deliver this Consent Order. In particular, and without
20 limiting the generality of the foregoing, each party warrants and represents that it is fully entitled to
21 enter into the covenants, and undertake the obligations set forth herein.

22 16. Signatures. This Consent Order may be executed by facsimile or scanned signature,
23 and any such facsimile or scanned signature by any party hereto shall be deemed to be an original
24 signature and shall be binding on such party to the same extent as if such facsimile or scanned
25 signature were an original signature.

26 17. Public Record. Birdseye Video Franchising, LLC and Joshua Kneifel acknowledge
27 that this Consent Order is a public record. Birdseye Video Franchising, LLC and Joshua Kneifel
28 further understand and agree to not make any statement or representation that is inconsistent with the

1 Consent Order.

2 18. Voluntary Agreement. The Parties each represent and acknowledge that in executing
3 this Consent Order, each does so completely voluntarily and without any duress or undue influence of
4 any kind from any source.

5 19. Effective Date: This Consent Order shall not become effective until signed by all
6 parties and delivered via email by the Commissioner’s agent to respondents at
7 mkreutzer@HowardandHoward.com.

8
9 Dated: 4/13/18

JAN LYNN OWEN
Commissioner of Business Oversight

11 By: _____
12 MARY ANN SMITH
13 Deputy Commissioner
14 Enforcement Division

15 BIRDSEYE VIDEO FRANCHISING, LLC

16 Dated: 4/13/18

17 By: _____
18 JOSHUA KNEIFEL
19 Owner and Principal of Birdseye Video
20 Franchising, LLC

21 Dated: 4/13/18

22 By: _____
23 JOSHUA KNEIFEL
24 In his Individual Capacity