

MARY ANN SMITH  
Deputy Commissioner  
MIRANDA LeKANDER  
Assistant Chief Counsel  
WILLIAM F. HORSEY (State Bar No. 136087)  
Senior Counsel  
Department of Business Oversight  
One Sansome Street, Suite 600  
San Francisco, California 94107-4428  
Telephone: (415) 972-8547  
Facsimile: (415) 972-8550

Attorneys for Complainant

BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT  
OF THE STATE OF CALIFORNIA

In the Matter of: ) FILE ORG. ID. 84093  
)  
THE COMMISSIONER OF BUSINESS ) CONSENT ORDER  
OVERSIGHT, )  
)  
Complainant, )  
)  
v. )  
)  
FOR FRANCHISING LLC doing business as )  
Window Genie and RICHARD NONELLE, )  
)  
Respondents. )  
)  
)  
)  
)  
)  
)

This Consent Order is entered into between the Commissioner of Business Oversight (Commissioner) and FOR Franchising, LLC, doing business as Window Genie (FOR Franchising), and Richard Nonelle (Nonelle) and is made with respect to the following facts:

///  
///  
///  
///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**I.**  
**RECITALS**

A. The Commissioner is the head of the Department of Business Oversight (Department) and is responsible for administering and enforcing the California Franchise Investment Law (FIL) (Corp. Code, § 31000, et seq.)<sup>1</sup> and registering the offer and sale of franchises in California.

B. To register a franchise, a franchisor must file a Uniform Franchise Disclosure Document (“Franchise Disclosure Document”) with the Department for review and approval, in accordance with sections 31111 and 31114.

C. The disclosure requirements of the FIL are intended to avoid misrepresentations and to provide prospective franchisees with facts upon which to make an informed decision to purchase a franchise, as stated in section 31001.

D. FOR Franchising was created on December 12, 1997, as a limited liability company under the laws of the State of Ohio. The principal business address of FOR Franchising is 40 W. Crescentville Road, Cincinnati, Ohio, 45246. FOR Franchising also does business under the name “Window Genie.”

E. Nonelle is the founder and president of FOR Franchising, and is authorized to execute this Consent Order on its behalf.

F. In March 2013, a California resident contacted a consultant to assist them in locating an appropriate franchise in which to invest. The franchise consultant referred the California residents to the Window Genie business concept offered by FOR Franchising.

G. Subsequently, the California residents spoke with Nonelle between April 11, 2013 and June 25, 2013.

H. In response to the inquiry, the California resident was provided with written materials that included the (1) Window Genie 2 Minute Drill for The You Network and (2) the Window Genie Company Profile.

---

<sup>1</sup> All further statutory references are to the Corporations Code unless otherwise indicated.

1 I. Section 31156 provides that no person shall publish any advertisement offering a  
2 franchise subject to the registration requirements of the FIL unless a true copy of the advertisement  
3 has been filed with the Commissioner at least three days before the first publication of the  
4 document.

5 J. The Department issued an order allowing FOR Franchising to offer and sell Window  
6 Genie franchises in California on June 12, 2012. Pursuant to the FIL, FOR Franchising was  
7 required to submit a Franchise Disclosure Document to the Commissioner.

8 K. On April 12, 2013, FOR Franchising filed a franchise renewal registration  
9 application for the Window Genie franchise with the Department (“Renewal Application”), and the  
10 application was granted on April 18, 2013.

11 L. The Commissioner is of the opinion that FOR Franchising and Nonelle failed to  
12 submit true and correct copies of advertisements with the Commissioner that were provided to a  
13 California resident for use in the sale of the Window Genie franchise in violation of section 31156.

14 M. The Commissioner finds that this Consent Order is appropriate, in the public interest  
15 and consistent with the purposes fairly intended by the policy and provisions of the FIL.

16 N. It is the intention and desire of the parties to resolve this matter without the necessity  
17 of a hearing or other litigation.

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

20  
21 **II.**

22 **TERMS AND CONDITIONS**

23 1. Purpose: This Consent Order resolves the violations before the Commissioner in a  
24 manner that avoids the expense of a hearing and possible further court proceedings, is in the public  
25 interest, protects consumers and is consistent with the purposes, policies and provisions of the FIL.

26 2. Desist and Refrain Order: In accordance with Corporations Code section 31406,  
27 FOR Franchising and Nonelle agree to desist and refrain from violations of section 31156.

1           3.       Administrative Penalties: Pursuant to section 31406, FOR Franchising stipulates to  
2 pay an administrative penalty of \$5,000.00 for the two violations related to the two documents that  
3 were provided to the prospective franchisees that were not previously filed with the Commissioner.  
4 Within 15 days from the Effective Date of this Consent Order, as defined in Paragraph 12, FOR  
5 Franchising shall pay the administrative penalty by way of Automated Clearing House payment, or  
6 in the form of a cashier’s check made payable to the “Department of Business Oversight” and  
7 mailed to the Department’s Accounting Division at 1515 K Street, Suite 200, Sacramento,  
8 California 95814. Notice of this payment should be concurrently sent to the attention of William  
9 Horsey, Senior Counsel, One Sansome Street, Suite 600, San Francisco, California 94104-4428.

10           4.       Remedial Education: Within 90 days of the date of this Consent Order, pursuant to  
11 section 31408, Nonelle and all persons employed by FOR Franchising who assist in preparing  
12 franchise registrations or who assist in franchise selling agree to attend remedial education, which  
13 shall consist of eight hours of franchise law training courses per person offered by instructors that  
14 are acceptable to the Commissioner. Proof of attendance of the remedial education shall be  
15 submitted to William Horsey, Senior Counsel, One Sansome Street, Suite 600, San Francisco,  
16 California 94104-4428, no later than 10 days from the date of this training.

17           5.       Waiver of Hearing Rights: FOR Franchising and Nonelle acknowledge that the  
18 Commissioner is ready, willing and able to proceed with the filing of an administrative enforcement  
19 action on the charges contained herein. FOR Franchising and Nonelle hereby waive any right to a  
20 hearing, and to any reconsideration, appeal, injunction, or other rights to review which may be  
21 afforded pursuant to the Corporations Code, the California Administrative Procedure Act, the Code  
22 of Civil Procedure, or any other provision of law. FOR Franchising and Nonelle further expressly  
23 waive any requirement for the filing of an Accusation that may be afforded by Government Code  
24 section 11415.60, subdivision (b), the California Administrative Procedure Act, the Code of Civil  
25 Procedure and any other provisions of law; and by so waiving, FOR Franchising and Nonelle  
26 effectively consent to this Consent Order and Desist and Refrain Order herein becoming final.

27  
28

1           6.       Full and Final Settlement: If FOR Franchising or Nonelle fail to comply with any  
2 terms of the Consent Order, the Commissioner may institute proceedings for any and all violations  
3 otherwise resolved under this Consent Order.

4           7.       Future Actions by the Commissioner: The Commissioner reserves the right to bring  
5 any future actions against FOR Franchising, Nonelle, or any of its partners, owners, officers,  
6 shareholders, directors, employees or successors for any and all unknown violations of the FIL.  
7 However, this Consent Order resolves and discharges FOR Franchising and Nonelle of any further  
8 liability, fine, discipline, or other punitive action that could have been brought by the Commissioner  
9 arising out of or relating to the allegations made in this Consent Order.

10          8.       Effective Date: This Consent Order shall not become effective until signed by all  
11 parties and delivered by email by the Commissioner’s agent to FOR Franchising and Nonelle’s  
12 counsel at Brian.Schnell@FaegreBD.com.

13          9.       Consent Order Coverage: The parties hereby acknowledge and agree that this  
14 Consent Order is intended to constitute a full, final and complete resolution of this matter. The  
15 Parties further acknowledge and agree that nothing in this Consent Order shall operate to limit the  
16 Commissioner’s ability to assist any other agency (city, state, county or federal) with any  
17 prosecution, administrative, civil or criminal, brought by any such agency against FOR Franchising  
18 and Nonelle based upon any of the activities alleged in this matter or otherwise.

19          10.      Independent Legal Advice: Each of the Parties represents, warrants and agrees that it  
20 has received or been advised to seek independent legal advice from its attorneys with respect to the  
21 advisability of executing this Consent Order.

22          11.      No Other Representation: Each of the Parties represents, warrants and agrees that in  
23 executing this Consent Order it has relied solely on the statements set forth herein and the advice of  
24 its own counsel. Each of the Parties further warrants, represents and agrees that in executing this  
25 Consent Order it has placed no reliance on any statement, representation, or promise of any other  
26 party, or any other person or entity not expressly set forth herein, or upon any failure of any party or  
27 any other person or entity to make any statement, representation, or disclosure of anything  
28

1 whatsoever. The Parties have included this clause: (1) to preclude any claim that any party was in  
2 any way fraudulently induced to execute this Consent Order; and (2) to preclude the introduction of  
3 parol evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

4 12. Modifications and Qualified Integration: No amendment, change or modification of  
5 the Consent Order shall be valid or binding to any extent unless it is in writing and signed by all of  
6 the parties affected by it.

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

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

20 21 15. Signatures: A fax signature or scanned signature of the Consent Order shall be as  
22 effective as an original ink signature.

23 16. Counterparts: This Consent Order may be executed in any number of counterparts by  
24 the Parties, and when each party has signed and delivered at least one such counterpart to the other  
25 party, each counterpart shall be deemed an original and taken together shall constitute one and the  
26 same Consent Order.

27 17. Headings and Governing Law: The headings of paragraphs of this Consent Order are  
28 inserted for convenience only and will not be deemed a part hereof or affect the construction or

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

interpretation of the provisions hereof. The Consent Order shall be construed and enforced in accordance with, and governed by, California law.

18. Settlement Authority: Each signatory hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Consent Order on behalf of the named party.

19. Public Record: FOR Franchising and Nonelle hereby acknowledge that this Consent Order is and will be a matter of public record.

20. Voluntary Agreement: The Parties each represent and acknowledge that it is executing this Consent Order voluntarily and without any duress or undue influence of any kind from any source.

Dated: November 14, 2017

JAN LYNN OWEN  
Commissioner of Business Oversight

By \_\_\_\_\_  
Mary Ann Smith.  
Deputy Commissioner, Enforcement Division

Dated: November 7, 2017

\_\_\_\_\_  
Richard Nonelle, on behalf of FOR Franchising, LLC  
doing business as Window Genie

Dated: November 7, 2017

By \_\_\_\_\_  
Richard Nonelle, as an individual