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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:)
12)
LARADA SCIENCES, INC., aka AIRALLE) **CONSENT ORDER**
13 aka LICE CLINICS OF AMERICA,)
14 Respondents.)
15)
16)

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18 This Consent Order is entered into between the Commissioner of Business Oversight
19 (Commissioner) and Larada Sciences, Inc., aka AirAllé aka Lice Clinics of America (LSI), and is
20 made with respect to the following facts:

21 **I.**

22 **RECITALS**

23 A. Larada Sciences, Inc., aka AirAllé aka Lice Clinics of America, is a Delaware
24 corporation with its address located at 154 East Myrtle Avenue, Suite 304, Murray, UT 84107.

25 B. The Department of Business Oversight (Department), through the Commissioner, has
26 jurisdiction over the administration and enforcement of the Franchise Investment Law (FIL) (Corp.
27 Code § 31000, et seq.).

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1 C. LSI offers and sells franchises for the operation of clinics that treat head lice.

2 D. Corporations Code section 25531, and Government Code section 11180 authorize the
3 Commissioner to conduct such investigations as she deems necessary to determine whether any
4 person has violated or is about to violate any provisions of the FIL. Further, Government Code
5 section 11181 allows the Commissioner to inspect books and records; and among other things, issue
6 subpoenas for the production of books and records in any inquiry or investigation pertinent or
7 material thereto in any part of the state.

8 E. In or about August 2016, the Department received information that LSI was
9 unlawfully offering or selling unregistered, non-exempt franchises to the general public, including
10 California residents in violation of the FIL.

11 F. Pursuant to Corporations Code section 25531 and Government Code section 11180,
12 the Department commenced an investigation of LSI on or about October 13, 2016. In or about
13 November 2016, LSI self-reported the activities that appeared to be in violation of the FIL.

14 G. Beginning in or about August 2014, to at least October 2016, LSI offered and sold
15 franchises to at least 20 California residents. During the time frame specified herein, LSI executed
16 written agreements described as “License Agreement,” (Agreements) with California resident
17 franchisees, which gave them the right to use one or more of LSI’s devices to operate a clinic for the
18 treatment of head lice for five years. Under the terms of the Agreement and in accordance with
19 LSI’s marketing plan or system, the franchisees are required or allowed to operate the franchise
20 using LSI’s proprietary marks, trademark, service mark, or trade name logotype.

21 H. The Agreements provide that the franchisees must use their “best efforts to perform
22 certain performance milestones” as set forth in the Agreements including, opening a clinic and any
23 satellites under LSI’s brand name and marketing that clinic or satellite as Lice Clinics of America.
24 The Agreements further require the franchisees to perform a prescribed number of treatments within
25 LSI’s schedule in the first 12 months a clinic is opened.

26 I. Pursuant to the Agreements, LSI agreed to provide the franchisees LSI’s “fully
27 designed business system, including logo; business cards; letterhead; brochures for school nurses,
28 pediatricians, hair salons; a template-based website localized for Territory which will contain

1 elements owned by LSI including, a domain name, video, images, Marks and other content... the
2 design of the licensee’s Facebook page, and submission to online business-directory listings.”

3 J. In exchange for the right to operate LSI’s franchise, the franchisees are required to:

- 4 (i) pay LSI a one-time, non-refundable license fee of \$28,500.00;
- 5 (ii) pay LSI a “Use Fee” of \$35.00 per treatment for each treatment; and \$800.00
6 refundable deposit for each device and actual shipping and handling costs per
7 device;
- 8 (iii) purchase all consumables (i.e., AirAllé Device replacement parts) only from
9 LSI; and
- 10 (iv) report treatment numbers to LSI twice a month by the fourth of each month.

11 K. Pursuant to the Agreements, LSI agreed to train the franchisees and provide training
12 materials and device training comprising; “... access to LSI’s resource portal; assignment of LSI’s
13 market-development team to guide a clinic’s success; fully designed business system that include
14 logo, business cards, letter head and brochures....”

15 L. LSI has not been registered to offer or sell franchises under the FIL and is not exempt
16 from registration under that law.

17 M. LSI represents it is willing to take the necessary steps to properly register its franchise
18 with the Commissioner in accordance with the FIL.

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

21 O. It is the intention and desire of the parties to resolve this matter without the necessity
22 of a hearing and/or other litigation.

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

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II.
TERMS

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3 1. Purpose. The Consent Order resolves the Commissioner’s investigation of LSI’s
4 alleged violations of the FIL in a manner that avoids the expense of a hearing and possible further
5 court proceedings, protects consumers, is in the public interest, and is consistent with the purposes,
6 policies, and provisions of the FIL.

7 2. Finality of Order. LSI hereby agrees to comply with this Consent Order and stipulate
8 that the Consent Order is deemed final.

9 3. Desist and Refrain Order. Pursuant to Corporations Code section 31402, LSI
10 consents to the issuance of a desist and refrain order for violations of Corporations Code section
11 31110. Additionally, LSI agrees to desist and refrain from the further offer or sale of franchises in
12 violation of Corporations Code section 31110, unless and until the offers have been duly registered
13 under the FIL or are otherwise exempt.

14 4. Notice of Violation. LSI agrees to file with the Department, within 60 days of the
15 execution of this Consent Order, subject to the approval of the Department, an initial franchise
16 registration application (Initial Application) and a Notice of Violation for the violations of
17 Corporations Code section 31110, along with the required fees. Within 30 days after the Department
18 approves LSI’s Initial Application and Notice of Violation, LSI agrees to make an offer of rescission
19 of all Agreements entered into with the franchisees.

20 5. Restitution to Franchisees. For every franchisee that accepts LSI’s offer of rescission,
21 LSI agrees to: (i) pay restitution for the actual cost of the initial franchise fee paid to LSI, (ii) return
22 all deposits on AirAllé Devices (Devices) the franchisee paid to LSI after the Devices have been
23 delivered to LSI in accordance with the terms of the franchisee’s Agreement, and (iii) repurchase
24 any LSI branded products from the franchisee at the price franchisee paid LSI for them, all
25 according to proof. Each franchisee shall be given 90 days from receipt of the offer of rescission to
26 elect to rescind. Provided each franchisee that accepts LSI’s offer of rescission complies with all
27 post-term obligations under its Agreement, returns all Applicator Tips (as defined in its Agreement)
28 to LSI, and signs a mutual termination and release of its Agreement with LSI, LSI agrees to, within

1 90 days of receiving its acceptance to rescind: (a) pay restitution for the actual cost of the initial
2 franchise fee paid to LSI; (b) return all Device deposits franchisee paid to LSI in accordance with the
3 terms of the franchisee's Agreement; and (c) repurchase any LSI-branded products from the
4 franchisee at the price franchisee paid LSI for them.

5 6. Report to Commissioner. LSI will provide the Commissioner with copies of the
6 letter(s) offering rescission, proof of mailing, responses received, proof of payment of restitution if
7 requested, within 120 days of execution of this Consent Order or within 120 days of the approval of
8 LSI's Initial Application and the Notice of Violation, whichever occurs later. LSI shall remit proof
9 of compliance to Uche Enenwali, Enforcement Division, Department of Business Oversight, 320
10 West Fourth Street, Suite 750, Los Angeles, California 90012.

11 7. Education. Within 60 days of the execution of this Consent Order, all persons
12 employed by LSI who assist in preparing franchise registrations or who assist in franchise selling are
13 hereby required to attend eight hours of remedial education, in the form of franchise law training
14 courses offered by a franchise law specialist certified with the State Bar of California or courses
15 offered by or through the International Franchise Association. Within 90 days of execution of this
16 Consent Order, LSI shall file proof of compliance to Uche Enenwali, Enforcement Division,
17 Department of Business Oversight, 320 West Fourth Street, Suite 750, Los Angeles, California
18 90012.

19 8. Administrative Penalties. LSI agrees to pay an administrative penalty in the amount
20 of \$50,000.00 for violations of Corporations Code section 31110. The above penalty shall be paid
21 by LSI and received by the Department within 10 days of the effective date of the execution of this
22 Consent Order. The check shall be made payable in the form of a cashier's check or by certified
23 check to the "Department of Business Oversight," and shall be sent to the Department, attention,
24 Accounting-Litigation, Department of Business Oversight, 1515 K Street, Suite 200, Sacramento,
25 California 95814-4052. Notice of the above penalty payment shall be sent to Uche Enenwali,
26 Enforcement Division, Department of Business Oversight, 320 West Fourth Street, Suite 750, Los
27 Angeles, California 90012.
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1 9. Remedy for Breach. In the event LSI fails to comply with the terms of this Consent
2 Order, LSI agrees that this Consent Order may be converted to an enforceable civil judgment for the
3 entire penalty amount of \$50,000.00. LSI further agrees that such civil judgment may be entered by
4 the court on an ex parte basis without further notice or hearing to LSI.

5 10. Waiver of Hearing Rights. LSI acknowledges that the Commissioner is ready,
6 willing, and able to proceed with the filing of an administrative enforcement action on the charges
7 contained in this Consent Order, and LSI hereby waives the right to a hearing, and to any
8 reconsideration, appeal, or other right to review which may be afforded pursuant to the CRMLA,
9 LSI further expressly waives any requirement for the filing of an Accusation that may be afforded by
10 Government Code section 11415.60 (b); the California Administrative Procedure Act, the California
11 Code of Civil Procedure, or any other provision of law; and by waiving such rights, LSI effectively
12 consents to this Consent Order becoming final.

13 11. Future Actions by the Commissioner. The Commissioner reserves the right to bring
14 any future action against LSI or any of its partners, owners, officers, directors, shareholders,
15 employees, or successors for any and all future violations of the FIL. This Consent Order shall not
16 serve to exculpate LSI or any of its partners, owners, officers, directors, shareholders, employees, or
17 successors from liability for any and all future violations of the FIL that may arise or occur after the
18 date of the Consent Order.

19 12. Binding. This Consent Order is binding on all heirs, assigns and/or successors in
20 interest.

21 13. Third Party Action. This Consent Order does not create any private rights or
22 remedies against LSI, create any liability for LSI or limit defenses of LSI for any person or entity not
23 a party to this Consent Order.

24 14. Full and Final Settlement. The parties hereby acknowledge and agree that this
25 Consent Order is intended to constitute a full, final and complete resolution of the allegations
26 contained in the Desist and Refrain Order and this Consent Order. The Commissioner expressly
27 agrees to release and discharge LSI and each of its parent corporations, affiliated corporations,
28 subsidiaries, divisions, insurers, indemnitors, attorneys, successors, representatives, agents, heirs,

1 assigns, directors, partners, owners, members, shareholders, officers, and employees, of and from
2 any and all actions, suits, proceedings, claims (including, but not limited to, claims for attorneys'
3 fees), complaints, judgments, executions, whether liquidated or unliquidated, known or unknown,
4 asserted or unasserted, absolute or contingent, accrued or not accrued, arising out of and related to
5 the alleged facts and allegations giving rise to the Desist and Refrain Order and this Consent Order.
6 However, the parties acknowledge and agree that nothing contained in this Consent Order shall
7 operate to limit the Commissioner's ability to assist any other agency, (city, county, state or federal)
8 with any prosecution, administrative, civil or criminal, brought by any such agency against LSI or
9 any other person based upon any of the activities alleged in these matters or otherwise.

10 15. Independent Legal Advice. Each of the parties represents, warrants, and agrees that it
11 has received independent advice from its attorney(s) and/or representatives with respect to the
12 advisability of executing this Consent Order.

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

22 17. Full Integration. This Consent Order is the final written expression and the complete
23 and exclusive statement of all the agreements, conditions, promises, representations, and covenants
24 between the parties with respect to the subject matter hereof, and supersedes all prior or
25 contemporaneous agreements, negotiations, representations, understandings, and discussions
26 between and among the parties, their respective representatives, and any other person or entity, with
27 respect to the subject matter covered hereby.
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1 18. No Presumption from Drafting. In that the parties have had the opportunity to draft,
2 review and edit the language of this Consent Order, no presumption for or against any party arising
3 out of drafting all or any part of this Consent Order will be applied in any action relating to,
4 connected, to, or involving this Consent Order. Accordingly, the parties waive the benefit of
5 California Civil Code section 1654 and any successor or amended statute, providing that in cases of
6 uncertainty, language of a contract should be interpreted most strongly against the party who caused
7 the uncertainty to exist.

8 19. Waiver or Modification. The waiver of any provision of this Consent Order shall not
9 operate to waive any other provision set forth herein, and any waiver, amendment and/or change to
10 the terms of this Consent Order must be in writing signed by the parties.

11 20. Headings and Governing Law. The headings to the paragraphs of this Consent Order
12 are inserted for convenience only and will not be deemed a part hereof or affect the construction or
13 interpretation of the provisions hereof.

14 21. Effective Date. This Consent Order shall not become effective until signed by all
15 parties and delivered by the Commissioner’s counsel by email to Max Schott II at
16 Max.Schott@gpmlaw.com.

17 22. Counterparts. This Consent Order may be executed in one or more counterparts, each
18 of which shall be an original but all of which, together, shall be deemed to constitute a single
19 document. This Consent Order may be executed by facsimile signature, and any such facsimile
20 signature by any party hereto shall be deemed to be an original signature and shall be binding on
21 such party to the same extent as if such facsimile signature were an original signature.

22 23. Bankruptcy. LSI agrees the facts and violations set forth in paragraphs A through L
23 above, in this Order may be taken as true without further proof in any bankruptcy case or subsequent
24 civil litigation the Department may pursue to enforce its rights to any payment or money judgment
25 under the terms of this Order, including but not limited to, any nondischargeability complaint in any
26 bankruptcy proceeding and that this Order shall have collateral estoppel effect in any bankruptcy
27 case.

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24. Public Record. LSI hereby acknowledges this Consent Order will become a public record upon the execution of this Consent Order.

25. Information Willfully Withheld. This Consent Order may be revoked and the Commissioner may pursue any and all remedies available under law against LSI, if the Commissioner later finds out that LSI knowingly or willfully withheld information used and relied upon in this Consent Order.

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

27. IN WITNESS WHEREOF, the parties have approved and executed this Consent Order on the dates set forth opposite their respective signatures.

Dated: 8/3/17

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner

Dated: 8/2/17

LARADA SCIENCES, LNC.

By _____
CLAIRE ROBERTS
President and CEO

APPROVED AS TO FORM AND CONTENT:

MAX SCHOTT II, ESQ.
GRAY PLANT MOOTY
Counsel for Larada Sciences, Inc. and Lice Clinics of America