

1 PRESTON DuFAUCHARD
California Corporations Commissioner
2 ALAN S. WEINGER
Deputy Commissioner
3 MARLOU de LUNA (CA BAR NO. 162259)
Sr. Corporations Counsel
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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)
CORPORATIONS COMMISSIONER,)

) File No.: 993-5353/266725
)

12 Complainant,)

) **SETTLEMENT AGREEMENT AND**
) **WITHDRAWAL OF ALLEGATIONS**
) **AGAINST DANIEL S. FRAGEN**
)

13 vs.)

14 PRS FRANCHISE SYSTEMS, LLC; DANIEL)
15 S. FRAGEN; IRA T. DISTENFIELD,)
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17 Respondents.)
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1 This Settlement Agreement (“Agreement”) shall be binding on the CALIFORNIA
2 CORPORATIONS COMMISSIONER and its officers, employees, agents, representatives,
3 successors, and attorneys (collectively, the “Commissioner” or “Complainant”); and DANIEL S.
4 FRAGEN (“Fragen”), and his employees, agents, representatives, successors, insurers, attorneys,
5 affiliated and related entities, assignors, and assignees. The Commissioner and Fragen shall
6 collectively be referred to as the “Parties.”

7 **I.**

8 **PARTICULARS**

9 A. At all relevant times, PRS Franchise Systems, LLC (“PRS”) is and was a North
10 Carolina corporation incorporated on March 19, 2002. PRS engaged in the sale of franchises
11 providing a variety of marketing services including specialty advertising, sales brochures, letterhead,
12 business cards, direct mail, annual reports, website development and similar services and products.
13 PRS’ principal place of business is 14045 Ballantyne Corporate Place, Suite 525, Charlotte, North
14 Carolina 28277.

15 B. At all relevant times until 2008, Fragen was the chief executive officer of PRS .

16 C. The Commissioner acting to protect the public from unlawful practices in the offer and
17 sale of franchises, under the California Franchise Investment Law, California Corporations Code
18 sections 31000 *et seq.*, commenced an investigation into PRS’ franchise registration application.

19 D. On June 1, 2009, the Commissioner issued a Desist and Refrain Order; and Citations
20 (“Order”) against PRS, Fragen, and Ira T. Distenfield (“Distenfield”) (collectively “Respondents”),
21 for violations of California Corporations Code section 31200, material misstatements or omissions in
22 a franchise registration application filed with the Commissioner and section 31201, material
23 misstatements or omissions. The Order seeks, among other things, certain penalties against the
24 Respondents.

25 E. On September 2, 2009, an Amended Desist and Refrain Order; and Citations
26 (“Amended Order”) was issued by the Commissioner. The Amended Order contained the same
27 allegations and the same violations as the previous Order against all Respondents. Certain facts,
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1 however, were deleted and/or corrected. The Amended Order supercedes the order issued on June 1,
2 2009.

3 F. The Parties now desire to resolve this matter without the necessity of a hearing and/or
4 other litigation.

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

7 **II.**

8 **TERMS AND CONDITIONS**

9 1. This Agreement is entered into for the purpose of judicial economy and expediency,
10 and to avoid the time and expense of a hearing and possible further court proceedings. No admission
11 of liability shall be inferred herefrom.

12 2. Fragen acknowledges and agrees to withdraw his request for a hearing before the
13 Office of Administrative Hearings and to waive any further right to appeal, in any forum, the
14 issuance of the Desist and Refrain Order that is the subject matter of this proceeding.

15 3. Complainant acknowledges and agrees to withdraw all the allegations set forth in the
16 Desist and Refrain Order against Fragen, including but expressly not limited to, Section II.,
17 subsection A., paragraph 6, subdivision c. In addition, Complainant acknowledges and agrees that
18 Fragen is not jointly and severally liable for the acts of PRS or Distenfield.

19 4. Fragen acknowledges and agrees to reimburse the Complainant in the amount of One
20 Thousand Two Hundred Fifty Dollars (\$1,250.00) for costs and other expenses related to the
21 investigation and resolution of this matter, only, and not as a penalty or fine. Such reimbursement
22 shall be made by Fragen within ten (10) days of the execution of this Agreement. The check shall be
23 made payable to "The Department of Corporations," and shall be sent by Fragen to the following
24 address:

25
26 Marlou de Luna
27 Sr. Corporations Counsel
28 Department of Corporations
320 W. 4th Street, Suite 750
Los Angeles, CA 90013

1 5. Notwithstanding any other provision contained herein, nothing in this Agreement shall
2 operate to limit the Commissioner's ability to investigate and prosecute violations of the Franchise
3 Investment Law not addressed herein, or to assist any other agency (county, state, or federal) with
4 any prosecution (administrative, civil, or criminal), brought by such agency against Respondents
5 concerning violations alleged herein or otherwise.

6 6. Each party hereto represents and warrants that it has received independent advice from
7 its attorney(s) and/or other representatives prior to entering into this Agreement, and in executing this
8 Agreement relied solely on the statements set forth herein and the advice of his own counsel and/or
9 representative.

10 7. In that the parties have had the opportunity to draft, review and edit the language of
11 this Agreement, no presumption for or against any party arising out of drafting all or any part of this
12 Agreement will be applied in any action relating to or arising out of this Agreement. Accordingly,
13 the parties hereby waive the benefit of California Civil Code section 1654 and any successor statute.

14 8. The waiver of any provision of this Agreement shall not operate to waive any other
15 provision set forth herein, and any waiver, amendment and/or change to the terms of this Agreement
16 must be in writing signed by the parties hereto.

17 9. The Commissioner shall cause this Agreement to be filed with the Office of
18 Administrative Hearings immediately upon its execution.

19 10. A fax signature or e-mail scanned signature of this Agreement shall be effective as an
20 original ink signature.

21 11. This Agreement may be executed in one or more counterparts, each of which shall be
22 deemed an original, and will become effective and binding upon the Parties at such time as all of the
23 signatories hereto have signed a counterpart of the Settlement Agreement. All counterparts so
24 executed shall constitute on Agreement binding on all of the Parties hereto, notwithstanding that all
25 of the Parties are not a signatory to the same counterpart.

26 12. Each signatory hereto covenants that he/she possesses the necessary capacity and
27 authority to sign and enter this Agreement.

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1 Dated: 10/23/09

California Corporations Commissioner
PRESTON DuFAUCHARD

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By: Alan S. Weinger
Deputy Commissioner

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6 Dated: 10/23/09

7 _____

By: Daniel S. Fragen

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APPROVED AS TO FORM:

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Dated: 10/23/09

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Joel D. Siegel
Sonnenschein, Nath, & Rosenthal LLP
Attorneys for Daniel S. Fragen

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