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

12 In the Matter of:) FIL ORG NO.: 92446
)
13 THE COMMISSIONER OF BUSINESS) CONSENT ORDER
OVERSIGHT,)
14)
15 Complainant,)
)
16 v.)
)
17 DAVI NAILS SALON AND SPA, LLC,)
18 DAVID TRUONG and VI TRUONG CAO)
)
19 Respondent.)
20)

21 Complainant, the Commissioner of Business Oversight (Commissioner) and Respondents,
22 DaVi Nails Salon and Spa, LLC (DaVi), David Truong and Vi Truong Cao (collectively, Truong)
23 (hereinafter, the parties), enter into this consent order based on the following facts:

24 **RECITALS**

- 25 A. The Commissioner regulates the offer and sale of franchises under the Franchise Investment
26 Law (Corp. Code, § 31000 et seq.) (FIL).
27 B. DaVi is a Utah limited liability company, formed on January 11, 2010. DaVi has a principal
28 place of business at 1559 W 3860 South, West Valley City, Utah 84119.

1 C. DaVi has been registered to offer and sell franchises in this state since October 4, 2012. DaVi
2 has 31 franchise locations in California and has over 400 nationwide. The most recent registration
3 lapsed, and DaVi filed a new franchise registration application with the Department of Business
4 Oversight on January 30, 2017. The application is currently pending.

5 D. During the review of DaVi's pending franchise registration application, DaVi responded to the
6 Commissioner's inquiry by admitting to selling a franchise while not registered or exempt.

7 E. On February 25, 2009, the Commissioner issued a Desist and Refrain Order to DaVi and
8 Truong for violations of Corporations Code section 31110 for selling franchises in the State of
9 California without first applying for and securing a registration or being exempt under the FIL.

10 F. On July 30, 2012, the Commissioner issued a Citation and Desist and Refrain Order (2012
11 Order) to DaVi and Truong for continued violations of the FIL by again offering unregistered
12 franchises in California and failing to disclose to potential franchisees the February 25, 2009 Desist
13 and Refrain Order.

14 G. On August 9, 2012, DaVi and Truong stipulated to the 2012 Order.

15 **TERMS**

16 1. Purpose: The purpose of this consent order is to resolve the matter before the Commissioner
17 in a manner that avoids the expense of a hearing and possible further court proceedings, and is in the
18 public interest, protects consumers, and is consistent with the purposes, policies, and provisions of the
19 FIL.

20 2. Citation and Desist and Refrain Orders: Pursuant to Corporations Code section 31406, the
21 Commissioner hereby issues a citation to DaVi and Truong and orders DaVi and Truong to desist and
22 refrain from the offer and sale of unregistered, non-exempt franchises in violation of section 31110 of
23 the FIL.

24 3. Finality of Desist and Refrain Orders: DaVi and Truong agree to the finality of the citation
25 and desist and refrain orders in Paragraph 2 of this consent order and voluntarily waives all rights to
26 reconsideration, appeal, or other rights which may be afforded pursuant to Corporations Code section
27 31406, or any other provision of law in connection with these matters, including but not limited to
28 Government Code sections 11521 and 11523, and any writ proceeding in accordance with the Code of

1 Civil Procedure.

2 4. Penalties: The Commissioner hereby orders DaVi and Truong to pay an administrative
3 penalty of \$3,000.00 within 30 days of executing this consent order. The penalties shall be paid by
4 check made payable to “Department of Business Oversight,” and mailed to the attention of
5 Accounting-Litigation, Department of Business Oversight, 1515 K Street, Suite 200, Sacramento,
6 California 95814. Notice of payment shall be concurrently made via email to Joanne Ross, Senior
7 Counsel at Department of Business Oversight, at joanne.ross@dbo.ca.gov.

8 5. Disclosure of Consent Order in FDD: DaVi will disclose this consent order in each of their
9 FDDs submitted after this consent order is effective.

10 6. Registration Application: In consideration for DaVi’s consenting to these terms, the
11 Commissioner will agree to the withdrawal of DaVi’s pending franchise registration and will approve
12 a newly filed registration application as soon as all standard registration requirements are met,
13 including but not limited to updated financial statements, with no delay relating to the violations
14 forming the basis of this consent order. Notwithstanding the foregoing, the newly filed registration
15 application and any subsequent applications must be in compliance with this consent order prior to
16 their approval.

17 7. Remedy for Breach: In the event DaVi, Truong or any of its officers or salespeople fail to
18 comply with the terms of this consent order with regard to any term in this consent order, it is hereby
19 agreed by DaVi and Truong that the Commissioner will issue a Stop Order to deny or revoke the
20 effectiveness of any pending or current registration. DaVi and Truong hereby agree to the finality of
21 such stop order and hereby waive any rights for a hearing to challenge such stop order, including but
22 not limited to any rights that may be afforded by Government Code section 11415.60, subdivision (b),
23 the California Administrative Procedure Act, the California Code of Civil Procedure, or any other
24 provision of law.

25 8. Waiver of Hearing Rights: DaVi and Truong acknowledges that the Commissioner is ready,
26 willing and able to proceed with the filing of an enforcement action on the charges contained in this
27 consent order, and DaVi and Truong hereby waives their right to a hearing, and to any reconsideration,
28 appeal, or other right to review which may be afforded pursuant to the FIL. DaVi and Truong further

1 expressly waive any requirement for the filing of an Accusation or other action that may be afforded
2 by Government Code section 11415.60, subdivision (b), the California Administrative Procedure Act,
3 the California Code of Civil Procedure, or any other provision of law, and by waiving such rights,
4 DaVi and Truong effectively consent to this consent order becoming final.

5 9. Binding: This consent order is binding on all heirs, assigns, and/or successors in interest.

6 10. Future Actions by the Commissioner: The Commissioner reserves the right to bring any future
7 action(s) against DaVi and Truong for any and all unknown or future violations of the FIL. This
8 consent order shall not serve to exculpate DaVi or Truong from liability for any and all unknown or
9 future violations of FIL. This consent order may be revoked, and the Commissioner may pursue any
10 and all remedies available under law against DaVi and Truong if the Commissioner later discovers that
11 DaVi and/or Truong knowingly or willfully withheld information used for and relied upon in this
12 consent order. Further, DaVi and Truong agree that this consent order does not resolve any penalties
13 that may be assessed by the Commissioner upon discovery of new and further violations of the FIL.

14 11. Independent Legal Advice: Each of the parties represents, warrants, and agrees that it has
15 received or been advised to seek independent legal advice from its attorneys with respect to the
16 advisability of executing this consent order.

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

26 13. Waiver and Modifications: The failure of any party to require the performance of any term or
27 obligation of this Agreement, or the waiver by any party of any breach of this Agreement, shall not
28 prevent any subsequent enforcement of such term or obligation or be deemed a waiver of any

1 subsequent breach. No waiver, amendment, or modification of this consent order shall be valid or
2 binding to any extent unless it is in writing and signed by all parties affected by it.

3 14. Full Integration: This consent order is the final written expression and the complete and
4 exclusive statement of all the agreements, conditions, promises, representations, and covenants
5 between the parties with respect to the subject matter hereof, and supersedes all discussions between
6 and among the parties, their respective representatives, and any other person or entity, with respect to
7 the subject matter covered hereby.

8 15. No Presumption From Drafting: In that the parties have had the opportunity to draft, review
9 and edit the language of this consent order, no presumption for or against any party arising out of
10 drafting all or any part of this consent order will be applied in any action relating to, connected to, or
11 involving this consent order. Accordingly, the parties waive the benefit of Civil Code section 1654
12 and any successor or amended statute, providing that in cases of uncertainty, language of a contract
13 should be interpreted most strongly against the party who caused the uncertainty to exist.

14 16. Counterparts: This consent order may be executed in any number of counter-parts by the
15 parties, and when each party has signed and delivered at least one such counterpart to the other party,
16 each counterpart shall be deemed an original and taken together shall constitute one and the same
17 consent order. A fax signature shall be deemed the same as an original signature.

18 17. Terms, Headings and Governing Law: All terms used, but not defined herein, shall have the
19 meaning assigned to them by the FIL. The headings to the paragraphs of this consent order are
20 inserted for convenience only and will not be deemed a part hereof or affect the construction or
21 interpretation of the provisions hereof. This consent order shall be construed and enforced in
22 accordance with, and governed by, the laws of the State of California.

23 18. Authority for Consent Order: Each signatory hereto covenants that he/she possesses all
24 necessary capacity and authority to sign and enter into this consent order. Each party warrants and
25 represents that such party is fully entitled and duly authorized to enter into and deliver this consent
26 order. In particular, and without limiting the generality of the foregoing, each party warrants and
27 represents that it is fully entitled to enter into the covenants, and undertake the obligations set forth
28 herein.

1 19. Public Record: DaVi and Truong hereby acknowledge that this consent order will be a matter
2 of public record. DaVi and Truong further understand and agree to not make any statement or
3 representation that is inconsistent with this consent order.

4 20. Voluntary Agreement: The parties each represent and acknowledge that he, she or it is
5 executing this consent order completely voluntarily and without any duress or undue influence of any
6 kind from any source.

7 21. Effective Date: This consent order shall become effective when executed by all parties and
8 served by the Commissioner's agent via email to DaVi and Truong's counsel, Jim Cannon, at
9 jecannon@hotmail.com.

10 Dated: October 26, 2018

JAN LYNN OWEN
Commissioner of Business Oversight

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

16 DAVI NAILS SALON AND SPA, LLC

17 Dated: October 25, 2018

By _____
David Truong, President

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19
20 Dated: October 25, 2018

By _____
David Truong

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22 Dated: October 25, 2018

By _____
Vi Truong Cao

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24
25 APPROVED AS TO FORM AND CONTENT:

26 Dated: October 25, 2018

By _____
JAMES E. CANNON
Attorney for
DaVi NAILS SALON AND SPA, LLC