

1 MARY ANN SMITH
Deputy Commissioner
2 DOUGLAS M. GOODING
Assistant Chief Counsel
3 MARISA I. URTEAGA-WATKINS (State Bar No. 236398)
4 Counsel
1515 K Street, Suite 200
5 Sacramento, California 95814
6 Telephone: (916) 445-9626
Facsimile: (916) 445-6985

7
8 Attorneys for Complainant

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

11 In the Matter of THE COMMISSIONER OF)
BUSINESS OVERSIGHT OF THE STATE)
12 OF CALIFORNIA,) SETTLEMENT AGREEMENT BETWEEN
13 Complainant,) THE DEPARTMENT OF BUSINESS
Oversight AND JOHN CREED
14 v.)
15 STEVE’S PLACE, INC., STEVE’S PIZZA)
16 FRANCHISE CORPORATION, d.b.a.)
17 STEVE’S PIZZA, PASSPORT)
18 RESTAURANTS, INC, dba PACIFIC)
19 RESTAURANT HOLDINGS, INC., STEVE)
WILKINSON, JOHN CREED,)
20 www.stevespizza.com, BRAND EQUITY)
DEVELOPMENT, L.L.C., and WILLIAM S.)
GLENNIE)
21 Respondents.)
22 _____)

23
24 This Settlement Agreement (“Agreement”) is entered into between JOHN CREED
25 (“Respondent” or “CREED”), and the Commissioner of Business Oversight (formerly the
26 Department of Corporations) (“Commissioner”) (together, the “Parties”), and is made with respect to
27 the following facts:

28 ///

RECITALS

1
2 A. Respondent CREED is an individual residing in Dana Point, California. From 2005
3 until January 2009, Respondent CREED served as director and Chairman of Respondent Pacific
4 Restaurant Holdings, Inc., a Delaware corporation (“PASSPORT”). From 2005 through 2008,
5 PASSPORT and CREED engaged in the franchising of Respondent Steve’s Pizza Franchise
6 Corporation (“CORP”). In January 2009, Respondent PASSPORT sold Respondent CORP to
7 Respondent Brand Equity Development, LLC (“BRAND”).

8 B. On April 10, 2013, the Commissioner issued to Respondent a Citation including Desist
9 and Refrain Order (“Order”) and Assessment of Administrative Penalties (“Penalties”) pursuant to
10 Corporations Code section 31406; and Claim for Ancillary Relief (“Relief”) pursuant to Corporations
11 Code section 31408, (collectively the “2013 Action” or “Action”) attached and incorporated herein as
12 “Exhibit 1”. The Order issued in the Action is applicable to CREED. The Commissioner did not
13 assess Penalties or a claim for Relief to CREED.

14 C. The Action was served on CREED in April 2013. CREED issued a timely written
15 administrative hearing request and waiver of statutory time requirements in which to hold the hearing
16 to the Commissioner on May 1, 2013.

17 D. It is the intention of the Parties to resolve this matter without the necessity of an
18 administrative hearing or any other litigation.

19 NOW, THEREFORE, for good and valuable consideration, and the terms and conditions set
20 forth herein, the Parties agree as follows:

21 **TERMS AND CONDITIONS**

- 22 1. This Agreement is entered into for the purpose of judicial economy and expediency.
23 2. Each Party represents, warrants, and agrees that it has received or been advised to
24 seek independent legal advice from an attorney with respect to the advisability of executing this
25 Agreement.
26 3. CREED, in and for purposes of entering into this Agreement, neither admits nor denies
27 the allegations set forth in the Action.
28 4. CREED understands, consents, and hereby agrees that he is ordered to desist and

1 refrain from filing registration and renewal applications that result in willful omissions of material
2 fact, and from failing to provide prompt notification of material changes, in accordance with
3 Corporations Code sections 31200 and 31123.

4 5. CREED acknowledges his right to a hearing under the Franchise Investment Law in
5 connection with the Order and Action. CREED hereby agrees to the finality of the Order and Action
6 and voluntarily waives all rights to reconsideration, appeal, or other rights which may be afforded
7 pursuant to the Franchise Investment Law, or any other provision of law in connection with these
8 matters, including but not limited to Government Code sections 11521 and 11523, and any writ
9 proceeding in accordance with the Code of Civil Procedure.

10 6. CREED hereby agrees to the terms of this Agreement in settlement of the Action.
11 CREED hereby withdraws his request for administrative hearing issued to the Department in May,
12 2013.

13 7. CREED acknowledges that this Agreement is a public record.

14 8. It is the intent and understanding between the Parties that this Agreement shall not be
15 binding or admissible against CREED in any action(s) brought against CREED by third Parties or the
16 Commissioner.

17 9. The Commissioner reserves the right to bring any unknown or future actions against
18 CREED or any of his partners, employees or successors for any and all unknown or future violations
19 of the Franchise Investment Law. This Agreement shall not serve to exculpate CREED or any of his
20 partners, employees or successors from liability for any and all future violations of the Franchise
21 Investment Law.

22 10. The Parties hereby acknowledge and agree that this Agreement is intended to
23 constitute a full, final and complete resolution of the Action. The Parties further acknowledge and
24 agree that nothing contained in this Agreement shall operate to limit the Commissioner's ability to
25 assist any other agencies with any administrative, civil or criminal prosecution brought by any such
26 agency against CREED, or any other person or entity, based upon any of the activities alleged in this
27 matter or otherwise.

28 11. Each of the Parties represents, warrants, and agrees that in executing this Agreement it

1 has relied solely on the statements set forth herein and has placed no reliance on any statement,
2 representation, or promise of any other party, or any other person or entity not expressly set forth
3 herein, or upon the failure of any party or any other person or entity to make any statement,
4 representation or disclosure of anything whatsoever. The Parties have included this clause: (1) to
5 preclude any claim that any party was in any way fraudulently induced to execute this Agreement;
6 and (2) to preclude the introduction of parol evidence to vary, interpret, supplement, or contradict the
7 terms of this Agreement.

8 12. This Agreement, including Exhibit 1, is the final written expression and the complete
9 and exclusive statement of all the agreements, conditions, promises, representations, and covenants
10 between the Parties with respect to the subject matter hereof, and supersedes all prior or
11 contemporaneous agreements, negotiations, representations, understandings, and discussions between
12 and among the Parties, their respective representatives, and any other person or entity.

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

19 14. This Agreement shall not become effective until signed by by all Parties. The
20 Commissioner shall file this Agreement with the Office of Administrative Hearings five (5) business
21 days after execution by all Parties.

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

26 16. No amendment, change or modification of this Agreement shall be valid or binding to
27 any extent unless it is in writing and signed by all of the Parties affected by it.

28

1 17. This Agreement shall be construed and enforced in accordance with and governed by
2 California law.

3 18. Each party covenants that they possess all necessary capacity and authority to sign and
4 enter into this Agreement. Each party warrants and represents that such party is fully entitled and
5 duly authorized to enter into and deliver this Agreement. In particular, and without limiting the
6 generality of the foregoing, each party warrants and represents that it is fully entitled to enter into the
7 covenants, and undertake the obligations set forth herein.

8 19. The Parties each represent and acknowledge that it is executing this Agreement
9 completely voluntarily and without any duress or undue influence of any kind from any source.

10 20. Notice shall be provided to each party at the following addresses:

11 If to Respondent to:

12 John Creed
13 23222 Tasmania Circle
14 Dana Point, CA 92629

15 If to the Commissioner to:

16 Marisa I. Urteaga-Watkins, Esq.
17 Department of Business Oversight
18 1515 K Street, Suite 200
19 Sacramento, CA 9581

20 IN WITNESS WHEREOF, the Parties hereto have approved and executed this Agreement on
21 the dates set forth opposite their respective signatures.

22 Dated: 5/11/15

JAN LYNN OWEN
Commissioner of Business Oversight

23 By _____
24 MARY ANN SMITH
25 Deputy Commissioner
26 Enforcement Division

27 Dated: 5/1/15

By _____
JOHN CREED, as an individual