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Attorneys for Complainant

BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
OF THE STATE OF CALIFORNIA

In the Matter of:)	FIL ORG ID.: 326720
THE COMMISSIONER OF BUSINESS OVERSIGHT,)	
Complainant,)	
v.)	
BENZER FRANCHISING, LLC,)	CONSENT ORDER
Respondent.)	
)	
)	
)	

This Consent Order is entered into between the Commissioner of Business Oversight (Commissioner) and Benzer Franchising, LLC (Benzer) (collectively, the Parties) and is made with respect to the following facts:

I.

Recitals

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

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1 B. Benzer is a Florida limited liability company with its principal business address
2 located at 5908 Breckenridge Parkway, Tampa, Florida 33610.

3 C. Benzer offers franchises for the operation of a retail pharmacy under the name
4 “Benzer Pharmacy.”

5 D. Alpesh M. Patel is the President and Managing Member of Benzer, and as such, is
6 authorized to enter into this Consent Order on behalf of Benzer.

7 E. On June 12, 2019, Benzer filed with the Commissioner an initial application for
8 registration of the offer and sale of Benzer franchises in California. Benzer also filed a notice of
9 violations for offering and selling franchise units prior to registration.

10 F. Benzer offered two California residents unregistered franchise opportunities in
11 September and November of 2018. The prospective franchisees received the Benzer Franchise
12 Disclosure Document, and franchise agreement on September 23, 2018 and November 5, 2018.

13 G. Only one of the prospective franchisees purchased the unregistered Benzer franchise,
14 by signing the franchise agreement on November 30, 2018. The franchisee wired \$2,500.00 to
15 Benzer, on December 11, 2018.

16 H. The Benzer franchise agreement that was executed in November 2018 was terminated
17 on March 3, 2020. Benzer and the franchisee executed a trademark agreement the same day.

18 I. On March 17, 2020, Benzer requested to withdraw its June 2019 registration
19 application.

20 J. Based upon the foregoing, the Commissioner finds that Benzer offered and sold
21 franchises in California without registration or exemption in violation of Corporations Code section
22 31110.

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

25 **II.**

26 **Terms and Conditions**

27 1. **Purpose.** This Consent Order resolves the issues before the Commissioner set forth
28 in paragraphs A through J, above, in a manner that avoids the expense of a hearing and other

1 possible court proceedings, protects consumers, is in the public interest, and is consistent with the
2 purposes, and provisions of the FIL.

3 2. Final Desist and Refrain Order. Pursuant to Corporations Code section 31402,
4 Benzer Franchising, LLC is hereby ordered to desist and refrain from the further offer or sale of
5 franchises in violation of Corporations Code section 31110, unless and until the offers have been
6 duly registered under the FIL or are otherwise exempt. This desist and refrain order is final and
7 effective from the Effective Date of this Consent Order, as defined in paragraph 25 (Effective
8 Date).

9 3. Penalties. Pursuant to Corporations Code section 31406, Benzer Franchising, LLC is
10 hereby ordered to pay an administrative penalty in the total amount of \$5,000.00 within 30 days
11 from the Effective Date of this Consent Order. The penalty payment shall be made in the form of a
12 cashier’s check or Automated Clearing House deposit to the “Department of Business Oversight,”
13 and transmitted to the attention of: Accounting - Litigation, at the Department of Business Oversight,
14 located at 2101 Arena Boulevard, Sacramento, California 95834-2036. Notice of payment shall be
15 sent concurrently to Afsaneh Eghbaldari, Counsel, Enforcement Division, by email at:
16 affi.eghbaldari@dbo.ca.gov. In the event the payment due date falls on a weekend or holiday, the
17 payment shall be due the next business day.

18 4. Ancillary Relief: Pursuant to Corporations Code section 31408, subdivision (a),
19 Benzer Franchising, LLC is hereby ordered to disgorge and refund all fees and royalties collected
20 from California franchisees. Within 30 days from the Effective Date of this Consent Order, Benzer is
21 to refund all franchise fees, advertisement fees, other fees and royalties that were paid pursuant to a
22 franchise agreement or collected from each California franchisee in violation of the FIL. Within 35
23 days from the Effective Date of this Consent Order, Benzer shall submit proof of disgorgement
24 and refunds, to Afsaneh Eghbaldari, Counsel, Enforcement Division, by email at:
25 affi.eghbaldari@dbo.ca.gov. Benzer agrees to comply with the escheat statutes of California (Code
26 Civ. Proc., § 1500 et seq.) for any refunds unclaimed by the California franchisees or residents.

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1 5. Withdraw Pending Franchise Application. Benzer hereby withdraws all pending
2 franchise registration applications filed with the Department, including but not limited to, the
3 pending registration application filed in June of 2019.

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

12 7. Full and Final Settlement. The Parties hereby acknowledge and agree that this
13 Consent Order is intended to constitute a full, final, and complete resolution of the violations and
14 Desist and Refrain Order as identified herein. No further proceedings or actions will be brought by
15 the Commissioner in connection with these matters under the FIL, or any other provision of law,
16 excepting therefrom any proceeding to enforce compliance with the terms of this Consent Order.

17 8. Failure to Comply with Consent Order. Benzer agrees that if it fails to comply with
18 any terms of this Consent Order or the Desist and Refrain Order, the Commissioner may, summarily
19 suspend/revoke any of Benzer’ registration and/or deny any pending registration application of
20 Benzer and/or its respective affiliates, successors, and assigns, by whatever names they might be
21 known, in addition to all other available remedies it may invoke under the FIL. Benzer waives any
22 notice and hearing rights to contest such summary suspensions, revocation or denial which may be
23 afforded under the FIL, the California Administrative Procedure Act, the California Code of Civil
24 Procedure, or any other provision of law in connection therewith.

25 9. Information Willfully Withheld. The Consent Order may be revoked, and the
26 Commissioner may pursue any and all remedies available under law against Benzer if the
27 Commissioner discovers that Benzer knowingly or willfully withheld or misrepresented information
28 used for and relied upon in this Consent Order.

1 10. Future Actions by Commissioner. If Benzer fails to comply with any terms of the
2 Consent Order or violates the Desist and Refrain Order, it agrees that the facts in the Consent Order
3 and Desist and Refrain Order are admitted for the purpose of proving a violation of this Consent
4 Order and Desist and Refrain Order. Benzer further agrees that the Commissioner may institute
5 proceedings for any and all violations otherwise unresolved under this Consent Order. The
6 Commissioner reserves the right to bring any future actions against Benzer, or any of its partners,
7 owners, officers, shareholders, directors, employees, or successors for any and all unknown
8 violations of the FIL.

9 11. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner’s
10 ability to assist a government agency (whether city, county, state, or federal) with any
11 administrative, civil or criminal action brought by that agency against Benzer or any other person
12 based upon any of the activities alleged in this matter or otherwise.

13 12. Independent Legal Advice. Each of the Parties represents, warrants, and agrees that
14 he, she, or it has received independent advice from its attorney(s) or representative(s) with respect to
15 the advisability of executing the Consent Order.

16 13. Headings. The headings to the paragraphs of this Consent Order are inserted for
17 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
18 the provisions hereof.

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

21 15. Reliance. Each of the Parties represents, warrants, and agrees that in executing this
22 Consent Order it has relied solely on the statements set forth herein and the advice of its own
23 counsel. Each of the Parties further represents, warrants, and agrees that in executing this Consent
24 Order it has placed no reliance on any statement, representation, or promise of any other party, or
25 any other person or entity not expressly set forth herein, or upon the failure of any party or any other
26 person or entity to make any statement, representation or disclosure of anything whatsoever. The
27 Parties have included this clause: (1) to preclude any claim that any party was in any way
28 fraudulently induced to execute this Consent Order; and (2) to preclude the introduction of parol

1 evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

2 16. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
3 this Consent Order will be valid or binding unless it is in writing and signed by each of the Parties.
4 The waiver of any provision of this Consent Order will not be deemed a waiver of any other
5 provision. No waiver by either party of any breach of, or of compliance with, any condition or
6 provision of this Consent Order by the other party will be considered a waiver of any other condition
7 or provision or of the same condition or provision at another time.

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

14 18. Governing Law. This Consent Order will be governed by and construed in
15 accordance with California law. Each of the Parties hereto consents to the jurisdiction of such court,
16 and hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient
17 forum to the maintenance of such action or proceeding in such court.

18 19. Counterparts. This Consent Order may be executed in one or more separate
19 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall
20 together constitute a single document.

21 20. Effect Upon Future Proceedings. If Benzer applies for any license, permit or
22 qualification under the Commissioner's current or future jurisdiction, or is the subject of any future
23 action by the Commissioner to enforce this Consent Order, then the subject matter hereof shall be
24 admitted for the purpose of such application(s) or enforcement proceeding(s).

25 21. Voluntary Agreement. Benzer enters into this Consent Order voluntarily and without
26 coercion and acknowledges that no promises, threats, or assurances have been made by the
27 Commissioner or any officer, or agent thereof, about this Consent Order. The Parties each represent
28 and acknowledge that he, she, or it is executing this Consent Order completely voluntarily and

1 without any duress or undue influence of any kind from any source.

2 22. Notice. Any notices required under the Consent Order shall be provided to each party
3 at the following addresses:

4 If to Respondents: Alpesh M. Patel, President
5 Benzer Franchising, LLC
6 5908 Breckenridge Parkway
7 Tampa, Florida 33610

8 If to the Commissioner: Afsaneh Eghbaldari, Counsel
9 Department of Business Oversight
10 1350 Front Street, Room 2034
11 San Diego, California 92101

12 23. Signatures. A fax or electronic mail signature shall be deemed the same as an original
13 signature.

14 24. Public Record. Benzer hereby acknowledges that this Consent Order is and will be a
15 matter of public record.

16 25. Effective Date. This Consent Order shall become final and effective when signed by
17 all parties and delivered by the Commissioner’s counsel via e-mail to Benzer’s counsel, Dan
18 Warshawsky, at dan@franchiselawyers.com.

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1 26. Authority to Sign. Each signatory hereto covenants that he or she possesses all
2 necessary capacity and authority to sign and enter into this Consent Order and undertake the
3 obligations set forth herein.

4 Dated: August 31, 2020

MANUEL P. ALVAREZ
Commissioner of Business Oversight

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6 By: _____
7 MARY ANN SMITH
8 Deputy Commissioner

9 Dated: August 31, 2020

BENZER FRANCHISING, LLC

10
11 By: _____
12 ALPESH M. PATEL
13 President and Managing Member of Benzer
14 Franchising, LLC

15 APPROVED AS TO FORM AND CONTENT:

16 _____
17 Dan Warshawsky, Esq.
18 WARSHAWSKY SELTZER
19 Counsel for Benzer Franchising, LLC
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