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8 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
9 OF THE STATE OF CALIFORNIA

11 In the Matter of:)	
)	
12 THE COMMISSIONER OF FINANCIAL)	
PROTECTION AND INNOVATION,)	
)	
13 Complainant,)	CONSENT ORDER
)	
14 v.)	
)	
15 DOCTOR’S ASSOCIATES LLC d/b/a)	
SUBWAY (a Florida limited liability)	
16 company))	
)	
17 Respondent.)	

18
19 This Consent Order is entered into between the Commissioner of Financial Protection and
20 Innovation (Commissioner) and Doctor’s Associates LLC doing business as (d/b/a) Subway
21 (Subway) (collectively the Parties) and is made with respect to the following facts:

22 **I.**

23 **Recitals**

24 A. The Commissioner is the head of the Department of Financial Protection and
25 Innovation (formerly the Department of Business Oversight) (Department) and is responsible for
26 administering and enforcing the Franchise Investment Law (FIL) (Corp. Code, § 31000 et seq.),¹ and
27 registering the offer and sale of franchises in California. To register a franchise, a franchisor must

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¹ All further statutory references are to the Corporations Code unless otherwise indicated.

1 file an application which includes a Uniform Franchise Disclosure Document (FDD) with the
2 Department for review and approval, in accordance with sections 31111 and 31114. The FIL
3 requires franchisors to disclose certain material information which is intended to provide prospective
4 franchisees with facts upon which to make an informed decision to purchase a franchise, as stated in
5 section 31001.

6 B. Doctor’s Associates LLC d/b/a Subway (formerly known as Doctor’s Associates, Inc.
7 until it converted to a Florida LLC on October 29, 2018) is a Florida limited liability company and is
8 authorized to conduct business in California. Subway’s principal business address is 325 Sub Way,
9 Milford, Connecticut 06461.

10 C. Subway offers and sells franchises in California.

11 D. Under section 31110, it is unlawful for any person to offer or sell a franchise in this
12 state unless the offer has been registered with the Commissioner or is exempt.

13 E. At all relevant times, Subway relied upon the exemption at section 31101, which
14 exempts well capitalized, experienced franchisors from the registration requirement of 31110.
15 Under 31101, franchisors are required to provide franchisees with a disclosure document, file an
16 exemption notice with the Commissioner each calendar year, and pay a filing fee, prior to the offer
17 or sale of any franchise in this state.

18 F. The Commissioner finds that Subway failed to file its exemption notice timely in
19 2013-2015, and 2018, resulting in 96 unregistered franchise sales in violation of section 31110.

20 G. The Commissioner further finds that Subway materially modified 68 existing
21 franchises in California from 2013-2015, and in 2018, without complying with section 31125.

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

24 **II.**

25 **Terms and Conditions**

26 1. Purpose. This Consent Order resolves the issues before the Commissioner [findings
27 in paragraphs F and G above] in a manner that avoids the expense of a hearing and other possible
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1 court proceedings, protects consumers, is in the public interest, and is consistent with the purposes
2 and provisions of the applicable law.

3 2. Desist and Refrain Order. Pursuant to Corporations Code sections 31402 and 31406,
4 Doctors Associates LLC d/b/a Subway is hereby ordered to desist and refrain from the violations set
5 forth herein, in violation of Corporations Code sections 31110 and 31125.

6 3. Penalties. Subway shall pay penalties of \$410,000.00 for the violations discussed
7 herein. The Commissioner acknowledges receipt of payment of the penalties contemporaneous with
8 the execution of this Consent Order.

9 4. Remedial Education. The following class of persons are required to attend remedial
10 education: (1) all persons with direct management responsibility relating to the sale of franchises,
11 (2) all persons who assist in preparing franchise materials (excluding outside lawyers and
12 accountants), and (3) the person who certifies the accuracy of the franchise disclosure document.
13 Each of these persons shall attend four hours of remedial education within 60 days from the
14 Effective Date of this Consent Order, in the form of California franchise law training courses
15 offered by David Beyer of Quarles and Brady, LLP. Subway shall file proof of compliance, in the
16 form of a sworn statement of each person required to take remedial education, under penalty of
17 perjury, within 75 days from the Effective Date of this Consent Order.

18 5. Waiver of Hearing Rights. Subway acknowledges that the Commissioner is ready,
19 willing, and able to proceed with the filing of an administrative enforcement action on the charges
20 contained in this Consent Order. Subway hereby waives the right to any hearings, and to any
21 reconsideration, appeal, or other right to review which may be afforded pursuant to the FIL, the
22 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
23 provision of law. Subway further expressly waives any requirement for the filing of an Accusation
24 pursuant to Government Code section 11415.60, subdivision (b). By waiving such rights, Subway
25 effectively consents to this Consent Order and the Desist and Refrain Order becoming final.

26 6. Failure to Comply with Consent Order. Subway agrees that if it fails to comply with
27 the terms of this Consent Order, the Commissioner may, in addition to all other available remedies
28 it may invoke under the FIL, summarily suspend/revoke its FIL registration (if applicable) or deny

1 FIL applications (if applicable) until Subway is in compliance. Subway waives any notice and
2 hearing rights to contest such summary suspensions which may be afforded under the FIL, the
3 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
4 provision of law in connection therewith.

5 7. Information Willfully Withheld or Misrepresented. This Consent Order may be
6 revoked, and the Commissioner may pursue any and all remedies available under law against
7 Subway if the Commissioner discovers that Subway knowingly or willfully withheld or
8 misrepresented information used for and relied upon in this Consent Order.

9 8. Future Actions by Commissioner. If Subway fails to comply with any terms of the
10 Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
11 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions
12 against Subway, or any of its partners, owners, officers, shareholders, directors, employees or
13 successors for any and all unknown violations of the FIL.

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

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

21 11. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
22 interest.

23 12. Reliance. Each of the Parties represents, warrants, and agrees that in executing this
24 Consent Order it has relied solely on the statements set forth herein and the advice of its own
25 counsel. Each of the Parties further represents, warrants, and agrees that in executing this Consent
26 Order it has placed no reliance on any statement, representation, or promise of any other party, or
27 any other person or entity not expressly set forth herein, or upon the failure of any party or any
28 other person or entity to make any statement, representation or disclosure of anything whatsoever.

1 The Parties have included this clause: (1) to preclude any claim that any party was in any way
2 fraudulently induced to execute this Consent Order; and (2) to preclude the introduction of parol
3 evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

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

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

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

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

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

27 18. Voluntary Agreement. Subway enters into this Consent Order voluntarily and
28 without coercion and acknowledges that no promises, threats or assurances have been made by the

1 Commissioner or any officer, or agent thereof, about this Consent Order. The parties each represent
2 and acknowledge that he, she or it is executing this Consent Order completely voluntarily and
3 without any duress or undue influence of any kind from any source.

4 19. Notice. Any notice required under this Consent Order shall be provided to each
5 party at the following addresses:

6 To Subway: Doctor’s Associates LLC d/b/a Subway
7 Julie Hidalgo, Head Counsel
8 325 Sub Way
9 Milford, Connecticut 06461
Hidalgo_j@subway.com

10 To the Commissioner: Danielle A. Stoumbos, Senior Counsel
11 Department of Financial Protection and
12 Innovation
13 320 West 4th Street, Suite 750
14 Los Angeles, California 90013
Danielle.Stoumbos@dfpi.ca.gov

15 20. Signatures. A fax or electronic mail signature shall be deemed the same as an
16 original signature.

17 21. Public Record. Subway hereby acknowledge that this Consent Order is and will be a
18 matter of public record.

19 22. Effective Date. This Consent Order shall become final and effective when signed by
20 all Parties and delivered by the Commissioner’s agent via e-mail to Subway’s agent, Julie Hidalgo,
21 at Hidalgo_j@subway.com.

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

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5 Dated: November 4, 2020

MANUEL P. ALVAREZ
Commissioner of Financial Protection and Innovation

6
7 By: _____
8 MARY ANN SMITH
9 Deputy Commissioner

10 Dated: October 28, 2020

DOCTOR’S ASSOCIATES LLC

11
12 By: _____
13 BEN K. WELLS
14 Vice President