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9  
10 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION  
11 OF THE STATE OF CALIFORNIA

12 In the Matter of: ) FIL ORG ID: 377865  
)  
13 THE COMMISSIONER OF FINANCIAL )  
PROTECTION AND INNOVATION, ) CONSENT ORDER  
14 )  
15 Complainant, )  
)  
16 v. )  
)  
17 NEIGHBORHOOD NETWORKS )  
18 PUBLISHING, INC. )  
)  
19 Respondent. )  
20 )

21 This Consent Order is entered into between the Complainant, the Commissioner of Financial  
22 Protection and Innovation (Commissioner) as head of the Department of Financial Protection and  
23 Innovation (Department), and the Respondent, Neighborhood Networks Publishing, Inc. ("N2  
24 Publishing" or Respondent), and is made with respect to the following:

25 **I.**

26 **Recitals**

27 A. The Commissioner is authorized to administer and enforce the provisions of the  
28 Franchise Investment Law (Corp. Code § 31000 *et seq.*) (FIL) and the rules and regulations

1 promulgated thereunder which control the registration, offer, and sale of franchises in California.

2 B. The Commissioner brings this action pursuant to the provisions of the FIL, and the  
3 rules and regulations promulgated thereunder, including Corporations Code section 31402, 31406, and  
4 31408.

5 C. N2 Publishing admits to the jurisdiction of the Commissioner in this matter and for the  
6 purposes of using and enforcing this Consent Order.

7 D. Without admitting or denying the Commissioner’s findings as set forth in paragraphs  
8 E – O, *infra*, Respondent desires to enter into this Consent Order which the Commissioner finds is  
9 appropriate, in the public interest, and consistent with the policies and purposes fairly intended by the  
10 FIL.

11 E. N2 Publishing is a Delaware corporation with a principal business address at 5051 New  
12 Centre Drive, Wilmington, North Carolina 28403.

13 F. N2 Publishing operates a business that publishes magazines and/or newsletters for  
14 residential communities and sells advertising space within these publications. During the relevant  
15 period, N2 contracted with local “Area Directors” who sell the advertisements and help generate  
16 content for the publications. No person currently operates under an Area Director agreement.

17 G. N2 Franchising, Inc. (“N2 Franchising”) is a Delaware corporation with a principal  
18 business address of 5051 New Centre Drive, Wilmington, North Carolina 28403. N2 Franchising is in  
19 the business of offering and selling franchises for businesses that are similar to N2 Publishing’s Area  
20 Director agreements. N2 Franchising is currently registered with the Commissioner to sell such  
21 franchises and has been since December 15, 2016. N2 Franchising currently has pending registrations  
22 to continue to offer these and other similar franchises in California. N2 Publishing is an affiliate of N2  
23 Franchising.

24 *Unregistered Franchise Sales and Offers*

25 H. From 2013 to 2016, N2 Publishing sold Area Director arrangements to California  
26 residents. Area directors sold advertising in N2 Publishing’s publications to local businesses and  
27 community members, and offered N2 Publishing’s services, including N2 Publishing’s advertising  
28 design services, to the community. Area directors also provided content to N2 Publishing for

1 publication. N2 Publishing designed, published, printed, and distributed the publication to those within  
2 the specific community or industry. N2 Publishing provided Area Directors with a marketing plan and  
3 business system that Area Directors were to comply with, granted Area Directors the right to use N2  
4 Publishing's trademarks in their business, and deducted 15 percent from the advertising payments  
5 received from advertisers as part of the calculation of the commission payment paid to Area Directors.

6 I. In each Area Director agreement, N2 Publishing granted the Area Director a limited  
7 license to use its trademarks, service marks, and copyright materials to advertise and promote their N2  
8 Publishing publication business.

9 J. N2 Publishing established a marketing plan that provided guidance to Area Directors  
10 and a system within which Area Directors were to operate. Area directors were only allowed to sell  
11 products and services approved by N2 Publishing under the terms and pricing set by N2 Publishing.  
12 More generally, N2 Publishing required its Area Directors follow its standards and procedures in  
13 operating their businesses. N2 Publishing had the right to terminate any Area Director arrangement if  
14 an Area Director failed to follow N2 Publishing's standards and procedures or failed to follow any  
15 other provision of their agreement after an opportunity to cure.

16 K. N2 Publishing charged and collected an indirect franchise fee from Area Directors in  
17 the form of a 15 percent deduction from the Area Directors' commission payments called the "N2  
18 Cost." In the agreement, N2 Cost was defined as 15 percent of the "Advertising Value of each N2  
19 Publication, whether or not N2 [Publishing] actually receives payment for the advertisements." The  
20 Agreement defined "Advertising Value" as "the value of the advertising in each N2 Publication, as  
21 determined by [N2 Publishing] in its discretion."

22 L. N2 Publishing deducted the 15 percent N2 Cost from the Area Director's monthly  
23 commission payment. N2 Publishing compensated the Area Directors in this manner because ad  
24 purchasers were required to pay for their advertisements by remitting payment directly to N2  
25 Publishing. N2 Publishing then deducted the N2 Cost, the actual publication cost, and other  
26 miscellaneous costs and fees from the revenue that it received before paying the remainder to the Area  
27 Director as a monthly commission.

28 M. If an Area Director's advertisement sales did not generate enough actual revenue to N2

1 Publishing in any month to cover the Area Director’s deductions, including the N2 Cost, then the Area  
2 Director did not receive a commission payment for that month. N2 Publishing then deducted the  
3 uncovered portion of the N2 Cost and other deductions from the Area Director’s commission payment  
4 for the following month. If an Area Director did not bring in enough actual revenue to cover the N2  
5 Cost and other deductions for more than two consecutive months, then N2 Publishing had the right to  
6 terminate the agreement.

7 N. N2 Publishing was not registered under the FIL to sell franchises in California during  
8 the period it was offering and selling the Area Director agreements.

9 *Failure to Provide Franchise Disclosure Documents*

10 O. N2 Publishing did not provide any of the California Area Directors with a franchise  
11 disclosure document (“FDD”) prior to the sale of the Area Director arrangements.

12 NOW, THEREFORE, in consideration of the foregoing and the terms and conditions set forth  
13 herein, the parties agree as follows.

14 **II.**

15 **Terms**

16 1. Purpose. This Consent Order resolves the issues before the Commissioner set forth in  
17 paragraphs E – O, *supra*, in a manner that avoids the expense of a hearing and other possible court  
18 proceedings, protects prospective franchisees, is in the public interest, and is consistent with the  
19 purposes and provisions of the Franchise Investment Law.

20 2. Desist-and-Refrain Order for Violation of Corp. Code, § 31110. The Commissioner  
21 finds that the offer for sale of the N2 Publishing Area Director arrangements as described in  
22 paragraphs E – N, *supra*, was a franchise offer subject to registration under the FIL and it was offered  
23 for sale in California without the offer first being registered, in violation of Corporations Code section  
24 31110. Pursuant to Corporations Code section 31402, N2 Publishing is ordered to desist and refrain  
25 from the further offer or sale of the N2 Publishing Area Director arrangements unless and until the  
26 offer has been duly registered under the FIL.

27 3. Citation and Desist-and-Refrain Order for Violation of Corp. Code, § 31119. The  
28 Commissioner finds that N2 Publishing sold franchises in California in the form of the N2 Publishing

1 Area Director arrangements as described in paragraphs E – O, *supra*, without first providing to the  
2 prospective franchisee, at least 14 days prior to the execution by the prospective franchisee of any  
3 binding franchise or other agreement, or at least 14 days prior to the receipt of any consideration,  
4 whichever occurs first, a copy of the franchise disclosure document, together with a copy of all  
5 proposed agreements relating to the sale of the franchise, in violation of Corporations Code section  
6 31119, subdivision (a). Pursuant to Corporations Code section 31406, the Commissioner hereby issues  
7 a citation to N2 Publishing for the violation of Corporations Code section 31119, subdivision (a). N2  
8 Publishing is ordered to desist and refrain from further violations of Corporations Code section 31119,  
9 subdivision (a).

10 4. Recovery of Costs. Pursuant to Corporations Code section 31408, subdivision (b), N2  
11 Publishing shall pay \$10,000.00 to the Commissioner as representing reasonable attorney’s fees and  
12 investigative expenses (“Cost Recovery”) for deposit into the Financial Protection Fund for the use of  
13 the Department of Financial Protection and Innovation. The Cost Recovery payment is due within five  
14 business days of the effective date of this Consent Order, and should be payable to the Commissioner  
15 in the form of a cashier’s check or Automated Clearing House deposit and transmitted to the attention  
16 of Accounting – Enforcement Division, Department of Financial Protection and Innovation, 2101  
17 Arena Boulevard, Sacramento, California 95834. Notice of such payment shall be made to Jeremy F.  
18 Koo, Counsel, at [Jeremy.Koo@dfpi.ca.gov](mailto:Jeremy.Koo@dfpi.ca.gov).

19 5. Waiver of Hearing Rights. N2 Publishing acknowledges the Commissioner is ready,  
20 willing, and able to proceed with the filing of an administrative enforcement action on the charges  
21 contained in this Consent Order. N2 Publishing hereby waives the right to any hearings, and to any  
22 reconsideration, appeal, or other right to review which may be afforded pursuant to the FIL, the  
23 California Administrative Procedure Act, the California Code of Civil Procedure, or any other  
24 provision of law. N2 Publishing further expressly waives any requirement for the filing of an  
25 Accusation pursuant to Government Code section 11415.60, subdivision (b). By waiving such rights,  
26 N2 Publishing effectively consents to the Consent Order becoming final.

27 6. Failure to Comply with Consent Order. N2 Publishing agrees that if it fails to comply  
28 with the terms of this Consent Order, the Commissioner may, in addition to all other available

1 remedies it may invoke under the FIL, summarily issue a stop order denying the effectiveness of or  
2 suspending or revoking effectiveness of any of N2 Publishing’s franchise registrations until N2  
3 Publishing is in compliance. N2 Publishing waives any notice and hearing rights to contest such  
4 summary suspensions which may be afforded under the FIL, the California Administrative Procedure  
5 act, the California Code of Civil Procedure, or any other provision of law in connection therewith.

6 7. Information Willfully Withheld or Misrepresented. This Consent Order may be revoked  
7 and the Commissioner may pursue any and all remedies available under law against N2 Publishing if  
8 the Commissioner discovers that N2 Publishing knowingly or willfully withheld or misrepresented  
9 information used for and relied upon in this Consent Order.

10 8. Future Actions by Commissioner. If N2 Publishing fails to comply with any terms of  
11 the Consent Order, the Commissioner may institute proceedings for any and all violations otherwise  
12 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions  
13 against N2 Publishing, or any of its partners, owners, officers, shareholders, directors, employees, or  
14 successors for any and all unknown violations of the FIL.

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

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

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

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

1 make any statement, representation or disclosure of anything whatsoever. The parties have included  
2 this clause: (1) to preclude any claim that any party was in any way fraudulently induced to executed  
3 this Agreement; and (2) to preclude the introduction of parol evidence to vary, interpret, supplement,  
4 or contradict the terms of this Agreement.

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

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

17 15. Governing Law. This Consent Order will be governed by and construed in accordance  
18 with California law. Each of the parties hereto consents to the jurisdiction of the Superior Court of  
19 California for the County of Sacramento, and hereby irrevocably waives, to the fullest extent permitted  
20 by law, the defense of an inconvenient forum to the maintenance of an action or proceeding in such  
21 court relating to this Consent Order.

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

25 17. Effect Upon Future Proceedings. If Respondents apply for any license, permit,  
26 qualification, or registration under the Commissioner's current or future jurisdiction, or are the subject  
27 of any future action by the Commissioner to enforce this Consent Order, then the subject matter hereof  
28 shall be admitted for purpose of such application(s) or enforcement proceeding(s).

1 18. Voluntary Agreement. N2 Publishing enters into this Consent Order voluntarily and  
2 without coercion and acknowledges that no promises, threats, or assurances have been made by the  
3 Commissioner or any offer, or agent thereof, about this Settlement Agreement. The Parties each  
4 represent and acknowledge that he, she, or it is executing this Agreement completely voluntarily and  
5 without any duress or undue influence of any kind from any source.

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

8 If to N2 Publishing, to: Will K. Woods, Partner  
9 Baker & McKenzie LLP  
10 1900 North Pearl Street, Suite 1500  
11 Dallas, TX 75201

12 If to the Commissioner, to: Jeremy F. Koo, Counsel  
13 Department of Financial Protection and Innovation  
14 2101 Arena Boulevard  
15 Sacramento, CA 95834.

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

18 21. Public Record. N2 Publishing hereby acknowledges that this Consent Order is and will  
19 be a matter of public record.

20 22. Effective Date. This Consent Order shall become final and effective when signed by all  
21 parties and delivered by the Commissioner’s agent via e-mail to N2 Publishing at  
22 Will.Woods@bakermckenzie.com.

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

IN WITNESS WHEREOF, the parties hereto have approved and executed the Consent Order on the dates set forth opposite their respective signatures.

MANUEL P. ALVAREZ  
Commissioner of Financial Protection and Innovation

Dated: November 2, 2020

By: \_\_\_\_\_  
MARY ANN SMITH  
Deputy Commissioner  
Enforcement Division

NEIGHBORHOOD NETWORKS PUBLISHING, INC.

Dated: October 29, 2020

By: \_\_\_\_\_  
Mike Mason  
Director of Legal Operations