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

11 In the Matter of:) FIL ORG ID: 246991
12)
13 THE COMMISSIONER OF FINANCIAL)
PROTECTION AND INNOVATION,)
14) CONSENT ORDER
Complainant,)
15 v.)
16 DISCOUNT NUTRITION, LLC, VDN)
LICENSING, LLC, VDN FRANCHISING,)
17 LLC, and BRUNO TERRANCE VICK,)
18 Respondents.)

19 This Consent Order is entered into between the Commissioner of Financial Protection and
20 Innovation (Commissioner) and Discount Nutrition, LLC, VDN Licensing, LLC, VDN Franchising,
21 LLC, and Bruno Terrance Vick (Respondents) (collectively the Parties) and is made with respect to
22 the following facts:

23 I.

24 Recitals

25 A. The Commissioner is the head of the Department of Financial Protection and
26 Innovation (Department) and is responsible for administering and enforcing the Franchise
27 Investment Law (FIL) (Corp. Code, § 31000 et seq.), and registering the offer and sale of franchises
28 in California. To register a franchise, a franchisor must file an application which includes a Uniform

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

5 B. Discount Nutrition, LLC (Discount Nutrition) is a Nevada limited liability company
6 with its address located at 6255 South Mojave Road, Suite A, Las Vegas, Nevada 89120, and 9680
7 South Eastern Avenue, Las Vegas, Nevada, 89123.

8 C. VDN Licensing, LLC (VDN Licensing) is a defaulted Nevada limited liability
9 company with its address located at 6255 South Mojave Road, Suite A, Las Vegas, Nevada 89120,
10 and 2057 E. Maule Avenue, Las Vegas, Nevada 89119.

11 D. VDN Franchising, LLC (VDN Franchising) is a defaulted Nevada limited liability
12 company with its address located at 6255 South Mojave Road, Suite A, Las Vegas, Nevada 89120.

13 E. Bruno Terrance Vick (Vick) is the president of VDN Franchising, and managing
14 member of Discount Nutrition and VDN Licensing, and as such, is authorized to enter into this
15 Consent Order on behalf of the Respondents.

16 F. Discount Nutrition, VDN Licensing, and VDN Franchising are affiliated entities that
17 offer and sell franchises for the operation of retail stores that sell nutritional supplements.

18 G. Discount Nutrition, VDN Licensing, and VDN Franchising conduct business under
19 the name “Discount Nutrition,” “Vegas Discount Nutrition,” or other designated trademarks licensed
20 to the companies.

21 H. In 2020, the Department discovered that Discount Nutrition, and VDN Licensing
22 each separately entered into “Retail Store License Agreements” for the operation of retail stores to
23 sell nutritional supplements in California. Licensees also signed a non-compete agreement.

24 I. The “Retail Store License Agreements” contained all four elements essential to
25 constitute a “franchise” within the definition of Section 31005, subdivision (a).

26 J. Under Corporations Code section 31110, it is unlawful for any person to offer or sell
27 a franchise in this state unless the offer has been registered with the Commissioner or is exempt.

28 K. From May 2016 to September 2019, Discount Nutrition sold at least 4 unregistered

1 franchises in California, and VDN Licensing sold at least 2 unregistered franchises in California.

2 L. The offers and sales of the franchises by Discount Nutrition, and VDN Licensing
3 were not registered under the FIL, and were not exempt under Chapter 1 of the law (commencing
4 with Section 31100).

5 M. Under Corporations Code section 31119, subdivision (a), it is unlawful to sell any
6 franchise in this state that is subject to registration under this law without first providing to the
7 prospective franchisee, at least 14 days prior to the execution by the prospective franchisee of any
8 binding franchise or other agreement, or at least 14 days prior to the receipt of any consideration,
9 whichever occurs first, a copy of the franchise disclosure document, together with a copy of all
10 proposed agreements relating to the sale of the franchise.

11 N. Neither Discount Nutrition, VDN Licensing, nor Vick provided an FDD to the
12 prospective franchisees as required by Corporations Code section 31119.

13 O. Under Corporations Code section 31200, it is unlawful for any person willfully to
14 make any untrue statement of a material fact in any application, notice or report filed with the
15 commissioner under this law, or willfully to omit to state in any such application, notice, or report
16 any material fact which is required to be stated therein, or fail to notify the commissioner of any
17 material change as required by Section 31123.

18 P. Under the California Guidelines for Franchise Registration, franchisors must disclose
19 certain material information in the FDD filed with the Department, including any affiliates that offer
20 franchises in any line of business or provide products or services to the franchisees of the franchisor.

21 Q. In January of 2017, VDN Franchising filed an initial franchise registration application
22 and FDD with the Department. VDN Franchising stated that it did not offer or sell any franchises
23 prior to the 2017 registration filing, and it had zero existing franchises and planned to open zero
24 franchises that year.

25 R. On January 18, 2017, Vick signed and certified VDN Franchising’s registration
26 application on behalf of VDN Franchising, swearing under penalty of law that all material facts in
27 the application materials, including the FDD, “are accurate and those documents do not contain any
28 material omissions.”

1 and Bruno Terrance Vick are hereby ordered to desist and refrain from the violations set forth
2 herein, in violation of Corporations Code sections 31200 and 31123. These desist and refrain orders
3 are final and effective from the Effective Date of this Consent Order, as defined in paragraph 24
4 (Effective Date).

5 3. Penalties. Discount Nutrition, LLC, VDN Licensing, LLC, VDN Franchising, LLC
6 and Bruno Terrance Vick, jointly and severally, are hereby ordered to pay \$35,000.00 for the
7 violations discussed herein, no later than 15 days after the Effective Date of this Consent Order. The
8 penalty payment shall be made in the form of a cashier's check or Automated Clearing House
9 deposit to the "Department of Financial Protection and Innovation," and transmitted to the attention
10 of: Accounting - Litigation, at the Department of Financial Protection and Innovation, located at
11 2101 Arena Boulevard, Sacramento, California 95834. Notice of payment shall be sent concurrently
12 to Afsaneh Eghbaldari, by email at: affi.eghbaldari@dfpi.ca.gov. In the event the payment due date
13 falls on a weekend or holiday, the payment shall be due the next business day.

14 4. Offer to Terminate Agreements. Pursuant to Corporations Code section 31408,
15 Discount Nutrition, LLC, VDN Licensing, LLC, and Bruno Terrance Vick are hereby ordered to
16 offer all California franchisees, including those franchisees that were described as licensees, the
17 option to terminate all agreements, including, but not limited to, all franchise agreements, "Retail
18 Store License Agreements," and non-compete agreements. Further, Discount Nutrition, LLC, VDN
19 Licensing, LLC, and Bruno Terrance Vick acknowledge that a non-compete clause or agreement is
20 generally invalid and unenforceable in California. Respondents are not required to submit a
21 termination offer to any California licensee that has executed a settlement agreement with the
22 Respondents, as long as the Respondents have fully performed their obligations under the executed
23 settlement agreement, or refunded all fees and royalties to such licensee. Discount Nutrition, LLC,
24 VDN Licensing, LLC, and Bruno Terrance Vick shall:

25 a. Submit to the Commissioner for review and approval the following, no later
26 than 30 days after the Effective Date of this Consent Order:

27 i. Proposed offer(s) to terminate any and all California franchise
28 agreements, "Retail Store License Agreements," and non-compete agreements;

1 ii. A list of all California franchisees and licensees;
2 iii. A list of all California franchisees and licensees that have executed a
3 settlement agreement with the Respondents, and satisfactory proof that the Respondents fully
4 performed their obligations under any executed settlement agreement or refunded all fees and
5 royalties to such licensees; and

6 iv. The proposed offers, lists and satisfactory documentation evidencing
7 resolution of any settlement agreements with the licensees or refunds received by the licensees shall
8 be sent to the attention of: Afsaneh Eghbaldari, by email at: affi.eghbaldari@dfpi.ca.gov, no later
9 than 30 days after the Effective Date of this Consent Order;

10 b. Serve all California franchisees, including those franchisees that were
11 described as licensees: (i) the approved Termination Offer, and (ii) a copy of this Consent Order no
12 later than 15 days after the Commissioner’s approval of the Termination Offers. Proofs of Service
13 shall be sent concurrently to the attention of: Afsaneh Eghbaldari, by email at:
14 affi.eghbaldari@dfpi.ca.gov; and

15 c. Submit to the Commissioner satisfactory documentation evidencing each
16 franchisee and licensee’s response to the Termination Offer no later than 60 days after service of the
17 Termination Offers. The documentation of each franchisee and licensee’s response shall be sent
18 concurrently to the attention of: Afsaneh Eghbaldari, by email at: affi.eghbaldari@dfpi.ca.gov.

19 5. Disgorgement. Discount Nutrition, LLC, VDN Licensing, LLC, and Bruno Terrance
20 Vick, jointly and severally, are hereby ordered to disgorge and refund to all California franchisees
21 and licensees that accept the offer of termination, and all California franchisees and licensees that
22 have paid any fees or royalties to Discount Nutrition, LLC, VDN Licensing, LLC, and/or Bruno
23 Terrance Vick (excluding the licensee that has executed a private settlement agreement with
24 Discount Nutrition, LLC), all consideration and payments collected from the California franchisees
25 and licensees. Discount Nutrition, LLC, VDN Licensing, LLC, and Bruno Terrance Vick shall:

26 a. Refund all consideration, including the initial franchise fee, marketing and
27 advertising fees, and royalties, they collected from the California franchisees, including those
28 franchisees that were described as licensees, no later than 90 days after the Effective Date of this

1 Consent Order;

2 b. Submit to the Commissioner proof of refunds or disgorgement, including
3 satisfactory documentation evidencing the initial franchise fee, marketing and advertising fees, and
4 royalties they collected, and refunds made to the California franchisees, including those franchisees
5 that were described as licensees. Proof of disgorgement or refund shall be sent to Afsaneh
6 Eghbaldari, Senior Counsel, Enforcement Division, by email at: affi.eghbaldari@dfpi.ca.gov, no
7 later than 95 days after the Effective Date of this Consent Order; and

8 c. Shall comply with the escheat statutes of California (Code Civ. Proc., § 1500
9 et seq.) for any refunds unclaimed by the California franchisees and licensees.

10 6. Remedial Education: The Respondents represent that going forward they will no
11 longer offer or sell franchises or licenses in California. The Respondents hereby agree that if they
12 wish to offer or sell franchises or licenses in California sometime in the future, that prior to offering
13 or selling any franchises or licenses in California, Respondents and/or their respective affiliates,
14 successors, and assigns, by whatever names they might be known, must file an Initial Franchise
15 Registration Application with the Department, pursuant to Corporations Code section 31111, and in
16 compliance with the FIL and the Department’s Guidelines for Franchise Registration. The
17 Respondents also agree that within 60 days of the filing of the Initial Franchise Registration
18 Application and before any offers or sales are made, all persons with management responsibility
19 relating to the sale of franchises and all persons who assist in preparing franchise materials
20 (excluding outside lawyers and accountants), and the person who certifies the accuracy of the
21 franchise disclosure document must complete remedial education. Each of these persons must
22 attend and complete eight hours of, in-person or virtual training, in the area of the FIL compliance,
23 including but not limited to the offering and selling of franchises, and preparing the Franchise
24 Disclosure Document (Training), offered by an attorney who specializes in franchise law
25 (Instructor). The Instructor and general format of the Training must be approved by the
26 Commissioner. Proof of compliance with the remedial education shall be sent to Afsaneh
27 Eghbaldari, by email at: affi.eghbaldari@dfpi.ca.gov.

28 7. Waiver of Hearing Rights. Respondents acknowledge that the Commissioner is

1 ready, willing, and able to proceed with the filing of an administrative enforcement action on the
2 charges contained in this Consent Order. Respondents hereby waive the right to any hearings, and to
3 any reconsideration, appeal, or other right to review which may be afforded pursuant to the FIL, the
4 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
5 provision of law. Respondents further expressly waive any requirement for the filing of an
6 Accusation pursuant to Government Code section 11415.60, subdivision (b). By waiving such rights,
7 Respondents effectively consent to this Consent Order and the Desist and Refrain Order becoming
8 final.

9 8. Failure to Comply with Consent Order. Respondents agree that if they fail to comply
10 with the terms of this Consent Order, the Commissioner may, in addition to all other available
11 remedies it may invoke under the FIL, summarily suspend/revoke its FIL registration (if applicable)
12 or deny FIL applications (if applicable) until Respondents are in compliance. Respondents waive any
13 notice and hearing rights to contest such summary suspensions which may be afforded under the
14 FIL, the California Administrative Procedure Act, the California Code of Civil Procedure, or any
15 other provision of law in connection therewith.

16 9. Information Willfully Withheld or Misrepresented. This Consent Order may be
17 revoked, and the Commissioner may pursue any and all remedies available under law against
18 Respondents if the Commissioner discovers that Respondents knowingly or willfully withheld or
19 misrepresented information used for and relied upon in this Consent Order.

20 10. Future Actions by Commissioner. If Respondents fail to comply with any terms of
21 the Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
22 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions
23 against Respondents, or any of their partners, owners, officers, shareholders, directors, employees, or
24 successors for any and all unknown violations of the FIL.

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

1 12. Headings. The headings to the paragraphs of this Consent Order are inserted for
2 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
3 the provisions hereof.

4 13. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
5 interest.

6 14. Reliance. Each of the Parties represents, warrants, and agrees that in executing this
7 Consent Order it has relied solely on the statements set forth herein and the advice of its own
8 counsel. Each of the Parties further represents, warrants, and agrees that in executing this Consent
9 Order it has placed no reliance on any statement, representation, or promise of any other party, or
10 any other person or entity not expressly set forth herein, or upon the failure of any party or any other
11 person or entity to make any statement, representation or disclosure of anything whatsoever. The
12 Parties have included this clause: (1) to preclude any claim that any party was in any way
13 fraudulently induced to execute this Consent Order; and (2) to preclude the introduction of parol
14 evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

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

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

27 17. Governing Law. This Consent Order will be governed by and construed in
28 accordance with California law. Each of the Parties hereto consents to the jurisdiction of such court,

1 and hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient
2 forum to the maintenance of such action or proceeding in such court.

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

6 19. Effect Upon Future Proceedings. If Respondents apply for any license, registration,
7 permit, or qualification under the Commissioner’s current or future jurisdiction, or are the subject of
8 any future action by the Commissioner to enforce this Consent Order, then the subject matter hereof
9 shall be admitted for the purpose of such application(s) or enforcement proceeding(s).

10 20. Voluntary Agreement. Respondents enter into this Consent Order voluntarily and
11 without coercion and acknowledge that no promises, threats or assurances have been made by the
12 Commissioner or any officer, or agent thereof, about this Consent Order. The parties each represent
13 and acknowledge that he, she or it is executing this Consent Order completely voluntarily and
14 without any duress or undue influence of any kind from any source.

15 21. Notice. Any notice required under this Consent Order shall be provided to each
16 party at the following addresses:

17 To Respondents: Discount Nutrition, LLC, VDN Licensing,
18 LLC, VDN Franchising, LLC, and Bruno
Terrance Vick
19 Matthew J. Kreutzer, Outside Counsel
20 3800 Howard Hughes Pkwy., Suite 1000
Las Vegas, NV 89169
21 mkreutzer@howardandhoward.com

22 To the Commissioner: Afsaneh Eghbaldari, Senior Counsel
23 Department of Financial Protection and
Innovation
24 1455 Frazee Road, Suite 315
25 San Diego, California 92108
26 Affi.eghbaldari@dfpi.ca.gov

27 22. Signatures. A fax or electronic mail signature shall be deemed the same as an
28 original signature.

1 23. Public Record. Respondents hereby acknowledge that this Consent Order is and will
2 be a matter of public record.

3 24. Effective Date. This Consent Order shall become final and effective when signed by
4 all Parties and delivered by the Commissioner’s agent via e-mail to Respondents’ counsel, Matthew
5 J. Kreutzer, at mkreutzer@howardandhoward.com.

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

9 Dated: March 30, 2021

MANUEL P. ALVAREZ
Commissioner of Financial Protection and Innovation

11 By: _____

12 MARY ANN SMITH
13 Deputy Commissioner
14 Enforcement Division



19 Dated: March 29, 2021

DISCOUNT NUTRITION, LLC, VDN LICENSING,

23 By: _____

24 BRUNO TERRANCE VICK
25 President and Managing Member

26 APPROVED AS TO FORM AND CONTENT:

27 By: _____

28 Matthew J. Kreutzer, Esq.
Attorney for the Respondents