

1 MARY ANN SMITH
Deputy Commissioner
2 SEAN M. ROONEY
Assistant Chief Counsel
3 VANESSA T. LU (State Bar No. 295217)
Counsel
4 ALICIA ARMAN (State Bar No. 329148)
Counsel
5 Department of Financial Protection and Innovation
1455 Frazee Road, Suite 315
6 San Diego, California 92108
Telephone: (619) 610-1232
7 Facsimile: (619) 209-3612

8 Attorneys for Complainant

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

12	In the Matter of:	)	OAH CASE NO.: 2021010783
)	
13	THE COMMISSIONER OF FINANCIAL	)	FIL ORG ID: 102266
14	PROTECTION AND INNOVATION,)	
		)	SETTLEMENT AGREEMENT
15	Complainant,)	
		)	PHC/MSC Date: June 4, 2021
16	v.	)	PHC/MSC Time: 1:30 P.M.
		)	Location: 320 West Fourth Street
		)	Suite 630
18	NAIL GARDEN FRANCHISE, LLC dba	)	Los Angeles, CA 90013
19	TRINITY PEACE, LLC,)	
		)	Hearing Dates: July 19-22, 2021
20		)	Time: 9:00 A.M.
	Respondent.	)	Location: 320 West Fourth Street
21		)	Suite 630
		)	Los Angeles, CA 90013
22		)	Judge: Laurie Pearlman
23)	
24)	

25
26 ///
27 ///
28 ///

1 This Settlement Agreement is entered by and between the Complainant, the Commissioner
2 of Financial Protection and Innovation (Commissioner), and the Respondent, Nail Garden
3 Franchise, LLC dba Trinity Peace, LLC (Nail Garden), and is made with respect to the following:

4 **I.**

5 **Recitals**

6 A. The Commissioner is authorized to administer and enforce the provisions of the
7 California Franchise Investment Law (Corp. Code § 31000 *et seq.*)¹ (FIL) and the rules and
8 regulations promulgated thereunder which control the registration, offer and sale of franchises in
9 California.

10 B. The Commissioner brings this action pursuant to the provisions of the FIL, and the
11 rules and regulations promulgated thereunder, including sections 31402, 31406, and 31408.

12 C. Pursuant to sections 31111, 31112, and 31114 of the FIL, an application for
13 registration of an offer of a franchise shall be accompanied by a Uniform Franchise Disclosure
14 Document (FDD) that contains the material information set forth in the application for registration
15 and shall be filed with the Commissioner.

16 D. As stated in section 31001, it is the intent of the FIL to provide each prospective
17 franchisee with the information necessary to make an intelligent decision regarding the franchise
18 being offered.

19 E. Nail Garden is a limited liability company organized on or around June 7, 2012 with
20 the principal place of business located at 17200 Ventura Boulevard #303, Encino, California 91316.

21 F. Reham W. Bastawros is the Chief Executive Officer of Nail Garden.

22 G. Fady Bastawros is the President of Nail Garden.

23 H. Wagih S. Awad is the Director of Franchising for Nail Garden.

24 I. Matthew W. Awad is the Director of Marketing for Nail Garden.

25 J. On November 6, 2020, the Commissioner served Nail Garden by certified mail
26 return receipt a Citation including: (1) Desist and Refrain Order; (2) Assessment of Administrative
27

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

1 Penalties; and (3) Claim for Ancillary Relief Pursuant to Corporations Code sections 31402, 31406,
2 and 31408 (Citation). The Citation is incorporated herein by reference.

3 K. The Citation alleged that Nail Garden committed the violations described in
4 Paragraphs i through vi below (Citation Allegations):

- 5 i. made unregistered offers and sales in violation of section 31110,
- 6 ii. failed to provide a registered FDD to prospective franchisees at least 14 days
7 prior to signing the franchise agreement in violation of section 31119,
8 subdivision (a), and Cal. Code Regs., tit. 10, section 310.111,
- 9 iii. failed to maintain books and records in violation of section 31150,
- 10 iv. violated an order or condition imposed by the Commissioner to the
11 effectiveness of registration of the offer or sale of franchises in violation of
12 section 31203,
- 13 v. willfully made an untrue statement of material fact in an application, notice, or
14 report filed with the Commissioner under the FIL, or willfully omitted to state
15 in any such application, notice, or report at least one material fact which is
16 required to be stated therein, in violation of section 31200,
- 17 vi. offered or sold a franchise in California by means of written or oral
18 communication not enumerated in the FIL, which includes an untrue
19 statement of material fact or omits to state a material fact necessary in order to
20 make the statements made, in the light of the circumstances under which they
21 were not misleading in violation of section 31201, and
- 22 vi. knowingly made an untrue statement to the Commissioner during the course
23 of his investigation in violation of section 31204, subdivision (b).

24 L. Pursuant to section 31406, the Commissioner ordered Nail Garden to pay an
25 administrative penalty of \$135,000.00 which was calculated based on \$2,500 for each of the 54
26 violations under the FIL.

27 ///

28 ///

1 M. Pursuant to section 31408, the Commissioner also ordered Nail Garden and all
2 persons employed by Nail Garden who assisted in preparing or selling franchise registrations to
3 attend eight hours of a remedial education course in franchise law training per person, offered by
4 instructors from a list provided by the Commissioner.

5 N. Pursuant to section 31408, subdivision (b), the Commissioner also ordered Nail
6 Garden to pay attorney’s fees and investigative expenses to the Department of Financial Protection
7 and Innovation (Department) in the amount of \$18,000.00 or according to proof.

8 O. On December 9, 2020, Nail Garden timely submitted a Notice of Defense to the
9 Commissioner requesting an administrative hearing on the Citation Allegations.

10 P. It is the intention of Nail Garden and the Commissioner (collectively, the Parties) to
11 resolve the Citation Allegations without the necessity of a hearing.

12 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions
13 contained herein, the Parties agree as follows:

14 **II.**

15 **Terms and Conditions**

16 1. Purpose. This Settlement Agreement resolves the Citation Allegations before the
17 Commissioner set forth in Paragraphs A through P above in a manner that avoids the expense of a
18 hearing and other possible court proceedings, protects consumers, is in the public interest, and is
19 consistent with the purposes, policies, and provisions of the FIL.

20 2. Final Desist and Refrain Order. Nail Garden hereby stipulates that, in accordance
21 with Corporations Code section 31406, Nail Garden shall desist and refrain from future violations
22 of Corporations Code sections 31110, 31119(a), 31150, 31200, 31201, 31203, and 31204(b), and
23 Cal. Code Regs., tit. 10, section 310.111.

24 3. Penalties. Pursuant to Corporations Code section 31406, Nail Garden shall pay an
25 administrative penalty of \$40,000.00 within 60 days from the date of executing this Settlement
26 Agreement (Date of Settlement Execution). This payment shall be made payable to the
27 Commissioner in the form of a cashier’s check or Automated Clearing House deposit to the
28 Department and transmitted to the following address: Accounting – Enforcement Division,

1 Department of Financial Protection and Innovation, 2101 Arena Blvd., Sacramento, California
2 95834, contemporaneously with notice of transmittal to Vanessa Lu, Counsel, at
3 Vanessa.Lu@dfpi.ca.gov.

4 4. Compliance Training. Pursuant to Corporations Code section 31408, Nail Garden
5 and all persons employed by Nail Garden who assist in selling or preparing franchise registrations,
6 including but not limited to Reham W. Bastawros, Fady Bastawros, Wagih S. Awad, and Matthew
7 W. Awad, are hereby required to attend remedial education, which shall consist of eight hours of
8 franchise law training per person offered by an instructor approved by the Commissioner within 60
9 days from the Date of Settlement Execution. Nail Garden shall be responsible for the costs of its
10 franchise law training and shall not offer or sell franchises in California until the training is
11 complete. Proof of training will be submitted as an exhibit in its franchise registration application.

12 5. Notice of Violation. In accordance with Cal. Code Regs., tit. 10, sections 310.303
13 and 310.304, and Corporations Code sections 31303 and 31304, Nail Garden will file a Notice of
14 Violation (NOV) with the Commissioner that notifies franchisees of its violations and provides
15 franchisees the following options:

- 16 i. allow an existing franchisee the option to disassociate from Nail Garden and
17 independently run its business, or
- 18 ii. remain in the system as a franchise in which case the franchisee’s time to
19 initiate a lawsuit against Nail Garden for violations listed in the NOV will
20 run in 90 days, or
- 21 iii. allow a franchisee with an unopened franchise outlet to receive the training
22 from Nail Garden and commence business.

23 Nail Garden will file a NOV with the Commissioner within 60 days from the Date of Settlement
24 Execution. The NOV must be filed contemporaneously with an initial franchise registration.

25 6. Training Owed to Franchisees. Nail Garden will provide all franchisees who remain
26 in the franchise system the training listed below:

- 27 i. “Initial Training Program” in section 5.1 of the Franchise Agreement (FA)
28 and Item 11 of the Franchise Disclosure Document (FDD),

- 1 ii. “Pre-Opening Consultation” in section 5.4 of the FA and Item 11 of the FDD
- 2 and
- 3 iii. “Salon Opening Assistance” in sections 5.2 and 5.3 of the FA and Item 11 of
- 4 the FDD.

5 Nail Garden shall submit a signed declaration affirming that it has completed the training owed to
6 franchisees within 60 days from the Date of Settlement Execution as an exhibit to its initial
7 franchise registration.

8 7. Provide Records to Franchisees. Nail Garden will provide all franchisees remaining
9 in the franchise system copies of its records, including but not limited to the executed FA, FDD,
10 and FDD receipt. Nail Garden will provide the franchisees their records within 60 days from the
11 Date of Settlement Execution. Nail Garden shall submit a signed declaration affirming that it has
12 provided records as an exhibit to its initial franchise registration.

13 8. Disclosure of Settlement Agreement and Final Desist and Refrain Order. Nail
14 Garden will disclose this Settlement and its Final Desist and Refrain Order referenced in Paragraph
15 2 of this Settlement Agreement in any pending or future application for franchise registration with
16 the Commissioner.

17 9. California Fee Deferral Requirement. Pursuant to Corporations Code section 31204,
18 as a condition to becoming registered to offer and sell franchises in the State of California, Nail
19 Garden agrees to defer a franchisee’s obligation to pay its initial franchise fee until franchisor has
20 complied with its material pre-opening obligations to future franchisees and the operation of their
21 businesses as set forth in the FA and FDD. Nail Garden’s compliance with its fee deferral will
22 remain a condition of registration until Nail Garden is adequately capitalized to fund operations
23 without relying on initial franchise fee as determined by the Commissioner.

24 10. Intermediary Penalty for Non-Compliance of Terms. Should Nail Garden fail to
25 comply with the terms of this Agreement, the Commissioner will provide written notice of breach
26 to Nail Garden and allow Nail Garden 10 business days to cure its defect. Failure to cure the defect
27 within 10 business days is an automatic \$10,000.00 penalty to the Commissioner.

28 ///

1 11. Removal of Affiliated-Owned Salons Representations. Nail Garden will remove the
2 financial performance representation (FPR) of its affiliated-owned salons in Item 19 and comply
3 with the North American Securities Administrators Association FPR Commentary and only include
4 FPRs in Item 19 that have a reasonable basis.

5 12. Removal of Prohibitive Waiver. Nail Garden will comply with the Franchise Rule,
6 16 C.F.R. Part 436, and not include prohibited waivers or disclaimers in its FDD.

7 13. Waiver of Hearing Rights. Nail Garden acknowledge that the Commissioner is
8 ready, willing, and able to proceed with the administrative enforcement action described in
9 Paragraphs J-N of this Settlement Agreement. Nail Garden agrees that this Settlement Agreement
10 shall have the effect of withdrawing its request for an administrative hearing on the Citation
11 currently set for July 19-22, 2021, Office of Administrative Hearings (OAH), Los Angeles, Case
12 No. 2021010783. Nail Garden acknowledges its right to an administrative hearing under the FIL
13 and hereby waives its right to a hearing, and to any reconsideration, appeal, or other right to review
14 which may be afforded pursuant to the FIL, the California Administrative Procedure Act (APA), the
15 California Code of Civil Procedure (CCP), or any other provision of law. By waiving such rights,
16 Nail Garden effectively consents to this Settlement Agreement becoming final.

17 14. Full and Final Settlement. The Parties hereby acknowledge and agree that this
18 Settlement Agreement is intended to constitute a full, final, and complete resolution of the Citation
19 and allegations described herein, and that no further proceedings or actions will be brought by the
20 Commissioner in connection with these matters under the FIL or any other provision of law,
21 excepting therefrom any proceeding to enforce compliance with the terms of this Settlement
22 Agreement.

23 15. Failure to Comply with Settlement Agreement. Nail Garden agrees that if it fails to
24 comply with the terms of this Settlement Agreement, the Commissioner may, in addition to all
25 other available remedies it may invoke under the FIL, deny any application, issue a stop order,
26 and/or summarily suspend or revoke any license granted by the Commissioner to Nail Garden until
27 Nail Garden is in compliance.

28 ///

1 16. Future Actions by Commissioner. This Settlement Agreement may be revoked, and
2 the Commissioner may pursue any and all remedies available under law against Nail Garden if the
3 Commissioner discovers that Nail Garden knowingly or willfully withheld or misrepresented
4 information used for and relied upon in this Settlement Agreement.

5 17. Assisting Other Agencies. Nothing in this Settlement Agreement limits the
6 Commissioner’s ability to assist any other government agency (city, county, state, or federal) with
7 any prosecution, administrative, civil, or criminal action or investigation brought by any such
8 agency against Nail Garden, Trinity Peace, or any other person based upon any of the activities
9 alleged in this matter or otherwise.

10 18. Headings. The headings to the paragraphs of this Settlement Agreement are inserted
11 for convenience only and will not be deemed a part hereof or affect the construction or
12 interpretation of the provisions hereof.

13 19. Binding. This Settlement Agreement is binding on all the Parties’ heirs, assigns,
14 and/or successors in interest.

15 20. Reliance. Each of the Parties represents, warrants, and agrees that in executing this
16 Settlement Agreement it has relied solely on the statements set forth herein and the advice of its
17 own counsel. Each of the Parties further represents, warrants, and agrees that in executing this
18 Settlement Agreement it has placed no reliance on any statement, representation, or promise of any
19 other party, or any other person or entity not expressly set forth herein, or upon the failure of any
20 party or any other person or entity to make any statement, representation, or disclosure of anything
21 whatsoever. The Parties have included this clause: (1) to preclude any claim that any party was in
22 any way fraudulently induced to execute this Settlement Agreement; and (2) to preclude the
23 introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this
24 Settlement Agreement.

25 21. No Presumption Against Drafting Party. Each of the Parties acknowledges that it
26 has had the opportunity to draft, review, and edit the language of this Settlement Agreement.
27 Accordingly, the Parties intend that no presumption for or against the drafting party will apply in
28 construing any part of this Settlement Agreement. The Parties waive the benefit of Civil Code

1 section 1654 as amended and corresponding provisions of any successor statute, which provide that
2 in cases of uncertainty, language of a contract should be interpreted most strongly against the party
3 that caused the uncertainty to exist.

4 22. Independent Legal Advice. Each of the Parties represents, warrants, and agrees that
5 it has received independent advice from its attorney(s) and/or representatives with respect to the
6 advisability of executing this Settlement Agreement.

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

13 24. Full Integration. This Settlement Agreement is the final written expression and the
14 complete and exclusive statement of all the agreements, conditions, promises, representations, and
15 covenants between the Parties with respect to the subject matter hereof, and supersedes all prior or
16 contemporaneous agreements, negotiations, representations, understandings, and discussions
17 between and among the Parties, their respective representatives, and any other person or entity, with
18 respect to the subject matter covered hereby. This Settlement Agreement resolves the matter of the
19 Citation, and the Parties agree that the penalties and remedies therein are no longer in effect.

20 25. Governing Law. This Settlement Agreement will be governed by and construed in
21 accordance with California law. Each of the Parties hereto consents to the jurisdiction of such
22 court, and hereby irrevocably waives, to the fullest extent permitted by law, the defense of an
23 inconvenient forum to the maintenance of such action or proceeding in such court.

24 26. Counterparts. This Settlement Agreement may be executed in one or more separate
25 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall
26 together constitute a single document.

27 ///

28 ///

1 27. Effect Upon Future Proceedings. If Nail Garden is the subject of any future action
2 by the Commissioner to enforce this Settlement Agreement, then the subject matter hereof may be
3 used to enforce the Settlement Agreement. In consideration for Nail Garden agreeing to the terms of
4 this Settlement Agreement, the Commissioner will timely review and consider any future or
5 pending application and agrees that this Settlement Agreement will not be the sole basis of any
6 action to deny such application.

7 28. Third Parties. This Settlement Agreement does not create or give rise to any private
8 rights or remedies against Nail Garden, create any liability for Nail Garden, or limit the defenses of
9 Nail Garden for any person or entity not a party to this Settlement Agreement.

10 29. Voluntary Agreement. Nail Garden enters into this Settlement Agreement
11 voluntarily and without coercion and acknowledges that no promises, threats, or assurances have
12 been made by the Commissioner or any officer, or agent thereof, about this Settlement Agreement.
13 The Parties each represent and acknowledge that he, she, or it is executing this Settlement
14 Agreement completely voluntarily and without any duress or undue influence of any kind from any
15 source.

16 30. Notice. Any notice required under this Settlement Agreement shall be provided to
17 each of the Parties at the following addresses:

18 To Respondent Nail Garden: Nail Garden Franchise, LLC dba Trinity Peace, LLC
19 Cheryl Mullin, Counsel
20 2425 N. Central Expy., Suite 200
21 Richardson, TX 75080
22 Cheryl.Mullin@mrkpc.com

23 To the Commissioner: Vanessa Lu, Counsel
24 Theresa Leets, Assistant Chief Counsel
25 Department of Financial Protection and Innovation
26 1455 Frazee Road, Suite 315
27 San Diego, California 92108
28 Vanessa.Lu@dfpi.ca.gov

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

1 32. Public Record. Nail Garden hereby acknowledges that this Settlement Agreement is
2 and will be a matter of public record.

3 33. Effective Date. This Settlement Agreement shall become final and effective when
4 signed by each of the Parties and delivered by the Commissioner’s agent via e-mail to Nail Garden
5 at Cheryl.Mullin@mrkpc.com.

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

9 Dated: June 4, 2021

MANUEL P. ALVAREZ
Commissioner of Financial Protection and Innovation

11 By _____
12 MARY ANN SMITH
13 Deputy Commissioner
14 Enforcement Division

15 Dated: June 3, 2021

NAIL GARDEN FRANCHISE, LLC dba
TRINITY PEACE, LLC

17 By _____
18 REHAM W. BASTAWROS
19 Chief Executive Officer

20 Dated: June 3, 2021

Approved as to Form and Content:

21 By _____
22 CHERYL MULLIN, ESQ.
23 Counsel for Nail Garden Franchise, LLC dba
24 Trinity Peace, LLC

