

JENNIFER RUMBERGER
Deputy Commissioner
THERESA LEETS
Assistant Chief Counsel
MARISA I. URTEAGA-WATKINS (State Bar No. 236398)
Counsel
Department of Financial Protection and Innovation
2101 Arena Blvd.
Sacramento, California 95834
Telephone: 916-576-7430
Facsimile: 916-928-7929

Attorneys for Complainant

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

In the Matter of:)
THE COMMISSIONER OF FINANCIAL)
PROTECTION AND INNOVATION,)
Complainant,) CONSENT ORDER
v.)
F.C. FRANCHISING SYSTEMS, INC., doing)
business as FRESH COAT,)
Respondent.)

This Consent Order is entered into between the Commissioner of Financial Protection and Innovation (Commissioner), and F.C. Franchising Systems, Inc., doing business as Fresh Coat (FCFS) (collectively, Parties) and is made with respect to the following facts:

I.
RECITALS

A. The Commissioner is the head of the Department of Financial Protection and Innovation (Department) and is responsible for administering and enforcing the Franchise Investment Law (FIL) (Corp. Code, § 31000 et seq.),¹ and registering the offer and sale of franchises in California. To register a franchise, a franchisor must file an application which includes a Uniform

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

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

5 B. At all relevant times, FCFS was an Ohio corporation, with a principal place of
6 business located at 4755 Lake Forest Drive, Suite 100, Ohio 45242. At all relevant times, FCFS
7 sells painting service franchises. At all relevant times, FCFS filed for franchise registration with the
8 Department on March 29, 2013, March 27, 2014, and April 2, 2015.

9 C. At all relevant times, Bernard “Bernie” Brozek (Brozek) was an individual currently
10 residing in Austin, Texas. Brozek was a FCFS director from January 2015 to December 2015. On
11 April 25, 2012, Brozek filed for voluntary Chapter 7 personal bankruptcy in the United States
12 Bankruptcy Court for the Southern District of Ohio, Case Number 1:12-BK-12270, before the
13 Honorable Jeffrey P. Hopkins. Brozek’s bankruptcy was discharged on July 31, 2012, with a final
14 decree dated August 30, 2012 (BK).

15 D. Under section 31200, it is unlawful for any person willfully to make any untrue
16 statement of a material fact in any application, notice or report filed with the Commissioner under
17 the FIL, or willfully omit to state in any such application, notice, or report any material fact which is
18 required to be stated therein or fail to notify the Commissioner of any material change as required by
19 section 31123.

20 E. FCFS failed to disclose to the Commissioner Brozek’s personal BK action, discharge
21 and final decree in Item 4 of FCFS’s FDD in 2013, 2014, and 2015. Bankruptcies of officers or
22 directors are required to be disclosed in FCFS’s FDD.

23 F. The Commissioner finds that FCFS, in at least three instances, willfully made an
24 untrue statement of a material fact in any application, notice or report filed with the Commissioner
25 or willfully omitted to state in any such application, notice, or report any material fact which is
26 required to be stated therein or failed to notify the Commissioner of any material change as required
27 by section 31123, in violation of section 31200.
28

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

3 **II.**

4 **TERMS AND CONDITIONS**

5 1. **Purpose.** This Consent Order resolves the issues before the Commissioner [findings
6 in paragraphs C through F above] in a manner that avoids the expense of a hearing and other
7 possible court proceedings, protects consumers, is in the public interest, and is consistent with the
8 purposes and provisions of the applicable law.

9 2. **Desist and Refrain Order.** Pursuant to Corporations Code sections 31402 and 31406,
10 F.C. Franchising Systems, Inc. doing business as Fresh Coat is hereby ordered to desist and refrain
11 from the violations set forth herein, in violation of Corporations Code section 31200. The issuance
12 of this order is necessary, in the public interest, for the protection of investors and is consistent with the
13 purposes, policies, and provisions of the Franchise Investment Law.

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

22 4. **Failure to Comply with Consent Order.** FCFS agrees that if it fails to comply with
23 the terms of this Consent Order, the Commissioner may, in addition to all other available remedies
24 it may invoke under the FIL, summarily suspend/revoke its FIL registration (if applicable),
25 summarily and permanently bar FCFS from offering and selling franchises in California or deny
26 FIL applications (if applicable). FCFS waives any notice and hearing rights to contest such
27 summary actions by the Commissioner which may be afforded under the FIL, the APA, the CCP, or
28 any other provision of law in connection therewith.

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

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

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

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

17 9. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
18 interest.

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

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

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

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

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

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

24 16. Voluntary Order. FCFS enters into this Consent Order voluntarily and without
25 coercion and acknowledges that no promises, threats or assurances have been made by the
26 Commissioner or any officer, or agent thereof, about this Consent Order. The parties each represent
27 and acknowledge that he, she or it is executing this Consent Order completely voluntarily and
28 without any duress or undue influence of any kind from any source.

1 17. Notice. Any notice required under this Consent Order shall be provided to each
2 party at the following addresses:

3 To FCFS: Jeffrey D. Siehl, Esq.
4 F.C. Franchise Systems, Inc.
5 4755 Lake Forest Drive, Suite 100
6 Cincinnati, Ohio 45242

7 To the Commissioner: Marisa I. Urteaga-Watkins, Esq,
8 Department of Financial Protection and Innovation
9 2101 Arena Blvd.
10 Sacramento, California 95834
11 marisa.urteaga-watkins@dfpi.ca.gov

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

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

16 20. Effective Date. This Consent Order shall become final and effective when signed by
17 all Parties and delivered by the Commissioner’s agent via e-mail to FCFS’s agent, Jeffrey D. Siehl,
18 Esq. at jsiehl@franchisesupport.net

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

22 Dated: 7/20/2021

CHRISTOPHER SHULTZ
Acting Commissioner of Financial Protection and
Innovation

By: _____

JENNIFER RUMBERGER
Deputy Commissioner

23 Dated: 7/19/2021

F.C. FRANCHISING SYSTEMS, INC. doing business
as FRESH COAT

By: _____

JEFFREY D. SIEHL, ESQ.
Vice President and General Counsel