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7 Attorneys for Complainant

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)
14 Complainant,) CONSENT ORDER
v.)
15 GREAT GREEK FRANCHISING, LLC)
16 Respondent.)
17

18
19 This Consent Order is entered into between the Commissioner of Financial Protection and
20 Innovation (Commissioner) and Great Greek Franchising, LLC (Great Greek) (collectively the
21 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. At all relevant times, Great Greek is a Florida Limited Liability Company formed on
7 December 4, 2017 with a principal place of business located at 2121 Vista Parkway, West Palm
8 Beach, Florida 33411. Great Greek engages in the offer and sale of franchises for restaurants under
9 the name “The Great Greek Mediterranean Grill.”

10 C. On March 22, 2018, Great Greek filed an initial application for registration to offer
11 and sell franchises in California. The Department determined that Great Greek did not demonstrate
12 the financial ability to meet its obligations stated in the FDD without relying on the proposed
13 franchisee’s funds. On October 18, 2018, the Department issued the registration with the
14 Commissioner’s condition that Great Greek could not collect initial franchise fees from new
15 California franchisees until after all its pre-opening obligations were completed and the new
16 franchisees commenced doing business. The Department required Great Greek to disclose the
17 condition to registration in the California Addendum to the FDD.

18 D. On August 15, 2019, Great Greek filed an application to renew its franchise
19 registration in California. On August 27, 2019, the Department again issued the registration with the
20 condition that Great Greek defer the collection of initial franchise fees until all pre-opening
21 obligations were completed and the franchisees commenced doing business.

22 E. On August 17, 2020, Great Greek filed an application to renew its franchise
23 registration in California. In the application, Great Greek removed the Commissioner’s condition to
24 registration from the California Addendum without express authorization from the Department.
25 Great Greek did not indicate such change in the marked copy of the FDD submitted to the
26 Department in its application. On August 20, 2020, the Department issued the registration without
27 the Commissioner’s condition.
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1 F. Between October 18, 2018 and August 20, 2020, Great Greek sold eight franchises in
2 California. As of the date of this Consent Order, none of the California franchisees have opened for
3 business.

4 G. The Commissioner finds that Great Greek collected initial franchise fees prior to
5 completing its pre-opening obligations and the franchisees opening for business from at least five
6 franchisees between October 18, 2018 and August 20, 2020, in violation of section 31203.

7 H. The Commissioner finds that Great Greek removed the Commissioner’s condition to
8 the effectiveness of its registration without proper authorization from the Department and failed to
9 indicate said change in its renewal application filed on August 17, 2020, in violation of Rule
10 310.122.1 and section 31200.

11 I. Great Greek acknowledges and agrees with the Commissioner’s findings.

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

14 **II.**

15 **Terms and Conditions**

16 1. Purpose. This Consent Order resolves the issues before the Commissioner, described
17 in recital G and H above, in a manner that avoids the expense of a hearing and other possible court
18 proceedings, protects consumers, is in the public interest, and is consistent with the purposes and
19 provisions of the FIL.

20 2. Desist and Refrain Order. Pursuant to Corporations Code sections 31406, Great
21 Greek is hereby ordered to desist and refrain from the violations set forth herein, in violation of
22 Corporations Code section(s) 31200, 31203, and Rule 310.122.1.

23 3. Penalties. Great Greek shall pay an administrative penalty of \$12,500 no later than
24 15 days after the effective date of this Consent Order as defined in paragraph 26 (Effective Date).
25 The penalty must be made payable in the form of a cashier’s check or Automated Clearing House
26 (ACH) deposit to the Department of Financial Protection and Innovation and transmitted to the
27 attention of Accounting – Litigation, at the Department of Financial Protection and Innovation, 2101
28

1 Arena Boulevard, Sacramento, California 95834. Notice of the payment must be concurrently sent to
2 Lindsay Nelson, Counsel, at Lindsay.Nelson@dfpi.ca.gov.

3 4. Rescission Offer

4 a. Great Greek has submitted to the Commissioner offers of rescission (rescind
5 the contracts and restore the parties to their former position by requiring each to return whatever he
6 or she received as consideration under the contract) (Rescission Offers) for each of the franchisees
7 who were offered and sold a franchise from October 18, 2018 to August 20, 2020 (Franchisee
8 Class).

9 b. Within 30 days of the Effective Date of this Consent Order, Great Greek
10 shall submit to the Commissioner proof(s) of service (by email and certified mail) of (i) the
11 Rescission Offers and (ii) a copy of this Consent Order to each of the franchisees in the Franchisee
12 Class. Great Greek shall not include any other documents in the mailing. The Proof(s) of Service
13 shall be sent to the attention of: Ms. Lindsay Nelson, Counsel, Lindsay.Nelson@dfpi.ca.gov.

14 c. Within 90 days of the Effective Date of this Consent Order, Great Greek
15 shall submit to the Commissioner satisfactory documentation evidencing each franchisee in the
16 Franchisee Class' response to the Rescission Offer. The documentation of each response shall be
17 sent to the attention of: Lindsay Nelson, Counsel, Lindsay.Nelson@dfpi.ca.gov.

18 d. Within 120 days of the Effective Date of this Consent Order, Great Greek
19 shall make all payments required under the Rescission Offer. Great Greek shall submit evidence of
20 the refunds to Lindsay Nelson, Counsel, Lindsay.Nelson@dfpi.ca.gov. Evidence of refunds shall
21 include franchisee business name and owner name, last known address and/or any other contact
22 information (including telephone number and email address), copies of cleared refund checks, and
23 copies of certified mail receipts for any checks not cleared. Great Greek shall escheat any
24 unclaimed refunds to the State Controller's Office within the period provided by Code of Civil
25 Procedure section 1520 of the Unclaimed Property Law (Code of Civ. Proc., section 1500, et seq.).

26 5. Cancellation and Refund Offer

27 a. Pursuant to Corporations Code section 31408, subdivision (a), Great Greek is
28 hereby ordered to disgorge and refund all fees collected from California franchisees from October

1 18, 2018 to August 20, 2020 (Cancellation Offers). Within 30 days from the Effective Date of this
2 Consent Order, Great Greek is to refund all franchise fees, advertisement fees, other fees and
3 royalties that were paid pursuant to a franchise agreement or collected from each California
4 franchisee in violation of the FIL.

5 b. Within 30 days of the Effective Date of this Consent Order, Great Greek
6 shall submit to the Commissioner proof(s) of service (by email and certified mail) of (i) the
7 Cancellation Offers and (ii) a copy of this Consent Order to each of the franchisees in the
8 Franchisee Class. Great Greek shall not include any other documents in the mailing. The Proof(s)
9 of Service shall be sent to the attention of: Lindsay Nelson, Counsel, Lindsay.Nelson@dfpi.ca.gov.

10 c. Within 90 days of the Effective Date of this Consent Order, Great Greek
11 shall submit to the Commissioner satisfactory documentation evidencing each franchisee in the
12 Franchisee Class' response to the Cancellation Offer. The documentation of each response shall be
13 sent to the attention of: Lindsay Nelson, Counsel, Lindsay.Nelson@dfpi.ca.gov.

14 d. Within 120 days of the Effective Date of this Consent Order, Great Greek
15 shall make all payments required under the Cancellation Offer. Great Greek shall submit evidence
16 of the refunds to Lindsay Nelson, Counsel, Lindsay.Nelson@dfpi.ca.gov. Evidence of refunds shall
17 include franchisee business name and owner name, last known address and/or any other contact
18 information (including telephone number and email address), copies of cleared refund checks, and
19 copies of certified mail receipts for any checks not cleared. Great Greek shall escheat any
20 unclaimed refunds to the California State Controller's Office within the period provided by Code of
21 Civil Procedure section 1520 of the Unclaimed Property Law (Code of Civ. Proc., section 1500, et
22 seq.).

23 6. Notice of Consent Order

24 a. Great Greek shall provide a copy of this Consent Order to all franchisees who
25 purchased a franchise from October 18, 2019 to August 20, 2020 (Franchisee Class).

26 b. Within 30 days of the Effective Date of this Consent Order, Great Greek
27 shall submit to the Commissioner proof(s) of service (by email and certified mail) of a copy of this
28 Consent Order to each of the franchisees in the Franchisee Class. Great Greek shall not include any

1 other documents in the mailing. The Proof(s) of Service shall be sent to the attention of: Lindsay
2 Nelson, Counsel, Lindsay.Nelson@dfpi.ca.gov.

3 7. Remedial Education. The following class of persons are required to attend remedial
4 California franchise law compliance education: (1) all principal officers, directors, trustees, and
5 any other individual who will have management responsibility relating to the sale or operation of
6 franchises in California, including but not limited to, Ray Titus, Michael White, Jim Butler, Nick
7 Della Penna, Jeff Thompson, John Fleming, and Mark Nichols; (2) all persons who assist in
8 preparing franchise materials, including but not limited to registrations, renewals, or amendments
9 (excluding outside lawyers and auditors) in California; (3) any person selling Great Greek's
10 franchise in California; and (4) the person who certifies the accuracy of Great Greek's Franchise
11 Disclosure Document filed with the Commissioner. Each of these persons shall attend eight hours
12 of remedial education within 60 days from the Effective Date of this Consent Order, in the form of
13 franchise law training courses offered by a seasoned franchise attorney to be approved by the
14 Department. Great Greek shall file proof of compliance, in the form of a sworn statement of each
15 person required to take remedial education, under penalty of perjury, within 60 days from the
16 Effective Date of this Consent Order.

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

25 9. Opportunity to Cure. In the event Great Greek fails to comply with the terms of this
26 Consent Order (except for the Desist and Refrain Order), Great Greek will have ten calendar days to
27 cure such breach from the date written notice of the breach is emailed by the Commissioner to
28 Great Greek (Notice) at the email address in paragraph 23. Proof of cure, satisfactory to the

1 Commissioner, shall be sent via traceable method with a notice via email by Great Greek so that it
2 is received within 15 days of the date of Notice to Lindsay Nelson, Counsel,
3 Lindsay.Nelson@dfpi.ca.gov.

4 10. Failure to Comply with Desist and Refrain Order or Cure Breach. Great Greek
5 agrees that if it fails to comply with the Desist and Refrain Order in this Consent Order or fails to
6 timely cure any breach to the satisfaction of the Commissioner, the Commissioner may, in addition
7 to all other available remedies it may invoke under the FIL, summarily suspend, revoke, or deny its
8 FIL registration (if applicable). Great Greek stipulates to the finality of any such FIL registration
9 suspensions, revocations, or denials that the Commissioner may order. Great Greek waives any
10 notice and hearing rights to contest such summary suspensions, revocations, or denials which may
11 be afforded under the FIL, the APA, CCP, or any other provision of law in connection therewith.

12 11. Information Willfully Withheld or Misrepresented. This Consent Order may be
13 revoked, and the Commissioner may pursue any and all remedies available under law against Great
14 Greek if the Commissioner discovers that Great Greek knowingly or willfully withheld or
15 misrepresented information used for and relied upon in this Consent Order.

16 12. Future Actions by Commissioner. If Great Greek fails to comply with any terms of
17 the Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
18 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions
19 against Great Greek, or any of its partners, owners, officers, shareholders, directors, employees or
20 successors for any and all unknown violations of the FIL or any other law under the Commissioner's
21 jurisdiction.

22 13. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner's
23 ability to assist any other government agency with any administrative, civil or criminal action
24 brought by that agency against Great Greek or any other person based upon any of the activities
25 alleged in this matter or otherwise.

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

1 15. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
2 interest.

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

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

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

24 19. Governing Law. This Consent Order will be governed by and construed in
25 accordance with California law. Each of the Parties hereto consents to the jurisdiction of such court,
26 and hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient
27 forum to the maintenance of such action or proceeding in such court.
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1 26. Effective Date. This Consent Order shall become final and effective when signed by
2 all Parties and delivered by the Commissioner’s agent via e-mail to Great Greek’s agent, Mark D.
3 Nichols, General Counsel, mnichols@ufgcorp.com.

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

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8 Dated: August 9, 2021

CHRISTOPHER S. SCHULTZ (Acting)
Commissioner of Financial Protection and Innovation

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10 By: _____
11 JENNIFER RUMBERGER
12 Deputy Commissioner

13 Dated: August 3, 2021

GREAT GREEK FRANCHISING, LLC

14
15 By: _____
16 TODD NEWTON
17 Chief Financial Officer
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