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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.)
NUTRISHOP, INC. doing business as)
NUTRISHOP STORE, and NUTRISHOP,)
Respondent.)

This Consent Order is entered into between the Commissioner of Financial Protection and Innovation (Commissioner), and Nutrishop, Inc., doing business as Nutrishop Store and Nutrishop (Nutrishop) (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
3 information which is intended to provide prospective franchisees with facts upon which to make an
4 informed decision to purchase a franchise, as stated in section 31001.

5 B. At all relevant times, Nutrishop was and is a Nevada corporation with a principal
6 place of business located at 751 W. Warm Springs Road, #100, Henderson, Nevada 89011. At all
7 relevant times, Nutrishop offers and sells franchises that provide vitamins, sports nutrition, dietary
8 supplements, vitamins, weight loss products, and related food items to California consumers. At all
9 relevant times, Nutrishop engaged in the offer and sale of Nutrishop franchises in California. Nutrishop
10 was and is registered to offer and sell franchises in California by the Department since August 2018
11 to April 20, 2021.

12 C. Pursuant to section 31110, it is unlawful for any person to offer or sell a franchise in
13 this state unless the offer has been registered with the Commissioner or is exempt.

14 D. From at least January 2016 to July 2018, Nutrishop entered into at least fifty-eight
15 (58) franchise agreements referred to as “license agreements” with various California franchisees for
16 the operation of stores, using a system prescribed by Nutrishop, at specific locations in California
17 (California Store(s)). Nutrishop was not registered to offer and sell franchises by the Commissioner
18 pursuant to the FIL from January 2016 to July 2018.

19 E. Pursuant to section 31119, it is unlawful to sell any franchise without first providing a
20 prospective franchisee with the FDD at least fourteen (14) days prior to the execution of a franchise
21 agreement or receipt of consideration.

22 F. From at least January 2016 to July 2018, Nutrishop executed franchise agreements
23 and collected franchise fees for each of the California Stores. However, Nutrishop did not provide
24 the California Store franchisees with an FDD at least fourteen (14) days prior to the execution of the
25 franchise agreement or receipt of the franchise fee payment.

26 G. Pursuant to section 31200, it is unlawful for any person willfully to make any untrue
27 statement of a material fact in any application, notice or report filed with the Commissioner under
28 the FIL, or willfully omit to state in any such application, notice, or report any material fact which is

1 required to be stated therein or fail to notify the Commissioner of any material change as required by
2 section 31123.

3 H. On August 28, 2018, the Department issued a registration permitting Nutrishop to
4 offer and/or sell franchises in California from August 1, 2018, to April 22, 2019 (App-12809). On
5 May 31, 2019, the Department approved a Nutrishop renewal application and granted a registration,
6 permitting Nutrishop to engage in the offer and/or sale of franchises in California from April 29,
7 2019, to April 20, 2020 (App-15252). On April 16, 2020, the Department approved another
8 Nutrishop renewal application and granted registration, thereby permitting Nutrishop to engage in
9 the offer and/or sale of franchises in California from April 15, 2020, to April 20, 2021 (App-17552).
10 Finally, on June 25, 2021, Nutrishop filed application number 21712 to renew its franchise
11 registration in California (App-21712). App-21712 is currently pending Department approval.

12 I. Nutrishop failed to disclose the existence of the California Stores to the
13 Commissioner in App-12809, App-15252, App-17552, and App-21712.

14 J. The Commissioner finds that Nutrishop offered and sold at least fifty-eight (58)
15 franchises in California without being registered with the Commissioner or exempt, in violation of
16 section 31110.

17 K. The Commissioner also finds that Nutrishop failed to provide prospective franchisees
18 in California with a Nutrishop FDD at least fourteen (14) days prior to the receipt of consideration in
19 at least fifty-eight (58) instances, in violation of section 31119.

20 L. The Commissioner finally finds that Nutrishop, in two hundred thirty-two (232)
21 occurrences, willfully omitted to state in App-12809, App-15252, App-17552, and App-21712 the
22 material fact that Nutrishop had fifty-eight (58) California Stores in California, which is required to
23 be stated therein, or, failed to notify the Commissioner of any material change as required by section
24 31123, in violation of section 31200.

25 M. NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions
26 set forth herein, the Parties agree as follows:

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II.

TERMS AND CONDITIONS

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

2. Desist and Refrain Order. Pursuant to Corporations Code section 31406, Nutrishop, Inc., doing business as Nurtishop Store and Nutrishop, is hereby ordered to desist and refrain from the violations of Corporations Code sections 31110, 31119, and 32100 set forth herein and from violating the Franchise Investment Law. The issuance of this order is necessary, in the public interest, for the protection of investors, and is consistent with the purposes, policies, and provisions of the Franchise Investment Law.

3. Penalties. Nutrishop shall pay an administrative penalty of \$95,000 (Penalties) no later than fifteen (15) days after the effective date of this Consent Order as defined in Paragraph 22 (Effective Date). The Penalties must be made payable in the form of a cashier’s check or Automated Clearing House deposit to the Department and transmitted to the attention of Accounting at the Department of Financial Protection and Innovation, 2101 Arena Boulevard, Sacramento, California 95834. Notice of the payment must be concurrently sent via email to Marisa I. Urteaga-Watkins, Esq. at marisa.urteaga-watkins@dfpi.ca.gov. Failure to pay Penalties in a timely manner shall be deemed to be a material breach of this Consent Order.

4. Post-Effective Amendment to Current Registration and Disclosure. Nutrishop hereby agrees that it will file a post-effective amendment application within fifteen (15) calendar days of the Effective Date in accordance with section 31123 to its currently effective registration (identified by the Department as app-20578) to include each and every Nutrishop California Store identified herein, and this Consent Order thereby complying with the FIL. Nutrishop further hereby agrees that it will disclose the Consent Order in Item 3, the existence of each and every California Store in Item 20 and in the exhibit list of current and former franchisees in any Nutrishop FDD filed with the Commissioner from now on.

1 5. Waiver of Hearing Rights. Nutrishop acknowledges that the Commissioner is ready,
2 willing, and able to proceed with the filing of an administrative enforcement action on the charges
3 contained in this Consent Order. Nutrishop hereby waives the right to any hearings, and to any
4 reconsideration, appeal, or other right to review which may be afforded pursuant to the FIL, the
5 Administrative Procedure Act (APA), the Code of Civil Procedure (CCP), or any other provision of
6 law. Nutrishop further expressly waives any requirement for the filing of an accusation pursuant to
7 Government Code section 11415.60, subdivision (b). By waiving such rights, Nutrishop effectively
8 consents to this Consent Order becoming final.

9 6. Failure to Comply with Consent Order. Nutrishop agrees that if it fails 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 or revoke Nutrishop’s franchise
12 registration (if applicable) or deny Nutrishop’s FIL applications (if applicable), until Nutrishop is in
13 compliance. Nutrishop waives any notice and hearing rights to contest such summary actions by the
14 Commissioner, which may be afforded under the FIL, APA, CCP, or any other provision of law.

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

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

25 9. 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 Nutrishop, or any other
28 person based upon any of the activities alleged in this matter or otherwise.

1 10. 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 11. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
5 interest.

6 12. 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
11 other person or entity to make any statement, representation, or disclosure of anything whatsoever.
12 The 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 13. Waiver, Amendments, and Modifications. No waiver, amendment, or modification
16 of this Consent Order will be valid or binding unless it is in writing and signed by each of the
17 Parties. The waiver of any provision of this Consent Order will not be deemed a waiver of any
18 other provision. No waiver by either Party of any breach of, or of compliance with, any condition
19 or provision of this Consent Order by the other Party will be considered a waiver of any other
20 condition or provision or of the same condition or provision at another time.

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

27 15. 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

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

3 16. 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 17. Effect Upon Future Proceedings. If Nutrishop applies for any license, registration,
7 permit, or qualification under the Commissioner’s current or future jurisdiction, or is 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 18. Voluntary Order. Nutrishop enters this Consent Order voluntarily and without
11 coercion and acknowledges 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
13 represent and acknowledge that he, she, or it is executing this Consent Order completely voluntarily
14 and without any duress or undue influence of any kind from any source.

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

17 To Nutrishop: Attn: Alan Greenfield, Esq.
18 Greenberg Traurig, LLP.
19 77 West Wacker Drive, Suite 3100
Chicago, IL 60601

20 To the Commissioner: Marisa I. Urteaga-Watkins, Esq,
21 Department of Financial Protection and Innovation
22 2101 Arena Blvd.
23 Sacramento, California 95834
marisa.urteaga-watkins@dfpi.ca.gov

24 20. Signatures. A fax, scanned, or electronic signature shall be deemed the same as an
25 original signature.

26 21. Public Record. Nutrishop hereby acknowledges that this Consent Order is and will
27 be a matter of public record.

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2 22. Effective Date. This Consent Order shall become final and effective when signed by
3 all Parties and delivered by the Commissioner’s agent via e-mail to Nutrishop’s agent, Alan
4 Greenfield, Esq. at greenfieldalan@gtlaw.com.

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

8 Dated: 9/15/2021

9 CHRISTOPHER S. SHULTZ
10 Acting Commissioner of Financial Protection and
11 Innovation

12 By: _____

13 JENNIFER RUMBERGER
14 Deputy Commissioner

15 Dated: 9/14/2021

16 NUTRISHOP, INC., doing business as NUTRISHOP
17 STORE and NUTRISHOP

18 By: _____

19 BRYON MCLENDON
20 President