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8 Attorneys for Complainant

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

11 In the Matter of:)
12)
13 THE COMMISSIONER OF FINANCIAL)
PROTECTION AND INNOVATION,)
14)
Complainant,)
15 v.)
16 MR. FRIES MAN, LLC., doing business as)
MR. FRIES MAN,)
17)
18 Respondent.)
_____)

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CONSENT ORDER

20 This Consent Order is entered into between the Commissioner of Financial
21 Protection and Innovation (Commissioner) and Mr. Fries Man, LLC. (Respondent)
22 (Commissioner and Respondent are collectively referred to herein as Parties) and is made
23 with respect to the following facts:

24 I.

25 RECITALS

26 A. The Commissioner is the head of the Department of Financial Protection and
27 Innovation (Department) and is responsible for administering and enforcing the Franchise
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1 Investment Law (FIL) (Corp. Code, § 31000 et seq.)¹, and registering the offer and sale of franchises
2 in California. To register a franchise, a franchisor must file an application that includes a Franchise
3 Disclosure Document (FDD) with the Department for review, in accordance with sections 31111
4 and 31114. The FIL requires franchisors to disclose certain material information that is intended to
5 provide prospective franchisees with facts upon which to make an informed decision to purchase a
6 franchise, as stated in section 31001

8 B. At all relevant times, Respondent was and is a California limited liability company
9 with a principal place of business located at 14800 S. Western Avenue 108, Gardena, California,
10 90249. At all relevant times, Respondent sells franchises that operate casual restaurants offering for
11 french fries with a variety of toppings.

13 C. At all relevant times, Brenda Roxie Samaniego (Roxie Samaniego), was an
14 individual and partner at Roxie Samaniego CPA, P.C., a professional corporation (Samaniego P.C.),
15 doing business at 3123 Savannah Avenue, El Paso, Texas 79930. On October 29, 2004, Roxie
16 Samaniego was certified and registered with the Texas State Board of Public Accountancy
17 (TSBPA). On December 12, 2018, Samaniego P.C. was registered with the TSBPA. A true and
18 correct copy of Roxie Samaniego's and Samaniego P.C.'s license history from the official TSBPA
19 public website at <https://www.tsbpa.texas.gov> is attached hereto and incorporated by reference
20 herein as "Exhibit A".

22 D. On February 29, 2020, Samaniego P.C.'s license expired. On February 28, 2021,
23 Roxie Samaniego's license expired. On March 11, 2021, the TSBPA revoked both Roxie
24 Samaniego's and Samaniego P.C.'s licenses, based upon violations regarding competence,
25 discreditable acts, responses, conduct indicating lack of fitness to serve the public as a professional
26 accountant, and/or violation of a rule of professional conduct adopted by the TSBPA.

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

1 E. Pursuant to section 31200, it is unlawful for any person willfully to make any untrue
2 statement of a material fact in any application, notice or report filed with the Commissioner under
3 the FIL, or willfully omit to state in any such application, notice, or report any material fact which
4 is required to be stated therein or fail to notify the Commissioner of any material change as required
5 by section 31123.

7 F. On August 31, 2020, Respondent filed a post-effective amendment with the
8 Department to amend its registration to offer and sell franchises in California (August 2020 Post-
9 Effective Amendment). The August 2020 Post-Effective Amendment included an auditor's consent
10 and an FDD containing audited financial statements accompanied by an independent auditor's report
11 signed by Samaniego P.C. as the firm conducting the audit (August 2020 Financial Statements). The
12 August 2020 Financial Statements included a balance sheet as of August 13, 2020, related statement
13 of operations, members equity, cash flows for the period of January 1, 2020, through August 13,
14 2020, and related notes. The independent auditor's report contained an unqualified audit opinion on
15 the August 2020 Financial Statements. On October 6, 2020, the Department issued an order making
16 this registration effective, thereby allowing Respondent to offer and sell franchises in California
17 from October 6, 2020, through April 20, 2021.

19 G. On October 28, 2020, Respondent filed a subsequent post-effective amendment
20 application to amend its registration to offer and sell franchises in California (October 2020 Post-
21 Effective Amendment). The October 2020 Post-Effective Amendment included an auditor's consent
22 and an FDD incorporating the August 2020 Financial Statements, accompanied by an independent
23 auditor's report signed by Samaniego P.C. as the firm conducting the audit August 2020 Financial
24 Statements. The August 2020 Financial Statements included a balance sheet as of August 13, 2020,
25 related statement of operations, members equity, cash flows for the period of January 1, 2020,
26 through August 13, 2020, and related notes. The independent auditor's report contained an
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1 unqualified audit opinion on the August 2020 Financial Statements. On November 2, 2020, the
2 Department issued an order making this registration effective, thereby allowing Respondent to offer
3 and sell franchises in California from November 2, 2020, through April 20, 2021.

4 H. On April 29, 2021, Respondent filed an application for registration with the
5 Department to offer and sell franchises in California (2021 Application). The 2021 Application
6 included an auditor's consent and an FDD containing audited financial statements accompanied by
7 an independent auditor's report signed by Samaniego P.C. as the firm conducting the audit
8 (December 2020 Financial Statements). The December 2020 Financial Statements included a
9 balance sheet as of December 31, 2020, related statement of operations, members equity, cash flows
10 for the year then ended, and related notes. The independent auditor's report contained an unqualified
11 audit opinion on the December 2020 Financial Statements. On June 29, 2021, the Department issued
12 an order making the registration effective thereby allowing Respondent to offer and sell franchises
13 in California from June 29, 2021, through April 20, 2022.

14 I. Respondent included the auditor's consent and financial statements with
15 accompanying independent auditor's report in its August 2020 Post-Effective Amendment, October
16 2020 Post-Effective Amendment, and the 2021 Application with the Department even though
17 Samaniego P.C.'s license expired on February 29, 2020, and both Samaniego P.C.'s and Roxie
18 Samaniego's licenses were revoked by the TSBPA on March 11, 2021. Respondent failed to disclose
19 to the Commissioner that Samaniego P.C. was not licensed by the TSBPA at the time the August
20 2020 Post-Effective Amendment, the October 2020 Post-Effective Amendment, and the 2021
21 Application was filed with the Department.

22 J. Pursuant to section 31201, it is unlawful for any person to offer or sell a franchise in
23 California by means of any written or oral communication not enumerated in section 31200 which
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1 includes an untrue statement of a material fact or omits to state a material fact necessary in order to
2 make the statement made, in light of the circumstances under which they were made, not misleading.

3 K. Respondent included the auditor's consent and financial statements with
4 accompanying independent auditor's report in its August 2020 Post-Effective Amendment October
5 2020 Post-Effective Amendment, and the 2021 Application with the Department, even though
6 Samaniego P.C.'s license expired on February 29, 2020, and both Samaniego P.C.'s and Roxie
7 Samaniego's licenses were revoked by the TSBPA on March 11, 2021. From August 2020 to July
8 2021, Respondent distributed the FDD which included the offending August 2020 Financial
9 Statement and December 2020 Financial Statement to at least nine (9) franchisees during the offer
10 and sale of Respondent franchise.
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12 L. The Commissioner finds that the failure to disclose in the August 2020 Post-Effective
13 Amendment, the October 2020 Post-Effective Amendment, and the 2021 Application that
14 Samaniego P.C.'s license expired on February 29, 2020, Roxie Samaniego's license expired on
15 February 28, 2021, and Samaniego P.C.'s and Roxie Samaniego's licenses were both revoked by
16 the TSBPA on March 11, 2021, is an omission of a material fact under the FIL, in violation of
17 section 31200.
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19 M. The Commissioner also finds that the inclusion of the August 2020 Financial
20 Statements and the December 2020 Financial Statements in the August 2020 Post-Effective
21 Amendment, the October 2020 Post-Effective Amendment, and the 2021 Application accompanied
22 by Samaniego P.C.'s independent auditor's report stating that such August 2020 Financial
23 Statements and December 2020 Financial Statements were audited when Samaniego P.C. was not
24 qualified to conduct audits, is an untrue statement of a material fact in an application filed with the
25 Commissioner, in violation of section 31200.
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1 N. The Commissioner further finds that Respondent offered and sold franchises using
2 an FDD containing an untrue statement of a material fact, since the FDD contained the August 2020
3 Financial Statements and the December 2020 Financial Statements accompanied by Samaniego's
4 P.C.'s independent auditor's report stating that the August 2020 Financials Statements and
5 December 2020 Financial Statements were audited when Samaniego P.C. was not qualified to
6 conduct audits, in violation of section 31201.
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8 O. NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions
9 set forth herein, the Parties agree as follows:

10 **II.**

11 **TERMS AND CONDITIONS**

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13 1. Purpose. This Consent Order resolves the issues before the Commissioner, described
14 in the Recitals above, in a manner that avoids the expense of a hearing and other possible court
15 proceedings, protects consumers, is in the public interest, and is consistent with the purposes and
16 provisions of the applicable law.

17 2. Desist and Refrain Order. Pursuant to section 31406, Mr. Fries Man, LLC. doing
18 business as Mr. Fries Man, is hereby ordered to desist and refrain from the violations set forth herein,
19 in violation of Corporations Code sections 31200 and 31201, and from any violations of the
20 Franchise Investment Law. The issuance of this Consent Order is necessary, in the public interest,
21 for the protection of investors, and is consistent with the purposes, policies, and provisions of the
22 Franchise Investment Law.

23 3. Penalties. Respondent shall pay an administrative penalty of \$37,500 (Penalties) in
24 monthly installments of \$7,500, no later than the 15th day of each month, beginning November 15,
25 2021 and ending March 15, 2022. Penalties must be made payable in the form of a cashier's check
26 or Automated Clearing House deposit to the Department and transmitted to the attention of
27 Accounting-Legal, Department of Financial Protection and Innovation, 2101 Arena Boulevard,
28 Sacramento, California 95834. Notice of the payment must be concurrently sent via email to Ektaa

1 Nijjar at ektaa.nijjar@dfpi.ca.gov. Failure to pay Penalties in accordance with the above referenced
2 Penalty-payment installments shall be deemed to be a material breach of this Consent Order.

3 4. Cancellation and Refund Offer. Respondent agrees to make offers (Cancellation
4 Offers) within thirty (30) days after the Effective Date to all franchisees listed in the franchisee list
5 (Franchisee List), attached hereto and incorporated by reference herein as “Exhibit B”, to cancel
6 their franchise agreements and obtain a refund of all initial franchise fees paid (Refund Payment).
7 The form of Cancellation Offer shall be in the form approved by the Commissioner (Cancellation
8 Form), attached hereto and incorporated by reference herein as “Exhibit C” and shall be sent to
9 franchisees on the Franchisee List by certified mail. No credits or benefits paid to, or received by, a
10 franchisee shall offset any refund payment. This provision shall apply to all California franchisees
11 who have received an FDD containing financial statements audited by Samaniego P.C. and
12 purchased a Mr. Fries Man franchise regardless of whether they were terminated on or before the
13 Effective Date, including any that are eligible but may have been omitted from the Franchisee
14 List/Exhibit C, according to proof. The Refund Payments shall be made within ten (10) calendar
15 days from the date the franchisor receives any acceptance of the Cancellation and Refund Offer.
16 Within sixty (60) days after the Effective Date, Respondent shall submit to the Commissioner
17 satisfactory documentation evidencing each franchisee’s response to the Cancellation Offer via
18 email to Ektaa Nijjar at ektaanijjar@dfpi.ca.gov. Respondent is responsible for ensuring that any
19 refund payment owed to any franchisee that has not been cashed within one hundred eighty (180)
20 days of the Effective Date of this Consent Order shall escheat to the State of California in accordance
21 with the Unclaimed Property Law.

22 5. Post-Effective Amendment to Current Registration. Respondent hereby agrees that
23 it shall cease the offer or sale of franchises in California until it has filed a post-effective amendment
24 application in accordance with section 31123 to its currently effective registration (identified by the
25 Department as app-21146) containing new audited financial statements and otherwise complying
26 with the FIL and the Department has issued an order registering such post-effective amendment.
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1 6. Waiver of Hearing Rights. Respondent acknowledges that the Commissioner is
2 ready, willing, and able to proceed with the filing of an administrative enforcement action on the
3 charges contained in this Consent Order. Respondent hereby waives the right to any hearings, and
4 to any reconsideration, appeal, or other right to review which may be afforded pursuant to the FIL,
5 the Administrative Procedure Act (APA), the Code of Civil Procedure (CCP), or any other provision
6 of law. Respondent further expressly waives any requirement for the filing of any accusation
7 pursuant to Government Code section 11415.60, subdivision (b). By waiving such rights,
8 Respondent effectively consents to this Consent Order becoming final.

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

16 8. 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 Respondent, if the Commissioner discovers that Respondent knowingly or willfully withheld or
19 misrepresented information used for and relied upon in this Consent Order.

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

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

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

6 12. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
7 interest.

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

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

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

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

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

10 18. Effect Upon Future Proceedings. If Respondent applies for any license, registration,
11 permit, or qualification under the Commissioner's current or future jurisdiction, or is the subject of
12 any future action by the Commissioner to enforce this Consent Order, then the subject matter hereof
13 shall be admitted for the purpose of such application(s) or enforcement proceeding(s).

14 19. Voluntary Order. Respondent enters into this Consent Order voluntarily and without
15 coercion and acknowledges that no promises, threats, or assurances have been made by the
16 Commissioner or any officer, or agent thereof, about this Consent Order. The Parties each represent
17 and acknowledge that he, she, or it is executing this Consent Order completely voluntarily and
18 without any duress or undue influence of any kind from any source.

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

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22 To Respondent: Susan Grueneberg, Esq.
23 Cozen O'Connor
24 601 S. Figueroa Street, Suite 3700
25 Los Angeles, CA 90017
26 sgrueneberg@cozen.com

27 To the Commissioner: Ektaa Nijjar, Counsel
28 Department of Financial Protection and Innovation
320 W 4th St. Suite 750,
Los Angeles, CA 90013
Ektaa.nijjar@dfpi.ca.gov

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

22. Public Record. Respondent hereby acknowledges that this Consent Order is and will be a matter of public record.

23. Effective Date. This Consent Order shall become final and effective when signed by all Parties and delivered by the Commissioner's agent via e-mail to Respondent's agent, Susan Grueneberg, Esq. at sgrueneberg@cozen.com

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

Dated: 11/15/2021 CHRISTOPHER S. SHULTZ
Acting Commissioner of Financial Protection
and Innovation

By: _____
JENNIFER RUMBERGER
Deputy Commissioner

Dated: 11/12/2021 MR. FRIES MAN, LLC doing business as
MR. FRIES MAN

By: _____
DOROTHY BATISTE
Chief Financial Officer