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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,)
) CONSENT ORDER
Complainant,)
v.)
)
NASH + TENDER FRANCHISE LLC., doing)
business as NASH + TENDER)
)
Respondent.)
)

This Consent Order is entered into between the Commissioner of Financial Protection and Innovation (Commissioner) and Nash + Tender Franchise LLC. . (Respondent) (Commissioner and Respondent are collectively referred to herein as 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

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 and
4 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.

7 B. At all relevant times, Respondent was and is a California limited liability company
8 with a principal place of business located at 222 North El Dorado Street, Unit B1, Stockton,
9 California 95202. At all relevant times, Respondent has sold franchises for the operations of a
10 business offering a variety of food products and services for sale to the general public.

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

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

23 E. Pursuant to section 31200, it is unlawful for any person willfully to make any untrue
24 statement of a material fact in any application, notice or report filed with the Commissioner under
25 the FIL, or willfully omit to state in any such application, notice, or report any material fact which is
26 required to be stated therein.

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

1 F. On July 15, 2021, Respondent filed an application for registration with the
2 Department to offer and sell franchises in California (Application). The Application included an
3 auditor's consent and an FDD containing audited financial statements accompanied by an
4 independent auditor's report signed by Samaniego P.C. as the firm conducting the audit (2021
5 Financial Statements). The 2021 Financial Statements included a balance sheet as of March 19,
6 2021, related statement of operations, members equity, cash flows for the period of January 2, 2021
7 through March 19, 2021, and related notes. The independent auditor's report contained an
8 unqualified audit opinion on the 2021 Financial Statements. On August 9, 2021, the Department
9 issued an order making this registration effective, thereby allowing Respondent to offer and sell
10 franchises in California from August 9, 2021 through April 20, 2022.

11 G. Respondent included the auditor's consent and financial Statements with
12 accompanying independent auditor's report in its Application with the Department even though
13 Samaniego P.C.'s license expired on February 29, 2020, and both Samaniego P.C.'s and Roxie
14 Samaniego's licenses were revoked by the TSBPA on March 11, 2021. Respondent failed to
15 disclose to the Commissioner that Samaniego P.C. was not licensed by the TSBPA at the time the
16 Application was filed with the Department.

17 H. The Commissioner finds that the failure to disclose in the Application that Samaniego
18 P.C.'s license expired on February 29, 2020, Roxie Samaniego's license expired on February 28,
19 2021, and Samaniego P.C.'s and Roxie Samaniego's licenses were both revoked by the TSBPA on
20 March 11, 2021, is an omission of a material fact under the FIL, in violation of section 31200.

21 I. The Commissioner also finds that the inclusion of the 2021 Financial Statements in
22 the Application accompanied by Samaniego P.C.'s independent auditor's report stating that such
23 2021 Financial Statements were audited when Samaniego P.C. was not qualified to conduct audits is
24 an untrue statement of a material fact in an application filed with the Commissioner, in violation of
25 section 31200.

26 J. NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions
27 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, described in the Recitals 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 section 31406, Nash + Tender Franchise LLC. doing business as Nash + Tender is hereby ordered to desist and refrain from the violations set forth herein, in violation of Corporations Code section 31200, and from any violations of 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. Respondent shall pay an administrative penalty of \$2,500 (Penalties) no later than fifteen (15) days after the effective date of this Consent Order as defined in paragraph 23 (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 Shohreh Aram at Shohreh.Aram@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. Respondent hereby agrees that it shall cease the offer or sale of franchises in California until it has filed a post-effective amendment application in accordance with section 31123 to its currently effective registration (identified by the Department as app-21848) containing new audited financial statements and otherwise complying with the FIL and the Department has issued an order approving such post-effective amendment.

5. Waiver of Hearing Rights. Respondent acknowledges that the Commissioner is ready, willing, and able to proceed with the filing of an administrative enforcement action on the charges contained in this Consent Order. Respondent hereby waives the right to any hearings, and to

1 any reconsideration, appeal, or other right to review which may be afforded pursuant to the FIL, the
2 Administrative Procedure Act (APA), the Code of Civil Procedure (CCP), or any other provision of
3 law. Respondent further expressly waives any requirement for the filing of any accusation pursuant
4 to Government Code section 11415.60, subdivision (b). By waiving such rights, Respondent
5 effectively consents to this Consent Order becoming final.

6 6. Failure to Comply with Consent Order. Respondent agrees that if it fails to comply
7 with the terms of this Consent Order, the Commissioner may, in addition to all other available
8 remedies it may invoke under the FIL, summarily suspend or revoke Respondent’s franchise
9 registration (if applicable) or deny Respondent’s FIL applications (if applicable), until Respondent
10 is in compliance. Respondent waives any notice and hearing rights to contest such summary
11 actions by the Commissioner, which may be afforded under the FIL, APA, CCP, or any other
12 provision of law.

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

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

23 9. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner’s
24 ability to assist any other government agency (whether city, county, state, or federal) with any
25 administrative, civil, or criminal action brought by that agency against Respondent, or any other
26 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 Respondent 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. Respondent enters into 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:

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18 To Respondent: Carl Khalil
19 Law Offices of Carl Khalil & Sada Sheldon
20 1248 Gunn Hall Drive, Suite 201
21 Virginia Beach, VA 23454
22 Carl@khalilsheldon.com

23 To the Commissioner: Shohreh Aram, Senior Counsel
24 Department of Financial Protection and Innovation
25 320 W. 4th Street, Suite 750
26 Los Angeles, CA 90013
27 Shohreh.Aram@dfpi.ca.gov

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

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

1 22. 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 Respondent’s agent, Carl
3 Khalil, Law Offices of Carl Khalil & Sada Sheldon, 1248 Gunn Hall Drive, Suite 201, Virginia
4 Beach VA 23454 at Carl@KhalilSheldon.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.

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9 Dated: 10/1/2021

CHRISTOPHER S. SHULTZ
Acting Commissioner of Financial Protection
and Innovation

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12 By: _____
13 JENNIFER RUMBERGER
14 Deputy Commissioner

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16 Dated: 9/30/2021

NASH + TENDER FRANCHISE LLC, doing business
as NASH + TENDER

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19 By: _____
20 JIMMY ISAIL SIERRA
21 CEO