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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,)
) CONSENT ORDER
Complainant,)
v.)
)
MR. PAINT AND PUFF FRANCHISE LLC,)
)
Respondent.)
)
)

This Consent Order is entered into between the Commissioner of Financial Protection and Innovation (Commissioner) and Mr. Paint and Puff Franchise LLC (Respondent, and together with Commissioner, the 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

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

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

6 B. At all relevant times, Respondent was and is a California corporation with a principal
7 place of business located at 2200 W. Century Blvd, Suite 47534, Los Angeles, California 90047.
8 Respondent intends to franchise businesses offering step-by-step painting classes and smoking of
9 hookah where permitted by law.

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

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

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

27 F. On June 17, 2021, Respondent filed an application for registration with the
28 Department to offer and sell franchises in California (Application). The Application included an

1 auditor’s consent and an FDD containing audited financial statements accompanied by an
2 independent auditor’s report signed by Samaniego P.C. as the firm conducting the audit (Financial
3 Statements). The Financial Statements included a balance sheet as of February 25, 2021, related
4 statement of operations, members’ equity, and cash flows for the period from January 1, 2021
5 through February 25, 2021, and related notes. The independent auditor’s report contained an
6 unqualified audit opinion on the Financial Statements.

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

13 H. Pursuant to section 31110, it is unlawful for any person to offer or sell a franchise in
14 California unless the offer has been registered with the Commissioner or is exempted. Pursuant to
15 section 31018, an “offer” or “offer to sell” includes every attempt to dispose of, or a solicitation of
16 an offer to buy, a franchise or interest in a franchise for value.

17 I. Respondent made statements in its Instagram account biography section and in an
18 Instagram post on March 10, 2021 offering franchises, but it was not registered to offer and sell
19 franchises at the time the statements were made. Respondent’s Instagram biography provided the
20 contact information for a franchise broker named Omar and stated to “👉 Call Omar at [] or DM
21 @franchise_creator_la for @mrpaintandpuff Franchising information.” The March 10, 2021
22 Instagram post stated, “I’m selling the first five Mr. Paint and Puff franchises for \$20,000 after that
23 they’re going up to \$25,000 🗨️ Already got four ready to sign 📄 All you need is a 650+ credit
24 score 100% SBA financed 💰 DM me or contact Omar at @franchise_creator_law for more info..
25 [sic].”

26 J. The Commissioner finds that the failure to disclose in the Application that Samaniego
27 P.C.’s license expired on February 29, 2020, Roxie Samaniego’s license expired on February 28,
28

1 2021, and Samaniego P.C.’s and Roxie Samaniego’s licenses were both revoked by the TSBPA on
2 March 11, 2021, is an omission of a material fact under the FIL, in violation of section 31200.

3 K. The Commissioner also finds that the inclusion of the Financial Statements in the
4 Application accompanied by Samaniego P.C.’s independent auditor’s report stating that such
5 Financial Statements were audited when Samaniego P.C. was not qualified to conduct audits is an
6 untrue statement of a material fact in an application filed with the Commissioner, in violation of
7 section 31200.

8 L. The Commissioner further finds that the statements made on Instagram constituted
9 offers of franchises in California while the Respondent was not registered or exempted, in violation
10 of section 31110.

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

13 **II.**

14 **TERMS AND CONDITIONS**

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

19 2. Desist and Refrain Order. Pursuant to sections 31402 and 31406, Mr. Paint and Puff
20 Franchise LLC is hereby ordered to desist and refrain from the violations set forth herein, in
21 violation of Corporations Code sections 31110 and 31200, and from any violations of the Franchise
22 Investment Law. The issuance of this order is necessary, in the public interest, for the protection of
23 investors, and is consistent with the purposes, policies, and provisions of the Franchise Investment
24 Law.

25 3. Penalties. Respondent shall pay an administrative penalty of \$7,500.00 (Penalties) no
26 later than fifteen (15) days after the effective date of this Consent Order as defined in paragraph 22
27 (Effective Date). The Penalties must be made payable in the form of a cashier’s check or Automated
28 Clearing House deposit to the Department and transmitted to the attention of Accounting-Legal at

1 the Department of Financial Protection and Innovation, 2101 Arena Boulevard, Sacramento,
2 California 95834. Notice of the payment must be concurrently sent via email to Lulu Gomez at
3 lulu.gomez@dfpi.ca.gov. Failure to pay Penalties in a timely manner shall be deemed to be a
4 material breach of this Consent Order.

5 4. Pre-Effective Amendment to Pending Application. Respondent hereby agrees that it
6 shall file a pre-effective amendment to the franchise registration application currently pending with
7 the Department (identified by the Department as app-21650), containing new audited financial
8 statements and otherwise complying with the FIL within sixty (60) days after the Effective Date.

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

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

24 7. Information Willfully Withheld or Misrepresented. This Consent Order may be
25 revoked, and the Commissioner may pursue any and all remedies available under law against
26 Respondent, if the Commissioner discovers that Respondent knowingly or willfully withheld or
27 misrepresented information used for and relied upon in this Consent Order.
28

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

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

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

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

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

25 13. Waiver, Amendments, and Modifications. No waiver, amendment, or modification
26 of this Consent Order will be valid or binding unless it is in writing and signed by each of the
27 Parties. The waiver of any provision of this Consent Order will not be deemed a waiver of any
28 other provision. No waiver by either Party of any breach of, or of compliance with, any condition

1 or provision of this Consent Order by the other Party will be considered a waiver of any other
2 condition or provision or of the same condition or provision at another time.

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

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

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

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

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

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

27 To Respondent: Carl J. Khalil, Esq.
28 Law Offices of Carl Khali & Sada Sheldon, PLC
1248 Gunn Hall Drive, Suite 201

Virginia Beach, VA 23454
carl@khalilsheldon.com

To the Commissioner: Lulu Gomez
Department of Financial Protection and Innovation
320 West 4th Street, Suite 750
Los Angeles, CA 90013
lulu.gomez@dfpi.ca.gov

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.

22. 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, Carl J. Khalil, Esq. at carl@khalilsheldon.com.

23. 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: 1/25/2022

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection
and Innovation

By: _____
JENNIFER RUMBERGER
Deputy Commissioner

Dated: 1/21/2022

MR. PAINT AND PUFF FRANCHISE LLC

By: _____
JAMES ERNEST GREEN
Chief Executive Officer