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8
9 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
10 OF THE STATE OF CALIFORNIA

11 In the Matter of:)
12 THE COMMISSIONER OF FINANCIAL)
PROTECTION AND INNOVATION,) CONSENT ORDER
13 Complainant,)
14 v.)
15 AMERICAN SHAMAN FRANCHISE)
16 SYSTEM, INC., doing business as CBD)
17 AMERICAN SHAMAN.)
18 Respondent.)

19 This Consent Order is entered into between the Commissioner of Financial Protection and
20 Innovation (Commissioner) and American Shaman Franchise System, Inc., doing business as CBD
21 American Shaman (ASFS or Respondent) (collectively, Parties) and is made with respect to the
22 following facts:

23 **I.**

24 **RECITALS**

25 A. The Commissioner is the head of the Department of Financial Protection and
26 Innovation (Department) and is responsible for administering and enforcing the Franchise
27
28

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 which includes a Uniform
3 Franchise Disclosure Document (FDD) with the Department for review and approval, in accordance
4 with sections 31111 and 31114. The FIL requires franchisors to disclose certain material information
5 which is intended to provide prospective franchisees with facts upon which to make an informed
6 decision to purchase a franchise, as stated in section 31001.

7 B. At all relevant times, ASFS was and is a Nevada corporation with a principal place of
8 business located at 2300 Main Street, Suite 165, Kansas City, Missouri 64108. At all relevant times,
9 ASFS sells franchises involving the retail sale of industrial hemp and other plant-based products
10 which are prepared or manufactured.

11 C. At all relevant times, Kathi Miley (KM) was and is ASFS's director of franchise
12 development also doing business at 2300 Main Street, Suite 165, Kansas City, Missouri 64108. On
13 June 20, 2012, KM filed for Federal Bankruptcy Chapter 13, Docket No. 1:12-BK-12979 in the U.S.
14 Bankruptcy Court Northern District of Ohio, Cleveland (Bankruptcy). A final Bankruptcy decree
15 was issued on August 14, 2012.

16 D. Pursuant to section 31200, it is unlawful for any person willfully to make any untrue
17 statement of a material fact in any application, notice or report filed with the Commissioner under
18 the FIL, or willfully omit to state in any such application, notice, or report any material fact which is
19 required to be stated therein or fail to notify the Commissioner of any material change as required by
20 section 31123.

21 E. On July 25, 2019, ASFS filed a FDD with the Department for review and approval
22 pursuant to the FIL identified as Application No. 15874 (2019 FDD). ASFS listed Kathi Miley in
23 the 2019 FDD Item 2 as ASFS's Director of Franchise Development. However, ASFS failed to
24 disclose the Bankruptcy in ASFS's 2019 FDD Item 4.

25 F. The Commissioner finds that the Bankruptcy is material information which is
26 intended to provide prospective franchisees with facts upon which to make an informed decision to
27 purchases a franchise, pursuant to section 31001.

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

1 G. The Commissioner further finds that the Bankruptcy is directly probative and material
2 to each and every ASFS franchise transaction.

3 H. The Commissioner finally finds that ASFS, by failing to disclose the Bankruptcy to
4 the Commissioner, willfully made an untrue statement of a material fact in any application, notice or
5 report filed with the Commissioner under the FIL, or willfully omitted to state in any such
6 application, notice, or report any material fact which is required to be stated therein or failed to
7 notify the Commissioner of any material change as required by section 31123, in violation of section
8 31200.

9 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set
10 forth herein, the Parties agree as follows:

11 **II.**

12 **TERMS AND CONDITIONS**

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

17 2. Desist and Refrain Order. Pursuant to Corporations Code sections 31402 and 31406,
18 American Shaman Franchise System, Inc., doing business as CBD American Shaman is hereby
19 ordered to desist and refrain from the violations set forth herein, in violation of Corporations Code
20 section 31200. The issuance of this Consent Order is necessary, in the public interest, for the
21 protection of investors and is consistent with the purposes, policies, and provisions of the Franchise
22 Investment Law.

23 3. Penalties. American Shaman Franchise System, Inc., doing business as CBD
24 American Shaman shall pay an administrative penalty of \$5,000 (Penalties) no later than fifteen
25 (15) calendar days after the effective date of this Consent Order as defined in Paragraph 21
26 (Effective Date). The Penalties must be made payable in the form of a cashier's check or
27 Automated Clearing House deposit to the Department and transmitted to the attention of
28 Accounting-Legal at the Department of Financial Protection and Innovation, 2101 Arena

1 Boulevard, Sacramento, California 95834. Notice of the payment must be concurrently sent via
2 email to Marisa I. Urteaga-Watkins, Esq. at marisa.urteaga-watkins@dfpi.ca.gov. Failure to pay
3 Penalties in a timely manner shall be deemed to be a material breach of this Consent Order.

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

12 5. Failure to Comply with Consent Order. ASFS agrees that if it fails to comply with
13 the terms of this Consent Order, the Commissioner may, in addition to all other available remedies
14 it may invoke under the FIL, summarily suspend/revoke its FIL registration (if applicable) or deny
15 FIL applications (if applicable) until ASFS is in compliance. ASFS waives any notice and hearing
16 rights to contest such summary suspensions which may be afforded under the FIL, the APA, the
17 CCP, or any other provision of law in connection therewith.

18 6. Information Willfully Withheld or Misrepresented. This Consent Order may be
19 revoked, and the Commissioner may pursue any and all remedies available under law against ASFS
20 if the Commissioner discovers that ASFS knowingly or willfully withheld or misrepresented
21 information used for and relied upon in this Consent Order.

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

27 8. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner's
28 ability to assist any other government agency (whether city, county, state, or federal) with any

1 administrative, civil or criminal action brought by that agency against ASFS or any other person
2 based upon any of the activities alleged in this matter or otherwise.

3 9. 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 of
5 the provisions hereof.

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

8 11. 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
13 other person or entity to make any statement, representation or disclosure of anything whatsoever.
14 The 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 12. 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
19 Parties. The waiver of any provision of this Consent Order will not be deemed a waiver of any
20 other provision. No waiver by either party of any breach of, or of compliance with, any condition
21 or provision of this Consent Order by the other party will be considered a waiver of any other
22 condition or provision or of the same condition or provision at another time.

23 13. 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
27 between and among the Parties, their respective representatives, and any other person or entity with
28 respect to the subject matter covered hereby.

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

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

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

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

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

19 To ASFS: Mr. Sean Pickett, Esq.
20 1118 McGee St #2000
21 Kansas City, MO 64106
22 SeanLegal@cbdamericanshaman.com

23 To the Commissioner: Ms. Marisa I. Urteaga-Watkins, Counsel
24 Department of Financial Protection and Innovation
25 2101 Arena Blvd.
26 Sacramento, California 95834
27 marisa.urteaga-watkins@dfpi.ca.gov

28 19. Signatures. A fax or electronic mail signature shall be deemed the same as an
original signature.

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

1 21. 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 ASFS’s agent, Mr. Sean Pickett,
3 Esq. at SeanLegal@cbdamericanshaman.com.

4 22. 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.

7 Dated: 2/11/2022

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation

10 By: _____

JENNIFER RUMBERGER
Deputy Commissioner

14 Dated: 2/11/2022

AMERICAN SHAMAN FRANCHISE SYSTEM,
INC., doing business as CBD AMERICAN
SHAMAN.

17 By: _____

STEPHEN VINCENT SANDERS
Chief Executive Officer and Director