

1 CLOTHILDE V. HEWLETT  
Commissioner  
2 THERESA LEETS  
Assistant Chief Counsel  
3 Lulu Gomez (State Bar No. 287527)  
4 Senior Counsel  
5 Department of Financial Protection and Innovation  
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6 Los Angeles, CA 90013-2344  
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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 ) CONSENT ORDER  
Complainant, )  
15 v. )  
16 NEW YORK PIZZERIA INCORPORATED, )  
17 )  
Respondent. )  
18 )  
19 )

20 This Consent Order is entered into between the Commissioner of Financial Protection and  
21 Innovation (Commissioner) and Respondent New York Pizzeria Incorporated (collectively,  
22 Commissioner and Respondent are referred to herein as Parties) and is made with respect to the  
23 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.),<sup>1</sup> 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. Respondent is a Texas corporation with a principal place of business located at 5120  
8 Woodway Drive, Suite 8030, Houston, Texas 77056. Respondent offers franchises granting the  
9 right to operate a full-service restaurant featuring New York-style pizza, Neapolitan Pizza, and other  
10 Italian food and drink under the name “Russo’s New York Pizzeria Restaurant.”

11 C. On October 8 and 9, 2021, Respondent attended and offered franchises at “The  
12 Franchise Show” at the Pasadena Convention Center in Pasadena, California as an exhibitor.

13 D. Respondent had previously been registered to offer and sell franchises in California  
14 through April 20, 2021 and had filed an initial application for franchise registration with the  
15 Department on September 10, 2021 (app-22221), which was not yet registered as of October 8 or 9,  
16 2021. Respondent therefore did not have a valid registration or exemption to offer or sell franchises  
17 in California at the time it attended The Franchise Show.

18 E. Pursuant to section 31110, it is unlawful for any person to offer or sell a franchise in  
19 this state unless the offer has been registered with the Commissioner or is exempted.

20 F. The Commissioner finds that on October 8 and 9, 2021, Respondent offered  
21 franchises at the “The Franchise Show” in California without being registered with the  
22 Commissioner or exempted, in violation of section 31110.

23 G. NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions  
24 set forth herein, the Parties agree as follows:

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<sup>1</sup> All further statutory references are to the Corporations Code unless otherwise indicated.

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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 Corporations Code sections 31402 and 31406, New York Pizzeria Incorporated is hereby ordered to desist and refrain from the violations set forth herein, in violation of Corporations Code section 31110, 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 \$2,500.00 no later than fifteen (15) days after the effective date of this Consent Order, as defined in paragraph 22 (Effective Date). The penalty must be made payable in the form of a cashier’s check or Automated Clearing House deposit to the Department of Financial Protection and Innovation and transmitted to the attention of Accounting – Legal, at the Department of Financial Protection and Innovation, 2101 Arena Boulevard, Sacramento, California 95834. Notice of the payment must be concurrently sent to Lulu Gomez via email at lulu.gomez@dfpi.ca.gov.

4. Pre-Effective Amendment to or Withdrawal of Pending Registration. Respondent hereby agrees that it will, within fifteen (15) calendar days of the Effective Date, either file a pre-effective amendment application to its pending registration application, app-22221, to disclose this Consent Order in Item 3 or will submit a request to withdraw its pending registration application, app-22221, and, if it so chooses, file a new initial application that discloses this Consent Order in Item 3.

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:

17 To Respondent: Michael T. Scanzello  
18 Spadea Lignana  
19 232 N. 2nd Street  
20 Philadelphia, PA 19106  
mscanzello@spdealaw.com

21 To the Commissioner: Lulu Gomez, Senior Counsel  
22 Department of Financial Protection and Innovation  
23 320 W. 4<sup>th</sup> St., Ste. 750  
Los Angeles, CA 90013  
lulu.gomez@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. Respondent hereby acknowledges that this Consent Order is and will  
27 be a matter of public record.  
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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, Michael T.  
3 Scanzello at mscanzello@spadealaw.com.

4           23.    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  
8 Dated: 3/23/2022

CLOTHILDE V. HEWLETT  
Commissioner of Financial Protection  
and Innovation

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12 By: \_\_\_\_\_  
13 THERESA LEETS  
14 Assistant Chief Counsel

15 Dated: 3/10/2022

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18 By: \_\_\_\_\_  
19 GERARDO ANTHONY RUSSO  
20 President and Chief Executive Officer  
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