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

12 In the Matter of:) FIL ORG ID: 189546
)
13 THE COMMISSIONER OF FINANCIAL)
PROTECTION AND INNOVATION,) CONSENT ORDER
14)
15 Complainant,)
)
16 v.)
)
17 LEMONSHARK FRANCHISING, LLC)
)
18 Respondent.)
19)

20 This Consent Order is entered into between the Complainant, the Commissioner of Financial
21 Protection and Innovation (Commissioner) as head of the Department of Financial Protection and
22 Innovation (Department), and the Respondent, LemonShark Franchising, LLC (LemonShark), and is
23 made with respect to the following:

24 I.

25 Recitals

26 A. The Commissioner is authorized to administer and enforce the provisions of the
27 Franchise Investment Law (Corp. Code § 31000 *et seq.*) (“FIL”) and the rules and regulations
28 promulgated thereunder which control the registration, offer, and sale of franchises in California.

1 B. LemonShark is a California limited liability company with its principal place of
2 business located at 439 North Bedford Drive, Beverly Hills, California 90210.

3 C. Tobias G. Miller is the co-founder, President, and Chief Operating Officer of
4 LemonShark and is authorized to enter into this Consent Order on behalf of LemonShark.

5 D. The Commissioner brings this action pursuant to the provisions of the FIL, and the
6 rules and regulations promulgated thereunder, including Corporations Code section 31406.

7 E. LemonShark admits to the jurisdiction of the Commissioner in this matter and for the
8 purposes of using and enforcing this Consent Order.

9 F. LemonShark desires to enter into this Consent Order which the Commissioner finds is
10 appropriate, in the public interest, and consistent with the policies and purposes fairly intended by the
11 FIL.

12 G. In October of 2015, LemonShark (originally named Bratworks Franchising) filed an
13 initial franchise registration application with the Department and began offering and selling franchises
14 in California for “fast-casual restaurants”. LemonShark’s registration expired in April of 2021.

15 H. To register a franchise, a franchisor must file an application which includes a Uniform
16 Franchise Disclosure Document (“FDD”) with the Department for review and approval, in accordance
17 with Corporations Code sections 31111 and 31114.

18 I. Every application for registration must include a proposed FDD that contains material
19 information and disclosures to prospective franchisees in accordance with the Uniform Franchise
20 Disclosure Document Guidelines, as adopted by the North American Securities Administrators
21 Association, Inc. on June 22, 2007, and effective July 1, 2007 [See Corp. Code § 31114 and Cal. Code
22 Regs., title 10 § 310.111(b)](“FDD Guidelines”) and the Federal Trade Commission’s amended
23 Franchise Rule, 16 C.F.R. § 436.

24 J. The FIL, FDD Guidelines, and the Federal Trade Commission’s amended Franchise
25 Rule (collectively, the “Uniform Franchise Guidelines”) require franchisors to disclose certain
26 material information which is intended to provide prospective franchisees with facts upon which to
27 make an informed decision to purchase a franchise.

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1 *Failure to Disclose Direct or Indirect Financing to the Commissioner*

2 K. The Uniform Franchise Guidelines require a franchisor to disclose any direct or indirect
3 financing in Item 10 of the Franchise Disclosure Document (FDD).

4 L. In 2019, LemonShark offered and sold a franchise to a California resident. After the
5 California franchisee began store operations, the franchisee was provided a Small Business
6 Administration (SBA) loan, with Tobias G. Miller as guarantor of the loan.

7 M. Under Corporations Code section 31200, it is unlawful for any person willfully to make
8 any untrue statement of a material fact in any application, notice or report filed with the Commissioner
9 under this law, or willfully to omit to state in any such application, notice, or report any material fact
10 which is required to be stated therein, or fail to notify the Commissioner of any material change as
11 required by Section 31123.

12 N. LemonShark violated section 31200 of the FIL by failing to notify the Commissioner of
13 the indirect finance arrangement between the California franchisee and Tobias G. Miller. This finance
14 agreement was not disclosed in Item 10 of LemonShark’s original application and LemonShark failed
15 to notify the Commissioner of this material change.

16 *Failure to Disclose Pro forma Financial Projection to Commissioner*

17 O. Many franchisors choose to provide pro forma financial projections to prospective
18 franchisees. The Franchise Guidelines do not require the disclosure of financial projections. However,
19 if a franchisor makes the decision to provide financial projections, those projections must be disclosed
20 in Item 19 of the FDD.

21 P. During its period of registration, LemonShark and Tobias G. Miller provided at least
22 one prospective California franchisee with a pro forma financial projection. The projection was not
23 disclosed in Item 19 of LemonShark’s FDD. The pro forma financial projection was especially
24 problematic because it provided estimates based on a franchise location in a different state with
25 significantly different operational costs.

26 Q. California Code of Regulations title 10, Section 310.111 requires franchisors to comply
27 with the requirements of the Uniform Franchise Guidelines. LemonShark failed to comply with the
28 guidelines by providing a franchisee with a pro forma financial projection that was not disclosed in

1 Item 19 of their FDD.

2 R. It is a violation of section 31200 of the FIL for any person to willfully make any untrue
3 statement of a material fact in any application, notice, or report filed with the commissioner under this
4 law, or willfully omit to state in any such application, notice, or report any material fact which is
5 required to be stated therein, or fail to notify the commissioner of any material change as required by
6 section 31123.

7 S. LemonShark omitted material facts to the Commissioner by failing to produce and
8 disclose the pro forma financial projection in Item 19 of their FDD.

9 T. 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**

13 1. Purpose. This Consent Order resolves the issues before the Commissioner set forth in
14 paragraphs H – S above, in a manner that avoids the expense of a hearing and other possible court
15 proceedings, protects prospective franchisees, is in the public interest, and is consistent with the
16 purposes and provisions of the Franchise Investment Law.

17 2. Desist and Refrain Order. The Commissioner finds that LemonShark’s omission of
18 material facts to the Commissioner regarding Tobias G. Miller providing indirect financing and
19 distributing an pro forma financial projection as described in paragraphs K – S above are violations of
20 Corporations Code section 31200. Pursuant to Corporations Code section 31402, LemonShark is
21 ordered to desist and refrain from further omissions to the Commissioner in violation of the FIL.

22 3. Waiver of Hearing Rights. LemonShark acknowledges the Commissioner is ready,
23 willing, and able to proceed with the filing of an administrative enforcement action on the charges
24 contained in this Consent Order. LemonShark hereby waives the right to any hearings and to any
25 reconsideration, appeal, or other right to review which may be afforded pursuant to the FIL, the
26 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
27 provision of law. LemonShark further expressly waives any requirement for the filing of an
28 Accusation pursuant to Government Code section 11415.60, subdivision (b). By waiving such rights,

1 LemonShark effectively consents to the Consent Order becoming final.

2 4. Failure to Comply with Consent Order. LemonShark agrees that if it fails to comply
3 with the terms of this Consent Order, the Commissioner may, in addition to all other available
4 remedies it may invoke under the FIL, summarily issue a stop order denying the effectiveness of or
5 suspending or revoking the effectiveness of any of LemonShark franchise registrations until
6 LemonShark gains compliance. LemonShark waives any notice and hearing rights to contest such
7 summary suspensions which may be afforded under the FIL, the California Administrative Procedure
8 Act, the California Code of Civil Procedure, or any other provision of law in connection therewith.

9 5. Information Willfully Withheld or Misrepresented. This Consent Order may be
10 revoked, and the Commissioner may pursue any and all remedies available under the law against
11 LemonShark if the Commissioner discovers that LemonShark knowingly or willfully withheld or
12 misrepresented information used for and relied upon in this Consent Order.

13 6. Future Actions by Commissioner. If LemonShark fails to comply with any terms of the
14 Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
15 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions
16 against LemonShark, or any of its partners, owners, officers, shareholders, directors, employees, or
17 successors for any and all unknown violations of the FIL.

18 7. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner's
19 ability to assist a government agency (whether city, county, state, federal, or otherwise) or self-
20 regulatory organization with any administrative, civil, or criminal action brought by that agency or
21 organization based upon any of the activities alleged in this matter or otherwise.

22 8. Headings. The headings to the paragraphs of this Consent Order are inserted for
23 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
24 the provisions hereof.

25 9. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
26 interest.

27 10. Reliance. Each of the parties represents, warrants, and agrees that in executing this
28 Agreement it has relied solely on the statements set forth herein and the advice of its own counsel.

1 Each of the parties further represents, warrants, and agrees that in executing this Agreement it has
2 placed no reliance on any statement, representation, or promise of any other party, or any other person
3 or entity not expressly set forth herein, or upon the failure of any party or any other person or entity to
4 make any statement, representation, or disclosure of anything whatsoever. The parties have included
5 this clause: (1) to preclude any claim that any party was in any way fraudulently induced to execute
6 this Agreement; and (2) to preclude the introduction of parol evidence to vary, interpret, supplement,
7 or contradict the terms of this Agreement.

8 11. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
9 the Consent Order will be valid or binding unless it is in writing and signed by each of the parties. The
10 waiver of any provision of this Consent Order will not be deemed a waiver of any other provision. No
11 waiver by either party of any breach of, or of compliance with, any condition or provision of this
12 Agreement by the other party will be considered a waiver of any other condition or provision or of the
13 same condition or provision at another time.

14 12. Full Integration. This Consent Order is the final written expression and the complete
15 and exclusive statement of all the agreements, conditions, promises, representations, and covenants
16 between the parties with respect to the subject matter hereof, and supersedes all prior or
17 contemporaneous agreements, negotiations, representations, understandings, and discussions between
18 and among the parties, their respective representatives, and any other person or entity, with respect to
19 the subject matter covered hereby.

20 13. Governing Law. This Consent Order will be governed by and construed in accordance
21 with California law. Each of the parties hereto consents to the jurisdiction of the Superior Court of
22 California for the County of Sacramento, and hereby irrevocably waives, to the fullest extent permitted
23 by law, the defense of an inconvenient forum to the maintenance of an action or proceeding in such
24 court relating to this Consent Order.

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

28 15. Effect Upon Future Proceedings. If LemonShark applies for any license, permit,

1 qualification, or registration under the Commissioner’s current or future jurisdiction, or is the subject
2 of any future action by the Commissioner to enforce this Consent Order, then the subject matter hereof
3 shall be admitted for the purpose of such application(s) or enforcement proceeding(s).

4 16. Voluntary Agreement. LemonShark enters into this Consent Order voluntarily and
5 without coercion and acknowledges that no promises, threats, or assurances have been made by the
6 Commissioner or any offer, or agent thereof, about this Settlement Agreement. The Parties each
7 represent and acknowledge that he, she, or it is executing this Agreement completely voluntarily and
8 without any duress or undue influence of any kind from any source.

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

11 If to LemonShark, to: Matthew J. Soroky, Esq.
12 Lewitt Hackman – A Law Corporation
13 16633 Ventura Boulevard, 11th Floor
14 Encino, California 91436

15 If to the Commissioner, to: Daniel DuBois, Senior Counsel
16 Department of Financial Protection and Innovation
17 1455 Frazee Road
18 San Diego, CA 95834

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

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

23 20. Effective Date. This Consent Order shall become final and effective when signed by all
24 parties and delivered by the Commissioner’s agent via e-mail to LemonShark’s counsel at
25 msoroky@lewitthackman.com.

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

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IN WITNESS WHEREOF, the parties hereto have approved and executed the Consent Order on the dates set forth opposite their respective signatures.

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation

Dated: November 2, 2023

By: _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

LEMONSHARK FRANCHISING, LLC.

Dated: November 2, 2023

By: _____
TOBIAS G. MILLER
Chief Operations Officer

APPROVED AS TO FORM AND CONTENT

Dated: November 8, 2023

By: _____
MATTHEW J. SOROKY, ESQ.
Lewitt Hackman - A Law Corporation

