

1 CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation
2 COLLEEN MONAHAN
Deputy Commissioner
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4 MARISA I. URTEAGA-WATKINS (State Bar No. 236398)
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5 Department of Financial Protection and Innovation
6 2101 Arena Blvd.
7 Sacramento, California 95834

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 THE COMMISSIONER OF FINANCIAL)
PROTECTION AND INNOVATION,)
13 Complainant,) CONSENT ORDER
14 v.)
15 HOMEWELL FRANCHISING, INC.)
16 Respondent.)
17 _____)

18 This Consent Order is entered into between the Commissioner of Financial Protection and
19 Innovation (Commissioner), HomeWell Franchising, Inc., (HomeWell) (collectively, Parties) and is
20 made with respect to the following facts:

21 I.

22 **RECITALS**

23 A. The Commissioner is the head of the Department of Financial Protection and
24 Innovation (Department) and is responsible for administering and enforcing the Franchise
25 Investment Law (FIL) (Corp. Code, § 31000 et seq.),¹ and registering the offer and sale of franchises
26 in California. To register a franchise, a franchisor must file an application that includes a Franchise
27 Disclosure Document (FDD) with the Department for review, in accordance with sections 31111 and
28 _____

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

1 31114. The FIL requires franchisors to disclose certain material information that is intended to
2 provide prospective franchisees with facts upon which to make an informed decision to purchase a
3 franchise, as stated in section 31001.

4 B. At all relevant times, HomeWell was and is a Texas corporation, with a principal
5 place of business located at 812 Sheppard Road, Burkburnett, TX 76354 and at 420 Throckmorton,
6 Suite 200, Fort Worth, TX 76102. At all relevant times, Homewell offered franchises to California
7 investors the operation and management of home care service franchises for seniors and others
8 requiring in-home care. HomeWell's FIL registration with the Department expired on April 20,
9 2021.

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

12 D. In or about March 2021, HomeWell offered at least one (1) HomeWell franchise to a
13 California franchisee. However, HomeWell sold (the franchisee executed a franchise agreement with
14 HomeWell and paid the franchise fee) the franchise to the California franchisee, after HomeWell's
15 FIL registration had expired with the Department in April 2021, in violation of section 31110.

16 E. HomeWell filed an Initial Notice for Large Franchisee Exemption under section
17 31109 on May 7, 2021. A California franchisee was offered a HomeWell franchise and received a
18 new HomeWell FDD on June 2, 2021. That same franchisee executed a franchise agreement with
19 HomeWell on June 4, 2021. Also, after April 2021 and before May 7, 2021, HomeWell caused the
20 publication and distribution of advertising offering HomeWell franchises in California to an
21 unknown number of recipients while unregistered or exempt with a perfected exemption filed with
22 the Department in violation of section 31110.

23 F. Pursuant to section 31201, it is unlawful for any person to offer or sell a franchise in
24 this state by means of any written or oral communication not enumerated in section 31200, which
25 includes an untrue statement of a material fact or omits to state a material fact necessary in order to
26 make the statements made, in the light of the circumstances under which they were made, not
27 misleading.
28

1 G. In or about 2021, HomeWell published and distributed advertisements offering
2 HomeWell franchises in California. The published advertisement which was sent via email to
3 multiple California investor recipients included a material financial performance representation that
4 was an untrue statement, in violation of section 31201.

5 H. Pursuant to section 31156, it prohibits the publication of any advertisement offering a
6 franchise without filing a copy of such with the Department at least three business days prior to its
7 first publication.

8 I. In or about 2021, HomeWell published and distributed advertisements offering
9 HomeWell franchises in California to California investors. The published advertisement was not file
10 with the Department, in violation of section 31156.

11 J. The Commissioner finds that HomeWell offered and sold at least one (1) HomeWell
12 franchise without perfecting an exemption with the Department, in violation on section 31110.

13 K. The Commissioner also finds that HomeWell offered and sold franchises in
14 California by means of a written communication which included an untrue statement of a material
15 fact, a financial performance representation, in violation of section 31201.

16 L. The Commissioner finally finds that HomeWell failed to file with the Department a
17 published advertisement offering HomeWell franchises to California investors, in violation of
18 section 31156.

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

21 **II.**

22 **TERMS AND CONDITIONS**

23 1. Purpose. This Consent Order resolves the issues set forth herein above before the
24 Commissioner in a manner that avoids the expense of a hearing and other possible court
25 proceedings, protects consumers, is in the public interest, and is consistent with the purposes and
26 provisions of the applicable law.

27 2. Desist and Refrain Order. Pursuant to sections 31402 and 31406, HomeWell
28 Franchising, Inc. is hereby ordered to desist and refrain from the violations of sections 31110,

1 31201 and 31156, and any other violations of the FIL. The issuance of this order is necessary, in the
2 public interest, for the protection of investors and is consistent with the purposes, policies, and
3 provisions of the FIL.

4 3. Waiver of Hearing Rights. HomeWell 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. HomeWell 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, the Code of Civil Procedure, or any other provision of law.
9 HomeWell further expressly waives any requirement for the filing of any accusation pursuant to
10 Government Code section 11415.60, subdivision (b). By waiving such rights, HomeWell effectively
11 consents to this Consent Order and all of its terms becoming final.

12 4. Failure to Comply with Consent Order or Cure Breach. HomeWell agrees that if it
13 fails to comply with the Desist and Refrain Order in this Consent Order, or fails to timely cure any
14 breach to the satisfaction of the Commissioner, the Commissioner may, in addition to all other
15 available remedies it may invoke under the FIL, summarily suspend, revoke, or deny its FIL
16 registration (if applicable). HomeWell stipulates to the finality of any such FIL registration
17 suspensions, revocations, or denials that the Commissioner may order. HomeWell waives any
18 notice and hearing rights to contest such summary suspensions, revocations, or denials which may
19 be afforded under the FIL, the California Administrative Procedure Act, the California Code of
20 Civil Procedure, or any other provision of law in connection therewith.

21 5. Information Willfully Withheld or Misrepresented. This Consent Order may be
22 revoked, and the Commissioner may pursue any and all remedies available under law against
23 HomeWell, if the Commissioner discovers that HomeWell knowingly or willfully withheld or
24 misrepresented information used for and relied upon in this Consent Order.

25 6. Future Actions by Commissioner. If HomeWell fails to comply with any terms of the
26 Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
27 resolved by this Consent Order. The Commissioner reserves the right to bring any future actions
28 against HomeWell, or any of its partners, owners, officers, shareholders, directors, employees, or

1 successors for any and all unknown violations of the FIL or any other law under the Commissioner’s
2 jurisdiction.

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

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

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

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

21 11. Waiver, Amendments, and Modifications. No waiver, amendment, or modification
22 of this Consent Order will be valid or binding unless it is in writing and signed by each of the
23 Parties. The waiver of any provision of this Consent Order will not be deemed a waiver of any
24 other provision. No waiver by either Party of any breach of, or of compliance with, any condition
25 or provision of this Consent Order by the other Party will be considered a waiver of any other
26 condition or provision or of the same condition or provision at another time.

27 12. Full Integration. This Consent Order is the final written expression and the complete
28 and exclusive statement of all the agreements, conditions, promises, representations, and covenant

1 between the Parties with respect to the subject matter hereof, and supersedes all prior or
2 contemporaneous agreements, negotiations, representations, understandings, and discussions
3 between and among the Parties, their respective representatives, and any other person or entity with
4 respect to the subject matter covered hereby.

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

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

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

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

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

23 To HomeWell: Leslie Pujo
24 Plave Koch PLC
25 12005 Sunrise Valley Drive, Suite 200
26 Reston, Virginia 20191
lpujo@plavekoch.com

27 To the Commissioner: Marisa I. Urteaga-Watkins, Esq,
28 Department of Financial Protection and Innovation
2101 Arena Blvd.
Sacramento, California 95834

marisa.urteaga-watkins@dfpi.ca.gov

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

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

20. 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 HomeWell’s agent, Leslie Pujo at lpujo@plavekoch.com.

21. 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: 1/10/2024

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection
and Innovation

By: _____
COLLEEN MONAHAN

Dated: 11/29/2023

HOMEWELL FRANCHISING, INC.

By: _____
CASEY MCCLESKY
Chief Financial Officer