

JENNIFER RUMBERGER
Deputy Commissioner
THERESA LEETS
Assistant Chief Counsel
Lulu Gomez (State Bar No. 287527)
Senior Counsel
Department of Financial Protection and Innovation
320 West 4th Street, Suite 750
Los Angeles, CA 90013-2344
Telephone: (213) 393-0032
Facsimile: (213) 576-7179

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.)
)
PDX Franchise, LLC,)
)
Respondent.)
)
)
)

This Consent Order is entered into between the Commissioner of Financial Protection and Innovation (Commissioner) and PDX 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 an Oregon limited liability company
7 with a principal place of business located at 4839 NE 106th Avenue, Portland, Oregon 97220.
8 Respondent offers franchises to operate a meal preparation company that provides healthy meals to
9 customers by delivery to their homes under the name PDX Meal Prep.

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 11, 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 May 13, 2021, related
4 statement of operations, members’ equity, and cash flows for the period from January 1, 2021
5 through May 13, 2021, and related notes. The independent auditor’s report contained an unqualified
6 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. The Commissioner finds that the failure to disclose in the Application that Samaniego
14 P.C.’s license expired on February 29, 2020, Roxie Samaniego’s license expired on February 28,
15 2021, and Samaniego P.C.’s and Roxie Samaniego’s licenses were both revoked by the TSBPA on
16 March 11, 2021, is an omission of a material fact under the FIL, in violation of section 31200.

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

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

24 **II.**

25 **TERMS AND CONDITIONS**

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

3 2. Desist and Refrain Order. Pursuant to section 31406, PDX Franchise, LLC is hereby
4 ordered to desist and refrain from the violations set forth herein, in violation of Corporations Code
5 section 31200, and from any violations of the Franchise Investment Law. The issuance of this order
6 is necessary, in the public interest, for the protection of investors, and is consistent with the
7 purposes, policies, and provisions of the Franchise Investment Law.

8 3. Penalties. Respondent shall pay an administrative penalty of \$5,000.00 (Penalties) no
9 later than fifteen (15) days after the effective date of this Consent Order as defined in paragraph 22
10 (Effective Date). The Penalties must be made payable in the form of a cashier's check or Automated
11 Clearing House deposit to the Department and transmitted to the attention of Accounting-Legal at
12 the Department of Financial Protection and Innovation, 2101 Arena Boulevard, Sacramento,
13 California 95834. Notice of the payment must be concurrently sent via email to Lulu Gomez at
14 lulu.gomez@dfpi.ca.gov. Failure to pay Penalties in a timely manner shall be deemed to be a
15 material breach of this Consent Order.

16 4. Pre-Effective Amendment to Pending Application. Respondent hereby agrees that it
17 shall file a pre-effective amendment to the franchise registration application currently pending with
18 the Department (identified by the Department as app-21620), containing new audited financial
19 statements and otherwise complying with the FIL within sixty (60) days after the Effective Date.

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

28 6. Failure to Comply with Consent Order. Respondent agrees that if it fails to comply

1 with the terms of this Consent Order, the Commissioner may, in addition to all other available
2 remedies it may invoke under the FIL, summarily suspend or revoke Respondent’s franchise
3 registration (if applicable) or deny Respondent’s FIL applications (if applicable), until Respondent
4 is in compliance. Respondent waives any notice and hearing rights to contest such summary
5 actions by the Commissioner, which may be afforded under the FIL, APA, CCP, or any other
6 provision of law.

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

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

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

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

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

26 12. Reliance. Each of the Parties represents, warrants, and agrees that in executing this
27 Consent Order, it has relied solely on the statements set forth herein and the advice of its own
28 counsel. Each of the Parties further represents, warrants, and agrees that in executing this Consent

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

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

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

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

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

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

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

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

10 To Respondent: Carl J. Khalil, Esq.
11 Law Offices of Carl Khali & Sada Sheldon, PLC
12 1248 Gunn Hall Drive, Suite 201
13 Virginia Beach, VA 23454
carl@khalilsheldon.com

14 To the Commissioner: Lulu Gomez
15 Department of Financial Protection and Innovation
16 320 West 4th Street, Suite 750
17 Los Angeles, CA 90013
lulu.gomez@dfpi.ca.gov

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

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

22 22. Effective Date. This Consent Order shall become final and effective when signed by
23 all Parties and delivered by the Commissioner’s agent via e-mail to Respondent’s agent, Carl J.
24 Khalil, Esq. at carl@khalilsheldon.com.

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1 23. Authority to Sign. Each signatory hereto covenants that he/she possesses all
2 necessary capacity and authority to sign and enter into this Consent Order and undertake the
3 obligations set forth herein.

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5 Dated: 1/28/2022

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection
and Innovation

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7
8 By: _____
9 JENNIFER RUMBERGER
10 Deputy Commissioner

11
12 Dated: 1/27/2022

PDX FRANCHISE, LLC

13
14 By: _____
15 JEAN GUTIERREZ
16 Chief Executive Officer