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7 Attorneys for Complainant

8 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
9 OF THE STATE OF CALIFORNIA

10	In the Matter of:	)	FIL ORG ID.:137613
11	THE COMMISSIONER OF BUSINESS	)	STIPULATION AND AGREEMENT OF
12	OVERSIGHT,	)	GLENN CYBULSKI AND PERSONA PIZZA
13	Complainant,	)	HOLDINGS LLC TO:
14	v.	)	(1) DESIST AND REFRAIN FROM
15		)	VIOLATION OF THE CALIFORNIA
16	GLENN CYBULSKI (an individual), and	)	FRANCHISE INVESTMENT LAW;
17	PERSONA PIZZA HOLDINGS LLC,	)	(2) CONSENT TO FINAL STOP ORDER
18	Respondents.	)	DENYING EFFECTIVENESS OF
19		)	FRANCHISE RENEWAL
20		)	REGISTRATION APPLICATION;
21		)	(3) PAY ADMINISTRATIVE PENALTIES
22		)	AND ATTORNEY'S FEES TO THE
23		)	COMMISSIONER;
24		)	(4) FILE A NOTICE OF VIOLATION AND
25		)	OFFER RESCISSION TO
26		)	FRANCHISEES; AND
27		)	(5) OTHER ANCILLARY RELIEF AS
28		)	SPECIFIED HEREIN

1 This Stipulation and Agreement (“Agreement”) shall be binding on the Commissioner of
2 Business Oversight, and its officers, employees, agents, representatives, successors, and attorneys
3 (collectively, the “Commissioner”), Glenn Cybulski (“Cybulski”), and Persona Pizza Holdings, LLC
4 (“Persona Pizza”) and its subsidiaries, officers, shareholders, employees, agents, representatives,
5 successors, insurers, attorneys, affiliated and related entities, principals, assignors, and assignees. The
6 Commissioner, Cybulski, and Persona Pizza shall collectively be referred to as the “Parties.”

7 **I.**

8 **RECITALS**

9 A. Persona Pizza is a Delaware Limited Liability Company engaged in the business of
10 franchising dine-in pizza restaurants offering specialty pizza under the brand name “Persona Wood
11 Fired Pizzeria.” Persona Pizza’s principal business is 6538 Collins Avenue, #182 Miami Beach,
12 Florida 33141. Glenn Cybulski (“Cybulski”) is Persona Pizza’s chief executive officer (“CEO”).

13 B. The Commissioner is the head of the Department of Business Oversight
14 (“Department”) and is responsible for administering and enforcing the California Franchise
15 Investment Law (“FIL”) (Corp. Code § 31000, et seq.),¹ and registering the offer and sale of
16 franchises in California. To register a franchise, a franchisor must file a Uniform Franchise
17 Disclosure Document (“Franchise Disclosure Document”) with the Department for review and
18 approval, in accordance with sections 31111 and 31114. The FIL requires franchisors to disclose
19 certain material information which is intended to provide prospective franchisees with facts upon
20 which to make an informed decision to purchase a franchise, as stated in section 31001.

21 C. On February 6, 2001, the Commodities Futures Trading Commission (“CFTC”) filed
22 an Amended Complaint and Notice of Hearing alleging that Cybulski violated provisions of the
23 Commodities Futures Modernization Act of 2000 (“CFMA”) and accompanying regulations
24 prohibiting misrepresentations and omissions in connection with commodities advertising. On
25 November 6, 2001, the CFTC and Cybulski stipulated to a final order (“CFTC Order”). Under the
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27 _____
28 ¹ All further statutory references are to the Corporations Code unless otherwise indicated.

1 CFTC Order, Cybulski was ordered to desist and refrain from violating the CFMA, pay investors
2 restitution, and pay the CFTC a civil monetary penalty.

3 D. On March 18, 2014, Persona Pizza filed a Franchise Registration Application with the
4 Department, listing Cybulski as a corporate officer. Cybulski and Persona Pizza failed to disclose the
5 CFTC Order as required under the FIL. In addition, the application asked whether Cybulski is subject
6 to a currently effective injunction or restrictive order or decree. Cybulski answered this question
7 “No.” On April 1, 2015, Persona Pizza filed a franchise renewal application with the Department,
8 again failing to disclose the CFTC Order and answering the question regarding any currently
9 effective injunctions, restrictive orders, or decrees in the negative.

10 E. Upon the execution of this agreement, the Commissioner will issue a Final Stop Order
11 Denying Effectiveness of Franchise Renewal Registration Application; and Final Citation Including:
12 (1) Desist and Refrain Order; (2) Assessment of Administrative Penalties; and (3) Claim for
13 Ancillary Relief and Costs (“Final Stop Order, Citation, and Desist and Refrain Order”), captioned *In*
14 *the Matter of The Commissioner of Business Oversight v. Glenn Cybulski (an individual) and*
15 *Persona Pizza Holdings LLC*, FIL Org Id.: 137613, before the Department of Business Oversight (the
16 “Action”). A true and correct copy of the Final Stop Order, Citation, and Desist and Refrain Order is
17 attached hereto and incorporated herein by reference as **Exhibit 1**.

18 F. The Final Stop Order, Citation, and Desist and Refrain Order alleges that Persona
19 Pizza and Cybulski violated section 31200 by willfully making untrue statements of material fact in
20 applications filed with the Commissioner or omitting to state material facts which were required to be
21 stated in the applications filed with the Commissioner. The Final Stop Order denies effectiveness of
22 Persona Pizza’s franchise renewal application filed on April 1, 2015, based on the misrepresentations
23 and omissions contained in the application.

24 G. Persona Pizza and Cybulski seek to resolve each and every aspect of the Action in
25 consideration of the terms and conditions described below. Now, therefore, in consideration of the
26 terms and conditions contained herein, the Parties agree as follows:

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II.

TERMS AND CONDITIONS

1. **Issuance of Final Stop Order, Citation and Desist and Refrain Order Pursuant to Corporations Code sections 31115 and 31406.** The Parties hereby agree to the issuance of the Final Stop Order, Citation, and Desist and Refrain Order Pursuant to Corporations Code sections 31115 and 31406 to become effective upon the execution of this Agreement. A true and correct copy of the Final Stop Order, Citation, and Desist and Refrain Order is attached hereto and incorporated herein by reference as **Exhibit 1**.

2. **Administrative Penalties.** Persona Pizza agrees to pay to the Commissioner penalties totaling \$5,000.00 (“Penalties”). Such Penalties shall be paid by Persona Pizza and received by the Commissioner within 10 days of the execution of this Agreement. The check shall be made payable to “The Department of Business Oversight,” and shall be sent to the following address:

Danielle A. Stoumbos, Esq.
Counsel
Department of Business Oversight
320 W. 4th Street, Suite 750
Los Angeles, CA 90013

In the event the payment due date falls on a weekend or holiday, the payment shall be due the next business day. Persona Pizza acknowledges that failure to timely pay the Penalties in this Agreement shall be a breach of this Agreement and shall be cause for the Commissioner to immediately revoke any licenses held by, and/or deny any pending application(s) of Persona Pizza, its successors and assigns, by whatever names they might be known. Persona Pizza hereby waives any notice and hearing rights to contest such revocations and/or denial(s) which may be afforded under the FIL, the California Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law in connection therewith.

3. **Attorney’s Fees.** Persona Pizza agrees to pay the Commissioner attorney’s fees totaling \$1,000.00 (“Attorney’s Fees”). Such Attorney’s Fees shall be paid by Persona Pizza and received by the Commissioner within 10 days of the execution of this Agreement. The check shall be

1 made payable to the “Department of Business Oversight,” and shall be sent to Danielle A. Stoumbos
2 at the above listed address.

3 4. **Persona Pizza’s Waiver of Hearing Rights.** Persona Pizza acknowledges its
4 right to a hearing under the FIL in connection with the Final Stop Order, Citation, and Desist and
5 Refrain Order and hereby waives that right to a hearing, and to any reconsideration, appeal, or
6 other right to review which may be afforded pursuant to the FIL, the California Administrative
7 Procedure Act, the Code of Civil Procedure, or any other provision of law, and by waiving such
8 rights, consents to the Agreement, Final Stop Order, Citation, and Desist and Refrain Order.

9 5. **Glenn Cybulski’s Waiver of Hearing Rights.** Cybulski acknowledges his right
10 to a hearing under the FIL in connection with the Final Stop Order, Citation, and Desist and Refrain
11 Order and hereby waives that right to a hearing, and to any reconsideration, appeal, or other
12 right to review which may be afforded pursuant to the FIL, the California Administrative
13 Procedure Act, the Code of Civil Procedure, or any other provision of law, and by waiving such
14 rights, consents to the Agreement and Final Stop Order, Citation and Desist and Refrain Order.

15 6. **Desist and Refrain Order.** Persona Pizza and Cybulski stipulate to undertake all
16 appropriate steps to assure full compliance with California law in the conduct of its business.
17 Persona Pizza shall desist and refrain from the further offer or sale of franchise agreements unless
18 and until the offers have been registered under the FIL, or are exempt.

19 7. **Education.** Within sixty (60) days of the execution of this Agreement, Cybulski and
20 all persons employed by Persona Pizza who assist in preparing franchise registrations or who assist
21 in franchise selling are hereby required to attend eight (8) hours of remedial education, in the form
22 of franchise law training courses offered by a franchise law specialist certified with the State Bar of
23 California or courses offered by the International Franchise Association. Within ninety (90) days of
24 execution of this Agreement, Cybulski and Persona Pizza shall file proof of compliance to Danielle
25 A. Stoumbos at the address above.

26 8. **Franchise Registration Application Requirement.** Within sixty (60) days of
27 execution of this Agreement, Persona Pizza will file an Initial Franchise Registration Application
28 pursuant to section 31111, and shall be in full compliance with the FIL. Persona Pizza will disclose

1 the CFTC Order and will also disclose the Final Stop Order, Citation, and Desist and Refrain Order
2 in the Initial Franchise Registration Application.

3 9. **Notice of Violation.**

4 a) **Approval.** Persona Pizza shall comply with section 31303 and Title 10 of California
5 Code of Regulations, Rule 310.303 within sixty (60) days of execution of this Agreement by filing
6 an application for approval as to form of a written notice of violation and offer of rescission of all
7 franchise agreements entered into (“Notice of Violation and Offer of Rescission”). Persona Pizza
8 will submit the Initial Franchise Registration Application, Notice of Violation and Offer of
9 Rescission to:

10 **Gillian Small, Esq.**
11 **Senior Counsel**
12 **Department of Business Oversight**
13 **100 Sansome Street, Suite 600**
14 **San Francisco, CA 94104**

15 Upon approval from the Commissioner, Persona Pizza will deliver the approved Notice of
16 Violation and Offer of Rescission to all franchisees in accordance with the FIL.

17 b) **Restitution to Franchisees.** Persona Pizza agrees to pay restitution to every franchisee
18 that accepts its offer of rescission for the actual cost of the initial franchise fee and fees and costs
19 paid by the franchisee, according to proof. Each franchisee shall be given ninety (90) days from
20 receipt of the offer of rescission to elect to rescind. Persona Pizza agrees to pay restitution to each
21 franchisee electing rescission within sixty (60) days of receiving any acceptance to rescind.

22 c) **Report to Commissioner.** Persona Pizza will provide the Commissioner with copies
23 of the letter(s) offering rescission, proof of mailing, responses received, proof of payment of
24 restitution if requested, within one hundred and twenty (120) days of execution of this Agreement
25 or the approval of Persona Pizza’s Initial Franchise Registration Application, whichever occurs
26 later. Persona Pizza shall remit proof of compliance to Danielle A. Stoumbos at 320 West 4th
27 Street, Suite 750, Los Angeles, CA 90013.

28 10. **Failure to Comply With Agreement.** If Persona Pizza fails to comply with any of
the terms of the Agreement, the Commissioner may institute proceedings for any and all violations

1 otherwise resolved under this Agreement, Final Stop Order, Citation, and Desist and Refrain Order.

2 Persona Pizza acknowledges that failure to comply with this Agreement shall be a breach
3 of this Agreement and shall be cause for the Commissioner to immediately revoke any
4 registrations held by, and/or deny any pending application(s) of Persona Pizza, its successors and
5 assigns, by whatever names they might be known. Persona Pizza hereby waives any notice and
6 hearing rights to contest such revocations and/or denial(s) which may be afforded under the FIL,
7 the California Administrative Procedure Act, the Code of Civil Procedure, or any other provision
8 of law in connection therewith.

9 11. **Future Actions by the Commissioner.** The Commissioner reserves the right to
10 bring any future action(s) against Cybulski and Persona Pizza or any of its partners, owners,
11 officers, directors, shareholders, employees, or successors for any and all unknown or future
12 violations of the FIL. This Agreement shall not serve to exculpate Cybulski or Persona Pizza or
13 any of its' partners, owners, officers, directors, shareholders, employees, or successors from liability
14 for any and all unknown or future violations of the FIL. However, this Agreement resolves and
15 discharges Cybulski and Persona Pizza of any further liability, fine or discipline or other
16 punitive conduct that could have been brought by the Commissioner arising out of or relating to
17 the allegations made in the Final Stop Order, Citation, and Desist and Refrain Order.

18 12. **Effective Date.** This Agreement shall become effective upon the receipt by each
19 party of an electronic copy of this Agreement signed by all Parties.

20 13. **Agreement Coverage.** The Parties hereby acknowledge and agree that this
21 Agreement is intended to constitute a full, final, and complete resolution of this matter. The
22 Parties further acknowledge and agree that nothing contained in this Agreement shall operate to
23 limit the Commissioner's ability to assist any other agency, county, or state or federal entity,
24 with any prosecution, administrative, civil or criminal, brought by any such agency against
25 Cybulski or Persona Pizza based upon any of the activities alleged in this matter or otherwise.

26 14. **Independent Legal Advice.** Each of the Parties represents, warrants, and agrees
27 that it has received or been advised to seek independent legal advice from its attorneys with
28 respect to the advisability of executing this Agreement.

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

10 16. **Modifications and Qualified Integration.** No amendment, change or
11 modification of this Agreement shall be valid or binding to any extent unless it is in writing
12 and signed by all of the parties affected by it.

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

19 18. **No Presumption From Drafting.** In that the Parties have had the opportunity to
20 draft, review and edit the language of this Agreement, no presumption for or against any party
21 arising out of drafting all or any part of this Agreement will be applied in any action
22 relating to, connected to, or involving this Agreement. Accordingly, the Parties waive the
23 benefit of Civil Code section 1654 and any successor or amended statute, providing that in
24 cases of uncertainty, language of a contract should be interpreted most strongly against the party
25 who caused the uncertainty to exist.

26 19. **Signatures.** A fax signature or e-mail scanned signature of this Agreement shall be as
27 effective as an original ink signature.

28 20. **Counterparts.** This Agreement may be executed in any number of counter-

1 parts by the Parties, and when each party has signed and delivered at least one such counterpart
2 to the other party, each counterpart shall be deemed an original and taken together shall
3 constitute one and the same Agreement.

4 21. **Headings and Governing Law.** The headings to the paragraphs of this Agreement
5 are inserted for convenience only and will not be deemed a part hereof or affect the
6 construction or interpretation of the provisions hereof. This Agreement shall be
7 construed and enforced in accordance with, and governed by, the laws of the State of
8 California.

9 22. **Authority For Settlement.** Each party warrants and represents that such party is
10 fully entitled and duly authorized to enter into and deliver this Agreement. In particular, and
11 without limiting the generality of the foregoing, each party warrants and represents that it is
12 fully entitled to enter into the covenants, and undertake the obligations set forth herein.

13 23. **Public Record.** Cybulski and Persona Pizza hereby acknowledge that this
14 Agreement, Final Stop Order, Citation, and Desist and Refrain Order is and will be a matter of
15 public record.

16 24. **Voluntary Agreement.** The Parties each represent and acknowledge that he, she
17 or it is executing this Agreement completely voluntarily and without any duress or undue
18 influence of any kind from any source.

19 IN WITNESS WHEREOF, the Parties have approved and executed this Agreement on the
20 dates set forth opposite their respective signatures.

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JAN LYNN OWEN
Commissioner of Business Oversight

Dated: 9/1/15

By

Mary Ann Smith
Deputy Commissioner

PERSONA PIZZA HOLDINGS, LLC

Dated: 8/31/15

By

Glenn Cybulski
Chief Executive Officer

GLENN CYBULSKI

Dated: 8/31/15

By

Glenn Cybulski

APPROVED AS TO FORM:

Dated: 9/1/15

By

Danielle A. Stoumbos
Counsel
Department of Business Oversight

Dated: 8/28/15

By

Robert Steinberger
Counsel
Persona Pizza Holdings LLC