

1 PRESTON DuFAUCHARD
California Corporations Commissioner
2 ALAN S. WEINGER
Deputy Commissioner
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7 Attorneys for Complainant
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9 BEFORE THE DEPARTMENT OF CORPORATIONS
10 OF THE STATE OF CALIFORNIA

11 In the Matter of THE CALIFORNIA) File No.: 993-5353/266725
CORPORATIONS COMMISSIONER,)
12)
Complainant,) **SETTLEMENT AGREEMENT**
13) **RE IRA T. DISTENFIELD**
vs.)
14)
15 PRS FRANCHISE SYSTEMS, LLC; DANIEL)
S. FRAGEN; IRA T. DISTENFIELD,)
16)
Respondents.)
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1 This Settlement Agreement (“Agreement”) shall be binding on the CALIFORNIA
2 CORPORATIONS COMMISSIONER and its officers, employees, agents, representatives,
3 successors, and attorneys (collectively, the “Commissioner” or “Complainant”); and IRA. T.
4 DISTENFIELD (“Distenfield”), and his employees, agents, representatives, successors, insurers,
5 attorneys, affiliated and related entities, assignors, and assignees. The Commissioner and Distenfield
6 shall collectively be referred to as the “Parties.”

7 **I.**

8 **PARTICULARS**

9 A. At all relevant times, PRS Franchise Systems, LLC (“PRS”) is and was a North
10 Carolina limited liability company incorporated on March 19, 2002. PRS engaged in business
11 activities providing a variety of marketing services including specialty advertising, sales brochures,
12 letterhead, business cards, direct mail, annual reports, website development and similar services and
13 products. PRS’ principal place of business is 14045 Ballantyne Corporate Place, Suite 525,
14 Charlotte, North Carolina 28277.

15 B. At all relevant times, Distenfield was a franchise sales broker of PRS. Distenfield also
16 owned and operated a PRS franchise at 3609 State Street, Santa Barbara, California.

17 C. The Commissioner acting to protect the public from unlawful practices in the offer and
18 sale of franchises, under the California Franchise Investment Law, California Corporations Code
19 sections 31000 *et seq.*, commenced an investigation into PRS’ franchise registration application.

20 D. On June 1, 2009, the Commissioner issued a Desist and Refrain Order; and Citations
21 (“Order”) against PRS, Daniel S. Fragen (“Fragen”), and Distenfield (collectively “Respondents”),
22 for violations of California Corporations Code section 31200, material misstatements or omissions in
23 a franchise registration application filed with the Commissioner and section 31201, material
24 misstatements or omissions. The Order seeks, among other things, certain penalties against the
25 Respondents.

26 E. On September 2, 2009, an Amended Desist and Refrain Order; and Citations
27 (“Amended Order”) was issued by the Commissioner. The Amended Order contained the same
28 allegations and the same violations as the previous Order against all Respondents. Certain facts,

1 however, were deleted and/or corrected. The Amended Order supercedes the order issued on June 1,
2 2009.

3 F. The Parties now desire to resolve this matter without the necessity of a hearing and/or
4 other litigation.

5 NOW THEREFORE, in consideration of the foregoing, and the terms and conditions
6 contained herein, the Parties agree as follows:

7 **II.**

8 **TERMS AND CONDITIONS**

9 1. This Agreement is entered into for the purpose of judicial economy and expediency,
10 and to avoid the time and expense of a hearing and possible further court proceedings.

11 2. Without admitting or denying the allegations contained in the Amended Order,
12 Distenfield stipulates to the following:

13 a. At all relevant times, Distenfield offered PRS franchises in California.

14 b. At all relevant times, the offers of PRS franchises in California included an
15 untrue statement of a material fact or omits to state a material fact necessary in order to make the
16 statements made, in the light of the circumstances under which they were made, not misleading, in
17 violation of Corporations Code section 31201.

18 c. Distenfield provided financial performance representations (“earnings claims”)
19 in two instances:

20 i. A franchisee was told that he would generate between \$40,000 -
21 \$50,000 in monthly revenue within six (6) months of opening his store.

22 ii. A franchisee was told “a retail store” would achieve cash flow in four
23 (4) months from opening and would generate \$50,000 in monthly revenue by
24 the sixth (6) month.

25 3. In the event that any future proceeding(s) are initiated by or brought before the
26 Commissioner against Distenfield, Distenfield shall not dispute the allegations contained in this
27 Agreement, including the Recitals above. It is the intent and understanding of the parties that this
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1 Agreement, and its Recitals, shall not be binding or admissible against Distenfield in any action(s)
2 brought against Distenfield by third parties.

3 4. This Agreement constitutes a settlement of all claims against Distenfield for providing
4 earnings claims in the offers and sales of PRS franchises at any time prior to the date of this
5 Agreement.

6 5. Distenfield shall withdraw his request for a hearing before the Office of
7 Administrative Hearings and waive any further right to appeal, in any forum, the issuance of the
8 Desist and Refrain Order that is the subject matter of this proceeding.

9 6. Distenfield shall pay a citation in the amount of \$5,000 to the Commissioner, in two
10 (2) installments: \$3,000 within ten (10) business days of execution of this Agreement, and the
11 remaining balance of \$2,000, within 30 days thereafter, otherwise the full amount of administrative
12 penalty assessed in the Amended Order will become due immediately, the Amended Order will be
13 final, and this Agreement will be terminated immediately.

14 7. Notwithstanding any other provision contained herein, nothing in this Agreement shall
15 operate to limit the Commissioner's ability to investigate and prosecute violations of the Franchise
16 Investment Law not addressed herein, or to assist any other agency (county, state, or federal) with
17 any prosecution (administrative, civil, or criminal), brought by such agency against Respondents
18 concerning violations alleged herein or otherwise.

19 8. Each party hereto represents and warrants that it has received independent advice from
20 its attorney(s) and/or other representatives prior to entering into this Agreement, and in executing this
21 Agreement relied solely on the statements set forth herein and the advice of his own counsel and/or
22 representative.

23 9. In that the parties have had the opportunity to draft, review and edit the language of
24 this Agreement, no presumption for or against any party arising out of drafting all or any part of this
25 Agreement will be applied in any action relating to or arising out of this Agreement. Accordingly,
26 the parties hereby waive the benefit of California Civil Code section 1654 and any successor statute.
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1 10. The waiver of any provision of this Agreement shall not operate to waive any other
2 provision set forth herein, and any waiver, amendment and/or change to the terms of this Agreement
3 must be in writing signed by the parties hereto.

4 11. The Commissioner shall cause this Agreement to be filed with the Office of
5 Administrative Hearings immediately upon its execution.

6 12. A fax signature or e-mail scanned signature of this Agreement shall be effective as an
7 original ink signature.

8 13. This Agreement may be executed in one or more counterparts, each of which shall be
9 deemed an original, and will become effective and binding upon the Parties at such time as all of the
10 signatories hereto have signed a counterpart of the Settlement Agreement. All counterparts so
11 executed shall constitute on Agreement binding on all of the Parties hereto, notwithstanding that all
12 of the Parties are not a signatory to the same counterpart.

13 14. Each signatory hereto covenants that he/she possesses the necessary capacity and
14 authority to sign and enter this Agreement.

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16 Dated: 10/26/09_____

California Corporations Commissioner
PRESTON DuFAUCHARD

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19 _____
By: Alan S. Weinger
Deputy Commissioner

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21 Dated: 10/24/09_____
22 _____

By: Ira T. Distenfield

23 APPROVED AS TO FORM:

24 Dated: 10/24/09_____

25 _____
Gerald G. Wilson
Attorney at Law
Attorney for Ira T. Distenfield