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7

8 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT  
9 OF THE STATE OF CALIFORNIA  
10

11 In the Matter of )  
12 THE CALIFORNIA COMMISSIONER OF )  
BUSINESS OVERSIGHT, )  
13 )  
Complainant, )  
14 v. )  
15 REDRHINO, INC., a California corporation, )  
CONNER AND ASSOCIATES, LLC, a Georgia )  
16 limited liability company (D/B/A FRANCHISE )  
MARKETING SYSTEMS), MICHAEL )  
17 KENEALY, and CHRISTOPHER CONNER )  
18 Respondents. )  
19 )  
20 )

**CITATION INCLUDING:**  
**(1) DESIST AND REFRAIN ORDER**  
**(2) ASSESSMENT OF**  
**ADMINISTRATIVE PENALTIES**  
**(3) CLAIM FOR ANCILLARY RELIEF**  
**AND COSTS**  
(Corp. Code §§ 31402, 31406, 31408)

21 Jan Lynn Owen, the California Commissioner (“Commissioner”) of the Department of  
22 Business Oversight (“Department”), finds the following:

23 **I. PARTIES**

24 1. At all relevant times, RedRhino, Inc. (“RedRhino”), is a California corporation formed  
25 on February 1, 2008, with its principal place of business at 929 E. Second Street, Unit 106, Los  
26 Angeles, CA 90012. RedRhino maintains a website at <https://redrhinoflooring.com/> and at  
27 [www.redrhinoinc.com](http://www.redrhinoinc.com).  
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1           2.       At all relevant times, Conner and Associates, LLC, is a Georgia limited liability  
2 company formed on May 28, 2009, with its principal place of business at 3479 Maritime Glen,  
3 Gainesville, Georgia 30506. Conner and Associates, LLC, does business as Franchise Marketing  
4 Systems. Conner and Associates, LLC, maintains a website at  
5 <http://www.franchisemarketingsystems.com/>.

6           3.       At all relevant times, Michael Kenealy (“Kenealy”) is the owner and operator of  
7 RedRhino and Trenton. Kenealy is also a “control” person of RedRhino and Trenton. “Control” is  
8 defined by Corporations Code section 160.<sup>1</sup>

9           4.       At all relevant times, Christopher Conner (“Conner”) is the President and owner of  
10 Conner and Associates, LLC, and a “control” person of Conner and Associates, LLC. “Control” is  
11 defined by section 160. Conner and Associates, LLC, does business under the name “Franchise  
12 Marketing Systems.” Hereinafter, Conner and Associates, LLC, will be referred to as Franchise  
13 Marketing Systems.

14           5.       The Commissioner is responsible for administering and enforcing the California  
15 Franchise Investment Law, and registering the offer and sale of franchises in California, pursuant to  
16 section 31000 et seq.

17           6.       To register a franchise, a franchisor must file a Uniform Franchise Disclosure  
18 Document (“UFDD” or “Disclosure Document”) with the Department for review and approval, in  
19 accordance with sections 31111 and 31114.

20           7.       The franchisor must provide copies of the registered Disclosure Document and all  
21 proposed agreements relating to the sale of the franchise to a prospective franchisee at least 14 days  
22 prior to executing any binding franchise or other agreement, or prior to receiving any consideration,  
23 whichever occurs first, as required by section 31119.

24           8.       The disclosure requirements of the Franchise Investment Law are intended to avoid  
25 misrepresentations and to provide prospective franchisees with facts upon which to make an informed  
26 decision to purchase a franchise, as stated in section 31001.

27 \_\_\_\_\_  
28 <sup>1</sup> All further statutory references are to the Corporations Code unless otherwise indicated.

1 **II. STATEMENT OF FACTS**

2 9. Since at least 2011, RedRhino has operated as an epoxy flooring supplier and installer  
3 in Los Angeles, California. Kenealy is the person primarily responsible for operating RedRhino.

4 10. Since at least October 2011, RedRhino retained Franchise Marketing Systems to assist  
5 RedRhino in marketing and selling RedRhino franchises. In exchange, RedRhino paid Franchise  
6 Marketing Systems a monthly fee and between 10 to 20 percent of any “franchise fee” collected by  
7 RedRhino from its franchise sales.

8 11. Since at least October 2011, RedRhino offered franchise opportunities on one of its  
9 websites, www.redrhinoflooring.com. RedRhino offered franchisees a “consistent and replicable  
10 business system,” which included a “proprietary means of lead generation and new business  
11 development” and “marketing and sales support.” RedRhino offered to “teach franchisees how to  
12 install and apply epoxy solutions.” RedRhino offered franchises for “only a \$10k-\$15k investment.”  
13 These and similar offers and representations were made by RedRhino and Conner on RedRhino’s  
14 website and in marketing materials provided to potential franchisees.

15 12. In its franchise marketing materials, RedRhino highlighted the successful RedRhino  
16 “business model” that franchisees would acquire, including “resources at Corporate,” an operations  
17 manual, a “web lead generation model” with an “ongoing expense” borne by the franchisee, and an  
18 “exclusive territory – based on 2.5 million population area.” In particular, RedRhino clarified that  
19 sales leads would initially be directed to “RedRhino Corporate” and that RedRhino would then set up  
20 appointments on behalf of the franchisees. In addition, RedRhino would provide “assistance with  
21 proposals/pricing models.” As a result, customers would see RedRhino corporate and franchisees as  
22 one cohesive unit, providing uniform services with consistent pricing.

23 13. In marketing its franchise opportunities, RedRhino brought potential franchisees to its  
24 Los Angeles office to meet with Kenealy and Conner in full-day meetings. During these meetings,  
25 Kenealy and Conner discussed launching a franchise network to achieve “scale,” to “leverage[]  
26 relationships,” and to find “opportunity in new markets.” Kenealy and Conner touted that a “bigger  
27 network [equals] bigger opportunities for everyone.” During these meetings, Kenealy and Conner  
28 told franchisees that, in exchange for purchasing a franchise, the franchisee would receive (1) training

1 at RedRhino's Los Angeles office and at the franchisee's locations, (2) marketing support, and (3)  
2 instruction on how to launch their franchise company, such as details on insurance and applying for  
3 an Employer Identification Number. In addition, during these meetings, Kenealy and Conner  
4 discussed RedRhino's franchise agreement, the RedRhino revenue model and the on-going royalty  
5 fees that franchisees would pay to RedRhino.

6 14. To any outsider, Conner appeared to be a RedRhino officer or employee. Conner  
7 communicated with potential franchises through an official RedRhino email address. Emails Conner  
8 sent from his RedRhino email address contained a signature which identified him as RedRhino's  
9 "Franchise Director." RedRhino's website also referred to Conner as RedRhino's Franchise Director.  
10 In addition, Conner directly posted marketing messages for RedRhino's franchise offerings on the  
11 RedRhino website.

12 15. To franchisees, RedRhino pitched its "national client list," its "consistent branding,"  
13 and its "association with national brand identity." On its website, RedRhino presented itself to the  
14 public as a unit with national coverage, showing customers a national map with all RedRhino  
15 franchise and corporate locations marked.

16 16. In approximately October 2012, RedRhino, Kenealy and Conner offered a RedRhino  
17 franchise to a California resident. The offering was for an exclusive RedRhino franchise in Northern  
18 California. In November 2012, RedRhino sold a RedRhino franchise in Northern California to a  
19 California resident. In exchange, for the sale of that franchise, RedRhino received a \$10,000 up-front  
20 franchise fee. RedRhino also collected about \$2,000 in monthly royalties from its Northern  
21 California franchisee. During the sale process, the California resident spoke with both Kenealy and  
22 Conner about RedRhino's franchising.

23 17. RedRhino entered into a franchise agreement with the California resident, through  
24 RedRhino's franchising entity, The Trenton Group, Inc., a purported Nevada Corporation owned by  
25 Kenealy. In exchange for franchise fees, RedRhino agreed to provide a month of training, continuing  
26 marketing and sales support, and web-based sales lead generation. RedRhino granted the California  
27 resident an exclusive territory in Northern California and covenanted that "all business generated by  
28 [RedRhino]" in Northern California "will belong to the" California franchisee. The agreement also

1 specified that any Northern California business referred to the franchisee by RedRhino would revert  
2 to RedRhino if the franchisee decided not to take the work.

3 18. The agreement between RedRhino and the California resident franchisee also provided  
4 that “[i]f the parties are to separate ways, [franchisee] may not continue to operate in the epoxy  
5 flooring business for a period of seven years.”

6 19. The agreement also provided that franchisee would pay a \$10,000 up-front fee and a  
7 \$1,000 monthly fee for the first 5 months. In addition, the California franchisee was to pay between  
8 6 and 8 percent of its gross revenues to RedRhino. To verify accurate record keeping, RedRhino also  
9 retained the right to demand that franchisee produce personal and business bank statements, revenue  
10 reports, and profit and loss statements.

11 20. After the agreement was completed and the franchise fee paid, RedRhino issued a  
12 press release announcing the opening of a Northern California location. The title of the press release  
13 read: “REDRHINO: The Epoxy Flooring Company opens in Northern California.” The press release  
14 further stated that “[t]he REDRHINO Leadership team is pleased to welcome . . . the organization’s  
15 newest addition to the organization’s team of franchise owner-operators.” The California resident  
16 franchisee was quoted in the press release, stating that he chose RedRhino over competitors because  
17 “REDRHINO provided all the necessary critical performance guarantees.” Kenealy was quoted in  
18 the press release, stating that RedRhino “entertained many requests from franchise candidates seeking  
19 the opportunity to open an office in the bay area.” Further, the press release stated that, “[t]oday,  
20 with a rapidly growing franchise network, the organization has taken a successful business model and  
21 replicated it through strong franchise partners in key U.S. markets.” The press release claims to be  
22 authored by Kenealy.

23 21. In addition to the press release, RedRhino provided public awareness of its Northern  
24 California franchise by listing it on the map of nation-wide RedRhino locations on its website.

25 22. About two months after RedRhino and the Northern California franchisee entered into  
26 the franchise agreement, the Northern California franchisee cancelled the agreement because  
27 RedRhino failed to provide the requisite training, marketing and sales generation support promised.  
28

1           23.     Neither RedRhino, Kenealy, Conner, or Conner and Associates, LLC registered  
2 offerings of RedRhino franchises in California.

3           24.     RedRhino and Kenealy made written or oral communications which included untrue  
4 statements of material facts or omitted to state a material fact necessary in order to made the  
5 statements made, in the light of the circumstances under which the made, not misleading. Such  
6 statements or omissions include, without limitation, the following:

7                 a.     Franchisees were provided with two pages of biographical information on  
8 Kenealy, wherein Kenealy describes his career history and personal successes in running RedRhino  
9 for the past 15 years. However, RedRhino and Kenealy did not contemporaneously disclose that  
10 Kenealy and RedRhino declared bankruptcy three years earlier in 2009 and did not disclose that the  
11 bankruptcy was declared while lawsuits relating to RedRhino’s business were pending.

12                 b.     At least one franchisee was told that RedRhino’s franchise offering had been  
13 registered in California.

14                 c.     At least one California resident was offered a franchise and was provided a  
15 RedRhino Franchise Disclosure Document. However, the California resident was not told that the  
16 Franchise Disclosure Document had never been registered for use in offerings in California.

17           25.     RedRhino, Kenealy, Conner, and Conner and Associates, LLC made written or oral  
18 communications which included untrue statements of material facts or omitted to state a material fact  
19 necessary in order to made the statements made, in the light of the circumstances under which the  
20 made, not misleading. Such statements or omissions include, without limitation, the following:

21                 a.     Franchisees were not presented with an accurate picture of the risks associated  
22 with purchasing a RedRhino franchise. Rather, franchisees were told that RedRhino franchises  
23 would produce “high margins with relatively low risk.” At least one franchisee was guaranteed  
24 certain performance levels.

25                 b.     Although franchisees were told that RedRhino had a “proven model to grow  
26 business within specific niche industry,” franchisees were not provided with complete information  
27 about RedRhino’s performance or the industry in general.

28

1 c. In violation of the guidelines of the Commissioner and the Federal Trade  
2 Commission, franchisees were provided with oral and written financial performance projections that  
3 were not disclosed in Item 19 of a franchise disclosure document submitted to the Commissioner.

4 **III. CITATION AND DESIST AND REFRAIN ORDER**

5 **VIOLATION OF CORPORATIONS CODE SECTION 31110**

6 **(Unregistered and Non-exempt Offer or Sell of Franchise)**

7 26. Section 31110 provides:

8 “On and after April 15, 1971, it shall be unlawful for any person to offer  
9 or sell any franchise in this state unless the offer of the franchise has been  
10 registered under this part or exempted under Chapter 1 (commencing with  
11 section 31000) of this part.”

12 27. Based upon the foregoing findings, the Commissioner is of the opinion that RedRhino,  
13 Kenealy, Conner, and Conner and Associates, LLC engaged in the offer and sale of franchises in this  
14 state that are subject to registration under the Franchise Investment Law without the offers first being  
15 registered or exempt, in violation of section 31110. Pursuant to sections 31402 and 31406,  
16 RedRhino, Kenealy, Conner, and Conner and Associates, LLC are hereby cited and ordered to desist  
17 and refrain from the further offer or sale of franchises unless and until the offers have been duly  
18 registered under the Franchise Investment Law or are otherwise exempt.

19 28. This order is necessary, in the public interest, for the protection of investors and  
20 franchisees and consistent with the purposes, policies and provisions of the Franchise Investment  
21 Law.

22 **VIOLATION OF CORPORATIONS CODE SECTION 31201**

23 **(Misrepresentation or Omission of Material Facts)**

24 29. Section 31201 provides:

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

30. Based on the foregoing findings, the Commissioner is of the opinion that RedRhino,  
Kenealy, Conner, and Conner and Associates, LLC engaged in the offer and sale of franchises in this

1 state by means of written or oral communications which include an untrue statement of a material  
 2 fact or omit to state a material fact necessary in order to make the statements made, in light of the  
 3 circumstances under which they were made, not misleading, in violation of section 31201. Pursuant  
 4 to section 31406, RedRhino, Kenealy, Conner, and Conner and Associates, LLC are hereby ordered  
 5 to desist and refrain from the further offer or sale of franchises, including but not limited to RedRhino  
 6 franchises, by means of written or oral communications which include an untrue statement of  
 7 material fact or omit to state a material fact necessary in order to make the statements made, in light  
 8 of the circumstances under which they were made, not misleading.

9 31. This order is necessary, in the public interest, for the protection of investors and  
 10 franchisees and consistent with the purposes, policies and provisions of the Franchise Investment  
 11 Law.

**IV. ADMINISTRATIVE PENALTIES**

12  
 13 32. Section 31406 provides in relevant part:

14 “(a) If, upon inspection or investigation, based upon a complaint or  
 15 otherwise, the commissioner has cause to believe that a person is violating  
 16 any provision of this division or any rule or order promulgated pursuant to  
 17 this division, the commissioner may issue a citation to that person in  
 18 writing describing with particularity the basis of the citation. Each citation  
 19 may contain an order to desist and refrain and an assessment of an  
 20 administrative penalty not to exceed two thousand five hundred dollars  
 21 (\$2,500) per violation and shall contain reference to this section, including  
 22 the provisions of subdivision (c). All penalties collected under this section  
 23 shall be deposited in the State Corporations Fund.

24 (b) The sanctions authorized under this section shall be separate from, and  
 25 in addition to, all other administrative, civil, or criminal remedies.”

26 (c) If within 60 days from the receipt of the citation, the person cited fails  
 27 to notify the commissioner that the person intends to request a hearing as  
 28 described in subdivision (d), the citation shall be deemed final.

(d) Any hearing under this section shall be conducted in accordance with  
 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of  
 Title 2 of the Government Code.

(e) After the exhaustion of the review procedures provided for in this  
 section, the commissioner may apply to the appropriate superior court for  
 a judgment in the amount of the administrative penalty and order  
 compelling the cited person to comply with the order of the commissioner.  
 The application shall include a certified copy of the final order of the  
 commissioner and shall constitute a sufficient showing to warrant the  
 issuance of the judgment and order.



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39. Pursuant to section 31408, RedRhino, Kenealy, Conner and Conner and Associates, LLC, shall pay attorney’s fees to the Department of Business Oversight in the amount of \$5,000, or according to proof. The amount awarded for attorney’s fees shall be made payable to the Department of Business Oversight and submitted to Adam J. Wright, Corporations Counsel, 320 West 4th Street, Suite 750, Los Angeles, California 90013-2344, no later than 45 days from the date of this order.

Dated: December 1, 2014  
Sacramento, California

JANN LYNN OWEN  
Commissioner of Business Oversight

By \_\_\_\_\_  
MARY ANN SMITH  
Deputy Commissioner  
Enforcement Division