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Corporate Finance Section
Franchise and Business Opportunities Project Group
North American Securities Administrators Association, Inc
750 First St NE # 1140
Washington, DC 20002

January 4th, 2022

RE: Proposed NASAA Statement of Policy Regarding the Use of Franchise Questionnaires and Acknowledgements (“Statement of Policy”)

Dear Sir or Madam,

I am writing in response to your call for public commentary dated December 6th, 2021. I am a former Franchisee of the now defunct Dental Fix Rx Franchise. Unfortunately, we were negatively affected by many of the behaviors that your group seeks to address. In late 2017 I organized a group of Franchisees as an attempt to fight back and return our lives to normalcy. To date, we have had success in obtaining regulatory settlement orders in both Virginia¹, and Washington State² through our combined efforts and additional information obtained during discovery in my personal legal action. The Washington State Action is notable, because it found that actual fraud had occurred.

While our efforts are not over, and we plan on renewing our push for regulatory action in the wake of the Washington Order, this call for public commentary is very welcomed and timely in nature. This request speaks to the core issue of why we were unable to obtain rescission after the fraud was uncovered. It also speaks to why the Franchisor and their Legal Counsel feel emboldened enough to continue, after these rulings, to sue victims of this scheme who simply try to walk away and restart their lives.

The Proposed Statement of Policy allows Accountability to be a Two-Way Street

Throughout the legal process I have been involved with, it has become very apparent that the base franchise agreements are indeed weaponized against Franchisees. The Questionnaires and Acknowledgements that are being discussed are one of the primary means that unscrupulous Franchisors use to evade being held liable for whatever misrepresentation that was made. They are used to essentially have the prospective Franchisee put in writing that they weren’t deceived and that no inappropriate comments were made, prior to finding out that they were deceived, or that a comment was indeed inappropriate! These documents are then used in various legal proceedings against the Franchisee in order to beat back fraud allegation; or presented to regulatory agencies with oversight, after a complaint has been made, in order to vindicate the illicit acts. Having been on the receiving end of a weaponized

¹ SEC-2018-00041, Settlement Order, Commonwealth of Virginia State Corporation Commission, Division of Securities and Retail Franchising, November 20, 2019, <https://scc.virginia.gov/docketsearch/DOCS/4jw901!.PDF>

² S-19-2776-20-CO01, Consent Order, Washington State Department of Financial Institutions, Securities Division, June 3, 2021. <https://dfi.wa.gov/documents/securities-orders/S-19-2776-20-CO01.pdf>

Questionnaire and Acknowledgement, I can accurately state that they are nothing more than Legal Seal Clubs used to keep the Franchisees at bay.

The combined impact of Questionnaires and Acknowledgements in the franchise purchase process presents an ill-fated scenario for franchising, particularly amongst emerging brands, that the only winning move for prospective Franchisee is not to play. If anything, our experience has shown that even in cases of outright fraud, and combined with regulatory orders that validate that, it is still impossible to prevail civilly, and even attempting to obtain rescission will likely only result in further financial loss for the Franchisee in the form of needing to pay judgements to the Franchisor as well as their Legal Fees incurred to sue them.

The proposed Statement of Policy would level the playing field from the beginning in a straightforward manner and allow Franchisees to be able to prevail in the legal process in a way that is fair to all parties involved. Essentially, if a Franchisee wants to allege fraud, they will get their day in court, with the case being heard on the facts alone, not documentation that was clearly put in place to exculpate misrepresentations. What this language does not do, is it does not remove the Franchisee's burden of proving reliance on, or the materiality of, whatever statement was made. I believe this important distinction that will help temper any excessive or unjustified claims against Franchisors that could come in as a result.

The Current Landscape is inhospitable to Franchisees

As I discussed this exact topic in a panel with the Federal Trade Commission in November of 2020, I stated plainly that by the time Franchisees become aware that there was misconduct with the sales process, it is typically too late. The effects that misrepresentations cause can be slow to surface, meanwhile they have caused missed expectations with the Franchisee, its employees, and their family, even with the best due diligence being performed. This usually ends with a scenario where the Franchisee is broke, unable to continue, and needing a quick exit, most will turn to Bankruptcy.

In the rare case that a Franchisee has the means to fight back, the problem then becomes funding a legal defense that can easily go into the hundreds of thousands of dollars, which is out of reach for many. I would argue that there exists Attorneys willing to take these types of cases on contingency, however that is no longer a viable option since we have recently seen that these Questionnaire and Acknowledgements defeat actual, legitimate, claims of Fraud, meaning, a contingency based representation would only serve to delay the inevitable for the Franchisee.

For the 13 Registration States, Franchisees with issues may submit complaints to the relative agencies. This is the most viable and productive option for Franchisees currently. These complaints are also a long shot for the impacted Franchisee and may take up to two years, if not more to resolve. Just as with civil litigation, the expectation is that the Franchisee continues to operate under the influence of the Franchisor during this time. The other issue is the recovery via this route. State rescission orders also may be limited in scope, and not able to provide full rescission; not to mention provisions limiting the Franchisee's speech, non-compete clauses, or limit other recovery options for the Franchisee. Keeping in mind, that this is only applicable if the State Regulators have decided to pursue the complaint, which we have+ also learned, is not consistent from state to state. The other 37 States must rely on the FTC to

enforce regulations, in spite of the fact that they have historically focused their enforcement powers on other areas of industry they regulate

Furthermore, if you have obtained a loan to start your business, the bank is certainly going to want its money back and continue to be repaid during this time, regardless of what happened between you and the franchise. If you close your business prior to paying off the loan, your loan is likely in default and can be accelerated by the bank. If this loan is backed by the SBA, that also means that Taxpayers will end up reimbursing the bank for the losses and then send the U.S. Treasury to accept pennies on the dollar in the ensuing bankruptcy proceedings. It is also my belief that when this happens, in the case that the Taxpayer coffers are diminished due to a partially or wholly uncollectible bankruptcy action resulting from this behavior, that the Government itself may have become a victim of Franchise Fraud.

The other side of this story is where the Franchisee continues in business, unable to thrive in a system that does not work for them. This creates an environment where Franchisees are afraid to speak up without fear of reprisal, fully aware that the Franchisors will terminate the agreement without hesitancy, and pursue for legal damages after the fact. This creates an industry where no one will warn prospects about the shortcomings of the system in the due diligence process, because they themselves are fearful of the Franchisor finding out they spoke negatively about them, and again, using contractual means to enforce this.

The reality of this situation is that it creates a nightmare scenario where the Franchisor can operate more as an extortion racket than an actual franchise, since it is fact that at least one unethical Franchisor and their legal team can and will:

- Cease Providing contractually called for Training to the Franchisees and their New Hires.³
- Cease Producing Disclosure Documents and Sales of New Units, killing the brand's viability.⁴
- Place in front of the Franchisee an Addendum to the Franchise Agreement to sign them over to the Franchisor's latest venture, that actively competes against existing Franchisees in their own territory, with a strong release for fraud, or stay behind in an abandoned system.⁵
- Continue to sue those who merely want to walk away and move on with life, even after being found liable for fraud by a regulatory authority.⁶
- Pursue Criminal Contempt Charges against Franchisees who don't pay their judgement for the court awarded Legal Fees.⁷

This is what it looks like when accountability is a one-way street. This is what is currently not only possible, but actually happening in franchising realm as we speak.

³ **Chris Canada Deposition**, Dental Fix Rx, LLC vs. Smile 17, LLC et al, Florida Southern District Court, 0:20-CV-62098, Docket Entry #50, Page 20, Entered on April 2, 2021.

⁴ **Eric Masson Trial Testimony**, Dental Fix Rx, LLC, vs Practiceworks, LLC, et al, Florida Southern District Court, 0:17-CV-62218, Docket Entry #156, Page 63, Trial Date March 29, 2021

⁵ **Addendum to Franchise Agreement**, Dental Fix Rx, LLC vs. Smile 17, LLC et al, Florida Southern District Court, 0:20-CV-62098, Docket Entry #50, Page 78, Entered on April 2, 2021

⁶ **Letter to Eric Masson**, Dental Fix Rx, LLC vs Global Dentistry Solutions, LLC, Broward County Civil Court, CACE21012982, Initial Complaint , Page 153, Entered June 29th, 2021

⁷ **Motion for Order to Show Cause why Defendant should not be held in Criminal Contempt of Court**, Dental Fix Rx, LLC vs ART Services, LLC, Broward County Civil Court, CACE17020450, Entered on July 25th, 2019.

Do the Right Thing

I will be the first to point out that the franchising experience I've had is atypical, and I certainly recognize that not all Franchisors capitalize on these behaviors, nor do I want to paint the industry with a broad brush. In truth, I would not hesitate to purchase another franchise again.

The tough reality is that current laws and regulations provide for an environment that is perilous for Franchisees. Now that this issue has been brought to the forefront of franchising issues, it is important we address it. This letter does not even scratch surface on the true human cost of the impacted Franchisees being unable to defend against this behavior, from numerous bankruptcies, ruined college plans, retirements that are now deemed impossible, broken families, the list goes on.

The phrase "The standard you walk past is the standard you accept" is applicable in this case. I am glad to see a group such as NASAA willing to not walk past this lapse in franchising and is willing to help restore integrity in the system.

I would like to end with a quote that appeared in a Franchise Times Interview in October of 2015, in which David Lopez, Founder and CEO of Dental Fix Rx, is repeating advice he received from his Attorney, whose firm he used to sue me in order to extract a \$97,000 judgement⁸, notable Industry Legal Expert and Franchisee Rights advocate Robert Zarco:

*"You know the attorney Robert Zarco, who represents only Franchisees, but he also represents me and he represents any company I'm involved with. I call him up, and he says, 'David, do the right thing.' At the end of the day, you have to live with yourself."*⁹

I think everyone should take Robert Zarco's advice when it comes to these types of issues and do the right thing. Adopting the proposed policy is exactly that.

Very Respectfully,

Brandon Moore

⁸ Final Judgement, Dental Fix Rx, LLC vs. Practiceworks, LLC et al, Florida Southern District Court, 0:17-CV-62218, Docket Entry #148, Entered on May 14th, 2021

⁹ Dental Fix CEO Learns his Lessons one sip at a time, Interview with David Lopez, Franchise Times, https://www.franchisetimes.com/article_archive/dental-fix-ceo-learns-lessons-one-sip-at-a-time/article_5bc1298c-aff2-5807-936c-274fe469df7d.html, October 28, 2015