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**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION**

IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Franchise Investment Protection Act of
Washington by:

Conner and Associates, LLC d.b.a.
Franchise Marketing Systems;
Christopher James Conner a.k.a. Chris Conner;
RedRhino Group, Inc. a.k.a. RedRhino, Inc.;
and Michael Kenealy,

Respondents

Order No. S-16-2021-19-CO01

CONSENT ORDER AND ORDER
TO CEASE AND DESIST
AS TO
CONNER AND ASSOCIATES, LLC
AND
CHRISTOPHER JAMES CONNER

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On May 10, 2019, the Securities Administrator of the Securities Division of the Department of Financial Institutions (“Securities Division”) issued a Statement of Charges and Notice of Intent To Enter Order To Cease and Desist (“Statement of Charges”), Order Number S-16-2021-19-SC01, against Respondents Conner and Associates, LLC d.b.a. Franchise Marketing Systems; Christopher James Conner a.k.a. Chris Conner; RedRhino Group, Inc. a.k.a. RedRhino, Inc. and Michael Kenealy. Pursuant to the Franchise Investment Protection Act of Washington, RCW 19.100, the Securities Division and Conner and Associates, LLC and Christopher J. Conner do hereby enter into this Consent Order in settlement of the matters alleged herein. Respondents admit to the Findings of Fact and Conclusions of Law as stated below.

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TENTATIVE FINDINGS OF FACT

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Respondents

1. Conner and Associates, LLC d.b.a. Franchise Marketing Systems (“FMS”) is a Georgia limited liability company formed on May 28, 2009 with its principal place of business in Alpharetta, Georgia. FMS is a marketing and consulting firm that assists franchisors with marketing, advertising, and selling franchises.

1 2. Christopher James Conner a.k.a. Chris Conner (“Conner”), a Georgia resident, is the President
2 and founder of FMS.

3 3. The RedRhino Group, Inc. a.k.a. Redrhino, Inc. (“RedRhino”) is a California corporation
4 that was in the business of offering RedRhino franchises to persons wishing to sell epoxy installation and
5 flooring products to commercial and retail customers. RedRhino’s principal place of business is in Los
6 Angeles, California.

7 4. Michael Kenealy is the President and CEO of The RedRhino Group, Inc. and a California
8 resident.

9 **Overview**

10 5. Respondents Conner and FMS, in their role as a franchise marketing and consulting firm,
11 provided Respondents RedRhino and Kenealy assistance in offering the RedRhino franchises in Washington
12 State and making a sale of a RedRhino franchise in Washington State. Respondents Conner and FMS, in
13 providing this assistance, were aware of the Washington franchise and franchise broker registration
14 requirements as they had either been involved with other franchise filings or had filed a franchise broker
15 application with the Securities Administrator. Respondents Conner and FMS assisted RedRhino with making
16 a sale of a RedRhino franchise in Washington after receiving notice from the state of California that Conner,
17 FMS, RedRhino, and Kenealy were out of compliance with its state Franchise Act, which is substantially
18 similar to that of Washington.

19 **Respondents Conner and Franchise Marketing Systems’ Regulatory Actions**

20 California

21 6. On December 1, 2014, the California Department of Business Oversight (“DBO”) issued to
22 Conner and FMS a “Notice and Acknowledgment of Receipt of Citation and Copies of California
23 Corporations Code Sections 31402, 31406 and 31408 (“The Notice”).” The Notice apprised Conner and FMS
of alleged violations of the California Franchise Investment Law in which the DBO alleged that FMS and

1 Conner offered and sold unregistered and non-exempt RedRhino, Inc. franchises. The DBO also charged FMS
2 and Conner with misrepresenting or omitting material facts in the offer and sale of a RedRhino, Inc. franchise.
3 Conner did not request a hearing regarding the allegations. Conner acknowledged the receipt of the Citation
4 and paid \$10,000 in administrative fees and penalties. The Citation became a final order on March 2, 2015.

5 7. On June 17, 2015, the DBO issued a second Citation against Christopher Conner and Conner
6 and Associates, LLC d.b.a. Franchise Marketing Systems in which the DBO alleged that Conner, FMS and
7 others had had violated the California Franchise Investment law by willfully making an untrue statement of a
8 material fact in a franchise application filed with the California DBO Commissioner, omitting to state a
9 material fact which is required to be stated in an application with the Commissioner or failing to notify the
10 Commissioner of any material change in an application. The DBO ordered Conner and FMS to desist and
11 refrain from further violations of these prohibitions.

12 8. On March 8, 2016, Conner and FMS settled the second Citation and entered into a Stipulation
13 of Citation with the DBO in which Conner and FMS admitted to violations of the California Franchise
14 Investment Law; agreed to not offer or sell franchises, or assist in the offer or sell of franchises, in the state
15 of California until January 1, 2021; agreed to have their employees attend franchise law training courses;
16 agreed to pay investigation and attorney costs of \$10,000; and pay an administrative fine of \$15,000.

17 Maryland

18 9. On November 4, 2015, Securities Division of the Office of the Attorney General of Maryland
19 issued an Order to Show Cause (“Show Cause”) against RedRhino, Kenealy and Conner to show cause why
20 a final order should not be entered ordering them to permanently cease and desist from violating the anti-
21 fraud, registration, and disclosure provisions of the Maryland Franchise Law.

22 10. The Show Cause identified Conner as the president of Franchise Marketing Systems, a
23 franchise consulting firm or franchise broker that, for a commission, offers and sells franchises. Connor is
identified as “Franchise Director” of Red Rhino.

1 11. In the Show Cause, Conner was alleged to have solicited individuals, including at least one
2 Maryland resident, to enter into Red Rhino Management Agreements and that he had sent one franchise
3 prospect a document called "Franchise Assumptions" that included a representation that franchisees could
4 expect a return on their investment of between 137% in the first year, to 983% in the fifth year. It was alleged
5 that the Respondents had made such earnings claims that had not been included in the Franchise Disclosure
6 Document.

7 12. On April 5, 2016, Conner entered into a consent order with the Maryland Office of the Attorney
8 General in which Conner was ordered and consented to: immediately and permanently cease and desist from
9 the offer and sale of franchises in violation of the Maryland Franchise Law; attend a remedial education
10 program acceptable to the Maryland Commissioner consisting of at least 8 hours of instruction regarding the
11 legal requirements for offering and selling franchises; and jointly and severally, pay the "Office of the
12 Attorney General of Maryland" a civil monetary penalty of Seven Thousand Five Hundred Dollars
13 (\$7,500.00).

14 **Franchise Registration Status**

15 13. RedRhino Group, Inc. is not currently registered to sell franchises in the state of Washington
16 and has not previously been so registered.

17 **Nature of the Conduct**

18 14. From at least 2014 to present, Respondents FMS and Conner have offered to provide
19 franchisors with marketing and sales services through its websites at www.fmsfranchise.com and
20 www.franchisemarketingsystems.com. On its website, Respondents FMS and Conner have made the
21 following claims: "Franchise Marketing Systems offers a full service franchise development model including
22 the marketing and sales of your franchise."..."Franchise Marketing Systems will sell your franchise for
23 you."..."FMS has spent years in the franchise and license industry, and we understand how to market
franchises. We have developed and defined a specific marketing model for recruiting qualified franchisees

1 for both new and existing franchisors.” ... “Franchise Marketing Systems will deliver results through cost-
2 effective and focused sales and franchise qualification processes and proven third party franchise sales
3 resources. Franchise Marketing Systems has unique and specialized sales and marketing models used for
4 selling and marketing franchise opportunities.” FMS further states that “The FMS sales team will manage
5 your franchise sales at a fraction of the cost of an in-house sales organization.”

6 Offer and Sale of Red Rhino Franchise

7 15. From 2014 to 2015, Respondents Conner, FMS, Kenealy and RedRhino communicated with
8 a Washington resident and his business partners (hereinafter referred to as the “Franchisees”) regarding the
9 offer and sale of a RedRhino franchise. Respondents Conner and FMS communicated with the Franchisees
10 primarily by email and/or telephone. Conner led prospective franchisees to believe he was employed by
11 RedRhino through the use of a RedRhino email address, connerc@redrhinoinc.com. Conner was not a
12 RedRhino employee. Conner used the RedRhino email address to communicate with the Washington
13 Franchisees. Conner identified himself as the Franchise Director of RedRhino in emails with Franchisees.

14 16. Respondents Conner, FMS, Kenealy and RedRhino provided the Franchisees with a
15 RedRhino Franchise Disclosure Document dated July 4, 2014.

16 17. In the spring of 2015, RedRhino offered and granted the Franchisees the right to operate a
17 RedRhino commercial and residential epoxy sales and installation business. RedRhino granted the
18 Franchisees the right to use the RedRhino name and marks. RedRhino agreed to provide the Franchisees
19 with the use of the RedRhino operations manual and trade secrets. RedRhino agreed to provide the
20 Franchisees with an initial training program; onsite guidance and assistance; advertising assistance; and
21 guidance on the purchase of hardware and software programs. RedRhino required the Franchisees to pay an
22 initial franchise fee of \$17,500 and an 8% monthly royalty fee on gross revenues.

1 18. The Franchisees purchased a RedRhino franchise based in part on representations and
2 information provided by the Respondents Conner and FMS, who expected to receive a commission from the
3 sale.

4 RCW 19.100.170 Violations

5 19. Respondent RedRhino was required by the Franchise Act to provide the Franchisees a
6 franchise disclosure document. Respondent RedRhino was also required by the Franchise rule, WAC 460-
7 80, (“the Rule”), and specifically WAC 460-80-315, to provide material information about the franchise in
8 the form of mandatory enumerated disclosures in the franchise disclosure document. Respondents FMS,
9 Conner, RedRhino, and Kenealy provided the Franchisees with a franchise disclosure document that failed to
10 disclose all of the material information required by the Rule. Examples of Respondents FMS, Conner,
11 RedRhino, and Kenealy’s failure to disclose material information in the franchise disclosure document are as
12 follows:

13 20. Respondents FMS, Conner, RedRhino, and Kenealy failed to disclose, in the franchise
14 disclosure document, material facts to the Franchisees about the offer of the RedRhino franchise including
15 information regarding Kenealy’s personal bankruptcy. While the Respondents disclosed the fact that Kenealy
16 filed for bankruptcy in 2004, they failed to provide the Franchisees with other additional required information
17 that would enable the Franchise to locate, review and evaluate the nature and extent of the bankruptcy.

18 21. Respondents FMS, Conner, RedRhino, and Kenealy failed to disclose, in the franchise
19 disclosure document, material information to the Franchisees such as required litigation information like the
20 California DBO’s action. This failure inhibited the Franchisees’ ability to do additional due diligence on
21 administrative actions against the Respondents.

22 22. Respondents FMS, Conner, RedRhino, and Kenealy failed to disclose, in the franchise
23 disclosure document, material information to the Franchisees such as the prior business experience for

1 Conner, who as the RedRhino Franchise Director, had responsibilities relating to the sale of franchises. This
2 failure inhibited the Franchisees' ability to do additional due diligence on the business experience of Conner.

3 23. Respondents FMS, Conner, RedRhino, and Kenealy failed to disclose, in the franchise
4 disclosure document, material information to the Franchisees such as the principal business addresses and
5 telephone numbers of FMS and Conner, who acted as franchise sellers on behalf of RedRhino. This failure
6 inhibited the Franchisees' ability to do additional due diligence on FMS and Conner.

7 Other FMS Franchise Selling Arrangements

8 24. In or about 2015, Respondents Conner and FMS provided a Washington resident ("Franchisor
9 A") a business plan in which FMS stated that it would prepare a marketing plan for Franchisor A to attract
10 franchisees to the system, that it would develop the franchise brochure and collateral materials, and oversee
11 Franchisor A's marketing and sales program. FMS stated that it "will be responsible for the qualification,
12 follow-up, and sale of franchises."

13 25. FMS listed Franchisor A's franchise on its website and Conner represented to Franchisor A
14 that he included her franchise on a list of franchises for sale that he handed out at trade shows.

15 26. FMS was to charge a commission on the sale of each franchise it sold for Franchisor A.

16 27. FMS charged Franchisor A approximately \$20,000 over about an eight month period for
17 marketing and other services that included assistance with the preparation of a Franchise Disclosure Document
18 that would enable Franchisor A to franchise its business.

19 28. In 2016, Respondents Conner and FMS entered into an agreement with a Washington resident
20 and business ("Franchisor B") in which they agreed to help the franchisor to market its business. They
21 promised Franchisor B that: FMS will place ads on its behalf on franchise lead generation sites; be responsible
22 for brand presentation to franchise buyers; complete franchise contractual work with buyers; report weekly to
23 franchisor on sales activity and buyer progress; work with its partners to generate referral business and broker

1 franchise sales; and send leads to the client for follow up. FMS charged Franchisor B \$1,000 a month for these
2 services.

3 29. The Respondents Conner and FMS assisted with the preparation of a Franchise Disclosure
4 Document for Franchisor B and negotiated a commission payment of twenty (20) per cent of the initial
5 franchise fee for any sales made.

6 **Franchise Broker Registration Status**

7 30. On May 10, 2013, Christopher J. Conner, as an individual, filed a franchise broker registration
8 application, file number 10005446, with the Securities Division. On May 21, 2013, the Securities Division
9 issued Christopher J. Conner a franchise broker registration permit that expired on December 31, 2013.
10 Conner did not file for renewal of his franchise broker application.

11 31. On August 28, 2015, Conner and Associates, LLC d.b.a. Franchise Marketing Systems filed a
12 franchise broker registration application, file number 10005583, with the Securities Division. Chris Conner
13 was named as a broker and principal of FMS on the application. On November 6, 2015, the Securities Division
14 issued Conner and Associates, LLC a franchise broker registration permit that expired on December 31, 2015.
15 Conner and Associates did not file for renewal of its franchise broker application.

16 32. Respondent Conner has not been registered with the Securities Division as a franchise broker
17 since December 31, 2013 and is not currently registered as franchise broker in the state of Washington.

18 33. Respondent FMS has not been registered with the Securities Division as a franchise broker
19 since December 31, 2015 and is not currently registered as franchise broker in the state of Washington.

20 Based upon the above Tentative Findings of Fact, the following Conclusions of Law are made:

21 **CONCLUSIONS OF LAW**

22 1. The offer or sale of the franchises as described above constitutes the offer or sale of a
23 franchise as defined in RCW 19.100.010(6), RCW 19.100.010(12), and RCW 19.100.010(17).

1 2. Respondents FMS and Conner each offered franchises in violation of RCW 19.100.170
2 because each failed to fully disclose all material facts in the offer and sale of the RedRhino franchise
3 opportunity.

4 3. The conduct of Respondents FMS and Conner, as described in Paragraph 5 and Paragraphs
5 14 through 18 of the Tentative Findings of Fact above constitutes the engagement, directly or indirectly, as a
6 franchise broker in the business of the offer or sale of franchises as defined in RCW 19.100.010(7).

7 4. Respondent FMS offered franchises in violation of RCW 19.100.140 because it was not
8 registered as a franchise broker with the state of Washington at the time of the offer and/or sale of a
9 franchise to a Washington resident.

10 5. Respondent Conner offered franchises in violation of RCW 19.100.140 because he was not
11 registered as a franchise broker with the state of Washington at the time of the offer and/or sale of a
12 franchise to a Washington resident.

13 **CONSENT ORDER**

14 Based upon the foregoing and finding it in the public interest:

15 IT IS AGREED AND ORDERED that Respondents Conner and Associates, LLC and Christopher J.
16 Conner, their affiliates, agents and employees shall each cease and desist from offering or selling franchises
17 in violation of RCW 19.100.170, the anti-fraud section of the FIPA of the state of Washington.

18 IT IS FURTHER AGREED AND ORDERED that Respondents Conner and Associates, LLC and
19 Christopher J. Conner, their affiliates, agents and employees shall each cease and desist from any violation of
20 RCW 19.100.140, the franchise broker registration section of the FIPA of the state of Washington.

21 IT IS FURTHER AGREED AND ORDERED that Respondents Conner and Associates, LLC and
22 Christopher J. Conner, shall be liable for and shall pay investigative costs of \$12,000 prior to the entry of this
23 Consent Order.

1 Respondents Conner and Associates, LLC and Christopher J. Conner, agree that they shall not offer
2 or sell franchises or assist in the offer or sell of franchises in the state of Washington until August 1, 2024 and
3 that Respondents shall take reasonable steps to provide notice to their clients, affiliates, agents and employees
4 of these restrictions.

5 IT IS FURTHER AGREED that the Securities Division has jurisdiction to enter this Consent Order.

6 IT IS FURTHER AGREED that Respondents Conner and Associates, LLC and Christopher J. Conner,
7 enter into this Consent Order freely and voluntarily and with a full understanding of its terms and significance.
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9 IT IS FURTHER AGREED that in consideration of the foregoing, Respondents Conner and
10 Associates, LLC and Christopher J. Conner waive their right to a hearing and to judicial review of this matter.

11 Signed this 16th day of July, 2019.

12 Signed by:
13 Conner and Associates, LLC

Approved as to form by:

14 By /s/
15 Christopher J. Conner
16 President and Managing Member

/s/
Matthew Kreutzer, Attorney for Respondent
CA Bar #237768, NV Bar #8834

17 Signed by:
18 /s/
19 Christopher J. Conner, Individually

20 SIGNED and ENTERED this 26th day of July, 2019.



21
22 WILLIAM M. BEATTY
23 Securities Administrator

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SUZANNE SARASON
Chief of Enforcement

/s/

MARTIN CORDELL
Financial Legal Examiner



JACK MCCLELLAN
Financial Legal Examiner Supervisor