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8 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION

9 OF THE STATE OF CALIFORNIA

10 In the Matter of:)
11)
12 THE COMMISSIONER OF FINANCIAL)
PROTECTION AND INNOVATION,)
13)
Complainant,)
14 v.)
15 LA MICHOACANA PLUS ICE CREAM)
PARLOR CORP.)
16)
Respondent.)
17)

CITATION INCLUDING:

- (1) DESIST AND REFRAIN ORDER;
- (2) ASSESSMENT OF ADMINISTRATIVE PENALTIES.
- (3) CLAIM FOR ANCILLARY RELIEF (Corp. Code §§ 31402, 31406 and 31408)

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19 The Complainant, the Commissioner of Financial Protection and Innovation
20 (Commissioner) finds the following:

21 **I.**

22 **Introduction**

- 23 1. La Michoacana Plus Ice Cream Parlor Corp. (LMP) is a California Corporation
24 located at 142 W. Olive Avenue, Porterville, California 93257.
- 25 2. At all relevant times, LMP offered Mexican ice cream and popsicle franchises to
26 California investors.
- 27 3. The Commissioner is the head of the Department of Financial Protection and
28 Innovation (Department) and is responsible for administering and enforcing the California Franchise

1 Investment Law (FIL) (Corp. Code, § 31000 et seq.),¹ and registering the offer and sale of franchises
2 in California.

3 4. Under section 31110, a franchisor must first register a franchise with the Department
4 before it offers or sells franchises in California, unless it is otherwise exempt. Pursuant to section
5 31119, it is unlawful to sell any franchise without first providing a prospective franchisee with an
6 FDD at least fourteen (14) days prior to the execution of a franchise agreement or receipt of
7 consideration. Section 31201 prohibits willful misrepresentations and omissions to prospective
8 franchisees.

9 5. The disclosure requirements of the FIL are intended to provide prospective
10 franchisees with material facts upon which to make an informed decision to purchase a franchise, as
11 stated in section 31001.

12 **II.**

13 **Statement of Facts**

14 6. LMP offered and sold at least fifty-six (56) franchises to California investors from
15 December 2018 through November 2024.

16 7. LMP executed fifty-six (56) franchise agreements with at least thirty California
17 investors from December 2018 through November 2024, without providing the investors with an
18 FDD prior to the execution date.

19 8. LMP accepted initial franchise fees of between \$12,500 and \$45,000 via wire
20 transfer from December 2018 to November 2024 from at least fifty-six (56) investors.

21 9. At all relevant times, LMP did not register their franchise offerings with the
22 Commissioner.

23 10. LMP failed to provide at least one California investor with an FDD 14 days prior to
24 execution of a binding franchise agreement.

25 **III.**

26 **Citations and Desist and Refrain Orders**

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¹ All further statutory references are to the Corporations Code unless otherwise indicated.

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- 11. California Corporations Code section 31110 states:

On and after April 15, 1971, it shall be unlawful for any person to offer or sell any franchise in this state unless the offer of the franchise has been registered under this part or exempted under Chapter 1 (commencing with Section 31100) of this part.

- 12. California Corporations Code section 31119(a) states:

(a) It is unlawful to sell any franchise in this state that is subject to registration under this law without first providing to the prospective franchisee, at least 14 days prior to the execution by the prospective franchisee of any binding franchise or other agreement, or at least 14 days prior to the receipt of any consideration, whichever occurs first, a copy of the franchise disclosure document, together with a copy of all proposed agreements relating to the sale of the franchise.

- 13. California Corporations Code section 31406 states:

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

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

(c) If within 60 days from the receipt of the citation, the person cited fails to notify the commissioner that the person intends to request a hearing as 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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14. California Corporations Code section 31408 states:

(a) If the commissioner determines it is in the public interest, the commissioner may include in any administrative action brought under this division, including a stop order, a claim for ancillary relief, including, but not limited to, a claim for rescission, restitution or disgorgement or damages on behalf of the persons injured by the act or practice constituting the subject matter of the action, and the administrative law judge shall have jurisdiction to award additional relief. The person affected may be required to attend remedial education, as directed by the commissioner.

(b) In an administrative action brought under this part the commissioner is entitled to recover costs, which in the discretion of the administrative law judge may include any amount representing reasonable attorney’s fees and investigative expenses for the services rendered, for deposit into the State Corporations Fund for the use of the Department of Financial Protection and Innovation.

15. Based on the foregoing findings, the Commissioner finds that LMP sold at least one franchise in this state that was subject to registration under this law without first registering its franchise business with the Commissioner in violation of Corporations Code section 31110.

16. Pursuant to California Corporations Code section 31406, LMP is hereby cited and ordered to desist and refrain from the further sale of franchises in this state that are subject to registration under this law without first registering with the Commissioner.

17. Based on the foregoing findings, the Commissioner finds that LMP sold at least two franchises in this state that was subject to registration under this law without first providing to the prospective franchisee, at least 14 days prior to the execution by the prospective franchisee of any binding franchise or other agreement, or at least 14 days prior to the receipt of any consideration, whichever occurs first, a copy of the franchise disclosure document, together with a copy of all proposed agreements relating to the sale of the franchise, in violation of Corporations Code section 31119(a).

18. Pursuant to California Corporations Code section 31406, LMP is hereby cited and ordered to desist and refrain from the further sale of franchises in this state that are subject to registration under this law without first providing to the prospective franchisee, at least 14 days

1 prior to the execution by the prospective franchisee of any binding franchise or other agreement, or
2 at least 14 days prior to the receipt of any consideration, whichever occurs first, a copy of the
3 franchise disclosure document, together with a copy of all proposed agreements relating to the sale
4 of the franchise.

5 19. Pursuant to California Corporations Code section 31406, LMP is hereby cited and
6 ordered to desist and refrain from violating any provision of this division or any rule or order
7 promulgated pursuant to this division, including but not limited to the Consent Order.

8 **III.**

9 **Administrative Penalties**

10 20. Pursuant to California Corporations Code section 31406, LMP is hereby assessed and
11 ordered to pay an administrative penalty of \$2,500.00 per violation of California Corporations Code
12 sections 31110 and 31119, for each of the 112 violations of Franchise Investment Law as stated
13 above, totaling \$280,000.00.

14 21. Pursuant to California Corporations Code section 31406, the total administrative
15 penalty shall be due within 60 days of receipt of the Citations above and shall be made payable to
16 the Commissioner in the form of a cashier's check or Automated Clearing House deposit to the
17 Department of Financial Protection and Innovation and transmitted to the attention of Accounting –
18 Litigation, at the Department of Financial Protection and Innovation, 651 Bannan Street, Suite 300,
19 Sacramento, California 95811, with notice of each concurrently sent to Safa Sajadi via e-mail at:
20 Safa.Sajadi@dfpi.ca.gov.

21 **IV.**

22 **Order for Ancillary Relief**

23 22. **Disgorgement.** The Commissioner, pursuant to California Corporations Code
24 section 31408, subdivision (a) orders LMP, and all other persons who are in receipt of, and who
25 may receive ill-gotten funds (including but not limited to rebates), to disgorge these ill-gotten funds
26 pro-rata, to current and former franchisees who have not been made whole.

27 23. **Rescission Offer.** The Commissioner, pursuant to California Corporations Code
28 section 31408, subdivision (a), orders LMP, within 30 days of the date of this order, to submit to the

1 Commissioner for review, comment, and approval proposed offers to rescind California franchise
2 agreements (Rescission Offers). The Rescission Offers must include an offer to financially place
3 the franchisees in the position they were in before they entered into the franchise agreements.

4 24. **Service of Rescission Offer**. The Commissioner, pursuant to California
5 Corporations Code section 31408, subdivision (a), orders LMP, within 30 days of the
6 Commissioner’s approval of the Rescission Offers, to serve each franchisee, via mail, return receipt
7 requested, and email, with a copy of the approved Rescission Offers, together with a copy of this
8 Citation. No other documents shall be included in the mailing absent the Commissioner’s approval.

9 25. **Proof of Service**. The Commissioner, pursuant to California Corporations Code
10 section 31408, subdivision (a), orders LMP, jointly and severally, within 30 days of the
11 Commissioner’s approval of the Rescission Offers to submit to the Commissioner, in a form
12 acceptable to the Commissioner, proof that they have served the Rescission Offer and Citations on
13 all franchisees, and a report that contains the name and contact information (including address,
14 telephone number, and email address) of each franchisee served with the Rescission Offer and
15 Citations.

16 26. **Franchisee Response Report**. The Commissioner, pursuant to California
17 Corporations Code section 31408, subdivision (a), orders LMP, jointly and severally, within 75
18 days of the Commissioner’s approval of the Rescission Offers, to submit to the Commissioner
19 satisfactory documentation evidencing each franchisees’ response to the Rescission Offers. The
20 documentation of each response shall be sent to the attention of Safa Sajadi, Senior Counsel at
21 Safa.Sajadi@dfpi.ca.gov.

22 27. **Refunds**. The Commissioner, pursuant to California Corporations Code section
23 31408, subdivision (a), orders LMP (jointly and severally) to provide rescission and refunds to all
24 franchisees who request it within 30 days of receiving the request.

25 28. **Refund Report**. The Commissioner, pursuant to California Corporations Code
26 section 31408, subdivision (a), orders LMP to submit to the Commissioner satisfactory
27 documentation evidencing proof of rescission and refund within 30 days of providing such relief to
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1 each franchisee in the Franchisee Class. The refund report shall be sent to the attention of Safa
2 Sakado, Senior Counsel at Safa.Sajadi@dfpi.ca.gov.

3 29. **Attorney’s Fees and Investigative Expenses.** The Commissioner, pursuant to
4 California Corporations Code section 31408, subdivision (b), orders LMP to pay, attorney’s fees
5 and investigative expenses to the Department of Financial Protection and Innovation according to
6 proof.

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

10 Dated: May 11, 2026
11 Sacramento, California

KHALIL MOHSENI
Commissioner of Financial Protection and Innovation

12
13 By _____
14 MARY ANN SMITH
15 Deputy Commissioner
16 Enforcement Division

