

1 MARY ANN SMITH
Deputy Commissioner
2 DOUGLAS M. GOODING
Assistant Chief Counsel
3 MARISA I. URTEAGA-WATKINS (State Bar No. 236398)
Counsel
4 Department of Business Oversight
1515 K Street, Suite 200
5 Sacramento, California 95814
Telephone: (916) 445-9626
6 Facsimile: (916) 445-6985

7 Attorneys for Complainant

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

11 In the Matter of:
12 THE COMMISSIONER OF BUSINESS
OVERSIGHT,
13
14 Complainant,
15 v.
16 RALPH MASSETTI; WILL SHAKESHEFF;
and BIKECAFFE FRANCHISING, INC., doing
17 business as BIKECAFFE FRANCHISING,
18 L.L.C., doing business as
WWW.BIKECAFFE.COM, doing business as
19 BIKECAFFE/MARLEY FRANCHISE, doing
20 business as BIKE CAFFE/MARLEY COFFEE,
doing business as THE FRANCHISE
21 BUILDERS, and doing business as
BIKECAFFE,
22
23 Respondents.

CITATION INCLUDING:

- (1) DESIST AND REFRAIN ORDER PURSUANT TO CORPORATIONS CODE SECTION 31406;
- (2) ASSESSMENT OF ADMINISTRATIVE PENALTIES PURSUANT TO CORPORATIONS CODE SECTION 31406; and
- (3) ORDER FOR ANCILLARY RELIEF AND COSTS PURSUANT TO CORPORATIONS CODE SECTION 31408.

24 Jan Lynn Owen, the Commissioner of Business Oversight (“Commissioner”) of the
25 Department of Business Oversight (“Department”), issues this Citation including Desist and Refrain
26 Order, Assessment of Administrative Penalties and Order for Ancillary Relief and Costs (collectively
27 “Action”) to Ralph Massetti (“Massetti”), Will Shakesheff (“Shakesheff”) and BikeCaffe Franchising,
28 Inc., doing business as BikeCaffe Franchising, L.L.C., doing business as www.bikecaffe.com, doing

1 business as BikeCaffe/Marley Franchise, doing business as BikeCaffe/Marley Coffee, doing business
2 as The Franchise Builders, and doing business as BikeCaffe (collectively “Bike”). This Action is
3 issued to Respondents pursuant to Corporations Code sections 31406 and 31408 for violations of the
4 Franchise Investment Law codified in Corporations Code sections 31000 *et seq.* (“CFIL”).

5 **I.**

6 **STATEMENT OF FACTS**

7 **A. Parties**

8 1. At all relevant times, Bike is comprised of various Colorado State business entities
9 formed in 2009, doing business in California. Bike’s principal place of business is located at 2707
10 W. Mansfield Ave., Englewood, CO, 80110 or 4700 Sterling Drive, Suite E, Boulder, CO, 80301.
11 Bike conducts business by telephone numbers (877) 733-2563 and (720) 371-5444, on the internet at
12 www.bikecaffe.com and by email at Franchise@BikeCaffe.com. Bike is in the business of operating
13 and selling commercial beverage franchises, namely, serving coffee from a bicycle with a console
14 attached to the bicycle.

15 2. At all relevant times, Respondent Massetti is the president and chief executive Officer
16 of Bike, and a representative of Bike. Massetti’s principal place of business is located at 2707 W.
17 Mansfield Ave., Englewood, CO, 80110 or 4700 Sterling Drive, Suite E, Boulder, CO, 80301.
18 Massetti also conducts business by personal meeting, by telephone numbers (877) 733-2563, (866)
19 748-3558 ext. 115 and (720) 371-5444, on the internet at www.bikecaffe.com and
20 www.thefranchisebuilders.com, and by email at Franchise@BikeCaffe.com,
21 ralph@thefranchisebuilders.com, and ralph@bikecaffe.com.

22 3. At all relevant times, Shakesheff is a representative of Bike. Shakesheff represents
23 himself to consumers as the chief franchise operations officer of Bike, as well as the “founder” and
24 “officer” of Bike. Shakesheff conducts business in California by telephone numbers (877) 733-2563,
25 on the internet at www.bikecaffe.com, and by email at will@bikecaffe.com.

26 4. Massetti, Shakesheff, and Bike are herein collectively referred to as “Respondents.”
27 Whenever reference is made herein to “Respondents” doing any act, the allegation shall mean the act
28 of each respondent acting individually, jointly and severally.

1 **B. Registrations with the Department**

2 5. On September 6, 2011, Respondents filed an initial franchise registration application
3 (“First Registration”) with the Department pursuant to Corporations Code section 31111. A Uniform
4 Franchise Disclosure Document (“FDD”) and required accompanying documents were also
5 submitted to the Commissioner. On November 10, 2011, the Department issued an Order
6 Accelerating Effectiveness of Registration Effective September 6, 2011 to April 20, 2012, thereby
7 approving the First Registration. Therefore, Bike was registered to offer franchises from September
8 6, 2011 to April 20, 2012.

9 6. On August 14, 2012, Respondents filed a renewal franchise registration application
10 (“Second Registration”) with the Department pursuant to Corporations Code section 31111. An FDD
11 and required accompanying documents were submitted to the Commissioner. On August 21, 2012,
12 the Department issued an Order Accelerating Effectiveness of Registration Effective August 14, 2012
13 to April 22, 2013, thereby approving the Second Registration. Bike was again registered to offer
14 franchises from August 14, 2012 to April 22, 2013.

15 7. Bike was not registered to offer franchises from April 21, 2012 to August 13, 2012,
16 and April 23, 2013 to the present. From April 23, 2013 to present, Bike remains unregistered to offer
17 franchises with the Department.

18 8. Respondents, in both the First Registration and the Second Registration, disclosed to
19 the Department in Item 2 “Business Experience” of the FDD that Massetti was the chief executive
20 officer and chief operating officer of Bike since September 2009. Respondents made no other
21 disclosures in the FDD regarding any other officer, directors, trustees, general partners, or any other
22 individuals who will have management responsibility relating to the sale or operation of franchises
23 offered by Bike.

24 9. In the First Registration, Bike set forth in Item 5 of the Bike FDD that the franchise
25 fee for a Bike franchise is the following:

26 “The initial franchise fee ‘Initial Franchise Fee’ payable to us for a
27 ‘Solo Rider Franchise,’ is \$33,500.00, a ‘Relay Team Franchise,’ is
28 \$39,000.00 and our ‘Tour de France Franchise’ is \$44,500.00. Your
initial franchise fee includes one Bike and one customer enclosed

1 trailer. If you purchasing [sic] the Relay Team Franchise or the Tour de
2 France Franchise you will be required to purchase additional bikes
3 from us for \$19,500.00 each.”

4 10. In the Second Registration, Bike set forth in Item 5 of the Bike FDD that the
5 franchise fee for a Bike franchise is the following:

6 “You must pay us an ‘initial franchise fee’ in a lump sum when you
7 sign the franchise agreement. The initial franchise fee is \$9,500.00 and
8 allows you to operate one (1) Bike. You may purchase the right to
9 operate additional Bikes for \$1,500.00 per Bike (‘Additional Initial
10 License Fee’) if the purchase is made at the same time as you sign the
11 franchise agreement and \$3,500.00 if you purchase this right after you
12 sign the franchise agreement. You may operate multiple bikes under
13 one (1) franchise agreement but your initial term will remain the same
14 regardless of how many bikes you purchase. You may also enter into a
15 separate franchise agreement for the operation of additional bikes by
16 paying the full initial franchise fee. Initial franchise fees are fully
17 earned by us when paid and are not refundable under any
18 circumstances. Unless otherwise agreed to, by way of example through
19 a Franchise sales promotion or otherwise, all Initial Franchise Fees are
20 uniform. In addition to the Initial Franchise Fee, you must pay
21 \$29,500.00 to Power Pedal Supply for our franchise starter package
22 (‘Franchise Starter Package’) which included one fully equipped,
23 BikeCaffe Bike, a custom branded enclosed cargo trailer, an initial
24 supply of Products and supplied, marketing materials and a uniform
25 package. You are only required to purchase one Franchise Starter
26 Package per franchise agreement that you sign regardless of the number
27 of bikes that you operate. The Franchise Starter Package is not
28 refundable, and is payable when you sign the Franchise Agreement.
Each Bike will be yours to use exclusively while you remain an active
franchisee. Should we or you terminate, or fail to renew your franchise
agreement, you are required to comply with the buy-back requirement
contained in the franchise agreement. Under this requirement, upon
termination or expiration of your BikeCaffe business, you are required
to sell to us within 30 days of ceasing business all Bikes at a
predetermined price depending on the condition of the bike.”

11. On or about September 8, 2011, the Commissioner imposed an impound condition
as a requirement to approve the First Registration. The Department also granted Bike the option to
choose a fee deferral or a guarantee to provide financial assurances for the purpose of approving
the First Registration. Bike selected a fee deferral option to provide financial assurances to
consumers purchasing a Bike franchise. The impound fee deferral was required to be in the FDD

1 of the First Registration. The First Registration contained a fee deferral provision under the “FDD
2 State Agenda Additional Disclosures for the Multi-State Franchise Disclosure Document of
3 BikeCaffe Franchising, Inc. (“Fee Deferral”)” paragraph as follows:

4 “Item 5 and 7 of the Franchise Disclosure Document and the
5 Franchise Agreement are hereby amended to state that the Initial
6 Franchise Fee will be deferred until the Franchisee has received the
initial training and is open for business.”

7 12. At all relevant times, Respondents did not disclose to the Commissioner any
8 franchise offer and sale terms or conditions other than the franchise offer and sale terms or
9 conditions which were set forth in the First Registration and the Second Registration in each
10 respective FDD.

11 **C. Website**

12 13. At all relevant times until at least December 2013, Bike maintained a website located
13 at www.bikecaffe.com. Bike states on the website the following: “A delicious opportunity”; “Ride a
14 bike of your own. Our BikeCaffes are for sale as stand-alone products, or through our franchise
15 network, depending on your location and foodservice experience. Click here (click the “purchase”
16 button) to learn more about the many BikeCaffe purchase options and our excellent financing
17 packages. If you’d like to purchase a BikeCaffe, please complete the short information form below
18 and someone from BikeCaffe will contact you immediately.”

19 14. The website offers Bike franchises and permits anyone who wishes to enter their own
20 contact information for Bike to contact them regarding the purchase of a Bike franchise. Bike also
21 added the following franchise disclaimer on the website:

22 “There are some US States that require registration prior to having any
23 detailed discussions regarding opening new locations. If you are
24 interested in one of these states listed below, we can take your name
25 and contact information, and then notify you when we become
26 registered: Washington, North Dakota, South Dakota, Minnesota,
Wisconsin, Illinois, Indiana, Kentucky, Maine, Rhode Island,
Connecticut, Maryland, Virginia, Georgia, Hawaii, New York.”

27 California was omitted from this list.
28

1 **D. Offer and Sale to Consumers M and A**

2 15. In April 2012, Respondents engaged in the offer and sale of a Bike franchise to
3 California consumers M and A. Respondents provided consumers M and A with a copy of the FDD
4 filed with the Commissioner.

5 16. Also in or about April 2012, Respondents offered consumers M and A the “special
6 promotion price” franchise fee (“Franchise Fee”) of twenty six thousand five hundred dollars
7 (\$26,500.00) per Bike franchise, which included one (1) bicycle with coffee dispensary console
8 (“Bicycle Unit”). This Franchise Fee was discounted from the price set forth in the FDD of the First
9 Registration as a “special promotion” to consumer M and A. Respondents offered this discounted
10 price on the condition that consumers M and A execute a franchise agreement with Respondents for a
11 Bike franchise sometime after April 30, 2012. Consumers M and A simply were offered a Bike
12 franchise which included one (1) Bicycle Unit. Additional Bicycle Units could be purchased for a
13 fixed price per Bicycle Unit. Consumers M and A were not offered a “Solo Rider Franchise,” a
14 “Relay Team Franchise” or a “Tour de France Franchise.” Consumers M and A purchased a total of
15 two (2) Bicycle Units.

16 17. In addition, on or about April 25 to April 27, 2013, Respondents also required
17 consumers M and A to execute a Bike Deposit Agreement (“Agreement”) as part of the Bike
18 franchise purchase. Respondents requested that consumers M and A backdate the Agreement to
19 April 20, 2013. Consumers M and A executed the Agreement accordingly. The terms of the
20 Agreement and the Agreement itself were not in the FDD’s or accompanying documents filed with
21 the Commissioner for public viewing in either the First Registration or the Second Registration. The
22 Agreement terms significantly and materially varied from the terms set for in the First and Second
23 Registrations.

24 18. The Agreement required consumers M and A to give Respondents eighteen thousand
25 five hundred dollars (\$18,500.00) (“Initial Fee”) as a requirement to enter into a franchise agreement
26 for the sale of a Bike franchise. Consumers M and A were also required to give Respondents the
27 Initial Fee to commence production of their Bicycle Unit, pursuant to the Agreement. Further,
28 Respondents promised in the Agreement that if consumers M and A entered into an agreement to

1 purchase a Bike franchise, the Initial Fee would be applied towards another Franchise Fee required to
2 be paid by consumers M and A at the time of entering into a franchise agreement. In addition, the
3 Agreement sets forth a nondisclosure clause which binds consumers M and A from disclosure of any
4 “system information” relating to a Bike franchise. Moreover, the Agreement set forth that if within
5 thirty (30) days of Respondents notifying consumers M and A that their Bicycle Unit is ready for
6 shipment and consumers M and A do not execute a franchise agreement with Respondents,
7 Respondents may keep the Initial Fee. Finally, the Agreement includes a “Health Department
8 Approval Amendment” as follows:

9 “Buyer is purchasing a BikeCaffe/Marley franchise under the
10 assumption that each BikeCaffe will meet all business licensing and
11 health department certification approvals required to operate a
12 BikeCaffe to its fully intended capabilities, including the ability to serve
13 the current BikeCaffe/MarleyCoffee menu items, for each designated
14 county of operation. It is agreed between parties, buyer and BikeCaffe
15 Franchising, Inc. that all monies paid to BikeCaffe by
16 buyers will be refunded in full for each BikeCaffe that cannot be
17 operated to their fullest intended capabilities within each designated
18 county.”

19 19. From about April 26-27, 2012 to May 2, 2012, consumers M and A paid Respondents
20 the Initial Fee of eighteen thousand dollars (\$18,500.00). Specifically, consumer M paid to
21 Respondents nine thousand two hundred fifty dollars (\$9,250.00) by way of Respondents invoice
22 number 20110676. In addition, consumer A paid to Respondents nine thousand two hundred fifty
23 dollars (\$9,250.00).

24 20. From about June 1, 2012 to about June 6, 2012, consumers M and A paid Respondents
25 the Franchise Fee of twenty six thousand five hundred dollars (\$26,500.00). Specifically, consumer
26 M paid to Respondents thirteen thousand two hundred and fifty dollars (\$13,250.00). In addition,
27 consumer A paid Respondents thirteen thousand two hundred and fifty dollars (\$13,250.00).

28 21. After paying the Initial Fee and the Franchise Fee, on or about July 5, 2012,
consumers M and A executed a Bike franchise agreement with Respondents for a Bike franchise.
Respondents never provided a copy of the executed franchise agreement to consumers M and A.

1 22. From about July 5, 2012 to July 17, 2012, consumers M and A paid Respondents an
2 additional eighteen thousand five hundred dollars (\$18,500.00) to Respondents for a second Bicycle
3 Unit, in addition to paying the Initial Fee and the Franchise Fee. Specifically, consumer M paid to
4 Respondents nine thousand two hundred fifty dollars (\$9,250.00). In addition, consumer A paid to
5 Respondents nine thousand two hundred fifty dollars (\$9,250.00).

6 23. In or about September 2012, consumers M and A still had not received their Bicycle
7 Units from Respondents despite paying Respondents sixty three thousand five hundred dollars
8 (\$63,500.00). Consumers M and A, along with Respondents, submitted plans to the Los Angeles
9 County Health Department (“Health Department”) to retain permits for their Bike franchise and
10 Bicycle Unit. On September 26, 2012, the Health Department issued a letter to Shakesheff and
11 consumers M and A notifying them that the Bicycle Unit plans submitted were not approved as over
12 two (2) pages of corrections had to be made to the Bicycle Unit and Bike franchise to meet Health
13 Department legal requirements before a permit would be granted and the Bike franchise would
14 become operational. Respondents did not cure the defects noted by the Health Department to ensure
15 that the Bicycle Unit would be operational and in compliance with Health Department regulations. To
16 date, the Bicycle Units purchased by consumers M and A from Respondents have not been approved
17 for a permit and are not legally approved for operation, in contravention of the Agreement.

18 24. To date, Respondents have not tendered the Bicycle Units to consumers M and A.
19 Consumers M and A have not been able to operate the Bike franchise purchased from Respondents as
20 Respondents have not given consumers M and A any materials, training, accessories for the Bicycle
21 Units or the Bicycle Units. To date, Respondents have not refunded the sixty three thousand five
22 hundred dollars (\$63,500.00) to consumers M and A despite consumers M and A requesting their
23 money back on several occasions.

24 25. From 2012 to 2015, consumers M and A retained an attorney to seek restitution of
25 Initial Fee and the Franchise Fee given to Respondents. Consumers M and A spent an additional four
26 thousand two hundred and thirty seven dollars and fifty cents (\$4237.50) in attorney’s fees in doing
27 so.

28

1 26. From 2012 to 2015, consumers M and A spent a total of one thousand six hundred and
2 six dollars and fifty two cents (\$1,606.52) in additional expenses relating to the purchase of
3 Respondent's Bike franchise.

4 II.

5 VIOLATIONS

6 A. **Unlawful Offer and Sale of Franchise – Violation of Corporations Code Section 31110** 7 **As to Bike.**

8 27. Pursuant to Corporations Code section 31110, it is unlawful for any person to offer or
9 sell any franchise unless the offer of the franchise has been registered with the Department or is
10 exempt. The period of time in which Bike was not registered to offer or sell franchises was April 21,
11 2012 to August 13, 2012, and April 23, 2013 to present. From at least April 23, 2013 to December
12 17, 2013, Bike offered or sold Bike franchises by way of the internet at www.bikecaffe.com. Bike is
13 not exempt from the licensing requirements set forth in the CFIL. Therefore, Bike violated
14 Corporations Code section 31110.

15 B. **Willful Omission and Failure to Notify Commissioner – Violations of Corporations** 16 **Code Sections 31200 and 31123 As to All Respondents.**

17 28. Pursuant to Corporations Code section 31200, it is unlawful to willfully make any
18 untrue statement of a material fact in any application, notice or report filed with the Commissioner, or
19 willfully to omit to state in any such application, notice, or report any material fact which is required
20 to be stated therein, or fail to notify the Commissioner of any material change as required by
21 Corporations Code section 31123. Corporations Code section 31123 requires that a franchisor must
22 promptly notify the Commissioner in writing, by way of an application to amend the registration, of
23 any material change in the information contained in the application as originally submitted, amended
24 or renewed. This filing is known as a "Post-Effective Amendment." Finally, pursuant to
25 Corporations Code section 31123, it is within the Commissioner's authority to determine what is
26 considered a material change with regard to franchise information.

27 29. On April 25 to April 27, 2013, Respondents required consumers M and A to execute
28 the Agreement as part of the Bike franchise negotiation and purchase.

1 30. Neither FDD includes the Agreement or the Agreement terms. The Department has
2 no record of the Agreement being submitted by Respondents in the form of a Post-Effective
3 Amendment or otherwise. Respondents also did not file any exemption notice with the
4 Commissioner pursuant to Corporations Code section 31109.1 or California Code of Regulations,
5 title 10, sections 310.100.2 or 310.100.4 “Negotiated Sales Exemption.” Therefore, Respondents
6 violated Corporations Code sections 31200 and 31123.

7 31. Also, in further violation of Corporations Code sections 31200 and 31123,
8 Respondents did not disclose to the Commissioner that Shakesheff and Dana D. Reineke were
9 officers in Bike. The disclosure by name and position of a franchisor’s directors, trustees, general
10 partners, principal officers, and any other individuals who will have management responsibility
11 relating to the sale or operation of franchises is of material importance to the Commissioner and
12 critical to the review of a registration or renewal application in accordance with the CFIL. Reineke
13 held herself out to consumers as the franchise operations officer, paralegal and as an “officer” of Bike
14 to at least July 2012. Shakesheff held himself out to consumers as representative, chief franchise
15 operations officer, “officer” and “founder” of Bike to at least September 2012.

16 32. However, Respondents did not disclose this in the FDD’s relating to the First
17 Registration and Second Registration, Item 2, as required by FDD Guidelines and the CFIL.
18 Respondents merely disclosed that Massetti was the president and chief executive officer of Bike,
19 despite Reineke and Shakesheff being materially involved in transactions with consumers of Bike
20 franchises. To date, Respondents have not disclosed the positions of Shakesheff and Reineke to the
21 Commissioner. Therefore, Respondents violated Corporations Code sections 31200 and 31123.

22 **C. Fee Deferral Condition of Registration – Violation of Corporations Code Section 31203**
23 **As to All Respondents.**

24 33. In asking for financial assurances from a franchise registration applicant, the
25 Department may impose an impound condition alone or can impose an impound condition, in
26 addition to giving the applicant other options such as a fee deferral or a surety bond, as a requirement
27 to approve a franchise application. (Corp. Code, § 31113.) It is unlawful for any person to violate
28

1 any order of the Commissioner or condition to the effectiveness of the registration of the offer or
2 sale of franchises. (Corp. Code, § 31203.)

3 34. The Commissioner imposed an impound condition as a requirement to approve the
4 First Registration in or about September, 2011. The Department then granted Bike the option to
5 choose a fee deferral or a guarantee to provide financial assurances for the purpose of approving
6 the First Registration. Bike selected a fee deferral option to provide financial assurances to
7 consumers purchasing a Bike franchise. The impound fee deferral was required to be in the FDD
8 of the First Registration. Respondents were required to abide by the fee deferral terms.

9 35. Respondents violated the impound order of the Commissioner issued as a condition
10 to the effectiveness of the First Registration by requiring consumers M and A to pay the Fee and
11 Initial Fee before consumers M and A received training, before receiving the Bicycle Units or
12 being ever able to open for business, all in violation of the Agreement. Consumer M and A paid
13 the Fee and Initial Fee and never received anything. Thus, Respondents violated the
14 Commissioner's order and Corporations Code section 31203.

15 **D. Misrepresentation during Franchise Sale – Violation of Corporations Code Section**
16 **31201 As to All Respondents.**

17 36. Pursuant to Corporations Code section 31201, it is unlawful for any person to offer or
18 sell a franchise by means of any written or oral communication which includes an untrue statement of
19 a material fact or omits to state a material fact necessary in order to make the statements made, in the
20 light of the circumstances under which they were made, not misleading.

21 37. In or about April 2012 to at least August 2012, Respondents represented to consumers
22 that, in exchange for the payment of the Initial Fee and a Franchise Fee, consumers would receive
23 Bicycle Units and various pieces of equipment for the Bicycle Units. Consumers M and A paid the
24 Initial Fee pursuant to the Agreement. In addition, consumers M and A paid the Franchise Fee in full
25 based on the promises made by Respondents. To date, consumers M and A have not received the
26 Bicycle Units, despite paying the Franchise Fee.

27 38. Also, on or about April 17, 2012 to April 27, 2012, Respondents represented to
28 consumers that each BikeCaffe bicycle and franchise would meet all business licensing and Health

1 Department certification approvals required to operate a franchise to its fully intended capabilities.
2 Specifically, Respondents represented to consumers M and A that all monies paid to BikeCaffe by
3 buyers would be refunded in full for each BikeCaffe that could not be operated to their fullest
4 intended capabilities within each designated county.

5 39. On September 26, 2012, the Health Department issued a corrections order to
6 consumers M and A setting forth structural and plumbing issues relating to the bicycle and BikeCaffe
7 franchise. The plans for the bicycles and the BikeCaffe franchise were not approved by the Health
8 Department on September 26, 2012, and thus the bicycles and franchise were not operable to its
9 fullest intended capabilities. Consumers M and A requested their money back from Respondents
10 based upon their representations.

11 40. To date, Respondents have not returned consumer M and A's money in the amount of
12 the amount of sixty three thousand five hundred dollars (\$63,500.00).

13 **III.**

14 **STATUTORY AUTHORITY**

15
16 Corporations Code section 31110 provides in pertinent part:

17 it shall be unlawful for any person to offer or sell any franchise in
18 this state unless the offer of the franchise has been registered under this
19 part or exempted...

20 Corporations Code section 31123 provides:

21 A franchisor shall promptly notify the commissioner in writing, by an
22 application to amend the registration, of any material change in the
23 information contained in the application as originally submitted,
24 amended or renewed. The commissioner may by rule further define
25 what shall be considered a material change for such purposes, and the
26 circumstances under which a revised offering prospectus must
27 accompany such application.

28 Corporations Code section 31200 provides:

It is unlawful for any person willfully to make any untrue statement of
a material fact in any application, notice or report filed with the

1 commissioner under this law, or willfully to omit to state in any such
2 application, notice, or report any material fact which is required to be
3 stated therein, or fail to notify the commissioner of any material change
as required by Section 31123.

4 Corporations Code section 31201 provides:

5 It is unlawful for any person to offer or sell a franchise in this state by
6 means of any written or oral communication not enumerated in Section
7 31200 which includes an untrue statement of a material fact or omits to
8 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.

9 Corporations Code section 31203 provides:

10 It is unlawful for any person to violate any order of the commissioner
11 or condition to the effectiveness of the registration of the offer or sale
12 of franchises.

13 Corporations Code section 31406 provides in 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
16 violating any provision of this division or any rule or order
17 promulgated pursuant to this division, the commissioner may issue a
18 citation to that person in writing describing with particularity the basis
19 of the citation. Each citation may contain an order to desist and refrain
20 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.

21

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

24

25 Corporations Code section 31408 provides in pertinent part:

26 (a) If the commissioner determines it is in the public interest, the
27 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,
28

1 restitution, or disgorgement or damages on behalf of the person
2 injured by the act or practice constituting the subject matter of the
3 action, and the administrative law judge shall have jurisdiction to
award additional relief.

4 (b) In an administrative action brought under this part, the
5 commissioner is entitled to recover costs, which in the discretion of
6 the administrative law judge may include any amount representing
reasonable attorney's' fees and investigative expenses for the
services rendered,...

7 **IV.**

8 **DESIST AND REFRAIN ORDER**

9
10 Based upon the foregoing findings, the Commissioner has cause to believe the following:

11 BikeCaffe Franchising, Inc., doing business as BikeCaffe Franchising, L.L.C., doing business
12 as www.bikecaffe.com, doing business as BikeCaffe/Marley Franchise, doing business as
13 BikeCaffe/Marley Coffee, doing business as The Franchise Builders, and doing business as
14 BikeCaffe:

15 a. Sold Bike franchises on the internet that were subject to registration under the CFIL
16 without first being registered or exempt, in violation of Corporations Code section 31110.

17 Also based upon the foregoing findings, the Commissioner has cause to believe the following:

18 Ralph Massetti, Will Shakesheff, and BikeCaffe Franchising, Inc., doing business as
19 BikeCaffe Franchising, L.L.C., doing business as www.bikecaffe.com, doing business as
20 BikeCaffe/Marley Franchise, doing business as BikeCaffe/Marley Coffee, doing business as The
21 Franchise Builders, and doing business as BikeCaffe:

22 b. Sold Bike franchises that were subject to registration under the CFIL without first
23 being registered or exempt, in violation of Corporations Code section 31110;

24 c. Failed to file a Post-Effective Amendment notifying the Commissioner of the
25 Agreement of the Agreement terms resulting in the willful omission of material fact, in
26 violation of Corporations Code sections 31200 and 31123;

1 d. Failed to file a Post-Effective Amendment notifying the Commissioner that
2 Shakesheff and Dana D. Reineke were officers in Bike resulting in the willful omission of material
3 fact in violation of Corporations Code sections 31200 and 31123;

4 e. Required consumers to pay fees upfront prior to receiving training and opening a Bike
5 franchise in violation of Corporations Code section 31203;

6 f. Represented to consumers that in exchange for the payment of the Initial Fee and the
7 Franchise Fee, consumers would receive their Bicycle Units, which is aa written or oral
8 communication which includes an untrue statement of a material fact or omits to state a material fact
9 necessary in order to make the statements made, in the light of the circumstances under which they
10 were made, not misleading, in violation of Corporations Code section 31201; and

11 g. Represented to consumers that each BikeCaffe bicycle and franchise would meet all
12 business licensing and health department certification approvals required to operate a franchise to its
13 fully intended capabilities and that all monies paid to BikeCaffe by buyers would be refunded in full
14 for each BikeCaffe that could not be operated to their fullest intended capabilities. This representation
15 is a written or oral communication which includes an untrue statement of a material fact or omits to
16 state a material fact necessary in order to make the statements made, in the light of the circumstances
17 under which they were made, not misleading, in violation of Corporations Code section 31201.

18 Pursuant to Corporations Code section 31406, BikeCaffe Franchising, Inc., doing business as
19 BikeCaffe Franchising, L.L.C., doing business as www.bikecaffe.com, doing business as
20 BikeCaffe/Marley Franchise, doing business as BikeCaffe/Marley Coffee, doing business as The
21 Franchise Builders, and doing business as BikeCaffe are hereby ordered to Desist and refrain from
22 the further offer or sale of Bike franchises unless and until the offers have been duly registered under
23 the CFIL or are exempt.

24 Also, pursuant to Corporations Code section 31406, Ralph Massetti, Will Shakesheff, and
25 BikeCaffe Franchising, Inc., doing business as BikeCaffe Franchising, L.L.C., doing business as
26 www.bikecaffe.com, BikeCaffe/Marley Franchise, doing business as BikeCaffe/Marley Coffee, doing
27 business as The Franchise Builders, and doing business as BikeCaffe are hereby ordered to desist and
28 refrain from the further offer or sale of Bike franchises unless and until the offers have been duly

1 registered under the CFIL or are exempt; from filing registrations and renewal applications that
2 contain willful omissions of material fact, and from failing to provide prompt notification of material
3 changes in these applications, in accordance with Corporations Code sections 31200 and 31123; from
4 engaging in written or oral communication which includes an untrue statement of a material fact or
5 omits to state a material fact necessary in order to make the statements made, in the light of the
6 circumstances under which they were made, not misleading, in relation to the offer and/or sale of
7 franchises in violation of Corporations Code section 31201; and from engaging in activity which
8 violates the Commissioner's condition to the effectiveness of any registration of the offer or sale of
9 franchises in violation of Corporations code section 31203.

10 This Order is necessary, in the public interest, for the protection of investors and consistent
11 with the purposes, policies and provisions of the CFIL.

12 **V.**

13 **ORDER FOR ANCILLARY RELIEF**

14 Based on the foregoing findings of fact, Respondents have offered and sold franchises to
15 consumers M and A in violation of the CFIL in the amount of sixty three thousand five hundred
16 dollars (\$63,500.00). Consumers M and A incurred expenses relating to the purchase of a Bike
17 franchise in the amount of one thousand six hundred and six dollars and fifty two cents (\$1,606.52).
18 Also, consumers M and A were required to retain counsel and expend for attorney's fees in the
19 amount of four thousand two hundred and thirty seven dollars and fifty cents (\$4,237.50).

20 **WHEREFORE**, good cause showing, and the Commissioner of Business Oversight having
21 determined that this action is in the public interest, for the protection of investors and consistent with
22 the purposes, policies, and provisions of the CFIL, based on Respondents' violations, the
23 Commissioner hereby orders ancillary relief pursuant to Corporations Code section 31408,
24 individually, jointly and severally against Respondents and in favor of the Commissioner on behalf of
25 consumers M and A, as follows:

26 Full restitution to be made to consumer M, domiciled and consumer A, in the total amount of
27 sixty nine thousand three hundred forty four dollars and two cents (\$69,344.02) ("Restitution
28 Amount") and interest at the legal rate accumulated on the Restitution Amount from the first day

1 consumers M and A tendered the Initial Fee to Respondents, or according to proof, to be paid within
2 ten (10) calendar days from the date the order for ancillary relief in the form of restitution is deemed
3 final. Respondents shall make full restitution to consumers M and A for the Restitution Amount by
4 certified cashier's check or bank wire transfer payable jointly to consumers M and A. Respondents
5 shall submit proof of payment to consumers M and A to the Department of Business Oversight, Attn:
6 Marisa I. Urteaga-Watkins, Counsel, 1515 K Street, Suite 200, Sacramento, CA 95814, immediately
7 upon payment to consumers M and A.

8 VI.

9 ADMINISTRATIVE PENALTIES

10 Pursuant to Corporations Code Section 31406:

11 a. BikeCaffe Franchising, Inc., doing business as BikeCaffe Franchising, L.L.C.,
12 doing business as www.bikecaffe.com, doing business as BikeCaffe/Marley Franchise, doing
13 business as BikeCaffe/Marley Coffee, doing business as The Franchise Builders, and doing business
14 as BikeCaffe is hereby assessed and ordered to pay administrative penalties in the amount of fifteen
15 thousand dollars (\$15,000.00) for a total of six (6) violations of the CFIL comprised of: one (1)
16 violation of Corporations Code section 31110 for the offer or sale of Bike franchises by way of the
17 internet set forth above in Paragraph 27; one (1) violation of Corporations Code section 31203 for
18 violating the impound order of the Commissioner set forth above in Paragraphs 33-35; two (2)
19 violations of Corporations Code section 31201 for misrepresentations made to consumers regarding
20 the receipt of Bicycle Units and that each BikeCaffe bicycle and franchise would meet all business
21 licensing and Health Department certification approvals required to operate a franchise to its fully
22 intended capabilities, set forth above in Paragraphs 36-40; and two (2) violations of Corporations
23 Code sections 31200 and 31123 for failing to notify the Commissioner of the Agreement terms and
24 failing to disclose that Shakesheff and Dana D. Reineke were officers in Bike, as set forth above in
25 Paragraphs 28-32;

26 b. Ralph Massetti is hereby assessed and ordered to pay administrative penalties in the
27 amount of twelve thousand five hundred dollars (\$12,500.00) for a total of five (5) violations of the
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1 CFIL comprised of: one (1) violation of Corporations Code section 31203 for violating the impound
2 order of the Commissioner set forth above in Paragraphs 33-35; two (2) violations of Corporations
3 Code section 31201 for misrepresentations made to consumers regarding the receipt of Bicycle Units
4 and that each BikeCaffe bicycle and franchise would meet all business licensing and Health
5 Department certification approvals required to operate a franchise to its fully intended capabilities,
6 set forth above in Paragraphs 36-40; and two (2) violations of Corporations Code sections 31200 and
7 31123 for failing to notify the Commissioner of the Agreement terms and failing to disclose that
8 Shakesheff and Dana D. Reineke were officers in Bike, as set forth above in Paragraphs 28-32; and

9 c. Will Shakesheff is hereby assessed and ordered to pay administrative penalties in the
10 amount of twelve thousand five hundred dollars (\$12,500.00) for a total of five (5) violations of the
11 CFIL comprised of: one (1) violation of Corporations Code section 31203 for violating the impound
12 order of the Commissioner set forth above in Paragraphs 33-35; two (2) violations of Corporations
13 Code section 31201 for misrepresentations made to consumers regarding the receipt of Bicycle Units
14 and that each BikeCaffe bicycle and franchise would meet all business licensing and Health
15 Department certification approvals required to operate a franchise to its fully intended capabilities,
16 set forth above in Paragraphs 36-40; and two (2) violations of Corporations Code sections 31200 and
17 31123 for failing to notify the Commissioner of the Agreement terms and failing to disclose that
18 Shakesheff and Dana D. Reineke were officers in Bike, as set forth above in Paragraphs 28-32.

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1 The administrative penalties set forth above stated portions shall be made payable to the
2 Department of Business Oversight and remitted to the Department of Business Oversight, attention
3 Marisa I. Urteaga-Watkins, Counsel, 1515 K Street, Suite 200, Sacramento, CA 95828 no later than
4 sixty (60) days from the date of a final order in this matter.

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Dated: August 31, 2016
Sacramento, CA

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division