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8 Attorneys for Complainant

10 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
11 OF THE STATE OF CALIFORNIA

12 In the Matter of:)	FIL ORG. ID.: 96133
13 THE COMMISSIONER OF BUSINESS)	
14 OVERSIGHT,)	CONSENT ORDER
15 Complainant,)	
16 v.)	
17 BOWL OF HEAVEN FRANCHISE GROUP,)	
18 LLC, doing business as BOWL OF HEAVEN,)	
19 Respondent.)	

21 This Consent Order is entered into between the Complainant, the Commissioner of Business
22 Oversight (Commissioner) and the Respondent, Bowl of Heaven Franchise Group, LLC, doing
23 business as Bowl of Heaven (Bowl of Heaven) (collectively, the Parties), and is made with respect to
24 the following facts:

25 **I.**
26 **Recitals**

27 A. The Commissioner is authorized to administer and enforce the provisions of the
28 Franchise Investment Law (Corp. Code section 31000 et seq.) (FIL) and the rules and regulations

1 promulgated thereunder which control the registration, offer and sale of franchises in California.

2 B. The Commissioner brings this action pursuant to the provisions of the FIL, and the
3 rules and regulations promulgated thereunder.

4 C. Bowl of Heaven admits to the jurisdiction of the Commissioner in this matter and for
5 the purposes of issuing and enforcing this Consent Order.

6 D. Bowl of Heaven Franchise Group, LLC, is a California limited liability company,
7 formed on May 21, 2012, with business addresses located at: 29851 Aventura, Suite N, Rancho Santa
8 Margarita, California 92688, and 8 Olympic Way, Coto de Caza, California 92679.

9 E. Bowl of Heaven offers and sells franchises for the operation of retail restaurants
10 providing acai bowls, exotic juice blend smoothies, bread, specified condiments and ingredients, and
11 other food, beverages, related products and accessories.

12 F. Bowl of Heaven was registered to offer and sell franchises in California from 2012 to
13 2017. Bowl of Heaven's franchise registration to offer and sell franchises in California expired as of
14 April 20, 2017.

15 G. In 2013 and 2014, Bowl of Heaven made untrue statements of material facts, and/or
16 omitted to state a material fact in the franchise applications, notices, or reports it filed with the
17 Commissioner, in violation of Corporations Code section 31200. The material misrepresentations and
18 omission included, but were not limited to: overstating the profitability of the franchise; understating
19 the initial investment costs and expenses; inflating the number of signed franchise agreements; and
20 failing to disclose a franchisee.

21 H. In 2013 and 2014, Bowl of Heaven offered and sold franchises in California. In
22 connection with the offers and sales of the franchises, Bowl of Heaven made untrue statements of
23 material facts and/or omitted to state a material fact, in violation of Corporations Code section 31201.
24 The material misrepresentations and omission included, but were not limited to: overstating the
25 profitability of the franchise; understating the initial investment costs and expenses; inflating the
26 number of signed franchise agreements; and failing to disclose a franchisee.

27 It is the intention and desire of the Parties to resolve these matters without the necessity of a
28 hearing and/or other litigation.

1 Bowl of Heaven consents to this Consent Order without contest and with no admission of
2 liability by its officers, members or managers.

3 The Commissioner finds that this Consent Order is appropriate, in the public interest, and
4 consistent with the purposes fairly intended by the policy and provisions of the FIL.

5 **II.**
6 **Terms and Conditions**

7 1. Purpose. This Consent Order resolves the violations described above and before the
8 Commissioner in a manner that avoids the expense of a hearing and possible further court
9 proceedings, is in the public interest, protects consumers, and is consistent with the purposes,
10 policies, and provisions of the FIL.

11 2. Finality of the Consent Order. Bowl of Heaven expressly waives any requirement for
12 the filing of an agency pleading that may be afforded by Government Code section 11415.60,
13 subdivision (b); the Administrative Procedure Act; the Code of Civil Procedure; or any other
14 provision of law. By waiving such rights, Bowl of Heaven effectively consents to and agrees to
15 comply with this Consent Order and stipulates that the Consent Order is final.

16 3. Desist and Refrain Order. Pursuant to Corporations Code section 31406, Bowl of
17 Heaven consents to the issuance of a desist and refrain order for violations of Corporations Code
18 sections 31200 and 31201, occurring in 2013 and 2014, as identified in paragraphs G and H, above.
19 Additionally, Bowl of Heaven agrees to desist and refrain from making any untrue statement of a
20 material fact in any application, notice or report filed with the Commissioner under the FIL, or
21 omitting to state in any such application, notice, or report any material fact, which is required to be
22 stated therein, in violation of Corporations Code section 31200. Bowl of Heaven further agrees to
23 desist and refrain from offering or selling a franchise in California by means of any written or oral
24 communication, which includes an untrue statement of a material fact or omits to state a material fact
25 necessary in order to make the statements made, in the light of the circumstances under which they
26 were made, not misleading, in violation of Corporations Code section 31201.

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1 4. Notice of Violation. Within 15 days of the execution of this Consent Order, Bowl of
2 Heaven agrees to submit to the Commissioner a proposed Notice of Violation for the violations of
3 Corporations Code sections 31200 and 31201, subject to the approval of the Commissioner. Bowl of
4 Heaven shall submit the proposed Notice of Violation to the attention of: Theresa Leets, Assistant
5 Chief Counsel, Securities Regulation Division, Department of Business Oversight, 320 West Fourth
6 Street, Suite 750, Los Angeles, California 90013. Within 15 days of the Commissioner's approval of
7 the Notice of Violation, Bowl of Heaven shall mail a copy of the approved Notice of Violation to the
8 California franchisees.

9 5. Offer of Rescission or Cancellation and Mutual Release. Bowl of Heaven agrees to
10 make an offer of rescission or cancellation of all agreements entered into with all California
11 franchisees. Within 30 days of the execution of this Consent Order, Bowl of Heaven shall send to all
12 California franchisees an offer of rescission or Cancellation and Mutual Release. Additionally, within
13 90 days of the execution of this Consent Order, Bowl of Heaven shall send to the Department of
14 Business Oversight (Department) the franchisees' responses to the offer of rescission or cancellation.
15 The franchisees' responses shall be sent to Afsaneh Eghbaldari, Counsel, Enforcement Division, by
16 email at: affi.eghbaldari@dbo.ca.gov.

17 6. Education. Within 60 days of the execution of this Consent Order, all principals of
18 Bowl of Heaven, and all persons employed by Bowl of Heaven who assist in preparing franchise
19 registrations, and who assist in offering and selling franchises, are hereby required to attend eight
20 hours of remedial education, in the form of franchise law training courses offered by a franchise law
21 specialist certified with the State Bar of California, or courses offered by or through the International
22 Franchise Association. Within 90 days of execution of this Consent Order, Bowl of Heaven shall
23 submit proof of compliance to Afsaneh Eghbaldari, Counsel, Enforcement Division, by email at:
24 affi.eghbaldari@dbo.ca.gov.

25 7. Administrative Penalties. Bowl of Heaven agrees to pay an administrative penalty of
26 \$15,000.00 for violations of Corporations Code sections 31200 and 31201 in three monthly
27 installment payments from the Effective Date of this Consent Order, as defined in paragraph 20, and
28 shall be due on the following dates:

- 1 a) The first installment payment of \$5,000.00 shall be received by the Department on or
- 2 before March 15, 2018;
- 3 b) The second installment payment of \$5,000.00 shall be received by the Department on or
- 4 before April 15, 2018; and
- 5 c) The third installment payment of \$5,000.00 shall be received by the Department on or
- 6 before May 15, 2018.

7 All three installment payments shall be made in the form of a cashier's check or Automated
8 Clearing House deposit to the "Department of Business Oversight," and transmitted to the attention
9 of: Accounting - Litigation, at the Department of Business Oversight, located at 1515 K Street, Suite
10 200, Sacramento, California 95814. Notice of all payments shall be sent concurrently to Afsaneh
11 Eghbaldari, Counsel, Enforcement Division, by email at: affi.eghbaldari@dbo.ca.gov. In the event
12 the payment due date falls on a weekend or holiday, the payment shall be due the next business day.

13 8. Failure to Comply. Bowl of Heaven agrees that if it fails to comply with any of the
14 terms of this Consent Order, this Consent Order may be converted immediately into an enforceable
15 civil judgment for the entire penalty amount of \$15,000.00, plus a 10% interest for every month the
16 penalty amount is not fully and timely paid. Bowl of Heaven agrees that such civil judgment may be
17 entered by the court on an ex parte basis, without further notice or hearing to Bowl of Heaven. Bowl
18 of Heaven agrees that a breach of this Consent Order shall be cause for the Commissioner to
19 immediately revoke any registrations held by, and/or deny any pending application(s) of Bowl of
20 Heaven, its successors and assigns, by whatever names they might be known. Bowl of Heaven hereby
21 waives any notice and hearing rights to contest such revocations and/or denial(s) which may be
22 afforded under the FIL; the Administrative Procedure Act; the California Code of Civil Procedure; or
23 any other provision of law in connection therewith.

24 9. Waiver of Hearing Rights. Bowl of Heaven acknowledges the right to a hearing, and
25 that the Commissioner is ready, willing, and able to proceed with the filing of an administrative
26 enforcement action on the charges contained in this Consent Order. Through its execution of this
27 Consent Order, Bowl of Heaven acknowledges that it was served with a copy of the Consent Order.
28 Bowl of Heaven hereby waives the right to a hearing, and to any reconsideration, appeal, or other

1 right to review which may be afforded pursuant to the FIL; the Administrative Procedure Act; the
2 Code of Civil Procedure; or any other provision of law.

3 10. Future Actions by the Commissioner. This Consent Order, and Bowl of Heaven’s
4 compliance with it, may be considered as a factor in determining the approval of any future
5 application in accordance with the provisions of the FIL, or any other applicable law. Failure to
6 comply with the terms of this Consent Order will be grounds for the Commissioner’s denial of the
7 application or the revocation of any subsequently effective franchise registration.

8 11. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
9 interest.

10 12. Third Party Action. This Consent Order does not create any private rights or remedies
11 against Bowl of Heaven, create any liability for Bowl of Heaven, or limit defenses of Bowl of
12 Heaven for any person or entity not a party to this Consent Order.

13 13. Full and Final Settlement. The Parties hereby acknowledge and agree that this
14 Consent Order is intended to constitute a full, final, and complete resolution of the violations of the
15 California Corporations Code, occurring from 2013 to 2014, identified in paragraphs G and H above
16 (hereafter, Released Matters). Notwithstanding this paragraph, the Commissioner may commence a
17 proceeding or action based upon any violation which Bowl of Heaven knowingly concealed from the
18 Commissioner. The Parties further acknowledge and agree that nothing contained in this Consent
19 Order shall operate to limit the Commissioner’s ability to assist any other agency (city, county, state
20 or federal) with any prosecution; administrative, civil or criminal, brought by any such agency
21 against Bowl of Heaven, based on any of the activities alleged in these matters or otherwise.

22 14. Independent Legal Advice. Each of the Parties represents and warrants that they have
23 received independent advice from their attorneys and/or other representatives with respect to the
24 advisability of executing this Consent Order.

25 15. Reliance. Each of the Parties represents, warrants, and agrees that in executing this
26 Consent Order, they have placed no reliance on any statement, representation, or promise of any
27 other party, or any person or entity not expressly set forth herein, or upon the failure of any party or
28 any other person or entity to make any statement, representation, or disclosure of anything

1 whatsoever. The Parties have included this clause: (1) to preclude any claim that any party was in any
2 way fraudulently induced to execute this Consent Order; and (2) to preclude the introduction of parol
3 evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

4 16. Full Integration. This Consent Order is the final written expression and the complete
5 and exclusive statement of all stipulations, agreements, conditions, promises, representations, and
6 covenants between the Parties with respect to the matter hereof, and supersedes all prior or
7 contemporaneous agreements, discussions, negotiations, representations, and understandings between
8 and among the Parties, their respective representatives, and any other person or entity, with respect to
9 the subject matter covered in this Consent Order.

10 17. No Presumption from Drafting. In that the Parties have had the opportunity to draft,
11 review and edit the language of this Consent Order, no presumption for or against any party arising
12 out of drafting all or any part of this Consent Order will be applied in any action relating to,
13 connected to, or involving this Consent Order. Accordingly, the Parties waive the benefit of Civil
14 Code section 1654 and any successor or amended statute, providing that in cases of uncertainty,
15 language of a contract should be interpreted most strongly against the party who caused the
16 uncertainty to exist.

17 18. Waiver or Modification. The waiver of any provision of this Consent Order shall not
18 operate to waive any other provision set forth herein, and any waiver, amendment and/or change to
19 the terms of this Consent Order must be in writing and signed by the Parties. No amendment, change
20 or modification of this Consent Order shall be valid or binding to any extent unless it is in writing and
21 signed by all the Parties affected by it.

22 19. Headings and Governing Law. The headings of the paragraphs of this Consent Order
23 are inserted for conveniences only and will not be deemed a part hereof or affect the construction or
24 interpretation of the provisions hereof. This Consent Order shall be construed and enforced in
25 accordance with and governed by California law.

26 20. Effective Date. This Consent Order shall become effective when signed by all Parties
27 and delivered by the Commissioner's counsel via email to Dana Larkin, Bowl of Heaven's counsel,
28 at: DLarkin@smith-lc.com.

1 21. Counterparts. This Consent Order may be executed in any number of counterparts by
2 the Parties, and when each party has signed and delivered at least one such counterpart to the other
3 party, each counterpart shall be deemed an original, and taken together shall constitute one and the
4 same Consent Order.

5 22. Public Record. Bowl of Heaven acknowledges that this Consent Order is a public
6 record.

7 23. Information Willfully Withheld. This Consent Order may be revoked, and the
8 Commissioner may pursue all remedies available under the law against Bowl of Heaven if the
9 Commissioner later finds out that Bowl of Heaven knowingly or willfully withheld information used
10 and relied upon in this Consent Order.

11 24. Settlement Authority. Each signatory hereto covenants that he/she possesses all
12 necessary capacity and authority to sign and enter into this Consent Order.

13 25. Voluntary Agreement. Bowl of Heaven enters into this Consent Order voluntarily and
14 without coercion and acknowledges that no promises, threats, or assurances have been made by the
15 Commissioner or any officer, or agent thereof, about this Consent Order.

16 26. Signatures. This Consent Order may be executed by facsimile or scanned signature,
17 and any such facsimile or scanned signature by any party hereto shall be deemed to be an original
18 signature and shall be binding on such party to the same extent as if such facsimile or scanned
19 signature was an original signature.

20 IN WITNESS WHEREOF, the Parties hereto have approved and executed this Order on the
21 dates set forth below opposite their respective signatures.

22 Dated: February 28, 2018

JAN LYNN OWEN
Commissioner of Business Oversight

24 By: _____
25 Mary Ann Smith
26 Deputy Commissioner
27 Enforcement Division

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BOWL OF HEAVEN FRANCHISE GROUP, LLC,
DOING BUSINESS AS BOWL OF HEAVEN

Dated: February 28, 2018

By: _____
Dan McCormick
President of Bowl of Heaven Franchise Group, LLC

APPROVED AS TO FORM:

By _____
Dana Larkin, Esq.
Attorney for Bowl of Heaven Franchise Group, LLC