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STATE OF CALIFORNIA
BUSINESS, TRANSPORTATION AND HOUSING AGENCY
DEPARTMENT OF CORPORATIONS

TO: Saxbys Coffee, Inc.
Nick Bayer
84 Peachtree Street, 801
Atlanta, Georgia 30303

and

John Larson
180 N. Jefferson Suite 901
Chicago, Illinois 60661

and

Greg Bayer
50 Highland Road
Chicago, Illinois 60521

and

Proven Record, Inc.
1530 Main Street
Windsor, Colorado 80550

AMENDED CITATION
AND
DESIST AND REFRAIN ORDER
(For violations of section 31110 of the Corporations Code)

On May 14, 2007 the California Department of Corporations issued a Desist and Refrain Order and Citation against Nick Bayer, Greg Bayer, John Larson, Saxby's Coffee, Inc. and Proven Record, Inc, and no hearing was requested. That Order and the administrative penalty assessed remains final. This Order amends the Citation, making the restitution amount of \$30,999.92 due and payable sixty (60) days from the date of this amended Order. California Corporations Commissioner finds that:

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2 1. In 2004 Proven Record, Inc., a Nevada corporation, began offering Saxbys Coffee
3 franchises for the operation of a Saxbys Coffee shop selling coffee, gourmet pastries, bagels, and
4 other related items.

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6 2. On August 23, 2005, Saxbys Coffee, Inc. (Saxbys), a Georgia Corporation, with its
7 principal place of business 84 Peachtree Street, Suite 801, Atlanta, Georgia 30303, acquired Proven
8 Record, Inc. which included Saxbys Coffee franchise contracts, trademarks, manuals, and other
9 assets.

10 3. John Larson was chief global strategist of Proven Record, Inc. from March 2004
11 through July 2005. Additionally, John Larson was Chief Operating Officer of Saxbys Coffee, Inc.
12 and at all times relevant acted as one of its principal officers and directors in fact, exercising
13 management responsibility and control with regard to all facets of its operations, including the
14 franchises offered by the company.

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16 4. Nick Bayer is President of Saxbys Coffee, and at all relevant times acted as one of its
17 principal officers and directors in fact, exercising management responsibility and control with regard
18 to all facets of its operations, including the franchises offered by the company.

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20 5. Greg Bayer was Secretary and National Franchise Director of Saxbys Coffee, Inc., at
21 all relevant times, and acted as one of its principal officers and directors in fact, exercising
22 management responsibility and control with regard to all facets of its operations, including the
23 franchises offered by the company.

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25 6. On December 13, 2005, the Saxbys franchise registration application was approved by
26 the California Department of Corporations, permitting the company to offer and sell franchises in
27 California. The Saxbys franchise registration lapsed on April 20, 2006. Saxbys filed a renewal
28 application for franchise registration on June 5, 2006. That application is currently pending.

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2 7. From 2004 through December 2005, Proven Record, Inc. and Saxbys Coffee, Inc. sold
3 a Saxbys Coffee franchise to a California investor, and entered into an area developer contract with,
4 Tabsheer Shah, a California investor. Proven Record, Inc. and Saxbys Coffee, Inc. were not
5 registered under the Franchise Investment Law and was not exempted under Chapter 1, beginning
6 with Corporations Code section 31100, of that law.

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8 8. From May 2006 through September 2006 Saxbys Coffee, Inc., sold eight franchises in
9 California. Saxbys Coffee, Inc. was not registered under the Franchise Investment Law and was not
10 exempted under Chapter 1, beginning with Corporations Code section 31100, of that law.

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12 9. Proven Record, Inc., Saxbys Coffee, Inc., John Larson, Nick Bayer, and Greg Bayer,
13 Inc. failed to tell area developers and potential franchise investors that Saxbys was not registered to
14 sell franchises in California.

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16 10. Proven Record, Inc., Saxbys Coffee, Inc., John Larson, Nick Bayer, and Greg Bayer
17 failed to tell area developers and potential franchise investors that the South Dakota Division of
18 Securities issued a Cease and Desist Order against Proven Records, Inc., Saxbys Coffee Franchising,
19 John Larson and all officers and directors on October 13, 2004 for offering and selling franchises
20 without registration.

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22 11. Based upon the foregoing findings, the California Corporations Commissioner is of
23 the opinion that Proven Record, Inc., Saxbys Coffee, Inc., John Larson, Nick Bayer, and Greg Bayer
24 sold franchises in California that were subject to registration under the Franchise Investment Law
25 without first being registered, in violation of Corporations Code section 31110. Pursuant to section
26 31402 of the Corporations Code, Proven Record, Inc., Saxbys Coffee, Inc., John Larson, Nick Bayer,
27 and Greg Bayer are hereby ordered to desist and refrain from the further offer or sale of Saxbys
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1 Coffee franchises unless and until the offers have been duly registered under the Franchise
2 Investment Law.

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4 12. Additionally, the California Corporations Commissioner is of the opinion that, Proven
5 Record, Inc., Saxbys Coffee, Inc., John Larson, Nick Bayer, and Greg Bayer engaged in the offer and
6 sale of franchises in this state by means of a written or oral communication which includes an untrue
7 statement of a material fact or omits to state a material fact necessary in order to make the statements
8 made, in light of the circumstances under which they were made, not misleading in violation of
9 section 31202 of the Corporations Code. Pursuant to section 31402 of the Corporations Code,
10 Proven Record, Inc., Saxbys Coffee, Inc., John Larson, Nick Bayer, and Greg Bayer are hereby
11 ordered to desist and refrain from the further offer or sale of franchises, including but not limited to
12 Saxbys franchises by means of means of a written or oral communication which includes an untrue
13 statement of a material fact or omits to state a material fact necessary in order to make the statements
14 made, in light of the circumstances under which they were made, not misleading.

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16 ADMINISTRATIVE PENALTY

17 13. Pursuant to section 31406 of the Corporations Code, Saxbys Coffee, Inc., are hereby
18 assessed and ordered to pay an administrative penalty of five thousand dollars (\$5,000.00).

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20 ANCILLARY RELIEF

21 14. Pursuant to section 31408 of the Corporations Code, Saxbys Coffee, Inc. is hereby
22 ordered to pay Tabsheer Shah, \$30,999.92 plus royalty fees past due and any other fees that may
23 become due and payable, as restitution for unpaid fees and services that Tabsheer performed pursuant
24 to his contracts with Saxbys Coffee, Inc.

25 This Order is necessary, in the public interest, for the protection of investors and consistent
26 with the purposes, policies and provisions of the Franchise Investment Law.

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Dated: October 23, 2007
Sacramento, California

PRESTON DuFAUCHARD
California Corporations Commissioner

By: _____
ALAN S. WEINGER
Lead Corporations Counsel
Enforcement Division