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

10
11 In the Matter of:) FIL ORG ID: 995-4543
)
12 THE COMMISSIONER OF BUSINESS) CITATIONS PURSUANT TO
OVERSIGHT,) CORPORATIONS CODE SECTIONS: 31406;
13) 31110; 31200 AND 31201:
14 Complainant,)
) DESIST AND REFRAIN ORDERS
15 v.) PURSUANT TO CORPORATIONS CODE
) SECTIONS 31110, 31200 AND 31201
16 CASA DEL CAFFÈ VERGNANO, S.P.A.,)
CAFFE VERGNANO USA CORP.,)
17 CAROLINA VERGNANO, PIETRO)
VERGNANO, and TOMMASO LAMBERT,)
18)
)
19 Respondents.)
20)
21)

22 Jan Lynn Owen, the California Commissioner (“Commissioner”) of the Department of
23 Business Oversight (“Department”), finds the following:

24 I
25 **BACKGROUND**

26 1. Casa Del Caffè Vergnano, S.p.A. (“Casa Del Caffè Vergnano”) was an entity formed
27 under the laws of the country of Italy with its principal place of business in Torino, Italy. Casa Del
28 Caffè Vergnano maintained a website at www.caffevergnano.com.

1 c. The franchise offering materials described the total investment amount of
2 approximately \$200,000.00. However, it cost the California franchisee at least \$400,000.00
3 to open the San Diego Caffé Vergnano 1882 coffee house.

4 **III**
5 **CITATIONS**

6 23. Corporations Code section 31406 authorizes the Commissioner to issue a citation not
7 exceeding \$2,500.00 for each violation of any provision of the FIL or any rule or under thereunder.

8 24. Corporations Code section 31406 provides:

9 (a) If, upon inspection or investigation, based upon a complaint or otherwise, the
10 commissioner has cause to believe that a person is violating any provision of this
11 division or any rule or order promulgated pursuant to this division, the
12 commissioner may issue a citation to that person in writing describing with
13 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.

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

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

18 (d) Any hearing under this section shall be conducted in accordance with Chapter
19 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the
Government Code.

20 (e) After the exhaustion of the review procedures provided for in this section, the
21 commissioner may apply to the appropriate superior court for a judgment in the
22 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.

23 25. Corporations Code section 31110 provides:

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

27 26. **CITATION A.** During the period of May 2010 to September 2010, Casa Del Caffè
28 Vergnano, S.p.A., Carolina Vergnano, and Tommaso Lambert offered and sold a franchise in

1 California that was subject to registration under the FIL without the offer and/or sale first being
2 registered, in violation of section 31110.

3 27. Corporations Code section 31200 provides:

4 It is unlawful for any person willfully to make any untrue statement of a material
5 fact in any application, notice or report filed with the commissioner under this
6 law, or willfully to omit to state in any such application, notice, or report any
7 material fact which is required to be stated therein, or fail to notify the
8 commissioner of any material change as required by Section 31123.

9 28. **CITATION B.** During the period of January 2011 through March 2011, Caffè
10 Vergnano USA Corp., Carolina Vergnano, and Pietro Vergnano willfully failed to disclose a
11 material fact in an application filed with the Commissioner, in violation of section 31200.

12 29. Corporations Code section 31201 provides:

13 It is unlawful for any person to offer or sell a franchise in this state by means of
14 any written or oral communication not enumerated in Section 31200 which
15 includes an untrue statement of a material fact or omits to state a material fact
16 necessary in order to make the statements made, in the light of the circumstances
17 under which they were made, not misleading.

18 30. **CITATION C.** During the period of May 2010 through September 2010, Casa Del
19 Caffè Vergnano, S.p.A., Carolina Vergnano, and Tommaso Lambert offered or sold a franchise in
20 this state by means of a written or oral communication which included untrue statements of material
21 facts or omitted to state a material fact necessary in order to make the statements made, in the light
22 of the circumstances under which they were made, not misleading, in violation of section 31201, by
23 making material misrepresentations regarding the service fee amount, the level of management and
24 support provided to the franchisee, and the franchise investment amount.

25 31. Pursuant to section 31406, Casa Del Caffè Vergnano, S.p.A., Caffè Vergnano USA
26 Corp., Carolina Vergnano, Pietro Vergnano, and Tommaso Lambert, jointly and severally, are
27 hereby ordered to pay an administrative penalty of \$2,500.00 for each of the three foregoing
28 violations for the total amount of \$7,500.00, within 30 days of the finality of this order. If within 60
days from the receipt of these citations, Casa Del Caffè Vergnano, S.p.A., Caffè Vergnano USA
Corp., Carolina Vergnano, Pietro Vergnano, and Tommaso Lambert fail to notify the Commissioner

1 that they intend to request a hearing as described in section 31406, subdivision (d), then this citation
2 shall be deemed final.

3 32. The administrative penalties in the amounts stated above shall be made in the form
4 of a cashier’s check payable to the “Department of Business Oversight” and submitted to the
5 attention of Counsel Afsaneh Eghbaldari, 1350 Front Street, Room 2034, San Diego, California
6 92101, no later than 60 days from the date of these orders.

7 **IV**

8 **DESIST AND REFRAIN ORDER**

9 33. Corporations Code section 31402 authorizes the Commissioner to order any person
10 to desist and refrain from violating any provide of the FIL or any rule or order thereunder.

11 34. Corporations Code section 31402 provides:

12 If, in the opinion of the commissioner, the offer of any franchise is subject to
13 registration under this law and it is being, or it has been, offered for sale
14 without the offer first being registered, the commissioner may order the
15 franchisor or offeror of that franchise to desist and refrain from the further
16 offer or sale of that franchise unless and until the offer has been duly
17 registered under this law. If, after that order has been made, a request for a
18 hearing is filed in writing within 60 days from the date of service of the order
19 by the person to whom the order was directed, a hearing shall be held in
20 accordance with Chapter 5 (commencing with Section 11500) of Part 1 of
21 Division 3 of Title 2 of the Government Code, and the commissioner shall
22 have all of the powers granted under that chapter. Unless that hearing is
23 commenced within 15 business days after the request is made (or the person
24 affected consents to a later date), the order shall be deemed rescinded.

25 If that person fails to file a written request for a hearing within 60 days from
26 the date of service of the order, the order shall be deemed a final order of the
27 commissioner and shall not be subject to review by any court or agency,
28 notwithstanding Section 31501.

29 The foregoing facts establish violations of the FIL by: (1) Casa Del Caffè Vergnano, S.p.A.,
30 Carolina Vergnano, and Tommaso Lambert offered and sold a franchise in California that was
31 subject to registration under the FIL without the offer and/or sale first being registered, in violation
32 of section 31110; (2) Caffè Vergnano USA Corp., Carolina Vergnano, and Pietro Vergnano
33 willfully failed to disclose a material fact in an application filed with the Commissioner, in violation
34 of section 31200; and (3) Casa Del Caffè Vergnano, S.p.A., Carolina Vergnano, and Tommaso
35 Lambert offered or sold a franchise in this state by means of a written or oral communication which

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included untrue statements of material facts or omitted to 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, in violation of section 31201, by making material misrepresentations regarding the service fee amount, the level of management and support provided to the franchisee, and the franchise investment amount.

Pursuant to section 31406, Casa Del Caffè Vergnano, S.p.A., Caffè Vergnano USA Corp., Carolina Vergnano, Pietro Vergnano and Tommaso Lambert are hereby ordered to desist and refrain from further violations of sections 31110, 31200 and 31201.

These orders are necessary, in the public interest, for the protection of franchisees and consistent with the purposes, policies and provisions of the FIL.

Dated: November 5, 2015
Sacramento, California

JANN LYNN OWEN
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division