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7	Attorneys for Complainant	
8	BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT	
9	OF THE STATE OF CALIFORNIA	
10	In the Matter of:	) FIL ORG ID: 995-4543
11 12	THE COMMISSIONER OF BUSINESS	) ) CITATIONS PURSUANT TO
12	OVERSIGHT,	<ul> <li>CORPORATIONS CODE SECTIONS: 31406;</li> <li>31110; 31200 AND 31201:</li> </ul>
14	Complainant,	) ) DESIST AND REFRAIN ORDERS
15	V.	<ul> <li>PURSUANT TO CORPORATIONS CODE</li> <li>SECTIONS 31110, 31200 AND 31201</li> </ul>
16 17	CASA DEL CAFFÈ VERGNANO, S.P.A., CAFFE VERGNANO USA CORP., CAROLINA VERGNANO, PIETRO VERGNANO, and TOMMASO LAMBERT,	) ) )
18		) )
19	Respondents.	)
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21	Jan Lynn Owen, the California Commissioner ("Commissioner") of the Department of	
23	Business Oversight ("Department"), finds the following:	
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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 Caffè Vergnano maintained a website at www.caffevergnano.com. 1	
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CITATIONS AND DESIST AND REFRAIN ORDER		ST AND REFRAIN ORDER

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2. Caffe Vergnano USA Corp. ("Caffe Vergnano USA"), a Delaware corporation, was a wholly owned subsidiary of Casa Del Caffè Vergnano with its principal place of business in Torino, Italy.

3. Carolina Vergnano was an Export Manager of Casa Del Caffè Vergnano and Director of Caffe Vergnano USA.

4. Pietro Vergnano was an Acquisition Manager of Casa Del Caffè Vergnano and a Director of Caffe Vergnano USA.

5. Tommaso Lambert ("Lambert") was a Business Development Manager of Casa Del Caffè Vergnano.

6. The Commissioner is the head of the Department of Business Oversight and is responsible for administering and enforcing the California Franchise Investment Law ("FIL") (Corporations Code § 31000, et seq.), and registering the offer and sale of franchises in California.

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# **VIOLATIONS OF THE FIL**

#### A. Offer and Sale of Unregistered Franchise

7. Pursuant to section 31110, it shall be unlawful for any person to offer or sell any franchises in California unless the offer of the franchise has been registered under Chapter 2 or exempted under Chapter 1 (commencing with section 31100) of Part 2 of the FIL.

8. Beginning in or about May 2010, Casa Del Caffè Vergnano, Carolina Vergnano and Lambert offered a "Caffé Vergnano 1882" franchise, an Italian-style coffee house franchise that markets, sells, and distributes Casa Del Caffè Vergnano products branded with its trade name, to a California resident.

9. From May 2010 to September 2010, Casa Del Caffè Vergnano, Lambert, and a
franchisee negotiated the sale of a Caffé Vergnano 1882 franchise in California.

10. On or about September 3, 2010, and prior to executing a franchise agreement, a
California franchisee wired a partial payment to Casa Del Caffè Vergnano for the right to operate a
Caffé Vergnano 1882 coffee house in San Diego, California.

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State of California – Department of Business Oversight

11. Three weeks later, on or about September 23, 2010, Casa Del Caffè Vergnano, Carolina Vergnano, and the California franchisee executed an agreement for the purchase of the Caffé Vergnano 1882.

12. The Caffé Vergnano 1882 coffee house offered and sold by Casa Del Caffè Vergnano, Carolina Vergnano and Lambert constituted a franchise within the meaning of section 31005.

13. Casa Del Caffè Vergnano, Carolina Vergnano and Lambert were not registered to offer or sell franchises with the California Department of Business Oversight at the time, in violation of section 31110.

B. Failing to Disclose a Material Fact to the Commissioner

14. Pursuant to section 31200, it is unlawful for any person willfully to fail to disclose a material fact in any application, notice, or report filed with the Commissioner.

15. On January 14, 2011, four months after the execution of the franchise agreement, as described above, Caffe Vergnano USA filed an initial franchise registration with the Department of Business Oversight.

16. On or about March 20, 2011, the Department of Business Oversight approved the initial franchise registration of Caffe Vergnano USA.

17. Caffe Vergnano USA, Carolina Vergnano and Pietro Vergnano failed to disclose that the parent company, Casa Del Caffè Vergnano, had offered and sold a franchise in California, in violation of section 31200.

C. Failing to Provide Franchisee the Franchise Disclosure Document Prior to Sale of Franchise

18. Pursuant to section 31119, it is unlawful to sell any franchise in this state that is subject to registration under the FIL 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.

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19. Casa Del Caffè Vergnano failed to provide a copy of the franchise disclosure document relating to the Caffé Vergnano 1882 coffee house to the prospective California franchisee prior to the execution of the franchise agreement and receiving consideration from the franchisee, in violation of section 31119.

## D. Untrue Statements of Material Facts to Franchisee

20. Pursuant to section 31201, it is unlawful for any person to offer or sell a franchise in California by means of any written or oral communication not enumerated in section 31200 which includes an untrue statement of a material fact or omits to a state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

21. On or about March 30, 2011, six months after the execution of the franchise agreement, and receipt of three wired payments from the California franchisee, Casa Del Caffè Vergnano provided the California franchisee a franchise disclosure document, which contained materially different information than the offering materials.

22. In connection with the offer or sale of the Caffé Vergnano 1882 franchise, Casa Del Caffè Vergnano, Carolina Vergnano, and Lambert made the following untrue statements of material facts or failed to disclose material facts to the franchisee, in violation of section 31201:

a. The franchise offering materials described a set amount for the annual service fee, which the California franchisee understood to be the royalties. Contrarily, the franchise disclosure document disclosed royalties of 4.5% of Gross Sales;

b. During the sales negotiations, the California franchisee was assured that Casa Del Caffè Vergnano would closely manage and support the franchisee through the entire process of opening and operating the Caffé Vergnano 1882 franchise. Contrarily, Casa Del Caffè Vergnano inadequately managed and supported the opening and operation of the franchise. For example, the California franchisee built the San Diego Caffé Vergnano 1882 coffee house according to an architectural design that the California franchisee had to separately select and purchase; and

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1 The franchise offering materials described the total investment amount of c. 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 Ш 5 **CITATIONS** 23. Corporations Code section 31406 authorizes the Commissioner to issue a citation not 6 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 commissioner has cause to believe that a person is violating any provision of this 10 division or any rule or order promulgated pursuant to this division, the commissioner may issue a citation to that person in writing describing with 11 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 12 thousand five hundred dollars (\$2,500) per violation and shall contain reference to this section, including the provisions of subdivision (c). All penalties collected 13 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 addition to, all other administrative, civil, or criminal remedies. 15 (c) If within 60 days from the receipt of the citation, the person cited fails to 16 notify the commissioner that the person intends to request a hearing as described in subdivision (d), the citation shall be deemed final. 17 (d) Any hearing under this section shall be conducted in accordance with Chapter 18 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. 19 (e) After the exhaustion of the review procedures provided for in this section, the 20 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 21 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 22 sufficient showing to warrant the issuance of the judgment and order. 25. Corporations Code section 31110 provides: 23 24 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 25 this part or exempted under Chapter 1 (commencing with Section 31100) of this part. 26 26. CITATION A. During the period of May 2010 to September 2010, Casa Del Caffè 27 Vergnano, S.p.A., Carolina Vergnano, and Tommaso Lambert offered and sold a franchise in 28 5

CITATIONS AND DESIST AND REFRAIN ORDER

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

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

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

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O. Corporations Code section 31201 provides:

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

30. **CITATION C**. During the period of May 2010 through September 2010, Casa Del Caffè Vergnano, S.p.A., Carolina Vergnano, and Tommaso Lambert offered or sold a franchise in this state by means of a written or oral communication which 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.

31. Pursuant to section 31406, Casa Del Caffè Vergnano, S.p.A., Caffe Vergnano USA Corp., Carolina Vergnano, Pietro Vergnano, and Tommaso Lambert, jointly and severally, are hereby ordered to pay an administrative penalty of \$2,500.00 for each of the three foregoing 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., Caffe Vergnano USA Corp., Carolina Vergnano, Pietro Vergnano, and Tommaso Lambert fail to notify the Commissioner

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

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

#### IV

## **DESIST AND REFRAIN ORDER**

33. Corporations Code section 31402 authorizes the Commissioner to order any person

to desist and refrain from violating any provide of the FIL or any rule or order thereunder.

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Corporations Code section 31402 provides:

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

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

The foregoing facts establish violations of the FIL by: (1) Casa Del Caffè Vergnano, S.p.A.,

Carolina Vergnano, and Tommaso Lambert offered and sold a franchise in California that was
subject to registration under the FIL without the offer and/or sale first being registered, in violation
of section 31110; (2) Caffe Vergnano USA Corp., Carolina Vergnano, and Pietro Vergnano

- 26 willfully failed to disclose a material fact in an application filed with the Commissioner, in violation
- 27 || of section 31200; and (3) Casa Del Caffè Vergnano, S.p.A., Carolina Vergnano, and Tommaso
- 28 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 2 3 misleading, in violation of section 31201, by making material misrepresentations regarding the 4 service fee amount, the level of management and support provided to the franchisee, and the 5 franchise investment amount.

Pursuant to section 31406, Casa Del Caffè Vergnano, S.p.A., Caffe 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**