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

TO: Dine In Discount, Inc., doing business as Dine and Discounts
Michael Gerken
18636 Pheasant Ridge Rd.
Prior Lake, MN 55372

DESIST AND REFRAIN ORDER

(For violations of section 31110 of the California Corporations Code)

The California Commissioner of Corporations (“Commissioner”) finds that:

1. At all times relevant hereto, Dine In Discount, Inc., doing business as Dine and Discounts (“Dine and Discounts”) was a Minnesota corporation with its principal place of business at 18636 Pheasant Ridge Rd., Prior Lake, Minnesota 55372. Dine and Discounts maintains a website at www.dineanddiscounts.com.

2. At all times relevant hereto, Michael Gerken was the chief executive officer, president and “control” person of Dine and Discounts. “Control” is defined by California Corporations Code section 160.

3. Since at least in or about April 2009, Dine and Discounts and Michael Gerken have offered and sold franchises to California residents in the state of California pursuant to “Territory Agreements” (“Agreements”). The Agreements grant the right to sell discount cards and/or discount coupons purchased from Dine and Discounts, for the purpose of fundraising, under Dine and Discounts’ exclusive trademark in designated “territories.”

4. The Agreements offered and sold by Dine and Discounts and Michael Gerken are franchises within the meaning of California Corporations Code section 31005. The Agreements grant the “Territory Owner” the right to engage in the business of selling discount cards and/or discount coupons for fundraising in a designated “territory.” The “Territory Owner” is required to observe specifications, directions, and processes furnished by Dine and Discounts, including guidelines

1 relating to training, sale price of the discount cards and/or discount coupons, and use of the Dine and
2 Discounts’ trademark and materials. In addition, the “Territory Owner” is required to pay Dine and
3 Discounts a fee of \$10,000 to acquire a designated “protected territory” and the discount coupons
4 and/or discount cards. Lastly, in its advertisement at www.franchiseclique.com, Dine and Discounts
5 states that it provides “[t]echnical, administrative, and marketing support” to franchisees.

6 5. California Corporations Code section 31402 provides in relevant part:

7 If, in the opinion of the commissioner, the offer of any franchise is
8 subject to registration under this law and it is being, or it has been,
9 offered for sale without the offer first being registered, the
10 commissioner may order the franchisor or offeror of that franchise to
11 desist and refrain from the further offer or sale of that franchise unless
12 and until the offer has been duly registered under this law. If, after the
13 order has been made, a request for a hearing is filed in writing within 60
14 days from the date of service of the order by the person on to whom the
15 order was directed, a hearing shall be held in accordance with Chapter 5
16 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of
17 the Government Code

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

23 6. Dine and Discounts and Michael Gerken’s offers and sales of franchises in California
24 have not been registered under the California Franchise Investment Law are not exempted under
25 Chapter 1, beginning with Corporations Code section 31100.

26 Based on the foregoing findings, the Commissioner is of the opinion that Dine In Discount,
27 Inc., doing business as Dine and Discounts and Michael Gerken have engaged in the offer and sale of
28 franchises in this state that are subject to registration under the California Franchise Investment Law
without the offers first being registered, in violation of Corporations Code section 31110. Pursuant to
California Corporations Code section 31402, Dine In Discount, Inc., doing business as Dine and
Discounts and Michael Gerken are hereby ordered to desist and refrain from the further offer or sale of
franchises unless and until the offers have been duly registered under the California Franchise
Investment Law or unless exempt.

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

Dated: May 22, 2013

JAN LYNN OWEWN
California Commissioner of Corporations

By _____
Mary Ann Smith
Deputy Commissioner
Enforcement Division