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8 Attorneys for Complainant

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

11 In the Matter of:)	FIL ORG ID. 5033
)	
12 THE COMMISSIONER OF BUSINESS)	CITATION INCLUDING:
13 OVERSIGHT,)	(1) DESIST AND REFRAIN ORDER
)	
14 Complainant,)	(2) ASSESSMENT OF
)	ADMINISTRATIVE PENALTIES
15 v.)	
)	(3) CLAIM FOR ANCILLARY RELIEF
16)	
17 GLACE FRANCHISING, LLC and GLACE)	
18 CRYOTHERAPY, LLC,)	
)	
19 Respondents.)	
)	
20)	

21 Jan Lynn Owen, the Commissioner of Business Oversight (Commissioner), is responsible for
22 administering and enforcing the California Franchise
23 Investment Law, and registering the offer and sell of franchises in California, pursuant to Corporations
24 Code section 31000 et seq. The Commissioner finds the following:

25 **I. STATEMENT OF FACTS**

26 1. Glace Franchising, LLC is a California limited liability company first registered on February
27 22, 2016, with a principal place of business located at 3777 The Barnyard, Carmel California 93923.
28 Glace Franchising, LLC was formed for the purpose of offering and selling franchises for spas that

1 offer “cryotherapy,” which involves immersing the body in cold gasses and other spa services under
2 the name and trade mark “Glance Cryotherapy.”

3 2. Glance Cryotherapy, LLC is a California limited liability company organized first registered
4 on April 13, 2015, with a principal place of business located at 3777 The Barnyard, Carmel
5 California 93923 and is an affiliate of Glance Franchising LLC.

6 3. Brittney Scarlett-Torres is the Chief Operating Officer and a control person of Glance
7 Cryotherapy, LLC and Glance Franchising, LLC.

8 4. Skyler Scarlett is the Chief Executive Officer and a control person of Glance Cryotherapy,
9 LLC and Glance Franchising, LLC.

10 5. On or about March 3, 2016, Glance Franchising, LLC applied to the Department of Business
11 Oversight (DBO) for registration to offer and sell franchises in California pursuant to Corporations
12 Code section 31111. The application and franchise disclosure documents (FDD) stated that Glance
13 Franchising, LLC first began offering franchises in February 2016 and that neither Glance Franchising
14 LLC nor Glance Cryotherapy, LLC had previously offered franchises in this or any other line of
15 business. The FDD also stated that as of December 31, 2015, there were no existing franchised
16 outlets and no outlets for which a franchise agreement had been signed but had not yet opened.

17 6. The DBO subsequently received a complaint in August 2016 from a person who operated
18 two California cryotherapy spa locations. The complaint indicated the operator had entered a written
19 agreement with Glance Cryotherapy, LLC entitled a “Contract” in June of 2015 to operate two
20 locations under the name and brand “Glance Cryotherapy.” The Contract also provided that Glance
21 Cryotherapy, LLC would provide training, use of existing social media advertising, access to
22 confidential manuals and documents and other ongoing support as to how to operate and market the
23 Glance Cryotherapy spa locations in exchange for a percentage of the gross monthly revenue of those
24 spa locations. A subsequent investigation by the DBO concluded that the Contract constituted sales
25 of two unregistered franchises by Glance Cryotherapy, LLC in violation of Corporations Code section
26 31110. Further, the DBO determined that Glance Franchising, LLC had failed to disclose these prior
27 franchise sales in its application to the DBO for a franchise permit or in the FDD.
28

1 7. Based on the foregoing violations of the California Franchise Investment Law, the
2 Commissioner finds grounds to issue the following orders and seek ancillary relief:

3 **II. DESIST AND REFRAIN ORDER AND CITATION FOR PENALTIES FOR**
4 **VIOLATION OF CORPORATIONS CODE SECTION 31110**

5 8. Corporations Code section 31110 provides:

6 On and after April 15, 1971, it shall be unlawful for any person to offer or
7 sell any franchise in this state unless the offer of the franchise has been
8 registered under this part or exempted under Chapter 1 (commencing with
9 section 31000) of this part.9.

10 Corporations Code section 31406 provides in relevant part:

11 (a) If, upon inspection or investigation, based upon a complaint or
12 otherwise, the commissioner has cause to believe that a person is violating
13 any provision of this division or any rule or order promulgated pursuant to
14 this division, the commissioner may issue a citation to that person in writing
15 describing with particularity the basis of the citation. Each citation may
16 contain an order to desist and refrain and an assessment of an administrative
17 penalty not to exceed two thousand five hundred dollars (\$2,500) per
18 violation and shall contain reference to this section, including the provisions
19 of subdivision (c). All penalties collected under this section shall be
20 deposited in the State Corporations Fund.

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

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

26 10. The Commissioner hereby finds that Glace Cryotherapy, LLC engaged in the offer and sale of
27 at least two franchises in this state that were subject to registration under the California Franchise
28 Investment Law, without the offers first being registered or exempt, in violation of Corporations Code
section 31110 and that Glace Franchising, LLC failed to disclose these prior sales in its franchise
permit application to the DBO or in the FDD.

Pursuant to Corporations Code sections 31402 and 31406, Glace Cryotherapy, LLC and Glace
Franchising, LLC are hereby ordered to desist and refrain from the further offer or sale of franchises in
California, including but not limited to the above described Contract, unless and until the offers have
been duly registered under the California Franchise Investment Law or are otherwise exempt.

1 10. The Commissioner, pursuant to Corporations Code section 31406, also hereby issues a
2 citation to Glace Cryotherapy, LLC and Glace Franchising, LLC and assesses an administrative
3 penalty of \$2500.00 for each violation, totaling \$5000.00 for the two franchise locations sold in
4 California in violation of Corporations Code section 31110. An additional penalty of \$2500.00 each
5 for any additional franchises sold in California by Glace Cryotherapy, LLC or Glace Franchising,
6 LLC is also ordered to be paid according to later proof at hearing. The payment of the \$5000.00
7 penalties will be due within 90 days of the issuance of this order. All payments of penalties shall be
8 made in the form of a cashier's check or Automated Clearing House deposit to the "Department of
9 Business Oversight," and transmitted to the attention of Accounting at the Department of Business
10 Oversight located at 1515 K Street, Suite 200, Sacramento, California, 95814. Notice of all
11 payments shall be sent concurrently to Kirk Wallace, Senior Counsel, Enforcement Division, at the
12 Department of Business Oversight located at One Sansome Street, Suite 600, San Francisco,
13 California, 94104.

14 III. ANCILLARY RELIEF

15 11. Corporations Code section 31408, subdivision (a), provides:

16 (a) If the commissioner determines it is in the public interest, the commissioner may include in
17 any administrative action brought under this division, including a stop order, a claim for
18 ancillary relief, including, but not limited to, a claim for rescission, restitution or disgorgement
19 or damages on behalf of the persons injured by the act or practice constituting the subject
20 matter of the action, and the administrative law judge shall have jurisdiction to award
21 additional relief. The person affected may be required to attend remedial education, as directed
22 by the commissioner.

23 12. Pursuant to Corporations Code section 31408, Glace Cryotherapy, LLC and Glace Franchising,
24 LLC shall disgorge all fees including any percentage of gross revenue generated by any spa location
25 paid pursuant to the above referred Contract or any other franchise agreement that were collected from
26 California residents in violation of the California Franchise Investment Law.

27 13. The disgorgement shall be made payable and delivered to each California resident and/or
28 franchisee no later than 90 days from the date of the order in this matter. On or before October 31,
2017, to demonstrate compliance with this order with regard to the disgorgement ordered, Glace

1 Cryotherapy, LLC and Glace Franchising, LLC shall mail a report addressed to Kirk Wallace, Senior
2 Counsel, Department of Business Oversight, One Sansome Street, Suite 600, San Francisco, California
3 94104. In paying this disgorgement, Glace Cryotherapy, LLC and Glace Franchising, LLC shall not
4 require the franchisee to waive any provision of the California Franchise Investment Law in
5 accordance with Corporations Code section 31512.

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

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Dated: August 7, 2017

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
Mary Ann Smith
Deputy Commissioner
Enforcement Division