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Attorneys for Complainant

BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
OF THE STATE OF CALIFORNIA

In the Matter of:)	FIL ORG ID.: 137613
)	
THE COMMISSIONER OF BUSINESS OVERSIGHT,)	CITATION INCLUDING:
)	
Complainant,)	(1) DESIST AND REFRAIN ORDER
)	
v.)	(2) ASSESSMENT OF ADMINISTRATIVE PENALTIES
)	
GLENN CYBULSKI, PERSONA PIZZA HOLDINGS LLC,)	(3) CLAIM FOR ANCILLARY RELIEF AND COSTS
)	
Respondents.)	
)	
)	

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

I
Introduction

1. Persona Pizza Holdings LLC (“Persona Pizza”) was created as a Florida Limited Liability Company on January 7, 2013 and converted to a Delaware Limited Liability Company on

1 November 27, 2013. Persona Pizza’s principal business address is 6538 Collins Avenue, # 182,
2 Miami Beach, Florida 33141.

3 2. At all relevant times, Glenn Cybulski (“Cybulski”) was the chief operating officer
4 (“COO”) of Persona Pizza Holdings LLC.

5 3. At all relevant times, Joseph Baumel (“Baumel”) was the chief executive officer
6 (“CEO”) of Persona Pizza Holdings LLC.

7 4. The Commissioner is the head of the Department of Business Oversight and is
8 responsible for administering and enforcing the California Franchise Investment Law (“FIL”)
9 (Corporations Code § 31000, *et seq.*), and registering the offer and sale of franchises in California.

10 5. To register a franchise, a franchisor must file a Uniform Franchise Disclosure
11 Document (“Franchise Disclosure Document”) with the Department for review and approval, in
12 accordance with sections 31111 and 31114.

13 6. The disclosure requirements of the FIL are intended to avoid misrepresentations and
14 to provide prospective franchisees with facts upon which to make an informed decision to purchase
15 a franchise, as stated in section 31001.

16 **II**

17 **Statement of Facts**

18 **A.**

19 **Commodities Futures Trading Commission Takes Action Against Cybulski**

20 7. On February 6, 2001, the Commodity Futures Trading Commission (“CFTC”) filed
21 an Amended Complaint and Notice of Hearing against Joyce Roeder, Currency Trading Systems,
22 Glenn Cybulski, and Michael Stewart. The Amended Complaint alleged that Cybulski violated
23 section 40(1) of the Commodities Futures Modernization Act of 2000 (“CFMA”), 7 U.S.C. § 60(1),
24 and Section 4.41(a) of the Commission’s Regulations, 17 C.F.R. § 4.41(a).

25 8. CFMA Section 40(1) prohibits commodity trade advisors from defrauding or
26 deceiving clients, prospective clients or participants. Commission’s Regulation section 4.41(a)
27 prohibits misrepresentations or omissions in connection with commodities advertising.

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15. Persona Pizza submitted a Franchise Seller Disclosure Form for Cybulski. The above question was answered “No.”

16. An officer of the applicant is required to review the Franchise Disclosure Document and certify its accuracy to the Commissioner. Bauman signed the following notarized certification on behalf of Persona Pizza, dated March 17, 2014:

I certify and swear under penalty of perjury of law that I have read and know the contents of this application, including the Franchise Disclosure Document with an issuance date of February 21, 2014, attached as an exhibit, and that all material facts stated in all those documents are accurate and those documents do not contain any material omissions. I further certify that I am duly authorized to make this certification on behalf of the Franchisor and that I do so upon my personal knowledge.

17. The Department issued an order allowing Persona Pizza to offer and sell franchises in California on April 4, 2014. Under this order, Persona Pizza’s franchise registration was effective through April 20, 2015.

C.
Persona Pizza Applies For Franchise Renewal Registration Again Failing to Disclose Cybulski Action

18. On April 1, 2015, Persona Pizza filed a franchise renewal registration application with the Department (“Renewal Application”).

19. Cybulski was again listed as the COO and Baumel as the CEO and Manager.

20. Persona Pizza again failed to disclose the CFTC Order in the Renewal Application.

21. Persona Pizza submitted a Franchise Seller Disclosure Form for Cybulski, asking whether Cybulski:

Is subject to a currently effective injunction or restrictive order or decree resulting from a pending or concluded action brought by a public agency and relating to the franchise, or to a Federal, State or Canadian franchise, securities, antitrust, trade regulation or trade practice law?

22. The above question was answered “No.”

23. Bauman again signed the following notarized certification on behalf of Persona Pizza, dated March 30, 2015:

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I certify and swear under penalty of perjury of law that I have read and know the contents of this application, including the Franchise Disclosure Document with an issuance date of January 30, 2015, attached as an exhibit, and that all material facts stated in all those documents are accurate and those documents do not contain any material omissions. I further certify that I am duly authorized to make this certification on behalf of the Franchisor and that I do so upon my personal knowledge.

III
Citation and Desist and Refrain Order
Violation of Corporations Code Section 31200

24. 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.

25. Based upon the foregoing findings, the Commissioner is of the opinion that Glenn Cybulski and Persona Pizza, in violation of section 31200, willfully made untrue statements of material fact in applications filed with the Commissioner or omitted to state material facts which were required to be stated in the applications filed with the Commissioner. Pursuant to section 31406, Cybulski and Persona Pizza are hereby cited and ordered to desist and refrain from further violations of Corporations Code section 31200.

26. This order is necessary, in the public interest, for the protection of franchisees and consistent with the purposes, policies and provisions of the FIL.

IV
Administrative Penalties

27. Section 31406 provides in relevant part:

(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 division or any rule or order promulgated pursuant to this division, the commissioner may issue a citation to that person in writing describing with particularity the basis of the citation. Each citation

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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.

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

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

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

(e) After the exhaustion of the review procedures provided for in this section, the 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 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.

28. Pursuant to Corporations Code section 31406, Persona Pizza is hereby assessed and ordered to pay an administrative penalty of \$5,000.00, which consists of a penalty of \$2,500.00 for each of the two violations of Corporations Code sections 31200 recited above.

29. The administrative penalties in the amounts stated above shall be made payable to the Department of Business Oversight and submitted to Danielle A. Stoumbos, Counsel, 320 West 4th Street, Suite 750, Los Angeles, California 90013-2344, no later than 60 days from the date of this order.

V
Ancillary Relief and Fees

30. Section 31408 provides in relevant part:

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

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(b) In an administrative action brought under this part the commissioner is entitled to recover costs, which in the discretion of the administrative law judge may include any amount representing reasonable attorney's fees and investigative expenses for the services rendered, for deposit into the State Corporations Fund for the use of the Department of Corporations.

31. Pursuant to Corporations Code section 31408, Cybulski and all persons employed by Persona Pizza who assist in preparing franchise registrations or who assist in franchise selling are hereby required to attend remedial education, which shall consist of eight hours of franchise law training courses per person offered by instructors that are acceptable to the Commissioner. Proof of attendance of the remedial education shall be submitted to Danielle A. Stoumbos, Counsel, 320 West 4th Street, Suite 750, Los Angeles, California 90013-2344, no later than 90 days from the date of this order.

32. Pursuant to Corporations Code section 31408, subdivision (b), Persona Pizza shall pay attorney's fees and investigative expenses to the Department of Business Oversight in the amount of \$1,000.00 or according to proof. The amount awarded for attorney's fees and investigative expenses shall be made payable to the Department of Business Oversight and submitted to Danielle A. Stoumbos, Counsel, 320 West 4th Street, Suite 750, Los Angeles, California 90013-2344, no later than 60 days from the date of this order.

33. This order is necessary, in the public interest, for the protection of investors and franchisees and consistent with the purposes, policies and provisions of the Franchise Investment Law.

Dated: July 20, 2015
Sacramento, California

JANN LYNN OWEN
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division