

1 STATE OF CALIFORNIA
2 BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY
3 DEPARTMENT OF BUSINESS OVERSIGHT

4 TO: Robert Lenhart
5 San Francisco Sourdough Eatery, Inc.
6 322 Sherman Avenue
7 Coeur D’Alene, Idaho 83814

8
9 **DESIST AND REFRAIN ORDER**
10 **(For violations of sections 31123, 31200, 31201 and 31203 of the Corporations Code)**

11 The Commissioner of Business Oversight finds that:

12 1. At all relevant times, San Francisco Sourdough Eatery, Inc. (“SFSE”) was an Idaho
13 corporation, first formed on February 7, 2002, with a principal place of business at 322 Sherman
14 Avenue, Coeur D’Alene, Idaho 83814.

15 2. At all relevant times, Robert Lenhart, (“Lenhart”) was the President and Chief
16 Executive of SFSE.

17 3. On January 26, 2012, the Department of Corporations (On July 1, 2012 the
18 Department of Corporations merged to form the Department of Business Oversight) (“The
19 Department”) issued an Order granting a valid franchise registration to SFSE to offer and sell
20 franchises in California. The registration was effective until April 20, 2012.

21 4. As a condition to registration the Department required that SFSE disclose:

22 a. The range of training costs and supplier/product review;

23 b. Costs for additional training as well as the locations, duration, frequency and
24 content of said training.

25 5. Additionally, the Department imposed a condition to registration that SFSE waive the
26 franchise fee for all new franchisees until SFSE met all pre-opening obligations. The Department of
27 Corporations imposed this condition to registration because it found that it was necessary to protect
28 prospective franchisees because SFSE failed to demonstrate that adequate financial arrangements had

1 been made to fulfill SFSE obligations to provide equipment, inventory, training, or other items. This
2 condition was imposed pursuant to Franchise Investment Law (FIL) section 31113.

3 6. SFSE and Lenhart agreed to this condition and acknowledged it in the Uniform
4 Franchise Disclosure Document (“UFDD”) and the Franchise Agreement by adding the following
5 language:

6 “As a condition of registration we have elected to defer all initial fees until
7 the first business day that we have completed all of our material initial
8 obligations to you under the Franchise Agreement, your initial training
9 program has been completed and you open the first restaurant for business,
10 at which time all initial fees shall become immediately all due and payable.”
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12 7. Despite this condition, on February 16, 2012, SFSE and Lenhart offered and sold a
13 franchise to a California resident and on July 27, 2012 collected a franchise fee and training fee
14 without first fulfilling its obligations in violation of FIL section 31203.

15 8. On or about February 16, 2012, Lenhart and SFSE violated FIL section 31200 by
16 willfully making untrue statements of material fact in the franchise registration application, and
17 failing to notify the commissioner of any material changes as required by Section 31123 by:

18 a. collecting franchise fees on July 27, 2012 and training fees prior to fulfilling their
19 obligations, despite including the waiver of fees condition in the UFDD and the Franchise agreement;
20 and

21 b. failing to notify the commissioner that fees were being collected prior to fulfilling
22 the agreed obligations.

23 9. At all relevant times, Lenhart and SFSE made untrue statements of material fact in the
24 offer and sale of a franchise in violation of FIL section 31201 by representing that:

25 a. There would be annual meetings for extensive training with the franchisor. There
26 were never any annual meetings.

27 b. SFSE would provide approved suppliers for kitchen equipment, signs and graphics.
28 These were not provided.

1 c. SFSE had a proven system for site selection, build out, operation and advertising for
2 all shop locations.

3 d. SFSE had a proprietary recipe for sourdough bread and a proprietary sandwich
4 spread.

5 e. SFSE had suppliers to insure adequate supply and delivery of the proprietary bread
6 and proprietary sandwich spread.

7 f. SFSE had a “system” under which all shops operated which was distinguished by
8 “distinctive food products...quality standards...instructional manuals, operational manuals and
9 training courses.” This system was maintained by “continuing research and development, marketing
10 programs, and requiring high standards of quality and service.”

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12 10. Based upon the foregoing findings, the Commissioner of Business Oversight is of the
13 opinion that San Francisco Sourdough Eatery, Inc. and Robert Lenhart violated a condition of
14 registration by taking fees prior to fulfilling obligations in violation of FIL section 31203. Pursuant
15 to FIL section 31406, San Francisco Sourdough Eatery, Inc. and Robert Lenhart are hereby ordered
16 to desist and refrain from the further offer or sale of franchises, including but not limited to San
17 Francisco Sourdough Eatery franchises in violation of FIL section 31203 in California.

18 11. Based upon the foregoing findings, the Commissioner of Business Oversight is of the
19 opinion that San Francisco Sourdough Eatery, Inc. and Robert Lenhart engaged in the offer and sale
20 of franchises in this state by means of written or oral communications which include an untrue
21 statement of a material fact or omit to state a material fact necessary in order to make the statements
22 made, in light of the circumstances under which they were made, not misleading, in violation of
23 Corporations Code section 31201. Pursuant to FIL section 31406, San Francisco Sourdough Eatery,
24 Inc. and Robert Lenhart are hereby ordered to desist and refrain from the further offer or sale of
25 franchises, including but not limited to San Francisco Sourdough Eatery franchises by means of
26 written or oral communications which include an untrue statement of material fact or omit to state a
27 material fact necessary in order to make the statements made, in light of the circumstances under
28 which they were made, not misleading in violation of FIL section 31201 in California.

1 12. Based upon the foregoing findings, the Commissioner of Business Oversight is of the
2 opinion that San Francisco Sourdough Eatery, Inc. and Robert Lenhart willfully made untrue
3 statements of a material fact in the franchise registration application and failed to notify the
4 commissioner of any changes in violation of FIL sections 31200 and 31123. Pursuant to section
5 31406, San Francisco Sourdough Eatery, Inc. and Robert Lenhart are hereby ordered to desist and
6 refrain from the offer and sale of franchises, including but not limited to San Francisco Sourdough
7 Eatery franchises in violation of FIL sections 31200 and 31123.

8 13. Corporations Code Section 31406 states:

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 division or any rule
11 or order promulgated pursuant to this division, the commissioner may issue a citation to that person
12 in writing describing with particularity the basis of the citation. Each citation may contain an order to
13 desist and refrain and an assessment of an administrative penalty not to exceed two thousand five
14 hundred dollars (\$2,500.00) per violation and shall contain reference to this section, including the
15 provisions of subdivision (c). All penalties collected under this section shall be deposited in the State
16 Corporations Fund.

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

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

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

24 (e) After the exhaustion of the review procedures provided for this section, the
25 commissioner may apply to the appropriate superior court for a judgment in the amount of the
26 administrative penalty and order compelling the cited person to comply with the order of the
27 commissioner. The application shall include a certified copy of the final order of the commissioner
28 and shall constitute a sufficient showing to warrant the issuance of the judgment and order.”

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

Dated: August 4, 2014
Sacramento, California

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division