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2 **STATE OF CALIFORNIA**
3 **BUSINESS, TRANSPORTATION AND HOUSING AGENCY**
4 **DEPARTMENT OF CORPORATIONS**

5 TO: Joey’s Smokin’ BBQ Franchising, Inc.
6 Joey’s Smokin’ BBQ, Inc
7 www.joeyssmokinbbq.com
8 Joseph Maggiore
9 6955 El Camino Real
10 Suite 107
11 Carlsbad, CA 92009

12 **DESIST AND REFRAIN ORDER**

13 **(For violations of sections 31110 of the Corporations Code)**

14 The California Corporations Commissioner finds that:

15 1. At all relevant times, Joseph Maggiore (“Maggiore”) was a president, principal and
16 control person of Joey’s Smokin’ BBQ Franchising, Inc., a California corporation, which was formed
17 on, or about November 6, 2009. Maggiore also is the control person and principal of Joey’s Smokin’
18 BBQ, Inc. and the Internet website located at: <http://www.joeyssmokinbbq.com>.

19 2. Joey’s Smokin’ BBQ Franchising, Inc. is operated by Maggiore from: 6955 El
20 Camino Real, Suite 107, Carlsbad, California 92009.

21 3. There are at least 7 separate Joey’s Smokin’ BBQ restaurants in Southern California.

22 4. Joey’s Smokin’ BBQ Franchising, Inc. and Maggiore have entered into “License
23 Agreements” on at least two separate occasions purporting to grant those persons the right to engage
24 in the business of operating restaurants under the name and logo of Joey’s Smokin’ BBQ. In both
25 agreements Maggiore is referred to as the “Owner” and the other party is referred to as the
26 “Licensee”.

1 5. The “License Agreements” not only grant each individual the right to engage in the
2 business of operating a Joey’s Smokin’ BBQ restaurant, but also purports to grant the individual the
3 right to engage in that business under a marketing plan or system prescribed in substantial part by
4 Maggiore and Joey’s Smokin’ BBQ Franchising, Inc. This marketing plan/system is evidenced by
5 Maggiore’s and Joey’s Smokin’ BBQ Franchising, Inc.’s comprehensive advertising scheme that
6 identifies the restaurant location and prohibits advertising without the prior approval of Maggiore and
7 Joey’s Smokin’ BBQ Franchising, Inc.
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9 6. Maggiore and Joey’s Smokin’ BBQ Franchising, Inc. also reserve the right in the
10 “License Agreement” to inspect the location; prescribe operating techniques; set and enforce quality
11 standards; and prescribe employee standards (per the Joey’s Smokin’ BBQ “Employee Handbook”).
12

13 7. The “License Agreements” clearly allow/mandate the use of the commercial symbols
14 of Joey’s Smokin’ BBQ Franchising, Inc. This is evidenced by Maggiore and Joey’s Smokin’ BBQ
15 Franchising, Inc.’s directions for use of trade names, trade marks, trade dress (including the use of
16 uniforms, signs, menus and décor).
17

18 8. Finally, the “License Agreement” explicitly mandates a monthly fee of 6% of the
19 gross sales for the restaurant.
20

21 9. Maggiore and Joey’s Smokin’ BBQ Franchising, Inc. operate an Internet website:
22 <http://www.joeyssmokinbbq.com/>. As late as February 2010, Maggiore and Joey’s Smokin’ BBQ
23 Franchising, Inc. had a web-page within their web-site which advertised a “Franchise Opportunity”
24 for those interested. The current website now promotes a “Restaurant Opportunity”
25

26 10. The “License Agreements” referred to herein constitute a “franchise” as defined by
27 California Corporations Code section 31005.
28

11. These franchises were offered and sold within this state.

1 12. The Department of Corporations has not issued a registration to Joseph Maggiore;
2 Joey's Smokin' BBQ Franchising, Inc.; Joey's Smokin' BBQ, Inc.; or www.joeyssmokinbbq.com for
3 the offer or sale of any franchise in this state. Additionally, the offers or sales of these franchises are
4 not exempt from registration.
5

6 Based upon the foregoing findings, the California Corporations Commissioner is of the
7 opinion that Joseph Maggiore; Joey's Smokin' BBQ Franchising, Inc.; Joey's Smokin' BBQ, Inc.;
8 and www.joeyssmokinbbq.com have offered franchises in California that are subject to registration
9 under the Franchise Investment Law, in violation of Corporations Code section 31110. Pursuant to
10 section 31402 of the Corporations Code Joseph Maggiore; Joey's Smokin' BBQ Franchising, Inc.;
11 Joey's Smokin' BBQ, Inc.; and www.joeyssmokinbbq.com are hereby ordered to desist and refrain
12 from the further offer or sale of franchises unless and until the offer has been duly registered under
13 the Franchise Investment Law or unless exempt.
14

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16 This Order is necessary, in the public interest, for the protection of franchisees and consistent
17 with the purposes, policies, and provisions of the Franchise Investment Law.
18

19 Dated: May 4, 2010
20 Los Angeles, California

21 PRESTON DUFAUCHARD
22 California Corporations Commissioner

23
24 By _____
25 ALAN S. WEINGER
26 Deputy Commissioner
27 Enforcement Division
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