

1
2 STATE OF CALIFORNIA
3 BUSINESS, TRANSPORTATION AND HOUSING AGENCY
4 DEPARTMENT OF CORPORATIONS

5 **TO:** Fresh Fruit Bouquet Company Franchising LLC
6 Fresh Fruit Bouquet Company
7 James Nortaris, President
8 72 Hillside Avenue
9 Williston Park, New York 11596
10 www.freshfruitbouquetcompany.com and www.ffbc.com

11 **DESIST AND REFRAIN ORDER**
12 (For violations of section 31110 of the Corporations Code)

13 The California Corporations Commissioner finds that:

- 14 1. Fresh Fruit Bouquet Company Franchising LLC (“FFBCF”) is a New York limited liability
15 company formed in May 2005 that does business as “Fresh Fruit Bouquet Company” from its
16 headquarters at 72 Hillside Avenue, Williston Park, New York 11596. FFBCF represents it has a
17 website at www.freshfruitboquetcompany.com, but that website directs one to www.ffbc.com instead.
18 2. Fresh Fruit Bouquet Company, Inc. (“FFBC”) is a New York corporation formed in
19 August 2004, which is also located at 72 Hillside Avenue, Williston Park, New York 11596. FFBC
20 along with POSNet Accounting Systems, LLC and FFBC Designs, Inc., are affiliates of FFBCF.
21 3. FFBC owns the federally registered trademarks, copyrights, proprietary information and
22 other intellectual property associated with the Fresh Fruit Bouquet Company concept and has
23 licensed the use of its marks and other intellectual property to FFBCF for use in franchising.
24 4. FFBCF sells franchises of FFBC stores that feature designed arrangements and gift baskets
25 whose primary ingredients are fresh fruit and chocolate. Payment of an initial franchise fee of \$25,000
26 is required at the time the franchise agreement is signed. Additionally, FFBCF’s franchisees are
27 required to pay the following fees: royalty fees are paid based on a store’s weekly gross sales, a
28 marketing advertising fee, training fees for employees, fees for products, services, computer software
support, upgrades, on-line ordering, website, audit, annual convention, testing, report preparation and
operations manuals. Additionally, a renewal, management or transfer fee may be required.

1 5. James Nortaris is the founder, president and chairman of the board of FFBCF.

2 6. On May 10, 2006, FFBCF first filed with the California Department of Corporations
3 (“Department”) an application pursuant to Corporations Code section 31111 for registration of
4 FFBCF’s offers and sales of franchises in California. Thereafter, the Department reviewed the
5 contents of FFBCF’s application and documents provided in connection with its application.

6 7. Based upon the contents of the application and document filed by FFBCF, the Department
7 approved FFBCF’s registration on June 2, 2006, and informed FFBCF that its franchise registration
8 in California was of a limited duration. The Department’s registration order to FFBCF entitled,
9 “Order Designating Registration Period,” unequivocally states that the registration of the offer and
10 sale of franchises requested in FFBCF’s application will terminate on October 18, 2006.

11 8. The Department not only informed FFBCF of the expiration date by the above-described
12 order but also did so by a transmittal letter dated June 2, 2006. The Department’s transmittal letter
13 states: “Please note that pursuant to section 31121, a registration renewal application must be filed no
14 later than 15 business days prior to the expiration of the registration.”

15 9. No timely registration renewal application was filed by FFBCF with the Department.

16 10. Although on May 10, 2006, FFBCF filed a notice of exemption for internet advertisements
17 pursuant to California Code of Regulations, title section 310.156.3, that exemption was unavailable to
18 FFBCF after its registration expired on October 18, 2006.

19 11. The Uniform Franchise Offering Circular (“UFOC”) Guidelines of the North American
20 Securities Administrators Association, Inc. (“NASAA”) requires that franchise applicants seeking to
21 register their offerings comply with NASAA’s UFOC Guidelines, one of which is disclosure of
22 litigation. The Department requires that franchise applicants conform to these NASAA UFOC
23 Guidelines pursuant to Corporations Code section 31114 and California Code of Regulations, Title
24 10, sections 310.111 and 310.114.1.

25 12. During relevant time periods FFBCF’s did not timely disclose to the Department the
26 existence of litigation filed by Edible Arrangements International, Inc., in United States District
27 Court, District of Connecticut, Case No. 3:05-CV-00197 (AWT), or in United States District Court,
28 Central District of California, Case No. CV 06-5945 FMV (PJW). FFBCF did not timely disclose to

1 the Department that the litigation filed in the United States District Court in the Central District of
2 California sought and obtained an injunction that ordered FFBCF, from, among other activities,
3 soliciting prospective franchisees, or otherwise advertising or marketing their franchise in California
4 until they have properly registered with the State of California. FFBCF's offering circular filed with
5 the Department on May 10, 2006, did not disclose to potential franchisees the existence of any
6 litigation.

7 13. After October 17, 2006, all offers and sales of franchises by FFBCF in California, including
8 FFBCF's "secure online franchising application," are unregistered under the Franchise Investment
9 Law and are not exempted under that law.

10 14. The offers or sales of franchises by FFBCF during all relevant times were made by means
11 of written and oral communications with included untrue statements of material fact and omitted to
12 state materials facts necessary in order to make the statements made, in the light of the circumstances
13 under which they were made, not misleading. Specifically, FFBCF through its offering circular and
14 its website www.ffbc.com omitted disclosure about the existence of litigation, the lack of effective
15 registration with the Department after October 17, 2006 and FFBCF's failure to operate in
16 accordance with California law.

17 Based upon the foregoing findings, the California Corporations Commissioner is of the
18 opinion that Fresh Fruit Bouquet Company Franchising LLC, doing business as Fresh Fruit Bouquet
19 Company and James Nortaris offered or sold franchises in California, that are subject to registration
20 under the Franchise Investment Law, without the offer first being registered, in violation of
21 Corporations Code section 31110.

22 Based upon the foregoing findings, the California Corporations Commissioner is also of the
23 opinion that Fresh Fruit Bouquet Company Franchising LLC, doing business as Fresh Fruit Bouquet
24 Company and James Nortaris have offered and sold franchises in California by means of written and
25 oral communications, which included untrue statements of material fact and which omitted to state
26 material facts necessary in order to make the statements made, in light of the circumstances under
27 which they were made, not misleading, in violation of Corporations Code section 31201.

28 ///

1 Pursuant to section 31402 of the Corporations Code, Fresh Fruit Bouquet Company
2 Franchising LLC, doing business as Fresh Fruit Bouquet Company and James Nortaris are hereby
3 ordered to desist and refrain from the further offer or sale of franchises of Fresh Fruit Bouquet
4 Company Franchising LLC, doing business as Fresh Fruit Bouquet Company unless and until the
5 offers have been duly registered under the Franchise Investment Law or unless exempt.

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 Franchise Investment Law.

8 Dated: December 11, 2006
9 Los Angeles, California

10 PRESTON DuFAUCHARD
11 California Corporations Commissioner

12
13 By _____
14 ALAN S. WEINGER
15 Lead Corporations Counsel
16 Enforcement Division
17
18
19
20
21
22
23
24
25
26
27
28