

1 MARY ANN SMITH
Deputy Commissioner
2 SEAN M. ROONEY
Assistant Chief Counsel
3 VANESSA T. LU (State Bar No. 295217)
Counsel
4 Department of Business Oversight
320 West 4th Street, Suite 750
5 Los Angeles, California 90013
Telephone: (213) 576-7632
6 Facsimile: (213) 576-7181

7 Attorneys for Complainant

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

11 In the Matter of:)	FIL ORG ID: 130338
)	
12 THE COMMISSIONER OF BUSINESS)	CITATION INCLUDING:
13 OVERSIGHT,)	(1) DESIST AND REFRAIN ORDER;
)	
14 Complainant,)	(2) ASSESSMENT OF
)	ADMINISTRATIVE PENALTIES; and
15 v.)	
)	(3) CLAIM FOR ANCILLARY RELIEF
16 CLASSIC ROCK COFFEE CO.)	
17 FRANCHISING LLC,)	(Corp. Code §§ 31303, 31304, 31406,
)	and 31408)
18 Respondent.)	
)	

20 The Complaint, the Commissioner of Business Oversight (Commissioner), of the
21 Department of Business Oversight (Department), finds the following:

22 **I.**
23 **Jurisdiction and Venue**

24 1. The Commissioner is authorized to administer and enforce the provisions of the
25 Franchise Investment Law (Corp. Code § 31000 *et seq.*) (FIL) and the rules and regulations
26 promulgated thereunder which control the registration, offer and sale of franchises in California.

27 2. The Commissioner brings this action pursuant to the provisions of the FIL, and the
28 rules and regulations promulgated thereunder, including Corporations Code sections 31303, 31304,

1 31406, and 31408.

2 **II.**
3 **Statement of Facts**

4 3. At all relevant times, Classic Rock Coffee Co. Franchising LLC (Classic Rock) is a
5 limited liability company organized and existing under the laws of the State of Missouri, on or
6 around August 2, 2012, with a principal place of business at 1900 West Sunset, Suite A116,
7 Springfield, Missouri 65807.

8 4. Classic Rock offers franchisees the opportunity to operate a Classic Rock Coffee Co.
9 store selling “coffee drinks, protein shakes, smoothies, pastries, soups, salads, and sandwiches,
10 equipment, apparel, and related merchandise.”

11 5. From December 2013 to present, Classic Rock was registered with the Department
12 to offer and sell franchises in California.

13 6. At all relevant times, Kent Morrison (Morrison) was the Managing Member of
14 Classic Rock, with a principal place of business at 1900 West Sunset, Suite A116, Springfield,
15 Missouri 65807.

16 7. At all relevant times, Brett Payne (Payne) was the Director of Franchise Operations
17 of Classic Rock, with a principal place of business at 1900 West Sunset, Suite A116, Springfield,
18 Missouri 65807.

19 8. On or about September 4, 2018, the Department requested that Classic Rock disclose
20 all franchises that it had offered and sold in California from December 2013 to present.

21 9. By September 25, 2018, Classic Rock disclosed to the Department that it had offered
22 and sold two franchises in California.

23 10. On or about January 12, 2016, AM, a prospective franchisee, completed a
24 “Confidential Franchise Application” with Classic Rock.

25 11. On or about January 12, 2016, Classic Rock, through Payne, emailed AM a link to
26 Classic Rock’s “Franchise Disclosure Document.”

27 12. On or about January 13, 2016, Payne on behalf of Classic Rock, sent AM a
28 document entitled “CRCC FDD Disclosures History.”

1 franchisee of any binding franchise or other agreement, or at least 14
2 days prior to the receipt of any consideration, whichever occurs first, a
3 copy of the franchise disclosure document, together with a copy of all
proposed agreements relating to the sale of the franchise.

4 23. Corporations Code section 31402 states, in relevant part:

5 If, in the opinion of the commissioner, the offer of any franchise is subject
6 to registration under this law and it is being, or it has been, offered for sale
7 without the offer first being registered, the commissioner may order the
8 franchisor or offeror of that franchise to desist and refrain from the further
offer or sale of that franchise unless and until the offer has been duly
9 registered under this law

10 24. Corporations Code section 31406 states, 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
13 violating any provision of this division or any rule or order
14 promulgated pursuant to this division, the commissioner may issue a
15 citation to that person in writing describing with particularity the basis
16 of the citation. Each citation may contain an order to desist and refrain
17 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.

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

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

23 25. Prior to March 7, 2017, Classic Rock failed to provide the required copy of the 2016
24 FDD to a California franchisee before the execution of the franchise agreement or receiving
25 consideration from franchisee.

26 26. Based upon the foregoing findings, the Commissioner is of the opinion that Classic
27 Rock failed to provide the required FDD, in violation of Corporations Code section 31119. Pursuant
28 to Corporations Code sections 31402 and 31406, Classic Rock Coffee Co. Franchising LLC is

1 hereby cited and ordered to desist and refrain from failing to give franchise disclosure documents to
2 franchisees within the time prescribed by Corporations Code section 31119.

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

5 **Omission of a Material Fact to Franchisee**

6 28. Corporations Code section 31201 states:

7 It is unlawful for any person to offer or sell a franchise in this state by
8 means of any written or oral communication not enumerated in Section
9 31200 which includes an untrue statement of a material fact or omits to
10 state a material fact necessary in order to make the statements made, in the
light of the circumstances under which they were made, not misleading.

11 29. During the period of March 2017, Classic Rock offered and sold a franchise
12 agreement in this state by means of a written or oral communication which included an untrue
13 statement of a material fact or omitted to state a material fact necessary in order to make the
14 statements made, in the light of the circumstances under which they were made, not misleading, by
15 failing to disclose the franchisee that she did not receive the then effective 2016 FDD.

16 30. When Classic Rock provided the “Franchise Compliance Certificate” to AM, she
17 completed and signed the certification that AM received, carefully reviewed and understood the
18 FDD. Classic Rock did not attempt to correct franchisee’s belief that she was provided with the
19 requisite FDD. Classic Rock, the franchisor, misled franchisee in her misguided belief despite
20 knowing that AM had not actually receive the 2016 FDD.

21 31. Based upon the foregoing findings, the Commissioner is of the opinion that Classic
22 Rock engaged in the offer and sale of franchises in this state by means of written or oral
23 communications which included an untrue statement of a material fact or omit to state a material
24 fact necessary in order to make the statements made, in light of the circumstances under which they
25 were made, not misleading, in violation of Corporations Code section 31201. Pursuant to
26 Corporations Code sections 31402 and 31406, Classic Rock Coffee Co. Franchising LLC is hereby
27 cited and ordered to desist and refrain from further offer or sale of franchises by means of written or
28 oral communications which include an untrue statement of material fact or omit to state a material

1 fact necessary in order to make the statements made, in light of the circumstances under which they
2 were made, not misleading.

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

5 **IV.**
6 **Administrative Penalties**

7 33. Corporations Code section 31406 states, in relevant part:

8 (a) If, upon inspection or investigation, based upon a complaint or
9 otherwise, the commissioner has cause to believe that a person is
10 violating any provision of this division or any rule or order
11 promulgated pursuant to this division, the commissioner may issue a
12 citation to that person in writing describing with particularity the basis
13 of the citation. Each citation may contain an order to desist and refrain
14 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.

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

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

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

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

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1 34. Pursuant to Corporations Code section 31406, Classic Rock Coffee Co. Franchising
2 LLC is hereby ordered to pay an administrative penalty of \$2,500.00 for each failure to provide a
3 franchise disclosure document prior to the sale of a franchise and for failing to disclose a material
4 fact to a franchisee, for a total amount of \$5,000.00. The administrative penalty in the amount of
5 \$5,000.00 shall be paid in the form of a cashier’s check payable to the “Department of Business
6 Oversight” and transmitted to the attention of: Accounting, at the Department of Business Oversight
7 located at 1515 K Street, Suite 200, Sacramento, California, 95814. Notice of the payment shall
8 concurrently be sent to the attention of Vanessa T. Lu, Counsel, Enforcement Division, 320 West 4th
9 Street, Suite 750, Los Angeles, California 90013-2344.

10 35. If within 60 days from the receipt of the Citation, Classic Rock Coffee Co.
11 Franchising LLC fails to notify the Commissioner that it intends to request a hearing as described in
12 Corporations Code section 31406, subdivision (d), this Citation shall be deemed final.

13 **V.**
14 **Ancillary Relief**

15 36. Corporations Code section 31408 provides, in relevant part:
16 (a) If the commissioner determines it is in the public interest, the
17 commissioner may include in any administrative action brought under
18 this division, including a stop order, a claim for ancillary relief,
19 including, but not limited to, a claim for rescission, restitution or
20 disgorgement or damages on behalf of the persons injured by the act or
21 practice consulting the subject matter of the action, and the
22 administrative law judge shall have jurisdiction to award additional
23 relief. The person affected may be required to attend remedial
24 education, as directed by the commissioner.

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37. Classic Rock Coffee Co. Franchising LLC is hereby ordered to pay restitution in the amount of the full franchise fee of \$39,000.00 to A.M. Proof of restitution payment shall be submitted to Vanessa T. Lu, Counsel, Enforcement Division, 320 West 4th Street, Suite 750, Los Angeles, California 90013-2344, within 60 days from the date of this Citation.

Dated: January 10, 2019
Los Angeles, California

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division