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9  
10 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT  
11 OF THE STATE OF CALIFORNIA

12 In the Matter of: ) FIL ORG. ID. 21288  
13 )  
14 THE COMMISSIONER OF BUSINESS ) CONSENT ORDER  
OVERSIGHT, )  
15 )  
16 Complainant, )  
17 v. )  
18 WELLSRING INDUSTRY, INC., ILTF, INC. )  
dba TUTTI FRUTTI, and OMB, Inc. dba O’MY )  
19 BUNS!, )  
20 Respondents. )  
21 )

22  
23 Complainant, the Commissioner of Business Oversight (Commissioner), and Respondents,  
24 Wellspring Industry, Inc. (Wellspring), ILTF, Inc. dba Tutti Frutti (ILTF), and OMB, Inc. dba O’  
25 My Buns! (OMB), (hereafter, the Parties), enter into this Consent Order based on the following

26 facts:

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**Recitals**

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

5 B. The Commissioner brings this action pursuant to the provisions of the FIL, and the  
6 rules and regulations promulgated thereunder, including Corporations Code sections 31303, 31402,  
7 31406, and 31408.

8 C. Wellspring, ILTF, and OMB (collectively, Companies) admit to the jurisdiction of the  
9 Commissioner in this matter and for the purposes of issuing and enforcing this Consent Order.

10 D. During the relevant timeframe, the Companies were California corporations with a  
11 business address located at 2100 East Valencia Drive, Suite B-2, Fullerton, California 92831, and are  
12 currently located at 14750 Nelson Avenue East, Unit B, City of Industry, California 91744.

13 E. During the relevant timeframe, Wellspring was an affiliate of ILTF and OMB.

14 F. The Companies were acquired in a series of transactions occurring between 2014 and  
15 2017, by an indirect parent, Wellspring Worldwide Limited, a company of Labuan, Malaysia. The  
16 Companies are now under Wellspring Worldwide Limited’s ownership and management.

17 G. Andy Farouk Muhamad Nasim is the President of the Companies, and as such, is  
18 authorized to enter into this Consent Order on behalf of the Companies.

19 H. Beginning in 2007 to 2016, the Companies offered and sold franchise investments in  
20 California. 56 units of “Tutti Frutti” and “O’My Buns!” franchises were sold to California residents  
21 (Franchisees).

22 I. ILTF granted individuals or entities the right to “distribute,” in a specific territory, its  
23 proprietary frozen yogurt using its “Tutti Frutti” trademarks in return for a franchise fee.

24 J. OMB granted individuals or entities the right to “distribute,” in a specific territory, its  
25 proprietary bakery products using its “O’My Buns!” trademarks in return for a franchise fee.

26 K. ILTF and OMB executed written franchise agreements described as “Distribution  
27 Agreements” (Agreements) with the Franchisees. The Agreements contained provisions indicative of  
28 a franchise.

1 L. ILTF Agreements granted Franchisees the right to engage in business and offer to the  
2 general public ILTF’s proprietary frozen yogurt products using ILTF’s trademarks and marketing  
3 scheme in return for a franchise fee.

4 M. The OMB Agreements granted Franchisees the right to engage in business and offer  
5 to the general public OMB’s proprietary bakery products using OMB’s trademarks and marketing  
6 scheme in return for a franchise fee, in combination with or separate from the ILTF offer.

7 N. The Agreements are franchises within the meaning of Corporations Code section  
8 31005. The offer and sale of franchises by the Companies in California have not been registered  
9 under the FIL and are not exempted under that law.

10 O. Based upon the foregoing, the Commissioner finds that the Companies offered and  
11 sold franchises in California without registration or exemption in violation of Corporations Code  
12 section 31110.

13 P. The Commissioner finds that this Consent Order is appropriate, in the public interest,  
14 and consistent with the purposes fairly intended by the policies and provisions of the FIL.

15 **Terms and Conditions**

16 1. Purpose. This Consent Order resolves the violations before the Commissioner in a  
17 manner that avoids the expense of a hearing and possible further court proceedings, protects  
18 consumers, is in the public interest, and is consistent with the purposes, policies, and provisions of  
19 the FIL. The Companies neither admit nor deny the findings and conclusions reached by the  
20 Department in entering into this Consent Order, which is not, and is not intended to be, an admission  
21 of any kind by the Companies.

22 2. Desist and Refrain Order. Pursuant to Corporations Code section 31402, the  
23 Companies are hereby ordered to desist and refrain from the further offer or sale of franchises in  
24 violation of Corporations Code section 31110, unless and until the offers have been duly registered  
25 under the FIL or are otherwise exempt.

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1           3.       Administrative Penalties. The Companies agree to pay administrative penalties in the  
2 total amount of \$135,000.00 for violations of Corporations Code section 31110. The above penalty  
3 shall be paid in equal quarterly installments over 12 months from the Effective Date of this Consent  
4 Order, as defined in Paragraph 20 (Effective Date) and shall be due on the following dates:

- 5           a.       \$33,750.00 is due within 5 days from the Effective Date of this Consent Order;
- 6           b.       \$33,750.00 is due 120 days from the Effective Date of this Consent Order;
- 7           c.       \$33,750.00 is due 240 days from the Effective Date of this Consent Order; and
- 8           d.       \$33,750.00 is due 360 days from the Effective Date of this Consent Order.

9           The installment payments shall be made in the form of a cashier’s check or Automated  
10 Clearing House deposit to the “Department of Business Oversight,” and transmitted to the attention  
11 of: Accounting - Litigation, at the Department of Business Oversight, located at 1515 K Street, Suite  
12 200, Sacramento, California 95814. Notice of payment shall be sent concurrently to Afsaneh  
13 Eghbaldari, Counsel, Enforcement Division, by email at: [affi.eghbaldari@dbo.ca.gov](mailto:affi.eghbaldari@dbo.ca.gov). In the event  
14 any payment due date falls on a weekend or holiday, the payment shall be due the next business day.

15           4.       Notice of Violation. Within 10 days from the Effective Date of this Consent Order,  
16 ILTF and OMB are hereby ordered to comply with the provisions of Corporations Code section  
17 31303 and California Code of Regulations, title 10, section 310.303, by submitting to the  
18 Commissioner for review and approval proposed notices of violation for violations of Corporations  
19 Code section 31110. The notices of violation must be mailed to Shohreh Aram, Senior Counsel,  
20 Securities Regulation Division, Department of Business Oversight, 320 West Fourth Street, Suite  
21 750, Los Angeles, California 90013. The approved notices of violation shall be sent to all  
22 franchisees listed on Schedule A, upon the later of: (i) approval of such notices by the Department,  
23 or (ii) approval by the Department of the registration of the Franchise Disclosure Document (FDD)  
24 filed by Tutti Frutti Franchising, Inc., the Companies’ affiliate entity, within 90 days from the  
25 Effective Date.

26           5.       Offer of Rescission. ILTF and OMB hereby agree to make an offer of rescission of all  
27 franchise agreements entered into with the franchisees identified in Schedule B (Offer of  
28 Rescission). The Companies represent that Schedule B is a true and correct list of the Franchisees

1 that are currently operating and have paid their franchise fee to the Companies for their franchises.  
2 The approved Offer of Rescission shall be sent to the Franchisees listed on Schedule B, upon the  
3 later of: (i) approval of the Notices of Violation and Offer of Rescission by the Department, or (ii)  
4 approval by the Department of the registration of the FDD filed by Tutti Frutti Franchising, Inc., the  
5 Companies’ affiliate, within 90 days from the Effective Date. Each franchisee shall be given 60 days  
6 from receipt of the Offer of Rescission the option to elect to rescind. The franchisees’ responses to  
7 the Offer of Rescission shall be sent promptly to Afsaneh Eghbaldari, Counsel, Enforcement  
8 Division, by email at: [affi.eghbaldari@dbo.ca.gov](mailto:affi.eghbaldari@dbo.ca.gov).

9         6.         Restitution to Franchisees. Pursuant to Corporations Code section 31408, ILTF and  
10 OMB are hereby ordered to pay restitution for the amount of the franchise fee to every franchisee  
11 that accepts the Offer of Rescission, according to proof. Within 180 days of receipt of election to  
12 rescind, ILTF and OMB shall pay restitution to each franchisee that elected to accept the Offer of  
13 Rescission.

14         7.         Registration Filing. The Companies represent that they have formed an affiliate  
15 entity, Tutti Frutti Franchising, Inc., for the purpose of offering and selling Tutti Frutti franchises in  
16 California. Within 90 days of the Effective Date of this Consent Order, Tutti Frutti Franchising, Inc.  
17 shall file an Initial Franchise Registration Application with the Department of Business Oversight,  
18 pursuant to Corporations Code section 31111, and in compliance with the FIL and the Department of  
19 Business Oversight’s Guidelines for Franchise Registration. Such application shall be mailed to the  
20 attention of Shohreh Aram, Senior Counsel, Securities Regulation Division, Department of Business  
21 Oversight, 320 West Fourth Street, Suite 750, Los Angeles, California 90013. This Consent Order  
22 shall be disclosed in each such Initial Franchise Registration Application and the approved  
23 disclosure statement shall be delivered to all California franchisees along with the notice of violation  
24 in satisfaction of the requirements of Section 310.303(d). Notice of the franchise registration filing  
25 shall be sent concurrently to Afsaneh Eghbaldari, Counsel, Enforcement Division, by email at:  
26 [affi.eghbaldari@dbo.ca.gov](mailto:affi.eghbaldari@dbo.ca.gov).

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1           8.       Education. Within 45 days of the Effective Date of this Consent Order, all persons  
2 employed by the Companies and their affiliates, who will assist in preparing franchise registrations  
3 or who will assist in franchise selling, are hereby required to attend 8 hours of remedial education, in  
4 the form of franchise law training courses offered by a franchise law specialist certified with the  
5 State Bar of California, or courses offered by or through the International Franchise Association.  
6 Within 60 days of the Effective Date of this Consent Order, the Companies shall submit proof of  
7 compliance to: Afsaneh Eghbaldari, Counsel, Enforcement Division, by email at:  
8 affi.eghbaldari@dbo.ca.gov.

9           9.       Remedy for Breach. In the event the Companies fail to timely comply with any of  
10 the terms of this Consent Order, and upon written notice from the Commissioner to the Companies  
11 and 30 days' opportunity to cure, the Companies and their respective affiliates, successors, and  
12 assigns agree that this Consent Order may be converted immediately to an enforceable civil  
13 judgment for the entire penalty amount of \$135,000.00. The Companies further agree that such  
14 civil judgment may be entered by the court ex parte without further notice or hearing. The  
15 Companies agree that a breach of this Consent Order shall be cause for the Commissioner to  
16 immediately revoke any registrations held by, and deny any pending application(s) of, the  
17 Companies and their respective affiliates, successors, and assigns, by whatever names they might be  
18 known.

19           10.      Waiver of Hearing Rights. The Companies acknowledge and agree that the  
20 Commissioner is ready, willing, and able to proceed with the filing of an administrative enforcement  
21 action on the charges contained in this Consent Order, and the Companies hereby waive the right to  
22 an administrative hearing, and to any reconsideration, appeal, or other right to review which may be  
23 afforded under the FIL and to judicial review of this matter pursuant to Code of Civil Procedure  
24 section 1094.5 with respect to the issuance of this Consent Order.

25           11.      Future Actions by the Commissioner. The Commissioner reserves the right to bring  
26 any future action(s) against the Companies or any of their partners, owners, officers, directors,  
27 shareholders, employees, or successors for all future violations of the FIL. This Consent Order shall  
28 not serve to exculpate the Companies or any of their partners, owners, officers, shareholders,

1 directors, employees, or successors from liability for all unknown or future violations of the FIL.

2 12. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in  
3 interest.

4 13. Full and Final Settlement. The Parties hereby acknowledge and agree that this  
5 Consent Order is intended to constitute a full, final, and complete resolution of the violations of the  
6 FIL, determined by the Department to have occurred between 2007 to 2016, identified in Paragraphs  
7 H through N above (hereafter, Released Matters). The Parties further acknowledge and agree that  
8 nothing contained in this Consent Order shall operate to limit the Commissioner’s ability to assist  
9 any other agency (city, county, state, or federal) with any prosecution; administrative, civil, or  
10 criminal, brought by any such agency against the Companies, based on any of the activities alleged  
11 in these matters or otherwise.

12 14. Independent Legal Advice. Each of the Parties represents and warrants that they have  
13 received independent advice from their attorneys and/or other representatives with respect to the  
14 advisability of executing this Consent Order.

15 15. Reliance. Each of the Parties represents, warrants, and agrees that in executing this  
16 Consent Order, they have placed no reliance on any statement, representation, or promise of any  
17 other party, or any person or entity not expressly set forth herein, or upon the failure of any party or  
18 any other person or entity to make any statement, representation, or disclosure of anything  
19 whatsoever. The Parties have included this clause: (1) to preclude any claim that any party was in  
20 any way fraudulently induced to execute this Consent Order; and (2) to preclude the introduction of  
21 parol evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

22 16. Full Integration. This Consent Order is the final written expression and the complete  
23 and exclusive statement of all stipulations, agreements, conditions, promises, representations, and  
24 covenants between the Parties with respect to the matter hereof, and supersedes all prior or  
25 contemporaneous agreements, discussions, negotiations, representations, and understandings  
26 between and among the Parties, their respective representatives, and any other person or entity, with  
27 respect to the subject matter covered in this Consent Order.

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1           17.    No Presumption from Drafting. In that the Parties have had the opportunity to draft,  
2 review, and edit the language of this Consent Order, no presumption for or against any party arising  
3 out of drafting all or any part of this Consent Order will be applied in any action relating to,  
4 connected to, or involving this Consent Order. Accordingly, the Parties waive the benefit of Civil  
5 Code section 1654 and any successor or amended statute, providing that in cases of uncertainty,  
6 language of a contract should be interpreted most strongly against the party who caused the  
7 uncertainty to exist.

8           18.    Waiver or Modification. The waiver of any provision of this Consent Order shall not  
9 operate to waive any other provision set forth herein, and any waiver, amendment, or change to the  
10 terms of this Consent Order must be in writing and signed by the Parties. No amendment, change, or  
11 modification of this Consent Order shall be valid or binding to any extent unless it is in writing and  
12 signed by all the Parties affected by it.

13           19.    Headings and Governing Law. The headings of the paragraphs of this Consent Order  
14 are inserted for conveniences only and will not be deemed a part hereof or affect the construction or  
15 interpretation of the provisions hereof. This Consent Order shall be construed and enforced in  
16 accordance with and governed by California law.

17           20.    Effective Date. This Consent Order shall not become effective until signed by all  
18 parties and delivered by the Commissioner’s counsel by email to the Franchisor’s attorney, Lori  
19 Lofstrom, at l.lofstrom@holmeslofstrom.com.

20           21.    Counterparts. This Consent Order may be executed in any number of counterparts by  
21 the Parties, and when each party has signed and delivered at least one such counterpart to the other  
22 party, each counterpart shall be deemed an original, and taken together shall constitute one and the  
23 same Consent Order.

24           22.    Public Record. The Companies acknowledge that this Consent Order is a public  
25 record.

26           23.    Information Willfully Withheld. This Consent Order may be revoked, and the  
27 Commissioner may pursue all remedies available under the law against the Companies if the  
28 Commissioner later finds out that the Companies knowingly or willfully withheld information used



1 and relied upon in this Consent Order.

2 24. Settlement Authority. Each signatory hereto covenants that he/she possesses all  
3 necessary capacity and authority to sign and enter into this Consent Order.

4 25. Voluntary Agreement. The Companies enter into this Consent Order voluntarily and  
5 without coercion and acknowledge that no promises, threats, or assurances have been made by the  
6 Commissioner or any officer, or agent thereof, about this Consent Order.

7 26. Signatures. This Consent Order may be executed by facsimile or scanned signature,  
8 and any such facsimile or scanned signature by any party hereto shall be deemed to be an original  
9 signature and shall be binding on such party to the same extent as if such facsimile or scanned  
10 signature was an original signature.

11 JAN LYNN OWEN  
12 Commissioner of Business Oversight

13 Dated: 3/4/19

14 By \_\_\_\_\_  
15 Mary Ann Smith  
16 Deputy Commissioner

17 WELLSRING INDUSTRY, INC., ILTF, INC. DBA  
18 TUTTI FRUTTI, AND OMB, INC. DBA O'MY  
19 BUNS!

20 Dated: 2/27/19

21 By \_\_\_\_\_  
22 Andy Farouk Muhamad Nasim  
23 President of Wellspring, ILTF, and OMB

24 APPROVED AS TO FORM AND CONTENT:

25 \_\_\_\_\_  
26 Lori M. Lofstrom, Esq.  
27 HOLMES LOFSTROM, PC  
28 Counsel for Wellspring, ILTF, and OMB