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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.: 249128
12 THE COMMISSIONER OF BUSINESS)
OVERSIGHT,)
13 Complainant,) CONSENT ORDER
14 v.)
15 WOW WOW, INC., WOW WOW)
HAWAIIAN LEMONADE FRANCHISING,)
16 LLC and TODD CASSELBERRY,)
17 Respondents.)

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19 This Consent Order is entered into between the Commissioner of Business Oversight
20 (Commissioner) and Wow Wow, Inc., Wow Wow Hawaiian Lemonade Franchising, LLC and Todd
21 Casselberry (Casselberry) (Respondents) and is made with respect to the following facts:

22 I.

23 Recitals

24 A. The Commissioner is the head of the Department of Business Oversight (Department)
25 and is responsible for administering and enforcing the Franchise Investment Law (FIL) (Corp. Code,
26 § 31000 et seq.),¹ and registering the offer and sale of franchises in California. To register a
27 franchise, a franchisor must file an application which includes a Uniform Franchise Disclosure
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¹ All further statutory references are to the Corporations Code unless otherwise indicated.

1 Document (FDD) with the Department for review and approval, in accordance with sections 31111
2 and 31114. The FIL requires franchisors to disclose certain material information which is intended to
3 provide prospective franchisees with facts upon which to make an informed decision to purchase a
4 franchise, as stated in section 31001.

5 B. Wow Wow, Inc. is a Nevada corporation formed on December 4, 2015 with a
6 principal place of business at 4960 South Gilbert Road, #1-462, Chandler, Arizona 85249. Wow
7 Wow, Inc. previously conducted business from 7105 West Knox Road, Chandler, Arizona 85226.
8 At all relevant times, Wow Wow, Inc. owned the Wow Wow Hawaiian Lemonades concept and was
9 Wow Wow Hawaiian Lemonade Franchising, LLC's parent company. Casselberry is Wow Wow
10 Inc.'s owner and Chief Executive Officer (CEO).

11 C. Wow Wow Hawaiian Lemonade Franchising, LLC (Wow Wow, Inc. and Wow Wow
12 Hawaiian Lemonade Franchising, LLC are collectively referred to herein as Wow Wow) is a
13 Nevada limited liability company formed on November 10, 2016, with a principal place of business
14 at 21001 North Tatum Boulevard, Suite 1630 #927, Phoenix, Arizona 85050. Wow Wow Hawaiian
15 Lemonade Franchising, LLC previously conducted business from 7105 West Knox Road, Chandler,
16 Arizona 85226. Wow Wow Hawaiian Lemonade Franchising, LLC offers artisanal lemonade stand
17 franchises. At all relevant times, Casselberry was Wow Wow Hawaiian Lemonade Franchising,
18 LLC's owner and CEO until September 1, 2019, when Tim Weiderhofs (Weiderhofs) became the
19 CEO.

20 D. On September 1, 2019, Casselberry sold 100% of the membership interests of Wow
21 Wow Hawaiian Lemonade Franchising, LLC to C&G Franchise Development, LLC (C&G). C&G
22 subsequently sold 15% of its membership interest to: DIR Services, LLC; Sagehen Investments,
23 LLC; and Holly Street Investors, LLC.

24 E. C&G is a Nevada limited liability company with a principal place of business at
25 4362 South Elk River Road, Reno, Nevada 89511. The members of C&G are John Choi and
26 KMOK Holdings, Inc. which is owned by Klaus Grimm.
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1 F. D.I.R. Services, LLC is an Arizona limited liability company with a principal place
2 of business at 4421 East Weaver Road, Phoenix, Arizona 85050. The sole member of DIR Services,
3 LLC is Weiderhoft.

4 G. Sagehen Investments, LLC is a California limited liability company with a principal
5 place of business at 567 San Nicolas Drive, Suite 340, Newport Beach, California 92660. The sole
6 member of Sagehen Investments, LLC is Ranney E. Draper.

7 H. Holly Street Investors, LLC is a California limited liability company with a principal
8 place of business at 567 San Nicolas Drive, Suite 340, Newport Beach, California 92660. The
9 members of Holly Street Investors, LLC are Mark Draper and Heidi Draper.

10 I. Casselberry remains the CEO of Wow Wow, Inc. Casselberry has not retained any
11 ownership interest in Wow Wow Hawaiian Lemonade Franchising, LLC, but he is employed as the
12 Creative Director for Wow Wow Hawaiian Lemonade Franchising, LLC.

13 J. The Commissioner finds that Respondents offered and sold unregistered, non-
14 exempt franchises in California from at least May 20, 2016 through September 8, 2016 in violation
15 of section 31110. In connection with the offer and sale of franchises in California, Respondents
16 failed to provide prospective franchisees with an FDD in violation of section 31119, and
17 misrepresented the costs associated with opening a Wow Wow store in violation of section 31201.

18 K. Respondents filed franchise registration applications with the Department in
19 February of 2017 and June of 2018. On September 18, 2017, the Commissioner issued an Order
20 granting effectiveness of franchise registration, valid through April 20, 2018. Item 19 of Wow
21 Wow's 2017 and 2018 FDDs represented that the company does not make financial performance
22 representations other than the statements made in the FDD. To the contrary, the Commissioner
23 finds that Respondents provided financial performance representations to a franchisee in June of
24 2017 that were not disclosed in the FDD in violation of section 31200.

25 L. Wow Wow signed a Consent Order with the State of Washington Department of
26 Financial Institutions Securities Division on March 1, 2018 to resolve allegations that Wow Wow
27 offered and sold unregistered franchises in Washington. Section 31123 requires a franchisee to
28 promptly amend its registration to notify the Commissioner of any material change. The

1 Commissioner finds that Respondents failed to promptly amend the FDD approved by the
2 Commissioner to disclose the Washington Consent Order as required in section 31123, and in
3 violation of section 31200.

4 M. The Commissioner finds that Respondents sold a franchise in California four days
5 after signing the Washington Consent Order. Respondents failed to disclose the existence of the
6 Washington Consent Order to the prospective franchisee in violation of section 31201.

7 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set
8 forth herein, the Parties agree as follows:

9 **II.**

10 **Terms and Conditions**

11 1. Purpose. This Consent Order resolves the issues before the Commissioner [findings
12 set forth in paragraphs J through M above] in a manner that avoids the expense of a hearing and
13 other possible court proceedings, protects consumers, is in the public interest, and is consistent with
14 the purposes, policies, and provisions of the applicable law.

15 2. Citations and Desist and Refrain Order. Pursuant to sections 31402 and 31406,
16 Respondents are hereby ordered to desist and refrain from violating sections 31110, 31119, 31123,
17 31200, and 31201.

18 3. Stop Order. Pursuant to section 31115, the Commissioner enters a final Stop Order
19 Denying Effectiveness of Wow Wow’s June 5, 2018 franchise registration application.

20 4. Penalties. Respondents shall pay a penalty of \$1,000.00 for the violations discussed
21 herein. The Commissioner acknowledges receipt of payment of the penalty contemporaneous with
22 the execution of this Consent Order.

23 5. Refund to Former Franchisee. Respondents shall refund the Danville, California
24 former franchisee, C.N., \$30,000.00. The Commissioner acknowledges receipt of the refund
25 payment contemporaneous with the execution of this Consent Order.

26 6. Remedial Education. Casselberry and the following class of persons are required to
27 attend remedial California franchise law compliance education: (1) all principal officers, directors,
28 trustees, and any other individual who will have management responsibility relating to sale or

1 operating of franchises offered by Wow Wow, including but not limited to, Tim Weiderhoft; (2)
2 all persons who assist in preparing Wow Wow franchise materials including but not limited to
3 registrations, renewals, or amendments; (3) any person selling a Wow Wow franchise; and (4) the
4 person who certifies the accuracy of Wow Wow’s Franchise Disclosure Document filed with the
5 Commissioner. Each of these persons shall attend eight hours of remedial education within 60 days
6 from the Effective Date of this Consent Order, in the form of franchise law training courses
7 offered by the State Bar of California certified franchise law specialist. Wow Wow shall file proof
8 of compliance, in the form of a sworn statement of each person required to take remedial
9 education, under penalty of perjury, within 75 days from the Effective Date of this Consent Order.

10 7. Undertaking. Respondents affirm that they have not offered or sold any unregistered,
11 non-exempt franchise in California since its prior registration expired on April 20, 2018.

12 8. Waiver of Hearing Rights. Respondents acknowledge the Commissioner is ready,
13 willing, and able to proceed with the filing of an administrative enforcement action on the charges
14 contained in this Consent Order. Respondents hereby waive the right to any hearings, and to any
15 reconsideration, appeal, or other right to review which may be afforded pursuant to the FIL, the
16 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
17 provision of law. Respondents further expressly waive any requirement for the filing of a Citation,
18 Desist and Refrain Order, and Stop Order pursuant to Government Code section 11415.60,
19 subdivision (b). By waiving such rights, Respondents effectively consent to this Consent Order,
20 Citation, Desist and Refrain Order, and Stop Order becoming final.

21 9. Full and Final Settlement. The Parties hereby acknowledge and agree that this
22 Consent Order is intended to constitute a full, final, and complete resolution of the violations
23 described herein and that no further proceedings or actions will be brought by the Commissioner in
24 connection with these matters except under FIL or any other provision of law, excepting therefrom
25 any proceeding to enforce compliance with the terms of this Consent Order.

26 10. Failure to Comply with Consent Order. Respondents agree that if they fail to
27 comply with the terms of this Consent Order, the Commissioner may, in addition to all other
28 available remedies it may invoke under the FIL, summarily suspend/revoke the FIL licenses of

1 Respondents until Respondents are in compliance. Respondents waive any notice and hearing
2 rights to contest such summary suspensions which may be afforded under the FIL, the California
3 Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law
4 in connection therewith.

5 11. Information Willfully Withheld or Misrepresented. This Consent Order may be
6 revoked, and the Commissioner may pursue any and all remedies available under law against
7 Respondents if the Commissioner discovers that Respondents knowingly or willfully withheld
8 information used for and relied upon in this Consent Order.

9 12. Future Actions by Commissioner. If Respondents fail to comply with any terms of
10 the Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
11 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions
12 against Respondents, or any of their partners, owners, officers, shareholders, directors, employees or
13 successors for any and all unknown violations of the FIL.

14 13. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner’s
15 ability to assist any other government agency (city, county, state, or federal) with any prosecution,
16 administrative, civil or criminal brought by that agency against Respondents or any other person
17 based upon any of the activities alleged in this matter or otherwise.

18 14. Headings. The headings to the paragraphs of this Consent Order are inserted for
19 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
20 the provisions hereof.

21 15. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
22 interest.

23 16. Reliance. Each of the Parties represents, warrants, and agrees that in executing this
24 Consent Order it has relied solely on the statements set forth herein and the advice of its own
25 counsel. Each of the Parties further represents, warrants, and agrees that in executing this Consent
26 Order it has placed no reliance on any statement, representation, or promise of any other party, or
27 any other person or entity not expressly set forth herein, or upon the failure of any party or any
28 other person or entity to make any statement, representation or disclosure of anything whatsoever.

1 The Parties have included this clause: (1) to preclude any claim that any party was in any way
2 fraudulently induced to execute this Consent Order; and (2) to preclude the introduction of parol
3 evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

4 17. Waiver, Amendments, and Modifications. No waiver, amendment, or modification
5 of this Consent Order will be valid or binding unless it is in writing and signed by each of the
6 Parties. The waiver of any provision of this Consent Order will not be deemed a waiver of any
7 other provision. No waiver by either party of any breach of, or of compliance with, any condition
8 or provision of this Consent Order by the other party will be considered a waiver of any other
9 condition or provision or of the same condition or provision at another time.

10 18. Full Integration. This Consent Order is the final written expression and the complete
11 and exclusive statement of all the agreements, conditions, promises, representations, and covenant
12 between the Parties with respect to the subject matter hereof, and supersedes all prior or
13 contemporaneous agreements, negotiations, representations, understandings, and discussions
14 between and among the Parties, their respective representatives, and any other person or entity with
15 respect to the subject matter covered hereby.

16 19. Governing Law. This Consent Order will be governed by and construed in
17 accordance with California law. Each of the Parties hereto consents to the jurisdiction of such court,
18 and hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient
19 forum to the maintenance of such action or proceeding in such court.

20 20. Counterparts. This Consent Order may be executed in one or more separate
21 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall
22 together constitute a single document.

23 21. Effect Upon Future Proceedings. If Respondents apply for any license, permit, or
24 qualification under the Commissioner’s current or future jurisdiction, or is the subject of any future
25 action by the Commissioner to enforce this Consent Order, then the subject matter hereof shall be
26 admitted for the purpose of such application(s) or enforcement proceeding(s).

27 22. Notice. Any notice required under this Consent Order shall be provided to each
28 party at the following addresses:

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To Respondents Matthew J. Kreutzer, Esquire
Counsel for Wow Wow, Inc., Wow Wow Hawaiian Lemonade
Franchising, LLC and Todd Casselberry
Howard and Howard
3800 Howard Hughes Parkway, Suite 1000
Las Vegas, Nevada 89169
mkreutzer@howardandhoward.com

To the Commissioner: Danielle A. Stoumbos
Senior Counsel
Department of Business Oversight
320 West 4th Street, Suite 750
Los Angeles, California 90013
Danielle.Stoumbos@dbo.ca.gov

23. Signatures. A fax or electronic mail signature shall be deemed the same as an original signature.

24. Public Record. Respondents hereby acknowledge that this Consent Order is and will be a matter of public record.

25. Effective Date. This Consent Order shall become final and effective when signed by all Parties and delivered by the Commissioner’s agent via e-mail to Respondents’ counsel, Matthew J. Kreutzer at mkreutzer@howardandhoward.com.

26. Authority to Sign. Each signatory hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Consent Order and undertake the obligations set forth herein.

Dated: 10/22/19

MANUEL P. ALVAREZ
Commissioner of Business Oversight

By: _____
MARY ANN SMITH
Deputy Commissioner

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Dated: 10/10/19

WOW WOW, INC.

By: _____
TODD CASSELBERRY
Chief Executive Officer, Wow Wow, Inc.

Dated: 10/10/19

WOW WOW HAWAIIAN FRANCHISING, LLC

By: _____
TIM WEIDERHOFT
Chief Executive Officer, Wow Wow Hawaiian
Franchising, LLC

Dated: 10/10/19

By: _____
TODD CASSELBERRY
as an individual