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BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
OF THE STATE OF CALIFORNIA

In the Matter of:)	FIL ORG ID.: 332159
THE COMMISSIONER OF BUSINESS OVERSIGHT,)	STATEMENT IN SUPPORT OF STOP ORDER DENYING EFFECTIVENESS OF FRANCHISE REGISTRATION
Complainant,)	
v.)	
TUTTI FRUTTI FRANCHISING, INC.,)	
Respondent.)	

The Commissioner of Business Oversight (Commissioner) is informed and believes, and based upon such information and belief, finds the following:

I.

Jurisdiction

1. The Commissioner is the head of the Department of Business Oversight (Department) and is responsible for administering and enforcing the California Franchise Investment Law (Corp. Code, § 31000 et seq.) (FIL), and registering the offer and sale of franchises in California.

2. On or about July 16, 2019, Tutti Frutti Franchising, Inc. (Tutti Frutti) filed a Franchise Registration Application with the Department, pursuant to a Consent Order that was

1 executed on March 4, 2019, by affiliate companies that are related to Tutti Frutti by common
2 ownership, shareholdings or other means of control.

3 3. The Commissioner has determined to deny the effectiveness of the franchise
4 registration application of Tutti Frutti pursuant to the terms of the March 2019 Consent Order, and
5 Corporations Code sections 31115 and 31117.

6 **II.**

7 **Statement of Facts**

8 4. Wellspring Industry, Inc. (Wellspring), ILTF, Inc. dba Tutti Frutti (ILTF), and OMB,
9 Inc. dba O' My Buns! (OMB) (collectively, the Wellspring Companies) are affiliate companies of
10 Tutti Frutti, and are related to Tutti Frutti by common ownership, shareholdings or other means of
11 control.

12 5. The Wellspring Companies formed Tutti Frutti for the purpose of offering and selling
13 Tutti Frutti franchises in California.

14 6. From 2007 to 2016, the Wellspring Companies offered and sold franchise
15 investments in California without registration or exemption in violation of Corporations Code
16 section 31110.

17 7. On or about March 4, 2019, the Wellspring Companies entered into a Consent Order
18 with the Commissioner for the purpose of resolving the violations of Corporations Code section
19 31110. The March 2019 Consent Order is incorporated herein by reference.

20 8. Under the terms of the March 2019 Consent Order, the Wellspring Companies were
21 ordered to: (i) pay an administrative penalty in the total amount of \$135,000.00; (ii) file with the
22 Commissioner notices of violation in compliance with the provisions of Corporations Code section
23 31303 and California Code of Regulations, title 10, section 310.303; (iii) send the approved notices
24 of violation to all of their California franchisees; (iv) make an offer of rescission of all franchise
25 agreements to certain franchisees; (v) pay restitution to the franchisees that accept their offer of
26 rescission, and (vi) attend eight hours of remedial franchise education.

27 9. In addition, under the terms of the March 2019 Consent Order, the Wellspring
28 Companies formed an affiliate entity, Tutti Frutti, for the purpose of offering and selling Tutti Frutti

1 franchises in California. Within 90 days of the effective date of the Consent Order, Tutti Frutti was
2 required to file an Initial Franchise Registration Application with the Department, pursuant to
3 Corporations Code section 31111, and in compliance with the FIL and the Department's Guidelines
4 for Franchise Registration. The Consent Order was required to be disclosed in each such Initial
5 Franchise Registration Application and the approved disclosure statement was required to be
6 delivered to all California franchisees along with the notice of violation in satisfaction of the
7 requirements of Section 310.303(d).

8 10. Pursuant to paragraph 9 of the March 2019 Consent Order, Wellspring Companies
9 and their respective affiliates, successors, and assigns agreed that a breach of the Consent Order
10 would be cause for the Commissioner to immediately deny any pending application of the
11 Wellspring Companies and their respective affiliates, successors, and assigns, by whatever names
12 they might be known.

13 11. As described above, the Wellspring Companies agreed and were ordered to pay the
14 \$135,000.00 penalties in equal installments that were due on the following dates:

- 15 a. \$33,750.00 was due on March 11, 2019;
- 16 b. \$33,750.00 was due on July 2, 2019;
- 17 c. \$33,750.00 was due on October 30, 2019; and
- 18 d. \$33,750.00 is due on March 3, 2020.

19 12. To this date, the Wellspring Companies only paid the first installment payment, but
20 failed to pay the second and third installment payments. The fourth installment payment is due in
21 March of 2020. The remaining unpaid penalty balance is \$101,250.00.

22 13. On or about March 14, 2019, the Wellspring Companies filed their notices of
23 violation. On or about March 15 and April 18, 2019, the Department notified the Wellspring
24 Companies that their notices of violation were incomplete and deficient and failed to comply with
25 the provisions of Corporations Code section 31303 and California Code of Regulations, title 10,
26 section 310.303, as required by the March 2019 Consent Order and FIL.

27 14. On or about May 20 and May 21, 2019, the Department sent letters to the Wellspring
28 Companies stating that their notices of violation will be considered abandoned unless the notices of

1 violation conform and comply with the provisions of Corporations Code section 31303 and
2 California Code of Regulations, title 10, section 310.303. The Wellspring Companies failed to
3 timely cure the insufficiencies of the notices of violation. On or about June 17, 2019, the
4 Commissioner issued orders declaring the notices of violation as abandoned.

5 15. On or about July 16, 2019, the Wellspring Companies filed another draft of the
6 notices of violation with the Department, which again failed to comply with the provisions of
7 Corporations Code section 31303 and California Code of Regulations, title 10, section 310.303.

8 16. On or about July 16, 2019, Tutti Frutti filed a Franchise Registration Application with
9 the Department.

10 17. On or about July 18, July 31, August 9 and September 20, 2019, the Department
11 communicated with, and sent comment letters to Tutti Frutti and Wellspring Companies inquiring
12 about their ownership structure and financial condition, liability and viability.

13 18. Tutti Frutti and Wellspring Companies failed to satisfactorily answer the
14 Department's questions regarding their ownership structure and financial condition, liability and
15 viability.

16 19. On or about June 14, July 9 and September 13, 2019, the Department notified the
17 Wellspring Companies that they were in breach of the March 2019 Consent Order. The Wellspring
18 Companies were notified that they failed to pay the remaining installment payments, which were
19 due on July 2 and October 30, 2019, and failed to file the notices of violation that complied with the
20 provisions of Corporations Code section 31303 and California Code of Regulations, title 10, section
21 310.303. The Wellspring Companies had over six months to cure the breach, which they have failed
22 to cure.

23 20. The Wellspring Companies notified the Department of their inability to pay
24 subsequent installment payments and expressed their desire to move the proceeding forward. On or
25 about August 1 and September 24, 2019, the Wellspring Companies requested the Department to
26 revise the installment payments, and proposed a revised installment payment plan.

27 21. In response to their request, the Department requested the Wellspring Companies to
28 provide supporting financials proving their ability to make the proposed revised payments. The

1 Wellspring Companies were unable to provide proof of same.

2 22. On or about November 18, 2019, the Wellspring Companies sent another letter to the
3 Department, proposing a different payment plan and resolution to the notices of violation matter.
4 The Wellspring Companies also claimed that the notices of violations are in compliance and
5 requested the Department to accept the notices of violations.

6 23. The Department has determined that Wellspring Companies’ revised proposal plans
7 lack proof of performance and are unacceptable.

8 24. The Wellspring Companies are in breach of the agreed terms of the March 2019
9 Consent Order by failing to pay the installment payments that were due in July and October of 2019,
10 and failing to provide satisfactory explanation regarding the notices of violation.

11 25. The Wellspring Companies agreed that the Commissioner may deny the pending
12 registration application of Tutti Frutti in the event they failed to timely comply with any of the terms
13 of the March 2019 Consent Order.

14 26. In addition, Tutti Frutti failed to satisfactorily answer the Department’s questions
15 regarding its registration application, ownership structure and financial condition, liability and
16 viability.

17 **III.**
18 **Applicable Law**

19 27. Corporations Code section 31115 provides, in relevant part:

20 The commissioner may summarily issue a stop order denying the
21 effectiveness of or suspending or revoking effectiveness of any
22 registration if the commissioner finds:

23 (a) That there has been a failure to comply with any of the provisions
24 of this law or the rules of the commissioner pertaining thereto.

25 (b) That the offer or sale of the franchise would constitute
26 misrepresentation to, or deceit or fraud of the purchasers, or that, in
27 the case of a franchise other than a subfranchise, a major
28 inducement to prospective franchisees is fees or other
compensation from participation in the sale of additional
franchises.

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28. Corporations Code section 31117 provides:

Upon the entry of a stop order under Section 31115 the commissioner shall promptly notify the applicant that it has been entered and of the reasons therefor and that upon receipt of written request the matter will be set down for hearing to commence within 15 business days after such receipt unless the applicant consents to a later date. If no hearing is requested within 30 days after receipt of the notice and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice and hearing in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, in connection with

which the commissioner shall have all of the powers granted thereunder, may modify or vacate the order or extend it until its final determination.

IV.
Conclusion

Based upon the foregoing findings, the Commissioner is of the opinion that Tutti Frutti and Wellspring Companies are in breach of the March 2019 Consent Order; and pursuant to the terms of the Consent Order and Corporations Code sections 31115 and 31117, the Commissioner is denying the franchise registration of Tutti Frutti Franchising, Inc.

For these reasons, the Commissioner has determined that an order should be issued denying the effectiveness of franchise registration of Tutti Frutti Franchising, Inc.

Dated: January 27, 2020
San Diego, California

MANUEL P. ALVAREZ
Commissioner of Business Oversight

By _____
Afsaneh Eghbaldari
Counsel, Enforcement Division