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

10
11 In the Matter of:) FIL ORG ID: 312620
)
12 THE COMMISSIONER OF BUSINESS) CONSENT ORDER
13 OVERSIGHT,)
)
14 Complainant,)
)
15 v.)
)
16 SK RESTAURANTS PVT. LTD. d.b.a.)
17 THE YELLOW CHILLI,)
)
18 Respondent.)
19)

20 This Consent Order is entered into between the Complainant, the Commissioner of Business
21 Oversight (Commissioner) as head of the Department of Business Oversight (Department), and the
22 Respondent, SK Restaurants Pvt. Ltd. d.b.a. The Yellow Chilli (SK Restaurants) (collectively, the
23 Parties), and is made with respect to the following:

24 **I.**
25 **Recitals**

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

1 B. The Commissioner brings this action pursuant to the provisions of the FIL, and the
2 rules and regulations promulgated thereunder, including Corporations Code sections 31303, 31402,
3 31406, and 31408.

4 C. SK Restaurants admits to the jurisdiction of the Commissioner in this matter and for
5 the purposes of issuing and enforcing this Consent Order.

6 D. SK Restaurants is incorporated under the Companies Act, 1956 (India), with a
7 principal place of business at C-18, Dalia Estate, Near Fun Republic, Andheri Link Road, Andheri
8 (West), Mumbai, India 400053. SK Restaurants' principal place of business in the United States is
9 555 Sun Valley Drive, Suite J-4, Roswell, Georgia 30076. SK Restaurants operates the website,
10 theyellowchilli.com.

11 E. SK Restaurants owns the restaurant brand, The Yellow Chilli (TYC).

12 F. On or around January 14, 2019, SK Restaurants filed an initial franchise registration
13 application and franchise disclosure document (FDD) with the Commissioner pursuant to
14 Corporations Code section 31111 (Initial Application).¹ SK Restaurants offers TYC franchises for
15 the use of TYC trademarks, trade names, service marks and logos in operating restaurants that
16 serve affordable Indian dishes designed and developed by Indian celebrity chef, entrepreneur, and
17 television personality, Sanjeev Kapoor.

18 G. The Department's review of the Initial Application disclosed that from in or around
19 February 2016 through January 2018 SK Restaurants entered into agreements entitled, "Letter of
20 Intent" (LOI) or "Interim Franchise Agreement" (IFA) (collectively, LOI), with at least three
21 California domiciled-entities that stated, in relevant part, that the LOI "sets out the key terms
22 relating to the proposed Franchise Agreement of brands/trademarks 'The Yellow Chilli' . . . for
23 setting up and running a restaurant in . . . [city], California."

24 H. The LOI designated SK Restaurants as the Franchisor and the California entity as the
25 Franchisee, and stated, in relevant part: "The Franchisor has agreed to execute a Franchise
26 Agreement with the Franchisee" for the purpose of carrying out the Franchise business from the
27 California location.

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¹ On or around August 22, 2019, SK Restaurants filed an amended FDD (Amended FDD). Unless otherwise specified, both the Amended FDD and Initial Application shall be referred collectively as "Initial Application."

1 I. The LOI stated that upon execution of the LOI, the Franchisee shall pay a fee to the
 2 Franchisor, designated variously as a “One Time non refundable Franchise Fee,” or “Earnest
 3 Money” that would be adjusted into the one time nonrefundable Franchise Fee upon execution of
 4 the Franchise Agreement (Booking Fee), in addition to a “Monthly Royalty” of 7.5% once the
 5 Franchisee commences business operations at the designated California location.

6 J. SK Restaurants disclosed that it received fees from the California entities as follows:

7 California Entity	8 City of TYC Restaurant in California	9 Date of Execution of LOI	10 Amount of Booking Fee Received	11 Amount of Monthly Royalties Received as of at least March 6, 2020
12 a.	Buena Park / Artesia	February 25, 2016	\$50,000.00	\$13,936.27
13 b.	Santa Clara	September 16, 2016	\$60,000.00	\$144,458.11
14 c.	Tustin	January 15, 2018	\$60,000.00	\$0.00

15 K. Each LOI was dated and signed by SK Restaurants and the California entity, which,
 16 as of the date of this Consent Order, is or was operating a TYC restaurant in a designated California
 17 location.

18 L. The LOI contained an offer of a franchise within the meaning of Corporations Code
 19 section 31005.

20 M. As of the date of this Consent Order, the Initial Application is pending before the
 21 Department and the offer and sale of TYC franchises is not yet registered.

22 N. SK Restaurants did not first provide a copy of an FDD to any California entity to
 23 whom it offered the LOI (TYC Franchisee) at least 14 days prior to the execution of any binding
 24 franchise or other agreement, or prior to the receipt of any consideration, whichever occurs first, in
 25 violation of Corporations Code section 31119, subdivision (a).

26 O. The Department informed SK Restaurants of its intent to order SK Restaurants to:
 27 (1) desist and refrain from making unregistered, nonexempt offers or sales of franchises in
 28 California; (2) pay administrative penalties for violations of the FIL; (3) file Notices of Violation;
 and (4) provide ancillary relief to all three known TYC Franchisees.

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1 P. SK Restaurants indicated its intent to cooperate fully with the Department to remedy
2 the past violations indicated herein and consent to the entry of this Consent Order.

3 Q. It is the intention and desire of the parties to resolve this matter without the necessity
4 of a hearing and/or other litigation.

5 R. The Commissioner finds that this Consent Order is appropriate, in the public interest,
6 and consistent with the purposes fairly intended by the policy and provisions of the FIL.

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 set forth
12 in paragraphs A through R above in a manner that avoids the expense of a hearing and other
13 possible court proceedings, protects consumers, is in the public interest, and is consistent with the
14 purposes, policies, and provisions of the FIL.

15 2. Finality of Consent Order. SK Restaurants hereby agrees to comply with this
16 Consent Order and, further, stipulates that this Consent Order is hereby deemed a final and
17 enforceable order.

18 3. Final Desist and Refrain Order. SK Restaurants hereby stipulates that, in accordance
19 with Corporations Code section 31402, SK Restaurants shall desist and refrain from violating
20 Corporations Code sections 31110 and 31119.

21 4. Penalties. SK Restaurants agrees to pay penalties in the amount of \$15,000.00.
22 Such payment shall be made by SK Restaurants within 10 days of the effective date of this Consent
23 Order, as such date is defined in Paragraph 25 (Effective Date) and shall be made payable to the
24 Commissioner in the form of a cashier's check or Automated Clearing House deposit to the
25 "Department of Business Oversight," and transmitted to: Accounting – Enforcement Division,
26 Department of Business Oversight, 1515 K Street, Suite 200, Sacramento, California 95814,
27 contemporaneously with notice of transmittal to Sophia C. Kim at Sophia.Kim@dbo.ca.gov.

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1 5. Notices of Violation and Ancillary Relief.

2 a. Within 30 days of the Effective Date, pursuant to Corporations Code section
3 31408, subdivision (a), SK Restaurants shall comply with Corporations Code section 31303 and
4 California Code of Regulations, title 10, section 310.303 by submitting to the Commissioner for
5 review and approval the following items: (i) An application, accompanied by the applicable filing
6 fee, to approve a form of the Notice of Violation to serve upon each TYC Franchisee for violating
7 Corporations Code section 31110; and (ii) A complete and updated FDD that discloses, at a
8 minimum, this Consent Order and all franchised and company-owned outlets as required (NOV).

9 b. Within 30 days of the Effective Date, pursuant to Corporations Code section
10 31408, subdivision (a), SK Restaurants shall submit to the Commissioner for review and approval
11 proposed offer(s) to rescind any and all unregistered offers or sales of TYC franchises and to refund
12 any and all consideration received pursuant thereto, to each TYC Franchisee (Rescission Offer(s)).

13 c. The NOV shall reference and include the Rescission Offer(s) and both shall
14 be addressed to the attention of: Dorothy Eshelman, Counsel, Securities Regulation / Legal
15 Division, Department of Business Oversight, One Sansome Street, Suite 600, San Francisco,
16 California 94104-4428; Dorothy.Eshelman@dbo.ca.gov.

17 d. Within 30 days of the Commissioner’s approval of the NOV and Rescission
18 Offer(s), SK Restaurants shall serve each TYC Franchisee with (i) an approved Rescission Offer,
19 (ii) a copy of this Consent Order, and (iii) the NOV.

20 e. Within 45 days of the Commissioner’s approval of the Rescission Offers and
21 the NOV, SK Restaurants shall submit to the Commissioner proof(s) of service of (i) an approved
22 Rescission Offer, (ii) a copy of this Consent Order, and (iii) the NOV (Proof(s) of Service). The
23 Proof(s) of Service shall be sent to the attention of: Sophia C. Kim, Senior Counsel, Enforcement
24 Division, Department of Business Oversight, 320 West 4th Street, Suite 750, Los Angeles,
25 California 90013; Sophia.Kim@dbo.ca.gov.

26 f. Within 30 days of the date on the Proof(s) of Service, SK Restaurants shall
27 submit to the Commissioner satisfactory documentation evidencing each TYC Franchisee’s
28 response to the Rescission Offer. The documentation of each TYC Franchisee’s response shall be

1 sent to the attention of: Sophia C. Kim, Senior Counsel, Enforcement Division, Department of
2 Business Oversight, 320 West 4th Street, Suite 750, Los Angeles, California 90013;
3 Sophia.Kim@dbo.ca.gov.

4 6. Waiver of Hearing Rights. SK Restaurants acknowledges the Commissioner is
5 ready, willing, and able to proceed with the filing of an enforcement action on the charges
6 contained in this Consent Order. SK Restaurants hereby waives the right to any hearings, and to
7 any reconsideration, appeal, or other right to review which may be afforded pursuant to the FIL, the
8 California Administrative Procedure Act (APA), the California Code of Civil Procedure (CCP), or
9 any other provision of law. SK Restaurants further expressly waives any requirement for the filing
10 of any action under the APA, CCP, or any other provision of law; and by waiving such rights, SK
11 Restaurants effectively consents to this Consent Order becoming final.

12 7. Full and Final Settlement. The Parties hereby acknowledge and agree that this
13 Consent Order is intended to constitute a full, final, and complete resolution of the violations
14 described herein, and that no further proceedings or actions will be brought by the Commissioner in
15 connection with these matters under the FIL or any other provision of law, excepting therefrom any
16 proceeding to enforce compliance with the terms of this Consent Order, or a proceeding or action
17 based upon discovery of new and further violations of the FIL which do not form the basis for this
18 Consent Order or which SK Restaurants knowingly concealed from the Commissioner.

19 8. Failure to Comply with Consent Order. SK Restaurants agrees that if it fails to
20 comply with the terms of this Consent Order, the Commissioner may, in addition to all other
21 available remedies it may invoke under the FIL, deny any application and/or summarily suspend or
22 revoke any license granted by the Commissioner to SK Restaurants until SK Restaurants is in
23 compliance. SK Restaurants waives any notice and hearing rights to contest such denial(s) and/or
24 summary suspensions or revocations which may be afforded under the law governing such license,
25 the APA, CCP, or any other provision of law in connection therewith.

26 9. Future Actions by Commissioner. This Consent Order may be revoked, and the
27 Commissioner may pursue any and all remedies available under law against SK Restaurants if the
28 Commissioner discovers that SK Restaurants knowingly or willfully withheld or misrepresented

1 information used for and relied upon in this Consent Order. Further, SK Restaurants agrees that
2 this Consent Order does not resolve any penalties that may be assessed by the Commissioner upon
3 discovery of new and further violations of the FIL.

4 10. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner’s
5 ability to assist any other government agency (city, county, state, or federal) with any prosecution,
6 administrative, civil or criminal brought by any such agency against SK Restaurants or any other
7 person based upon any of the activities alleged in this matter or otherwise.

8 11. Headings. The headings to the paragraphs of this Consent Order are inserted for
9 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
10 the provisions hereof.

11 12. Binding. This Consent Order is binding on all the Parties’ heirs, assigns, and/or
12 successors in interest.

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

22 14. No Presumption Against Drafting Party. Each of the Parties acknowledges that it
23 has had the opportunity to draft, review, and edit the language of this Consent Order. Accordingly,
24 the Parties intend that no presumption for or against the drafting party will apply in construing any
25 part of this Consent Order. The Parties waive the benefit of Civil Code section 1654 as amended or
26 corresponding provisions of any successor statute, which provide that in cases of uncertainty,
27 language of a contract should be interpreted most strongly against the party that caused the
28 uncertainty to exist.

1 15. Independent Legal Advice. Each of the Parties represents, warrants, and agrees that
2 it has received independent advice from its attorney(s) and/or representatives with respect to the
3 advisability of executing this Consent Order.

4 16. 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 of the Parties of any breach of, or of compliance with, any
8 condition or provision of this Consent Order by the other party will be considered a waiver of any
9 other condition or provision or of the same condition or provision at another time.

10 17. 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 covenants
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 18. 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
18 court, and hereby irrevocably waives, to the fullest extent permitted by law, the defense of an
19 inconvenient forum to the maintenance of such action or proceeding in such court.

20 19. 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 20. Effect Upon Future Proceedings. If SK Restaurants applies for any license, permit
24 or qualification under the Commissioner’s current or future jurisdiction, or are the subject of any
25 future action by the Commissioner to enforce this Consent Order, then the subject matter hereof
26 shall be admitted for the purpose of such application(s) or enforcement proceeding(s).

27 21. Voluntary Agreement. SK Restaurants enters into this Consent Order voluntarily
28 and without coercion and acknowledges that no promises, threats, or assurances have been made by

1 the Commissioner or any officer, or agent thereof, about this Consent Order. The Parties each
2 represent and acknowledge that he, she, or it is executing this Consent Order completely voluntarily
3 and without any duress or undue influence of any kind from any source.

4 22. Notice. Any notice required under this Consent Order shall be provided to each of
5 the Parties at the following addresses:

6 To SK Restaurants:

7 Peter E. Morgan, Esq., Morgan Easley, LLC, 555 Sun Valley Drive, Suite J-4,
8 Roswell, Georgia 30076; pm@morganeasley.com

9 To the Commissioner:

10 Sophia C. Kim, Senior Counsel, Enforcement Division, California Department of
11 Business Oversight, 320 West 4th Street, Suite 750, Los Angeles, California 90013;
12 Sophia.Kim@dbo.ca.gov

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

15 24. Public Record. SK Restaurants hereby acknowledges that this Consent Order is and
16 will be a matter of public record.

17 25. Effective Date. This Consent Order shall become final and effective when signed by
18 each of the Parties and delivered by the Commissioner’s agent via e-mail to SK Restaurants at
19 pm@morganeasley.com.

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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: 5/7/20

MANUEL P. ALVAREZ
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner

Dated: 5/5/20

SK RESTAURANTS PVT. LTD. d.b.a.
THE YELLOW CHILLI

By _____
Alyona Kapoor
Director

APPROVED AS TO FORM:

Peter Morgan, Esq.
Morgan Easley, LLC
Counsel for SK Restaurants Pvt. Ltd. d.b.a. The Yellow Chilli