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11 Attorneys for Complainant

12 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION  
13 OF THE STATE OF CALIFORNIA

14 In the Matter of: )

15 THE COMMISSIONER OF FINANCIAL )  
16 PROTECTION AND INNOVATION, )

17 Complainant, )

18 v. )

19 THOMAS NARIMAN and DRNK COFFEE + )  
20 TEA FRANCHISING, LLC., )

21 Respondents. )

22 CONSENT ORDER

23 FIL App: 15074

24 This Consent Order is entered into between the Commissioner of Financial Protection and  
25 Innovation (Commissioner), DRNK Coffee + Tea Franchising, LLC. and Thomas Nariman, as an  
26 individual, and as president of DRNK Coffee + Tea Franchising, LLC. (collectively DRNK or  
27 Parties) and is made with respect to the following facts:

28 **I.**

**RECITALS**

A. The Commissioner is the head of the Department of Financial Protection and  
Innovation (Department) and is responsible for administering and enforcing the Franchise  
Investment Law (FIL) (Corp. Code, § 31000 et seq.),<sup>1</sup> and registering the offer and sale of franchises  
in California. To register a franchise, a franchisor must file an application which includes a Uniform

<sup>1</sup> All further statutory references are to the Corporations Code unless otherwise indicated.

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

5 B. DRNK Coffee + Tea Franchising, LLC. was a California limited liability company  
6 with a principal place of business located at 350 S. Grand Avenue, Suite 3070, Los Angeles,  
7 California 90071. At all relevant times, DRNK Coffee + Tea Franchising, LLC. offers and sells  
8 franchises for the operation of beverage outlets selling coffee, tea, and juice drinks. DRNK Coffee +  
9 Tea Franchising, LLC. filed its FDD and initial registration with the Department on May 26, 2015.  
10 Since 2015, DRNK Coffee + Tea Franchising, LLC. has filed its application for renewal of  
11 registration on an annual basis until April 20, 2020. At all relevant times, DRNK Coffee + Tea  
12 Franchising, LLC. offers and sells franchises in California. At all relevant times, Thomas Nariman  
13 was an individual and chief executive officer of DRNK Coffee + Tea Franchising, LLC. Thomas  
14 Nariman also engaged in the offer and sale of DRNK Coffee + Tea Franchising, LLC. franchises in  
15 California.

16 C. Under section 31119, it is unlawful to sell any franchise without first providing a  
17 prospective franchisee with the FDD at least fourteen days prior to the execution of a franchise  
18 agreement or receipt of consideration.

19 D. On June 2, 2016, DRNK executed a franchise sales agreement with franchisee IW in  
20 Los Angeles. Franchisee IW subsequently paid DRNK a franchise fee payment of \$35,000 on June  
21 13, 2016. DRNK franchisee IW their FDD on September 12, 2016. DRNK then required franchisee  
22 IW to backdate the FDD receipt to May 10, 2016.

23 E. Under section 31200, it is unlawful for any person willfully to make any untrue  
24 statement of a material fact in any application, notice or report filed with the Commissioner under  
25 the FIL, or willfully omit to state in any such application, notice, or report any material fact which is  
26 required to be stated therein or fail to notify the Commissioner of any material change as required by  
27 section 31123.  
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1 F. On November 21, 2019, franchisee DDC Group, Inc. filed a civil complaint for  
2 breach of contract against DRNK in the Superior Court of Los Angeles County. DRNK did not file  
3 a post-effective amendment disclosing this pending civil action to the Commissioner. DRNK asserts  
4 that it was not actively offering and selling franchises in California in November 2019 or after and  
5 did not file a renewal registration application in 2020 due to the public health crisis caused by  
6 COVID-19.

7 G. In the DRNK FDD Item 11, DRNK disclosed that franchisees were responsible for  
8 locating their own franchise site and negotiating the purchase or lease of the site. However, in 2017,  
9 DRNK required franchisee IW to select a DRNK franchise site located in Los Angeles, even though  
10 franchisee IW wanted to select a site in Chicago, Illinois. Also, DRNK required franchisee IW to  
11 sublease its franchise site in Los Angeles directly from DRNK. Finally, DRNK did not allow  
12 franchisee IW to negotiate the lease of the DRNK Los Angeles site. DRNK failed to disclose these  
13 changes to the Commissioner in a post-effective amendment or otherwise.

14 H. In the DRNK FDD Item 7, DRNK disclosed that \$205,800 to \$429,000 was the total  
15 cost of property improvements for a DRNK franchise. However, franchisee IW paid nearly  
16 \$500,000 for the construction build out/property improvements for a franchise site in Los Angeles  
17 from 2016 to 2018. Franchisee IW had to pay this amount directly to DRNK, without ever knowing  
18 the itemized costs of the property improvements. Also, franchisee RS was required to pay over  
19 \$234,000 from February 15, 2019 to October 28, 2019 for property improvements. DRNK failed to  
20 disclose the change in the FDD cost of property improvements to the Commissioner.

21 I. DRNK, in FDD Item 19, does not make any financial performance representations.  
22 However, in September 2016 before franchisee IW signed the franchise agreement, DRNK that a  
23 DRNK franchise with two concepts (coffee and juice beverages) would produce an annual income of  
24 between \$850 to \$1 million dollars per year. DRNK failed to disclose this change in Item 19  
25 regarding financial representations to the Department.

26 J. Under section 31201, it is unlawful for any person to offer or sell a franchise by  
27 means of any written or oral communication which includes an untrue statement of a material fact or  
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1 omits to state a material fact necessary in order to make the statements made, in the light of the  
2 circumstances under which they were made, not misleading.

3 K. In the DRNK FDD Item 11, DRNK represented that franchisees were responsible for  
4 locating their own franchise site and negotiating the purchase or lease of the site. However, in 2017,  
5 DRNK required franchisee IW to select a specific franchise site located in Los Angeles, despite  
6 franchisee IW wanting to select a site in Chicago, Illinois. Also, DRNK required franchisee IW to  
7 sublease its franchise site in Los Angeles directly from DRNK. DRNK did not allow franchisee IW  
8 to negotiate the lease of the Los Angeles site.

9 L. In the DRNK FDD Item 7, DNRK disclosed that \$205,800 to \$429,000 was the total  
10 cost of property improvements for a DRNK franchise. However, franchisee IW paid nearly  
11 \$500,000 for the construction build out/property improvements for a franchise site in Los Angeles  
12 from 2016 to 2018. Franchisee IW was required to pay this amount directly to DRNK, without ever  
13 knowing the itemized costs of the property improvements. In 2019, franchisee RS paid over  
14 \$234,000 for property improvements for his store, well over the amount asserted in the FDD.

15 M. DRNK, in FDD Item 19, does not make any financial performance representations.  
16 On the contrary, DRNK, in September 2016 before franchisee IW signed the franchise agreement,  
17 told franchisee IW that the Los Angeles site DRNK franchise with two concepts (coffee and juice  
18 beverages) would bring in an annual income of between \$850 to \$1 million dollars per year. Based  
19 upon this representation, franchisee IW signed the DRNK franchise agreement and paid DRNK  
20 \$35,000. However, to date, the Los Angeles DRNK site has not produced an annual income of  
21 between \$850 to \$1 million dollars per year.

22 N. The Commissioner finds that DRNK failed to provide their FDD to franchise IW at  
23 least fourteen days prior to the execution of a franchise agreement or receipt of consideration,  
24 resulting in a violation of section 31119.

25 O. The Commissioner further finds that DRNK, in at least five instances, willfully made  
26 an untrue statement of a material fact in any application, notice or report filed with the  
27 Commissioner or willfully omitted to state in any such application, notice, or report any material fact  
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1 which is required to be stated therein or failed to notify the Commissioner of any material change as  
2 required by section 31123, in violation of section 31200.

3 P. The Commissioner finally finds that DRNK, in at least four instances, offered or sold  
4 a franchise in California by means of any written or oral communication which includes an untrue  
5 statement of a material fact or omits to state a material fact necessary in order to make the statements  
6 made, in the light of the circumstances under which they were made, not misleading, in violation of  
7 section 31201.

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

10 **II.**

11 **TERMS AND CONDITIONS**

12 1. Purpose. This Consent Order resolves the issues before the Commissioner [findings  
13 in paragraphs N, O, and P above] in a manner that avoids the expense of a hearing and other  
14 possible court proceedings, protects consumers, is in the public interest, and is consistent with the  
15 purposes and provisions of the FIL. Without admitting or denying the Commissioner’s findings as  
16 set forth herein for settlement purposes, DRNK desires to enter into this Consent Order which the  
17 Commissioner finds is appropriate, in the public interest, and consistent with the purposes fairly  
18 intended by the FIL.

19 2. Desist and Refrain Order. Pursuant to Corporations Code sections 31402 and 31406,  
20 Thomas Nariman and DRNK Coffee + Tea Franchising, LLC. are hereby ordered to desist and  
21 refrain from the violations set forth herein, in violation of Corporations Code sections 31119, 31200,  
22 and 31201. Thomas Nariman and DRNK Coffee + Tea Franchising, LLC. hereby agree to comply  
23 with this Desist and Refrain Order and stipulates that this Order is hereby deemed to be final and  
24 effective from the effective date of this Consent Order listed in paragraph 22 herein (Effective Date).

25 3. Penalties. DRNK shall pay penalties of \$13,000 (Penalties) for the violations  
26 discussed herein. DRNK shall pay Penalties to the Commissioner by way of the following Penalty  
27 payment schedule: First payment of \$2,000 due within ten calendar days of the Effective Date of this  
28 Consent Order; Second payment of \$3,000 due on July 1, 2021; Third payment of \$3,500 due on

1 October 1, 2021; and fourth and final payment of \$4,500 due on December 31, 2021. Penalties shall  
2 be paid via cashier's check or Automated Clearing House deposit to the Department of Financial  
3 Protection and Innovation, Accounting, 2101 Arena Blvd., Sacramento, California 95834. Failure to  
4 timely pay the Penalties constitutes a breach of this Consent Order.

5 4. Remedial Education. The following class of persons are required to attend remedial  
6 education: (1) All persons with direct management responsibility relating to the sale of franchises;  
7 (2) All persons who assist in preparing franchise materials (excluding outside lawyers and  
8 accountants); (3) Thomas Nairman; and (4) the person who certifies the accuracy of the franchise  
9 disclosure document. Each of these persons shall complete at least eight hours of continuing  
10 education offered by a Commissioner approved vendor for a period of one year, commencing on the  
11 Effective Date of this Consent Order. DRNK shall file proof of compliance, in the form of a sworn  
12 statement of each person required to take remedial education, under penalty of perjury, and a  
13 certificate of completion from the vendor to the Commissioner upon completion. Proof of  
14 compliance shall be sent to the Department of Financial Protection and Innovation, Attn. Marisa I.  
15 Urteaga-Watkins, Counsel, 2101 Arena Blvd., Sacramento, California 95834. DRNK agrees that the  
16 Department shall not register any DRNK franchise application for registration until all remedial  
17 education is complete. Failure to timely complete said remedial education requirement within one  
18 year of the Effective Date of this Order constitutes a breach of this Consent Order and DRNK shall  
19 be barred from offering and selling franchises until said training is complete.

20 5. Waiver of Hearing Rights. DRNK acknowledges that the Commissioner is ready,  
21 willing, and able to proceed with the filing of an administrative enforcement action on the charges  
22 contained in this Consent Order. DRNK hereby waives the right to any hearings, and to any  
23 reconsideration, appeal, or other right to review which may be afforded pursuant to the FIL, the  
24 Administrative Procedure Act (APA), the Code of Civil Procedure (CCP), or any other provision of  
25 law. DRNK further expressly waives any requirement for the filing of an Accusation pursuant to  
26 Government Code section 11415.60, subdivision (b). By waiving such rights, DRNK effectively  
27 consents to this Consent Order and the Desist and Refrain Order becoming final.  
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1           6.       Failure to Comply with Consent Order. DRNK agrees that if it fails to comply with  
2 the terms of this Consent Order, the Commissioner may, in addition to all other available remedies  
3 it may invoke under the FIL, summarily suspend/revoke its FIL registration (if applicable) or deny  
4 FIL applications (if applicable) until DRNK is in compliance. DRNK waives any notice and  
5 hearing rights to contest such summary suspensions which may be afforded under the FIL, the APA,  
6 the CCP, or any other provision of law in connection therewith.

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

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

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

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

23           11.      Binding. This Consent Order is binding on all heirs, assigns, and/or successors in  
24 interest.

25           12.      Reliance. Each of the Parties represents, warrants, and agrees that in executing this  
26 Consent Order it has relied solely on the statements set forth herein and the advice of its own  
27 counsel. Each of the Parties further represents, warrants, and agrees that in executing this Consent  
28 Order it has placed no reliance on any statement, representation, or promise of any other party, or

1 any other person or entity not expressly set forth herein, or upon the failure of any party or any  
2 other person or entity to make any statement, representation or disclosure of anything whatsoever.  
3 The Parties have included this clause: (1) to preclude any claim that any party was in any way  
4 fraudulently induced to execute this Consent Order; and (2) to preclude the introduction of parol  
5 evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

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

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

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

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

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

1           18.    Voluntary Order. DRNK enters into this Consent Order voluntarily and without  
2 coercion and acknowledges that no promises, threats or assurances have been made by the  
3 Commissioner or any officer, or agent thereof, about this Consent Order. The parties each represent  
4 and acknowledge that he, she or it is executing this Consent Order completely voluntarily and  
5 without any duress or undue influence of any kind from any source.

6           19.    Notice. Any notice required under this Consent Order shall be provided to each  
7 party at the following addresses:

8                   To DRNK:                   Susan Grueneberg, Esq.  
9   Cozen O’Connor  
10    601 S. Figueroa Street, Suite 3700  
11    Los Angeles, California 90017  
12    SGrueneberg@cozen.com

13                   To the Commissioner:           Marisa I. Urteaga-Watkins, Counsel  
14    Department of Financial Protection and Innovation  
15    2101 Arena Blvd.  
16    Sacramento, California 95834  
17    marisa.urteaga-watkins@dfpi.ca.gov

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

20           21.    Public Record. DRNK hereby acknowledges that this Consent Order is and will be a  
21 matter of public record.

22           22.    Effective Date. This Consent Order shall become final and effective when signed by  
23 all Parties and delivered by the Commissioner’s agent via e-mail to DRNK’s agent, Susan  
24 Grueneberg, Esq., at SGrueneberg@cozen.com.

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23. 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: May 3, 2021

MANUEL P. ALVAREZ  
Commissioner of Financial Protection and Innovation

By: \_\_\_\_\_  
MARY ANN SMITH  
Deputy Commissioner

Dated: April 29, 2021

DRNK COFFEE + TEA FRANCHISING, LLC.

By: \_\_\_\_\_  
Thomas Nariman, as president of DRNK COFFEE +  
TEA FRANCHISING, LLC.

Dated: April 29, 2021

THOMAS NARIMAN

By: \_\_\_\_\_  
Thomas Nariman, as an individual.