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9 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
10 OF THE STATE OF CALIFORNIA

11 In the Matter of:)
12)
13 THE COMMISSIONER OF FINANCIAL)
PROTECTION AND INNOVATION,)
14)
Complainant,) CONSENT ORDER
15 v.)
16)
BYC, INC. and BYC FRANCHISING, LLC.,)
17)
18 Respondents.)

19 This Consent Order is entered into between the Commissioner of Financial Protection and
20 Innovation (Commissioner) and BYC, Inc. (BYC) and BYC Franchising, LLC (Franchising LLC,
21 and together with BYC, Respondents) (Commissioner and Respondents are collectively referred to
22 as the Parties) and is made with respect to the following facts:

23 I.

24 RECITALS

25 A. The Commissioner is the head of the Department of Financial Protection and
26 Innovation (Department) and is responsible for administering and enforcing the Franchise
27 Investment Law (FIL) (Corp. Code, § 31000 et seq.),¹ and registering the offer and sale of franchises
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¹ All further statutory references are to the Corporations Code unless otherwise indicated.

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

6 B. At all relevant times, BYC, Inc. was a California corporation with a principal place of
7 business located at 1851 Garnet Avenue, San Diego, California 92109.

8 C. At all relevant times, BYC Franchising, LLC was a California limited liability
9 company with a principal place of business also located at 1851 Garnet Avenue, San Diego,
10 California 92109.

11 D. Under section 31110, it is unlawful for any person to offer or sell a franchise in this
12 state unless the offer has been registered with the Commissioner or is exempt.

13 E. From 2005 to 2008, BYC entered into license agreements with California companies
14 for the operation of cafes under the trademark “Broken Yolk Café” and using the marketing plan and
15 system prescribed by BYC at specified locations in California. BYC was not registered to offer and
16 sell franchises by the Commissioner pursuant to the FIL between 2005 and 2008.

17 F. Under section 31119, it is unlawful to sell any franchise without first providing a
18 prospective franchisee with the FDD at least 14 days prior to the execution of a franchise agreement
19 or receipt of consideration.

20 G. From 2005 to 2008, BYC did not provide FDDs to the California companies
21 described in paragraph E at least 14 days prior to executing the license agreements.

22 H. Franchising LLC filed at least 16 applications for franchise registration or renewal, or
23 amendments thereto, under sections 31111, 31121, and 31123, between 2010 and 2021. The FDDs
24 submitted with such applications stated that BYC sold “licenses” to operate the Broken Yolk Café.

25 I. Franchising LLC has sold at least 26 franchises in California since 2010.

26 J. The Commissioner finds that BYC offered and sold non-exempt, unregistered
27 franchises in California between 2005 and 2008 in violation of section 31110.
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1 K. The Commissioner further finds that BYC failed to provide the prospective
2 franchisees, at least 14 days prior to the execution by the prospective franchisee of any binding
3 franchise or other agreement or receipt of any consideration, whichever occurs first, a copy of a
4 FDD, in violation of section 31119.

5 L. Respondents acknowledge and agree with the Commissioner’s findings.

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

8 **II.**

9 **TERMS AND CONDITIONS**

10 1. Purpose. This Consent Order resolves the issues before the Commissioner,
11 described in the recitals above, in a manner that avoids the expense of a hearing and other possible
12 court proceedings, protects consumers, is in the public interest, and is consistent with the purposes
13 and provisions of the FIL.

14 2. Desist and Refrain Order. Pursuant to Corporations Code sections 31402 and 31406,
15 BYC, Inc. is hereby ordered to desist and refrain from the violations set forth herein, in violation of
16 Corporations Code sections 31110 and 31119, and BYC Franchising, LLC is hereby ordered to
17 desist and refrain from the violations set forth herein and to disclose this Consent Order and the
18 Commissioner’s findings in Item 3 of BYC Franchising, LLC’s FDD.

19 3. Penalties. Respondents shall pay an administrative penalty of \$10,000 no later than
20 15 days after the effective date of this Consent Order as defined in paragraph 23 (Effective Date).
21 The penalty must be made payable in the form of a cashier’s check or Automated Clearing House
22 (ACH) deposit to the Department of Financial Protection and Innovation and transmitted to the
23 attention of Accounting – Litigation, at the Department of Financial Protection and Innovation, 2101
24 Arena Boulevard, Sacramento, California 95834. Notice of the payment must be concurrently sent
25 to Lulu Gomez, Senior Counsel, via email at lulu.gomez@dfpi.ca.gov. Failure to pay penalties in a
26 timely manner shall be deemed to be a material breach of this Consent Order.

27 4. Attorney’s Fees and Costs. Respondents shall pay the Commissioner’s attorney’s
28 fees and costs of \$5,000 no later than 15 days of the Effective Date. The costs and fees must be

1 made payable in the form of a cashier’s check or ACH deposit to the Department of Financial
2 Protection and Innovation and transmitted to the attention of Accounting – Litigation, at the
3 Department of Financial Protection and Innovation, 2101 Arena Boulevard, Sacramento, California
4 95834. Notice of the payment must be concurrently sent to Lulu Gomez, Senior Counsel, via email
5 at lulu.gomez@dfpi.ca.gov. Failure to pay attorney’s fees and costs in a timely manner shall be
6 deemed to be a material breach of this Consent Order.

7 5. Waiver of Hearing Rights. Respondents acknowledge that the Commissioner is
8 ready, willing, and able to proceed with the filing of an administrative enforcement action on the
9 charges contained in this Consent Order. Respondents hereby waive the right to any hearings, and to
10 any reconsideration, appeal, or other right to review which may be afforded pursuant to the FIL, the
11 California Administrative Procedure Act (APA), the California Code of Civil Procedure (CCP), or
12 any other provision of law. Respondents further expressly waive any requirement for the filing of an
13 action pursuant to Government Code section 11415.60, subdivision (b). By waiving such rights,
14 Respondents effectively consent to this Consent Order and all of its terms becoming final.

15 6. Opportunity to Cure. In the event Respondents fail to comply with the terms of this
16 Consent Order (except for the Desist and Refrain Order), Respondents will have 10 calendar days to
17 cure such breach from the date written notice of the breach is emailed by the Commissioner to
18 Respondents (Notice) at the email address in paragraph 20. Proof of cure, satisfactory to the
19 Commissioner, shall be sent via traceable method with a notice via email by Respondents so that it is
20 received within 15 days of the date of Notice to Lulu Gomez at lulu.gomez@dfpi.ca.gov.

21 7. Failure to Comply with Desist and Refrain Order or Cure Breach. Respondents
22 agree that if they fails to comply with the Desist and Refrain Order in this Consent Order, or fail to
23 timely cure any breach to the satisfaction of the Commissioner, the Commissioner may, in addition
24 to all other available remedies it may invoke under the FIL, summarily suspend, revoke, or deny
25 their FIL registrations (if applicable). Respondents stipulate to the finality of any such FIL
26 registration suspensions, revocations, or denials that the Commissioner may order. Respondents
27 waive any notice and hearing rights to contest such summary suspensions, revocations, or denials
28 which may be afforded under the FIL, the APA, the CCP, or any other provision of law in

1 connection therewith.

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

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

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

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

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

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

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

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

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

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

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

26 19. Voluntary Agreement. Respondents enter into this Consent Order voluntarily and
27 without coercion and acknowledge that no promises, threats or assurances have been made by the
28 Commissioner or any officer, or agent thereof, about this Consent Order. The Parties each represent

1 and acknowledge that he, she or it is executing this Consent Order completely voluntarily and
2 without any duress or undue influence of any kind from any source.

3 20. Notice. Any notice required under this Consent Order shall be provided to each
4 party at the following addresses:

5 To Respondents: Lori M. Lofstrom, Esq.
6 Lofstrom Law Corporation
7 7755 Center Avenue, Suite 1100
8 Huntington Beach, CA 92647
9 lori@lostromlc.com

10 To the Commissioner: Lulu Gomez, Senior Counsel
11 Department of Financial Protection and Innovation
12 350 West 4th Street, Suite 750
13 Los Angeles, CA 90013
14 lulu.gomez@dfpi.ca.gov

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

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

19 23. Effective Date. This Consent Order shall become final and effective when signed by
20 all Parties and delivered by the Commissioner’s agent via email to Respondents’ agent, Lori
21 Lofstrom, Esq., Lofstrom Law Corporation, at lori@lostromlc.com

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24. 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: 7/15/2021
CHRISTOPHER S. SHULTZ (ACTING)
Commissioner of Financial Protection and Innovation

By: _____
JENNIFER RUMBERGER
Deputy Commissioner

Dated: 7/15/2021
BYC, INC.

By: _____
JOHN GELASTOPOULOS
Chief Executive Officer

Dated: 7/15/2021
BYC FRANCHISING, LLC.

By: _____
JOHN GELASTOPOULOS
Manager