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8  
9 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION  
10 OF THE STATE OF CALIFORNIA

11 In the Matter of: )  
12 THE COMMISSIONER OF FINANCIAL ) FIL ORG ID: 92873  
PROTECTION AND INNOVATION, ) CONSENT ORDER  
13 )  
14 Complainant, )  
15 v. )  
16 WATERS EDGE WINERIES, INC., )  
17 Respondent. )

18  
19 The Commissioner of Financial Protection and Innovation (Commissioner) and Respondent,  
20 Waters Edge Wineries, Inc. (WEW), enter into this Consent Order (Consent Order) with respect to  
21 the following facts:

22 **I.**  
23 **Recitals**

24 A. The Commissioner is responsible for administering and enforcing the Franchise  
25 Investment Law (FIL) (Corp. Code, § 31000 et seq.)<sup>1</sup>, and registering the offer and sale of franchises  
26 in California.

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

1 B. WEW is a California corporation with its principal place of business located at 8560  
2 Vineyard Avenue, Suite 408, Rancho Cucamonga, California 91730. According to WEW’s 2020  
3 Franchise Disclosure Document (FDD), WEW grants “franchises for Waters Edge Winery & Bistros  
4 that feature the manufacture and sale of wine, the teaching of winemaking, the sale of related wine  
5 accessories, and the sale of bistro menu items that include artisan cheese and fruit appetizers,  
6 seasonal salads, panini-style sandwiches, flatbread pizzas, decadent desserts, and beverages such as  
7 craft beer (subject to state law), coffee and soft drinks.”

8 C. Ken Lineberger (Lineberger) is the CEO and sole shareholder of WEW.

9 D. In order to register a franchise, a franchisor must file a FDD with the Commissioner  
10 for review and approval, in accordance with sections 31111 and 31114 and thereafter renew its  
11 franchise registration yearly.

12 E. On or about July 6, 2012, WEW was first registered as a California franchise after  
13 filing its initial FDD with the Commissioner.

14 F. On April 17, 2019, WEW filed an application to renew its franchise registration with  
15 the Commissioner (Renewal Application). The Department’s review of WEW’s Renewal  
16 Application revealed WEW had insufficient working capital — negative \$27,379.00, to perform  
17 certain pre-obligations in connection with the establishment of each new franchise. Further, WEW’s  
18 financial statements disclosed that on or about December 31, 2018, Lineberger advanced an  
19 unsecured, non-interest-bearing loan in the amount of \$319,383, payable on demand to WEW.

20 G. Section 31113 states that the “Commissioner may, if he finds it necessary and  
21 appropriate for the protection of prospective franchisees or subfranchisors because the applicant has  
22 failed to demonstrate that adequate financial arrangements have been made to fulfill the franchisor’s  
23 obligations under the offering, by rule or order require the escrow or impound of franchisee fees and  
24 other funds paid by the franchisee or subfranchisor until such obligations have been satisfied.”

25 H. Further, pursuant to California Code of Regulations, title 10, section 310.113, “where  
26 the applicant has failed to demonstrate that adequate financial arrangements have been made to  
27 fulfill obligations to provide real estate, improvements, equipment, inventory, training or other items  
28 included in the offering, the Commissioner may impose as a condition to the registration of a

1 franchise offering an impoundment of the franchise fees and other funds paid by the franchisee or  
2 subfranchisor until such obligations have been satisfied.”

3 I. Since WEW’s financial statements showed WEW had insufficient working capital  
4 (negative \$27,379.00) to perform pre-obligations in connection with the establishment of each new  
5 franchise, on or about April 18, 2019, the Commissioner issued a comment letter to WEW dated  
6 April 18, 2019, requiring a financial assurance condition (Comment Letter), and offering four  
7 options to WEW including, impound of initial franchise fees, cash infusion, guaranty, or fee deferral.

8 J. The Comment Letter contained the following language regarding the cash infusion  
9 option:

The franchisor may infuse sufficient cash into the company to meet  
all of the obligations of the franchisor to the franchisee prior to the  
opening of the business without relying on any of the initial franchise  
fee. If the infusion is by a debt payable, the promissory note should  
not require the payment of interest or principal by applicant until all  
of the franchisor’s pre-opening obligations to the franchisees have  
been met during the current effective term of the franchise  
registration (i.e., the franchisor will not call the note during the  
effective period of registration).

16 K. In response to the Comment Letter, WEW sent a letter to the Commissioner dated  
17 April 23, 2019 requesting to sign an undertaking “not to call the promissory note due during the  
18 registration period, i.e., until at least April 20, 2020” in lieu of the options listed in the Comment  
19 Letter. The franchise was subsequently registered on April 25, 2019, effective through April 20,  
20 2020.

21 L. On April 13, 2020, WEW filed an application for franchise registration renewal with  
22 the Commissioner (app-17525). A review of the financial statements submitted for the year ended  
23 December 31, 2019 indicated that the amount “Due to Stockholder” had decreased to \$246,650 and  
24 the loan was now due in December 2021. The Commissioner sent a letter to WEW dated May 12,  
25 2020, requesting an explanation for the change in WEW’s financial statement.

26 M. In response to the Commissioner’s May 12, 2020, WEW sent a letter to the  
27 Commissioner dated May 20, 2020 confirming that WEW had paid down a portion of the loan to  
28 Lineberger. WEW further explained in its May 20, 2020 letter that it understood the language in the

1 Comment Letter requiring WEW not to “call the loan,” to mean that “the full amount would not be  
2 demanded.”

3 N. For the purposes of resolving the factual findings in paragraphs A through M, above  
4 without the expense and uncertainty of further proceedings, Respondent while making no personal  
5 admissions and without admitting any wrongdoing, agrees that at a hearing, Complainant could  
6 establish a prima facie factual basis for each of the findings contained in this Consent Order and that  
7 those findings constitute cause for this action.

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 this matter in a manner that avoids the expense  
13 of a hearing and other possible court proceedings, protects consumers, is in the public interest, and is  
14 consistent with the purposes, policies, and provisions of the Escrow Law.

15 2. Final Desist and Refrain Order. Pursuant to Corporations Code section 31406,  
16 Waters Edge Wineries, Inc. is hereby ordered to desist and refrain from further violations of  
17 Corporations Code section 31203. This desist and refrain order is final and effective from the  
18 Effective Date of this Consent Order, as defined in paragraph 23 (Effective Date).

19 3. Waiver of Hearing Rights. WEW acknowledges the Commissioner is ready, willing,  
20 and able to proceed with the filing of an administrative enforcement action on the charges contained  
21 in this Consent Order and WEW hereby waives the right to any hearing, and to any reconsideration,  
22 appeal, or other right to review which may be afforded pursuant to the FIL; the California  
23 Administrative Procedure Act, the California Code of Civil Procedure, any judicial review of this  
24 matter pursuant to Code of Civil Procedure section 1094.5 with respect to the issuance of this  
25 Consent Order and the desist and refrain; or any other provision of law; and by waiving such rights,  
26 WEW effectively consents to this Consent Order becoming final.

27 4. Full and Final Settlement. The Parties hereby acknowledge and agree that this  
28 Consent Order is intended to constitute a full, final, and complete resolution of the violations and

1 Desist and Refrain Order as identified herein. No further proceedings or actions will be brought by  
2 the Commissioner in connection with these matters under the FIL, or any other provision of law,  
3 excepting therefrom any proceeding to enforce compliance with the terms of this Consent Order.

4 5. Failure to Comply with Consent Order. WEW agrees that if it fails to comply with  
5 any terms of this Consent Order or the Desist and Refrain Order, the Commissioner may, summarily  
6 suspend/revoke any of WEW's registration and/or deny any pending registration application of  
7 WEW, in addition to all other available remedies it may invoke under the FIL. WEW waives any  
8 notice and hearing rights to contest such summary suspensions, revocation or denial which may be  
9 afforded under the FIL, the California Administrative Procedure Act, the California Code of Civil  
10 Procedure, or any other provision of law in connection therewith.

11 6. Third Party Actions. This Consent Order does not create any private rights or  
12 remedies against WEW, create any liability for WEW, or limit defenses of WEW against any person  
13 or entity not a party to this Consent Order.

14 7. Information Willfully Withheld. This Consent Order may be revoked, and the  
15 Commissioner may pursue any and all remedies available under law against WEW if the  
16 Commissioner discovers that WEW knowingly or willfully withheld or misrepresented information  
17 used for and relied upon in this Consent Order.

18 8. Future Actions by Commissioner. If WEW fails to comply with any terms of the  
19 Consent Order or violates the Desist and Refrain Order, WEW agrees that the Commissioner may, in  
20 addition to all other available remedies he may invoke under the FIL, summarily suspend/revoke  
21 WEW's FIL registration (if applicable) or deny WEW's FIL applications (if applicable) until WEW  
22 is in compliance. WEW waives any notice and hearing rights to contest such summary suspensions  
23 which may be afforded under the FIL, the APA, the CCP, or any other provision of law in  
24 connection therewith.

25 9. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner's  
26 ability to assist a government agency (whether city, county, state, or federal) with any  
27 administrative, civil, or criminal action brought by that agency against WEW, or any other person  
28 based upon any of the activities alleged in this matter or otherwise.

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

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

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

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

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

24           15.    Full Integration. This Consent Order is the final written expression and the complete  
25 and exclusive statement of all the agreements, conditions, promises, representations, and covenant  
26 between the Parties with respect to the subject matter hereof, and supersedes all prior or  
27 contemporaneous agreements, negotiations, representations, understandings, and discussions  
28

1 between and among the parties, their respective representatives, and any other person or entity, with  
2 respect to the subject matter covered hereby.

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

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

10 18. Effect Upon Future Proceedings. If WEW applies for any license, permit, or  
11 qualification under the Commissioner's current or future jurisdiction or is the subject of any future  
12 action by the Commissioner to enforce this Consent Order, then the such application(s) or  
13 enforcement proceeding(s).

14 19. Voluntary Agreement. WEW enters into this Consent Order voluntarily and without  
15 coercion and acknowledges that no promises, threats, or assurances have been made by the  
16 Commissioner or any officer, or agent thereof, about this Settlement Agreement. The Parties each  
17 represent and acknowledge that he, she, or it is executing this Consent Order completely voluntarily  
18 and without any duress or undue influence of any kind from any source.

19 20. Notice. Any notices required under the Consent Order shall be provided to each party  
20 at the following addresses:

21 If to Respondent: Ken Lineberger, CEO  
22 Waters Edge Wineries, Inc.  
23 8560 Vineyard Avenue, Suite 408  
Rancho Cucamonga, California 91730

24 If to the Commissioner: Uche Enenwali, Senior Counsel  
25 Department of Financial Protection and Innovation  
26 320 W. 4th Street, Suite 750  
Los Angeles, California 90013-2344 24.

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

1           22.    Public Record. WEW hereby acknowledges that this Consent Order is and will be a  
2 matter of public record.

3           23.    Effective Date. This Consent Order shall become final and effective when signed by  
4 all parties and delivered by the Commissioner's agent via e-mail to Tal Grinblat, Esq.;  
5 tgrinblat@lewitthackman.com

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

9           IN WITNESS WHEREOF, the parties hereto have approved and executed the Consent Order  
10 on the dates set forth opposite their respective signatures.

11 Dated: November 10, 2021

CHRISTOPHER S. SHULTZ  
Acting Commissioner of Financial Protection  
and Innovation

By \_\_\_\_\_  
MARY ANN SMITH  
Deputy Commissioner  
Enforcement Division

WATERS EDGE WINERIES, INC.,

20 Dated: November 9, 2021

By \_\_\_\_\_  
KEN LINEBERGER  
CEO

23 APPROVED AS TO FORM

25 \_\_\_\_\_  
26 TAL GRINBLAT, ESQ.  
27 Attorney for Respondent

