

1 CLOTHILDE V. HEWLETT
Commissioner
2 THERESA LEETS
Assistant Chief Counsel
3 Lulu Gomez (State Bar No. 287527)
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Department of Financial Protection and Innovation
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8 Attorneys for Complainant

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) CONSENT ORDER
Complainant,)
15 v.)
16 BAWARCHI FRANCHISE LLC and)
17 BAWARCHI BIRYANIS LLC,)
18 Respondents.)
19)

20 This Consent Order is entered into between the Commissioner of Financial Protection and
21 Innovation (Commissioner) and Respondents Bawarchi Franchise LLC and Bawarchi Biryani LLC
22 (collectively, Commissioner and Respondents are referred to herein as Parties) and is made with
23 respect to the following facts:

24 I.

25 RECITALS

26 A. The Commissioner is the head of the Department of Financial Protection and
27 Innovation (Department) and is responsible for administering and enforcing the Franchise
28

1 Investment Law (FIL) (Corp. Code, § 31000 et seq.),¹ and registering the offer and sale of franchises
2 in California. To register a franchise, a franchisor must file an application that includes a Franchise
3 Disclosure Document (FDD) with the Department for review, in accordance with sections 31111 and
4 31114. The FIL requires franchisors to disclose certain material information that is intended to
5 provide prospective franchisees with facts upon which to make an informed decision to purchase a
6 franchise, as stated in section 31001.

7 B. At all relevant times, Bawarchi Franchise LLC (Bawarchi Franchise) was and is a
8 Texas limited liability company with a principal place of business located at 4940 McDermott Road,
9 Suite #100, Plano, Texas 75024. Bawarchi Franchise offers franchises granting the right to operate a
10 dine-in and take-out restaurant featuring Indian, Moghul, and Indo-Chinese cuisine under the name
11 “Bawarchi Indian Cuisine.”

12 C. At all relevant times, Bawarchi Biryani LLC (Bawarchi Biryani) was and is a Texas
13 limited liability company with a principal place of business located at 4940 McDermott Road, Suite
14 #100, Plano, Texas 75024. Bawarchi Biryani is an affiliate of Bawarchi Franchise and offered
15 franchises for Bawarchi Indian Cuisine restaurants from 2013 until a restructuring transaction took
16 place on January 1, 2020, in which Bawarchi Franchise purchased all franchise assets from Bawarchi
17 Biryani and another affiliate, Bawarchi, LLC.

18 D. On or about March 1, 2018, Bawarchi Biryani entered into an agreement with
19 Niftyshack Services, LLC (Niftyshack) granting Niftyshack the right to operate a Bawarchi Indian
20 Cuisine restaurant in Lake Forest, California. Niftyshack paid an initial franchise fee of \$35,000.00
21 to Bawarchi Biryani.

22 E. On July 28, 2020, Bawarchi Franchise filed an initial franchise registration
23 application with the Department, identified by the Department as app-18800. In the FDD filed with
24 app-18800, Bawarchi Franchise disclosed the franchised outlet opened by Niftyshack in Lake Forest,
25 California in 2018 in Table 3 of Item 20 and Exhibit C to the FDD.

26 F. Following a comment letter from the Department on October 7, 2020, Bawarchi
27 Franchise admitted in a written response letter dated November 24, 2020 that due to the lack of
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¹ All further statutory references are to the Corporations Code unless otherwise indicated.

1 records maintained by Bawarchi Biryani, there were no records relating to the sale of the franchise
2 or any agreement signed by Niftyshack.

3 G. On March 22, 2021, Bawarchi Franchise filed an application for approval of a form of
4 Notice of Violation for the sale of the unregistered franchise to Niftyshack, identified by the
5 Department as app-20224.

6 H. Pursuant to section 31110, it is unlawful for any person to offer or sell a franchise in
7 this state unless the offer has been registered with the Commissioner or is exempted.

8 I. Pursuant to section 31119, it is unlawful to sell any franchise without first providing a
9 prospective franchisee with the FDD at least 14 days prior to the execution of a franchise agreement
10 or receipt of consideration.

11 J. Pursuant to section 31150, every franchisor offering franchises for sale in California
12 must at all times keep and maintain a complete set of books, records, and accounts of such sales.

13 K. The Commissioner finds that Bawarchi Biryani offered and sold a franchise to
14 Niftyshack in California in 2018 without being registered with the Commissioner or exempted, in
15 violation of section 31110.

16 L. The Commissioner further finds that Bawarchi Biryani failed to provide Niftyshack
17 with the FDD at least at least 14 days prior to the execution of a franchise agreement or receipt of
18 consideration, in violation of section 31119.

19 M. The Commissioner further finds that Respondents failed to maintain books, records,
20 and accounts of the sale of a franchise to Niftyshack, in violation of section 31150.

21 N. NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions
22 set forth herein, the Parties agree as follows:

23 **II.**

24 **TERMS AND CONDITIONS**

25 1. Purpose. This Consent Order resolves the issues before the Commissioner,
26 described in the Recitals above, in a manner that avoids the expense of a hearing and other possible
27 court proceedings, protects consumers, is in the public interest, and is consistent with the purposes
28 and provisions of the applicable law.

1 2. Desist and Refrain Order. Pursuant to Corporations Code sections 31402 and 31406,
2 Bawarchi Franchise LLC and Bawarchi Biryani LLC are hereby ordered to desist and refrain from
3 the violations set forth herein, in violation of Corporations Code sections 31110, 31119, and 31150,
4 and from any violations of the Franchise Investment Law. The issuance of this order is necessary,
5 in the public interest, for the protection of investors, and is consistent with the purposes, policies,
6 and provisions of the Franchise Investment Law.

7 3. Penalties. Respondents shall pay an administrative penalty of \$7,500.00 no later than
8 fifteen (15) days after the effective date of this Consent Order, as defined in paragraph 22 (Effective
9 Date). The penalty must be made payable in the form of a cashier’s check or Automated Clearing
10 House deposit to the Department of Financial Protection and Innovation and transmitted to the
11 attention of Accounting – Legal, at the Department of Financial Protection and Innovation, 2101
12 Arena Boulevard, Sacramento, California 95834. Notice of the payment must be concurrently sent
13 to Lulu Gomez via email at lulu.gomez@dfpi.ca.gov.

14 4. Notice of Violation.

15 i. Approval. Bawarchi Franchise shall obtain approval of pending app-20224
16 for the Notice of Violation by providing all necessary responses and making all necessary changes
17 to the Notice of Violation required by the Department’s counsel. Upon approval from the
18 Commissioner, Bawarchi Franchise will deliver the approved Notice of Violation to Niftyshack.

19 ii. Report to Commissioner. Bawarchi Franchise will provide the
20 Commissioner with proof of mailing of the Notice of Violation (the Report), within 30 days of the
21 Commissioner’s Order Approving Bawarchi Franchise’s Notice of Violation. Bawarchi Franchise
22 shall submit the Report to Lulu Gomez at lulu.gomez@dfpi.ca.gov.

23 5. Waiver of Hearing Rights. Respondents acknowledge that the Commissioner is
24 ready, willing, and able to proceed with the filing of an administrative enforcement action on the
25 charges contained in this Consent Order. Respondents hereby waive the right to any hearings, and to
26 any reconsideration, appeal, or other right to review which may be afforded pursuant to the FIL, the
27 Administrative Procedure Act (APA), the Code of Civil Procedure (CCP), or any other provision of
28 law. Respondents further expressly waive any requirement for the filing of any accusation pursuant

1 to Government Code section 11415.60, subdivision (b). By waiving such rights, Respondents
2 effectively consent to this Consent Order becoming final.

3 6. Failure to Comply with Consent Order. Respondents agree that if they fail to
4 comply with the terms of this Consent Order, the Commissioner may, in addition to all other
5 available remedies it may invoke under the FIL, summarily suspend or revoke Respondents’
6 franchise registration (if applicable) or deny Respondents’ FIL applications (if applicable), until
7 Respondents are in compliance. Respondents waive any notice and hearing rights to contest such
8 summary actions by the Commissioner, which may be afforded under the FIL, APA, CCP, or any
9 other provision of law.

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

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

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

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

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

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

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

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

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

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

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

5 18. Voluntary Order. Respondents enter into this Consent Order voluntarily and without
6 coercion and acknowledges that no promises, threats, or assurances have been made by the
7 Commissioner or any officer, or agent thereof, about this Consent Order. The Parties each
8 represent and acknowledge that he, she, or it is executing this Consent Order completely voluntarily
9 and without any duress or undue influence of any kind from any source.

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

12 To Respondent: Farheen Ibrahim, Esq.
13 Canada Lewis
14 5550 Granite Pkwy, Suite 195
15 Plano, Texas 75024
16 fibrahim@canadalewis.com

17 To the Commissioner: Lulu Gomez, Senior Counsel
18 Department of Financial Protection and Innovation
19 320 W. 4th St., Ste. 750
20 Los Angeles, CA 90013
21 lulu.gomez@dfpi.ca.gov

22 20. Signatures. A fax, scanned, or electronic signature shall be deemed the same as an
23 original signature.

24 21. Public Record. Respondents hereby acknowledge that this Consent Order is and will
25 be a matter of public record.

26 22. Effective Date. This Consent Order shall become final and effective when signed by
27 all Parties and delivered by the Commissioner’s agent via e-mail to Respondents’ agent, Farheen
28 Ibrahim, Esq. at fibrahim@canadalewis.com.

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1 23. Authority to Sign. Each signatory hereto covenants that he/she possesses all
2 necessary capacity and authority to sign and enter into this Consent Order and undertake the
3 obligations set forth herein.

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5 Dated: 2/22/2022

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection
and Innovation

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9 By: _____
10 THERESA LEETS
11 Assistant Chief Counsel

12 Dated: 2/18/2022

BAWARCHI FRANCHISE LLC

13
14
15 By: _____
16 KISHORE KANCHARLA
17 Chief Executive Officer

18 Dated: 2/18/2022

BAWARCHI BIRYANIS LLC

19
20 By: _____
21 KISHORE KANCHARLA
22 Chief Executive Officer