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Commissioner  
2 MARY ANN SMITH  
Deputy Commissioner  
3 DANIEL P. O'DONNELL  
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Senior Counsel  
5  
6 Department of Financial Protection and Innovation  
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9 Attorneys for Complainant

10  
11 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION  
12 OF THE STATE OF CALIFORNIA

13 In the Matter of: ) FIL ORG ID: 346859  
)  
14 THE COMMISSIONER OF FINANCIAL )  
PROTECTION AND INNOVATION, ) CONSENT ORDER  
15 )  
16 Complainant, )  
)  
17 v. )  
)  
18 CRUISIN' TIKIS, LLC, )  
)  
19 Respondent. )  
20 )  
21 )

22 Complainant, the Commissioner of Financial Protection and Innovation (Commissioner) as  
23 head of the Department of Financial Protection and Innovation (Department), and Respondent,  
24 Cruisin' Tikis, LLC (Cruisin' Tikis), enter this Consent Order with respect to the following:

25 I.

26 Recitals

27 A. The Commissioner is authorized to administer and enforce the provisions of the  
28 Franchise Investment Law (Corp. Code § 31000 *et seq.*) (FIL) and the rules and regulations

1 promulgated thereunder which control the registration, offer, and sale of franchises in California.

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

4 C. Cruisin' Tikis admits to the jurisdiction of the Commissioner in this matter and for the  
5 purposes of using and enforcing this Consent Order.

6 D. Cruisin' Tikis is a Florida limited liability company formed on January 1, 2016, with a  
7 principal place of business at 3560 NW 53<sup>rd</sup> St., Bay 3, Fort Lauderdale, Florida. Cruisin' Tikis is the  
8 owner of the trademark "Cruisin' Tikis."

9 E. Cruisin' Tikis International, Inc. (Cruisin' Tikis International) is a Florida corporation  
10 organized on April 18, 2018, with a principal place of business at 3560 NW 53<sup>rd</sup> St., Bay 3, Fort  
11 Lauderdale, Florida. Cruisin' Tikis International was formed for the sole purpose of selling and  
12 servicing Cruisin' Tikis franchises.

13 F. Cruisin' Tikis is the parent of Cruisin' Tikis International.

14 G. On or around November 20, 2018, Cruisin' Tikis International filed an initial franchise  
15 registration application and franchise disclosure document (FDD) with the Commissioner pursuant to  
16 Corporations Code section 31111 (Initial Application). Cruisin' Tikis International offers franchises to  
17 own and operate multiple Cruisin' Tikis vessels for recreational excursions within a designated  
18 territory.

19 H. The Department's review of the Initial Application disclosed that in 2018 Cruisin' Tikis  
20 entered into two license agreements with one corporate entity for the operation of Cruisin' Tikis  
21 vessels under the trademark "Cruisin' Tikis" at two specified locations in California.

22 I. Each license agreement granted the licensee an exclusive, non-assignable right and  
23 license to operate a commercial charter operation of a Cruisin' Tikis vessel in a specific territory in  
24 California and use the branding, license and support services of Cruisin' Tikis, LLC.

25 J. The license agreements provided for payment of an initial "license" fee of \$5,000 and  
26 additional "service" fee of 8 percent of the gross revenue derived from using the Cruisin' Tikis  
27 website, brand name, intellectual property, marketing materials and Charter software applications.

28 K. Each license agreement contained an offer of a franchise within the meaning of

1 Corporations Code section 31005.

2 L. Cruisin' Tikis was never registered to offer and sell franchises by the Commissioner  
3 pursuant to the FIL.

4 M. Cruisin' Tikis did not first provide a copy of an FDD to any licensee in California to  
5 whom it offered the license agreements at least 14 days prior to execution of any binding franchise or  
6 other agreement, or prior to receipt of any consideration, whichever occurred first.

7 N. The Department informed Cruisin' Tikis of its intent to order Cruisin' Tikis to: (1)  
8 desist and refrain from making unregistered, nonexempt offers or sales of franchises in California; and  
9 (2) pay administrative penalty for violations of the FIL.

10 O. Cruisin' Tikis indicated its intent to cooperate fully with the Department to remedy the  
11 past violations indicated herein and consent to the entry of this Consent Order.

12 P. It is the intention and desire of the parties to resolve this matter without the necessity of  
13 a hearing and/or litigation.

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

16 NOW, THEREFORE, in consideration of the foregoing and the terms and conditions set forth  
17 herein, the parties agree as follows.

18 **II.**

19 **Terms**

20 1. Purpose. This Consent Order resolves the issues before the Commissioner set forth in  
21 paragraphs A through Q above, in a manner that avoids the expense of a hearing and other possible  
22 court proceedings, protects consumers, is in the public interest, and is consistent with the purposes and  
23 provisions of the FIL.

24 2. Finality of Consent Order. Cruisin' Tikis hereby agrees to comply with this Consent  
25 Order and, further, stipulates that this Consent Order is hereby deemed a final and enforceable order.

26 3. Desist-and-Refrain Order for Violation of Corp. Code, § 31110. Pursuant to  
27 Corporations Code section 31402, Cruisin' Tikis is hereby ordered to desist and refrain from the  
28 further offer or sale of franchises in violation of Corporations Code section 31110, unless and until the

1 offer has been duly registered under the FIL or is otherwise exempt from registration.

2 4. Citation and Desist-and-Refrain Order for Violation of Corp. Code, § 31119. Pursuant  
3 to Corporations Code section 31406, the Commissioner hereby issues a citation to Cruisin' Tikis for  
4 the violation of Corporations Code section 31119, subdivision (a). Cruisin' Tikis is hereby ordered to  
5 desist and refrain from the further sale of franchises in this state that are subject to registration under  
6 the FIL in violation of Corporations Code section 31119 without first providing to the prospective  
7 franchisee, at least 14 days prior to the execution by the prospective franchisee of any binding  
8 franchise or other agreement, or at least 14 days prior to the receipt of any consideration, whichever  
9 occurs first, a copy of the franchise disclosure document, together with a copy of all proposed  
10 agreements relating to the sale of the franchise.

11 5. Administrative Penalties. Cruisin' Tikis agrees to pay administrative penalties in the  
12 total amount of \$5,000.00. Such payment shall be made within ten (10) business days of the effective  
13 date of this Consent Order, as such date is defined in Paragraph 23 (Effective Date), made payable in  
14 the form of a cashier's check or Automated Clearing House deposit to the "Department of Financial  
15 Protection and Innovation," and transmitted to the attention of Accounting- Litigation, Department of  
16 Financial Protection and Innovation, 2101 Arena Blvd., Sacramento, California 95834. Notice of all  
17 payments shall be sent to Boryana Arsova, Senior Counsel, at Boryana.Arsova@dfpi.ca.gov. In the  
18 event any payment due date falls on a weekend or holiday, the payment shall be due the next business  
19 day.

20 6. Waiver of Hearing Rights. Cruisin' Tikis acknowledges 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. Cruisin' Tikis 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 California Administrative Procedure Act, the California Code of Civil Procedure, or any other  
25 provision of law. Cruisin' Tikis further expressly waives any requirement for the filing of an  
26 Accusation pursuant to Government Code section 11415.60, subdivision (b). By waiving such rights,  
27 Cruisin' Tikis effectively consents to the Consent Order becoming final.

28 7. Failure to Comply with Consent Order. Cruisin' Tikis agrees that if it fails to comply

1 with the terms of this Consent Order, the Commissioner may, in addition to all other available  
2 remedies it may invoke under the FIL, summarily issue a stop order denying the effectiveness of or  
3 suspending or revoking effectiveness of any of Cruisin' Tikis, or any of its affiliates, franchise  
4 registrations until Cruisin' Tikis gains compliance. Cruisin' Tikis waives any notice and hearing rights  
5 to contest such summary suspensions which may be afforded under the FIL, the California  
6 Administrative Procedure act, the California Code of Civil Procedure, or any other provision of law in  
7 connection therewith.

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

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

17 10. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner's  
18 ability to assist a government agency (whether city, county, state, federal, or otherwise) or self-  
19 regulatory organization with any administrative, civil, or criminal action brought by that agency or  
20 organization based upon any of the activities alleged in this matter or otherwise.

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

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

26 13. Reliance. Each of the parties represents, warrants, and agrees that in executing this  
27 Agreement it has relied solely on the statements set forth herein and the advice of its own counsel.  
28 Each of the parties further represents, warrants, and agrees that in executing this Agreement it has

1 placed no reliance on any statement, representation, or promise of any other party, or any other person  
2 or entity not expressly set forth herein, or upon the failure of any party or any other person or entity to  
3 make any statement, representation, or disclosure of anything whatsoever. The parties have included  
4 this clause: (1) to preclude any claim that any party was in any way fraudulently induced to execute  
5 this Agreement; and (2) to preclude the introduction of parol evidence to vary, interpret, supplement,  
6 or contradict the terms of this Agreement.

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

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

19 16. Governing Law. This Consent Order will be governed by and construed in accordance  
20 with California law. Each of the parties hereto consents to the jurisdiction of the Superior Court of  
21 California for the County of Sacramento, and hereby irrevocably waives, to the fullest extent permitted  
22 by law, the defense of an inconvenient forum to the maintenance of an action or proceeding in such  
23 court relating to this Consent Order.

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

27 18. Effect Upon Future Proceedings. If Cruisin' Tikis applies for any license, permit,  
28 qualification, or registration under the Commissioner's current or future jurisdiction, or are the subject

1 of any future action by the Commissioner to enforce this Consent Order, then the subject matter hereof  
2 shall be admitted for purpose of such application(s) or enforcement proceeding(s).

3 19. Voluntary Agreement. Cruisin’ Tikis enters into this Consent Order voluntarily and  
4 without coercion and acknowledges that no promises, threats, or assurances have been made by the  
5 Commissioner or any offer, or agent thereof, about this Consent Order. The Parties each represent and  
6 acknowledge that he, she, or it is executing this Consent Order completely voluntarily and without any  
7 duress or undue influence of any kind from any source.

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

10 If to Cruisin’ Tikis, to: Michael Daigle  
11 Cheng Cohen LLC  
12 363 West Erie Street, Suite 500  
Chicago, Illinois 60654  
Michael.daigle@chengcohen.com

13 If to the Commissioner, to: Boryana Arsova, Senior Counsel  
14 Department of Financial Protection and Innovation  
15 2101 Arena Boulevard  
Sacramento, CA 95834  
16 Boryana.Arsova@dfpi.ca.gov.

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

19 22. Public Record. Cruisin’ Tikis hereby acknowledges that this Consent Order is and will  
20 be a matter of public record.

21 23. Effective Date. This Consent Order shall become final and effective when signed by all  
22 parties and delivered by the Commissioner’s agent via e-mail to Cruisin’ Tikis at  
23 Michael.daigle@chengcohen.com.

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

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

CLOTHILDE V. HEWLETT  
Commissioner of Financial Protection and Innovation

Dated: February 3, 2022

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

CRUISIN' TIKIS, LLC.

Dated: January 31, 2022

By: \_\_\_\_\_  
GREGORY DARBY  
Managing Member, CEO

APPROVED AS TO FORM AND CONTENT

Dated: January 31, 2022

By: \_\_\_\_\_  
MICHAEL DAIGLE  
Cheng Cohen, LLC

