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

11 In the Matter of:)
12 THE COMMISSIONER OF FINANCIAL)
PROTECTION AND INNOVATION,)
13 Complainant,) CONSENT ORDER
14 v.)
15 MCCOLLA ENTERPRISES, LTD., doing)
business as Street Corner.)
16 Respondent.)
17)
18)

19 This Consent Order is entered into between the Commissioner of Financial Protection and
20 Innovation (Commissioner), and McColla Enterprises, LTD., doing business as Street Corner
21 (MEL) (collectively, Parties) and is made with respect to the following facts:

22 **I.**

23 **RECITALS**

24 A. The Commissioner is the head of the Department of Financial Protection and
25 Innovation (Department) and is responsible for administering and enforcing the Franchise
26 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 offer a franchise, subfranchise or area representative franchise in California, a
2 franchisor must register the offering with the Department, in accordance with section 31110.

3 B. At all relevant times, MEL was and is a Kansas corporation, with a principal place of
4 business at 2945 S.W. Wanamaker Drive Topeka, Kansas 66614. At all relevant times, MEL sells
5 unit and area representative franchises that sell prepackaged and prepared foods, beverages, non-
6 food merchandise, sundries and convenience store goods and services, and other products and
7 services. During the relevant times between May 1, 2017 and June 30, 2019, MEL had no valid
8 registration to offer an area representative franchise in California.

9 C. While unregistered, MEL offered and sold four area representative franchises in
10 California.

11 D. The Commissioner finds that MEL violated Corporations Code section 31110 by
12 offering and selling four area representative franchises while unregistered.

13 E. MEL failed to provide copies of the franchise disclosure document at least 14 days
14 prior to the execution of the franchise agreement on at least three occasions.

15 F. The Commissioner finds that MEL violated Corporations Code section 31119(a) by
16 failing to provide a franchise disclosure document to its prospective franchisees at least 14 days prior
17 to the execution of the franchise agreements.

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

20 **II.**

21 **TERMS AND CONDITIONS**

22 1. Purpose. This Consent Order resolves the issues before the Commissioner [findings
23 in paragraphs A through F above] in a manner that avoids the expense of a hearing and other
24 possible court proceedings, protects consumers, is in the public interest, and is consistent with the
25 purposes and provisions of the applicable law.

26 2. Desist and Refrain Order. Pursuant to Corporations Code sections 31402 and 31406,
27 MEL is hereby ordered to desist and refrain from the violations set forth herein, in violation of
28 Corporations Code sections 31110 and 31119 set forth herein. The issuance of this Consent Order is

1 necessary, in the public interest, for the protection of investors and is consistent with the purposes,
2 policies, and provisions of the Franchise Investment Law.

3 3. Penalty. MEL shall pay, within 15 business days of the date of this Consent Order,
4 an administrative penalty of Ten Thousand dollars and no cents \$10,000 (Penalties) payable via
5 ACH to the Department. ACH payment instructions will be provided via e-mail to MEL’s agent,
6 Kenneth A. Goss, Esq. at kg@businessandfranchiselaw.com. Notice of the payment must be
7 concurrently sent via email to Anne Marie Wong at AnneMarie.Wong@dfpi.ca.gov. Failure to pay
8 the Penalties in accordance with this paragraph shall be deemed to be a material breach of this
9 Consent Order.

10 4. Registration and Disclosures. MEL shall apply for updated registrations for its unit
11 and area representative franchise offerings within 30 business days of the date of this Consent Order
12 and provide approved franchise disclosure documents to the area representatives that were sold
13 while unregistered. Within 30 calendar days of the date the Department orders MEL’s area
14 representative FDD application effective, MEL shall provide the Department with a certification,
15 signed by an authorized officer, that MEL has complied with the requirements of this paragraph.

16 5. Waiver of Hearing Rights. MEL acknowledges that the Commissioner is ready,
17 willing, and able to proceed with the filing of an administrative enforcement action on the charges
18 contained in this Consent Order. MEL hereby waives the right to any hearings, and to any
19 reconsideration, appeal, or other right to review which may be afforded pursuant to the FIL, the
20 Administrative Procedure Act (APA), the Code of Civil Procedure (CCP), or any other provision of
21 law. MEL expressly waives any requirement for the filing of an Accusation pursuant to Government
22 Code section 11415.60, subdivision (b). By waiving such rights, MEL effectively consents to this
23 Consent Order becoming final.

24 6. Failure to Comply with Consent Order. MEL agrees that if they fail to comply with
25 the terms of this Consent Order, the Commissioner may, in addition to all other available remedies
26 it may invoke under the FIL, summarily suspend/revoke its FIL registration (if applicable),
27 summarily and permanently bar MEL from offering and selling franchises in California or deny FIL
28 applications (if applicable). MEL waives any notice and hearing rights to contest such summary

1 actions by the Commissioner which may be afforded under the FIL, the APA, the CCP, or any other
2 provision of law in connection therewith.

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

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

12 9. 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 MEL or any other person
15 based upon any of the activities alleged in this matter or otherwise.

16 10. 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 11. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
20 interest.

21 12. 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 13. 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 14. 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 15. 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 court,
17 and hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient
18 forum to the maintenance of such action or proceeding in such court.

19 16. 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 17. Effect Upon Future Proceedings. If MEL applies 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 18. Voluntary Order. MEL enters into this Consent Order voluntarily and without
27 coercion and acknowledges 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 each party is executing this Consent Order completely voluntarily and
2 without any duress or undue influence of any kind from any source.

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

5 To MEL: Kenneth A. Goss, Esq.
6 The Internicola Law Firm, P.C.
7 115 Maple Avenue
8 Red Bank, New Jersey 07701

9 To the Commissioner: Anne Marie Wong, Esq.
10 Department of Financial Protection and Innovation
11 One Sansome, Suite 600
12 San Francisco, CA 94104

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

15 21. Public Record. MEL hereby acknowledges that this Consent Order is and will be a
16 matter of public record.

17 22. Effective Date. This Consent Order shall become final and effective when signed by
18 all Parties and delivered by the Commissioner’s agent via e-mail to MEL’s agent, Kenneth A. Goss,
19 Esq. at kg@businessandfranchiselaw.com.

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

23 Dated: 11/07/2022

CLOTHILDE V. HEWLETT

Commissioner of Financial Protection and Innovation

By: _____

COLLEEN MONAHAN
Acting Deputy Commissioner

24 Dated: 11/07/2022

MCCOLLA ENTERPRISES, LTD., doing business as
STREET CORNER

By: _____

PETER LACOLLA
President and/or Chairman of the Board