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8 Attorneys for Complainant

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

12 In the Matter of:) FIL ORG ID: 295447
13 THE COMMISSIONER OF FINANCIAL)
PROTECTION AND INNOVATION,)
14 Complainant,) CONSENT ORDER
15 v.)
16 FLIP FLOP SHOPS, LLC,)
17 Respondents.)
18)
19)
20)

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22 This Consent Order is entered into between the Commissioner of Financial Protection and
23 Innovation (Commissioner) and Flip Flop Shops, LLC, (collectively the Parties) and is made with
24 respect to the following facts:

25 **I.**

26 **Recitals**

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

1 Investment Law (FIL) (Corp. Code, § 31000 et seq.)¹, and registering the offer and sale of franchises
2 in California.

3 B. To register a franchise, a franchisor must file an application which includes a
4 Uniform Franchise Disclosure Document (FDD) with the Department for review and approval, in
5 accordance with Corporations Code sections 31111 and 31114.

6 C. Every application for registration must include a proposed FDD that contains material
7 information and disclosures to prospective franchisees in accordance with the Uniform Franchise
8 Disclosure Document Guidelines, as adopted by the North American Securities Administrators
9 Association, Inc. on June 22, 2007, and effective July 1, 2007 [*See* Corp. Code, § 31114 and Cal.
10 Code Regs., tit. 10, § 310.111, subd. (b)] (hereinafter, FDD Guidelines) and the amended Franchise
11 Rule, 16 C.F.R. 436.

12 D. The FIL, FDD Guidelines, and amended Franchise Rule (collectively, Franchise
13 Guidelines) require franchisors to disclose certain material information which is intended to provide
14 prospective franchisees with facts upon which to make an informed decision to purchase a franchise.

15 E. Flip Flop Shops is a California limited liability company formed on May 22, 2018,
16 with a principal place of business located at 7524 Old Auburn Road, Citrus Heights, CA, 95610.

17 F. Thomas Romeo (Romeo) is the Chief Executive Officer and Managing Member of
18 Flip Flops Shops and is authorized to enter into this Consent Order on behalf of Flip Flop Shops.

19 G. Flip Flop Shops Franchise Company, LLC (FFSFC) was, at all relevant times, a
20 Delaware limited liability company formed on August 24, 2007, and doing business in California.
21 FFSFC offered and sold franchises for retail stores that specialize in the sale of flip flops, sandals,
22 and related footwear and accessories and operated under the name “Flip Flop Shops.” FFSFC was
23 registered to offer and sell franchises in California until May 18, 2018.

24 H. On June 1, 2018, Flip Flop Shops entered into an Asset Purchase Agreement with
25 FFSFC whereby Flip Flop Shops purchased certain assets of FFSFC, including but not limited to
26 FFSFC’s franchises, licenses, intellectual property, and franchise contracts.

27 I. On August 27, 2018, Flip Flop Shops filed an initial franchise registration application
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¹ All further statutory references are to the California Corporations Code unless otherwise indicated.

1 with the Commissioner and began offering and selling franchises in California for retail stores that
2 specialize in the sale of flip flops, sandals, and related footwear and accessories under the name
3 “Flip Flop Shops.” FFS has been registered with the Department until April 20, 2022, when their last
4 franchise registration expired.

5 J. On July 28, 2022, Flip Flop Shops filed a registration application with the
6 Department. However, due to multiple deficiencies, which Flip Flop Shops failed to correct, the
7 application was abandoned. On April 25, 2023, Flip Flop Shops filed another registration application
8 with the Department, which is currently pending.

9 K. Romeo, under the advice of counsel, certified Flip Flop Shops’ initial registration and
10 renewal applications and swore under penalty of perjury that all the material facts stated in the initial
11 and renewal applications and accompanying documents were accurate; and the applications and
12 documents did not contain any material omissions.

13 L. Under Corporations Code section 31200, it is unlawful for any person willfully to
14 make any untrue statement of a material fact in any application, notice or report filed with the
15 Commissioner under this law, or willfully to omit to state in any such application, notice, or report
16 any material fact which is required to be stated therein, or fail to notify the Commissioner of any
17 material change as required by Section 31123.

18 M. Under the Franchise Guidelines, franchisors must disclose certain material
19 information in the FDD filed with the Department, including, but not limited to whether the
20 franchisor, their predecessor, parent, affiliate(s), or any person identified in Item 2 of the FDD: 1)
21 has any pending administrative, criminal, and material civil action(s) alleging violation of a
22 franchise, antitrust, or securities law, or alleging fraud, unfair or deceptive practices, or comparable
23 allegations; 2) was a party to any material civil action involving the franchise relationship in the last
24 fiscal year; or 3) in the 10-year period immediately before the disclosure document’s issuance date
25 was held liable in a civil action involving an alleged violation of a franchise, antitrust, or securities
26 law, or alleging fraud, unfair or deceptive practices, or comparable allegations.

27 N. The Department discovered that Flip Flop Shops’ predecessor FFSFC had a history of
28 litigation. Specifically, in 2016, FFSFC was named defendant in a civil lawsuit *Vupico USA, Inc, et*

1 *al. v. Flip Flop Shops Franchise Company, LLC, et all*, case number 37-2016-00020530-CU-NU-
2 CTL filed in San Diego Superior Court (Vupico Lawsuit). The Vupico Lawsuit filed by former
3 franchisees involved allegations of fraud, unfair or deceptive practices, negligence, or comparable
4 allegations against FFSFC. In November 2019, plaintiffs obtained a civil money judgment against
5 FFSFC for fraudulent inducement, unfair business practices, and negligence, whereby the franchise
6 agreements that were the subject of the lawsuit were rescinded and FFSFC was ordered to pay
7 restitution.

8 O. Even though Flip Flop Shops identified FFSFC as their predecessor in the franchise
9 registration applications filed with the Department from 2018 to 2023, they failed to disclose the
10 pending Vupico Lawsuit or the subsequent civil money judgment in Item 3 of the FDDs in violation
11 of Corporations Code section 31200. Specifically, Flip Flop Shops committed six (6) violations of
12 Corporations Code section 31200 as follows:

- 13 (1) *Initial filing on August 27, 2018, failed to disclose the pending Vupico*
14 *Lawsuit*
- 15 (2) *Renewal filing on April 19, 2019, failed to disclose the pending Vupico*
16 *Lawsuit*
- 17 (3) *Renewal filing on June 17, 2020, failed to disclose the civil money judgement*
18 *obtained in the Vupico Lawsuit in November 2019*
- 19 (4) *Initial filing on June 2, 2021, failed to disclose the civil money judgement*
20 *obtained in the Vupico Lawsuit in November 2019*
- 21 (5) *Initial filing on July 28, 2022, failed to disclose the civil money judgement*
22 *obtained in the Vupico Lawsuit in November 2019*
- 23 (6) *Initial filing on April 25, 2023 (failed to disclose the civil money judgement*
24 *obtained in the Vupico Lawsuit in November 2019*

25 P. In addition, Flip Flop Shops committed two (2) violations of Corporations Code
26 section 31200 by failing to disclose in the FDD filed with the Department on April 25, 2023, two
27 material lawsuits in which Flip Flop Shops was a party involving the franchise relationship in the
28 past fiscal year. Flip Flop Shops filed both lawsuits in April 2022 in Sacramento Superior Court

1 against former franchisees as follows:

2 (1) *Flip Flop Shops, LLC v. Flopz, LLC, et all*, case number 34-2022-00317670

3 (2) *Flip Flop Shops, LLC v. All Team Sport & Apparel, LLC, et. All*, case number
4 34-2022-00317726

5 Q. Based on the foregoing, the Commissioner finds that Flip Flop Shops, on at least
6 eight occasions, violated Corporations Code section 31200 by failing to disclose all the civil actions
7 and judgment in Item 3 of the FDDs filed between August 2018 and April 2023.

8 R. Under Corporations Code section 31201, it is unlawful for any person to offer or sell
9 a franchise in this state by means of any written or oral communication not enumerated in Section
10 31200 which includes an untrue statement of a material fact or omits to state a material fact
11 necessary in order to make the statements made, in the light of the circumstances under which they
12 were made, not misleading.

13 S. From August 2018 to April 2022, Flip Flop Shops sold at least 10 franchises in
14 California. The FDDs provided to these California franchisees failed to disclose the pending civil
15 actions and civil judgment referenced in paragraphs P and Q above.

16 T. Based upon the foregoing, the Commissioner finds that Flip Flop Shops made
17 material misrepresentations or omissions to at least 10 California franchisees in violation of
18 Corporations Code section 31201 as none of the 10 franchisees received information about the prior
19 civil actions and judgement, which Flip Flop Shops was required to disclose.

20 U. Under Corporations Code section 31110, it is unlawful to offer or sell in California a
21 franchise unless the offer of the franchise has been registered with the Commissioner or exempt.
22 Further, under Corporations Code section 31119, it is unlawful to sell a franchise without first
23 providing the prospective franchisee with the FDD at least 14 days prior to the execution of the
24 franchise agreement or receipt of consideration.

25 V. The Department’s investigation revealed that in December 2022, while Flip Flop
26 Shops’ registration application was pending with the Department, Flip Flop Shops sold at least one
27 franchise in California.

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1 consideration, whichever occurs first, a copy of the franchise disclosure document, together with a
2 copy of all proposed agreements relating to the sale of the franchise.

3 c. Pursuant to Corporations Code section 31406, Flip Flop Shops is hereby
4 ordered to desist and refrain from the violations set forth herein, in violation of Corporations Code
5 section 31200 by willfully making any untrue statement of a material fact in any application, notice
6 or report filed with the commissioner under the FIL, or willfully omitting to state in any such
7 application, notice, or report any material fact which is required to be stated therein.

8 d. Pursuant to Section 31406 of the FIL, Flip Flop Shops is hereby ordered to
9 desist and refrain from the further offer and sale of franchises in this state in violation of
10 Corporations Code section 31201 by means of any written or oral communication not enumerated
11 in Section 31200 which includes an untrue statement of a material fact or omits to state a material
12 fact necessary in order to make the statements made, in the light of the circumstances under which
13 they were made, not misleading.

14 e. These desist and refrain orders are final and effective from the Effective Date
15 of this Consent Order, as defined in paragraph 27 (Effective Date).

16 3. Penalties. Flip Flop Shops agree to pay administrative penalties in the amount of
17 \$52,500.00 for the violations discussed herein, no later than 10 business days after the Effective Date
18 of this Consent Order. The penalty payment shall be made in the form of a cashier's check or
19 Automated Clearing House deposit to the "Department of Financial Protection and Innovation," and
20 transmitted to the attention of: Accounting - Litigation, the
21 Innovation, located at 2101 Arena Boulevard, Sacramento, California 95834. Notice of payment
22 shall be sent concurrently to Boryana Arsova, Senior Counsel, by email at:
23 boryana.arsova@dfpi.ca.gov.

24 4. Notice of Violation. Within 30 days from the Effective Date of this Consent Order,
25 Flip Flop Shops is hereby ordered to comply with the provisions of Corporations Code section
26 31303 and California Code of Regulations, title 10, section 310.303 and Corporations Code section
27 31304 and California Code of Regulations, title 10, section 310.304 by submitting to the
28 Commissioner for review and approval proposed notices of violation (Notices of Violation) for

1 violations of Corporations Code sections 31110, 31200 and 31201, respectively. The Notices of
2 Violation must be emailed to Boryana Arsova, Senior Counsel at boryana.arsova@dfpi.ca.gov. Upon
3 approval by the Commissioner, Flip Flop Shops shall deliver the approved Notices of Violation to all
4 franchisees who, from the period August 27, 2018, to the present acquired rights to own and operate
5 a Flip Flop Shop franchise in California.

6 5. Preservation of Franchisees’ Ability to Maintain a Private Action. Nothing in this
7 Consent Order prohibits franchisees from filing or maintaining a private action in accordance with
8 Corporations sections 31303 or 31304, or any other provision in law.

9 6. Waiver of Limitation Period under California Corporations Code sections 31303 and
10 31304. Flip Flop Shops agrees to waive the limitation period in Corporations Code sections 31303
11 and 31304, or any other provision of law, as a defense to a claim in a private action that alleges
12 damages or seeks equitable relief as a result of any of the violations described in the Notices of
13 Violations so long as any such claim is filed in a private action within 90 days of delivery of the
14 approved Notices of Violations to the franchisee.

15 7. Report to the Commissioner. Flip Flop Shops will provide the Commissioner with
16 proof of delivery of the Notices of Violations (Report) within 120 calendar days of the
17 Commissioner’s Order approving the Notices of Violation. In case a franchisee is no longer with the
18 Flip Flop Shops franchise system and cannot be located for delivery of the Notices of Violations,
19 Flip Flop Shops will deliver the Notice of Violation at the franchisee’s last known address and
20 include in the Report a description of all reasonable measures taken to locate the franchisee. Flip
21 Flop Shops will submit the Report to Boryana Arsova, Senior Counsel, at
22 Boryana.Arsova@dfpi.ca.gov

23 8. Remedial Education Required. The following class of persons are required to attend
24 eight (8) hours of remedial education: (1) all persons with direct management responsibility relating
25 to the sale of Flip Flop Shops franchises; (2) all persons who assist in preparing Flip Flop Shops’
26 franchise materials (excluding outside lawyers and accountants); and (3) any person who certifies
27 the accuracy of the Flip Flop Shops franchise disclosure document. Each of these persons shall
28 complete eight (8) hours of in-person or virtual training in the area of the FIL compliance, including,

1 but not limited to the offering and selling of franchises, and preparing the franchise disclosure
2 document (Training), offered by franchise law specialist instructor(s). The instructor(s) must be
3 approved by the Commissioner. No later than 180 days from the Effective Day of this Consent
4 Order, Flip Flop Shops shall file proof of compliance in the form of a sworn statement of each
5 person required to take remedial education, under penalty of perjury, and a certificate of completion
6 from the instructor(s) to the Commissioner upon completion. Proof of compliance shall be sent to
7 Boryana Arsova, Senior Counsel, at boryana.arsova@dfpi.ca.gov. Failure to complete the Training
8 and submit proof of compliance as stated herein within 180 days from the Effective Day of the
9 Consent Order shall constitute breach of this Consent Order and Flip Flop Shops shall be barred
10 from offering and selling franchises in California until such Training is completed.

11 9. Waiver of Hearing Rights. Respondent acknowledges that the Commissioner is
12 ready, willing, and able to proceed with the filing of an administrative enforcement action on the
13 charges contained in this Consent Order. Respondent hereby waives the right to any hearings, and to
14 any reconsideration, appeal, or other right to review which may be afforded pursuant to the FIL, the
15 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
16 provision of law. Respondent further expressly waives any requirement for the filing of an
17 Accusation pursuant to Government Code section 11415.60, subdivision (b). By waiving such rights,
18 Respondents effectively consent to this Consent Order and the Desist and Refrain Order becoming
19 final.

20 10. Failure to Comply with Consent Order. Respondent agrees that if they fail to comply
21 with the terms of this Consent Order, the Commissioner may, in addition to all other available
22 remedies it may invoke under the FIL, summarily suspend/revoke its FIL registration (if applicable)
23 or deny FIL applications (if applicable) until Respondent is in compliance. Respondent waives any
24 notice and hearing rights to contest such summary suspensions which may be afforded under the
25 FIL, the California Administrative Procedure Act, the California Code of Civil Procedure, or any
26 other provision of law in connection therewith.

27 11. Information Willfully Withheld or Misrepresented. This Consent Order may be
28 revoked, and the Commissioner may pursue any and all remedies available under law against

1 Respondent if the Commissioner discovers that Respondent knowingly or willfully withheld or
2 misrepresented information used for and relied upon in this Consent Order.

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

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

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

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

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

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

1 contemporaneous agreements, negotiations, representations, understandings, and discussions
2 between and among the Parties, their respective representatives, and any other person or entity with
3 respect to the subject matter covered hereby.

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

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

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

17 21. Effect Upon Future Proceedings. If Respondent applies for any license, registration,
18 permit, or qualification under the Commissioner's current or future jurisdiction, or is the subject of
19 any future action by the Commissioner to enforce this Consent Order, then the subject matter hereof
20 shall be admitted for the purpose of such application(s) or enforcement proceeding(s).

21 22. Voluntary Agreement. Respondent enters into this Consent Order voluntarily and
22 without coercion and acknowledges that no promises, threats or assurances have been made by the
23 Commissioner or any officer, or agent thereof, about this Consent Order. The parties each represent
24 and acknowledge that he, she or it is executing this Consent Order completely voluntarily and
25 without any duress or undue influence of any kind from any source.

26 23. Third Party Actions. This Consent Order does not create or give rise to any private
27 rights or remedies against the Respondent, create any liability for the Respondent, or limit the
28 defenses of the Respondent, for any person or entity not a party to this Consent Order.

1 27. Effective Date. This Consent Order shall become final and effective when signed by
2 all Parties and delivered by the Commissioner’s agent via e-mail to Respondents’ counsel, John
3 Richey, at jrichey@richeylawgroup.law.

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

7 Dated: July 19, 2023

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation

9 By: _____
10 MARY ANN SMITH
11 Deputy Commissioner
12 Enforcement Division

13 Dated: July 14, 2023

FLIP FLOP SHOPS, LLC

14 By: _____
15 THOMAS ROMEO
16 Chief Executive Officer and Managing Member

17 APPROVED AS TO FORM AND CONTENT:

18 By: _____
19 John Richey, Esq. Attorney for Respondent
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