

1 CLOTHILDE V. HEWLETT  
Commissioner of Financial Protection and Innovation  
2 COLLEEN MONAHAN  
Deputy Commissioner  
3 MARISA I. URTEAGA-WATKINS (State Bar No. 236398)  
Counsel  
4 Department of Financial Protection and Innovation  
2101 Arena Blvd.  
5 Sacramento, California 95834  
6 Telephone: 916-576-7430

7 Attorneys for Complainant

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

10 In the Matter of:

11 THE COMMISSIONER OF FINANCIAL  
PROTECTION AND INNOVATION,

12 Complainant,

13 v.

14 EIGHT USA, INC., doing business as EIGHT  
USA, and PREMIUM MATCHA CAFÉ  
15 MAIKO,

16 Respondent.

17 )  
18 )  
19 )  
20 )  
21 )  
22 )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )  
CONSENT ORDER

18 This Consent Order is entered into between the Commissioner of Financial Protection and  
19 Innovation (Commissioner), and Eight USA, Inc., doing business as Eight USA, and Premium  
20 Matcha Café Maiko, (EU), collectively, Parties, and is made with respect to the following facts:

21 **I.**

22 **RECITALS**

23 A. The Commissioner is the head of the Department of Financial Protection and  
24 Innovation (Department) and 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. To register a franchise, a franchisor must file an application which includes a Uniform  
27

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

1 Franchise Disclosure Document (FDD) with the Department for review and approval, in accordance  
2 with sections 31111 and 31114. The FIL requires franchisors to disclose certain material  
3 information which is intended to provide prospective franchisees with facts upon which to make an  
4 informed decision to purchase a franchise, as stated in section 31001.

5 B. At all relevant times, EU was and is a Hawaii corporation with a principal place of  
6 business located at 1441 Kapiolani Blvd. Suite 910, Honolulu, Hawaii 96814. At all relevant times,  
7 EU offers and sells franchises that provides green tea beverages, ice cream and related food items to  
8 consumers. At all relevant times, EU engaged in the offer and sale of EU franchises in California.  
9 At all relevant times, EU was not registered to offer and sell franchises in California by the  
10 Department.

11 C. Pursuant to section 31110, it is unlawful for any person to offer or sell a franchise in  
12 California unless the offer has been registered with the Commissioner or is exempt.

13 D. From at least 2019 to 2020, EU made at least twenty-four (24) franchise offers, at  
14 least three (3) franchise sales and purchased substantially all of the assets of another company  
15 relating to the Matcha Café Maiko business. EU was not registered to offer and sell franchises by  
16 the Commissioner pursuant to the FIL from 2019 to 2020, or otherwise.

17 E. Pursuant to section 31119, it is unlawful to sell any franchise without first providing a  
18 prospective franchisee with the FDD at least fourteen (14) days prior to the execution of a franchise  
19 agreement or receipt of consideration.

20 F. From at least 2019 to 2020, EU executed at least three (3) franchise agreements in  
21 California, and/or collected franchise fees for each in California (California Stores). EU failed to  
22 provide the California Stores franchisees, with an FDD at least fourteen (14) days prior to the  
23 execution of the franchise agreement and/or receipt of the franchise fee payment, or at any time.

24 G. Pursuant to section 31156, no person shall publish in California any advertisement  
25 offering a franchise subject to the registration requirements of the FIL, unless a true copy of the  
26 advertisement has been filed with the Commissioner at least three (3) business days prior to the first  
27 publication, unless the advertisement has been exempted by rule of the Commissioner.  
28

1 H. From at least 2019 to 2020, EU submitted at least three (3) advertising brochures to  
2 California investors which were not filed with the Commissioner and were not exempt by rule of the  
3 Commissioner.

4 I. Pursuant to section 31200, it is unlawful for any person willfully to make any untrue  
5 statement of a material fact in any application, notice or report filed with the Commissioner under  
6 the FIL, or willfully omit to state in any such application, notice, or report any material fact which is  
7 required to be stated therein or fail to notify the Commissioner of any material change as required by  
8 section 31123.

9 J. On October 4, 2021, the Department received a FIL application from EU (App-  
10 22366). In App-22366, EU failed to disclose with specificity to the Commissioner that EU assumed  
11 at least ten (10) franchise agreements with California franchisees referred to as “license agreements”.  
12 Also, EU, in App-22366, misrepresented to the Commissioner in Item 20 that at least ten (10)  
13 franchise agreements were “license agreements”, not franchise agreements subject to the FIL.  
14 Further, EU failed to disclose to the Commissioner that it failed to provide at least thirteen (13)  
15 California franchisees with an FDD, including the assumed franchisees. Finally, EU failed to  
16 disclose to the Commissioner that it circulated at least three (3) advertisements to California  
17 investors without registering them with the Commissioner.

18 K. The Commissioner finds that EU offered and/or sold at least thirty-seven (37)  
19 franchises, including the assumed franchises, in California, without being registered with the  
20 Commissioner or exempt, in violation of section 31110.

21 L. The Commissioner also finds that EU on at least three (3) instances, failed to provide  
22 franchisees in California with an EU FDD at least fourteen (14) days prior to the receipt of  
23 consideration, in violation of section 31119.

24 M. The Commissioner further finds that EU submitted at least three (3) advertising  
25 brochures to California investors which were not filed with the Commissioner and were not exempt  
26 by rule of the Commissioner, in violation of section 31156.

27 N. The Commissioner finally finds, in violation of section 31200, that EU: (1) failed to  
28 disclose with specificity to the Commissioner that EU assumed at least ten (10) franchise agreements

1 with California franchisees referred to as “license agreements”; (2) misrepresented to the  
2 Commissioner in Item 20 that at least ten (10) franchise agreements were “license agreements”, not  
3 franchise agreements subject to the FIL; (3) failed to disclose to the Commissioner that it failed to  
4 provide at least thirteen (13) California franchisees with an FDD; and (4) failed to disclose to the  
5 Commissioner that it circulated at least three (3) advertisements to California investors without  
6 registering them with the Commissioner.

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

9 **II.**

10 **TERMS AND CONDITIONS**

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

15 2. Desist and Refrain Order. Pursuant to Corporations Code section 31406, Eight  
16 USA, Inc., doing business as Eight USA, and Premium Matcha Café Maiko, is hereby ordered to  
17 desist and refrain from the violations of Corporations Code sections 31110, 31119, 31156, and  
18 31200 set forth herein and from violating the Franchise Investment Law. The issuance of this order  
19 is necessary, in the public interest, for the protection of investors, and is consistent with the  
20 purposes, policies, and provisions of the Franchise Investment Law.

21 3. Penalties. EU shall pay an administrative penalty of \$50,000 (Penalties) no later than  
22 fifteen (15) days after the effective date of this Consent Order as defined in Paragraph 21 (Effective  
23 Date). The Penalties must be made payable in the form of a cashier’s check or Automated Clearing  
24 House deposit to the Department and transmitted to the attention of **Accounting – Legal SRD**  
25 **Franchise Unit** at the Department of Financial Protection and Innovation, 2101 Arena Boulevard,  
26 Sacramento, California 95834. Notice of the payment must be concurrently sent via email to Marisa  
27 I. Urteaga-Watkins, Esq. at [marisa.urteaga-watkins@dfpi.ca.gov](mailto:marisa.urteaga-watkins@dfpi.ca.gov). Failure to pay Penalties in a timely  
28 manner shall be deemed to be a material breach of this Consent Order.

1           4.       Waiver of Hearing Rights. EU acknowledges that the Commissioner is ready,  
2 willing, and able to proceed with the filing of an administrative enforcement action on the charges  
3 contained in this Consent Order. EU hereby waives the right to any hearings, and to any  
4 reconsideration, appeal, or other right to review which may be afforded pursuant to the FIL, the  
5 Administrative Procedure Act (APA), the Code of Civil Procedure (CCP), or any other provision of  
6 law. EU further expressly waives any requirement for the filing of an accusation pursuant to  
7 Government Code section 11415.60, subdivision (b). By waiving such rights, EU effectively  
8 consents to this Consent Order becoming final.

9           5.       Failure to Comply with Consent Order. EU agrees that if it fails to comply with the  
10 terms of this Consent Order, the Commissioner may, in addition to all other available remedies it  
11 may invoke under the FIL, summarily suspend or revoke EU's franchise registration (if applicable)  
12 or deny EU's FIL applications (if applicable), until EU is in compliance. EU waives any notice and  
13 hearing rights to contest such summary actions by the Commissioner, which may be afforded under  
14 the FIL, APA, CCP, or any other provision of law.

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

19           7.       Future Actions by Commissioner. If EU fails to comply with any terms of the  
20 Consent Order, the Commissioner may institute proceedings for any and all violations otherwise  
21 resolved by this Consent Order. The Commissioner reserves the right to bring any future actions  
22 against EU or any of its partners, owners, officers, shareholders, directors, employees, or successors  
23 for any and all unknown violations of the FIL or any other law under the Commissioner's  
24 jurisdiction.

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

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

4           10.    Binding. This Consent Order is binding on all heirs, assigns, and/or successors in  
5 interest.

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

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

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

27           14.    Governing Law. This Consent Order will be governed by and construed in  
28 accordance with California law. Each of the Parties hereto consents to the jurisdiction of such

1 court, and hereby irrevocably waives, to the fullest extent permitted by law, the defense of an  
2 inconvenient forum to the maintenance of such action or proceeding in such court.

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

6 16. Effect Upon Future Proceedings. If EU applies for any license, registration, permit,  
7 or qualification under the Commissioner’s current or future jurisdiction, or is the subject of any  
8 future action by the Commissioner to enforce this Consent Order, then the subject matter hereof  
9 shall be admitted for the purpose of such application(s) or enforcement proceeding(s).

10 17. Voluntary Order. EU enters this Consent Order voluntarily and without coercion and  
11 acknowledges that no promises, threats, or assurances have been made by the Commissioner or any  
12 officer, or agent thereof, about this Consent Order. The Parties each represent and acknowledge  
13 that he, she, or it is executing this Consent Order completely voluntarily and without any duress or  
14 undue influence of any kind from any source.

15 18. Notice. Any notice required under this Consent Order shall be provided to each  
16 party at the following addresses:

17 To EU: Kiriko U. Oishi, Esq.  
18 GO Law Group  
19 1441 Kapiolani Blvd., Suite 910  
20 Honolulu, Hawaii 96814  
kiriko@golaw-hi.com

21 To the Commissioner: Marisa I. Urteaga-Watkins, Esq,  
22 Department of Financial Protection and Innovation  
23 2101 Arena Blvd.  
Sacramento, California 95834  
marisa.urteaga-watkins@dfpi.ca.gov

24 19. Signatures. A fax, scanned, or electronic signature shall be deemed the same as an  
25 original signature.

26 20. Public Record. EU hereby acknowledges that this Consent Order is and will be a  
27 matter of public record.  
28

1           21.    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 EU’s agent, Kiriko U. Oishi,  
3 Esq. at [kiriko@golaw-hi.com](mailto:kiriko@golaw-hi.com)

4           22.    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: 9/8/2023

CLOTHILDE V. HEWLETT  
Commissioner of Financial Protection and Innovation

8  
9           By: \_\_\_\_\_

10  
11           COLLEEN MONAHAN  
Deputy Commissioner

12           Dated:

EIGHT USA, INC., doing as EIGHT USA, and  
PREMIUM MATCHA CAFÉ MAIKO,

13  
14  
15           By: \_\_\_\_\_

16  
17           HIDEYUKI HASHIMOTO  
President