

1 COLLEEN MONAHAN
Deputy Commissioner
2 THERESA LEETS
Assistant Chief Counsel
3 EK TAA NIJJAR (State Bar No. 323969)
Counsel
4 Department of Financial Protection and Innovation
320 West 4th Street, Suite 750
5 Los Angeles, California 90013
Telephone: (213) 576-7589
6 Facsimile: (213) 220-5777

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)
12 PROTECTION AND INNOVATION,)

13 Complainant,)

14 v.)

15 SOMISOMI FRANCHISE, INC.)

16 Respondent.)

CONSENT ORDER

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18 This Consent Order is entered into between the Commissioner of Financial Protection and
19 Innovation (Commissioner), SomiSomi Franchise, Inc. (SomiSomi) (collectively, Parties) and is
20 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.),¹ 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 Franchise Disclosure Document (FDD) with the Department for review and approval, in accordance
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¹ All further statutory references are to the Corporations Code unless otherwise indicated.

1 with sections 31111 and 31114. The FIL requires franchisors to disclose certain material information
2 which is intended to provide prospective franchisees with facts upon which to make an informed
3 decision to purchase a franchise, as stated in section 31001.

4 B. At all relevant times, SomiSomi was a California Corporation, formed on January 30,
5 2017, with a principal place of business located at 621 S. Western Ave., Suite 208-A, Los Angeles,
6 CA 90005. SomiSomi engages in the offer and sale of franchises for soft serve ice cream stores in
7 fish shaped cones with a choice of flavors, toppings, and fillings.

8 C. Under section 31200, it is unlawful for any person willfully to make any untrue
9 statement of a material fact in any application, notice or report filed with the Commissioner under
10 the FIL, or willfully omit to state in any such application, notice, or report any material fact which is
11 required to be stated therein or fail to notify the Commissioner of any material change as required by
12 section 31123.

13 D. SomiSomi filed a franchise application with the Department since 2018. SomiSomi
14 had an effective registration up until April 20, 2021 (app-17240). SomiSomi failed to disclose a
15 lawsuit by one of its California franchisees, where the court granted the franchisor’s motion to
16 compel arbitration on February 8, 2021. SomiSomi failed to file a post-effective amendment with
17 the Department to disclose the existence of material litigation in Item 3 of the FDD.

18 E. The Commissioner finds that SomiSomi, in at least one instance, willfully made an
19 untrue statement of a material fact in an application, notice or report filed with the Commissioner
20 under the FIL, or willfully omitted to state in any such application, notice, or report any material fact
21 which is required to be stated therein or failed to notify the Commissioner of any material change as
22 required by section 31123, in violation of section 32100.

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

25 **II.**

26 **TERMS AND CONDITIONS**

27 1. Purpose. This Consent Order resolves the issues before the Commissioner, described
28 in recitals A through E above, in a manner that avoids the expense of a hearing and other possible

1 court proceedings, protects consumers, is in the public interest, and is consistent with the purposes
2 and provisions of the applicable law.

3 2. Desist and Refrain Order. Pursuant to Corporations Code sections 31402 and 31406,
4 SomiSomi, is hereby ordered to desist and refrain from the violations set forth herein, in violation of
5 Corporations Code section 31200.

6 3. Penalties. SomiSomi shall pay penalties of \$2,000 (Penalties) no later than fifteen
7 (15) calendar days after the effective date of this Consent Order. The Penalty must be made payable
8 in the form of a cashier’s check or Automated Clearing House deposit to the Department of
9 Financial Protection and Innovation and transmitted to the attention of Accounting – Legal, at the
10 Department of Financial Protection and Innovation, 2101 Arena Boulevard, Sacramento, California
11 95834. Notice of payment must be concurrently sent via email to Ektaa Nijjar at
12 ektaa.nijjar@dfpi.ca.gov. Failure to pay Penalties in accordance with the above referenced Penalty
13 payment installments shall be deemed to be a material breach of this Consent Order.

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

22 5. Failure to Comply with Consent Order. SomiSomi agrees that if it fails to comply
23 with the terms of this Consent Order, the Commissioner may, in addition to all other available
24 remedies it may invoke under the FIL. SomiSomi waives any notice and hearing rights to contest
25 such summary suspensions which may be afforded under the FIL, the APA, the CCP, or any other
26 provision of law in connection therewith.

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

3 7. Future Actions by Commissioner. If SomiSomi fails to comply with any terms of the
4 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 SomiSomi, or any of its partners, owners, officers, shareholders, directors, employees or
7 successors for any and all unknown violations of the FIL.

8 8. 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 SomiSomi or any other
11 person based upon any of the activities alleged in this matter or otherwise.

12 9. 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 10. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
16 interest.

17 11. 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
22 other person or entity to make any statement, representation or disclosure of anything whatsoever.
23 The 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 12. Waiver, Amendments, and Modifications. No waiver, amendment, or modification
27 of this Consent Order will be valid or binding unless it is in writing and signed by each of the
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1 Parties. The waiver of any provision of this Consent Order will not be deemed a waiver of any
2 other provision. No waiver by either party of any breach of, or of compliance with, any condition
3 or provision of this Consent Order by the other party will be considered a waiver of any other
4 condition or provision or of the same condition or provision at another time.

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

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

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

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

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

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

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To Respondents: Helena Kim, Esq.
5681 Beach Blvd., Suite 200
Buena Park, CA 90621
hkim@yleelaw.com

To the Commissioner: Ektaa Nijjar, Counsel
Department of Financial Protection and Innovation
320 W. 4th Street, Suite 750
Los Angeles, CA 90013
Ektaa.nijjar@dfpi.ca.gov

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

20. Public Record. SomiSomi hereby acknowledges that this Consent Order is and will be a matter of public record.

21. Effective Date. This Consent Order shall become final and effective when signed by all Parties and delivered by the Commissioner’s agent via e-mail to SomiSomi’s agent, Helena Kim at hkim@yleelaw.com

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

Dated: 8/9/2023

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation

By: _____
COLLEEN MONAHAN
Deputy Commissioner

Dated: 8/9/2023

SOMISOMI FRANCHISE, INC.

By: _____
JIGEON KIM
CEO