

1 CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation
2 COLLEEN MONAHAN
Deputy Commissioner
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Assistant Chief Counsel
4 MARISA I. URTEAGA-WATKINS (State Bar No. 236398)
Senior Counsel
5 Department of Financial Protection and Innovation
6 2101 Arena Blvd.
7 Sacramento, California 95834

8 Attorneys for Complainant

9 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION

10 OF THE STATE OF CALIFORNIA

11 In the Matter of:)
)
12 THE COMMISSIONER OF FINANCIAL)
PROTECTION AND INNOVATION,)
13) CONSENT ORDER
Complainant,)
14 v.)
)
15 MR. DEWIE’S, LLC., also known as)
16 MR.DEWIE’S CASHEW CREAMERY, LLC.,)
)
17 Respondent.)
18)

19 This Consent Order is entered into between the Commissioner of Financial Protection and
20 Innovation (Commissioner) and Mr. Dewie’s, LLC., also known as Mr. Dewie’s Cashew Creamery,
21 LLC. (MD) and together with Commissioner, (Parties) and is made with respect to the following
22 facts:

23 I.

24 RECITALS

25 A. The Commissioner is the head of the Department of Financial Protection and
26 Innovation (Department) and is responsible for administering and enforcing the Franchise
27 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 register a franchise, a franchisor must file an application that includes a Franchise
2 Disclosure Document (FDD) with the Department for review, in accordance with sections 31111 and
3 31114. The FIL requires franchisors to disclose certain material information that is intended to
4 provide prospective franchisees with facts upon which to make an informed decision to purchase a
5 franchise, as stated in section 31001.

6 B. At all relevant times, MD was and is a California limited liability company with a
7 principal place of business located at 2000 Wayne Avenue, San Leandro, California 94577. At all
8 relevant times, MD operated fast casual restaurants that provide nondairy ice cream and related
9 foods to consumers. MD sold two of its locations and, in doing so, engaged in the offer and sale of
10 MD franchises in California. However, MD was and is not registered with the Department to offer
11 and sell franchises in California.

12 C. Pursuant to section 31110, it is unlawful for any person to offer or sell a franchise in
13 this state unless the offer has been registered with the Commissioner or is exempted.

14 D. From at least October 2022 to February 2023, MD entered into at least two (2)
15 franchise agreements referred to as “license agreements” with California investors for the operation
16 of stores, using a system prescribed by MD, in Emeryville and Piedmont, California (California
17 Store(s)). MD was not registered to offer and sell franchises by the Commissioner pursuant to the
18 FIL at any time including from October 2022 to February 2023.

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

22 F. From at least October 2022 to February 2023, MD executed franchise agreements and
23 collected franchise fees for each of the California Stores. However, MD did not provide the
24 California Store franchisees with an FDD at least fourteen (14) days prior to the execution of the
25 franchise agreement or receipt of the franchise fee payment.

26 G. The Commissioner finds that MD offered and sold at least two (2) MD franchises in
27 California without being registered with the Commissioner or exempt, in violation of section 31110.
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1 H. The Commissioner finally finds that MD failed to provide prospective franchisees in
2 California with a MD FDD at least fourteen (14) days prior to the receipt of consideration in at least
3 two (2) instances, in violation of section 31119.

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

6 **II.**

7 **TERMS AND CONDITIONS**

8 1. Purpose. This Consent Order resolves the issues before the Commissioner,
9 described in the Recitals above, in a manner that avoids the expense of a hearing and other possible
10 court proceedings, protects consumers, is in the public interest, and is consistent with the purposes
11 and provisions of the applicable law.

12 2. Desist and Refrain Order. Pursuant to section 31406, Mr. Dewie’s, LLC., also
13 known as Mr. Dewie’s Cashew Creamery, LLC. is hereby ordered to desist and refrain from the
14 violations set forth herein, in violation of Corporations Code sections 31110 and 31119, and from
15 any violations of the Franchise Investment Law. The issuance of this order is necessary, in the
16 public interest, for the protection of investors, and is consistent with the purposes, policies, and
17 provisions of the Franchise Investment Law.

18 3. Penalties. Mr. Dewie’s, LLC., also known as Mr. Dewie’s Cashew Creamery, LLC.
19 shall pay an administrative penalty of four thousand dollars (\$4,000.00) (Penalties) no later than
20 fifteen (15) days after the effective date of this Consent Order as defined in paragraph 21 (Effective
21 Date). The Penalties must be made payable in the form of a cashier’s check or Automated Clearing
22 House deposit to the Department and transmitted to the attention of Accounting-Legal at the
23 Department of Financial Protection and Innovation, 2101 Arena Boulevard, Sacramento, California
24 95834. Notice of the payment must be concurrently sent via email to marisa.urteaga-
25 watkins@dfpi.ca.gov. Failure to pay Penalties in a timely manner shall be deemed to be a material
26 breach of this Consent Order.

27 4. Waiver of Hearing Rights. MD acknowledges that the Commissioner is ready,
28 willing, and able to proceed with the filing of an administrative enforcement action on the charges

1 contained in this Consent Order. MD hereby waives the right to any hearings, and to any
2 reconsideration, appeal, or other right to review which may be afforded pursuant to the FIL, the
3 Administrative Procedure Act, the Code of Civil Procedure, or any other provision of law. MD
4 further expressly waives any requirement for the filing of any accusation pursuant to Government
5 Code section 11415.60, subdivision (b). By waiving such rights, MD effectively consents to this
6 Consent Order and all of its terms becoming final.

7 5. Failure to Comply with Consent Order or Cure Breach. MD agrees that if it fails to
8 comply with the Desist and Refrain Order in this Consent Order, or fails to timely cure any breach
9 to the satisfaction of the Commissioner, the Commissioner may, in addition to all other available
10 remedies it may invoke under the FIL, summarily suspend, revoke, or deny its FIL registration (if
11 applicable). MD stipulates to the finality of any such FIL registration suspensions, revocations, or
12 denials that the Commissioner may order. MD waives any notice and hearing rights to contest such
13 summary suspensions, revocations, or denials which may be afforded under the FIL, the California
14 Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law
15 in connection therewith.

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

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

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

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

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

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

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

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

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

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

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

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

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

19 To MD: Jonathan Barber, Esq.
20 Franchise.Law
21 101 S. Tryon St
22 Suite 2700
23 Charlotte, North Carolina 28280
24 registrations@franchise.law

25 To the Commissioner: Marisa I. Urteaga-Watkins, Esq.
26 Department of Financial Protection and Innovation
27 2101 Arena Blvd.
28 Sacramento, California 95834
 marisa.urteaga-watkins@dfpi.ca.gov

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

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20. Public Record. MD 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 MD’s agent, Jonathan Barber, Esq. at registrations@franchise.law.

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: 11/17/2023

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection
and Innovation

By: _____
COLLEEN MONAHAN
Deputy Commissioner

Dated: _____

MR. DEWIE’S, LLC., also known as MR.DEWIE’S
CASHEW CREAMERY, LLC

By: _____
ANDREW COHEN
MEMBER