

1 CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation
2 COLLEEN MONAHAN
Deputy Commissioner
3 THERESA LEETS
Assistant Chief Counsel
4 MARISA I. URTEAGA-WATKINS (State Bar No. 236398)
Senior Counsel
5 Department of Financial Protection and Innovation
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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)
13 PROTECTION AND INNOVATION,)
14 Complainant,) CONSENT ORDER
15 v.)
16 MAC AND CHEESE FRANCHISE)
17 OPERATIONS, LLC., also known as I)
18 HEART MAC AND CHEESE, IHMC, and I)
19 HEART MAC AND CHEESE AND MORE,)
Respondent.)

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21 This Consent Order is entered into between the Commissioner of Financial Protection and
22 Innovation (Commissioner), and Mac and Cheese Franchise Operations, LLC., also known as I
23 Heart Mac and Cheese, IHMC, and I Heart Mac and Cheese and More, collectively, Parties, and is
24 made with 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. To register a franchise, a franchisor must file an application which includes a Uniform
3 Franchise Disclosure Document (FDD) with the Department for review and approval, in accordance
4 with sections 31111 and 31114.

5 B. At all relevant times, Mac and Cheese Franchise Operations, LLC., also known as I
6 Heart Mac and Cheese, IHMC, and I Heart Mac and Cheese and More (IHMC), is a Delaware
7 limited liability company, doing business in California and in Florida at 621 N.W. 53 Street, #360
8 Boca Raton, Florida 33487. At all relevant times, IHMC offers and sells restaurant franchise outlets
9 serving macaroni and cheese dishes,. At all relevant times, IHMC engaged in the offer and sale of
10 IHMC franchises in California. IHMC was registered with the Department to offer and sell
11 franchises pursuant to the FIL from July 12, 2019 to April 20, 2022.

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

14 1. On or about March 30, 2021, IHMC executed a franchise agreement
15 (not an Area Development Agreement) with franchisee C for an El Segundo/Los Angeles location,
16 charging and collecting a franchise fee of \$35,000 from franchisee C. IHMC then executed a
17 “California Addendum” with franchisee C for the sale of a second El Segundo/Los Angeles location
18 on or about May 12, 2022. However, IHMC’s registration with the Department to be able to lawfully
19 offer and sell franchises expired in April 2022. Because the franchise agreement executed on March
20 30, 2021 was not an Area Development Agreement and only a franchise agreement, the offer and
21 sale of the second El Segundo/Los Angeles location via a “California Addendum” is an unlawful
22 offer and sale of a franchise in violation of section 31110. IHMC asserted to the Department that
23 there was no “Development Agreement” between IHMC and franchisee C. However, the “California
24 Addendum” falsely states that there is an Area Development Agreement in place.

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

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¹ All further statutory references are to the Corporations Code unless otherwise indicated.

1 1. IHMC executed a “California Addendum” franchise agreement with
2 franchisee C. for the sale of a second El Segundo/Los Angeles IHMC franchise location on or about
3 May 12, 2022. IHMC did not provide franchisee C with a new FDD for the second location at least
4 fourteen (14) days prior to the execution of a franchise agreement or receipt of consideration.

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

10 1. On or about September 5, 2018, IHMC filed initial application number
11 12982 for registration with the Department pursuant to the FIL (2018 Application). IHMC failed to
12 disclose to the Commissioner in the 2018 Application the existence and result of eviction litigation
13 as follows: Case No. CONO-17-002302, Filing No. 53726428, dated March 14, 2017, in the
14 county court in and for Broward County, Florida – Southport Retail, LLC. vs. IHMC (2017
15 Action). Moreover, IHMC misrepresented to the Commissioner in the 2018 Application Item 3 that
16 there was no litigation that must be disclosed in this item, despite the existence of the 2017 Action.

17 2. On or about May 1, 2019, IHMC filed application number 15270 for
18 registration with the Department pursuant to the FIL (2019 Application). IHMC failed to disclose to
19 the Commissioner in the 2019 Application the existence and result of the 2017 Action. Also, by not
20 disclosing the 2017 Action, IHMC misrepresented to the Commissioner in the 2019 Application
21 Item 3 that there was no other litigation that was required to be disclosed aside from the litigation
22 listed, which was unrelated to the 2017 Action. Moreover, IHMC failed to file a post-effective
23 amendment to the 2019 Application pursuant to FIL section 31123 disclosing in Item 3, eviction
24 litigation Case No. CONO-19-013545, Filing No. 98122940, dated October 30, 2019, in the
25 county court in and for Broward County, Florida – Southport Retail, LLC. vs. Mac and Cheese
26 FLL, LLC., dba I Heart Mac and Cheese (2019 Action). In addition, in the 2019 Application,
27 IHMC omitted the 2017 Action and failed to file a post-effective amendment disclosing the 2019
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1 Action to investors. Finally, IHMC made an untrue statement of material fact to investors by failing
2 to list the result of the 2017 Action and the 2019 Action.

3 3. On or about May 28, 2020, IHMC filed application number 18284 for
4 registration with the Department pursuant to the FIL (2020 Application). IHMC failed to disclose to
5 the Commissioner in the 2020 Application the existence and result of both the 2017 Action and the
6 2019 Action. Also, by not disclosing the 2017 Action and the 2019 Action in the 2020 Application,
7 IHMC misrepresented to the Commissioner in the 2020 Application Item 3 that there was no other
8 litigation that was required to be disclosed aside from the litigation listed, which was unrelated to the
9 2017 Action and 2019 Action. Moreover, IHMC failed to file a post-effective amendment to the
10 2020 Application pursuant to FIL section 31123 disclosing in Item 3, a civil law suit filed in the 15th
11 Judicial Circuit in and for Palm Beach County, Florida, Case No. CACE 20-010969, which was
12 removed to the United States District Court of the Southern District of Florida, Case No. 20-82048
13 for defamation, slander, tortious interference against IHMC's own franchisees (2020 Action).
14 Finally, by omitting the 2017 Action, the 2019 Action and the 2020 Action in the 2020 Application,
15 IHMC made an untrue statement to investors.

16 4. On or about April 22, 2021, IHMC filed application number 21027 for
17 registration with the Department pursuant to the FIL (2021 Application). IHMC failed to disclose
18 the 2017 Action, the 2019 Action, and the 2020 Action in the 2021 Application. Also, IHMC failed
19 to disclose in the 2021 Application eviction litigation Case No. COSO-21-001612, Filing No.
20 121706197, dated February 19, 2021, in the county court in and for Broward County, Florida –
21 Weingarten Realty Investors vs. Mac and Cheese Deerfield, Inc., dba I Love Mac & Cheese
22 (2021 Action). Moreover, by not disclosing the 2017 Action, the 2019 Action, the 2020 Action and
23 the 2021 Action, IHMC misrepresented to the Commissioner in the 2021 Application Item 3 that
24 there was no other litigation that was required to be disclosed aside from the litigation listed, which
25 was unrelated to the 2017 Action, the 2019 Action, the 2020 Action and the 2021 Action. Finally,
26 IHMC failed to file a post-effective amendment to the 2021 Application pursuant to FIL
27 Corporations Code section 31123 disclosing in Item 3, that the 2020 Action was settled and the
28 details as to the settlement (2020 Action Settlement in 2021).

1 5. On or about June 22, 2022, IHMC filed application number 24987 for registration
2 with the Department pursuant to the FIL (2022 Application). IHMC failed to disclose to the
3 Commissioner in the 2022 Application the existence and result of the 2017 Action, the 2019 Action,
4 the 2020 Action, the 2020 Action Settlement in 2021, and the 2021 Action. Finally, by not disclosing
5 the 2017 Action, the 2019 Action, the 2020 Action, the 2020 Action Settlement in 2021, and the
6 2021 Action, IHMC misrepresented to the Commissioner in the 2022 Application Item 3 that there
7 was no other litigation that was required to be disclosed aside from the litigation listed, which was
8 unrelated to the 2017 Action, the 2019 Action, the 2020 Action, the 2020 Action Settlement in 2021,
9 and the 2021 Action.

10 6. In Item 20 in the 2021 Application, IHMC asserts that there were seven (7)
11 outlets open at the beginning of 2020, and in 2020, four (4) new outlets opened, four (4) were
12 terminated, and two (2) were reacquired by the franchisor. This calculation should be a net negative
13 two (-2) for five (5) outlets at the end of the year. However, the 2021 Application Item 20 shows
14 nine (9) open at the end of the year. IHMC asserts that an error made for New York state that
15 affected the termination column in Item 20. Two (2) franchises were terminated in New York state
16 in 2021 and these terminations were placed in the year 2020. Yet, the 2021 Application Item 20
17 shows nine (9) open at the end of the year. IHMC asserts that an error was made for New York state
18 that affected the termination column in Item 20 whereby two (2) franchises were terminated in New
19 York state in 2021 and these terminations were placed in the year 2020. Just the same, IHMC failed
20 to disclose to the Commissioner the correct outlet numbers. Also, IHMC misrepresented to the
21 Commissioner the outlet count in Item 20 in the 2021 Application. Finally, by failing to state the
22 correct outlet numbers in Item 20, IHMC made an untrue statement of material fact to investors.

23 7. IHMC filed the 2022 Application with the Department on June 22, 2022. The
24 Department's investigation of IHMC commenced in 2022 and ended in January 2024. The State of
25 Indiana Office of the Secretary of State Securities Division issued a Petition and Cease and Desist
26 Order against IHMC dated and filed on May 24, 2023 (Indiana Order). The Indiana Order was
27 served on IHMC in Florida by the Palm Beach County Florida Sherriff's office on June 23, 2023.
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1 IHMC failed to disclose the existence of the Indiana Order to the Commissioner and failed to file a
2 post-effective amendment to include the Indiana Order in the 2022 Application.

3 G. Pursuant to sections 31204, it is unlawful for any person to knowingly conceal and/or
4 cover up any record, document, or tangible object with the intent to impede, obstruct, or influence
5 the administration or enforcement of any provision of this division. It is also unlawful for any person
6 to knowingly make an untrue statement to the commissioner during the course of an investigation, or
7 with the intent to impede, obstruct, or influence the administration or enforcement of any provision
8 of this division.

9 1. The Department requested from IHMC any and all eviction proceeding documents
10 in a Request for Documents issued on March 23, 2022 and March 19, 2023. IHMC represented to
11 the Department that it did not have any documents. IHMC went so far as to request a copy of these
12 documents from the Department. IHMC violated section 31204 by impeding and obstructing the
13 Department’s investigation by not producing these documents which are required to be in the
14 possession of IHMC.

15 H. The Commissioner hereby finds as follows:

16 1. The Commissioner finds that eviction proceedings and related settlement
17 agreements are material as to the FIL. The Commissioner also finds that tort litigation and related
18 settlement agreements are material as to the FIL.

19 2. The 2017 Action, 2019 Action, the 2020 Action, the 2020 Action Settlement in
20 2021, and the 2021 Action are material and must be disclosed accordingly in each and every FIL
21 application filed by IHMC with the Department;

22 3. IHMC engaged in the sale of a franchise in the El Segundo/Los Angeles location
23 while unregistered, in violation of section 31110;

24 4. IHMC failed to provide an FDD to a prospective or actual franchisee at least 14
25 days prior to the execution of a franchise agreement or receipt of consideration as to the sale of the
26 second El Segundo/Los Angeles location, in violation of section 31119;

27 5. IHMC failed to disclose to the Commissioner the existence and result of eviction
28 litigation, tort litigation and failing to accurately report information in Item 20 of FDD’s filed with

1 the Department in multiple applications in violation of section 31200. Also, IHMC misrepresented to
2 the Commissioner that there was no litigation in Item 3 to report, all in violation of section 31200;
3 and 6. IHMC violated section 31204 by impeding and obstructing the Department’s
4 investigation by not producing these documents which are required to be in the possession of IHMC.

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

7 **II.**

8 **TERMS AND CONDITIONS**

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

13 2. Desist and Refrain Order. Pursuant to Corporations Code section 31406, Mac and
14 Cheese Franchise Operations, LLC., also known as I Heart Mac and Cheese, IHMC, and I Heart
15 Mac and Cheese and More, is hereby ordered to desist and refrain from the violations of
16 Corporations Code sections 31110, 31119, 31200, and 31204 set forth herein and from violating the
17 Franchise Investment Law. The issuance of this order is necessary, in the public interest, for the
18 protection of investors, and is consistent with the purposes, policies, and provisions of the Franchise
19 Investment Law.

20 3. Penalties. Mac and Cheese Franchise Operations, LLC., also known as I Heart Mac
21 and Cheese, IHMC and I Heart Mac and Cheese and More, shall pay an administrative penalty of
22 \$43,000 (Penalties) no later than fifteen (15) days after the effective date of this Consent Order as
23 defined in Paragraph 23 (Effective Date). The Penalties must be made payable in the form of a
24 cashier’s check or Automated Clearing House deposit to the Department and transmitted to the
25 attention of **Accounting – SRD Franchise Unit** at the Department of Financial Protection and
26 Innovation, 2101 Arena Boulevard, Sacramento, California 95834. Notice of the payment must be
27 concurrently sent via email to Marisa I. Urteaga-Watkins, Esq. at marisa.urteaga-
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1 watkins@dfpi.ca.gov. Failure to pay Penalties in a timely manner shall be deemed to be a material
2 breach of this Consent Order.

3 4. Independent Monitor: Mac and Cheese Franchise Operations, LLC., also known as I
4 Heart Mac and Cheese, IHMC, and I Heart Mac and Cheese and More agrees that it will contract
5 with an independent monitor who has no familial, financial, or professional affiliation with IHMC
6 and who is a licensed California attorney with specialty experience in franchise law, to consult with
7 IHMC on its compliance with the FIL and any and all California franchise openings for the next
8 three (3) years from the Effective Date of this consent order, at IHMC's expense. The monitor shall
9 be approved by the Department and must submit annual reports regarding IHMC's offer and sales
10 actions to the Department. Proof of compliance shall be sent to the Department of Financial
11 Protection and Innovation, Attn. Marisa I. Urteaga-Watkins, Counsel, 2101 Arena Blvd.,
12 Sacramento, California 95834 and at marisa.urteaga-watkins@dfpi.ca.gov.

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

21 6. Failure to Comply with Consent Order. IHMC agrees that if it fails to comply with
22 the terms of this Consent Order, the Commissioner may, in addition to all other available remedies it
23 may invoke under the FIL, summarily suspend or revoke IHMC's franchise registration (if
24 applicable) or deny IHMC's FIL applications (if applicable), until IHMC is in compliance. IHMC
25 waives any notice and hearing rights to contest such summary actions by the Commissioner, which
26 may be afforded under the FIL, APA, CCP, or any other provision of law.

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

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

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

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

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

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

27 13. Waiver, Amendments, and Modifications. No waiver, amendment, or modification
28 of this Consent Order will be valid or binding unless it is in writing and signed by each of the

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

15 16. 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 17. Effect Upon Future Proceedings. If IHMC 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 18. Voluntary Order. IHMC enters this Consent Order voluntarily and without coercion
23 and acknowledges that no promises, threats, or assurances have been made by the Commissioner or
24 any officer, or agent thereof, about this Consent Order. The Parties each represent and
25 acknowledge that he, she, or it is executing this Consent Order completely voluntarily and without
26 any duress or undue influence of any kind from any source.

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

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To IHMC: Kevin Ayers, Esq.
621 N.W. 53 Street, #360
Boca Raton, Florida 33487
kayers@iheartmacandcheese.com

Rob Lauer, Esq.
Haynes Boone, LLP.
98 San Jacinto Boulevard, Suite 1500
Austin, Texas 78701
Rob.Lauer@haynesboone.com

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

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

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

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22. 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 IHMC’s agent, Kevin Ayers, Esq. at kayers@iheartmacandcheese.com and/or Rob Lauer, Esq. at Rob.Lauer@haynesboone.com.

23. 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: March 28, 2024

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation

By: _____

COLLEEN MONAHAN
Deputy Commissioner

Dated: March 27, 2024

MAC AND CHEESE FRANCHISE OPERATIONS, LLC., also known as I HEART MAC AND CHEESE, IHMC, and I HEART MAC AND CHEESE AND MORE

By: _____

STEPHEN GIORDANELLA
Chief Executive Officer.