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

12 In the Matter of: ) FIL ORG ID: 447472  
13 THE COMMISSIONER OF FINANCIAL ) CONSENT ORDER  
14 PROTECTION AND INNOVATION, )  
15 Complainant, )  
16 v. )  
17 THE COFFEE FRANCHISE, INC., )  
18 Respondent. )  
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The Commissioner of Financial Protection and Innovation (Commissioner) as head of the Department of Financial Protection and Innovation (Department), and the Respondent, The Coffee Franchise, Inc. (TCF) (collectively, the Parties), enter into this Consent Order with respect to the following:

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**I.**

**RECITALS**

A. The Commissioner is authorized to administer and enforce the provisions of the Franchise Investment Law (Cal. Corp. Code §§ 31000 – 31516) (FIL) and the rules and regulations promulgated thereunder which control the registration, offer and sale of franchises in California.

B. The Commissioner brings this action pursuant to the provisions of the FIL, and the rules and regulations promulgated thereunder, including California Corporations Code sections 31402, 31406, and 31408.

C. Pursuant to California Corporations Code sections 31111, 31112, and 31114 of the FIL, an application for registration of an offer of a franchise shall be accompanied by a Uniform Franchise Disclosure Document (FDD) that contains the material information set forth in the application for registration and shall be filed with the Commissioner.

D. As stated in California Corporations Code section 31001, it is the intent of the FIL to provide each prospective franchisee with the information necessary to make an intelligent decision regarding the franchise being offered.

E. TCF is a Delaware corporation formed on or around January 13, 2020, with a principal place of business at 251 Little Falls Drive, Wilmington, Delaware 19608. TCF operates a retail coffee business called The Coffee, which started operations in 2017 in the city of Curitiba, in the state of Parana, Brazil. TCF operates a website located at [www.thecoffee.jp](http://www.thecoffee.jp).

F. The Commissioner finds that on or around August 13, 2020, TCF offered and sold to at least one California entity a franchise in the form of an Area Development Agreement (ADA). The ADA referred to the California entity as “Developer.”

G. The ADA granted the Developer the right to engage in the business of offering, selling or distributing the goods or services, specifically “the exclusive exploitation and trading of hot and iced coffee served under the ‘grab and go’ system.”

H. The ADA granted the right to engage in the “The Coffee System,” defined as “the system through which The Coffee operates the sale of its products and services through Licensees,

1 which contains commercial and operational rules defined by The Coffee . . . ,” which is a marketing  
2 plan or system prescribed in substantial part by TCF.

3 I. The operation of TCF’s business pursuant to “The Coffee System” is substantially  
4 associated with TCF’s trade name, “The Coffee.”

5 J. The ADA required the Developer to pay a franchise fee in the form of purchasing  
6 coffee, matcha, disposables, cups, packages, and lids “solely and exclusively from Licensor,” i.e.  
7 TCF. However, to date no franchise fee was paid by the Developer to TCF.

8 K. The ADA also provided that the Developer would perform the following:

9 [D]evelop the Territory by promoting the opening of The Coffee corporate  
10 stores and licensed units in the State of California . . . [and] shall provide  
11 the services under this Agreement in strict compliance with all guidelines  
12 established by THE COFFEE, both with respect to the promotion,  
13 recruitment and shortlist procedures and the use of the Trademarks and  
14 other intangible assets comprising of THE COFFEE System. Such  
15 guidelines shall be specified in writing, in this case by any means (i.e.,  
16 informative guides, etc.).

17 L. The ADA also provided that the Developer would open and operate the first store,  
18 referred to as the “Pilot Business.”

19 M. The ADA further stated that it “becomes effective after the acceptance and  
20 performance by both Parties in the State of California. This Agreement shall be interpreted and  
21 construed in accordance with the laws of the State of California . . . .”

22 N. The Commissioner finds that the ADA contained an offer of a franchise within the  
23 meaning of California Corporations Code section 31005.

24 O. The franchise offered and sold by TCF was not registered with the Department or  
25 exempt, in violation of California Corporations Code section 31110.

26 P. TCF did not first provide a copy of an FDD to the Developer at least 14 days prior to  
27 the execution of any binding franchise or other agreement, or prior to the receipt of any  
28 consideration, whichever occurs first, in violation of California Corporations Code section  
31119(a).

Q. The Commissioner and TCF intend to resolve this matter amicably without the  
necessity of a hearing or other litigation. TCF admits to the jurisdiction of the Commissioner in this

1 matter and for the purposes of issuing and enforcing this Consent Order, neither admits nor denies  
2 the findings of fact and conclusions of law contained herein, and consents to the entry of this  
3 Consent Order by the Commissioner.

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 set forth in  
9 Paragraphs G through Q 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 policies, and provisions of the FIL.

12 2. Citation and Desist and Refrain Order. Pursuant to California Corporations Code  
13 sections 31402 and 31406, TCF is hereby ordered to desist and refrain from violating California  
14 Corporations Code sections 31110 and 31119.

15 3. Penalty. Pursuant to California Corporations Code section 31406(a), TCF shall pay a  
16 penalty in the amount of \$5,000.00 for the violations found by the Commissioner in Paragraphs G  
17 through Q above by no later than 30 days after the Effective Date of this Consent Order as defined in  
18 Paragraph 27 below. The penalty shall be made payable 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, at the Department of Financial Protection and  
21 Innovation, 2101 Arena Boulevard, Sacramento, California 95814-2306. Notice of the payment  
22 must be concurrently sent to Sophia C. Kim via e-mail at: Sophia.Kim@dfpi.ca.gov.

23 4. Rescission Offer and Restitution/Damages. Pursuant to California Corporations Code  
24 section 31408 (a):

25 a. By no later than 30 days after the Effective Date of this Consent Order as  
26 defined in Paragraph 27 below, TCF shall submit to the Commissioner for review and approval a  
27 proposed offer to rescind the ADA offered and sold to the Developer (Rescission Offer). The  
28 Rescission Offer shall include, without limitation: an offer to terminate without any further penalties

1 or fees; and an offer to pay restitution and/or damages of \$10,000.00 for losses incurred in  
2 connection with the ADA.

3 b. Within 30 days of the Commissioner’s approval of the Rescission Offer, TCF  
4 shall serve the Developer with the approved Rescission Offer.

5 c. Within 45 days of the Commissioner’s approval of the Rescission Offer, TCF  
6 shall submit to the Commissioner a proof of service of the approved Rescission Offer (Proof of  
7 Service). The Proof of Service shall be sent to the attention of: Sophia C. Kim, Senior Counsel,  
8 Enforcement Division, Department of Financial Protection and Innovation, 320 West 4<sup>th</sup> Street, Suite  
9 750, Los Angeles, California 90013, Sophia.Kim@dfpi.ca.gov.

10 d. Within 30 days of the date on the Proof of Service, TCF shall submit to the  
11 Commissioner satisfactory documentation evidencing any response(s) to the Rescission Offer. The  
12 documentation of the response shall be sent to the attention of: Sophia C. Kim, Senior Counsel,  
13 Enforcement Division, Department of Financial Protection and Innovation, 320 West 4<sup>th</sup> Street, Suite  
14 750, Los Angeles, California 90013, Sophia.Kim@dfpi.ca.gov.

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

24 6. Failure to Comply with Consent Order. TCF agrees that if it fails to comply with the  
25 terms of this Consent Order, the Commissioner may, in addition to all other available remedies she  
26 may invoke under the FIL, deny any application and/or summarily suspend or revoke any license  
27 granted by the Commissioner to TCF until TCF is in compliance. TCF waives any notice and  
28 hearing rights to contest such denial or summary suspension or revocation which may be afforded

1 under the FIL, the California Administrative Procedure Act, the California Code of Civil Procedure,  
2 or any other provision of law in connection therewith.

3 7. Information Willfully Withheld or Misrepresented. This Consent Order may be  
4 revoked and the Commissioner may pursue any and all remedies available under law against TCF if  
5 the Commissioner discovers that TCF knowingly or willfully withheld or misrepresented  
6 information used for and relied upon in this Consent Order.

7 8. Future Actions by Commissioner. If TCF fails to comply with any terms of the  
8 Consent Order, the Commissioner may institute proceedings for any and all violations otherwise  
9 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions  
10 against TCF, or any of their partners, owners, officers, shareholders, directors, employees or  
11 successors for any and all unknown violations of the FIL and Corporations Code.

12 9. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner's  
13 ability to assist any other government agency (city, county, state, or federal) with any prosecution,  
14 administrative, civil or criminal brought by that agency against TCF or any other person based upon  
15 any of the activities alleged in this matter or otherwise.

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

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

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

1 evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

2 13. No Presumption Against Drafting Party. Each party acknowledges that it has had the  
3 opportunity to draft, review, and edit the language of this Consent Order. Accordingly, the parties  
4 intend that no presumption for or against the drafting party will apply in construing any part of this  
5 Consent Order. The parties waive the benefit of Civil Code section 1654 as amended or  
6 corresponding provisions of any successor statute, which provide that in cases of uncertainty,  
7 language of a contract should be interpreted most strongly against the party that caused the  
8 uncertainty to exist.

9 14. Independent Legal Advice. Each of the parties represents, warrants, and agrees that it  
10 has received independent advice from its attorney(s) and/or representatives with respect to the  
11 advisability of executing this Consent Order.

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

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

24 17. Governing Law. This Consent Order shall be construed and enforced in accordance  
25 with and governed by California law. Each of the parties hereto consents to the jurisdiction of such  
26 court in California, administrative or otherwise, best suited to handle any action or proceeding under

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

3 18. 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 19. Effect Upon Future Proceedings. If TCF applies for any license, permit or  
7 qualification under the Commissioner's current or future jurisdiction, or is the subject of any future  
8 action by the Commissioner to enforce this Consent Order, then the subject matter hereof shall be  
9 admitted for the purpose of such application(s) or enforcement proceeding(s).

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

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

17 To TCF:

18 Kevin Adams, Mortenson Taggart Adams LLP, 300 Spectrum Center Drive, Suite  
19 1200, Irvine, CA 92618; kadams@mortensontaggart.com,

20 and

21 Carlos Fertonani, President, The Coffee Franchise, Inc., 251 Little Falls Drive,  
22 Wilmington, Delaware 19608.

23 To the Commissioner:

24 Sophia C. Kim, Senior Counsel, Enforcement Division, Department of Financial  
25 Protection and Innovation, 320 West 4<sup>th</sup> Street, Suite 750, Los Angeles, California  
26 90013; Sophia.Kim@dfpi.ca.gov.

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

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

27. Effective Date. This Consent Order shall become final and effective when signed by all parties and delivered by the Commissioner’s counsel via e-mail to TCF at kadams@mortensontaggart.com.

28. 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: 4/4/24

CLOTHILDE V. HEWLETT  
Commissioner of Financial Protection and Innovation

By \_\_\_\_\_

MARY ANN SMITH  
Deputy Commissioner  
Enforcement Division

Dated: 4/3/24

THE COFFEE FRANCHISE, INC.

By \_\_\_\_\_

CARLOS FERTONANI  
President of The Coffee Franchise, Inc.