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8 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
9 OF THE STATE OF CALIFORNIA

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|----|--|---|---------------------------------------|
| 11 | In the Matter of |) | FILE NO. 993-6170 |
| 12 | THE CALIFORNIA COMMISSIONER OF |) | CITATION INCLUDING: |
| 13 | BUSINESS OVERSIGHT, |) | (1) DESIST AND REFRAIN ORDER |
| 14 | Complainant, |) | (2) ASSESSMENT OF |
| 15 | v. |) | ADMINISTRATIVE PENALTIES |
| 16 | MEAT HOUSE FRANCHISING, LLC, a New |) | (3) CLAIM FOR ANCILLARY RELIEF |
| 17 | Hampshire Limited Liability Company, and |) | AND COSTS |
| 18 | JUSTIN ROSBERG, |) | (Corp. Code §§ 31402, 31406, 31408) |
| 19 | Respondents. |) | |

20
21 Jan Lynn Owen, the California Commissioner (“Commissioner”) of the Department of
22 Business Oversight (“Department”), finds the following:

23 **I. PARTIES**

24 1. At all relevant times, Meat House Franchising, LLC (“Franchisor”) is a New
25 Hampshire limited liability company formed on May 12, 2008 with its principal place of business at
26 307 New Market Road, Durham, New Hampshire, 03824. Franchisor maintains a website at
27 www.themeathouse.com.
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1 name, logotype, advertising or other commercial symbol designating the franchisor or its affiliate. In
2 addition, under Franchisor's franchise agreements, the franchisee is required to pay a franchise fee.

3 8. In October 2008, months before Franchisor applied for registration in California,
4 California residents ("Residents") approached Franchisor about franchising opportunities.

5 9. In November 2008, Rosberg informed Residents that he would not be able to
6 "directly" discuss offerings of franchises located within California, but Rosberg encouraged
7 Residents to consider franchise opportunities outside of California. To that end, Rosberg forwarded
8 Residents a UFDD that had apparently been registered in other states.

9 10. Residents continued discussions with Rosberg and Franchisor through the end of
10 2008. In January 2009, Residents made a trip from California to New England to meet with Rosberg
11 in person, to tour Franchisor's existing franchise locations, and to speak with Franchisor's existing
12 franchise owners. During this trip, Rosberg hand-delivered Residents a bundle of historical financial
13 information for two of Franchisor's most successful corporate-owned stores, along with an estimate
14 of projected costs for opening a new franchise. After providing Residents with this financial
15 information, Rosberg explained to Residents how he projects costs and revenues for future franchises.
16 During the trip, Rosberg and Franchisor encouraged Residents to purchase and operate franchises in
17 California.

18 11. In February 2009, more than a month before Franchisor applied for registration in
19 California, Rosberg delivered financial projections to Residents. These financial projections
20 contained projections for how California-located franchises owned and operated by Residents would
21 perform. Rosberg's financial projections stated that a franchise run by Residents in California could
22 earn \$4.5 to \$5 million in annual sales. Rosberg then explained to Residents, "Do I think that if I put
23 a store in OC, CA that it will get to \$5 million+ annually [. . .] maybe. Do I think it will be
24 extremely successful and have considerably higher top line sales than New England stores...yes!"

25 ***B. Franchisor's Application For Registration In California***

26 12. On March 31, 2009, Franchisor finally filed an Application For Initial Registration Of
27 An Offer And Sale Of Franchises in California with the Commissioner (the "2009 Application")
28 upon a Uniform Franchise Registration Application pursuant to Corporations Code section 31111 and

1 California Code of Regulations, Rule 310.111(b). Franchisor's 2009 Application included a
2 proposed UFDD, as required by Section 31114 and Rule 310.111.

3 13. In response to Franchisor's 2009 Application, the Commissioner sent Franchisor a
4 comment letter dated April 13, 2009, stating that Franchisor did not demonstrate a present financial
5 ability to meet obligations stated in its proposed UFDD without relying on a franchisee's funds.
6 Consequently, the Commissioner required an impound of all initial fees paid by a franchisee to the
7 Franchisor, pursuant to Rule 310.113. Corp. Code § 31113. The comment letter further stated that
8 the Franchisor could avoid an impound if the Franchisor deferred the collection of initial franchise
9 fees until the Franchisor's initial obligations to the franchisee were met.

10 14. In response to the Commissioner's comment letter, on April 22, 2009, Franchisor
11 elected to defer initial franchise fees. In connection with this election, Franchisor submitted a revised
12 version of its proposed UFDD to the Commissioner.

13 15. Franchisor's revised UFDD stated that any franchise agreement Franchisor entered
14 into with a California franchisee would provide that "all initial franchise fees payable to [Franchisor]
15 shall be deferred until such time as the business opens and shall be due and payable in full to us upon
16 the completion of the material pre-opening obligations to [franchisee]." In addition, the revised
17 UFDD provided that any area development agreement fee owed by a California franchisee "shall be
18 due and payable in full upon our completion of the initial material pre-opening obligations." Such
19 obligations included, amongst others, Franchisor's completion of initial trainings for staff of the
20 franchisee, Franchisor's loan of an operations manual to the franchisee, and the opening of the
21 franchisee's store itself.

22 16. On April 23, 2009, the Commissioner issued an Order Accelerating Effectiveness Of
23 Registration, providing that Franchisor's registration to offer and sell franchises in the State of
24 California commenced on April 23, 2009 and would terminate on April 20, 2010.

25 ***C. Franchisor's Post-Registration Activity***

26 17. Following Franchisor's registration in California, on April 27, 2009, Rosberg emailed
27 Residents a copy of the UFDD approved by the Commissioner, proclaiming to Residents that "[t]he
28 handcuffs are officially off!"

1 18. In May 2009, Rosberg and other Franchisor representatives traveled to California to
2 assist Residents in determining optimal locations for Residents to open a new franchise. During the
3 California visit, Rosberg provided Residents with a projected profit and loss statement for Resident's
4 proposed California location. Rosberg's projected profit and loss statement projected \$4 million in
5 annual sales. Rosberg later described to Residents in detail why he projected that Residents'
6 California franchise could earn a "2x multiple on our best 6 months [in New England]" and claimed
7 that a California franchise would have "a minimum starting point of \$4M-\$5M"

8 19. Shortly after the California trip, Rosberg exclaimed to Residents that "I am operating
9 10 stores in the wrong part of the country! . . . The sky is the limit [in California]!!" Rosberg also
10 urged Residents to consider opening a second franchise in California.

11 20. Throughout this time, Residents and Franchisor continued discussing franchise
12 opportunities in California. Discussions became more serious in June 2009, about two months after
13 Franchisor's registration in California. In June 2009, Franchisor and Residents negotiated revisions
14 to the Franchise Agreement and Area Development Agreement that had been included in the
15 proposed UFDD that had been approved by the Commissioner.

16 21. During these June 2009 negotiations, Franchisor offered Residents a "\$25,000
17 incentive for executing your second [franchise agreement] within 4 months of opening."

18 22. Then, on June 17, 2009, Residents and Franchisor entered into a written Franchise
19 Agreement for a franchise in Costa Mesa, California. The executed June 17, 2009 Franchise
20 Agreement was in the form approved by the Commissioner and contained the provision that
21 Franchisor would not collect initial franchise fees from Residents until Franchisor had completed its
22 material pre-opening obligations, as had been ordered by the Commissioner. The executed Franchise
23 Agreement required Residents to pay Franchisor a \$50,000 initial franchise fee and a \$7,500
24 marketing fee.

25 23. Residents opened their Costa Mesa, California franchise in January 2010. Residents
26 subsequently paid Franchisor the \$50,000 initial franchise fee and the \$7,500 marketing fee for the
27 Costa Mesa franchise on January 28, 2010.

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1 24. Shortly thereafter, on February 17, 2010, Residents entered into an Area Development
2 Agreement with Franchisor under which Residents would open four franchises in California. The
3 Area Development Agreement granted Residents an exclusive franchise area that covered all of
4 Orange County and part of Los Angeles County. The Area Development Agreement called for a
5 payment of \$40,000 only after completion of Franchisor's material pre-opening obligations.

6 25. One week later, on February 24, 2010, under pressure from Franchisor for a larger
7 deal, Residents entered into a written amendment with Franchisor that expanded the previously
8 signed Area Development Agreement to a total of 35 stores (the "First Amendment"). Under the
9 First Amendment, Residents would also pay a significantly larger \$340,000 fee. As with the original
10 Area Development Agreement, Residents were not required to pay the \$340,000 fee until Franchisor
11 had completed Franchisor's material pre-opening obligations.

12 26. About two days after the First Amendment was signed, on or about February 26, 2010,
13 Residents and Franchisor further amended the Area Development Agreement. Worried that they
14 could not pay the \$340,000 fee, Residents sought a second amendment with a lesser fee. Thus,
15 Residents and Franchisor again amended the Area Development Agreement (the "Second
16 Amendment"). The Second Amendment reduced the total stores to 10 and reduced the fee owed by
17 Residents to \$100,000.

18 27. The Second Amendment was never reduced to writing. And, despite requests from
19 Residents, the Second Amendment was never formally documented.

20 28. On March 2, 2010, about five days after the Second Amendment was agreed upon,
21 Residents paid the \$100,000 Area Development Agreement to Franchisor. However, as of that date,
22 Franchisor had not yet completed its material pre-opening obligations.

23 29. On March 16, 2010, Franchisor filed a Notice Of Negotiated Sale Of Franchise
24 pursuant to Rule 310.100.2. This notice disclosed the changes in the First Amendment that Residents
25 and Franchisor negotiated to the proposed UFDD that had been approved by the Commissioner.
26 However, Franchisor never filed a similar notice disclosing the changes Residents and Franchisor
27 negotiated in the Second Amendment.

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1 32. Rule 310.100.2 further provides that the Section 31109.1 exemption is only available
2 if a franchisor files a “Notice of Negotiated Sale of Franchise in the form set forth in subsection (b) is
3 filed with the Commissioner within 15 business days after the negotiated sale is consummated.”

4 33. Based upon the foregoing findings, the Commissioner is of the opinion that Meat
5 House Franchising, LLC, and Justin Rosberg engaged in the offer and sale of franchises in this state
6 that are subject to registration under the Franchise Investment Law without the offers first being
7 registered or exempt, in violation of Corporations Code section 31110. Pursuant to Corporations
8 Code sections 31402 and 31406, Meat House Franchising, LLC, and Justin Rosberg are hereby cited
9 and ordered to desist and refrain from the further offer or sale of franchises unless and until the offers
10 have been duly registered under the Franchise Investment Law or are otherwise exempt.

11 34. This order is necessary, in the public interest, for the protection of investors and
12 franchisees and consistent with the purposes, policies and provisions of the Franchise Investment
13 Law.

14 **VIOLATION OF CORPORATIONS CODE SECTION 31201**

15 **(Misrepresentation or Omission of Material Facts)**

16 35. Section 31201 provides:

17 “It is unlawful for any person to offer or sell a franchise in this state by
18 means of any written or oral communication not enumerated in Section
19 31200 which includes an untrue statement of a material fact or omits to
state a material fact necessary in order to make the statements made, in the
light of the circumstances under which they were made, not misleading.”

20 36. Franchisor and Rosberg made misrepresentations and omissions of material fact in
21 connection with the offer and sale of franchises to Residents, including without limitation:

- 22 a. Franchisor and Rosberg failed to disclose that the financial performance
23 projections in Item 19 of the UFDD approved by the Commissioner contained
24 hypothetical future projections, rather than actual, historical results; and
25 b. In violation of the guidelines of the Commissioner and the Federal Trade
26 Commission, Franchisor and Rosberg provided Residents with oral and written
27 financial performance projections that were not disclosed in Item 19 of the
28 UFDD submitted to the Commissioner.

1 42. Section 31406 provides in relevant part:

2 “(a) If, upon inspection or investigation, based upon a complaint or
3 otherwise, the commissioner has cause to believe that a person is violating
4 any provision of this division or any rule or order promulgated pursuant to
5 this division, the commissioner may issue a citation to that person in
6 writing describing with particularity the basis of the citation. Each citation
7 may contain an order to desist and refrain and an assessment of an
8 administrative penalty not to exceed two thousand five hundred dollars
9 (\$2,500) per violation and shall contain reference to this section, including
10 the provisions of subdivision (c). All penalties collected under this section
11 shall be deposited in the State Corporations Fund.

12 (b) The sanctions authorized under this section shall be separate from, and
13 in addition to, all other administrative, civil, or criminal remedies.”

14 (c) If within 60 days from the receipt of the citation, the person cited fails
15 to notify the commissioner that the person intends to request a hearing as
16 described in subdivision (d), the citation shall be deemed final.

17 (d) Any hearing under this section shall be conducted in accordance with
18 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of
19 Title 2 of the Government Code.

20 (e) After the exhaustion of the review procedures provided for in this
21 section, the commissioner may apply to the appropriate superior court for
22 a judgment in the amount of the administrative penalty and order
23 compelling the cited person to comply with the order of the commissioner.
24 The application shall include a certified copy of the final order of the
25 commissioner and shall constitute a sufficient showing to warrant the
26 issuance of the judgment and order.

27 43. Pursuant to Section 31406, Meat House Franchising, LLC, and Justin Rosberg are
28 hereby assessed and ordered to pay, jointly and severally, an administrative penalty of seven thousand
five hundred dollars (\$7,500) based on the three foregoing violations.

44. The administrative penalty in the amount of seven thousand five hundred dollars
(\$7,500) shall be made payable to the Department of Business Oversight and submitted to Adam J.
Wright no later than 60 days from the date of the final order in this matter.

V. ANCILLARY RELIEF

45. Section 31408 provides in relevant part:

“(a) If the commissioner determines it is in the public interest, the
commissioner may include in any administrative action brought under this
division, including a stop order, a claim for ancillary relief, including, but
not limited to, a claim for rescission, restitution or disgorgement or
damages on behalf of the persons injured by the act or practice
constituting the subject matter of the action, and the administrative law

1 judge shall have jurisdiction to award additional relief. The person
2 affected may be required to attend remedial education, as directed by the
commissioner.

3 (b) In an administrative action brought under this part the commissioner is
4 entitled to recover costs, which in the discretion of the administrative law
5 judge may include any amount representing reasonable attorney's fees and
6 investigative expenses for the
services rendered, for deposit into the State Corporations Fund for the use
of the Department of Corporations.”

7 46. Pursuant to Corporations Code 31408, the Area Development Agreement, the First
8 Amendment and the Second Amendment entered into between Franchisor and Residents are hereby
9 rescinded.

10 47. This ancillary relief is necessary, in the public interest, for the protection of investors
11 and franchisees and consistent with the purpose, policies and provisions of the Franchise Investment
12 Law.

13 **VI. ATTORNEY'S FEES**

14 48. Pursuant to section 31408, Meat House Franchising, LLC, and Justin Rosberg shall
15 pay attorney's fees to the Department of Business Oversight in the amount of \$10,000, or according
16 to proof. The amount awarded for attorney's fees shall be made payable to the Department of
17 Business Oversight and submitted to Adam J. Wright no later than 60 days from the date of a final
18 order in this matter.

19
20 Dated: April 23, 2014
Sacramento, California

21 JANN LYNN OWEN
22 Commissioner of Business Oversight

23
24 By _____
25 MARY ANN SMITH
26 Deputy Commissioner
27 Enforcement Division
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