

1 MARY ANN SMITH
Deputy Commissioner
2 SEAN M. ROONEY
Assistant Chief Counsel
3 SOPHIA C. KIM (State Bar No. 265649)
Senior Counsel
4 Department of Business Oversight
320 West 4th Street, Suite 750
5 Los Angeles, California 90013
Telephone: (213) 576-7594
6 Facsimile: (213) 576-7181

7 Attorneys for Complainant

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

11	In the Matter of:)	FIL File No.: 993-6543
)	OAH Case No.: 2016120760
12	THE COMMISSIONER OF BUSINESS)	
13	OVERSIGHT,)	SETTLEMENT AGREEMENT
)	
14	Complainant,)	
)	Hearing Date: September 21, 2017
15	v.)	Hearing Time: 9:00 a.m.
)	
16	RALPH MASSETTI; WILL SHAKESHEFF;)	Assigned: Unassigned
17	and BIKECAFFE FRANCHISING, INC., doing)	Location: Office of Administrative Hearings
18	business as BIKECAFFE FRANCHISING,)	320 West 4 th Street, Suite 630
	L.L.C., doing business as)	Los Angeles, California 90013
19	WWW.BIKECAFFE.COM, doing business as)	
20	BIKECAFFE/MARLEY FRANCHISE, doing)	
21	business as BIKE CAFFE/MARLEY COFFEE,)	
	doing business as THE FRANCHISE)	
22	BUILDERS, and doing business as)	
	BIKECAFFE,)	
23	Respondents.)	

24
25 This Settlement Agreement is entered into between BikeCaffe Franchising, Inc., doing
26 business as BikeCaffe Franchising, L.L.C., doing business as www.bikecaffe.com, doing business
27 as BikeCaffe/Marley Franchise, doing business as BikeCaffe/Marley Coffee, doing business as The
28 Franchise Builders, and doing business as BikeCaffe (BikeCaffe) and Ralph Massetti (Massetti)

1 (collectively, Respondents) and the Commissioner of Business Oversight (Commissioner),
2 (hereinafter collectively referred to as, the Parties), and is made with respect to the following facts:

3 **I.**

4 **RECITALS**

5 A. At all relevant times, BikeCaffe was a Colorado corporation formed on or around
6 October 6, 2010, doing business in California. BikeCaffe’s principal places of business included:
7 2150 West 6th Avenue, Suite H, Broomfield, Colorado 80020; 2707 West Mansfield Avenue,
8 Englewood, Colorado 80110; and 4700 Sterling Drive, Suite E, Boulder, Colorado 80301.
9 BikeCaffe conducted business using the telephone numbers (877) 733-2563 and (720) 371-5444, a
10 website located at www.bikecaffe.com that is currently not in operation, and an email address at
11 Franchise@BikeCaffe.com. BikeCaffe was in the business of operating and selling commercial
12 beverage franchises.

13 B. At all relevant times, Massetti was the president and chief executive officer of
14 BikeCaffe and is authorized to enter into this Settlement Agreement on behalf of BikeCaffe.

15 C. The Department of Business Oversight (Department), through the Commissioner,
16 has jurisdiction over the administration and enforcement of the Franchise Investment Law (FIL).

17 D. BikeCaffe was registered with the Commissioner pursuant to Corporations Code
18 section 31111 to offer and sell franchises from November 10, 2011 through April 20, 2012 under its
19 first registration, and from August 21, 2012 through April 22, 2013 under its second registration.

20 E. On or around August 31, 2016, pursuant to Corporations Code sections 31406 and
21 31408, the Commissioner issued a Citation Including: Desist and Refrain Order; Assessment of
22 Administrative Penalties; and Order for Ancillary Relief (Order). The Order alleged violations of
23 Corporations Code sections 31110 (unlawful offer or sale of a franchise), 31200 and 311123
24 (willful omission of material fact and failure to notify the Commissioner), 31203 (violation of a
25 condition of the Commissioner to the effectiveness of the registration of the offer or sale of a
26 franchise), and 31201 (misrepresentations made during the offer or sale of a franchise).

27 F. On or around September 16, 2016, the Commissioner served the Order on
28 Respondents via certified mail at their last known business addresses on file. On or around October

1 20, 2016, Massetti, individually, and on behalf of BikeCaffe, timely requested an administrative
2 hearing regarding the Order by filing a Notice of Defense.

3 G. Currently, the administrative hearing on this matter, OAH Case No. 2016120760, is
4 scheduled to commence at 9:00 a.m. on September 21, 2017 at the Office of Administrative
5 Hearings located at 320 West Fourth Street, Suite 630, Los Angeles, California 90013.

6 H. It is the intention and desire of the Parties to resolve this matter without the necessity
7 of a hearing and/or other litigation.

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

10 **II.**

11 **TERMS AND CONDITIONS**

12 1. Purpose. This Settlement Agreement is entered into for the purpose of judicial
13 economy and expediency, and to avoid the expense of a hearing and possible further court
14 proceedings.

15 2. Finality of Order. Massetti and BikeCaffe each hereby withdraws their Notice of
16 Defense dated October 20, 2016 regarding the Order, which is incorporated herein by reference.
17 The Order shall be deemed final as to Massetti and BikeCaffe. Massetti and BikeCaffe neither
18 admit nor deny any violation of the Franchise Investment Law.

19 3. Effective Date. This Settlement Agreement shall become effective when signed by
20 the Parties and delivered via email to Sophia.Kim@dbo.ca.gov and
21 mkreutzer@HowardandHoward.com (Effective Date).

22 4. Restitution. Massetti and BikeCaffe shall pay to California consumers M
23 (M) and A (A) referenced in the Order, collectively, the amount of
24 \$24,000.00 (the Restitution Amount), as follows:

25 a. Respondents shall pay \$1,000.00 each to M and A, for a total of \$2,000.00,
26 which shall be due and payable on the Effective Date and delivered to the address provided by the
27 Department for M and A by no later than three business days following the Effective Date. The
28 remaining balance of \$22,000.00 shall be paid in monthly installments of \$1,000.00 each to M and

1 A, for a total of \$2,000.00, and each installment shall be delivered to the address provided by the
2 Department for M and A on the first business day of each month for the next 11 months.

3 Respondents will be deemed to have failed to make a payment if that payment is not delivered to M
4 or A within five (5) days after the first business day of the month. Respondents may pre-pay all or
5 any portion of the Restitution Amount at any time without penalty, and any such prepayment will
6 be credited toward (and deducted from) the next installment payment that is due (if any).

7 b. Respondents shall submit, contemporaneously with all payments to M and A,
8 notice and proof of payment to the Department via mail and email, addressed to the attention of:
9 Sophia C. Kim, Senior Counsel, Enforcement Division, Department of Business Oversight, 320
10 West Fourth Street, Suite 750, Los Angeles, California 90013, Sophia.Kim@dbo.ca.gov. To be
11 sufficient, each notice must contain: (i) a photocopy or picture of the checks made payable to M and
12 A; and (ii) a photocopy or picture of the postage-paid envelope for the mailing or delivery service.

13 c. Failure to make any monthly payment pursuant to paragraph 4 of this
14 Settlement Agreement shall be deemed a breach of this Settlement Agreement, resulting in any and
15 all remaining payments to be immediately due and payable each to M and A.

16 5. Administrative Penalty. For violations of the FIL, Massetti and/or BikeCaffe shall
17 pay to the Department an administrative penalty of \$2,500.00, which shall be received by the
18 Department within 30 days from the Effective Date. The penalty shall be made payable in the form
19 of a cashier’s check or Automated Clearing House deposit to the “Department of Business
20 Oversight,” and transmitted to:

21 ATTN: Accounting-Litigation
22 The Department of Business Oversight
23 1515 K Street, Suite 200
24 Sacramento, California 95814

25 Notice of payment shall be sent contemporaneously via mail and email to the
26 attention of: Sophia C. Kim, Senior Counsel, Enforcement Division, Department of Business
27 Oversight, 320 West Fourth Street, Suite 750, Los Angeles, California 90013,
28 Sophia.Kim@dbo.ca.gov.

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1 6. Remedy for Breach. Failure to submit payment of restitution and/or penalty shall
2 constitute breach of this Settlement Agreement and the Commissioner may proceed under
3 Corporations Code section 31406, subdivision (e) for the issuance of a judgment and order.

4 7. Waiver of Hearing Rights. Masetti and BikeCaffe each acknowledge their right to
5 an administrative hearing in connection with the Order and hereby waive the right to a hearing, and
6 to any reconsideration, appeal, or other right to review which may be afforded pursuant to the FIL,
7 the California Administrative Procedure Act, the California Code of Civil Procedure, or any other
8 provision of law. The Parties hereby agree that the Department shall file this Settlement Agreement
9 with the Office of Administrative Hearings and request that the administrative hearing for OAH
10 Case No. 2016120760, scheduled for September 21, 2017, be taken off the court’s calendar.

11 8. Future Actions by Commissioner. This Settlement Agreement may be revoked and
12 the Commissioner may pursue any and all remedies available under the law against Respondents if
13 the Commissioner later discovers that Respondents knowingly or willfully withheld information
14 used and relied upon in this Settlement Agreement.

15 9. Binding. This Settlement Agreement is binding on all heirs, assigns and/or
16 successors in interest.

17 10. Third Party Action. This Settlement Agreement does not create any private rights or
18 remedies against Respondents, create any liability for Respondents or limit defenses of
19 Respondents for any person or entity not a party to this Settlement Agreement.

20 11. Commissioner’s Duties. The Parties acknowledge and agree that nothing contained
21 in this Settlement Agreement shall operate to limit the Commissioner’s ability to assist any other
22 agency (city, county, state or federal) with any prosecution, administrative, civil or criminal,
23 brought by any such agency against Respondents or any other person based upon any of the
24 activities alleged in these matters or otherwise.

25 12. Full and Final Settlement. The Parties hereby acknowledge and agree that this
26 Settlement Agreement is intended to constitute a full, final and complete resolution of the Order and
27 that no further proceedings or actions will be brought by the Commissioner in connection with these
28 matters either under the CFIL or any other provision of law, excepting therefrom any proceeding or

1 action if such proceeding or action is based upon facts not presently known to the Commissioner or
2 which were knowingly concealed from the Commissioner by Respondents or is based upon failure
3 to abide by any of the terms in this Settlement Agreement.

4 13. Independent Legal Advice. Each of the Parties represents, warrants, and agrees that
5 it has received independent advice from its attorney(s) and/or representatives with respect to the
6 advisability of executing this Settlement Agreement.

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

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

23 16. No Presumption from Drafting. In that the Parties have had the opportunity to draft,
24 review and edit the language of this Settlement Agreement, no presumption for or against any party
25 arising out of drafting all or any part of this Settlement Agreement will be applied in any action
26 relating to, connected to, or involving this Settlement Agreement. Accordingly, the Parties waive
27 the benefit of Civil Code section 1654 and any successor or amended statute, providing that in cases
28 of uncertainty, language of a contract should be interpreted most strongly against the party who

1 caused the uncertainty to exist.

2 17. Waiver or Modification. The waiver of any provision of this Settlement Agreement
3 shall not operate to waive any other provision set forth herein, and any waiver, amendment and/or
4 change to the terms of this Settlement Agreement must be in writing and signed by the Parties.

5 18. Voluntary Agreement. Respondents enter into this Settlement Agreement
6 voluntarily and without coercion and acknowledge that no promises, threats or assurances have
7 been made by the Commissioner or any officer, or agent thereof, about this Settlement Agreement.

8 19. Notices. All communications regarding this Settlement Agreement shall be
9 addressed as follows:

10 To Respondents: Matthew J. Kreutzer, Esq.
11 Howard & Howard
12 3800 Howard Hughes #1000
Las Vegas, Nevada 89169

13 To the Commissioner: Sophia C. Kim
14 Senior Counsel, Enforcement Division
15 Department of Business Oversight
16 320 West 4th Street, Suite 750
Los Angeles, California 90013-2344

17 20. Counterparts. The Parties agree that this Settlement Agreement may be executed in
18 one or more separate counterparts, each of which when so executed, shall be deemed an original.
19 Such counterparts shall together constitute and be one and the same instrument. A facsimile or
20 scanned signature shall be deemed the same as an original signature.

21 21. Headings and Governing Law. The headings to the paragraphs of this Settlement
22 Agreement are inserted for convenience only and will not be deemed a part hereof or affect the
23 construction or interpretation of the provisions hereof. This Settlement Agreement shall be
24 construed and enforced in accordance with and governed by California law.

25 22. Public Record. Respondents hereby acknowledge that this Settlement Agreement is
26 a matter of public record.

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23. Authority to Execute. Each signator hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Settlement Agreement.

Dated: 5/18/17

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner

Dated: 5/15/17

BIKECAFFE FRANCHISING, INC., d.b.a. BikeCaffe Franchising, L.L.C., d.b.a. www.bikecaffe.com, d.b.a. BikeCaffe/Marley Franchise, d.b.a. BikeCaffe/Marley Coffee, d.b.a. The Franchise Builders, and d.b.a. BikeCaffe

By _____
RALPH MASSETTI
President and Chief Executive Officer

Dated: 5/15/17

By _____
RALPH MASSETTI
An Individual

APPROVED AS TO FORM:

Matthew J. Kreutzer, Esq.
Howard & Howard
Counsel for BIKECAFFE FRANCHISING, INC., and RALPH MASSETTI