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IN THE SUPERIOR COURT OF CALIFORNIA

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IN AND FOR THE COUNTY OF SACRAMENTO

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THE PEOPLE OF THE STATE OF
CALIFORNIA, by and through the CALIFORNIA
CORPORATIONS COMMISSIONER,

Case No.: 07AS04971

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CORPORATIONS COMMISSIONER,

COMPLAINT FOR INJUNCTIVE RELIEF;
CIVIL PENALTIES; AND ANCILLARY
RELIEF

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Plaintiff,

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vs.

VIOLATION OF CALIFORNIA
CORPORATIONS CODE SECTION 31110
(UNREGISTERED OFFER AND/OR SALE
OF FRANCHISES)

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OLA ROBERT HASSAN, an individual, JANET
PHIFER, an individual, OLA'S EXOTIC
COFFEE, INC., and DOES 1-10, inclusive.

VIOLATION OF CALIFORNIA
CORPORATIONS CODE SECTION 31203
(VIOLATION OF CALIFORNIA
CORPORATIONS COMMISSIONER'S
ORDER)

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Defendants.

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THE PEOPLE OF THE STATE OF CALIFORNIA, by and through Preston DuFauchard,
California Corporations Commissioner, acting to protect the public from fraudulent and unregistered
franchise offers and sales, brings this action in the public interest and alleges as follows:

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VENUE AND JURISDICTION

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1. The California Corporations Commissioner ("Commissioner") brings this action to
enjoin the defendants from violating the Franchise Investment Law ("FIL") (Cal. Corp. Code sec.
27 31400), to enjoin Defendants from violating an order of the Commissioner (Cal. Corp. Code sec.
28

1 31203), and to request necessary civil penalties and ancillary relief (Cal. Corp. Code sec. 31405).

2 2. The Commissioner brings this action pursuant to California Corporations Code
3 sections 31400, 31405 and Government Code section 11180 *et seq.*, in his capacity as head of the
4 California Department of Corporations (“Department”).

5 3. The Defendants, Ola Robert Hassan, individually and in his capacity as Chief
6 Executive Officer, President, and/or Chairman of the Board of Ola’s Exotic Coffee, Inc., Janet Phifer,
7 individually and in her capacity as Marketing Director of Ola’s Exotic Coffee, Inc., and Ola’s Exotic
8 Coffee, Inc., itself, have offered and/or sold and continue to offer and/or sell unregistered franchises
9 within Sacramento County, California and throughout the state. Sacramento, California is listed as a
10 future location for a store on the company website, along with eight other California locations. The
11 violations of law described herein have occurred and will continue to occur within Sacramento
12 County, California and throughout the state unless enjoined.

13 **DEFENDANTS**

14 4. Ola Robert Hassan (“Hassan”), a natural person, individually and in his capacity as
15 CEO, President and Chairman of the Board of Ola’s Exotic Coffee, Inc., maintains business
16 addresses of 1477 N. Milpitas Road, Milpitas, California, 95035 and 187 S. Main Street, Milipitas,
17 California, 95035.

18 5. Janet Phifer (“Phifer”), a natural person, individually and in her capacity as Marketing
19 Director for Ola’s Exotic Coffee, Inc., maintains business addresses of 3422 W. Hammer Lane,
20 Stockton, California, 95205 and 605 N. El Dorado Street, Stockton, California, 95202. Phifer may
21 also have offices at Ola’s Exotic Coffee, Inc.’s business addresses, infra, as well.

22 6. Ola’s Exotic Coffee, Inc. (“Ola’s Coffee”), is a corporation registered with the
23 California Secretary of State on January 28, 2004. Ola’s Coffee’s business addresses are 1477 N.
24 Milpitas Road, Milpitas, California, 95035 and 187 S. Main Street, Milpitas, California, 95035. The
25 registered agent for service for Ola’s Coffee is Hassan.

26 7. Defendants sued herein under the fictitious names Does 1 through 10, inclusive, are
27 unknown to plaintiff who therefore sues such defendants by such fictitious names, pursuant to the
28 provisions of Code of Civil Procedure section 474. The Commissioner asks leave of the court to

1 amend the Complaint and allege the true names and capacities of such defendants at such time as the
2 same have been ascertained.

3 8. The defendants named as officers, directors, agents or employees, acted in such
4 capacities in connection with the acts, practices and schemes of business set forth below.

5 9. Whenever any allegation is made in the Complaint to "Defendants" doing any act, the
6 allegation shall mean the act of each defendant and corporate entity defendants doing said act, or that
7 the acts done were authorized by the officers, directors, agents and employees of the business entity
8 defendant while actively engaged in the management, direction or control of the affairs of the
9 business entity defendant, and while acting within the course and scope of their employment.

10 **STATEMENT OF FACTS**

11 10. On August 5, 2004, Defendants filed an application with the Department to register a
12 franchise offering under California Corporations Code section 31111. On November 16, 2004, the
13 Department granted the application, with the registration effective through April 20, 2005. The
14 Department instructed Defendants to file for registration renewal no later than 15 days prior to April
15 20, 2005.

16 11. On April 20, 2005, Defendants filed another application with the Department for
17 registration of the offer and sale of franchises under California Corporations Code section 31111. On
18 February 2, 2006, the application was deemed abandoned by the Department. Defendants have made
19 no further effort to register their on-going franchise offers and or sales here in California. Therefore,
20 Defendants have not successfully registered their franchise offerings or sales in California, nor had a
21 valid registration to offer or sell franchises in and from the State of California since April 20, 2005.

22 12. On July 14, 2006, a representative of the Department spoke directly with Defendant
23 Hassan and Defendants' counsel because Defendants' website, www.olascorner.com, was clearly
24 offering unregistered franchises for sale in and from the State of California in violation of the FIL.
25 Hassan stated the franchise offering was in a holding pattern awaiting state approval, which required
26 the submission of audited financial statements. The Department's representative told both Hassan
27 and counsel to remove the illegal offer of franchises from the website until the offering was lawfully
28 registered. Within a week, the illegal offering of franchises for sale was completely removed from

1 the website at www.olascorner.com.

2 13. On January 11, 2007, the website www.olascorner.com was again offering Ola's
3 Coffee franchises for sale. However, neither Ola's Coffee nor Hassan had registered the offering with
4 the Department during the interim time period, making the offers and/or sales illegal.

5 14. On February 22, 2007, a representative of the Department "shopped" the website to
6 see if illegal, unregistered franchises were indeed being offered by Defendants. The Department's
7 representative contacted Hassan directly via his cell phone. Hassan offered a franchise for sale in the
8 Sacramento area for a franchise fee of either \$79,000 for a coffee shop or \$49,000 for a coffee cart.
9 Hassan explained the franchise fee would cover all equipment, inventory, marketing materials,
10 training, and initial start-up support. Hassan further promised there were no on-going franchise fees
11 or advertising fees to be paid to the franchisor after the initial fee. Hassan stated that a uniform
12 franchise offering circular ("UFOC") was available. Hassan directed the Department's representative
13 to call the office and speak to Phifer.

14 15. Later that same day, February 22, 2007, the Department's representative spoke to
15 Phifer (Jphifer@olascorner.com). He inquired about the UFOC and expressed interest. After a series
16 of e-mails, on March 8, 2007, Phifer sent the Department's representative a copy of Ola's UFOC.
17 The UFOC was an offer for the sale of an Ola's Coffee franchise. However, contrary to Hassan's
18 earlier representations, the UFOC called for on-going royalty fees, training fees, and fees for
19 advertising as part of the franchisee's financial obligations to the franchisor, Ola's Coffee.

20 16. On March 19, 2007, the Commissioner issued a Desist and Refrain Order to Ola's
21 Coffee and Hassan (individually and as President and CEO of Ola's Coffee), Phifer (as the Director
22 of Marketing), and Bill Diamond (an Ola's Coffee Board of Director's Member) finding that
23 unregistered offers of franchises were being made and ordering those identified individuals and
24 entities to desist and refrain from offering or selling illegal unregistered franchises in California.

25 17. The Desist and Refrain Order was personally served on Hassan on July 24, 2007, in
26 his individual and corporate capacities. It was personally served on Phifer on July 24, 2007. It was
27 personally served on Bill Diamond on July 31, 2007.

28 18. California Corporations Code section 31402 allows a "person" to whom a Desist and

1 Refrain Order was directed 60 days within which to request a hearing to challenge the
2 Commissioner’s findings and order. None of the “persons” served with the Desist and Refrain Order
3 in this case requested such a hearing. Section 31402 provides that a Desist and Refrain Order is
4 deemed a final order, not subject to review by any court or agency, if a person subject to the order
5 fails to request a hearing within the statutory time period. Thus, the Desist and Refrain Order became
6 final as to Hassan and Phifer on September 23, 2007, and against Diamond, who is not a party to this
7 case, no later than September 29, 2007.

8 19. On September 24, 2007, <http://www.olascorner.com/> was offering “Distributor”
9 territories. Under California Corporations Code section 31005, the Distributor territories constitute
10 franchises.

11 20. The website <http://www.olascorner.com/> is registered to Hassan, at 167 South Main
12 Street, Milpitas, California, 95035.

13 21. As of October 4, 2007, and continuing to the present date, Defendants, and each of
14 them, continue to illegally offer through their website, both the “Distributorships” described above,
15 as well as the coffee shop and cart franchises Defendants were offering before the Desist and Refrain
16 Order was issued, served, and became final. The site map index on the website indicates that
17 Franchise opportunities are available under the Business Opportunities section of the site. Several
18 pull-down menus direct the general public to the Franchise Opportunity section of Ola’s Coffee’s
19 website.

20 **FIRST CAUSE OF ACTION**
21 (Against all Defendants)

22 OFFERING AND/OR SELLING UNREGISTERED FRANCHISES IN CALIFORNIA IN
23 VIOLATION OF CORPORATIONS CODE SECTION 31110

24 22. Plaintiff incorporates by reference each and every allegation of paragraphs 1 through
25 21 as if fully set forth herein.

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23. California Corporations Code section 31110 provides:

On and after April 15, 1971, it shall be unlawful for any person to offer or sell any franchise in this state unless the offer of the franchise has been registered under this part or exempted under Chapter 1 (commencing with Section 31100) of this part.[¹]

24. California Corporations Code section 31005 defines a “Franchise,” in relevant part as:

(a) "Franchise" means a contract or agreement, either expressed or implied, whether oral or written, between two or more persons by which:

(1) A franchisee is granted the right to engage in the business of offering, selling or distributing goods or services under a marketing plan or system prescribed in substantial part by a franchisor; and

(2) The operation of the franchisee's business pursuant to such plan or system is substantially associated with the franchisor's trademark, service mark, trade name, logotype, advertising or other commercial symbol designating the franchisor or its affiliate; and

(3) The franchisee is required to pay, directly or indirectly, a franchise fee.[²]

25. California Corporations Code section 31013, subsections (a) and (b) describe when an offer and/or a sale of a franchise occurs within this state:

(a) An offer or sale of a franchise is made in this state when an offer to sell is made in this state, or an offer to buy is accepted in this state, or, if the franchisee is domiciled in this state, the franchised business is or will be operated in this state.

(b) An offer to sell is made in this state when the offer either originates from this state or is directed by the offeror to this state and received at the place to which it is directed. An offer to sell is accepted in this state when acceptance is communicated to the offeror in this state; and acceptance is communicated to the offeror in this state when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received at the place to which it is directed.

26. Defendants, and each of them, have and are continuing to illegally offer and sell franchises in the state of California without first having registered the offering with the Department pursuant to California Corporations Code section 31110.

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¹ Corporations Code section 31153 places the burden of proving an exemption or an exception from a definition upon the person claiming it.

² “Person,” “franchisee,” “franchisor,” “franchise fee,” are defined at Corporations Code sections 31015, 31006, 31007, and 31011, respectively.

1 30 as if fully set fourth herein.

2 32. California Corporations Code section 31203 provides that “[i]t is unlawful for any
3 person to violate any order of the commissioner . . .”^{3]}

4 33. On March 19, 2007, the Commissioner issued a Desist and Refrain Order to
5 Defendants, and each of them, ordering Defendants to desist and refrain from the illegal offer and
6 sale of unregistered franchises in the State of California.

7 34. The Order was served on Ola’s Coffee, Hassan, and Phifer on July 24, 2007, and on
8 all persons subject to the order no later than July 31, 2007.

9 35. Defendants failed to request a hearing to contest the Order.

10 36. By operation of law pursuant to Corporations Code section 31402, the Order became
11 final against the Defendants, and each of them, on September 23, 2007.

12 37. Defendants, and each of them, violated an order of the Commissioner in violation of
13 Corporations Codes section 31203 by maintaining their illegal offer of unregistered franchises on
14 their website (www.olascorner.com) not only past the date upon which Defendants, and each of them,
15 were served with the Commissioner’s Order, but also after the date upon which the Commissioner’s
16 Order became final, and up to the present.

17 38. Defendants’ pattern of conduct, as set out above, demonstrates the necessity for a
18 temporary, preliminary, and, ultimately, permanent injunctive relief, and an award of civil penalties
19 and ancillary relief to deter, restrain, and prevent such and similar acts in violation of the FIL. Unless
20 enjoined, Defendants will continue to violate section 31203 by violating the Order of the
21 Commissioner in this case.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, plaintiff prays for judgment against Defendants, and each of them, as follows:

- 24 1. For a Temporary Restraining Order, an Order of Preliminary Injunction, and,
25 ultimately, a Permanent Injunction restraining and enjoining Defendants from directly or indirectly:
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27 _____

28 ³ California Corporations Code section 31004 defines commissioner as the Commissioner of Corporations.

1 a. Violating Corporations Code section 31110 by making illegal, unregistered
2 franchise offers in the State of California;

3 b. Violating Corporations Code section 31203 by violating the Commissioner's
4 Desist and Refrain Order;

5 c. Removing, destroying, mutilating, concealing, altering, transferring, or
6 otherwise disposing of, in any manner, any books, records, documents, correspondence (whether
7 written or electronic), brochures, manuals, or other documents of any kind in the possession, custody
8 and control of the Defendants, and each of them, including but not limited to those pertaining to the
9 above referenced acts;

10 d. Transferring, changing, disbursing, selling, dissipating, converting, pledging,
11 assigning, foreclosing, or otherwise disposing of any real or personal property or assets in their
12 possession or under their control, which property or other assets are or were to be held for the benefit
13 of the Defendants' franchisees, licensees, or distributors, whether in trust or otherwise.

14 2. For judgment requiring Defendants, and each of them, to pay civil penalties to the
15 California Corporations Commissioner for each specific violation, in an amount of \$10,000 per
16 violation, for a total of \$60,000.00, or according to proof, pursuant to California Corporations Code
17 section 31405.

18 3. For a judgment of rescission, restitution, disgorgement, and damages in favor of any
19 franchisees requiring Defendants, and each of them, to return any franchise fees paid to Defendants,
20 and each of them, during the period of non-registration according to proof.

21 4. That Plaintiff recover its costs of suit herein.

22 5. For such other and further relief as the court may deem just and proper.

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24 DATED: November 6, 2007

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26 By: _____
27 ERIK BRUNKAL
28 Attorney for the Plaintiff