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

11 In the Matter of:	)	FIL ORG ID: 137991
)	
12 THE COMMISSIONER OF BUSINESS	)	CONSENT ORDER TO:
13 OVERSIGHT,	)	(1) DESIST AND REFRAIN FROM
	)	VIOLATIONS OF THE FRANCHISE
14 Complainant,	)	INVESTMENT LAW;
)	
15 v.	)	(2) PAY ADMINISTRATIVE PENALTIES;
)	
16 LA KAFFA INTERNATIONAL CO., LTD.	)	(3) FILE NOTICES OF VIOLATION; and
17 d.b.a. CHATIME USA, LLC,	)	(4) ANCILLARY RELIEF
)	
18 Respondent.	)	(Corp. Code §§ 31303, 31304, 31402,
	)	31406, and 31408)

20 This Consent Order is entered into between the Complainant, the Commissioner of Business
21 Oversight (Commissioner) as head of the Department of Business Oversight (Department), and the
22 Respondent, La Kaffa International Co., Ltd. d.b.a. Chatime USA, LLC (La Kaffa) (collectively,
23 the Parties), and is made with respect to the following:

24 **I.**
25 **Jurisdiction and Venue**

26 1. The Commissioner is authorized to administer and enforce the provisions of the
27 Franchise Investment Law (Corp. Code § 31000 *et seq.*) (FIL) and the rules and regulations
28 promulgated thereunder which control the registration, offer and sale of franchises in California.

1 10. On or around September 1, 2015, pursuant to California Code of Regulations, title
2 10, section 250.16, Chatime USA’s 2015 Renewal FDD was abandoned for Chatime USA’s failure
3 to respond to the Department’s comment letter and request for additional information issued on
4 March 5, 2015.

5 11. In or around June 2017, La Kaffa voluntarily submitted information to the
6 Department indicating that between July 2013 and August 2016 La Kaffa made unregistered,
7 nonexempt offers and sales of franchises, including a regional representation agreement for the
8 territory of the San Francisco Bay Area, in violation of Corporations Code section 31110.
9 Additionally, one unregistered offer of a franchise made on July 15, 2013 included the statement,
10 “Party A [La Kaffa] has complied with the laws, ordinances, rules, and regulations of the federal
11 and state governments or agencies bearing on the offering and sale of the franchise, including the
12 California Franchise Investment Law,” when in fact La Kaffa had not registered the offering as
13 required by the FIL, in violation of Corporations Code section 31201.

14 12. Between July 2013 and August 2016, La Kaffa, directly and/or through its
15 authorized regional representative for the territory of the San Francisco Bay Area, made
16 unregistered offers and sales of Chatime franchises to seven California entities or individuals.

17 13. The Department informed La Kaffa of its intent to order La Kaffa to: (1) desist and
18 refrain from (a) making unregistered, nonexempt offers or sales of franchises in California and (b)
19 offering or selling franchises that include an untrue statement of a material fact; (2) pay
20 administrative penalties for violations of the FIL; (3) file Notices of Violation; and (4) provide
21 ancillary relief to all seven known California Chatime franchisees (Enforcement Action).

22 14. La Kaffa indicated its intent to cooperate fully with the Department to remedy the
23 past violations indicated in the Enforcement Action and consent to the entry of this Consent Order.

24 15. It is the intention and desire of the parties to resolve this matter without the necessity
25 of a hearing and/or other litigation.

26 16. The Commissioner finds that this Consent Order is appropriate, in the public interest,
27 and consistent with the purposes fairly intended by the policy and provisions of the FIL.

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III.
Desist and Refrain Order and Citations

17. The Commissioner makes the following findings:

Corporations Code section 31110 states:

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.

Corporations Code section 31201 states:

It is unlawful for any person to offer or sell a franchise in this state by means of any written or oral communication not enumerated in Section 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.

Corporations Code section 31402 states, in relevant part:

If, in the opinion of the commissioner, the offer of any franchise is subject to registration under this law and it is being, or it has been, offered for sale without the offer first being registered, the commissioner may order the franchisor or offeror of that franchise to desist and refrain from the further offer or sale of that franchise unless and until the offer has been duly registered under this law

Corporations Code section 31406 states, in relevant part:

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

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

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

1 18. From in or around July 2013 through August 2016, La Kaffa, directly and/or through
2 its authorized regional representative for the territory of the San Francisco Bay Area, made
3 unregistered offers and sales of Chatime franchises to seven California entities or individuals
4 without exemption from the registration requirement, in violation of Corporations Code section
5 31110. Pursuant to Corporations Code section 31402, La Kaffa is hereby ordered to desist and
6 refrain from the further offer or sale of franchises in California unless and until the offers have been
7 duly registered under the FIL or are otherwise exempt.

8 19. On or around July 15, 2013, La Kaffa made an unregistered offer and sale of a
9 franchise that contained the following untrue statement of a material fact, in violation of
10 Corporations Code section 31201: “Party A [La Kaffa] has complied with the laws, ordinances,
11 rules, and regulations of the federal and state governments or agencies bearing on the offering and
12 sale of the franchise, including the California Franchise Investment Law.” Pursuant to
13 Corporations Code section 31406, La Kaffa is hereby ordered to desist and refrain from the further
14 offer or sale of franchises in California by means of any written or oral communication not
15 enumerated in Section 31200 which includes an untrue statement of a material fact or omits to state
16 a material fact necessary in order to make the statements made, in the light of the circumstances
17 under which they were made, not misleading.

18 20. Pursuant to Corporations Code section 31406, the Commissioner hereby issues to La
19 Kaffa a citation and assesses an administrative penalty of \$2,500.00 for each of seven violations of
20 Corporations Code section 31110 and one violation of Corporations Code section 31201, totaling
21 \$20,000.00.

22 21. The administrative penalty totaling \$20,000.00 shall be due within 10 days from the
23 effective date of this Consent Order, as defined in Paragraph 42 (Effective Date) and shall be made
24 payable to the Commissioner in the form of a cashier’s check or Automated Clearing House deposit
25 to the “Department of Business Oversight,” and transmitted to: Accounting – Enforcement
26 Division, Department of Business Oversight, 1515 K Street, Suite 200, Sacramento, California
27 95814, contemporaneously with notice of transmittal to Sophia C. Kim at Sophia.Kim@dbo.ca.gov.

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IV.
Ancillary Relief

Corporations Code section 31408, subdivision (a) provides, in relevant part:

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 . . . on behalf of the persons injured by the act or practice constituting the subject matter of the action, and the administrative law judge shall have jurisdiction to award additional relief . . .

22. From July 2013 through in or around August 2016, La Kaffa, directly and/or through its authorized regional representative for the territory of the San Francisco Bay Area, made unregistered offerings and sales of Chatime franchises to the following seven California individuals and entities (Franchisees):

- (1) Franchisee A (7/15/13, San Gabriel, CA)
- (2) Franchisee B (8/20/13, Hayward, CA)
- (3) Franchisee C (3/3/14, Arcadia, CA)
- (4) Franchisee D (8/5/15, Rowland Heights, CA)
- (5) Franchisee E (8/1/16, San Mateo, CA)
- (6) Franchisee F (8/4/16, San Jose, CA)
- (7) Franchisee G (9/1/14, Redwood City, CA)

23. Within 60 days of the Effective Date, La Kaffa shall submit to the Commissioner for review and approval proposed offer(s) to rescind any Chatime franchise agreement made pursuant to an unregistered offer and sale of a franchise (Rescission Offer(s)).

24. Within 10 days of the Commissioner’s approval of the Rescission Offer(s), La Kaffa shall serve each Franchisee with a copy of this Consent Order and the approved Rescission Offer(s).

25. Within 90 days of the Effective Date, La Kaffa shall submit to the Commissioner a proof of service of this Consent Order and the approved Rescission Offer(s) to each Franchisee (Proof of Service). Within 120 days of the Effective Date, La Kaffa shall submit to the Commissioner satisfactory documentation evidencing each Franchisee’s response to the Rescission

1 Offer. The Proof of Service and documentation of each Franchisee’s response shall be mailed to
2 the attention of: Sophia C. Kim, Senior Counsel, Enforcement Division, Department of Business
3 Oversight, 320 West 4th Street, Suite 750, Los Angeles, California 90013.

4 **V.**

5 **Notices of Violation Pursuant to Corporations Code Sections 31303 and 31304**

6 26. Within 60 days of the Effective Date, La Kaffa shall comply with the provisions of
7 Corporations Code sections 31303 and 31304 and California Code of Regulations, title 10, sections
8 310.303 and 310.304 by submitting to the Commissioner applications for Notices of Violation as
9 follows:

- 10 a. For violating Corporations Code section 31110, an application pursuant to
11 Corporations Code section 31303; and
- 12 b. For violating Corporations Code section 31201, an application pursuant to
13 Corporations Code section 31304.

14 27. La Kaffa shall submit the applications for the Notices of Violation, including an
15 updated franchise disclosure document, by mailing them to the attention of: Shohreh Aram, Senior
16 Counsel, Securities Regulation Division, Department of Business Oversight, 320 West Fourth
17 Street, Suite 750, Los Angeles, California 90013.

18 28. Within 10 days of the Commissioner’s approval of the Notices of Violation, La
19 Kaffa shall serve each Franchisee with approved Notice(s) of Violation.

20 **VI.**

21 **Additional Terms and Conditions**

22 29. Waiver. La Kaffa, through its execution of this Consent Order, acknowledges that it
23 was served with a copy of the Consent Order. La Kaffa acknowledges that the Commissioner is
24 ready, willing, and able to proceed with the Enforcement Action, and hereby waives the right to a
25 hearing, and to any reconsideration, appeal, or other right to review which may be afforded
26 pursuant to the FIL.

27 30. Final Order. La Kaffa expressly waives any requirement for the filing of an agency
28 pleading that may be afforded by Government Code section 11415.60, subdivision (b), the

1 Administrative Procedure Act, the Code of Civil Procedure, or any other provision of law. By
2 waiving such rights, La Kaffa effectively consents to this Consent Order becoming final.

3 31. Future Actions by the Commissioner. This Consent Order, and La Kaffa’s
4 compliance with it, may be considered as a factor in determining the approval of any future
5 application in accordance with the provisions of the FIL, or any other applicable law. Failure to
6 comply with the terms of this Consent Order will be grounds for the Commissioner’s denial of the
7 application or the revocation of any subsequently effective franchise registration.

8 32. Commissioner’s Duties. The parties hereby acknowledge and agree that nothing
9 contained in this Consent Order shall operate to limit the Commissioner’s ability to assist any other
10 agency (city, county, state or federal) with any prosecution, administrative, civil or criminal,
11 brought by any such agency against La Kaffa or any other person based upon any of the activities
12 alleged in these matters or otherwise.

13 33. Full and Final Settlement. The parties hereby acknowledge and agree that this
14 Consent Order is intended to constitute a full, final, and complete resolution of the Enforcement
15 Action and that no further proceedings or actions will be brought by the Commissioner in
16 connection with these matters either under the FIL, or any other provision of law, excepting
17 therefrom any proceeding or action to enforce compliance with the terms of this Consent Order, or
18 if such proceeding or action is based upon discovery of new and further violations of the FIL that
19 do not form the basis of this Consent Order, or which were knowingly concealed from the
20 Commissioner by La Kaffa.

21 34. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
22 interest.

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

26 36. Counterparts. The parties agree that this Consent Order may be executed in one or
27 more separate counterparts, each of which when so executed, shall be deemed an original. Such
28 counterparts shall together constitute and be one and the same instrument.

1 37. Waiver, Modification, and Qualified Integration. The waiver of any provision of
2 this Consent Order shall not operate to waive any other provision set forth herein. No waiver,
3 amendment, or modification of this Consent Order shall be valid or binding to any extent unless it is
4 in writing and signed by all of the parties affected by it.

5 38. Headings and Governing Law. The headings to the paragraphs of this Consent
6 Order are inserted for convenience only and will not be deemed a part hereof or affect the
7 construction or interpretation of the provisions hereof. This Consent Order shall be construed and
8 enforced in accordance with and governed by California law.

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

18 40. Presumption from Drafting. In that the parties have had the opportunity to draft,
19 review and edit the language of this Consent Order, no presumption for or against any party arising
20 out of drafting all or any part of this Consent Order will be applied in any action relating to,
21 connected to, or involving this Consent Order. Accordingly, the parties waive the benefit of Civil
22 Code section 1654 and any successor or amended statute, providing that in cases of uncertainty,
23 language of a contract should be interpreted most strongly against the party who caused the
24 uncertainty to exist.

25 41. Voluntary Agreement. La Kaffa enters into this Consent Order voluntarily and
26 without coercion and acknowledge that no promises, threats or assurances have been made by the
27 Commissioner or any officer, or agent thereof, about this Consent Order.
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42. Effective Date. This Consent Order shall become effective when signed by all parties and delivered by the Commissioner’s counsel by email to Respondents’ counsel at James.Hsu@squirepb.com.

43. Public Record. La Kaffa acknowledges that this Consent Order is a public record.

44. Authority to Execute. Each signator hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Consent Order.

Dated: 11/7/17

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner

Dated: 11/6/17

LA KAFFA INTERNATIONAL CO., LTD. d.b.a.
CHATIME USA, LLC

By _____
HENRY WANG a.k.a. YAO-HUI WANG
President and Founder

APPROVED AS TO FORM:

James Hsu, Esq.
Squire Patton Boggs (US) LLP
Counsel for LA KAFFA INTERNATIONAL CO., LTD.
d.b.a. CHATIME USA, LLC