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12 Attorneys for Complainant

13 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
14 OF THE STATE OF CALIFORNIA

15 In the Matter of:)	FIL ORG ID: 205881
)	
16 THE COMMISSIONER OF BUSINESS)	CITATION INCLUDING:
17 OVERSIGHT,)	
)	(1) DESIST AND REFRAIN ORDER
18 Complainant,)	
)	(2) ASSESSMENT OF ADMINISTRATIVE
19 v.)	PENALTIES
)	
20 PACIFIC EQUITY FOOD AND BEVERAGE,)	(3) CLAIM FOR ANCILLARY RELIEF
21 INC., doing business as ATTIBASSI,)	
)	
22 Respondent.)	(Corp. Code §§ 31406, 31408)
)	

23 JAN LYNN OWEN, the Commissioner of Business Oversight (Commissioner) finds the
24 following:

25 **I.**
26 **Introduction**

27 1. The Commissioner is responsible for administering and enforcing the California
28 Franchise Investment Law (FIL), and registering the offer and sale of franchises in California,
pursuant to Corporations Code Section 31000 et seq.

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1 10. In 2015 and 2016 and in connection with the offers and sales of the franchises, Pacific
 2 Equity made untrue statements of material facts or omitted to state a material fact, in violation of
 3 Corporations Code section 31201. The material misrepresentations and omission included, but were
 4 not limited to: overstating the profitability of the franchise; understating initial investment costs and
 5 expenses relating to consumables and equipment pricing; and exaggerating the success of the
 6 Attibassi franchise business model in California. Pacific Equity also promised a prospective
 7 franchisee a commercial loan to purchase a franchise in California, and after selling the franchise,
 8 Pacific Equity refused to provide the loan to the franchisee.

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 10 **III.**
 11 **Citations and Desist and Refrain Order**

- 12 11. Corporations Code Section 31406 provides:
- 13 (a) If, upon inspection or investigation, based upon a complaint or
 14 otherwise, the commissioner has cause to believe that a person is
 15 violating any provision of this division or any rule or order
 16 promulgated pursuant to this division, the commissioner may issue a
 17 citation to that person in writing describing with particularity the basis
 18 of the citation. Each citation may contain an order to desist and refrain
 19 and an assessment of an administrative penalty not to exceed two
 20 thousand five hundred dollars (\$2,500) per violation and shall contain
 21 reference to this section, including the provisions of subdivision (c).
 22 All penalties collected under this section shall be deposited in the State
 23 Corporations Fund.
 - 24 (b) The sanctions authorized under this section shall be separate from,
 25 and in addition to, all other administrative, civil, or criminal remedies.
 - 26 (c) If within 60 days from the receipt of the citation, the person cited
 27 fails to notify the commissioner that the person intends to request a
 28 hearing as described in subdivision (d), the citation shall be deemed
 final.
 - (d) Any hearing under this section shall be conducted in accordance
 with Chapter 5 (commencing with Section 11500) of Part 1 of
 Division 3 of Title 2 of the Government Code.
 - (e) After the exhaustion of the review procedures provided for in this
 section, the commissioner may apply to the appropriate superior court
 for a judgment in the amount of the administrative penalty and order

1 compelling the cited person to comply with the order of the
2 commissioner. The application shall include a certified copy of the
3 final order of the commissioner and shall constitute a sufficient
4 showing to warrant the issuance of the judgment and order.

5 12. Corporations Code section 31110 provides:

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

10 13. In or about November 2015, Pacific Equity offered franchises in California that were
11 subject to registration under the FIL without the offers first being registered or being exempt under
12 FIL.

13 14. Based upon the foregoing, the Commissioner finds that Pacific Equity Food and
14 Beverage, Inc., doing business as Attibassi, offered franchises in this state that are subject to
15 registration under the FIL without the offers first being registered or exempt, in violation of
16 Corporations Code section 31110. Pursuant to Corporations Code section 31406, Pacific Equity
17 Food and Beverage, Inc., doing business as Attibassi, is hereby cited and ordered to desist and
18 refrain from the further offer or sale of franchises unless and until the offers have been duly
19 registered under the FIL or are otherwise exempt.

20 15. Corporations Code section 31200 provides:

21 It is unlawful for any person willfully to make any untrue statement of
22 a material fact in any application, notice or report filed with the
23 commissioner under this law, or willfully to omit to state in any such
24 application, notice, or report any material fact which is required to be
25 stated therein, or fail to notify the commissioner of any material
26 change as required by Section 31123.

27 16. The FDD and registration application submitted to the Department in January 2016
28 overstated the profitability of the franchise and understated the initial investment costs and expenses.
29 Pacific Equity also failed to disclose to the Department that it had offered unregistered franchises in
30 California, in November 2015.

31 17. Based upon the foregoing, the Commissioner finds that Pacific Equity Food and
32 Beverage, Inc., doing business as Attibassi, willfully made untrue statements of material facts in an

1 application, notice, or report that it filed with the Commissioner, or willfully omitted to state in the
2 application, notice, or report material facts which were required to be stated, in violation of
3 Corporations Code section 31200. Pursuant to Corporations Code section 31406, Pacific Equity
4 Food and Beverage, Inc., doing business as Attibassi, is hereby cited and ordered to desist and
5 refrain from willfully making any untrue statement of a material fact in any application, notice, or
6 report filed with the Commissioner under the FIL, willfully omitting to state in any such
7 application, notice, or report any material fact which is required to be stated therein, or failing to
8 notify the commissioner of any material change as required by Corporations Code section 31123.

9 18. Corporations Code section 31201 provides:

10 It is unlawful for any person to offer or sell a franchise in this state by
11 means of any written or oral communication not enumerated in Section
12 31200 which includes an untrue statement of a material fact or omits to
13 state a material fact necessary in order to make the statements made, in
14 the light of the circumstances under which they were made, not
15 misleading.

16 19. In 2015 and 2016, Pacific Equity offered and sold franchises in California by means of
17 written or oral communications which included untrue statements of material facts or omitted to state
18 a material fact, including, but not limited to overstating the franchise profitability; understating
19 initial investment costs and expenses relating to consumables and equipment pricing; exaggerating
20 the success of the Attibassi franchise business model in California; and refusing to provide a
21 promised business loan to a franchisee.

22 20. Based upon the foregoing, the Commissioner finds that Pacific Equity Food and
23 Beverage, Inc., doing business as Attibassi, made untrue statements of material facts or omitted to
24 state a material fact, in connection with the offer and sale of franchises, in violation of Corporations
25 Code section 31201. Pursuant to Corporations Code section 31406, Pacific Equity Food and
26 Beverage, Inc., doing business as Attibassi, is hereby cited and ordered to desist and refrain from
27 further offer or sale of franchises by means of written or oral communications which include an
28 untrue statement of material fact or omit to state a material fact necessary in order to make the
statements made, in light of the circumstances under which they were made, not misleading.

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1 25. In light of the foregoing findings and pursuant to Corporations Code section 31408,
2 Pacific Equity Food and Beverage, Inc., doing business as Attibassi, is ordered to provide further
3 ancillary relief in that all franchisees that entered into an Agreement with Pacific Equity Food and
4 Beverage, Inc., doing business as Attibassi for a franchise in California, from January 1, 2015
5 through December 31, 2016, shall be afforded the right to rescind any contract for the purchase of
6 an Agreement.

7 26. Pacific Equity Food and Beverage, Inc., doing business as Attibassi, is hereby
8 ordered to pay restitution, in the amount of the full franchise fee collected for each Agreement, to
9 all California franchisees that entered into an Agreement with Pacific Equity Food and Beverage,
10 Inc., doing business as Attibassi from January 1, 2015 through December 31, 2016. Proof of
11 restitution payment shall be submitted to Counsel Afsaneh Eghbaldari, 1350 Front Street, Room
12 2034, San Diego, California 92101, within 60 days from the date of this order.

13 27. Pacific Equity Food and Beverage, Inc., doing business as Attibassi, shall provide the
14 Commissioner a report of the restitution, as set forth in paragraph 26, above, paid to each franchisee.
15 The report shall include the following for each and every unit and master franchisee: (i) franchisee's
16 name; (ii) the full franchise fee collected from the franchisee; (iii) restitution amount paid to the
17 franchisee; and (iv) date restitution payment was made to the franchisee. The report shall be
18 submitted to the Commissioner, within 60 days from the date of these orders.

19 28. Within 60 days from the date of these orders, all officers, directors, representatives
20 and persons employed by Pacific Equity Food and Beverage, Inc., doing business as Attibassi who
21 assist in preparing franchise registrations or who assist in franchise selling are hereby ordered to
22 attend 8 hours of remedial education, in the form of franchise law training courses offered by a
23 franchise law specialist certified with the State Bar of California, or courses offered by or through
24 the International Franchise Association. Within 60 days of these orders, Pacific Equity shall submit
25 proof of compliance to: Afsaneh Eghbaldari, Counsel, Enforcement Division, by email at:
26 affi.eghbaldari@dbo.ca.gov.

27 29. Within 60 days from the date of these orders, Pacific Equity Food and Beverage, Inc.,
28 doing business as Attibassi, shall comply with the provisions of Corporations Code section 31303

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and California Code of Regulations, title 10, section 310.303, by submitting to the Commissioner for review and approval a proposed notice of violation for violations of Corporations Code sections 31110, 31200 and 31201. The notice of violation must be mailed to the Securities Regulation Division, Department of Business Oversight, 320 West Fourth Street, Suite 750, Los Angeles, California 90013. Such notice, upon approval by the Department, shall be sent to all franchisees.

30. This order is necessary, in the public interest, for the protection of investors and franchisees and consistent with the purpose, policies and provisions of the Franchise Investment Law.

Dated: March 14, 2019
Sacramento, California

JAN LYNN OWEN
Commissioner of Business Oversight

By: _____
Mary Ann Smith
Deputy Commissioner
Enforcement Division