

1 **STATE OF WASHINGTON**  
2 **DEPARTMENT OF FINANCIAL INSTITUTIONS**  
3 **SECURITIES DIVISION**

4 IN THE MATTER OF DETERMINING )  
5 Whether there has been a violation of the )  
6 Franchise Investment Protection Act of ) Order No. S-16-1853-16-SC02  
7 Washington by: )  
8 ) STATEMENT OF CHARGES AND NOTICE OF INTENT  
9 David Baer, ) TO ENTER ORDER TO CEASE AND DESIST  
10 )  
11 Respondent. )  
12 )

13 **THE STATE OF WASHINGTON TO:** **David Baer**

14 **STATEMENT OF CHARGES**

15 Please take notice that the Securities Administrator for the state of Washington has reason to believe that  
16 Respondent David Baer has violated the Franchise Investment Protection Act of Washington, RCW 19.100 and that  
17 his violations justify the entry of an order of the Securities Administrator under RCW 19.100.248 against him to cease  
18 and desist from such violations. The Securities Administrator finds as follows:

19 **TENTATIVE FINDINGS OF FACT**

20 **I.**

21 1. Dine In 2Nite North America, Inc. ("Dine In 2Nite"), a related party, is a California corporation with  
22 its principal place of business in San Diego, California. Dine In 2Nite describes its business as "the first subscription  
23 based catering franchise, delivering freshly prepared gourmet meals for \$10 per day." On May 9, 2016, Dine In 2Nite  
24 was issued a Final Order to Cease and Desist from violations of the registration and violations sections of the  
25 Franchise Act of Washington by the Securities Administrator after a Statement of Charges and Notice of Intent to Issue  
an Order to Cease and Desist was issued to the company by the Administrator on March 29, 2016. On June 27, 2015,  
the State of California's Department of Business Oversight issued a Desist and Refrain Order against Dine In 2Nite  
North America, Inc. and Leo Kats for failing to comply with the California franchise offer and sale requirements and  
ordered the Respondents "to desist and refrain from the further offer or sale of franchise investments unless and until  
the offers have been duly registered under the Franchise Investment Law, or are exempt."

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2 2. From 2012 to 2013, Respondent David Baer was a master franchisee and franchisee of Dine In 2Nite.  
3 Baer's primary place of business was in Portland, Oregon.

4 **II.**

5 3. In 2012, David Baer entered into an agreement with Dine In 2Nite to act as its master franchisee in  
6 Oregon and southwest Washington. As the Dine In 2Nite master franchisee, David Baer marketed Dine In 2Nite  
7 franchises for sale and received a commission on the sale of a franchise. David Baer also provided ongoing assistance  
8 to Dine In 2Nite franchisees. In early 2013, David Baer caused to be published various advertisements for the sale of  
9 Dine In 2Nite franchises on Internet websites such as Craigslist, [www.franchiseinoregon.com](http://www.franchiseinoregon.com), and other sites. On  
10 [www.franchiseinoregon.com](http://www.franchiseinoregon.com), David Baer offered prospective franchisees the opportunity to purchase a Dine In 2Nite  
11 franchise in southwest Washington. David Baer published an advertisement stating that Dine In 2Nite was seeking  
12 franchisees in "...Vancouver, Camas and beyond."

13 4. In or about January or February, 2013 and, in response to Baer's Craigslist advertisement, a  
14 Washington resident ("Resident") contacted Baer about the purchase of a Dine In 2Nite franchise. Shortly thereafter,  
15 Dine In 2Nite emailed the Resident the Dine In 2Nite franchise disclosure document ("FDD") and franchise  
16 agreement. In exchange for an initial franchise fee and other fees, Dine In 2Nite offered the Resident the use of its  
17 names and marks, training, an operations manual and other marketing assistance. David Baer communicated with the  
18 Resident later to discuss the information in the FDD. On March 7, 2013, the Resident and Dine In 2Nite signed the  
19 franchise agreement. The Resident purchased a Dine In 2Nite franchise for an initial \$34,000 franchise fee. Dine In  
20 2Nite subsequently paid David Baer a commission for the Resident's purchase of the franchise.

21 **III.**

22 5. An online advertisement published by David Baer stated that Dine In 2Nite promised franchises a  
23 high return on investment, high income potential, and a predictable revenue model, but the advertisement failed to  
24 disclose material facts regarding the claim such as the basis and assumptions underlying and supporting the claim.  
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**IV.**

6. Respondent David Baer is not currently registered as a franchise broker to offer or sell franchises in the state of Washington and has not previously been so registered.

Based upon the above Tentative Findings of Fact, the following Conclusions of Law are made:

**CONCLUSIONS OF LAW**

**I.**

The offer or sale of the Dine In 2Nite franchise described above constitute the offer and/or sale of a franchise as defined in RCW 19.100.010(6), RCW 19.100.010(12), and RCW 19.100.010(17).

**II.**

Respondent David Baer offered and sold said franchise in violation of RCW 19.100.140 because he was not registered as a franchise broker with the state of Washington at the time of the offer and/or sale of Dine In 2Nite franchises to Washington residents.

**III.**

Respondent David Baer violated RCW 19.100.170, the "Violations" section of the Franchise Investment Protection Act, because he failed to provide prospective purchasers material information about the potential financial performance of the business, including, but not necessarily limited to, the basis and material assumptions underlying the claims made about potential performance.

**NOTICE OF INTENT TO ORDER THE RESPONDENT TO CEASE AND DESIST**

Based upon the above Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that David Baer, his agents and employees each shall cease and desist from violations of RCW 19.100.140 and RCW 19.100.170.

**AUTHORITY AND PROCEDURE**

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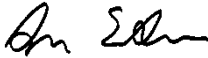
This Order is entered pursuant to the provisions of RCW 19.100.248 and is subject to the provisions of Chapter 34.05 RCW. David Baer may make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this order. If he does not request a hearing within the allowed time, the Securities Administrator intends to adopt the above Tentative Findings of Fact and Conclusions of Law as final and enter a permanent order to cease and desist.

Signed and Entered this 12th day of May, 2016.



William M. Beatty  
Securities Administrator

Approved by:



Suzanne Sarason  
Chief of Enforcement

Presented by:



Martin Cordell  
Financial Legal Examiner

Reviewed by:

Jack McClellan  
Financial Legal Examiner Supervisor