

ADMINISTRATIVE PROCEEDING  
BEFORE THE  
SECURITIES COMMISSIONER OF MARYLAND

IN THE MATTER OF: \*

**MAKE AND TAKE HOLDING, LLC,** \*

and \*

Case Number 2008-0433

**MICHELE BELLSO,** \*

Respondents, \*

\* \* \* \* \*

**ORDER TO SHOW CAUSE**

WHEREAS, the Securities Division of the Office of the Attorney General of Maryland (the "Division") initiated an investigation into the franchise-related activities of Make and Take Holding, LLC under the authority granted under the Maryland Franchise Registration and Disclosure Law, MD. BUS. REG. CODE ANN. §14-210 et seq. (2004 Repl. Vol. and Supp. 2008) (the "Maryland Franchise Law"); and

WHEREAS, as a result of that investigation, the Maryland Securities Commissioner (the "Commissioner") finds grounds to allege that Respondents Make and Take Holding, LLC and Michele Bellso violated the registration, disclosure, and antifraud provisions of the Maryland Franchise Law, in relation to the offer and sale of a Make and Take Gourmet franchise in Maryland;

NOW, THEREFORE, the Commissioner orders Respondents to show cause why a final order should not be entered ordering Respondents to cease and desist from violating the registration, disclosure, and antifraud provisions of the Maryland Franchise Law;

## **I. JURISDICTION**

1. The Commissioner has jurisdiction in this proceeding and over Respondents pursuant to section 14-210 (a) of the Maryland Franchise Law.

## **II. STATEMENT OF FACTS**

On information and belief, the Commissioner alleges the following:

### **A. Respondents**

2. Make and Take Holding, LLC (“Make and Take”) is a New York limited liability company with a principal place of business at 109 Twin Oaks Drive, Syracuse, New York 13206.

3. Make and Take offers and sells franchises for retail meal assembly businesses under the name “Make and Take Gourmet.”

4. Michele Bellso is the founder and president of Make and Take. Michele Bellso is involved in all aspects of the Make and Take Gourmet franchise operation, including marketing, offering and selling Make and Take Gourmet franchises to prospective franchisees.

5. Make and Take was registered with the Division to offer and sell franchises in Maryland for a one year period, from June 12, 2007 to June 12, 2008.

### **B. Unregistered Sale in Maryland**

6. In the Fall of 2006, Terri Morgan (“Morgan”), a Maryland resident, was exploring franchise opportunities. Morgan owned a second house in upstate New York that she and her husband visited on a regular basis. While in New York, Morgan observed a Make and Take Gourmet franchise being built near her house.

7. At the end of January 2007, Morgan visited the Internet website for Make and Take Gourmet and contacted the company by e-mail for franchise information. Jim Bellso, Michele

Bello's brother-in-law and a Make and Take employee, responded to Morgan's e-mail and also called Morgan by telephone to discuss the Make and Take Gourmet franchise opportunity. At that time, Make and Take was not registered to offer franchises in Maryland or in New York. Morgan advised Jim Bello that she intended to operate her franchise in Maryland.

8. During their initial telephone call, Morgan and Jim Bello discussed various aspects of the Make and Take Gourmet franchise opportunity.

9. On or about February 3, 2007, Morgan had a lunch meeting in Fayetteville, New York with Dave Menapace, Make and Take's Franchise Sales Manager. Then, Morgan and Dave Menapace toured a company-owned Make and Take Gourmet store located in Fayetteville, New York (the "Fayetteville Make and Take").

10. While visiting the Fayetteville Make and Take, Morgan also met with Michele Bello and David Bello, Michele Bello's husband. Morgan and Michele Bello discussed various details of the Make and Take franchise opportunity, including the business concept, the costs to open a franchise, build-out expenses, using contractors to construct the space, and finding an appropriate location.

11. During the visit to the Fayetteville Make and Take, Morgan advised Michele Bello and Dave Menapace that she intended to operate her franchise in Maryland.

12. Michele Bello also advised Morgan during her visit to the Fayetteville Make and Take that a franchise owner could earn "\$400 - \$500 a day" just in sales of "grab and go" meals. Grab and go meals are pre-packaged meals offered for sale at Make and Take Gourmet stores.

13. On February 7, 2007, Jim Bello took Morgan to visit a recently opened Make and Take franchised store in Camillus, New York. Morgan met with the owner of the Make and Take

franchise in Camillus and, with Jim Bellso present, talked to the owner about his Make and Take franchise.

14. Throughout the late Winter and Spring of 2007, Morgan had numerous meetings with Michele Bellso, Jim Bellso, and Dave Menapace to discuss Morgan's purchase of a Make and Take franchise. Michele Bellso and Dave Menapace advised Morgan that Make and Take was not yet registered to offer and sell franchises in Maryland, but she expected to have that registration completed soon. Michele Bellso and Dave Menapace also advised Morgan that Make and Take was developing a franchise disclosure document, then called a uniform franchise offering circular ("UFOC"), but that disclosure document that was not yet finalized.

15. Dave Menapace also advised Morgan that, although Make and Take had not yet completed the legal requirements to offer franchises in Maryland, Make and Take could enter into "operating agreements" for individuals to operate Make and Take Gourmet stores, and that owners could later convert those operating agreements to franchise agreements, once Make and Take completed its UFOC and registered its franchise offering.

16. In approximately February 2007, Morgan began looking for possible locations for a Make and Take Gourmet store in Anne Arundel County, Maryland. While Morgan was attempting to negotiate a lease for a potential Make and Take location in Severna Park, Maryland, the real estate agent for the landlord of that location asked Morgan for a "pro forma" for her new business. Morgan asked Dave Menapace whether he could help her with that pro forma.

17. On February 21, 2007, Dave Menapace sent Morgan, by e-mail, a document entitled One Year Revenue Projections for Make and Take Gourmet ("Revenue Projection"). The Revenue Projection that Dave Menapace sent to Morgan includes a column projecting "gross income" of

\$1,185,740 in one year, based on 70 meal preparation sessions per month with 10 people per session. The Revenue Projection also estimated food costs and other expenses, projecting an annual net income of \$287,596. Although the document included a notation “Please us [sic] this as a forecasting model and please try to put in your best estimate of exact expenses and revenue,” when Morgan received the document from Dave Menapace, all of the columns were filled in with numbers. A copy of the Revenue Projection, which Morgan saved on her personal computer, is attached to this Order to Show Cause as Exhibit 1.

18. In March 2007, a Make and Take representative directed Morgan to an article that appeared in the Central New York Business Journal about the Make and Take franchise opportunity. That article reported on the success of the Make and Take Gourmet concept in New York. The article quotes Michele Bellso as stating that “Make and Take’s Cicero location sells, on average, 3,000 meals per day,” and that “in December 2006, during the busy holiday season, sales increased to 6,000 meals per day.” The article also quotes David Bellso as stating that the Make and Take Gourmet store in Cicero, New York expected that year to “generate annual revenue of \$1.2 million to \$1.5 million.”

19. On March 15, 2007, Make and Take filed an initial franchise registration application with the Division and, simultaneously, with other franchise registration states. On April 12, 2007, a franchise examiner sent Make and Take a comment letter on behalf of the Division outlining numerous deficiencies that Make and Take had to resolve before Make and Take’s franchise registration could be made effective in any state. In that April 12, 2007 deficiency letter, the Division notified Make and Take that on the basis of the franchisor’s financial information the Commissioner had determined, as a condition of granting Make and Take’s franchise registration

in Maryland, that all fees paid by Maryland franchisees should be held in escrow, or deferred, pending satisfaction of all of the franchisor's material pre-opening obligation to the franchisee.

20. In May 2007, Dave Menapace advised Morgan that she must pay her franchise fee in order for Make and Take representatives to keep talking with her about a Make and Take franchise opportunity.

21. On May 11, 2007, Morgan paid a \$30,000 franchise fee to Make and Take towards her purchase of a Make and Take Gourmet franchise. At that time, Dave Menapace gave Morgan a UFOC for the Make and Take Gourmet franchise offering. The UFOC that Dave Menapace gave Morgan on May 11, 2007 had not been registered by the Division for use in Maryland and did not contain all of the disclosure information the Division required in a UFOC to be used in Maryland.

22. On May 11, 2007, Dave Menapace signed a document in which Make and Take Gourmet acknowledged the receipt of Morgan's \$30,000 franchise fee. The document stated "This franchise fee is payment in advance of the signing of the Make and Take Gourmet Franchise Agreement. This constitutes full payment for the franchise fee only. All other fees, excluding the franchise fee, will be collected at the time the Make and Take Gourmet Franchise Agreement is executed between Make and Take Gourmet [and] Terri Morgan. Make and Take Gourmet agrees to refund the franchise fee in the event that Make and Take Gourmet Franchise Agreement is not signed by Terri Morgan."

23. On June 12, 2007, Make and Take received notification that, as of that date, Make and Take was registered in all franchise registration states, including New York and Maryland.

24. On June 26, 2007, Morgan signed a lease for a proposed Make and Take franchise location in Pasadena, Maryland.

25. In June 2007, Morgan received a second copy of a UFOC for the Make and Take franchise offering that was sealed and wrapped in plastic. She compared this UFOC with the version she received in May and noticed several differences, including the fact that the earlier version she received in May 2007 did not include the statement that, in Maryland, the Commissioner required Make and Take to defer receipt of all initial fees and payments from franchisees until Make and Take completed its material pre-opening obligations to Maryland franchisees.

26. On July 7, 2007, Morgan signed a Franchise Agreement with Make and Take to operate a Make and Take Gourmet franchise to be located in Pasadena, Maryland.

27. Morgan signed her Make and Take Franchise Agreement as principal of TMORGAN4, LLC, an entity she formed for the purpose of operating a Make and Take Gourmet franchise.

28. Morgan opened her Make and Take Gourmet franchise business on November 23, 2007. After operating a year, Morgan has not begun to approach the revenue figures represented in the Revenue Projection that Dave Menapace sent to her.

29. Morgan has never earned anything close to \$400 - \$500 a day in sales of grab and go meals at her Make and Take Gourmet franchise.

### **C. Unlawful Financial Performance Representation**

30. In the UFOC that Make and Take registered with the Division, and in the UFOCs that Make and Take delivered to Morgan, under the section entitled Item 19, Earnings Claim, Make and Take included a disclaimer that Make and Take “does not furnish or authorize its salespersons to furnish any oral or written information concerning the actual or potential sales, costs, income or profits of a Make and Take Gourmet store. Actual Results vary from unit to unit and we cannot

estimate the results of any particular franchise.”

31. During all times relevant to this action, the Make and Take UFOC did not include any disclosure or substantiation of the Revenue Projections delivered to Morgan.

32. During all times relevant to this action, the Make and Take UFOC did not include any disclosure or substantiation of the representation by Michele Bellso that a franchise owner could earn “\$400 - \$500 per day” just in sales of grab and go meals.

**COUNT ONE**  
**AGAINST ALL RESPONDENTS**  
(Violation of Registration Provisions)

WHEREAS, section 14-228 of the Maryland Franchise Law makes it unlawful for any person to offer or sell a franchise in Maryland or to a Maryland resident unless the offering has been registered with the Commissioner before the person offers to sell, through advertisement or otherwise, or sells the franchise in Maryland; and

WHEREAS, Respondents offered and sold a franchise in Maryland without registering the offering with the Commissioner;

NOW, THEREFORE, IT IS HEREBY ORDERED that Respondents show cause why they should not be ordered to permanently cease and desist from the offer and sale of franchises in violation of the registration provisions of section 14-228 of the Maryland Franchise Law.

**COUNT TWO**  
**AGAINST ALL RESPONDENTS**  
(Violation of Disclosure Provisions)

WHEREAS, section 14-223 of the Maryland Franchise Law makes it unlawful for any person to offer or sell a franchise in Maryland or to a Maryland resident without first giving a prospective

franchisee a copy of the offering prospectus and a copy of each proposed agreement that relates to the sale of the franchise at the earlier of: (1) the first personal meeting of the franchisor and the prospective franchisee to discuss the possible sale of the franchise; or (2) 10 business days before the execution of a contract or payment of any consideration that relates to the franchise relationship; and

WHEREAS, under section 14-216 (a) and COMAR 02.02.08.04, the “offering prospectus” that a franchisor must give to a prospective franchisee is the Franchise Disclosure Document that is registered by the Division; and

WHEREAS, Respondents offered and sold at least one franchise in Maryland without giving that prospective Maryland franchisee, at the first personal meeting or 10 business days before payment of consideration, a copy of the offering prospectus required under the Maryland Franchise Law related to her franchise purchase;

NOW, THEREFORE, IT IS HEREBY ORDERED that Respondents show cause why they should not be ordered to permanently cease and desist from the offer and sale of franchises in violation of the disclosure provisions of section 14-223 of the Maryland Franchise Law.

**COUNT THREE**  
**AGAINST ALL RESPONDENTS**  
(Unlawful Earnings Claims)

WHEREAS, section 14-229 of the Maryland Franchise Law and COMAR 02.02.08.16(D) prohibit any person, in connection with the offer or sale of a franchise, directly or indirectly, to make any oral or written statements concerning the potential earnings from operation of a franchise (“Earnings Claim”) if that Earnings Claim has not been included in the franchise disclosure

document required to be filed with the Commissioner; and

WHEREAS, Respondents made Earnings Claims about the Make and Take franchise offering to a prospective Maryland franchisee, but Respondents did not include the required disclosure about those Earnings Claims, or any Earnings Claim, in the franchise disclosure document required to be filed with the Commissioner;

NOW THEREFORE, IT IS HEREBY ORDERED, that Respondents show cause why a final order should not be issued against them directing them to permanently cease and desist from the offer and sale of franchises in violation of the antifraud provisions of section 14-229 of the Maryland Franchise Law and COMAR 02.02.08.16(D).

**COUNT FOUR**  
**AGAINST ALL RESPONDENTS**  
(Misrepresentation in connection with the offer or sale of franchises)

WHEREAS, section 14-229 of the Maryland Franchise Law prohibits any person, in connection with the offer or sale of a franchise, directly or indirectly, to employ a device, scheme or artifice to defraud; make any untrue statement of a 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; or engage in any act, practice, or course of business which operates or would operate as a fraud or deceit on any person; and

WHEREAS, Respondents made material misrepresentations of fact and/or omissions of material fact about the Make and Take franchise offering by making Earnings Claims to a prospective Maryland franchisee without disclosing the factual bases and material assumptions behind those Earnings Claims and without otherwise complying with the Maryland Franchise Law

for disclosing an Earnings Claim; and

WHEREAS, Respondents made material misrepresentations of fact about the Make and Take franchise offering by including a disclosure in Item 19 of its franchise disclosure document distributed to a prospective Maryland franchisee that it makes no Earnings Claims about the Make and Take franchise offering when, in fact, Respondents did make Earnings Claims about the Make and Take franchise offering; and

WHEREAS, Make and Take offered and sold a franchise to a prospective Maryland franchisee, but Make and Take omitted to advise that prospective franchisee, at the time of accepting her \$30,000 franchise fee, that the Commissioner required that all fees and payments received by Make and Take from prospective Maryland franchisees should be placed in an escrow account, or deferred, pending satisfaction of the franchisor's material pre-opening obligations to the franchisee;

NOW, THEREFORE, IT IS HEREBY ORDERED that Respondents show cause why they should not be ordered to permanently cease and desist from the offer and sale of franchises in violation of the antifraud provisions of section 14-229 of the Maryland Franchise Law.

**COUNT FIVE**  
**AGAINST RESPONDENT MAKE AND TAKE ONLY**  
(Untrue Statement in Application to the Securities Division)

WHEREAS, section 14-231 of the Maryland Franchise Law prohibits a person from making or causing to be made an untrue statement of a material fact, or to omit to state a material fact in an application for registration, amendment of a registration, or renewal of a registration, or in a notice or report filed with the Commissioner; and

WHEREAS, in a registration application filed with the Commissioner, Respondent Make and

Take has represented, in pertinent part that it “does not furnish or authorize its salespersons to furnish any oral or written information concerning the actual or potential sales, costs, income or profits of a Make and Take Gourmet store. Actual results vary from unit to unit and we cannot estimate the results of any particular franchise”; and

WHEREAS, Make and Take’s representation in its franchise disclosure document that it does not make oral or written representations about sales, costs, income or profits that prospective franchisees could expect from operating a Make and Take Gourmet franchise is untrue, as Make and Take has made to a prospective Maryland franchisee both oral and written representations about the revenue, sales or profit that a prospective Make and Take franchisee could expect to earn from operating a Make and Take Gourmet franchise;

NOW THEREFORE, IT IS HEREBY ORDERED, that Respondent Make and Take show cause why a final order should not be issued against it directing it to permanently cease and desist from the offer and sale of franchises in violation of section 14-231 of the antifraud provisions of the Maryland Franchise Law.

**REQUIREMENT OF ANSWER AND  
NOTICE OF OPPORTUNITY FOR HEARING**

IT IS FURTHER ORDERED, pursuant to section 14-210 of the Maryland Franchise Law and COMAR 02.02.06.06, that Respondents shall file with the Commissioner a written Answer to this Order within fifteen days of service of the Order. The Answer shall admit or deny each factual allegation in the Order and shall set forth affirmative defenses, if any. A respondent without knowledge or information sufficient to form a belief as to the truth of an allegation shall so state.

The Answer also shall indicate whether a respondent requests a hearing. A hearing will be scheduled in this matter if one is requested in writing. Failure by any respondent to file a written request for a hearing in this matter shall be deemed a waiver by that respondent of the right to such a hearing. Failure of any respondent to file an Answer, including a request for a hearing, shall result in entry of a final order directing Respondents to permanently cease and desist from violation of the Maryland Franchise Law.

**SO ORDERED:**

**Commissioner's Signature is  
on File with Original Document**

Dated: December 3, 2008

MELANIE SENTER LUBIN  
SECURITIES COMMISSIONER