

1 PRESTON DuFAUCHARD
California Corporations Commissioner
2 WAYNE STRUMPFER
Deputy Commissioner
3 ALAN S. WEINGER (CA BAR NO. 86717)
Lead Corporations Counsel
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6 San Francisco, CA 94105-2908
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8 Attorneys for Complainant
CALIFORNIA DEPARTMENT
9 OF CORPORATIONS

10 BEFORE THE DEPARTMENT OF CORPORATIONS
11 OF THE STATE OF CALIFORNIA
12

13 File No. 8319

14 In the Matter of THE COMMISSIONER OF
15 CORPORATIONS OF THE STATE OF
16 CALIFORNIA,

17 Complainant,

18 v.

19 F-19 Holdings, LLC;

20 Respondent
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**STIPULATION TO ENTRY OF DESIST
AND REFRAIN ORDER**

1 STIPULATION AND AGREEMENT

2 In resolution of an inquiry into the possible offer and sale of unregistered franchises within
3 the State of California, and without admitting or denying such activities, IT IS HEREBY
4 STIPULATED AND AGREED between F-19 Holdings, LLC (a Delaware limited liability
5 company, located at 17215 SE Wax Rd., Covington, Washington, 98042) ("F-19"), and the
6 Commissioner of Corporations of the State of California ("Commissioner"), as follows:
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9 1. The Commissioner has alleged that F-19 offered unregistered and non-exempt franchises
10 in violation of the California Franchise Investment Law ("CFIL"), Corporations Code section 31000
11 et.seq. and specifically Corporations Code section 31110, which states in relevant part: "...it shall
12 be unlawful for any person to offer or sell any franchise in this state unless the offer of the franchise
13 has been registered under this part or exempted under Chapter 1...." It is the intent and
14 understanding between the Parties that this Stipulation and any inferences that may be drawn there
15 from shall not be binding or admissible against F-19 in any pending or future actions brought against
16 F-19 by third Parties.
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18 2. The Parties hereby acknowledge and agree that this Stipulation is intended to constitute a
19 full, final and complete resolution of the Desist and Refrain Order, referred to in Section 3 below.
20 The Parties also acknowledge and agree that nothing contained in this Stipulation shall operate to
21 limit the Commissioner's ability to assist any other agency, (county, state, or federal) with any
22 prosecution, administrative, civil or criminal, brought by any such agency against F-19 based upon
23 any of the activities alleged in these matters or otherwise.
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26 3. On April 15, 2008, the Commissioner shall issue an Order pursuant to California
27 Corporations Code section 31402 directing F-19 to desist and refrain from the offer and sale of
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State of California - Department of Corporations

1 unregistered, non-exempt franchises in the State of California. A true and correct copy of the order
2 is attached hereto as Exhibit A.

3 4. F-19 Holdings LLC, without admitting or denying such allegations seeks to resolve the
4 concerns of the Commissioner by entering into this Stipulation regarding the issuance of the Desist
5 and Refrain Order.
6

7 5. F-19 Holdings agrees, from the date of execution of this Stipulation, pursuant to
8 California Corporations Code section 31110, not to offer and/or sell franchises in the State of
9 California without registration, unless such franchises and/or offer and sale is exempt or not subject
10 to registration under Chapter 2, (commencing with section 31100 of the California Corporations
11 Code).
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13 6. F-19 Holdings, LLC, acknowledges that there are 26 "facilities" using the trademark and
14 trade name of "Fitness 19" located throughout California, and operating under the direction of F-19.
15 A list of the locations of these facilities is attached hereto as Exhibit B, and made a part hereof.
16

17 7. F-19 Holdings, LLC agrees, as of the effective date of this Stipulation that the opening of
18 any additional facilities within this State, and/or the addition of any new members to any local
19 operating Fitness 19 LLC which manages the respective individual facilities, shall only be
20 implemented in full compliance with the CFIL. The transfer of an equity interest in the Local LLC
21 by any existing member to a family member or trust controlled by the existing member shall not
22 constitute the addition of a new member to the local LLC. F-19 Holdings, LLC, further agrees to
23 comply with all exemption requirements of the CFIL as and where applicable and stipulates that F-
24 19 shall bear the burden of proving any exemption or exception from a definition set out in the
25 CFIL, as required by California Corporations Code section 31153.
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1 8. Subject to F-19 complying with the terms of this Stipulation and the Desist and Refrain
2 Order, F-19 may offer and sell franchises in the State of California, in compliance with the
3 California Franchise Investment Law.
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5 9. F-19 Holdings, LLC, hereby acknowledges that the Commissioner stands ready to grant a
6 hearing in relation to the above-mentioned Order. F-19 Holdings, LLC, understands it has a right to
7 a hearing with regard to that Order, as set out in Corporations Code section 31402.

8 10. F-19 Holdings, LLC, hereby voluntarily waives its right to a hearing in relation to the
9 Desist and Refrain Order against F-19 Holdings, LLC, for violations of California Corporations
10 Code section 31110, for the offer and sale of unregistered, non-exempt franchises in the State of
11 California. F-19 Holdings, LLC, further waives its right to any reconsideration, appeal, or other
12 rights which may be afforded pursuant to the Corporations Code, the California Administrative
13 Procedure Act, the California Code of Civil Procedure or any other provision of law in connection
14 with this matter.
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16 11. F-19 Holdings, LLC, agrees to pay the California Department of Corporations
17 administrative costs in the amount of \$20,000, (twenty-thousand dollars) due at the time of execution
18 of this Stipulation.
19

20 12. The Parties hereto further stipulate that if evidence of the continuing offer or sale of
21 unregistered, non-exempt franchises by F-19 Holdings, LLC, is discovered after the execution of
22 this Stipulation, the Commissioner may seek additional remedies against F-19. These remedies
23 include, but are not limited to, civil injunctive and ancillary relief and /or criminal prosecution as set
24 out in the relevant parts of the CFIL.
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26 13. Each of the Parties represents, warrants, and agrees that it has received independent legal
27 advice from its attorney(s) with respect to the advisability of executing this Stipulation.
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1 14. Each of the Parties represents, warrants, and agrees that in executing this Stipulation it
2 has relied solely on the statements set forth herein and the advice of its own counsel. Each of the
3 Parties further represents, warrants, and agrees that in executing this Stipulation it has placed no
4 reliance on any statement, representation, or promise of any other party, or any other person or entity
5 not expressly set forth herein, or upon the failure of any party or any other person or entity to make
6 any statement, representation, or disclosure of anything whatsoever. The Parties have included this
7 clause: (1) to preclude any claim that any Party was in any way fraudulently induced to execute this
8 Stipulation; and (2) to preclude the introduction of parol evidence to vary, interpret, supplement, or
9 contradict the terms of this Stipulation.
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12 15. This Stipulation is the final written expression and the complete and exclusive statement
13 of all the agreements, conditions, promises, representations, and covenants between the Parties with
14 respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements,
15 negotiations, representations, understandings, and discussions between and among the Parties, their
16 respective representatives, and any other person or entity, with respect to the subject matter covered
17 herein.
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19 16. In that the Parties have had the opportunity to draft, review and edit the language of this
20 Stipulation, no presumption for or against any Party arising out of drafting all or any part of this
21 Stipulation will be applied in any action relating to, connected to, or involving this Stipulation.
22 Accordingly, the Parties waive the benefit of California Civil Code section 1654 and any successor
23 or amended statute, providing that in cases of uncertainty, language of a contract should be
24 interpreted most strongly against the Party who caused the uncertainty to exist.
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26 17. This Stipulation may be executed in one or more counterparts, each of which shall be an
27 original but all of which, together, shall be deemed to constitute a single document.
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1 18. Each signatory hereto covenants that he/she possesses all necessary capacity and
2 authority to sign and enter into this Stipulation.

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5 Dated: April 15, 2008

PRESTON DuFAUCHARD
California Corporations Commissioner

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7 By: _____
8 ALAN S. WEINGER
9 Lead Corporations Counsel
10 California Department of Corporations

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13 For F-19 Holdings, LLC, by Its Members:

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16 _____
EARL WILSON

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18 _____
NICK MILAT

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21 _____
ROBERT LINEBERGER

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23 _____
JOHN HENRY (Attorney at Law)

EXHIBIT A

1 **STATE OF CALIFORNIA**
2 **BUSINESS TRANSPORTATION AND HOUSING AGENCY**
3 **DEPARTMENT OF CORPORATIONS**
4

5 TO: F-19 Holdings, LLC
6 17215 SE Wax Rd.
7 Covington, WA 98042

8 **DESIST AND REFRAIN ORDER**
9 **(For violations of section 31110 of the Corporations Code)**

10 The California Corporations Commissioner finds that:

11 1. F-19 Holdings, LLC ("F-19") is a Delaware limited liability company doing business in
12 California and located at 17215 SE Wax Rd., Covington, WA 98042.

13 2. F-19 Holdings, LLC has established retail exercise/gym facilities at 26 locations
14 throughout California, and has created a separate entity ("Local LLC") for the management and
15 operation of each facility. F-19 Holdings, LLC retains a controlling interest in each Local LLC and
16 control over operations of each local facility. Each facility uses the trademark and trade name
17 "Fitness 19" with the consent of F-19 and each Local LLC is granted the right to use the "Fitness 19"
18 service mark and related logos, trademarks, service marks, trade names, and other commercial
19 symbols in connection with the operation of their facilities. All of the "Fitness 19" facilities use the
20 same standard business model which features large, well lit facilities located in suburban locations
21 with a variety of exercise equipment and accessible parking. The monthly fee for retail members is
22 suggested at \$19 and each location is distinguished by the fact that there are minimal water facilities,
23 such as showers or spas, and each facility contains a childcare operation.

24 3. The Local LLC manager/operator receives an Operations Manual provided by F-19
25 containing suggested standards and operating procedures and marketing systems for each Fitness 19
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1 facility. F-19 Holdings, LLC provides set-up services, location selection advice and ongoing credit
2 enhancements and assistance to each Local LLC. Each Local LLC pays a fee, currently in the
3 amount of \$15,000 to F-19 upon the commencement of operations for these services and credit
4 enhancements. A revenue sharing and operating agreement is entered into between F-19 and the
5 members of the Local LLC, and accordingly a portion of the income generated by each Local LLC is
6 paid to F-19 on a monthly basis. Some, but not all of the Local LLC members have provided loans to
7 the Local LLC which F-19 repays at a fixed interest rate.
8

9
10 4. F-19 Holdings, LLC provides equity in the form of membership interests in the Local
11 LLC's to some manager/operators as incentives to maximize revenue.

12 5. The Commissioner has determined that the relationship between F-19 and each Local LLC
13 is a franchise, as defined in California Corporations Code 31005. These franchises were offered and
14 sold in this state.

15 6. The Department of Corporations has not issued a registration to F-19 or the Managers for
16 the offer or sale of "Fitness 19" franchises in this state.
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18 Based upon the foregoing findings, the California Corporations Commissioner is of the
19 opinion that F-19 Holdings, LLC, has offered and sold franchises in California that are subject to
20 registration under the California Franchise Investment Law, in violation of California Corporations
21 Code section 31110. Pursuant to section 31402 of the California Corporations Code, F-19 Holdings,
22 LLC, is hereby ordered to desist and refrain from the further offer or sale of "Fitness 19" franchises
23 unless and until the offers have been duly registered under the California Franchise Investment Law
24 or unless exempt.
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26 This Order is necessary, in the public interest, for the protection of franchisees and consistent
27 with the purposes, policies, and provisions of the Franchise Investment Law.
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Dated: April 15, 2008

PRESTON DuFAUCHARD
California Corporations Commissioner

By _____
ALAN S. WEINGER
Lead Corporations Counsel
Enforcement Division

EXHIBIT B

EXHIBIT "B"

	Company Name	Address	Phone Number
1	Fitness 19 CA 104, LLC	9620 Hageman Road, Suite B, Bakersfield, CA 93312	(661) 588-5519
2	Fitness 19 CA 105, LLC	3A Via Pico Plaza, San Clemente, CA 92672	(949) 369-1999
3	Fitness 19 CA 107, LLC	908 Rancho Parkway, Arroyo Grande, CA 93420	(805) 489-1908
4	Fitness 19 CA 109, LLC	76 Lake Blvd, Redding, CA 96003	(530) 243-1919
5	Fitness 19 CA 110, LLC	1190 W. Sixth Street, Corona, CA 92882	(951) 808-9919
6	Fitness 19 CA 111, LLC	141 W Foothill Suite C, Upland, CA 91786	(909) 608-1902
7	Fitness 19 CA 115, LLC	1060 E El Camino Real, Sunnyvale, CA 94087	(408) 984-1919
8	Fitness 19 CA 119, LLC	6823 Lonetree Blvd Ste 101, Rocklin, CA 95765	(916) 780-1919
9	Fitness 19 CA 120, LLC	2020 Club Center Dr. Ste. 100, Sacramento, CA 95835	(916) 928-7999
10	Fitness 19 CA 121, LLC	70 Peabody Road, Vacaville, CA 95867	(707) 447-1919
11	Fitness 19 CA 123, LLC	1350 S Park Victoria Dr, Suite 22, Milpitas, CA 95035	(408) 942-8819
12	Fitness 19 CA 125, LLC	6735 N Milburn Ave, Suite 100 Fresno, CA	(559) 261-4419
13	Fitness 19 CA 127, LLC	7845 Lichen Drive, Citrus Heights, CA 95621	(916) 727-1919
14	Fitness 19 CA 128, LLC	9580 Oak Ave Pkwy #12BC Folsom, CA 95630	(916) 989-0190
15	Fitness 19 CA 129, LLC	1853 Ygnacio Valley Road, Walnut Creek, CA 94598	(925) 935-1132
16	Fitness 19 CA 130, LLC	160 Market Place, San Ramon, CA 94583	(925) 327-1919
17	Fitness 19 CA 132, LLC	34448 Yucaipa Blvd, Yucaipa, CA 92399	(909) 797-6595
18	Fitness 19 CA 133, LLC	40758 Fremont Blvd, Fremont, CA 94538	(510) 656-1919
19	Fitness 19 CA 138, LLC	27742 Vista Del Lago Ste. J4, Mission Viejo, CA 92692	(949) 595-0800
20	Fitness 19 CA 154, LLC	7354 Stoney Creek Dr, Suite 1, Highland, CA 92346	(909) 425-1919
21	Fitness 19 CA 155, LLC	14075 Frederick Street, Moreno Valley, CA 92553	(951) 653-8454
22	Fitness 19 CA 161, LLC	23877 Clinton Keith Road Suite 2, Wildomar, CA 92595	(951) 696-4119
23	Fitness 19 CA 163, LLC	39022 Sky Canyon Drive, Suites 101-102, Murrieta, CA 92563	(951) 698-3333
24	Fitness 19 CA 179, LLC	2727 S El Camino Real, Suite D, San Mateo, CA 94403	(650) 212-1919
25	Fitness 18 CA 187, LLC	16080 Perris Blvd. Moreno Valley, CA 92551	
26	Fitness 19 CA 192, LLC	32655 S Hwy 79, Suite 100-110 Temecula, CA 92592	(951) 302-4747
*	Fitness 19 CA 010, LLC	4345 Sunrise Blvd, Fair Oaks, CA 95628	(916) 962-1900
**	Express Fitness CA 02, LLC	2311-BN Tracy Blvd, Tracy, CA 95376	(209) 836-8787 F-19
	* F-19 Holdings, LLC has no equity interest		
	** F-19 Holdings, LLC has no equity interest		