

STATE OF CALIFORNIA  
BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY  
DEPARTMENT OF BUSINESS OVERSIGHT

TO: Smart Fitness, LLC  
Culley Wayne Davis  
12227 South Business Park Drive, Suite 100  
Draper, Utah 84020  
  
<http://getspinx.com>

**DESIST AND REFRAIN ORDER**

**(For violations of section 25401 of the Corporations Code)**

The Commissioner of Business Oversight finds that:

1. At all relevant times, Smart Fitness, LLC (Smart Fitness) is a Nevada limited liability company and maintained an address at 12227 South Business Park Drive, Suite 100, Draper, Utah 84020. Smart Fitness operated and maintained an internet website located at <http://getspinx.com>.

2. At all relevant times, Culley Wayne Davis (Davis) was the CEO, president, founder, and manager of Smart Fitness.

3. Beginning on or about May 2015, Smart Fitness and Davis offered and sold securities to investors in the form of investment contracts called “membership interests” in Smart Fitness to at least one California resident.

4. Smart Fitness and Davis told investors that the investment funds would be used to market and sell fitness products created by Smart Fitness. To promote this investment opportunity, Smart Fitness and Davis hosted several promotional dinners in restaurants in Orange County, California. At the dinners, Smart Fitness and Davis presented information to potential investors regarding various fitness products Smart Fitness and Davis planned to sell.

5. In order to invest in Smart Fitness, each investor was told they would be required to sign: a “Subscription Agreement For Class A Membership Units”; an “Amended and Restated Operating Agreement”; and an “Accredited Investor Certification and Acknowledgment of Risk Factors”.

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1           6.       At least one California investor paid \$25,000.00 to Smart Fitness and Davis and in  
2 return, received a security in the form of an investment contract called “membership interests”,  
3 which represented the investor’s ownership in Smart Fitness.

4           7.       In connection with the offer and sale of these securities, Smart Fitness and Davis  
5 made, or caused to be made, misrepresentations of material fact or omitted to state material facts  
6 necessary in order to make the statements made, in the light of the circumstances under which they  
7 were made, not misleading. These misrepresentations and omissions included, but are not limited to  
8 the following:

9                   (a)       Smart Fitness and Davis misrepresented to members they would receive a  
10 quarterly report no later than 45 days after the close of each calendar quarter and an annual report no  
11 later than 90 days after the close of the fiscal year. Smart Fitness and Davis never provided quarterly  
12 reports, annual reports, or other financial statements as promised.

13                   (b)       Smart Fitness and Davis failed to disclose to members that Davis filed for  
14 bankruptcy twice. Davis filed for bankruptcy on July 28, 1981, in Salt Lake City, Utah (Case Number  
15 B-81-01736). Davis also filed for bankruptcy on March 6, 2002, in the District of Utah (Case Number  
16 02-23574).

17                   (c)       Smart Fitness and Davis failed to disclose to members that Davis signed a  
18 consent order on June 11, 1996, with the State of Idaho, Department of Finance in *State of Idaho v.*  
19 *Culley Wayne Davis* (Case Number CV OC 9602781D) Fourth Judicial District of Idaho. Davis  
20 admitted to violating the Idaho Securities Act, specifically Idaho Code §§ 30-1403(2) and (3), 30-  
21 1406, and 30-1416; and consented to a judgment permanently enjoining him from engaging in any  
22 acts, practices, or omissions that would constitute violations of the Idaho Securities Act.

23           Based on the foregoing findings, the Commissioner of Business Oversight is of the opinion  
24 that the securities offered by Smart Fitness, LLC and Culley Wayne Davis, were offered in this state  
25 by means of written or oral communications that included untrue statements of material fact or  
26 omitted to state material facts necessary in order to make the statements made, in the light of the  
27 circumstances under which they were made, not misleading, in violation of section 25401 of the  
28 Corporate Securities Law of 1968.

1 Pursuant to section 25532 of the Corporate Securities Law of 1968, Smart Fitness, LLC and  
2 Culley Wayne Davis, are hereby ordered to desist and refrain from offering or selling or buying or  
3 offering to buy any security in the State of California, including but not limited to, investment  
4 contracts, by means of any written or oral communication which includes an untrue statement of a  
5 material fact or omits to state a fact necessary in order to make the statements made, in the light of  
6 the circumstances under which they were made, not misleading.

7 This Order is necessary, in the public interest, for the protection of investors and consistent  
8 with the purposes, policies, and provisions of the Corporate Securities Law of 1968.

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10 Dated: February 14, 2018

JAN LYNN OWEN  
Commissioner of Business Oversight

11  
12 By: \_\_\_\_\_  
13 MARY ANN SMITH  
14 Deputy Commissioner  
15 Enforcement Division  
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