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10	BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT	
11	OF THE STATE OF CALIFORNIA	
12		EH ODG ID 100361
13	In the Matter of:) FIL ORG ID: 180261
14	THE COMMISSIONER OF BUSINESS)
	OVERSIGHT,	CITATION INCLUDING DESIST AND
15	Complainant,) REFRAIN ORDER)
16		
17	V	
18	FITNESS EVOLUTION FRANCHISING, LLC;)
19	CHRISTOPHER MADDOX,))
20	Respondents.	
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22	Manuel P. Alvarez, the Commissioner of Business Oversight (Commissioner), finds the	
23	following:	
24		I.
25	<u>Introduction</u>	
26	1. Fitness Evolution Franchising, LLC (Fitness Evolution) is a Delaware corporation	
27	with its principal place of business at 2144 Industrial Parkway, Silver Spring, Maryland, 20904.	
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	CITATION	

Fitness Evolution is in the business of establishing and operating fitness centers. The company maintains a website at www.fitnessevolution.com.

- 2. At all relevant times, Christopher Maddox (Maddox) is the co-founder and chief executive officer of Fitness Evolution.
- 3. The Commissioner as the chief officer of the Department of Business Oversight (Department) is responsible for administering and enforcing the California Franchise Investment Law (Corporations Code § 31000 et seq.).

II.

Statement of Facts

- 4. Since at least October 19, 2015, Fitness Evolution and Maddox (collectively, Respondents) have offered and sold franchises in California pursuant to franchise agreements. The agreements grant the right to engage in the business of establishing and operating fitness center under the Fitness Evolution trademarks, service marks, advertising and other commercial symbols. Fitness Evolution's Franchise Disclosure Document (FDD) states that "Fitness Evolution Franchising, LLC offers franchises for businesses that will establish and operate fitness centers." Fitness Evolution's initial registration with the Commissioner to offer and sell franchises in California became effective on October 19, 2015.
- 5. On June 3, 2016, Respondents filed Fitness Evolution's franchise renewal application (2016 Registration). The 2016 Registration was approved and valid until April 20, 2017. However, in light of a civil complaint filed against Respondents, as described below, Fitness Evolution was required to file a Post-Effective Amendment Application, but Respondents failed to do so in violation of Corporations Code section 31123.
- 6. On January 17, 2017, a complaint was filed against, among others, Respondents in the Superior Court of the State of California for the County of Stanislaus, Case No. 2023304 (January 2017 Complaint). The January 2017 Complaint included allegations of fraud in the offers and sales of license agreements between the plaintiffs and Respondents.

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7. On April 7, 2017, Respondents filed an application to renew Fitness Evolution's
registration (2017 Registration) along with its FDD. However, neither the 2017 Registration nor the
FDD disclosed the January 2017 Complaint. The 2017 Registration was not approved because
Respondents failed to disclose the January 2017 Complaint. Moreover, Respondents did not respond
to the Commissioner's comments and questions concerning the disclosure of the January 2017
Complaint. Consequently, a letter of abandonment was issued on September 21, 2017.

III.

<u>Citation and Desist and Refrain Order</u> Violations of Corporations Code Sections 31200 and 31123

8. Corporations Code section 31200 provides:

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

9. Corporations Code section 31123 provides:

A franchisor shall promptly notify the commissioner in writing, by an application to amend the registration, of any material change in the information contained in the application as originally submitted, amended or renewed. The commissioner may by rule further define what shall be considered a material change for such purposes, and the circumstances under which a revised offering prospectus must accompany such application.

- 10. Corporations Code section 31406 provides:
 - (a) If, upon inspection or investigation, based upon a complaint or otherwise, the commissioner has cause to believe that a person is violating any provision of this division or any rule or order promulgated pursuant to this division, the commissioner may issue a citation to that person in writing describing with particularity the basis of the citation. Each citation may contain an order to desist and refrain and an assessment of an administrative penalty not to exceed two thousand five hundred dollars (\$2,500) per violation and shall contain reference to this section, including the provisions of subdivision (c).

All penalties collected under this section shall be deposited in the State Corporations Fund.

- (b) The sanctions authorized under this section shall be separate from, and in addition to, all other administrative, civil, or criminal remedies.
- (c) If within 60 days from the receipt of the citation, the person cited fails to notify the commissioner that the person intends to request a 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 <u>Section 11500</u>) of Part 1 of <u>Division</u> 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 compelling the cited person to comply with the order of the commissioner. The application shall include a certified copy of the final order of the commissioner and shall constitute a sufficient showing to warrant the issuance of the judgment and order.
- 11. Based upon the foregoing findings, the Commissioner is of the opinion that Fitness Evolution Franchising, LLC and Christopher Maddox failed to file a Post-Effective Amendment Application to disclose the January 2017 Complaint, in violation of Corporations Code section 31123. In addition, Fitness Evolution Franchising, LLC and Christopher Maddox failed to disclose the January 2017 Complaint in its 2017 Registration, in violation of Corporations Code section 31200. Fitness Evolution Franchising, LLC and Christopher Maddox also failed to disclose the January 2017 Complaint in its FDD that was submitted with its 2017 Registration, in violation of Corporations Code section 31200. Pursuant to Corporations Code section 31406, Fitness Evolution Franchising, LLC and Christopher Maddox are hereby cited and ordered to desist and refrain from violating Corporations Code sections 31200 and 31123.
- 12. This order is necessary, in the public interest, for the protection of franchisees and consistent with the purposes, policies and provisions of the Franchise Investment Law.

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IV

Administrative Penalties

- 13. In light of the foregoing findings, under Corporations Code section 31406, Fitness Evolution Franchising, LLC and Christopher Maddox are hereby ordered to pay the Commissioner an administrative penalty in the amount of \$2,500.00 for one violation of Corporations Code section 31123 and an administrative penalty in the amount of \$2,500.00 for one violation of Corporations Code section 31200, for a total of \$5,000.00.
- 14. The administrative penalties in the amount stated above shall be made payable in the form of a cashier's check or Automated Clearing House deposit to the "Department of Business Oversight," and transmitted to the attention of Accounting – Enforcement Division, Department of Business Oversight, 1515 K Street, Suite 200, Sacramento, California, 95814. Notice of the payment shall be concurrently sent to Marlou de Luna, Senior Counsel, Department of Business Oversight, 320 West 4th Street, Suite 750, Los Angeles, California 90013, no later than 30 days from the date of this order.

Dated: September 10, 2019 MANUEL P. ALVAREZ Commissioner of Business Oversight

> By: MARY ANN SMITH **Deputy Commissioner** Enforcement Division

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