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8 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
9 OF THE STATE OF CALIFORNIA

11	In the Matter of:)	FIL ORG ID.: 92090
12	THE COMMISSIONER OF BUSINESS)	
13	OVERSIGHT,)	
14	Complainant,)	CONSENT ORDER
15	v.)	
16	AMADA FRANCHISE, INC. (a Wyoming)	
17	Corporation), Tafa JEFFERSON, and Chad)	
	FOTHERINGHAM,)	
	Respondents.)	

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19 This Consent Order is entered into between the Commissioner of Business Oversight
20 (Commissioner) and Amada Franchise, Inc. (Amada), Tafa Jefferson (Jefferson), and Chad
21 Fotheringham (Fotheringham) (collectively the Parties) and is made with respect to the following
22 facts:

23 **I.**

24 **Recitals**

25 A. The Commissioner is the head of the Department of Business Oversight (Department)
26 and is responsible for administering and enforcing the Franchise Investment Law (FIL) (Corp. Code,
27 § 31000, et seq.),¹ and registering the offer and sale of franchises in California. To register a
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¹ All further statutory references are to the Corporations Code unless otherwise indicated.

1 franchise, a franchisor must file a Uniform Franchise Disclosure Document (Franchise Disclosure
2 Document) with the Department for review and approval, in accordance with sections 31111 and
3 31114. The FIL requires franchisors to disclose certain material information which is intended to
4 provide prospective franchisees with facts upon which to make an informed decision to purchase a
5 franchise, as stated in section 31001.

6 B. Amada is a Wyoming Corporation formed on January 27, 2012 and is authorized to
7 conduct business in California. Amada’s principal business address is: 901 Calle Amanecer, Suite
8 350, San Clemente, California, 92673. Amada formerly conducted business from: 2463 El Toro
9 Road, Suite 205, Laguna Woods, California 92637. Amada does business under the name “Amada
10 Senior Care”. According to documents filed with the Commissioner, the Amada Senior Care
11 business “provides and markets non-medical homemaker, companionship, personal care services,
12 personal technology services, and equipment to the elderly and others who need assistance in daily
13 living”.

14 C. Tafa Jefferson is Amada’s co-founder and chief executive officer.

15 D. Chad Fotheringham is Amada’s co-founder and president.

16 E. On August 12, 2016, the Commissioner, Amada and Amada’s executive chairman,
17 Jared Turner (Turner), entered into a stipulation to resolve allegations that Amada failed to disclose
18 material information in an application filed with the Commissioner, and failed to promptly amend its
19 Franchise Disclosure Document to disclose material facts in violation of Corporations Code sections
20 31123 and 31200 (the 2016 Stipulation).

21 F. In or around May of 2018, the Commissioner learned that in 2014, Amada failed to
22 promptly amend its Franchise Disclosure Document to disclose that: (1) a company that Turner had
23 been an officer of in the past 10 years (Play N Trade Franchise, Inc.), filed for bankruptcy on March
24 23, 2014 (Play N Trade bankruptcy); and (2) Amada’s Director of Franchise Marketing, Jeremy
25 Brooker, filed a petition for chapter 7 bankruptcy on May 13, 2014 (Brooker bankruptcy), in
26 violation of sections 31123 and 31200 (the 2018 Action). Amada subsequently amended its
27 Franchise Disclosure Document to disclose the Play N Trade and Brooker bankruptcies.

28 G. The Parties settled the 2018 Action on January 16, 2019 (the 2019 Stipulation).

1 H. On February 15, 2019, Amada filed a pre-effective amendment to its application for
2 franchise registration with the Commissioner.

3 I. On or around May 22, 2019, Jefferson and Fotheringham received an Amended
4 Complaint in the matter titled *Salucci v. Amada Senior Care, Inc., et al.*, Case No. 30-2015-
5 00778081-CU-OE-CTL (Orange County Superior Court) (the Salucci case), alleging Jefferson and
6 Fotheringham violated Business and Professions Code section 17200, for unfair, unlawful, or
7 deceptive conduct. Amada Senior Care Inc. (ASC) is an affiliate of Amada. The Salucci case was
8 originally filed against ASC in April 2015. The Amended Complaint filed against Jefferson and
9 Fotheringham was dismissed with prejudice on December 19, 2019.

10 J. The Commissioner finds that under Corporations Code section 31123, Amada was
11 required to promptly amend Item 3 of its Franchise Disclosure Document to disclose the Salucci
12 case when Jefferson and Fotheringham were named in the Amended Complaint. The Commissioner
13 finds that Amada did not amend its registration until October 30, 2019, over 5 months after Jefferson
14 and Fotheringham were served with the Amended Complaint, in violation of Corporations Code
15 sections 31123 and 31200.

16 K. The Commissioner finds that Amada offered and sold one franchise in September of
17 2019 without disclosing the Salucci case in violation of Corporations Code section 31201. Amada
18 maintains that the franchise sold in September of 2019 is exempt from registration.

19 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set
20 forth herein, the Parties agree as follows:

21 **II.**

22 **Terms and Conditions**

23 1. **Purpose.** This Consent Order resolves the issues before the Commissioner [findings
24 set forth in paragraphs J and K above] in a manner that avoids the expense of a hearing and other
25 possible court proceedings, protects consumers, is in the public interest, and is consistent with the
26 purposes, policies, and provisions of the applicable law.

27 2. **Final Desist and Refrain Order.** Amada, Jefferson, and Fotheringham hereby agree
28 that in accordance with Corporations Code section 31406, they will immediately desist and refrain

1 from the violations set forth herein. Amada, Jefferson, and Fotheringham agree that the Desist and
2 Refrain Order is hereby deemed a final order.

3 3. Penalties. Amada, Jefferson, and Fotheringham, agree, jointly and severally, to pay a
4 penalty of \$10,000.00 for the violations discussed herein. The Commissioner acknowledges receipt
5 of payment of the penalty contemporaneous with the execution of this Consent Order.

6 4. Remedial Education. The following class of persons is required to attend remedial
7 California franchise law compliance education: (1) all principal officers, directors, trustees, and
8 any other individual who will have management responsibility relating to the sale or operation of
9 franchises offered by Amada, including but not limited to, Jefferson and Fotheringham; (2) all
10 persons who assist in preparing Amada franchise materials including but not limited to
11 registrations, renewals, or amendments, but excluding Amada’s outside lawyers and auditors; (3)
12 any person selling an Amada franchise; and (4) the person who certifies the accuracy of Amada’s
13 Franchise Disclosure Document filed with the Commissioner. Each of these persons shall attend
14 eight hours of remedial education within 90 days from the Effective Date of this Consent Order, in
15 the form of franchise law training courses offered by a seasoned franchise attorney to be approved
16 by the Department. Amada shall file proof of compliance, in the form of a sworn statement of
17 each person required to take remedial education, under penalty of perjury, within 90 days from the
18 Effective Date of this Consent Order.

19 5. Notice of Violation.

20 (a) Approval. Amada shall submit a Notice of Violation in compliance with
21 section 31303 of the FIL and California Code of Regulations, title 10, section 310.303, within 30
22 days of execution of this Consent Order. Amada will submit the Notice of Violation for approval to
23 the Commissioner to:

24 Shohreh Aram, Esq.
25 Senior Counsel
26 Department of Business Oversight
27 320 West 4th Street, Suite 750
28 Los Angeles, California 90013

Upon approval from the Commissioner, Amada will deliver the approved Notice of

1 Violation and approved Franchise Registration to the franchisee offered and sold a franchise in
2 September of 2019.

3 (b) Report to Commissioner. Amada will provide the Commissioner with proof
4 of mailing of the Notice of Violation (the Report), within 60 days of the Commissioner’s Order
5 Approving Amada’s Notice of Violation. Amada shall submit the Report to Danielle A. Stoumbos,
6 Senior Counsel, at: Danielle.Stoumbos@dbo.ca.gov.

7 6. Waiver of Hearing Rights. Amada, Jefferson, and Fotheringham acknowledge the
8 Commissioner is ready, willing, and able to proceed with the filing of an administrative enforcement
9 action on the charges contained in this Consent Order. Amada, Jefferson, and Fotheringham hereby
10 waive the right to any hearings, and to any reconsideration, appeal, or other right to review which
11 may be afforded pursuant to the FIL, the California Administrative Procedure Act, the California
12 Code of Civil Procedure, or any other provision of law. Amada further expressly waives any
13 requirement for the filing of an Accusation pursuant to Government Code section 11415.60,
14 subdivision (b). By waiving such rights, Amada, Jefferson, and Fotheringham effectively consent to
15 this Consent Order and the Desist and Refrain Order becoming final.

16 7. Full and Final Settlement. The Parties hereby acknowledge and agree that this
17 Consent Order is intended to constitute a full, final, and complete resolution of the violations
18 described herein and that no further proceedings or actions will be brought by the Commissioner in
19 connection with these matters under the FIL or any other provision of law, excepting therefrom any
20 proceeding to enforce compliance with the terms of this Consent Order.

21 8. Failure to Comply with Consent Order. Amada, Jefferson, and Fotheringham agree
22 that if they fail to comply with the terms in paragraphs 4 or 5 of this Consent Order, the
23 Commissioner may, upon ten (10) days’ prior notice (during which period any alleged failure to
24 comply may be cured), summarily suspend/revoke the FIL registration or deny the FIL application
25 of Amada. Amada, Jefferson, and Fotheringham agree that if they fail to comply with final Desist
26 and Refrain Order in paragraph 2 (i.e. they violate Corporations Code section 31123 or 31200), the
27 Commissioner may summarily suspend Amada’s FIL registration for 30 days, and/or deny any
28 pending registrations in addition to all other available remedies it may invoke under the FIL. Amada

1 waives any notice and hearing rights to contest such summary suspensions which may be afforded
2 under the FIL, the California Administrative Procedure Act, the California Code of Civil Procedure,
3 or any other provision of law in connection therewith.

4 9. Information Willfully Withheld or Misrepresented. This Consent Order may be
5 revoked, and the Commissioner may pursue any and all remedies available under law against
6 Amada, Jefferson, or Fotheringham if the Commissioner discovers that Amada, Jefferson, or
7 Fotheringham knowingly or willfully withheld information used for and relied upon by the
8 Commissioner in entering into this Consent Order.

9 10. Future Actions by Commissioner. In addition to the remedies in Paragraph 8, if
10 Amada, Jefferson, or Fotheringham fail to comply with any terms of the Consent Order (after notice
11 and opportunity to cure for failure to comply with paragraphs 4 or 5 as provided in paragraph 8 of
12 this Consent Order), the Commissioner may institute proceedings for any and all violations
13 otherwise resolved under this Consent Order. Commissioner reserves the right to bring any future
14 actions against Amada, or any of its partners, owners, officers, shareholders, directors, employees or
15 successors and Jefferson and Fotheringham for any and all unknown violations of the FIL.

16 11. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner’s
17 ability to assist any other government agency (city, county, state, or federal) with any prosecution,
18 administrative, civil or criminal brought by that agency against Amada, Jefferson, or Fotheringham
19 or any other person based upon any of the activities alleged in this matter or otherwise.

20 12. Headings. The headings to the paragraphs of this Consent Order are inserted for
21 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
22 the provisions hereof.

23 13. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
24 interest.

25 14. Reliance. Each of the Parties represents, warrants, and agrees that in executing this
26 Consent Order it has relied solely on the statements set forth herein and the advice of its own
27 counsel. Each of the Parties further represents, warrants, and agrees that in executing this Consent
28 Order it has placed no reliance on any statement, representation, or promise of any other party, or

1 any other person or entity not expressly set forth herein, or upon the failure of any party or any
2 other person or entity to make any statement, representation or disclosure of anything whatsoever.
3 The Parties have included this clause: (1) to preclude any claim that any party was in any way
4 fraudulently induced to execute this Consent Order; and (2) to preclude the introduction of parol
5 evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

6 15. Waiver, Amendments, and Modifications. No waiver, amendment, or modification
7 of this Consent Order will be valid or binding unless it is in writing and signed by each of the
8 Parties. The waiver of any provision of this Consent Order will not be deemed a waiver of any
9 other provision. No waiver by either party of any breach of, or of compliance with, any condition
10 or provision of this Consent Order by the other party will be considered a waiver of any other
11 condition or provision or of the same condition or provision at another time.

12 16. Full Integration. This Consent Order is the final written expression and the complete
13 and exclusive statement of all the agreements, conditions, promises, representations, and covenant
14 between the Parties with respect to the subject matter hereof, and supersedes all prior or
15 contemporaneous agreements, negotiations, representations, understandings, and discussions
16 between and among the Parties, their respective representatives, and any other person or entity with
17 respect to the subject matter covered hereby.

18 17. Governing Law. This Consent Order will be governed by and construed in
19 accordance with California law. Each of the Parties hereto consents to the jurisdiction of such court,
20 and hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient
21 forum to the maintenance of such action or proceeding in such court.

22 18. Counterparts. This Consent Order may be executed in one or more separate
23 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall
24 together constitute a single document.

25 19. Effect Upon Future Applications and Proceedings. If Amada applies for any license,
26 registration, permit, or qualification under the Commissioner’s current or future jurisdiction, or is
27 the subject of any future action by the Commissioner to enforce this Consent Order, then the subject
28 matter hereof shall be admitted for the purpose of such application(s) or enforcement proceeding(s).

1 20. Notice. Any notice required under this Consent Order shall be provided to each
2 party at the following addresses:

3 To Amada: Amada Franchise, Inc.
4 Douglas Luther, General Counsel
5 901 Calle Amanecer, Suite 350
6 San Clemente, California 92673
7 Doug.l@amadaseniorcare.com

8 To the Commissioner: Danielle A. Stoumbos, Senior Counsel
9 Department of Business Oversight
10 320 West 4th Street, Suite 750
11 Los Angeles, California 90013
12 Danielle.Stoumbos@dbo.ca.gov

13 21. Signatures. A fax or electronic mail signature shall be deemed the same as an
14 original signature.

15 22. Public Record. Amada, Jefferson, and Fotheringham hereby acknowledge that this
16 Consent Order is and will be a matter of public record.

17 23. Effective Date. This Consent Order shall become final and effective when signed by
18 all Parties and delivered by the Commissioner’s agent via e-mail to Amada’s General Counsel,
19 Douglas Luther at doug.l@amadaseniorcare.com.
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24. Authority to Sign. Each signatory hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Consent Order and undertake the obligations set forth herein.

Dated: April 27, 2020

MANUEL P. ALVAREZ
Commissioner of Business Oversight

By: _____
MARY ANN SMITH
Deputy Commissioner

Dated: April 17, 2020

AMADA FRANCHISE, INC.

By: _____
DOUGLAS LUTHER
General Counsel

Dated: April 17, 2020

TAFA JEFFERSON

TAFA JEFFERSON
An individual

Dated: April 17, 2020

CHAD FOTHERINGHAM

CHAD FOTHERINGHAM
An individual