

1 JENNIFER RUMBERGER
Deputy Commissioner
2 THERESA LEETS
Assistant Chief Counsel
3 LINDSAY NELSON (State Bar No. 278558)
Counsel
4 Department of Financial Protection and Innovation
320 West 4th Street, Suite 750
5 Los Angeles, California 90013
Telephone: (213) 576-7648
6 Facsimile: (213) 576-7179

7 Attorneys for Complainant

8 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
9 OF THE STATE OF CALIFORNIA

11 In the Matter of:)

12 THE COMMISSIONER OF FINANCIAL)
PROTECTION AND INNOVATION,)

14 Complainant,)

15 v.)

16 KICKHOUSE FITNESS, LLC (a)
DELAWARE LIMITED LIABILITY)
17 COMPANY))

18 Respondent.

CONSENT ORDER

19 This Consent Order is entered into between the Commissioner of Financial Protection and
20 Innovation (Commissioner) and KickHouse Fitness, LLC (Respondent) (collectively the Parties)
21 and is made with respect to the following facts:

22 I.

23 **Recitals**

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

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

6 B. Respondent is a Delaware limited liability company formed on July 14, 2020 and is
7 authorized to conduct business in California. Respondent's principal business address is 931
8 Lexington Dr., Rockwall, Texas 75087. Respondent is in the business of offering and selling
9 franchises for kickboxing studios. Respondent has never been registered to sell franchises in
10 California. Respondent currently has pending registrations to begin offering and selling these
11 franchises in California.

12 *Unregistered Franchise Sales and Offers*

13 C. From July 14, 2020 to November 12, 2020, Respondent entered into Trademark
14 License Agreements with California licensees (Licensees) to operate KickHouse fitness studios in
15 California.

16 D. In each Trademark License Agreement, Respondent granted the Licensees the right to
17 use its trademarks and system to operate KickHouse kickboxing studios. Respondent paid the costs
18 to rebrand the Licensees' fitness studios to the KickHouse trademarks.

19 E. Respondent prescribed a marketing plan and a system within which Licensees were to
20 operate. Respondent required Licensees to offer fitness classes in a prescribed format and to follow
21 its standards and procedures in operating their business.

22 F. The Trademark License Agreement stated that Licensees would pay a license fee
23 capped at \$614 within the first six months of the term of the Trademark License Agreement, with no
24 fee to be paid during the first three months. The Licensees also agreed to pay a percentage of gross
25 revenues to Respondent for the duration of the Trademark License Agreement.

26 G. Respondent represents that all fees were waived until its franchise registration
27 became effective in California and the Licensee executed a franchise agreement. Respondent further
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1 represents that no fees have been collected from the Licensees at any time while Respondent was not
2 registered to sell franchises in California.

3 H. Under the Trademark License Agreement, the license could be terminated, and the
4 Licensee forced to de-brand if they did not convert to a franchise after receiving a registered
5 franchise disclosure document from Respondent.

6 I. Respondent was not registered under the FIL to sell franchises in California during
7 the period it was offering and selling the Trademark License Agreements.

8 J. The Commissioner finds that Respondent offered and sold non-exempt, unregistered
9 franchises in California from July 14, 2020 to November 9, 2020 in violation of Corporations Code
10 section 31110.

11 *Failure to Provide Franchise Disclosure Documents*

12 K. Respondent did not provide any of the California Licensees with a franchise
13 disclosure document prior to the sale of the Trademark License Agreements, which is found by the
14 Commissioner to have constituted the offer and sale of non-exempt, unregistered franchises in
15 California.

16 L. The Commissioner finds that Respondent entered into the Trademark License
17 Agreements without first providing a copy of a franchise disclosure document at least 14 days prior
18 to the execution by the Licensees in violation of Corporations Code section 31119.

19 M. NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions
20 set 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, described
24 in recital J and L above, in a manner that avoids the expense of a hearing and other possible court
25 proceedings, protects consumers, is in the public interest, and is consistent with the purposes and
26 provisions of the FIL.
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1 2. Desist and Refrain Order. Pursuant to Corporations Code sections 31402,
2 Respondent is hereby ordered to desist and refrain from the further offer or sale of franchises in
3 violation of Corporations Code section 31110 and 31119.

4 3. Penalties. Respondent shall pay an administrative penalty of \$14,000.00 no later than
5 15 days after the effective date of this Consent Order as defined in paragraph 24 (Effective Date).
6 The penalty must be made payable in the form of a cashier’s check or Automated Clearing House
7 deposit to the Department of Financial Protection and Innovation and transmitted to the attention of
8 Accounting – Litigation, at the Department of Financial Protection and Innovation, 2101 Arena
9 Boulevard, Sacramento, California 95834. Notice of the payment must be concurrently sent to
10 Lindsay Nelson, Counsel, at Lindsay.Nelson@dfpi.ca.gov. Remedial Education. The Respondent’s
11 Chief Executive Officer shall be required to attend remedial California franchise law compliance
12 education. The Chief Executive Officer has the sole management responsibility relating to the sale
13 or operation of franchises, and will assist in preparing franchise materials, including but not
14 limited to registrations, renewals, or amendments (excluding outside lawyers and auditors), be
15 involved in selling Respondent’s franchise, and is the person who certifies the accuracy of
16 Respondent’s Franchise Disclosure Document filed with the Commissioner. She shall attend eight
17 hours of remedial education within 60 days from the Effective Date of this Consent Order, in the
18 form of franchise law training courses offered by a seasoned franchise attorney to be approved by
19 the Department. Respondent shall file proof of compliance, in the form of a sworn statement of
20 each person required to take remedial education, under penalty of perjury, within 60 days from the
21 Effective Date of this Consent Order.

22 4. Notice of Consent Order

23 a. Respondent shall provide a copy of this Consent Order to all Licensees who
24 executed a Trademark License Agreement from July 14, 2020 to November 12, 2020 (Franchisee
25 Class).

26 b. Within 30 days of the Effective Date of this Consent Order, Respondent shall
27 submit to the Commissioner proof(s) of service (by email and certified mail) of a copy of this
28 Consent Order to each of the franchisees in the Franchisee Class. Respondent shall not include any

1 other documents in the mailing. The Proof(s) of Service shall be sent to the attention of Lindsay
2 Nelson, Counsel, at Lindsay.Nelson@dfpi.ca.gov.

3 5. Waiver of Hearing Rights. Respondent acknowledges that the Commissioner is
4 ready, willing, and able to proceed with the filing of an administrative enforcement action on the
5 charges contained in this Consent Order. Respondent hereby waives the right to any hearings, and to
6 any reconsideration, appeal, or other right to review which may be afforded pursuant to the FIL, the
7 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
8 provision of law. Respondent further expressly waives any requirement for the filing of an action
9 pursuant to Government Code section 11415.60, subdivision (b). By waiving such rights,
10 Respondent effectively consents to this Consent Order and all of its terms becoming final.

11 6. Opportunity to Cure. In the event Respondent fails to comply with the terms of this
12 Consent Order (except for the Desist and Refrain Order), Respondent will have 10 calendar days to
13 cure such breach from the date written notice of the breach is emailed by the Commissioner to
14 Respondent (Notice) at the email address in paragraph 6b. Proof of cure, satisfactory to the
15 Commissioner, shall be sent via traceable method with a notice via email by Respondent so that it is
16 received within 15 days of the date of Notice to Lindsay Nelson at Lindsay.Nelson@dfpi.ca.gov.

17 7. Failure to Comply with Desist and Refrain Order or Cure Breach. Respondent agrees
18 that if it fails to comply with the Desist and Refrain Order in this Consent Order or fails to timely
19 cure any breach to the satisfaction of the Commissioner, the Commissioner may, in addition to all
20 other available remedies it may invoke under the FIL, summarily suspend, revoke, or deny its FIL
21 registration (if applicable). Respondent stipulates to the finality of any such FIL registration
22 suspensions, revocations, or denials that the Commissioner may order. Respondent waives any
23 notice and hearing rights to contest such summary suspensions, revocations, or denials which may
24 be afforded under the FIL, the California Administrative Procedure Act, the California Code of
25 Civil Procedure, or any other provision of law in connection therewith.

26 8. Information Willfully Withheld or Misrepresented. This Consent Order may be
27 revoked, and the Commissioner may pursue any and all remedies available under law against
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1 Respondent if the Commissioner discovers that Respondent knowingly or willfully withheld or
2 misrepresented information used for and relied upon in this Consent Order.

3 9. Future Actions by Commissioner. If Respondent fails to comply with any terms of
4 the Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
5 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions
6 against Respondent, or any of its partners, owners, officers, shareholders, directors, employees, or
7 successors for any and all unknown violations of the FIL or any other law under the Commissioner’s
8 jurisdiction.

9 10. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner’s
10 ability to assist any other government agency (whether city, county, state, or federal) with any
11 administrative, civil, or criminal action brought by that agency against Respondent, or any other
12 person based upon any of the activities alleged in this matter or otherwise.

13 11. Headings. The headings to the paragraphs of this Consent Order are inserted for
14 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
15 the provisions hereof.

16 12. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
17 interest.

18 13. Reliance. Each of the Parties represents, warrants, and agrees that in executing this
19 Consent Order it has relied solely on the statements set forth herein and the advice of its own
20 counsel. Each of the Parties further represents, warrants, and agrees that in executing this Consent
21 Order it has placed no reliance on any statement, representation, or promise of any other party, or
22 any other person or entity not expressly set forth herein, or upon the failure of any party or any
23 other person or entity to make any statement, representation, or disclosure of anything whatsoever.
24 The Parties have included this clause: (1) to preclude any claim that any party was in any way
25 fraudulently induced to execute this Consent Order; and (2) to preclude the introduction of parol
26 evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

27 14. Waiver, Amendments, and Modifications. No waiver, amendment, or modification
28 of this Consent Order will be valid or binding unless it is in writing and signed by each of the

1 Parties. The waiver of any provision of this Consent Order will not be deemed a waiver of any
2 other provision. No waiver by either party of any breach of, or of compliance with, any condition
3 or provision of this Consent Order by the other party will be considered a waiver of any other
4 condition or provision or of the same condition or provision at another time.

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

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

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

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

22 19. Voluntary Agreement. Respondent enters into this Consent Order voluntarily and
23 without coercion and acknowledges that no promises, threats or assurances have been made by the
24 Commissioner or any officer, or agent thereof, about this Consent Order. The Parties each represent
25 and acknowledge that he, she or it is executing this Consent Order completely voluntarily and
26 without any duress or undue influence of any kind from any source.

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

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To Respondent: Justin M. Klein, Esq.
Marks & Klein, LLP
63 Riverside Avenue
Red Bank, NJ 07701

To the Commissioner: Lindsay Nelson, Counsel
Department of Financial Protection and
Innovation
320 W. 4th Street, Suite 750
Los Angeles, CA 90013
Lindsay.Nelson@dfpi.ca.gov

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

22. Public Record. Respondent hereby acknowledge that this Consent Order is and will be a matter of public record.

23. Effective Date. This Consent Order shall become final and effective when signed by all Parties and delivered by the Commissioner’s agent via e-mail to Respondent’s agent, Justin M. Klein, Esq. at justin@marksklein.com.

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: 5/24/2021

MANUEL P. ALVAREZ
Commissioner of Financial Protection and Innovation

By: JENNIFER RUMBERGER
Deputy Commissioner

Dated:

KICKHOUSE FITNESS, LLC

By: _____

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NAME OF PERSON WITH AUTHORITY AT
COMPANY TO SIGN

Title