

1 MARY ANN SMITH
Deputy Commissioner
2 DANIEL P. O'DONNELL
Assistant Chief Counsel
3 TAYLOR HERRLINGER (State Bar No. 314791)
4 Counsel
5 Department of Financial Protection and Innovation
6 2101 Arena Boulevard
7 Sacramento, California 95834
Telephone: (916) 936-7038
Facsimile: (916) 928-7929
8 Attorneys for Complainant

9
10 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
11 OF THE STATE OF CALIFORNIA

12 In the Matter of:) FIL ORG ID: 346859
)
13 THE COMMISSIONER OF FINANCIAL)
PROTECTION AND INNOVATION,) CONSENT ORDER
14)
15 Complainant,)
)
16 v.)
)
17 LIFESTYLE MEDIA SOLUTIONS, LLC f/k/a)
18 LIFESTYLE PUBLICATIONS, LLC,)
)
19 Respondent.)
20)

21 This Consent Order is entered into between the Complainant, the Acting Commissioner of
22 Financial Protection and Innovation (Commissioner) as head of the Department of Financial
23 Protection and Innovation (Department), and the Respondent, Lifestyle Media Solutions, LLC f/k/a
24 Lifestyle Publications, LLC (Lifestyle), and is made with respect to the following:

25 **I.**

26 **Recitals**

27 A. The Commissioner is authorized to administer and enforce the provisions of the
28 Franchise Investment Law (Corp. Code § 31000 *et seq.*) (FIL) and the rules and regulations

1 promulgated thereunder which control the registration, offer, and sale of franchises in California.

2 B. The Commissioner brings this action pursuant to the provisions of the FIL, and the
3 rules and regulations promulgated thereunder, including Corporations Code section 31402, 31406, and
4 31408.

5 C. Lifestyle admits to the jurisdiction of the Commissioner in this matter and for the
6 purposes of using and enforcing this Consent Order.

7 D. Lifestyle desires to enter into this Consent Order which the Commissioner finds is
8 appropriate, in the public interest, and consistent with the policies and purposes fairly intended by the
9 FIL.

10 E. Lifestyle is a Kansas and Missouri limited liability company with a business address at
11 514 W. 26th Street, Kansas City, Missouri 64108. Lifestyle previously operated under the name
12 “Lifestyle Publications, LLC” between 2013 and 2019 and, prior to that, as Kingdom Holdings, LLC
13 from its inception until December 2012.

14 F. Lifestyle operates a business that publishes magazines for residential communities and
15 sells advertising space within these publications. During the relevant period, Lifestyle contracted with
16 independent sales contractors, referred to as “publishers” who sell the advertisements and help
17 generate content for the publications. Lifestyle offers and sells the right to act as a publisher under the
18 Lifestyle brand and direction. Since at least as early as 2016, Lifestyle has offered or sold the rights to
19 enter into twenty (20) “publishing agreements” in California.
20

21 *Unregistered Franchise Sales and Offers*

22 G. Since at least as early as 2016, Lifestyle offered and sold publishing agreements to
23 California residents. Publishers sold advertising in Lifestyle publications to local businesses and
24 community members, and offered Lifestyle’s services, including Lifestyle’s advertising design
25 services, to the community. Publishers also provided content to Lifestyle for publication. Lifestyle
26 designed, published, printed, and distributed the publication to those within the specific community.
27 Lifestyle provided publishers with a marketing plan and business system that publishers were to
28 comply with, granted publishers the right to use Lifestyle’s trademarks in their business, and required

1 a seven (7) percent deduction from the advertising payments received from advertisers as part of the
2 calculation of the commission payment paid to publishers.

3 H. In each publishing agreement, Lifestyle granted the publisher a limited license to use its
4 trademarks, service marks, and copyright materials to advertise and promote their Lifestyle publication
5 business.

6 I. Lifestyle established a marketing plan that provided guidance to publishers and a
7 system within which publishers were to operate. Publishers were only allowed to sell products and
8 services approved by Lifestyle under the terms and pricing set by Lifestyle. Lifestyle had the right to
9 terminate any publishing agreement if a publisher failed to follow Lifestyle’s standards and procedures
10 or failed to follow any other provision of their agreement after an opportunity to cure.

11 J. Lifestyle charged a “licensing fee” in order to enter into at least three (3) publishing
12 agreements and deducted an amount of seven (7) percent from the publishers’ commission payments
13 called “Lifestyle Publications Cost” from at least seventeen (17) publishers. Lifestyle Publications
14 Cost was defined as seven (7) percent of the Advertising Value of each Lifestyle Publication, whether
15 or not Lifestyle actually received payment for the advertisements and/or services. The Agreement
16 defined “Advertising Value” as the value of the advertising and related services in each Lifestyle
17 Publication as determined by Lifestyle’s then current rate card for the area.

18 K. Lifestyle deducted the 7 percent cost from the publisher’s monthly commission
19 payment. Lifestyle compensated publishers in this manner because ad purchasers were required to pay
20 for their advertisements by remitting payment directly to Lifestyle. Lifestyle then deducted the cost, the
21 actual publication cost, and other miscellaneous costs and fees from the revenue that it received before
22 paying the remainder to the publisher as a monthly commission.

23 L. If a publisher’s advertisement sales did not generate enough actual revenue to Lifestyle
24 in any month to cover the publisher’s deductions, including the cost, then the publisher did not earn a
25 commission payment for that month. Lifestyle then deducted the uncovered portion of the cost and
26 other deductions from the publisher’s commission payment for the following month. If a publisher did
27 not bring in enough actual revenue to cover the cost and other deductions within a specified time, then
28 Lifestyle had the right to terminate the agreement.

1 M. Lifestyle was not registered under the FIL to sell franchises in California during the
2 period it was offering and selling the publishing agreements.

3 *Failure to Provide Franchise Disclosure Documents*

4 N. Lifestyle did not provide any of the California publishers with a franchise disclosure
5 document (“FDD”) prior to the sale of the publishing agreements.

6 NOW, THEREFORE, in consideration of the foregoing and the terms and conditions set forth
7 herein, the parties agree as follows.

8 **II.**

9 **Terms**

10 1. Purpose. This Consent Order resolves the issues before the Commissioner set forth in
11 paragraphs E – N above, in a manner that avoids the expense of a hearing and other possible court
12 proceedings, protects prospective franchisees, is in the public interest, and is consistent with the
13 purposes and provisions of the Franchise Investment Law.

14 2. Desist-and-Refrain Order for Violation of Corp. Code, § 31110. The Commissioner
15 finds that the offer for sale of the Lifestyle publishing agreements as described in paragraphs E – M
16 above was a franchise offer subject to registration under the FIL and it was offered for sale in
17 California without the offer first being registered, in violation of Corporations Code section 31110.
18 Pursuant to Corporations Code section 31402, Lifestyle is ordered to desist and refrain from the
19 further offer or sale of Lifestyle publishing agreements unless and until the offer has been duly
20 registered under the FIL.

21 3. Citation and Desist-and-Refrain Order for Violation of Corp. Code, § 31119. The
22 Commissioner finds that Lifestyle sold franchises in California in the form of Lifestyle publishing
23 agreements as described in paragraphs E – N above without first providing to the prospective
24 franchisee, at least 14 days prior to the execution by the prospective franchisee of any binding
25 franchise or other agreement, or at least 14 days prior to the receipt of any consideration, whichever
26 occurs first, a copy of the franchise disclosure document, together with a copy of all proposed
27 agreements relating to the sale of the franchise, in violation of Corporations Code section 31119,
28 subdivision (a). Pursuant to Corporations Code section 31406, the Commissioner hereby issues a

1 citation to Lifestyle for the violation of Corporations Code section 31119, subdivision (a). Lifestyle is
2 ordered to desist and refrain from further violations of Corporations Code section 31119, subdivision
3 (a).

4 4. Recovery of Costs. Pursuant to Corporations Code section 31408, subdivision (b),
5 Lifestyle shall pay \$7,500.00 to the Commissioner as representing reasonable attorney’s fees and
6 investigative expenses (“Cost Recovery”) for deposit into the Financial Protection Fund for the use of
7 the Department of Financial Protection and Innovation. The Cost Recovery payment is due within
8 thirty (30) business days of the effective date of this Consent Order and should be payable to the
9 Commissioner in the form of a cashier’s check or Automated Clearing House deposit and transmitted
10 to the attention of Accounting – Enforcement Division, Department of Financial Protection and
11 Innovation, 2101 Arena Boulevard, Sacramento, California 95834. Notice of such payment shall be
12 made to Taylor Herrlinger, Counsel, at Taylor.Herrlinger@dfpi.ca.gov.

13 5. Waiver of Hearing Rights. Lifestyle acknowledges the Commissioner is ready, willing,
14 and able to proceed with the filing of an administrative enforcement action on the charges contained in
15 this Consent Order. Lifestyle hereby waives the right to any hearings, and to any reconsideration,
16 appeal, or other right to review which may be afforded pursuant to the FIL, the California
17 Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law.
18 Lifestyle further expressly waives any requirement for the filing of an Accusation pursuant to
19 Government Code section 11415.60, subdivision (b). By waiving such rights, Lifestyle effectively
20 consents to the Consent Order becoming final.

21 6. Failure to Comply with Consent Order. Lifestyle agrees that if it fails to comply with
22 the terms of this Consent Order, the Commissioner may, in addition to all other available remedies it
23 may invoke under the FIL, summarily issue a stop order denying the effectiveness of or suspending or
24 revoking effectiveness of any of Lifestyle franchise registrations until Lifestyle gains compliance.
25 Lifestyle waives any notice and hearing rights to contest such summary suspensions which may be
26 afforded under the FIL, the California Administrative Procedure act, the California Code of Civil
27 Procedure, or any other provision of law in connection therewith.

28 7. Information Willfully Withheld or Misrepresented. This Consent Order may be

1 revoked, and the Commissioner may pursue any and all remedies available under law against Lifestyle
2 if the Commissioner discovers that Lifestyle knowingly or willfully withheld or misrepresented
3 information used for and relied upon in this Consent Order.

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

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

13 10. 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 11. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
17 interest.

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

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

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

5 14. 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 covenants
7 between the parties with respect to the subject matter hereof, and supersedes all prior or
8 contemporaneous agreements, negotiations, representations, understandings, and discussions between
9 and among the parties, their respective representatives, and any other person or entity, with respect to
10 the subject matter covered hereby.

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

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

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

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

28 19. Notice. Any notice required under this Consent Order shall be provided to each party at

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IN WITNESS WHEREOF, the parties hereto have approved and executed the Consent Order on the dates set forth opposite their respective signatures.

CHRISTOPHER S. SHULTZ
Acting Commissioner of Financial Protection and Innovation

Dated: October 20, 2021

By: _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

LIFESTYLE MEDIA SOLUTIONS, LLC, f/k/a LIFESTYLE PUBLICATIONS, LLC.

Dated: October 18, 2021

By: _____
DELAND SHORE
Chief Financial Officer

APPROVED AS TO FORM AND CONTENT

Dated: October 18, 2021

By: _____
ELIZABETH DILLON
Counsel for Lathrop GPM, LLP

