

1 JENNIFER RUMBERGER  
Deputy Commissioner  
2 THERESA LEETS  
Assistant Chief Counsel  
3 Anne Marie Wong  
4 Senior Counsel  
Department of Financial Protection and Innovation  
5 One Sansome Street, Suite 600  
San Francisco, CA 94104  
6 Telephone: 415-972-8939

7 Attorneys for Complainant

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

10 In the Matter of:

11 THE COMMISSIONER OF FINANCIAL  
12 PROTECTION AND INNOVATION,

13 Complainant,

14 v.

15 DUCK DONUTS HOLDINGS, LLC., doing  
16 business as Duck Donuts

17 Respondent.

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19 This Consent Order is entered into between the Commissioner of Financial Protection and  
20 Innovation (Commissioner), and Duck Donuts Holdings, LLC., doing business as Duck Donuts  
21 (DDH) (collectively, Parties) 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 (Department) and is responsible for administering and enforcing the Franchise  
26 Investment Law (FIL) (Corp. Code, § 31000 et seq.),<sup>1</sup> and registering the offer and sale of franchises  
27  
28

<sup>1</sup> All further statutory references are to the Corporations Code unless otherwise indicated.

1 in California. To offer a franchise, subfranchise or area representation in California, franchisor must  
2 be registered with the Department., in accordance with section 31110.

3 B. At all relevant times, DDH was and is a Delaware limited liability company, with a  
4 principal place of business located 1215 Manor Drive-Suite 302, Mechanicsburg, Pennsylvania 17055. At  
5 all relevant times, DDH sells franchises that offer made to order donuts on site and DDH has not  
6 registered with the Department to offer and sell franchises in California.

7 C. On April 13, 2021, DDH purchased the assets of Duck Donuts Franchising Company,  
8 LLC., a Delaware limited liability company with a principal place of business at 1215 Manor Drive-Suite  
9 302, Mechanicsburg, Pennsylvania 17055 (DDFC). At all relevant times, DDFC was and is the former  
10 franchisor of the DDH’s franchise system.

11 D. Pursuant to section 31110, it is unlawful for any person to offer or sell a franchise in  
12 this state unless the offer has been registered with the Commissioner or is exempt.

13 E. During the month of July 2021, DDH engaged in talks with GK., a California  
14 consumer, about opening a fifth franchise unit pursuant to an existing multi-unit option agreement  
15 with DDFC. DDH offered a franchise to GK and presented GK with documents, but GK declined to  
16 purchase an additional outlet. DDH offered the additional franchise outlet to GK without being  
17 registered with the Department to do so.

18 F. The Commissioner finds that DDH violated section 31110 by offering an unregistered  
19 franchise in California.

20 G. Pursuant to section 31156, no person shall publish in this state any advertisement  
21 offering a franchise subject to the registration requirements of this law unless a true copy of the  
22 advertisement has been filed in the office of the commissioner at least three business days prior to  
23 the first publication or such shorter period as the commissioner by rule or order may allow, or unless  
24 such advertisement has been exempted by rule of the commissioner.

25 H. From May 21, 2021 to September 17, 2021, DDH published an advertisement on the  
26 internet website at Google.com thereby offering DDH franchises to California consumers. At no  
27 time did DDH file a true and correct copy of said advertisement set forth on Google.com with the  
28 Commissioner.

1 I. The Commissioner also finds that DDH violated section 31156 by engaging in  
2 advertising without filing a true copy of with the Commissioner at least three business days prior to  
3 its first publication.

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

6 **II.**

7 **TERMS AND CONDITIONS**

8 1. Purpose. This Consent Order resolves the issues before the Commissioner [findings  
9 in paragraphs A through I above] in a manner that avoids the expense of a hearing and other  
10 possible court proceedings, protects consumers, is in the public interest, and is consistent with the  
11 purposes and provisions of the applicable law.

12 2. Desist and Refrain Order. Pursuant to Corporations Code sections 31402 and 31406,  
13 DDH is hereby ordered to desist and refrain from the violations set forth herein, in violation of  
14 Corporations Code section 31110 and section 31156 set forth herein. The issuance of this Consent  
15 Order is necessary, in the public interest, for the protection of investors and is consistent with the  
16 purposes, policies, and provisions of the Franchise Investment Law.

17 3. Penalty. DDH shall pay, within 15 business days of the date of this Consent Order, an  
18 administrative penalty of \$5,000 (Penalties) payable in the form of a cashier's check or Automated  
19 Clearing House deposit to the Department and transmitted to the attention of Accounting-Legal,  
20 Department of Financial Protection and Innovation, 2101 Arena Boulevard, Sacramento, California  
21 95835. Notice of the payment must be concurrently sent via email to Anne Marie Wong at  
22 [AnneMarie.Wong@dfpi.ca.gov](mailto:AnneMarie.Wong@dfpi.ca.gov). Failure to pay the Penalties in accordance with this paragraph shall  
23 be deemed to be a material breach of this Consent Order.

24 4. Waiver of Hearing Rights. DDH acknowledges that the Commissioner is ready,  
25 willing, and able to proceed with the filing of an administrative enforcement action on the charges  
26 contained in this Consent Order. DDH hereby waives the right to any hearings, and to any  
27 reconsideration, appeal, or other right to review which may be afforded pursuant to the FIL, the  
28 Administrative Procedure Act (APA), the Code of Civil Procedure (CCP), or any other provision of

1 law. DDH expressly waives any requirement for the filing of an Accusation pursuant to Government  
2 Code section 11415.60, subdivision (b). By waiving such rights, DDH effectively consents to this  
3 Consent Order becoming final.

4 5. Failure to Comply with Consent Order. DDH agrees that if they fail to comply with  
5 the terms of this Consent Order, the Commissioner may, in addition to all other available remedies  
6 it may invoke under the FIL, summarily suspend/revoke its FIL registration (if applicable),  
7 summarily and permanently bar DDH from offering and selling franchises in California or deny FIL  
8 applications (if applicable). DDH waives any notice and hearing rights to contest such summary  
9 actions by the Commissioner which may be afforded under the FIL, the APA, the CCP, or any other  
10 provision of law in connection therewith.

11 6. Information Willfully Withheld or Misrepresented. This Consent Order may be  
12 revoked, and the Commissioner may pursue any and all remedies available under law against DDH  
13 if the Commissioner discovers that DDH knowingly or willfully withheld or misrepresented  
14 information used for and relied upon in this Consent Order.

15 7. Future Actions by Commissioner. If DDH fails to comply with any terms of the  
16 Consent Order, the Commissioner may institute proceedings for any and all violations otherwise  
17 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions  
18 against DDH, or any of their partners, owners, officers, shareholders, directors, employees or  
19 successors for any and all unknown violations of the FIL.

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

24 9. Headings. The headings to the paragraphs of this Consent Order are inserted for  
25 convenience only and will not be deemed a part hereof or affect the construction or interpretation of  
26 the provisions hereof.

27 10. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in  
28 interest.

1           11.    Reliance. Each of the Parties represents, warrants, and agrees that in executing this  
2 Consent Order it has relied solely on the statements set forth herein and the advice of its own  
3 counsel. Each of the Parties further represents, warrants, and agrees that in executing this Consent  
4 Order it has placed no reliance on any statement, representation, or promise of any other Party, or  
5 any other person or entity not expressly set forth herein, or upon the failure of any Party or any  
6 other person or entity to make any statement, representation or disclosure of anything whatsoever.  
7 The Parties have included this clause: (1) to preclude any claim that any Party was in any way  
8 fraudulently induced to execute this Consent Order; and (2) to preclude the introduction of parol  
9 evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

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

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

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

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

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

5           17.    Voluntary Order. DDH enters into this Consent Order voluntarily and without  
6 coercion and acknowledges that no promises, threats or assurances have been made by the  
7 Commissioner or any officer, or agent thereof, about this Consent Order. The Parties each represent  
8 and acknowledge that he, she or it is executing this Consent Order completely voluntarily and  
9 without any duress or undue influence of any kind from any source.

10          18.    Notice. Any notice required under this Consent Order shall be provided to each  
11 Party at the following addresses:

12           To DDH:                           Stephanie Grobler, Esq.  
13   Spadea Lignana  
14   232 N. 2nd Street,  
  Philadelphia, PA. 19106

15           To the Commissioner:           Anne Marie Wong, Esq.  
16   Department of Financial Protection and Innovation  
17   One Sansome, Suite 600  
  San Francisco, CA 94104

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

20          20.    Public Record. DDH hereby acknowledges that this Consent Order is and will be a  
21 matter of public record.

22          21.    Effective Date. This Consent Order shall become final and effective when signed by  
23 all Parties and delivered by the Commissioner’s agent via e-mail to DDH’s agent, Stephanie  
24 Grobler, Esq. at [sgrobler@spadealaw.com](mailto:sgrobler@spadealaw.com)..

25          22.    Authority to Sign. Each signatory hereto covenants that he/she possesses all  
26 necessary capacity and authority to sign and enter into this Consent Order and undertake the  
27 obligations set forth herein.  
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Dated: 1/26/2022

CLOTHILDE V. HEWLETT  
Commissioner of Financial Protection and Innovation

By: \_\_\_\_\_

JENNIFER RUMBERGER  
Deputy Commissioner

Dated: 1/25/2022

DUCK DONUTS HOLDINGS, LLC, doing business  
as DUCK DONUTS

By: \_\_\_\_\_

ELIZABETH HAMM  
Chief Executive Officer