

1 CLOTHILDE V. HEWLETT
Commissioner
2 THERESA LEETS
Assistant Chief Counsel
3 Lulu Gomez (State Bar No. 287527)
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Department of Financial Protection and Innovation
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6 Los Angeles, CA 90013-2344
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8 Attorneys for Complainant

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

11 In the Matter of:)
12)
13 THE COMMISSIONER OF FINANCIAL)
PROTECTION AND INNOVATION,)
14) CONSENT ORDER
Complainant,)
15 v.)
16 MARGARITAVILLE HOTELS & RESORTS,)
17 LLC,)
18 Respondent.)
19 _____)

20 This Consent Order is entered into between the Commissioner of Financial Protection and
21 Innovation (Commissioner) and Margaritaville Hotels & Resorts, LLC (Respondent, and together
22 with Commissioner, the Parties) and is made with respect to the following facts:

23 I.

24 RECITALS

25 A. The Commissioner is the head of the Department of Financial Protection and
26 Innovation (Department) and is responsible for administering and enforcing the Franchise
27 Investment Law (FIL) (Corp. Code, § 31000 et seq.),¹ and registering the offer and sale of franchises
28 _____

¹ All further statutory references are to the Corporations Code unless otherwise indicated.

1 in California. To register a franchise, a franchisor must file an application that includes a Franchise
2 Disclosure Document (FDD) with the Department for review, in accordance with sections 31111 and
3 31114. The FIL requires franchisors to disclose certain material information that 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. At all relevant times, Margaritaville Hotels & Resorts, LLC was and is a Delaware
7 limited liability company with a principal place of business located at 6900 Turkey Lake Road, Suite
8 200, Orlando, Florida 32819. Respondent offers franchises granting the right to develop and operate
9 upscale, full-service hotel or resort establishments that provide lodging and food and beverage under
10 the names Margaritaville Hotel, Margaritaville Resort, Margaritaville Beach Resort, and
11 Margaritaville Lake Resort (collectively, Margaritaville Hotels).

12 C. On September 15, 2020, Respondent filed an initial franchise registration application
13 with the Department, identified by the Department as app-19153. In the FDD filed with app-19153,
14 Respondent disclosed two “Franchise/License Agreements Signed but Outlet Not Opened” in
15 California in Table 5 of Item 20 and two existing outlets as of December 31, 2019 in Exhibit K to
16 the FDD. After Respondent failed to respond to a comment letter issued by the Department, the
17 Department ordered the application abandoned on April 14, 2021.

18 D. On April 29, 2021, Respondent filed an initial franchise registration application with
19 the Department, identified by the Department as app-21138. In the FDD filed with app-21138,
20 Respondent disclosed one existing outlet in California in Table 1 of Item 20, two “Franchise/License
21 Agreements Signed but Outlet Not Opened” in California in Table 5 of Item 20, and three existing
22 outlets as of December 31, 2020 in Exhibit J to the FDD.

23 E. Pursuant to section 31110, it is unlawful for any person to offer or sell a franchise in
24 this state unless the offer has been registered with the Commissioner or is exempted.

25 F. Pursuant to section 31106, a franchisor must file a notice of exemption with and pay a
26 fee to the Commissioner no later than fifteen (15) calendar days after the sale of a franchise to be
27 exempted from registration under section 31106.
28

1 G. Respondent entered into three (3) Trademark Sub-License Agreements between July
2 2019 and February 2020 with franchisees for the operation of Margaritaville Hotels in California.

3 H. In response to a comment letter issued by the Department’s counsel relating to app-
4 21138, Respondent, via its outside counsel, admitted to selling these three (3) franchises without
5 registration and failing to file notices of exemption within fifteen (15) days after the sale.

6 I. The Commissioner finds that Respondent failed to perfect its exemption from
7 registration under section 31106 and therefore offered and sold three (3) franchises in California
8 without registration or exemption, in violation of section 31110.

9 J. NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions
10 set forth herein, the Parties agree as follows:

11 **II.**

12 **TERMS AND CONDITIONS**

13 1. Purpose. This Consent Order resolves the issues before the Commissioner,
14 described in the Recitals above, in a manner that avoids the expense of a hearing and other possible
15 court proceedings, protects consumers, is in the public interest, and is consistent with the purposes
16 and provisions of the applicable law.

17 2. Desist and Refrain Order. Pursuant to Corporations Code sections 31402 and 31406,
18 Margaritaville Hotels & Resorts, LLC is hereby ordered to desist and refrain from the violations set
19 forth herein, in violation of Corporations Code section 31110, and from any violations of the
20 Franchise Investment Law. The issuance of this order is necessary, in the public interest, for the
21 protection of investors, and is consistent with the purposes, policies, and provisions of the Franchise
22 Investment Law.

23 3. Penalties. Respondent shall pay an administrative penalty of \$7,500.00 no later than
24 fifteen (15) days after the effective date of this Consent Order, as defined in paragraph 22 (Effective
25 Date). The penalty must be made payable in the form of a cashier’s check or Automated Clearing
26 House deposit to the Department of Financial Protection and Innovation and transmitted to the
27 attention of Accounting – Legal, at the Department of Financial Protection and Innovation, 2101
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1 Arena Boulevard, Sacramento, California 95834. Notice of the payment must be concurrently sent
2 to Lulu Gomez via email at lulu.gomez@dfpi.ca.gov.

3 4. Pre-Effective Amendment to or Withdrawal of Pending Registration. Respondent
4 hereby agrees that it will, within fifteen (15) calendar days of the Effective Date, either file a pre-
5 effective amendment application to its pending registration application, app-21138, to disclose this
6 Consent Order in Item 3 or will submit a request to withdraw its pending registration application,
7 app-21138, and, if it so chooses, file a new initial application that discloses this Consent Order in
8 Item 3.

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

17 6. Failure to Comply with Consent Order. Respondent agrees that if it fails to comply
18 with the terms of this Consent Order, the Commissioner may, in addition to all other available
19 remedies it may invoke under the FIL, summarily suspend or revoke Respondent’s franchise
20 registration (if applicable) or deny Respondent’s FIL applications (if applicable), until Respondent
21 is in compliance. Respondent waives any notice and hearing rights to contest such summary
22 actions by the Commissioner, which may be afforded under the FIL, APA, CCP, or any other
23 provision of law.

24 7. Information Willfully Withheld or Misrepresented. This Consent Order may be
25 revoked, and the Commissioner may pursue any and all remedies available under law against
26 Respondent, if the Commissioner discovers that Respondent knowingly or willfully withheld or
27 misrepresented information used for and relied upon in this Consent Order.
28

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

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

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

14 11. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
15 interest.

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

25 13. Waiver, Amendments, and Modifications. No waiver, amendment, or modification
26 of this Consent Order will be valid or binding unless it is in writing and signed by each of the
27 Parties. The waiver of any provision of this Consent Order will not be deemed a waiver of any
28 other provision. No waiver by either Party of any breach of, or of compliance with, any condition

1 or provision of this Consent Order by the other Party will be considered a waiver of any other
2 condition or provision or of the same condition or provision at another time.

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

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

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

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

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

25 19. Notice. Any notice required under this Consent Order shall be provided to each
26 party at the following addresses:

27 To Respondent: Annie Caiola, Esq.
28 Caiola & Rose, LLC
125 Clairemont Avenue, Suite 240
Decatur, Georgia 30030

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annie@caiolarose.com

To the Commissioner: Lulu Gomez, Senior Counsel
Department of Financial Protection and Innovation
320 West 4th Street, Suite 750
Los Angeles, CA 90013
lulu.gomez@dfpi.ca.gov

20. Signatures. A fax, scanned, or electronic signature shall be deemed the same as an original signature.

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

22. 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, Annie Caiola, Esq. at annie@caiolarose.com.

23. 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: 3/7/2022

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection
and Innovation

By: _____
THERESA LEETS
Assistant Chief Counsel

Dated: 3/7/2022

MARGARITAVILLE HOTELS
AND RESORTS, LLC

By: _____
JOHN COHLAN
Chief Executive Officer