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

11 In the Matter of:)
12 THE COMMISSIONER OF FINANCIAL)
PROTECTION AND INNOVATION,) CONSENT ORDER
13 Complainant,)
14 v.)
15 JOHN T. HEWITT, an individual,)
16 Respondent.)
17 _____)

18 This Consent Order is entered into between the Commissioner of Financial Protection and
19 Innovation (Commissioner) and John T. Hewitt (Hewitt or Respondent), to resolve a dispute
20 surrounding the interpretation of franchise disclosure requirements, and is made with respect to the
21 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.),¹ and registering the offer and sale of
27 franchises in California.

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

1 B. John T. Hewitt is an individual and resident of Virginia. Hewitt currently serves as
2 chairman and chief executive officer of Loyalty, LLC. At all relevant times, Loyalty, LLC was and
3 is a Virginia limited liability company, with a principal place of business located at 780 Lynnhaven
4 Parkway, Suite 240, Virginia Beach, Virginia 23452.

5 C. Loyalty, LLC is a limited liability company formed under the laws of the
6 Commonwealth of Virginia whose business is to offer and sell franchises in the State of California,
7 in connection with various brands.

8 D. Hewitt founded the Liberty Tax Services (Liberty) brand. Liberty provides retail tax
9 preparation services to consumers throughout the United States. Hewitt served as the Chief
10 Executive Officer of Liberty from formation in 1997 until 2017. Until 2018, Hewitt was chairman
11 of the company’s board of directors and controlling shareholder with the authority to select a
12 majority of the board members.

13 E. On December 20, 2019, approximately 16 months after Hewitt left Liberty, in a Final
14 Order with the Department of Justice, Liberty agreed to: (i) avoid hiring or otherwise engage Hewitt
15 as an executive, advisor, consultant, employee, franchisee, area developer or member of the Liberty
16 board of directors; and (ii) refrain from granting stock options or other rights to acquire equity in
17 Liberty or in the parent entity or entities of Liberty. (See the Final Order in United States of
18 America vs. Franchise Group Intermediate, dba Liberty Tax, Case No.2:19-cv-00653-RAJ-DEM,
19 dated December 20, 2019 (Final Order)). Hewitt was not a named party to the aforementioned case
20 or provided notice of its existence prior to the entry of the Final Order. The Final Order was
21 executed as a final judgment in the above referenced action without the parties engaging in the
22 discovery process regarding the allegations contained in the complaint or the findings of fact or
23 conclusions of law contained in the Final Order.

24 F. Pursuant to section 31114 of the FIL, the Commissioner may require franchise
25 applicants and/or franchise registrants to make additional disclosures beyond those required by the
26 Amended Franchise Rule. Section 31203 of the FIL makes it unlawful for any person to violation
27 any order of the Commissioner or fail to comply with a condition to the effectiveness of the
28 registration of the offer or sale of franchises in the state of California.

1 G. The Commissioner has determined pursuant to her authority under the FIL that
2 Hewitt is “subject to” the Final Order, and thus is required to disclose the Final Order in Item 3 of
3 any Franchise Disclosure Document filed by any present or future franchisor (Franchisor) where
4 Hewitt maintains management responsibilities over the sale or operation of any Franchisor.

5 H. The Commissioner finds that entering into this Consent Order is in the public interest
6 and consistent with the purposes fairly intended by the policy and provisions of the FIL.

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

9 **II.**

10 **Terms and Conditions**

11 1. Purpose. This Consent Order resolves the issues before the Commissioner relating to
12 disclosure of the Final Order in the franchise registrations of ATAX, LLC and Loyalty Business
13 Services LLC, where Hewitt is identified in the respective Item 2 disclosures, in a manner that
14 avoids the expense of a hearing and other possible court proceedings, protects consumers, is in the
15 public interest, and is consistent with the purposes and provisions of the applicable laws.

16 2. Disclosure of the DOJ Final Order. Hewitt shall include a description of the DOJ
17 Consent Order in any Franchise Disclosure Document where he is included in Item 2, as a material
18 disclosure in Item 3 of the respective Franchise Disclosure Documents, for so long as Hewitt is a
19 director, trustee, general partner, principal officer, or maintains management responsibility relating
20 to the sale or operation of the respective Franchisor. Hewitt hereby agrees to make all required
21 disclosures, pursuant to this Consent Order. The disclosure shall recite the below language:

22
23 ***Governmental Actions against Unrelated Entities:***

24 United States of America v. Franchise Group Intermediate L 1, LLC d/b/a Liberty
25 Tax Service, (Case No. 2:19-cv-00653-RAJ-DEM) filed on or around December 3,
26 2019 in the United States District Court for the Eastern District of Virginia. The
27 Department of Justice (DOJ) filed a complaint asserting that Liberty Tax failed to
28 maintain adequate controls over the tax returns prepared by its franchisees and
failed to take steps to prevent the filing of potentially false or fraudulent returns
prepared by its franchises despite notice of fraud at some of its franchisee stores.
The primary focus of the DOJ’s investigation that preceded the complaint related

1 to the alleged operational wrongdoing of 12 franchisees. Also on December 3,
2 2019, the DOJ and Liberty Tax filed a joint motion asking the court to approve a
3 proposed settlement order setting forth certain enhancements to the Liberty Tax
4 service compliance program and requiring Liberty Tax to retain an independent
5 monitor to oversee the implementation of the required enhancements to the
6 compliance program; and work with Liberty Tax to make further enhancements to
7 improve the compliance program. As part of the proposed order, Liberty Tax
8 agreed not to rehire John T. Hewitt, under whose supervision the alleged conduct
9 at issue occurred. Liberty Tax further agreed not to grant John T. Hewitt any
10 options or other rights to acquire equity in Liberty Tax or to nominate him to the
11 company's board of directors. On December 20, 2019, the court granted the joint
12 motion and the motion to seal, which fully resolved the legal proceedings initiated
13 by the DOJ. Although he is referenced in the court's order, John T. Hewitt was not
14 a named party to this case.

15 3. Disclosure of the Instant Consent Order. Hewitt will include a description of this
16 instant Consent Order in any Franchise Disclosure Document where he is included in Item 2, as a
17 material disclosure in Item 3 of any respective Franchise Disclosure Documents, for so long as
18 Hewitt is a director, trustee, general partner, principal officer, or maintains management
19 responsibility relating to the sale or operation of the respective Franchisor. The disclosure shall
20 recite the below language:

21 ***Governmental Actions Against John T. Hewitt***

22 In the Matter of a Consent Order between The Commissioner of Financial
23 Protection and Innovation and John T. Hewitt, before the Commissioner of
24 Financial Protection and Innovation for the State of California. The Commissioner
25 is the head of the Department of Financial Protection and Innovation (Department)
26 and is responsible for administering and enforcing the Franchise Investment Law
27 (FIL) (Corp. Code, § 31000 et seq.). The Commissioner has determined pursuant
28 to her authority under the FIL that John T. Hewitt is "subject to" the Final Order
entered in the matter of United States of America v. Franchise Group Intermediate
L 1, LLC d/b/a Liberty Tax Service (Case No. 2:19-cv-00653-RAJ-DEM) filed on
or around December 3, 2019 in the United States District Court for the Eastern
District of Virginia (the Final Order). John T. Hewitt agreed that he is required to
disclose the Final Order in Item 3 of any Franchise Disclosure Document filed by
any present or future Franchisor where John T. Hewitt is a director, trustee, general
partner, principal officer, or maintains management responsibility relating to the
sale or operation of the respective Franchisor, along with disclosure of this
governmental action.

1 4. Affidavit of John T. Hewitt. Hewitt will execute an Affidavit acknowledging that he
2 is on Notice of the Commissioner’s interpretation of disclosure requirements under the FIL and that
3 he will disclose to all present and future Franchisors where he is a director, trustee, general partner,
4 principal officer, or maintains management responsibility relating to the sale or operation, the
5 existence of this Consent Order, along with such other conditions. The form of the Affidavit will
6 contain the below language:

- 7
- 8 1. I am chairman and chief executive officer of Loyalty, LLC, a Virginia limited liability
9 company.
- 10 2. Loyalty, LLC presently maintains an ownership interest in multiple affiliated companies that
11 offer and sell franchises in the United States of America. Loyalty, LLC intends to continue
12 to acquire businesses for the purposes of offering and selling franchises (individually,
13 Loyalty Franchisor; collectively, Loyalty Franchisors).
- 14 3. I have actual notice of the Final Order in United States of America vs. Franchise Group
15 Intermediate, dba Liberty Tax, Case No.2:19-cv-00653-RAJ-DEM, dated December 20,
16 2019 (the Final Order).
- 17 4. I agree that I will provide notice of the Final Order to any Loyalty Franchisor and any other
18 franchise system (collectively Franchisor) where I am currently, or in the future become, a
19 director, trustee, general partner, principal officer, or exercise management responsibility
20 relating to the sale or operation,
- 21 5. I agree that disclosures relating to the Final Order, as agreed upon in the contemporaneously
22 executed Consent Order with the Commissioner of Financial Protection and Innovation for
23 the State of California, shall be included in any Franchise Disclosure Document in the
24 United States of America as a condition precedent of my being, or becoming, a director,
25 trustee, general partner, or principal officer, or exercising any management responsibility
26 relating to the sale or operation of the respective Franchisor,
- 27 6. This Affidavit shall be admissible in any future proceeding arising from, or related to, a
28 failure to disclose the Final Order in a Franchise Disclosure Document whereby I am a
29 director, trustee, general partner, principal officer, or maintain management responsibility
30 relating to the sale or operation.

31 5. Information Willfully Withheld or Misrepresented. This Consent Order may be
32 rescinded, and the Commissioner may pursue any and all remedies available under law against
33 Respondent, if the Commissioner discovers that Respondent knowingly or willfully withheld or
34

1 misrepresented information used for and relied upon in this Consent Order.

2 6. Future Actions by Commissioner. If Respondent fail to comply with any terms of
3 this Consent Order, the Commissioner may institute proceedings for any and all violations
4 otherwise resolved under this Consent Order. The Commissioner reserves the right to bring any
5 future actions against Respondent for any and all unknown violations of the FIL.

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

10 8. Waiver of Hearing Rights. Respondent acknowledges that the Commissioner is
11 ready, willing, and able to proceed with the filing of an administrative enforcement action on the
12 findings described in the recitals. Respondent hereby waives the right to any hearings, any
13 reconsideration, appeal, or other right to review which may be afforded by the FIL, the California
14 Administrative Procedure Act (APA), the California Code of Civil Procedure (CCP), or any other
15 provision of law. By waiving such rights, Respondent effectively consents to the finality of this
16 Consent Order.

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

20 10. Binding. This Consent Order is binding on all heirs, assigns, or successors in
21 interest.

22 11. Reliance. Each of the parties represents, warrants, and agrees that in executing this
23 Consent Order it has relied solely on the statements set forth herein and the advice of its own
24 counsel. Each of the parties further represents, warrants, and agrees that in executing this Consent
25 Order it has placed no reliance on any statement, representation, or promise of any other party, or
26 any other person or entity not expressly set forth herein, or upon the failure of any party or any
27 other person or entity to make any statement, representation, or disclosure of anything whatsoever.
28 The parties have included this clause: (1) to preclude any claim that any party was in any way

1 fraudulently induced to execute this Consent Order and (2) to preclude the introduction of parole
2 evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

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

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

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

19 15. Counterparts. This Consent Order may be executed in one or more separate
20 counterparts, each of which will be deemed an original when so executed. Such counterparts
21 together will be deemed to constitute a single document.

22 16. Mandatory Disclosure in Future Applications. Respondent will disclose this Consent
23 Order as provided in paragraph 2 and 3, in any application for a license, permit, or qualification
24 under the Commissioner’s current or future jurisdiction.

25 17. Effect Upon Future Proceedings. If any of Respondent apply for any license, permit,
26 or qualification under the Commissioner’s current or future jurisdiction or is the subject of any
27 future action by the Commissioner to enforce this Consent Order, then the subject matter hereof
28 shall be admitted for the purpose of such application or action.

