

1 CLOTHILDE V. HEWLETT
Commissioner
2 THERESA LEETS
Assistant Chief Counsel
3 Lulu Gomez (State Bar No. 287527)
4 Senior Counsel
5 Department of Financial Protection and Innovation
320 West 4th Street, Suite 750
6 Los Angeles, CA 90013-2344
Telephone: (213) 393-0032
7 Facsimile: (213) 576-7179

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 DAVID PROHASKA and DJP ADVISORS)
17 LLC,)
18 Respondents.)
19 _____)

20 This Consent Order is entered into between the Commissioner of Financial Protection and
21 Innovation (Commissioner) and David Prohaska and DJP Advisors LLC (Respondents, and together
22 with Commissioner, 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. David Prohaska is the sole member-manager of DJP Advisors LLC, a limited liability
7 company (DJP Advisors), with a principal place of business located at 27 Gleneagles Dr, Newport
8 Beach, CA 92660. There have never been nor are there currently any individuals or entities named
9 David Prohaska or DJP Advisors, LLC, respectively, licensed by the California Department of
10 Consumer Affairs Board of Accountancy.

11 C. Pursuant to section 31200, it is unlawful for any person willfully to make any untrue
12 statement of a material fact in any application, notice or report filed with the Commissioner under
13 the FIL, or willfully to omit to state in any such application, notice, or report any material fact which
14 is required to be stated therein, or fail to notify the Commissioner of any material change as required
15 by section 31123.

16 D. On May 21, 2018, December 17, 2018, March 25, 2019, and May 11, 2020, MD
17 Hydration Franchise, Inc. (Franchisor) filed four applications (2018-2020 Applications) for
18 registration, amendment, or renewal with the Department to offer and sell franchises in California.
19 The 2018-2020 Applications included auditor's consents and FDDs containing audited financial
20 statements accompanied by independent auditor's reports signed by Respondents as the persons
21 conducting the audit (Financial Statements). The Financial Statements included balance sheets,
22 statements of income, and/or statements of changes in members' equity for the periods ended March
23 31, 2018, December 31, 2018, and December 31, 2019. The independent auditor's reports included
24 with each of the Financial Statements contained unqualified audit opinions on such Financial
25 Statements.

26 E. The Franchisor included Respondents' auditor's consents and Financial Statements
27 with accompanying independent auditor's reports in its 2018-2020 Applications filed with the
28 Department even though neither DJP Advisors nor David Prohaska were licensed to conduct audits

1 in California. Franchisor and Respondents failed to disclose to the Commissioner that David
2 Prohaska nor DJP Advisors were not licensed by the California Board of Accountancy at the time
3 the 2018-2020 Applications were filed with the Department.

4 F. The Commissioner finds that the failure to disclose in the 2018-2020 Applications
5 that both David Prohaska and DJP Advisors were unqualified to issue independent auditor’s reports
6 are omissions of a material fact under the FIL, in violation of section 31200.

7 G. The Commissioner also finds that the inclusion of the Financial Statements in the
8 2018-2020 Applications accompanied by Respondents’ independent auditor’s report stating that such
9 Financial Statements were audited when Respondents were not qualified to conduct audits are untrue
10 statements of a material fact in an application filed with the Commissioner, in violation of section
11 31200.

12 H. NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions
13 set forth herein, the Parties agree as follows:

14 **II.**

15 **TERMS AND CONDITIONS**

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

20 2. Desist and Refrain Order. Pursuant to section 31406, Respondents are hereby
21 ordered to desist and refrain from the violations set forth herein, in violation of Corporations Code
22 section 31200, and from any violations of the Franchise Investment Law. The issuance of this order
23 is necessary, in the public interest, for the protection of investors, and is consistent with the
24 purposes, policies, and provisions of the Franchise Investment Law.

25 3. Penalties. Respondent shall pay an administrative penalty of \$20,000 (Penalties) no
26 later than thirty (30) days after the effective date of this Consent Order as defined in paragraph 20
27 (Effective Date). The Penalties must be made payable in the form of a cashier’s check or Automated
28 Clearing House deposit to the Department and transmitted to the attention of Accounting-Legal at

1 the Department of Financial Protection and Innovation, 2101 Arena Boulevard, Sacramento,
2 California 95834. Notice of the payment must be concurrently sent via email to Lulu Gomez at
3 lulu.gomez@dfpi.ca.gov. Failure to pay Penalties in a timely manner shall be deemed to be a
4 material breach of this Consent Order.

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

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

17 6. Future Actions by Commissioner. If Respondents fail to comply with any terms of
18 the Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
19 resolved by this Consent Order. The Commissioner reserves the right to bring any future actions
20 against Respondents, or any of their partners, owners, officers, shareholders, directors, employees, or
21 successors for any and all unknown violations of the FIL or any other law under the Commissioner's
22 jurisdiction.

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

1 8. Headings. The headings to the paragraphs of this Consent Order are inserted for
2 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
3 the provisions hereof.

4 9. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
5 interest.

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

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

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

27 13. Governing Law. This Consent Order will be governed by and construed in
28 accordance with California law. Each of the Parties hereto consents to the jurisdiction of such

1 court, and hereby irrevocably waives, to the fullest extent permitted by law, the defense of an
2 inconvenient forum to the maintenance of such action or proceeding in such court.

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

6 15. Effect Upon Future Proceedings. If Respondents apply for any license, registration,
7 permit, or qualification under the Commissioner’s current or future jurisdiction, or is the subject of
8 any future action by the Commissioner to enforce this Consent Order, then the subject matter hereof
9 shall be admitted for the purpose of such application(s) or enforcement proceeding(s).

10 16. Voluntary Order. Respondents enter into this Consent Order voluntarily and without
11 coercion and acknowledge that no promises, threats, or assurances have been made by the
12 Commissioner or any officer, or agent thereof, about this Consent Order. The Parties each
13 represent and acknowledge that he, she, or it is executing this Consent Order completely voluntarily
14 and without any duress or undue influence of any kind from any source.

15 17. Notice. Any notice required under this Consent Order shall be provided to each
16 party at the following addresses:

17 To Respondent: David Prohaska
18 DJP Advisors LLC
19 27 Gleneagles Dr,
20 Newport Beach, CA 92660
dave@djp advisors.com

21 To the Commissioner: Lulu Gomez, Senior Counsel
22 Department of Financial Protection and Innovation
23 320 West Fourth Street, Suite 750
Los Angeles, CA, 90013
lulugomez@dfpi.ca.gov

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

26 19. Public Record. Respondents hereby acknowledge that this Consent Order is and will
27 be a matter of public record.
28

1 20. Effective Date. This Consent Order shall become final and effective when signed by
2 all Parties and delivered by the Commissioner’s agent via e-mail to David Prohaska at
3 dave@djp advisors.com.

4 21. Authority to Sign. Each signatory hereto covenants that he/she possesses all
5 necessary capacity and authority to sign and enter into this Consent Order and undertake the
6 obligations set forth herein.

7
8 Dated: 8/8/2022

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection
and Innovation

11 By: _____
12 THERESA LEETS
13 Assistant Chief Counsel

14
15 Dated: 8/8/2022

David Prohaska

DJP ADVISORS LLC

19
20 By: _____
21 David Prohaska
22 Member & Manager