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Commissioner
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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 MD HYDRATION FRANCHISE INC.,)
17)
Respondent.)
18)
19)

20 This Consent Order is entered into between the Commissioner of Financial Protection and
21 Innovation (“Commissioner”) and MD Hydration Franchise Inc. (“Respondent,” and together with
22 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
28

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

1 franchises in California. To register a franchise, a franchisor must file an application that includes a
2 Franchise Disclosure Document (“FDD”) with the Department for review, in accordance with
3 sections 31111 and 31114. The FIL requires franchisors to disclose certain material information that
4 is intended to provide prospective franchisees with facts upon which to make an informed decision
5 to purchase a franchise, as stated in section 31001.

6 B. Respondent is a California professional medical corporation with a principal place of
7 business located at 404 Westminster Avenue, Suite 4, Newport Beach, California 92663.
8 Respondent sells franchises to operate a clinic that administers hydration and injection therapies to
9 patients in a relaxing medi-spa environment, using a variety of injectable vitamins and minerals,
10 purified water and other non-prescription fluids in quantities, combinations and preparation
11 techniques as determined by a medical practitioner under the name “The Hydration Room.”

12 C. David Prohaska is the sole member-manager of DJP Advisors LLC, a limited liability
13 company (“DJP Advisors”), with a principal place of business located at 27 Gleneagles Dr, Newport
14 Beach, CA 92660. There have never been any individuals or entities named David Prohaska or DJP
15 Advisors, LLC, respectively, licensed by the California Department of Consumer Affairs Board of
16 Accountancy.

17 D. Stan Brandenburg is or was a partner at Brandenburg Financial, Inc (“Brandenburg
18 Financial”). There has never been any individuals or entities named Stan Brandenburg or
19 Brandenburg Financial, Inc, respectively, licensed by the California Department of Consumer
20 Affairs Board of Accountancy.

21 E. Pursuant to section 31111, an application for registration of an offer of a franchise
22 shall be filed with the commissioner upon the Uniform Franchise Registration Application, as
23 identified, modified, and supplemented by rule of the commissioner. Pursuant to Section
24 310.111.2(a) of the California Code of Regulations, title 10 (“Rule 310.111.2”), “Financial
25 Statements required to be filed by these rules or by any official form of the Department shall be
26 prepared in accordance with generally accepted accounting principles. Financial statements should
27 be audited by either an independent certified public accountant or independent public accountant,
28

1 except where the particular form or this Section permits the use of unaudited statements for interim
2 periods or generally.”

3 F. Pursuant to section 31200, it is unlawful for any person willfully to make any untrue
4 statement of a material fact in any application, notice or report filed with the Commissioner under
5 the FIL, or willfully omit to state in any such application, notice, or report any material fact which is
6 required to be stated therein or fail to notify the Commissioner of any material change as required by
7 section 31123.

8 G. Pursuant to section 31201, it is unlawful for any person to offer or sell a franchise in
9 this state by means of any written or oral communication not enumerated in Section 31200 which
10 includes an untrue statement of a material fact or omits to state a material fact necessary in order to
11 make the statements made, in the light of the circumstances under which they were made, not
12 misleading.

13 H. On October 6, 2017 (“2017 Application”) and May 21, 2018, December 17, 2018,
14 March 25, 2019, and May 11, 2020 (collectively, “2018-2020 Applications”), Respondent filed five
15 applications for registration, amendment, or renewal with the Department to offer and sell franchises
16 in California. The 2017 Application included an independent auditor’s consent signed by Stan
17 Brandenburg and an FDD containing audited financial statements accompanied by an independent
18 auditor’s report signed by Brandenburg Financial as the firm conducting the audit (“2017 Financial
19 Statement”). The 2017 Financial Statements included a balance sheet as of September 24, 2017.
20 The 2018-2020 Applications included independent auditor’s consents and FDDs containing audited
21 financial statements accompanied by independent auditor’s reports signed by David Prohaska and
22 DJP Advisors as the persons conducting the audit (“2018-2020 Financial Statements”). The 2018-
23 202 Financial Statements included balance sheets as of December 31, 2018 and December 31, 2019
24 and statements of income and of changes in members’ equity listing the dates 2018 and 2019.

25 I. The Commissioner finds that the failure to comply with the requirement set forth in
26 Rule 310.111.2 that financial statements filed with franchise registration applications should be
27 audited by either an independent certified public accountant or independent public accountant in the
28 2017 Financial Statement and 2018-2020 Financial Statement is in violation of section 31111.

1 J. The Commissioner finds that the inclusion of the 2017 Financial Statement in the
2 2017 Application accompanied by Brandenburg Financial’s independent auditor’s report stating that
3 such 2017 Financial Statement was audited when Brandenburg Financial was not qualified to
4 conduct audits is an untrue statement of a material fact in an application filed with the
5 Commissioner, in violation of section 31200.

6 K. The Commissioner finds that the inclusion of the 2018-2020 Financial Statements in
7 the 2018-2020 Applications accompanied by David Prohaska’s independent auditor’s reports stating
8 that such 2018-2020 Financial Statements were audited when David Prohaska was not qualified to
9 conduct audits is an untrue statement of a material fact in an application filed with the
10 Commissioner, in violation of section 31200.

11 L. The Commissioner further finds that Respondent offered and sold franchises using
12 FDDs containing an untrue statement of a material fact, since the FDDs contained the 2017 Financial
13 Statements and 2018-2020 Financial Statements accompanied by Brandenburg Financial’s and
14 David Prohaska’s independent auditor’s reports stating, respectively, that the 2017 Financial
15 Statements and 2018-2020 Financial Statements were audited when Brandenburg Financial and
16 David Prohaska were not qualified to conduct audits, in violation of section 31201.

17 M. NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions
18 set forth herein, the Parties agree as follows:

19 **II.**

20 **TERMS AND CONDITIONS**

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

25 2. Desist and Refrain Order. Pursuant to section 31406, MD Hydration Franchise Inc.
26 is hereby ordered to desist and refrain from the violations set forth herein, in violation of
27 Corporations Code sections 31111, 31200, and 31201, and from any violations of the Franchise
28 Investment Law. The issuance of this order is necessary, in the public interest, for the protection of

1 investors, and is consistent with the purposes, policies, and provisions of the Franchise Investment
2 Law.

3 3. Penalties. Respondent shall pay an administrative penalty of \$35,625.00
4 (“Penalties”) no later than fifteen (15) days after the effective date of this Consent Order as defined
5 in paragraph 23 (“Effective Date”). The Penalties must be made payable in the form of a cashier’s
6 check or Automated Clearing House deposit to the Department and transmitted to the attention of
7 Accounting-Legal at the Department of Financial Protection and Innovation, 2101 Arena Boulevard,
8 Sacramento, California 95834. Notice of the payment must be concurrently sent via email to Lulu
9 Gomez at lulu.gomez@dfpi.ca.gov. Failure to pay Penalties in a timely manner shall be deemed to
10 be a material breach of this Consent Order.

11 4. Cancellation and Refund Offer. Respondent agrees to make offers (“Cancellation
12 Offers”) within thirty (30) days after the Effective Date to each of the franchisees who were offered
13 and sold a franchise from November 28, 2017 to present (“Franchisee Class”) to cancel their
14 franchise agreements and obtain a refund of all initial franchise fees paid (“Refund Payment”). The
15 form of Cancellation Offer shall be in the form approved by the Commissioner (“Cancellation
16 Form”) and shall be sent to each of the franchisees in the Franchisee Class by certified mail. No
17 credits or benefits paid to, or received by, a franchisee shall offset any refund payment. This
18 provision shall apply to all California franchisees who purchased an MD Hydration franchise
19 regardless of whether they were terminated on or before the Effective Date. The Refund Payments
20 shall be made within ten (10) calendar days from the date the franchisor receives any acceptance of
21 the Cancellation and Refund Offer. Within sixty (60) days after the Effective Date, Respondent
22 shall submit to the Commissioner satisfactory documentation evidencing each franchisee’s response
23 to the Cancellation Offer via email to Lulu Gomez at lulu.gomez@dfpi.ca.gov. Respondent is
24 responsible for ensuring that any refund payment owed to any franchisee that has not been cashed
25 within one hundred eighty (180) days of the Effective Date of this Consent Order shall escheat to the
26 State of California in accordance with the Unclaimed Property Law.

27 5. Waiver of Hearing Rights. Respondent acknowledges that the Commissioner is
28 ready, willing, and able to proceed with the filing of an administrative enforcement action on the

1 charges contained in this Consent Order. Respondent hereby waives the right to any hearings, and to
2 any reconsideration, appeal, or other right to review which may be afforded pursuant to the FIL, the
3 Administrative Procedure Act, the Code of Civil Procedure, or any other provision of law.

4 Respondent further expressly waives any requirement for the filing of any accusation pursuant to
5 Government Code section 11415.60, subdivision (b). By waiving such rights, Respondent
6 effectively consents to this Consent Order and all of its terms becoming final.

7 6. Opportunity to Cure. In the event Respondent fails to comply with the terms of this
8 Consent Order (except for the Desist and Refrain Order), Respondent will have 10 calendar days to
9 cure such breach from the date written notice of the breach is emailed by the Commissioner to
10 Respondent (Notice) at the email address in paragraph 20. Proof of cure, satisfactory to the
11 Commissioner, shall be sent via traceable method with a notice via email by Respondent so that it is
12 received within 15 days of the date of Notice to Lulu Gomez at lulu.gomez@dpi.ca.gov.

13 7. Failure to Comply with Consent Order or Cure Breach. Respondent agrees that if it
14 fails to comply with the Desist and Refrain Order in this Consent Order, or fails to timely cure any
15 breach to the satisfaction of the Commissioner, the Commissioner may, in addition to all other
16 available remedies it may invoke under the FIL, summarily suspend, revoke, or deny its FIL
17 registration (if applicable). Respondent stipulates to the finality of any such FIL registration
18 suspensions, revocations, or denials that the Commissioner may order. Respondent waives any
19 notice and hearing rights to contest such summary suspensions, revocations, or denials which may
20 be afforded under the FIL, the California Administrative Procedure Act, the California Code of
21 Civil Procedure, or any other provision of law in connection therewith.

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

26 9. Future Actions by Commissioner. If Respondent fails to comply with any terms of
27 the Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
28 resolved by this Consent Order. The Commissioner reserves the right to bring any future actions

1 against Respondent, or any of its partners, owners, officers, shareholders, directors, employees, or
2 successors for any and all unknown violations of the FIL or any other law under the Commissioner’s
3 jurisdiction.

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

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

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

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

22 14. Waiver, Amendments, and Modifications. No waiver, amendment, or modification
23 of this Consent Order will be valid or binding unless it is in writing and signed by each of the
24 Parties. The waiver of any provision of this Consent Order will not be deemed a waiver of any
25 other provision. No waiver by either Party of any breach of, or of compliance with, any condition
26 or provision of this Consent Order by the other Party will be considered a waiver of any other
27 condition or provision or of the same condition or provision at another time.
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1 15. Full Integration. This Consent Order is the final written expression and the complete
2 and exclusive statement of all the agreements, conditions, promises, representations, and covenant
3 between the Parties with respect to the subject matter hereof, and supersedes all prior or
4 contemporaneous agreements, negotiations, representations, understandings, and discussions
5 between and among the Parties, their respective representatives, and any other person or entity with
6 respect to the subject matter covered hereby.

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

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

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

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

23 20. Notice. Any notice required under this Consent Order shall be provided to each
24 party at the following addresses:

25 To Respondent: Don Drysdale, Esq.
26 Lee, Hong, Degerman, Kang, Waimey
27 3501 Jamboree Road, Suite 6000
28 Newport Beach, CA, 92660
 ddrysdale@lhlaw.com

 To the Commissioner: Lulu Gomez, Senior Counsel

Department of Financial Protection and Innovation
320 West Fourth Street, Suite 750
Los Angeles, CA, 90013
lulugomez@dfpi.ca.gov

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

22. Public Record. Respondent hereby acknowledges that this Consent Order is and will be a matter of public record.

23. 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, Don Drysdale at ddrysdale@lhlaw.com.

24. 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: 9/19/2022

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection
and Innovation

By: _____
THERESA LEETS
Assistant Chief Counsel

Dated: 9/14/2022

MD HYDRATION FRANCHISE INC.

By: _____
BRETT FLORIE
CEO