

1 CLOTHIDE V. HEWLETT  
Commissioner of Financial Protection and Innovation  
2 COLLEEN MONAHAN  
Acting Deputy Commissioner  
3 THERESA LEETS  
Assistant Chief Counsel  
4 MARISA I. URTEAGA-WATKINS (State Bar No. 236398)  
Counsel  
5 Department of Financial Protection and Innovation  
6 2101 Arena Blvd.  
7 Sacramento, California 95834

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 THE COMMISSIONER OF FINANCIAL )  
13 PROTECTION AND INNOVATION, )  
14 Complainant, ) CONSENT ORDER  
15 v. )  
16 21 FUN, INC., doing business as 21 FUN, and )  
17 JOHN GARRETT SCARBOROUGH, an )  
18 individual, )  
Respondents. )

19 This Consent Order is entered into between the Commissioner of Financial Protection and  
20 Innovation (Commissioner), and 21 Fun, Inc. doing business as 21 Fun (21F), and John Garrett  
21 Scarborough, an individual and chief executive officer of 21 Fun, Inc. (Scarborough) collectively,  
22 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  
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1 Investment Law (FIL) (Corp. Code, § 31000 et seq.),<sup>1</sup> and registering the offer and sale of franchises  
2 in California. To register a franchise, a franchisor must file an application which includes a Uniform  
3 Franchise Disclosure Document (FDD) with the Department for review and approval, in accordance  
4 with sections 31111 and 31114. The FIL requires franchisors to disclose certain material  
5 information which is intended to provide prospective franchisees with facts upon which to make an  
6 informed decision to purchase a franchise, as stated in section 31001.

7 B. At all relevant times, 21F was and is a California corporation with a principal place of  
8 business located at 1461 Alvarado Avenue, Burlingame, California 94010. At all relevant times,  
9 21F offered and sold franchises that provide casino style games and entertainment to consumers. At  
10 all relevant times, 21F engaged in the offer of 21F franchises in California. At all relevant times, 21F  
11 was not registered to offer and sell franchises in California by the Department. At all relevant times,  
12 21F was not registered as a Seller Assisted Marketing Plan (SAMP) with the California Attorney  
13 General's Office.

14 C. At all relevant times, Scarborough was and is an individual who does business as the  
15 chief executive officer, secretary and registered agent for service of process for 21F, with a principal  
16 place of business located at 1461 Alvarado Avenue, Burlingame, California 94010. At all relevant  
17 times, Scarborough offered and sold 21F franchises that provide casino style games and  
18 entertainment to consumers. At all relevant times, Scarborough engaged in the offer of 21F franchises  
19 in California. At all relevant times, Scarborough was not registered to offer and sell franchises in  
20 California by the Department. At all relevant times, Scarborough was not registered as a SAMP with  
21 the California Attorney General's Office.

22 D. Pursuant to section 31110, it is unlawful for any person to offer or sell a franchise in  
23 California unless the offer has been registered with the Commissioner or is exempt.

24 E. From October 8 to October 9, 2021, 21F and Scarborough offered 21F franchises to  
25 attendees seeking to purchase franchises at the Los Angeles Franchise Expo Show in the Pasadena  
26 Convention Center. 21F and Scarborough were not registered to offer and sell franchises by the  
27 Commissioner pursuant to the FIL from 2021 to present, or otherwise.

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

1 F. The Commissioner finds that 21F and Scarborough offered franchises in California  
2 without being registered with the Commissioner or exempt, in violation of section 31110.

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

5 **II.**

6 **TERMS AND CONDITIONS**

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

11 2. Desist and Refrain Order. Pursuant to Corporations Code section 31406, 21 Fun,  
12 Inc. doing business as 21 Fun, and John Garrett Scarborough, an individual and chief executive  
13 officer of 21 Fun, Inc. are hereby ordered to desist and refrain from the violations of Corporations  
14 Code section 31110 set forth herein and from violating the Franchise Investment Law. The  
15 issuance of this order is necessary, in the public interest, for the protection of investors, and is  
16 consistent with the purposes, policies, and provisions of the Franchise Investment Law.

17 3. Penalties. 21F and Scarborough shall jointly pay an administrative penalty of \$2,500  
18 (Penalties) no later than fifteen (15) days after the effective date of this Consent Order as defined in  
19 Paragraph 21 (Effective Date). The Penalties must be made payable in the form of a cashier's check  
20 or Automated Clearing House deposit to the Department and transmitted to the attention of

21 **Accounting – Legal SRD Franchise Unit** at the Department of Financial Protection and Innovation,  
22 2101 Arena Boulevard, Sacramento, California 95834. Notice of the payment must be concurrently  
23 sent via email to Marisa I. Urteaga-Watkins, Esq. at marisa.urteaga-watkins@dfpi.ca.gov. Failure to  
24 pay Penalties in a timely manner shall be deemed to be a material breach of this Consent Order.

25 4. Waiver of Hearing Rights. 21F and Scarborough acknowledge that the  
26 Commissioner is ready, willing, and able to proceed with the filing of an administrative enforcement  
27 action on the charges contained in this Consent Order. 21F and Scarborough hereby waive the right  
28 to any hearings, and to any reconsideration, appeal, or other right to review which may be afforded

1 pursuant to the FIL, the Administrative Procedure Act (APA), the Code of Civil Procedure (CCP), or  
2 any other provision of law. 21F and Scarborough further expressly waive any requirement for the  
3 filing of an accusation pursuant to Government Code section 11415.60, subdivision (b). By waiving  
4 such rights, 21F and Scarborough effectively consent to this Consent Order becoming final.

5       5.     Failure to Comply with Consent Order. 21F and Scarborough agree that if either fails  
6 to comply with the terms of this Consent Order, the Commissioner may, in addition to all other  
7 available remedies it may invoke under the FIL, summarily suspend or revoke 21F and/or  
8 Scarborough’s franchise registration (if applicable) or deny 21F and/or Scarborough’s FIL  
9 applications (if applicable), until 21F and/or Scarborough are in compliance. 21F and Scarborough  
10 waive any notice and hearing rights to contest such summary actions by the Commissioner, which  
11 may be afforded under the FIL, APA, CCP, or any other provision of law.

12       6.     Information Willfully Withheld or Misrepresented. This Consent Order may be  
13 revoked, and the Commissioner may pursue any and all remedies available under law against 21F  
14 and/or Scarborough, if the Commissioner discovers that 21F and/or Scarborough knowingly or  
15 willfully withheld or misrepresented information used for and relied upon in this Consent Order.

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

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

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

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

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

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

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

24           14.    Governing Law. This Consent Order will be governed by and construed in  
25 accordance with California law. Each of the Parties hereto consents to the jurisdiction of such  
26 court, and hereby irrevocably waives, to the fullest extent permitted by law, the defense of an  
27 inconvenient forum to the maintenance of such action or proceeding in such court.  
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1           15.    Counterparts. This Consent Order may be executed in one or more separate  
2 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall  
3 together constitute a single document.

4           16.    Effect Upon Future Proceedings. If 21F and/or Scarborough applies for any license,  
5 registration, permit, or qualification under the Commissioner’s current or future jurisdiction, or is  
6 the subject of any future action by the Commissioner to enforce this Consent Order, then the subject  
7 matter hereof shall be admitted for the purpose of such application(s) or enforcement proceeding(s).

8           17.    Voluntary Order. 21F and Scarborough enter this Consent Order voluntarily and  
9 without coercion and acknowledges that no promises, threats, or assurances have been made by the  
10 Commissioner or any officer, or agent thereof, about this Consent Order. The Parties each  
11 represent and acknowledge that he, she, or it is executing this Consent Order completely voluntarily  
12 and without any duress or undue influence of any kind from any source.

13           18.    Notice. Any notice required under this Consent Order shall be provided to each  
14 party at the following addresses:

15           To 21F and Scarborough:	Mathew J. Kreutzer, Esq. Howard & Howard 3800 Howard Hughes Parkway, Suite 1000 Las Vegas, NV 89169 mkreutzer@howardandhoward.com
16 17 18           To the Commissioner:	Marisa I. Urteaga-Watkins, Esq, Department of Financial Protection and Innovation 2101 Arena Blvd. Sacramento, California 95834 marisa.urteaga-watkins@dfpi.ca.gov

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

24           20.    Public Record. 21F and Scarborough hereby acknowledge that this Consent Order is  
25 and will be a matter of public record.

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21. 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 21F and Scarborough’s agent, Mathew J. Kreutzer, Esq. at mkreutzer@howardandhoward.com.

22. 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: CLOTHILDE V. HEWLETT  
Commissioner of Financial Protection and Innovation

By: \_\_\_\_\_  
COLLEEN MONAHAN  
Acting Deputy Commissioner

Dated: 21 FUN, INC., doing business as 21 FUN

By: \_\_\_\_\_  
JOHN GARRETT SCARBOROUGH  
Chief Executive Officer

Dated: JOHN GARRETT SCARBOROUGH

By: \_\_\_\_\_  
JOHN GARRETT SCARBOROUGH,  
an Individual and Chief Executive Officer  
of 21 FUN, Inc.