

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

9 Attorneys for Complainant

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

12 In the Matter of:)
13)
14 THE COMMISSIONER OF FINANCIAL)
PROTECTION AND INNOVATION,)
15) CONSENT ORDER
16 Complainant,)
17 v.)
18)
19 HOUSE OF TRIX, LLC,)
20 Respondent.)
)

21 This Consent Order is entered into between the Commissioner of Financial Protection and
22 Innovation (“Commissioner”) and House of Trix, LLC (“Respondent,” and together with
23 Commissioner, “Parties”) and is made with respect to the following facts:

24 I.

25 **RECITALS**

26 A. The Commissioner is the head of the Department of Financial Protection and
27 Innovation (“Department”) and is responsible for administering and enforcing the Franchise
28

1 Investment Law (“FIL”) (Corp. Code, § 31000 et seq.),¹ and registering the offer and sale of
2 franchises in California. To register a franchise, a franchisor must file an application that includes a
3 Franchise Disclosure Document (“FDD”) with the Department for review, in accordance with
4 sections 31111 and 31114. The FIL requires franchisors to disclose certain material information that
5 is intended to provide prospective franchisees with facts upon which to make an informed decision
6 to purchase a franchise, as stated in section 31001.

7 B. Respondent is a Delaware limited liability company with a principal place of business
8 located at 86 N. University Avenue, Suite 350, Provo, Utah 94601. Respondent sells franchises to
9 operate an indoor trampoline and entertainment parks under the name “Defy.”

10 C. On May 4, 2021, Respondent filed an application for franchise registration pursuant
11 to section 31111, identified by the Department as app-21257. The application was registered on
12 April 18, 2022.

13 D. On or about January 28, 2022, Respondent’s counsel informed Department counsel
14 that Respondent had sold one unregistered franchise on December 9, 2021. At the time it had sold
15 that franchise, Respondent was not registered because its last registration had expired on April 22,
16 2020 and its pending app-21257 had not yet been registered.

17 E. On February 15, 2022, Respondent’s counsel sent an email to Department counsel
18 that stated, “As you know, in December 2021, the company inadvertently made a *single sale* of a
19 Defy franchise in California” (emphasis added).

20 F. On February 23, 2022, Franchisor filed a Notice of Violation pursuant to section
21 31303, identified by the Department as app-23106, relating to the December 9, 2021 unregistered
22 franchise sale.

23 G. On April 20, 2022, Franchisor filed a renewal application pursuant to section 31121,
24 identified by the Department as app-24119, which remains pending. Table 5 of Item 20 of the FDD
25 disclosed that Respondent had two franchises signed but not yet open as of December 31, 2021. The
26 Department issued a comment letter on May 27, 2022 asking when the second sale was and what the
27 circumstances surrounding the sale were. On August 17, 2022 Respondent submitted a response
28

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

1 letter stating that it had sold a second franchise on November 1, 2021. Respondent also informed the
2 Department that it had entered into a Mutual Termination and Release Agreement with the
3 franchisee on July 15, 2022 and refunded the franchisee’s initial franchise fee.

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

6 I. Pursuant to section 31204, it is unlawful for any person knowingly to make an untrue
7 statement to the Commissioner during the course of the Department’s investigation with the intent to
8 impede, obstruct, or influence the administration or enforcement of any provision of the FIL.

9 J. The Commissioner finds that Respondent offered and sold unregistered franchises on
10 November 1, 2021 and December 9, 2021 in violation of section 31110.

11 K. The Commissioner also finds that the Respondent made an untrue statement to the
12 Commissioner when it told Department counsel that it had only sold a single unregistered franchise
13 in violation of section 31204.

14 L. NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions
15 set forth herein, the Parties agree as follows:

16 **II.**

17 **TERMS AND CONDITIONS**

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

22 2. Desist and Refrain Order. Pursuant to section 31406, House of Trix, LLC is hereby
23 ordered to desist and refrain from the violations set forth herein, in violation of Corporations Code
24 sections 31110 and 31204, and from any violations of the Franchise Investment Law. The issuance
25 of this order is necessary, in the public interest, for the protection of investors, and is consistent
26 with the purposes, policies, and provisions of the Franchise Investment Law.

27 3. Penalties. Respondent shall pay an administrative penalty of \$5,000.00 (“Penalties”)
28 no later than fifteen (15) days after the effective date of this Consent Order as defined in paragraph

1 25 (“Effective Date”). The Penalties must be made payable in the form of a cashier’s check or
2 Automated Clearing House deposit to the Department and transmitted to the attention of
3 Accounting-Legal at the Department of Financial Protection and Innovation, 2101 Arena Boulevard,
4 Sacramento, California 95834. Notice of the payment must be concurrently sent via email to Lulu
5 Gomez at lulu.gomez@dfpi.ca.gov. Failure to pay Penalties in a timely manner shall be deemed to
6 be a material breach of this Consent Order.

7 4. Pre-Effective Amendment to Pending Application. Respondent hereby agrees that it
8 will file a pre-effective amendment to franchise registration application app-24119 currently pending
9 with the Department to disclose this Consent Order in Item 3 of the FDD filed therewith.

10 5. Notice of Violation. Respondent shall obtain approval of pending app-23106 for the
11 Notice of Violation by providing all necessary responses and making all necessary changes to the
12 Notice of Violation required by Departments counsel. Upon approval from the Commissioner,
13 Respondent shall deliver the approved Notice of Violation to the franchisee named therein.
14 Respondent shall provide the Commissioner with proof of mailing of the Notice of Violation, within
15 30 days of the Commissioner’s Order Approving Respondent’s Notice of Violation. Respondent
16 must submit the proof of mailing via email to Lulu Gomez at lulu.gomez@dfpi.ca.gov.

17 6. Notice of Consent Order. Respondent shall provide a copy of this Consent Order to
18 all California franchisees who purchased a franchise from April 22, 2020 to January 27, 2023
19 (“Franchisee Class”) by email and certified mail. Respondent shall not include any other documents
20 in the mailing. Within 30 days of the Effective Date of this Consent Order, Respondent shall submit
21 to the Commissioner proof that it has served a copy of the Consent Order on each member of the
22 Franchisee Class (“Proof(s) of Service”) by emailing the Proof(s) of Service to Lulu Gomez at
23 lulu.gomez@dfpi.ca.gov.

24 7. Waiver of Hearing Rights. Respondent acknowledges that the Commissioner is
25 ready, willing, and able to proceed with the filing of an administrative enforcement action on the
26 charges contained in this Consent Order. Respondent hereby waives the right to any hearings, and to
27 any reconsideration, appeal, or other right to review which may be afforded pursuant to the FIL, the
28 Administrative Procedure Act, the Code of Civil Procedure, or any other provision of law.

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

4 8. Opportunity to Cure. In the event Respondent fails to comply with the terms of this
5 Consent Order (except for the Desist and Refrain Order), Respondent will have 10 calendar days to
6 cure such breach from the date written notice of the breach is emailed by the Commissioner to
7 Respondent at the email address in paragraph 22. Proof of cure, satisfactory to the Commissioner,
8 shall be sent via email within 15 days of the date of such notice to Lulu Gomez at
9 lulu.gomez@dpi.ca.gov.

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

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

23 11. Future Actions by Commissioner. If Respondent fails to comply with any terms of
24 the Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
25 resolved by this Consent Order. The Commissioner reserves the right to bring any future actions
26 against Respondent, or any of its partners, owners, officers, shareholders, directors, employees, or
27 successors for any and all unknown violations of the FIL or any other law under the Commissioner's
28 jurisdiction.

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

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

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

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

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

25 17. Full Integration. This Consent Order is the final written expression and the complete
26 and exclusive statement of all the agreements, conditions, promises, representations, and covenant
27 between the Parties with respect to the subject matter hereof, and supersedes all prior or
28 contemporaneous agreements, negotiations, representations, understandings, and discussions

1 between and among the Parties, their respective representatives, and any other person or entity with
2 respect to the subject matter covered hereby.

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

7 19. Counterparts. This Consent Order may be executed in one or more separate
8 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall
9 together constitute a single document.

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

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

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

21 To Respondent: Gordon O. Jesperson
22 CircusTrix Holdings, LLC
23 SVP & General Counsel
24 86 N. University Avenue, Suite 350
Provo, Utah 94601
gordon.jesperson@circustrix.com

25 To the Commissioner: Lulu Gomez, Senior Counsel
26 Department of Financial Protection and Innovation
27 320 West Fourth Street, Suite 750
28 Los Angeles, CA, 90013
lulugomez@dfpi.ca.gov

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

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

5 25. Effective Date. This Consent Order shall become final and effective when signed by
6 all Parties and delivered by the Commissioner’s agent via e-mail to Respondent’s agent, Matthew
7 Gruenberg at Matthew.Gruenberg@us.dlapiper.com.

8 26. Authority to Sign. Each signatory hereto covenants that he/she possesses all
9 necessary capacity and authority to sign and enter into this Consent Order and undertake the
10 obligations set forth herein.

11 Dated: 2/21/2023

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection
and Innovation

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15 By: _____
16 COLLEEN MONAHAN
17 Acting Deputy Commissioner

18
19 Dated: _____

HOUSE OF TRIX, LLC

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21 By: _____
22 SHAWN HASSEL
23 CHIEF FINANCIAL OFFICER
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