

1 CLOTHILDE V. HEWLETT
Commissioner
2 COLLEEN MONAHAN
Acting Deputy 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
12 In the Matter of:)
13 THE COMMISSIONER OF FINANCIAL)
PROTECTION AND INNOVATION,)
14) CONSENT ORDER
15 Complainant,)
16 v.)
17 MOCHINUT, INC. (a CALIFORNIA)
CORPORATION))
18 Respondent.)

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20 This Consent Order is entered into between the Commissioner of Financial Protection and
21 Innovation (Commissioner) and Mochinut, Inc. (Mochinut) (collectively the Parties) and is made
22 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
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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 which includes a Uniform
2 Franchise Disclosure Document (FDD) with the Department for review and approval, in accordance
3 with sections 31111 and 31114. The FIL requires franchisors to disclose certain material information
4 which is intended to provide prospective franchisees with facts upon which to make an informed
5 decision to purchase a franchise, as stated in section 31001.

6 B. Mochinut is a California corporation formed on March 13, 2020 and is authorized to
7 conduct business in California. Mochinut’s principal business address is 648 N Gramercy Place, Los
8 Angeles, CA 90004.

9 C. From June 11, 2020 to August 26, 2022, Mochinut entered into twenty-eight (28)
10 written agreements entitled “License Agreement” that constitute franchise offerings and sales in
11 California. Mochinut was not registered to offer or sell franchises under the FIL and was not exempt
12 from registration under Corporations Code section 31110.

13 D. From December 17, 2020 to May 21, 2021, Mochinut entered into three (3) written
14 agreements entitled “Trademark License Agreement” that constitute subfranchise offerings and sales
15 in California. Mochinut was not registered to offer or sell subfranchises under the FIL and was not
16 exempt from registration under Corporations Code section 31110.

17 E. On August 22, 2022 the Department issued a subject inquiry letter to Mochinut
18 requesting information about the “license agreements” sold in California.

19 F. On January 20, 2023, Mochinut Franchise, Inc. filed a Notice of Violation on behalf
20 of Mochinut notifying the Commissioner that Mochinut offered and sold three (3) unregistered
21 subfranchises and twenty-eight (28) unregistered franchises. On January 23, 2023, Mochinut
22 Franchise, Inc. filed a franchise registration application.

23 G. The Commissioner finds that Mochinut offered and sold thirty-one (31) non-exempt,
24 unregistered franchises in California from June 2020 to August 2022 in violation of Corporations
25 Code section 31110.

26 H. Mochinut acknowledges and agrees with the Commissioner’s findings.

27 I. NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions
28 set forth herein, the Parties agree as follows:

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II.

Terms and Conditions

1. Purpose. This Consent Order resolves the issues before the Commissioner, described in recital G above, in a manner that avoids the expense of a hearing and other possible court proceedings, protects consumers, is in the public interest, and is consistent with the purposes and provisions of the FIL.

2. Desist and Refrain Order. Pursuant to Corporations Code sections 31402, Mochinut is hereby ordered to desist and refrain from the violations set forth herein, in violation of Corporations Code section 31110.

3. Penalties. Mochinut shall pay an administrative penalty of \$50,000.00 no later than 15 days after the effective date of this Consent Order as defined in paragraph 25 (Effective Date). The penalty must be made payable in the form of a cashier’s check or Automated Clearing House deposit to the Department of Financial Protection and Innovation and transmitted to the attention of Accounting – Litigation, at the Department of Financial Protection and Innovation, 2101 Arena Boulevard, Sacramento, California 95834. Notice of the payment must be sent concurrently to Lindsay Nelson, Senior Counsel, via email at Lindsay.Nelson@dfpi.ca.gov.

4. Remedial Education. The following class of persons are required to attend remedial California franchise law compliance education: (1) all principal officers, directors, trustees, and any other individual who will have management responsibility relating to the sale or operation of franchises, including but not limited to, Jaewook Ha; (2) all persons who assist in preparing franchise materials, including but not limited to registrations, renewals, or amendments (excluding outside lawyers and auditors); (3) any person selling Mochinut’s franchise; and (4) the person who certifies the accuracy of Mochinut’s Franchise Disclosure Document filed with the Commissioner. Each of these persons shall attend eight hours of remedial education within 60 days from the Effective Date of this Consent Order, in the form of franchise law training courses offered by a seasoned franchise attorney to be approved by the Department. Mochinut shall file proof of compliance, in the form of a sworn statement of each person required to take remedial education, under penalty of perjury, within 60 days from the Effective Date of this Consent Order.

1 5. Rescission Offer

2 a. Mochinut has submitted to the Commissioner offers of rescission (rescind the
3 contracts and restore the parties to their former position by requiring each party to return whatever
4 the party received as consideration under the contract) (Rescission Offers) for each of the
5 franchisees and subfranchisees who were offered and sold a franchise or subfranchise from June 11,
6 2020 to August 26, 2022 (Franchisee Class).

7 b. Within 30 days of the Effective Date of this Consent Order, Mochinut shall
8 submit to the Commissioner proof(s) of service (by email and certified mail) of (i) the Rescission
9 Offers and (ii) a copy of this Consent Order to each of the franchisees in the Franchisee Class.
10 Mochinut shall not include any other documents in the mailing. The Proof(s) of Service shall be
11 sent to the attention of: Lindsay Nelson, Senior Counsel, via email at Lindsay.Nelson@dfpi.ca.gov.

12 c. Within 90 days of the Effective Date of this Consent Order, Mochinut shall
13 submit to the Commissioner satisfactory documentation evidencing each franchisee in the
14 Franchisee Class’ response to the Rescission Offer. The documentation of each response shall be
15 sent to the attention of: Lindsay Nelson, Senior Counsel, via email at Lindsay.Nelson@dfpi.ca.gov.

16 d. Within 120 days of the Effective Date of this Consent Order, Mochinut shall
17 make all payments required under the Rescission Offer. Mochinut shall submit evidence of the
18 refunds to Lindsay Nelson, Senior Counsel, via email at Lindsay.Nelson@dfpi.ca.gov. Evidence of
19 refunds shall include franchisee business name and owner name, last known address and/or any
20 other contact information (including telephone number and email address), copies of cleared refund
21 checks, and copies of certified mail receipts for any checks not cleared. Mochinut shall escheat any
22 unclaimed refunds to the California State Controller’s Office within the period provided by Code of
23 Civil Procedure section 1520 of the Unclaimed Property Law (Code of Civ. Proc., section 1500, et
24 seq.).

25 6. Notice of Consent Order

26 a. Mochinut shall provide a copy of this Consent Order to all franchisees who
27 purchased a franchise from x date to y date (Franchisee Class).

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1 b. Within 30 days of the Effective Date of this Consent Order, Mochinut shall
2 submit to the Commissioner proof(s) of service (by email and certified mail) of a copy of this
3 Consent Order to each of the franchisees in the Franchisee Class. Mochinut shall not include any
4 other documents in the mailing. The Proof(s) of Service shall be sent to the attention of: Lindsay
5 Nelson, Senior Counsel, via email at Lindsay.Nelson@dfpi.ca.gov.

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

14 8. Opportunity to Cure. In the event Mochinut fails to comply with the terms of this
15 Consent Order (except for the Desist and Refrain Order), Mochinut will have 10 calendar days to
16 cure such breach from the date written notice of the breach is emailed by the Commissioner to
17 Mochinut (Notice) at the email address in paragraph ___. Proof of cure, satisfactory to the
18 Commissioner, shall be sent via traceable method with a notice via email by Mochinut so that it is
19 received within 15 days of the date of Notice to Lindsay Nelson, Senior Counsel, via email at
20 Lindsay.Nelson@dfpi.ca.gov.

21 9. Failure to Comply with Desist and Refrain Order or Cure Breach. Mochinut agrees
22 that if it fails to comply with the Desist and Refrain Order in this Consent Order, or fails to timely
23 cure any breach to the satisfaction of the Commissioner, the Commissioner may, in addition to all
24 other available remedies it may invoke under the FIL, summarily suspend, revoke, or deny its FIL
25 registration (if applicable). Mochinut stipulates to the finality of any such FIL registration
26 suspensions, revocations, or denials that the Commissioner may order. Mochinut waives any notice
27 and hearing rights to contest such summary suspensions, revocations, or denials which may be
28 afforded under the FIL, the California Administrative Procedure Act, the California Code of Civil

1 Procedure, or any other provision of law in connection therewith.

2 10. Information Willfully Withheld or Misrepresented. This Consent Order may be
3 revoked, and the Commissioner may pursue any and all remedies available under law against
4 Mochinut if the Commissioner discovers that Mochinut knowingly or willfully withheld or
5 misrepresented information used for and relied upon in this Consent Order.

6 11. Future Actions by Commissioner. If Mochinut fails to comply with any terms of the
7 Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
8 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions
9 against Mochinut, or any of its partners, owners, officers, shareholders, directors, employees or
10 successors for any and all unknown violations of the FIL or any other law under the Commissioner’s
11 jurisdiction.

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

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

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

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

3 16. Waiver, Amendments, and Modifications. No waiver, amendment, or modification
4 of this Consent Order will be valid or binding unless it is in writing and signed by each of the
5 Parties. The waiver of any provision of this Consent Order will not be deemed a waiver of any
6 other provision. No waiver by either party of any breach of, or of compliance with, any condition
7 or 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 17. 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 covenant
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 18. Governing Law. This Consent Order will be governed by and construed in
16 accordance with California law. Each of the Parties hereto consents to the jurisdiction of such court,
17 and hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient
18 forum to the maintenance of such action or proceeding in such court.

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

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

26 21. Voluntary Agreement. Mochinut enters into this Consent Order voluntarily and
27 without coercion and acknowledges that no promises, threats or assurances have been made by the
28 Commissioner or any officer, or agent thereof, about this Consent Order. The Parties each represent

1 and acknowledge that the party is executing this Consent Order completely voluntarily and without
2 any duress or undue influence of any kind from any source.

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

5 To Mochinut: Helena Kim
6 Law Offices of Yohan Lee
7 5681 Beach Blvd., Suite 200
8 Buena Park, CA 90621
9 hkim@yleelaw.com

10 To the Commissioner: Lindsay Nelson, Senior Counsel
11 Department of Financial Protection and
12 Innovation
13 320 W. 4th St., Suite 750
14 Los Angeles, CA 90013
15 Lindsay.Nelson@dfpi.ca.gov

16 23. Signatures. A fax or electronic mail signature shall be deemed the same as an
17 original signature.

18 24. Public Record. Mochinut hereby acknowledge that this Consent Order is and will be
19 a matter of public record.

20 25. Effective Date. This Consent Order shall become final and effective when signed by
21 all Parties and delivered by the Commissioner’s agent via e-mail to Mochinut’s agent, Helena Kim,
22 Esq at hkim@yleelaw.com.

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

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Dated: 5/10/2023

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation

By: _____
COLLEEN MONAHAN
ACTING DEPUTY COMMISSIONER

Dated:

MOCHINUT, INC.

By: _____
Jae Wook Ha
Chief Executive Officer

