

1 CLOTHILDE V. HEWLETT
Commissioner
2 COLLEEN MONAHAN
Deputy Commissioner
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7

8 Attorneys for Complainant

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

11 In the Matter of:

12 THE COMMISSIONER OF FINANCIAL
PROTECTION AND INNOVATION,

13 Complainant,

14 CONSENT ORDER

15 v.

16 F45 TRAINING, INC. (a DELAWARE
CORPORATION),

17 Respondent.

18
19 This Consent Order is entered into between the Commissioner of Financial Protection and
20 Innovation (Commissioner) and F45 Training, Inc. (F45) (collectively the Parties) and is made
21 with respect to the following facts:

22 **I.**

23 **Recitals**

24 A. The Commissioner is the head of the Department of Financial Protection and
25 Innovation (Department) and is responsible for administering and enforcing the Franchise
26 Investment Law (FIL) (Corp. Code, Sec. 31000 et seq.),¹ and registering the offer and sale of
27

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 which
2 includes a Uniform Franchise Disclosure Document (FDD) with the Department for review and
3 approval, in accordance with sections 31111 and 31114. The FIL requires franchisors to disclose
4 certain material information which is intended to provide prospective franchisees with facts upon
5 which to make an informed decision to purchase a franchise, as stated in section 31001.
6

7 B. F45 is a Delaware corporation formed on March 25, 2015, with its principal
8 business address located at 3601 South Congress Ave, Building E, Austin, TX 78704.

9 C. F45 was first registered to sell franchises in California on November 23, 2015, and
10 renewed its franchise registration each of the following years through October 2021. With each
11 application, F45 filed a Franchise Disclosure Document (FDD) with the Department.
12

13 D. Franchisors are permitted to make financial performance representations in their
14 FDD if the financial performance representation has a reasonable basis, is not misleading, and
15 written substantiation is made available to franchisees. Franchisors may not make any
16 representations regarding financial performance of a franchise if they do not include a financial
17 performance representation in their FDD unless they are providing the actual financial
18 performance of an operating franchise during the sale of that particular franchise.

19 E. At all relevant times, F45 did not include financial performance representations in
20 any of the FDDs it registered in California. Each of F45's FDDs filed with the Department stated
21 that F45 did not make financial performance representations.
22

23 F. Franchisors are permitted to use public figures to promote sales of their franchises
24 if the franchisor discloses the compensation the public figure receives from the franchisor, the
25 extent of the public figure's management or control over the franchisor, and the public figure's
26 total investment in the franchisor. This information must be disclosed in Item 18 of the
27 franchisor's FDD.
28

1 G. At relevant times, each of the FDD's that F45 registered with the Department
2 stated that F45 did not use any public figures to promote their franchise.

3 H. In the course of its franchise sales in California, F45 used advertising materials
4 that contained financial performance representations and the images and endorsements of certain
5 public figures.

6 I. From November 23, 2015 to September 1, 2019, F45 provided to certain
7 prospective franchisees in California a cash flow model spreadsheet containing financial
8 performance representations, videos that contained financial performance representations, and
9 advertising materials that promised franchisees "a minimum of 14x and up to 19x return on total
10 investment."
11 investment."

12 J. F45 provided advertising materials that contained images of professional athletes,
13 national sports teams coaches and owners in such a manner indicating that the public figures
14 endorsed the franchise system. During certain times, including during 2016 and 2017, F45 had
15 agreements with these sports teams, athletes, and coaches compensating them for the use of their
16 logos, names, and likeness. F45 did not disclose these agreements in its FDDs registered in
17 California.
18 California.

19 K. For the reasons stated above, the Commissioner finds that F45 made unlawful
20 financial performance representations and failed to include required disclosures involving the use
21 of public figures to promote franchise sales in violation of section Corporations Code section
22 31201.
23 31201.

24 M. NOW, THEREFORE, in consideration of the foregoing and the terms and
25 conditions 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 K 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 section 31406, F45 is hereby ordered to desist and refrain from the violations set forth herein, in violation of Corporations Code section 31201.

3. Penalties. F45 shall pay an administrative penalty of \$152,500.00 in four monthly installments of \$25,415.00 and two monthly installments of \$25,420.00 no later than the 1st day of each month, beginning November 1, 2023 and ending April 1, 2024. 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 Innovations, 2101 Arena Boulevard, Sacramento, California 95834. Notice of the payment must be sent concurrently via email to Lindsay Nelson, Senior Counsel, at Lindsay.Nelson@dfpi.ca.gov.

4. Remedial Education. The following persons and classes 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 direct management responsibility relating to the sale of franchises, including but not limited to, Luke Armstrong, Liz Hebert, and Brian Dernulc; (2) all persons who have direct responsibility for preparing franchise materials, including but not limited to registrations, renewals or amendments (excluding outside lawyers and auditors); (3) any persons selling F45 franchises, including but not limited to, Jamie Britt, Jacob

1 Hall, Damien Rayner, Cortney Lessard, and Jessica Dell; and (4) the person who certifies the
2 accuracy of F45's Franchise Disclosure Document filed with the Commissioner. Each of these
3 persons shall attend eight hours of remedial education within 60 days from the Effective Date of
4 this Consent Order, in the form of franchise law training courses offered by a seasoned franchise
5 attorney to be approved by the Department. F45 shall file proof of compliance, in the form of a
6 sworn statement of each persons required to take remedial education, under penalty of perjury,
7 within 60 days from the Effective Date of this Consent Order.
8

9 5. Rescission Offer

10 a. F45 and the Commissioner have agreed that F45 will make an offer of
11 rescission to the California franchises listed on Exhibit A hereto. F45 has submitted to the
12 Commissioner proposed offers of rescission to each of the listed franchises (the "Rescission
13 Offers").
14

15 b. Within 30 days of the Effective Date of this Consent Order, F45 shall
16 submit to the Commissioner proof(s) of service (by email and certified mail) of (i) the Rescission
17 Offers and (ii) a copy of this Consent Order to each of the franchisees listed in Exhibit A. F45
18 shall not include any other documents in the mailing. The Proof(s) of Service shall be sent to the
19 attention: Lindsay Nelson, Senior Counsel, at Lindsay.Nelson@dfpi.ca.gov.
20

21 c. Within 90 days of the Effective Date of this Consent Order, F45 shall
22 submit to the Commissioner satisfactory documentation evidencing each franchisee in the
23 Franchisee Class's response to the Rescission Offer. The documentation of each response shall be
24 sent to the attention of: Lindsay Nelson, Senior Counsel, at Lindsay.Nelson@dfpi.ca.gov.
25

26 d. Within 120 days of the Effective Date of this Consent Order, F45 shall
27 make all payments required under the Rescission Offer to each franchisee who has given notice of
28 its acceptance of the Rescission Offer in accordance with its terms. F45 shall submit evidence of

1 the payments to Lindsay Nelson, Senior Counsel, at Lindsay.Nelson@dfpi.ca.gov. Evidence of
2 payments shall include franchisee business name and owner name, last known address and/or any
3 other contact information (including telephone number and email address), copies of cleared
4 refund checks, and copies of certified mail receipts for any checks not cleared. Payment may also
5 be made by wire transfer, in which event F45 will provide appropriate confirmation of payment.
6 F45 shall escheat any unclaimed refunds to the California State Controller's Office within the
7 period provided by Code of Civil Procedure section 1520 of the Unclaimed Property Law (Code
8 of Civ. Proc., section 1500, et seq.).

10 6. Notice of Consent Order

11 a. F45 shall provide a copy of this Consent Order to all franchisees who are
12 listed in Exhibit A.

13 b. Within 30 days of the Effective Date of this Consent Order, F45 shall
14 submit to the Commissioner proof(s) of service (by email and certified mail) of a copy of this
15 Consent Order to each of the franchisees listed in Exhibit A. F45 shall not include any other
16 documents in the mailing. The Proof(s) of Service shall be sent to the attention of: Lindsay
17 Nelson, Senior Counsel, at Lindsay.Nelson@dfpi.ca.gov.

18 7. Waiver of Hearing Rights. F45 acknowledges that the Commissioner is ready,
19 willing, and able to proceed with the filing of an administrative enforcement action on the charges
20 contained in this Consent Order. F45 hereby waives the right to any hearings, and to any
21 reconsideration, appeal, or other right to review which may be afforded pursuant to the FIL, the
22 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
23 provision of law. F45 further expressly waives any requirement for the filing of an action
24 pursuant to Government Code section 11415.60, subdivision (b). By waiving such rights, F45
25 effectively consents to entry of this Consent Order and all of its terms becoming final.
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1 8. Opportunity to Cure. In the event F45 fails to comply with the terms of this
2 Consent Order (except for the Desist and Refrain Order), F45 will have 10 calendar days to cure
3 such breach from the date written notice of the breach is emailed by the Commissioner to F45
4 (Notice) at the email address in paragraph 22. Proof of cure, satisfactory to the Commissioner,
5 shall be sent via traceable method with a notice via email by F45 so that it is received within 15
6 days of the date of Notice to Lindsay Nelson, Senior Counsel, at Lindsay.Nelson@dfpi.ca.gov.
7

8 9. Failure to Comply with Desist and Refrain Order or Cure Breach. F45 agrees that
9 if it fails to comply with the Desist and Refrain Order in this Consent Order, or fails to timely
10 cure any breach to the satisfaction of the Commissioner, the Commissioner may, in addition to all
11 other available remedies it may invoke under the FIL, summarily suspend, revoke, or deny its FIL
12 registration (if applicable). F45 stipulates to the finality of any such FIL registration suspensions,
13 revocations, or denials that the Commissioner may order. F45 waives any notice and hearing
14 rights to contest such summary suspensions, revocations, or denials which may be afforded under
15 the FIL, the California Administrative Procedure Act, the California Code of Civil Procedure, or
16 any other provision of law in connection therewith.
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18 10. Information Willfully Withheld or Misrepresented. This Consent Order may be
19 revoked, and the Commissioner may pursue any and all remedies available under law against F45
20 if the Commissioner discovers that F45 knowingly or willfully withheld or misrepresented
21 information used for and relied upon in this Consent Order.
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23 11. Future Actions by Commissioner. If F45 fails to comply with any terms of the
24 Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
25 resolved under this Consent Order. The Commissioner reserves the right to bring any future
26 actions against F45, or any of its partners, owners, officers, shareholders, directors, employees or
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1 successors for any and all unknown violations of the FIL or any other law under the
2 Commissioner's jurisdiction.

3 12. Assisting Other Agencies. Nothing in this Consent Order limits the
4 Commissioner's ability to assist any other government agency (whether city, county, state, or
5 federal) with any administrative, civil or criminal action brought by that agency against F45 or
6 any other person based upon any of the activities alleged in this matter or otherwise.
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8 13. 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
10 of the provisions hereof.

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

13 15. 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
19 whatsoever. The Parties have included this clause: (1) to preclude any claim that any party was in
20 any way fraudulently induced to execute this Consent Order; and (2) to preclude the introduction
21 of parol evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.
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23 16. Waiver, Amendments, and Modifications. No waiver, amendment, or modification
24 of this Consent Order will be valid or binding unless it is in writing and signed by each of the
25 Parties. The waiver of any provision of this Consent Order will not be deemed a waiver of any
26 other provision. No waiver by either party of any breach of, or of compliance with, any condition
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1 or provision of this Consent Order by the other party will be considered a waiver of any other
2 condition or provision or of the same condition or provision at another time.

3 17. Full Integration. This Consent Order is the final written expression and the
4 complete and exclusive statement of all the agreements, conditions, promises, representations,
5 and covenant between the Parties with respect to the subject matter hereof, and supersedes all
6 prior contemporaneous agreements, negotiations, representations, understandings, and discussions
7 between and among the Parties, their respective representatives, and any other person or entity
8 with respect to the subject matter covered hereby.

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

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

18 20. Effect Upon Future Proceedings. If F45 applies for any license, registration,
19 permit, or qualification under the Commissioner's current or future jurisdiction, or is the subject
20 of any future action by the Commissioner to enforce this Consent Order, then the subject matter
21 hereof shall be admitted for the purpose of such application(s) or enforcement proceeding(s).

22
23 21. Voluntary Agreement. F45 enters into this Consent Order voluntarily and without
24 coercion and acknowledges that no promises, threats or assurances have been made by the
25 Commissioner or any officer, or agent thereof, about this Consent Order. The Parties each
26 represent and acknowledge that the party is executing this Consent Order completely voluntarily
27 and without any duress or undue influence of any kind from any source.

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Dated: 10/15/2023

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and
Innovation

By: _____
COLLEEN MONAHAN
Deputy Commissioner

F45 TRAINING, INC.

Dated: 10/5/2023

By: _____
PATRICK GROSSO
Chief Legal Officer

EXHIBIT A – RECISSION OFFERS

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STUDIO NAME

FRANCHISEE

F45 La Quinta 111	JB Fit, LLC
F45 Sacramento Midtown	Hunter Blincoe
F45 Alamos Bay	Joshua Rothstein
F45 Rocklin	Achieve Life Fitness
F45 South Coast Metro	Banes Performance, LLC
F45 Morgan Hill	PF Fitness Ventures LLC
F45 Glendale North	No Pain No Gain LLC
F45 Corte Madera	True HIIT LLC
F45 Hollywood CA	Escalante Media Group Hollywood
F45 Central Burbank	DnA HIIT LLC
F45 Poway Central	David Aznavah
F45 Carmel Mountain Ranch	Carmel Mountain Fitness Group Inc.
F45 Petaluma	Theodore Michael Simpkins
F45 San Rafael	Alleycat Enterprises, LLC
F45 Arcadia CA	HIIT and Run, LLC
F45 Mission Heights Park	MKJ Fitness, LLC
F45 Willow Glen East	Setoguchi Health & Wellness, LLC
F45 Fresno North	Geak Life, LLC
F45 Ventura Main	Curtis Joseph Dowell
F45 Oakland Uptown	Spencer Hooper
F45 Mountain View South	BLT Fitness LLC
F45 Hillcrest	NBC Fitness LLC
F45 La Costa	NBC Fitness LLC
F45 Poinsettia	NBC Fitness LLC
F45 Coronado CA	GF Fitness Ventures LLC
F45 Oceanside Pier	Stephanie Feld
F45 Rowland Heights	Bravado Partners, LLC
F45 Diamond Bar	Zeal Investment LLC
F45 Murrieta North	Coondrat Enterprises, LLC
F45 La Mesa	Hunter Fitness Series 1, LLC
F45 Eastlake Village	DC Strength, LLC