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Commissioner of Financial Protection and Innovation
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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)
PROTECTION AND INNOVATION,)
13) CONSENT ORDER
Complainant,)
14 v.)
)
15 TEASPOON FRANCHISING, INC., doing)
16 business as TEASPOON,)
)
17 Respondent.)
18)

19 This Consent Order is entered into between the Commissioner of Financial Protection and
20 Innovation (“Commissioner”) and Teaspoon Franchising, Inc. (“TEASPOON,” and together with
21 Commissioner, “Parties”) and is made 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, § 31000 et seq.),¹ and registering the offer and sale of
27 franchises in California. To register a franchise, a franchisor must file an application that includes a
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¹ All further statutory references are to the Corporations Code unless otherwise indicated.

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

5 B. At all relevant times, TEASPOON is a California Corporation with a principal place
6 of business located at 2290 Ringwood Ave., Unit E, San Jose, CA 95131. At all relevant times,
7 TEASPOON sells franchises to operate beverage café under the name “Teaspoon.” At all relevant
8 times, TEASPOON was registered to offer and sell franchises in California by the Department from
9 June 14, 2016 to April 20, 2022. At all relevant times, TEASPOON never reported or received approval
10 from the Department to conduct negotiated sales pursuant to the FIL.

11 C. On or about May 16, 2016, TEASPOON provided an FDD to a California investor,
12 Franchisee 1, and subsequently sold one franchise to Franchisee 1. TEASPOON executed the related
13 franchise agreement on June 1, 2016. However, at the time TEASPOON sold the franchise to
14 Franchisee 1, it was not registered to offer and sell franchises with the Department.

15 D. From February 20, 2020 to August 2, 2021, TEASPOON conducted three (3)
16 unlawful negotiated franchise sales transactions with franchisees in California. At no time did
17 TEASPOON comply with the applicable negotiated sales exemptions or filed the required negotiated
18 sale exemption filings with the Department. Specifically, TEASPOON stated one amount for the
19 initial franchise fee in the controlling FDD filed with the Department at the time of the sale, but
20 charged a different initial franchise fee to franchisees at the time of the franchise sale, thereby
21 resulting in an unlawful negotiated sale in violation of the FIL as follows:

22 i. On or about February 20, 2020, TEASPOON executed a franchise agreement
23 with Franchisees 2, 3 and 4 and collected an initial franchise fee of zero dollars (\$0). The FDD
24 registered with the Department that controlled the sale, disclosed that the initial franchise fee should
25 have been forty-five thousand dollars (\$45,000);

26 ii. On or about March 30, 2021, TEASPOON executed a franchise agreement
27 with Franchisee 5, and collected an initial franchise fee of ten thousand dollars (\$10,000). The FDD
28 registered with the Department that controlled the sale disclosed that the initial franchise fee for a

1 franchisee in Franchisee 5’s situation should have been eleven thousand two-hundred and fifty
2 dollars (\$11,250); and

3 iii. On or about August 2, 2021, TEASPOON executed franchise agreement with
4 Franchisees 6 and 7, and collected an initial franchise fee of twenty-five thousand dollars (\$25,000).
5 The FDD registered with the Department that controlled the sale disclosed that the initial franchise
6 fee should have been forty-five thousand dollars (\$45,000).

7 E. From June 2020 to September 2020, TEASPOON filed three (3) applications for
8 franchise registration with the Department containing FDDs that failed to disclose non-uniform
9 initial franchise fees in Item 5 due to the negotiated sales described in Recitals C through F above, as
10 required by the FIL. The applications were filed on June 25, 2020 (identified by the Department as
11 app-18527), September 23, 2020 (identified as app-19180), and April 19, 2021 (identified as app-
12 20412).

13 F. From 2016 to 2022, TEASPOON, sold seventeen (17) franchises using FDDs that
14 failed to disclose non-uniform initial franchise fees in Item 5 due to negotiated sales described in
15 Recitals C through F above, as required by the FIL.

16 G. TEASPOON failed to maintain and provide to the Department a signed Receipt page
17 for Franchisee 8.

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

20 I. Pursuant to section 31200, it is unlawful for any person willfully to make any untrue
21 statement of a material fact in any application, notice or report filed with the Commissioner under
22 the FIL, or willfully to omit to state in any such application, notice, or report any material fact which
23 is required to be stated therein.

24 J. Pursuant to section 31201, it is unlawful for any person to offer or sell a franchise in
25 this state by means of any written or oral communication not enumerated in section 31200, which
26 includes an untrue statement of a material fact or omits to state a material fact necessary in order to
27 make the statements made, in the light of the circumstances under which they were made, not
28 misleading.

1 K. Pursuant to section 31150, every franchisor or subfranchisor offering franchises for
2 sale in California shall at all times keep and maintain a complete set of books, records, and accounts
3 of such sales.

4 L. The Commissioner finds that TEASPOON offered and sold unregistered franchises to
5 Franchisee 1 on June 1, 2016, Franchisees 2 through 4 on February 20, 2020, Franchisee 5 on March
6 30, 2021, and Franchisees 6 and 7 on August 2, 2021 (in four (4) instances) in violation of section
7 31110.

8 M. The Commissioner further finds that TEASPOON made an untrue statement of
9 material fact or willfully omitted to state a material fact required to be stated therein to the
10 Commissioner when it filed FDDs without disclosing it sold franchises with non-uniform franchise
11 fees in Item 5 resulting from negotiated sales on three (3) occasions, in violation of section 31200.

12 N. The Commissioner further finds that TEASPOON sold franchises using FDDs that
13 omitted to state the material fact that it had sold franchises with non-uniform franchise fees via
14 negotiated sales on seventeen (17) occasions, in violation of section 31201.

15 O. The Commissioner finally finds that TEASPOON failed to keep and maintain a
16 complete set of books, records, and accounts of sales made in California in one instance when it
17 failed to keep and provide a signed Receipt page for Franchisee 8 (in one instance), in violation of
18 section 31150.

19 P. NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions
20 set forth herein, the Parties agree as follows:

21 **II.**

22 **TERMS AND CONDITIONS**

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

27 2. Desist and Refrain Order. Pursuant to section 31406, Teaspoon Franchising, Inc.
28 doing business as Teaspoon is hereby ordered to desist and refrain from the violations set forth

1 herein, in violation of Corporations Code sections 31110, 31200, 31201, and 31150, and from any
2 violations of the Franchise Investment Law. The issuance of this order is necessary, in the public
3 interest, for the protection of investors, and is consistent with the purposes, policies, and provisions
4 of the Franchise Investment Law.

5 3. Penalties. Teaspoon Franchising Inc., doing business as Teaspoon shall pay an
6 administrative penalty of sixty-two thousand five hundred dollars (\$62,500.00) (“Penalties”) no later
7 than fifteen (15) days after the effective date of this Consent Order as defined in paragraph 23
8 (“Effective Date”). The Penalties must be made payable in the form of a cashier’s check or
9 Automated Clearing House deposit to the Department and transmitted to the attention of
10 Accounting-Legal at the Department of Financial Protection and Innovation, 2101 Arena Boulevard,
11 Sacramento, California 95834. Notice of the payment must be concurrently sent via email to
12 marisa.urteaga-watkins@dfpi.ca.gov. Failure to pay Penalties in a timely manner shall be deemed to
13 be a material breach of this Consent Order.

14 4. Notice of Consent Order. TEASPOON shall provide a copy of this Consent Order to
15 all California franchisees who purchased a franchise from June 14, 2015 through the Effective Date
16 (“Franchisee Class”) by email and certified mail. TEASPOON shall not include any other
17 documents in the mailing. Within thirty (30) days of the Effective Date of this Consent Order,
18 TEASPOON shall submit to the Commissioner proof that it has served a copy of the Consent Order
19 on each member of the Franchisee Class (“Proof(s) of Service”) by emailing the Proof(s) of Service
20 to marisa.urteaga-watkins@dfpi.ca.gov.

21 5. Waiver of Hearing Rights. TEASPOON acknowledges that the Commissioner is
22 ready, willing, and able to proceed with the filing of an administrative enforcement action on the
23 charges contained in this Consent Order. TEASPOON hereby waives the right to any hearings, and
24 to any reconsideration, appeal, or other right to review which may be afforded pursuant to the FIL,
25 the Administrative Procedure Act, the Code of Civil Procedure, or any other provision of law.
26 TEASPOON further expressly waives any requirement for the filing of any accusation pursuant to
27 Government Code section 11415.60, subdivision (b). By waiving such rights, TEASPOON
28 effectively consents to this Consent Order and all of its terms becoming final.

1 6. Opportunity to Cure. In the event TEASPOON fails to comply with the terms of this
2 Consent Order (except for the Desist and Refrain Order), TEASPOON will have ten (10) calendar
3 days to cure such breach from the date written notice of the breach is emailed by the Commissioner
4 to TEASPOON at the email address in paragraph 20. Proof of cure, satisfactory to the
5 Commissioner, shall be sent via email within fifteen (15) days of the date of such notice to Marisa I.
6 Urteaga-Watkins, Senior Counsel, at marisa.urteaga-watkins@dpi.ca.gov.

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

16 8. Information Willfully Withheld or Misrepresented. This Consent Order may be
17 revoked, and the Commissioner may pursue any and all remedies available under law against
18 TEASPOON, if the Commissioner discovers that TEASPOON knowingly or willfully withheld or
19 misrepresented information used for and relied upon in this Consent Order.

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

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

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

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

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

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

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

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

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

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

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

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

19 To TEASPOON: Dawn Newton, Esq.
20 Donahue Fitzgerald LLP
21 1999 Harrison Street 26th Floor
22 Oakland, CA 94612
23 dnewton@donahue.com

24 To the Commissioner: Marisa I. Urteaga-Watkins, Esq.,
25 Senior Counsel
26 Department of Financial Protection and Innovation
27 2101 Arena Blvd.
28 Sacramento, California 95834
 marisa.urteaga-watkins@dfpi.ca.gov

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

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

3 23. Effective Date. This Consent Order shall become final and effective when signed by
4 all Parties and delivered by the Commissioner’s agent via e-mail to TEASPOON’s agent, Dawn
5 Newton at dnewton@donahue.com.

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

9
10 Dated: 10/19/2023

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection
and Innovation

11
12
13 By: _____
14 COLLEEN MONAHAN
15 Deputy Commissioner

16
17 Dated: 10/11/2023

TEASPOON FRANCHISING, INC.

18
19 By: _____
20 AMY LAI
21 CHIEF EXECUTIVE OFFICER
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