

1 COLLEEN MONAHAN
Deputy Commissioner
2 THERESA LEETS
Assistant Chief Counsel
3 LINDSAY NELSON (State Bar No. 278558)
Counsel
4 Department of Financial Protection and Innovation
320 West 4th Street, Suite 750
5 Los Angeles, California 90013
Telephone: (213) 576-7648
6 Facsimile: (213) 576-7179

7 Attorneys for Complainant

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

11 In the Matter of:

12 THE COMMISSIONER OF FINANCIAL
PROTECTION AND INNOVATION,

14 Complainant,

15 v.

16 SKILL SAMURAI, INC.

17 Respondent.

CONSENT ORDER

19 This Consent Order is entered into between the Commissioner of Financial Protection and
20 Innovation (Commissioner) and Skill Samurai, Inc. (Skill Samurai) (collectively the Parties) and is
21 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 franchises
27 in California. To register a franchise, a franchisor must file an application which includes a Uniform
28

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

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

5 B. Skill Samurai is a Florida Corporation formed on March 20, 2019, with its principal
6 place of business located at 2423 SW 147th Ave., #2206, Miami, FL 33185. Prior to September
7 2021, Skill Samurai conducted business and sold franchises under the name Level Up Learning, Inc.,
8 DBA Skill Samurai. Skill Samurai engages in the offer and sale of franchises that offer afterschool
9 classes in coding and STEM-based subjects.

10 C. On April 19, 2021, Skill Samurai filed a franchise registration application to offer and
11 sell franchises in California. The Department determined that Skill Samurai did not demonstrate the
12 financial ability to meet its obligations stated in the FDD without relying on the proposed
13 franchisee's funds. As a condition of registration, the Department required Skill Samurai to defer the
14 collection of initial franchise fees from California franchisees until after Skill Samurai completed all
15 its pre-opening obligations and new franchisees opened for business (Fee Deferral).

16 D. On September 21, 2021, Skill Samurai entered into a franchise agreement with a
17 California franchisee for the establishment of two Skill Samura franchise locations. Skill Samurai
18 collected initial franchise fees for both locations on October 29, 2021. However, the first location did
19 not open until after January 12, 2022. The franchisee never opened the second location.

20 E. On March 27, 2022, Skill Samurai entered into a franchise agreement with a second
21 California franchisee. Skill Samurai collected the initial franchise fees on May 31, 2022, but the
22 franchisee never opened for business.

23 F. On September 16, 2021, Skill Samurai amended its FDD to reflect the name change
24 from Level Up Learning, Inc. to Skill Samurai, Inc.

25 G. Section 31123 requires franchisors to promptly notify the Department in writing of
26 any material change in the information contained in their FDD after its registration becomes
27 effective (Post-Effective Amendment). The legal name of a franchisor selling franchises in
28 California as material information that requires the filing of a Post-Effective Amendment if changed.

1 H. Skill Samurai did not file a Post-Effective Amendment to notify the Department of its
2 name change. Skill Samurai did not notify the Department of its name change until it filed its
3 renewal application on April 28, 2022.

4 I. The Commissioner finds that Skill Samurai failed to comply with a condition of
5 registration when Skill Samurai collected initial franchise fees from two franchisees prior to the
6 franchisees opening for business on October 29, 2021 and May 31, 2022, in violation of section
7 31203.

8 J. The Commissioner further finds that Skill Samurai failed to promptly notify the
9 Department of a material change to its FDD in violation of section 31123.

10 K. Skill Samurai acknowledges and agrees with the Commissioner’s findings.

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

13 **II.**

14 **Terms and Conditions**

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

19 2. Desist and Refrain Order. Pursuant to Corporations Code section 31406, Skill
20 Samurai, Inc. is hereby ordered to desist and refrain from the violations of Corporations Code
21 section(s) 31123 and 31203 set forth herein.

22 3. Penalties. Skill Samurai shall pay an administrative penalty of \$5,000.00 in two
23 monthly installments of \$2,500.00 no later than the last day of each month, beginning December 31,
24 2023 and ending January 31, 2024. The penalty must be made payable in the form of a cashier’s
25 check or Automated Clearing House (ACH) deposit to the Department of Financial Protection and
26 Innovation and transmitted to the attention of Accounting – Litigation, at the Department of
27 Financial Protection and Innovation, 2101 Arena Boulevard, Sacramento, California 95834. Notice
28

1 of the payment must be concurrently sent to Lindsay Nelson, Senior Counsel, at
2 Lindsay.Nelson@dfpi.ca.gov.

3 4. Rescission Offer

4 a. Skill Samurai has submitted to the Commissioner offers of rescission
5 (rescind the contracts and restore the parties to their former position by requiring each to return
6 whatever the party received as consideration under the contract) (Rescission Offers) for the
7 franchisee who entered a franchise agreement on March 27, 2022 (Franchisee).

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

13 c. Within 90 days of the Effective Date of this Consent Order, Skill Samurai
14 shall submit to the Commissioner satisfactory documentation evidencing the response the
15 Franchisee to the Rescission Offer. The documentation of each response shall be sent to the
16 attention of: Lindsay Nelson, Senior Counsel, Lindsay.Nelson@dfpi.ca.gov.

17 d. Within 240 days of the Effective Date of this Consent Order, Skill Samurai
18 shall make all payments required under the Rescission Offer. Skill Samurai shall submit evidence
19 of the refunds to Lindsay Nelson, Senior Counsel, Lindsay.Nelson@dfpi.ca.gov. Evidence of
20 refunds shall include franchisee business name and owner name, last known address and/or any
21 other contact information (including telephone number and email address), copies of cleared refund
22 checks, and copies of certified mail receipts for any checks not cleared. Skill Samurai shall escheat
23 any unclaimed refunds to the State Controller’s Office within the period provided by Code of Civil
24 Procedure section 1520 of the Unclaimed Property Law (Code of Civ. Proc., section 1500 et seq.).

25 5. Refund

26 a. Pursuant to Corporations Code section 31408, subdivision (a), Skill Samurai
27 is hereby ordered to disgorge and refund all fees collected from California franchisees from
28 September 21, 2021 to May 31, 2022 (Refunds). Pursuant to the following requirements, Skill

1 Samurai is to refund all initial franchise fees that were paid pursuant to a franchise agreement or
2 collected from each California franchisee who signed a franchise agreement on or between
3 September 21, 2021 and May 31, 2022 in violation of the FIL (Franchisee Class).

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

9 c. Within 90 days of the Effective Date of this Consent Order, Skill Samurai
10 shall submit to the Commissioner satisfactory documentation evidencing each franchisee in the
11 Franchisee Class' response to the Refund Offer. The documentation of each response shall be sent
12 to the attention of: Lindsay Nelson, Senior Counsel, Lindsay.Nelson@dfpi.ca.gov.

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

22 6. Notice of Consent Order

23 a. Skill Samura shall provide a copy of this Consent Order to the Franchisee
24 Class.

25 b. Within 30 days of the Effective Date of this Consent Order, Skill Samurai
26 shall submit to the Commissioner proof(s) of service (by email and certified mail) of a copy of this
27 Consent Order to each of the franchisees in the Franchisee Class. Skill Samurai shall not include
28

1 any other documents in the mailing. The Proof(s) of Service shall be sent to the attention of:
2 Lindsay Nelson, Senior Counsel, Lindsay.Nelson@dfpi.ca.gov.

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

15 8. Waiver of Hearing Rights. Skill Samurai acknowledges that the Commissioner is
16 ready, willing, and able to proceed with the filing of an administrative enforcement action on the
17 charges contained in this Consent Order. Skill Samurai hereby waives the right to any hearings, and
18 to any reconsideration, appeal, or other right to review which may be afforded pursuant to the FIL,
19 the California Administrative Procedure Act (APA), the California Code of Civil Procedure (CCP),
20 or any other provision of law. Skill Samurai further expressly waives any requirement for the filing
21 of an action pursuant to Government Code section 11415.60, subdivision (b). By waiving such
22 rights, Skill Samurai effectively consents to this Consent Order and all of its terms becoming final.

23 9. Opportunity to Cure. In the event Skill Samurai fails to comply with the terms of
24 this Consent Order (except for the Desist and Refrain Order), Skill Samurai will have ten calendar
25 days to cure such breach from the date written notice of the breach is emailed by the Commissioner
26 to Skill Samurai (Notice) at the email address in paragraph 23. Proof of cure, satisfactory to the
27 Commissioner, shall be sent via traceable method with a notice via email by Skill Samurai so that it
28 is received within 15 days of the date of Notice to Lindsay Nelson, Senior Counsel,

1 Lindsay.Nelson@dfpi.ca.gov.

2 10. Failure to Comply with Desist and Refrain Order or Cure Breach. Skill Samurai
3 agrees that if it fails to comply with the Desist and Refrain Order in this Consent Order or fails to
4 timely cure any breach to the satisfaction of the Commissioner, the Commissioner may, in addition
5 to all other available remedies it may invoke under the FIL, summarily suspend, revoke, or deny its
6 FIL registration (if applicable). Skill Samurai stipulates to the finality of any such FIL registration
7 suspensions, revocations, or denials that the Commissioner may order. Skill Samurai waives any
8 notice and hearing rights to contest such summary suspensions, revocations, or denials which may
9 be afforded under the FIL, the APA, CCP, or any other provision of law in connection therewith.

10 11. Information Willfully Withheld or Misrepresented. This Consent Order may be
11 revoked, and the Commissioner may pursue any and all remedies available under law against Skill
12 Samurai if the Commissioner discovers that Skill Samurai knowingly or willfully withheld or
13 misrepresented information used for and relied upon in this Consent Order.

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

20 13. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner’s
21 ability to assist any other government agency with any administrative, civil or criminal action
22 brought by that agency against Skill Samurai or any other person based upon any of the activities
23 alleged in this matter or otherwise.

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

27 15. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
28 interest.

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

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

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

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

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

1 21. Effect Upon Future Proceedings. If Skill Samurai applies for any license,
2 registration, permit, or qualification under the Commissioner’s current or future jurisdiction, or is
3 the subject of any future action by the Commissioner to enforce this Consent Order, then the subject
4 matter hereof shall be admitted for the purpose of such application(s) or enforcement proceeding(s).

5 22. Voluntary Agreement. Skill Samurai enters into this Consent Order voluntarily and
6 without coercion and acknowledges that no promises, threats or assurances have been made by the
7 Commissioner or any officer, or agent thereof, about this Consent Order. The Parties each represent
8 and acknowledge that he, she or it is executing this Consent Order completely voluntarily and
9 without any duress or undue influence of any kind from any source.

10 23. Notice. Any notice required under this Consent Order shall be provided to each
11 party at the following addresses:

12 To Skill Samurai: Javier L. Esteve, Esq.
13 Charter Law
14 2639 Erie Ave., #8488
15 Cincinnati, OH 45208
16 Javier@charterdifference.com

17 To the Commissioner: Lindsay Nelson, Counsel
18 Department of Financial Protection and Innovation
19 320 W. 4th Street, Suite 750
20 Los Angeles, CA 90013
21 Lindsay.Nelson@dfpi.ca.gov

21 24. Signatures. A fax or electronic mail signature shall be deemed the same as an
22 original signature.

23 25. Public Record. Skill Samurai hereby acknowledge that this Consent Order is and
24 will be a matter of public record.

25 26. Effective Date. This Consent Order shall become final and effective when signed by
26 all Parties and delivered by the Commissioner’s agent via e-mail to Skill Samurai’s agent, Javier L.
27 Esteve at Javier@charterdifference.com.
28

1 27. Authority to Sign. Each signatory hereto covenants that he/she possesses all
2 necessary capacity and authority to sign and enter into this Consent Order and undertake the
3 obligations set forth herein.

4
5 Dated: 11/27/2023

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation

6
7
8 By: _____
COLLEEN MONAHAN
9 Deputy Commissioner

10 Dated: 11/13/2023

SKILL SAMURAI, INC

11
12 By: _____
13 Jeff Hughes
14 Chief Executive Officer