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**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION**

IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Franchise Investment Protection Act of
Washington by:

F45 Training, Inc.

Respondent.

Order No.: S-19-2681-19-CO01

CONSENT ORDER

INTRODUCTION

Pursuant to the Franchise Investment Protection Act of Washington, RCW 19.100, the Securities Division of the Washington State Department of Financial Institutions (Securities Division) and Respondent F45 Training, Inc. (F45) do hereby enter into this Consent Order in settlement of the matters alleged herein. Respondent F45 neither admits nor denies the findings of fact or conclusions of law as stated below.

FINDINGS OF FACT

Respondents

1. Respondent F45 is a Delaware entity formed on March 25, 2015, with its principal place of business in El Segundo, California. Respondent F45 is the domestic subsidiary of F45 Aus Hold Co Pty Ltd, based in Sydney, Australia. Respondent F45 franchises its functional fitness studio concept to franchisees in the United States.

Conduct

2. Respondent F45 first registered its franchises for sale in Washington on November 23, 2015, and renewed its franchise registration each of the following years. As part of the franchise registration process, franchisors file a franchise disclosure document (FDD) with the Securities Division. Franchisors can make financial performance representations in the FDD to potential franchisees. Franchisors must have

CONSENT ORDER

DEPARTMENT OF FINANCIAL INSTITUTIONS
Securities Division
PO Box 9033
Olympia, WA 98507-9033
360-902-8760

1 a reasonable basis and written substantiation for these claims, and must present the information in a way so
2 that their representations are not misleading.

3 3. Alternatively, a franchisor can elect not to include financial performance representations in
4 the FDD, but it cannot then make financial performance representations to prospective franchisees except
5 for providing the actual operating results of a particular franchise to potential purchasers of that franchise.

6 4. Respondent F45 elected not to include financial performance representations in the FDDs it
7 filed with the Securities Division, instead including in the FDDs it filed a statement affirming it does not
8 make these representations.

9 5. Instead of making financial performance representations in its FDD, Respondent F45 made
10 representations in advertisements and online videos.

11 6. For example, Respondent F45 claimed in a number of advertisements on franchise marketing
12 websites that its franchises had low investment costs and high profit margins.

13 7. On its franchise sales website, Respondent F45 posted a video in which its representative
14 walked through a financial model that it used to provide to prospective franchisees. Respondent F45
15 represented in this video that franchisees could expect to start with a set membership and achieve a regular
16 level of month-to-month growth.

17 8. In the video, Respondent F45 represented to prospective franchisees that they could earn
18 approximately two hundred and fifty thousand dollars in profit in their first year and over a million dollars
19 in profit by the third year of ownership. Respondent F45 then presented two other scenarios with different
20 cost inputs, each with a minimum profit totaling over seven hundred thousand dollars.

21 9. Respondent F45 sent the video to multiple prospective franchisees who inquired about
22 purchasing an F45 franchise in Washington. Respondent F45 also sent franchisees materials that
23 emphasized the speed at which franchisees could expect to make a profit. Additionally, Respondent F45

1 sent material representing to prospective Washington franchisees that they could earn back a certain amount
2 of their initial investment each year.

3 10. Respondent F45 did not substantiate these financial performance representations.

4 11. Respondent F45 also made financial performance representations by citing the performance
5 of local franchisees. In one email, Respondent F45 stated that one local franchise was “doing extremely
6 well (350+ members)” and F45 could give the prospective franchisee “insight into their pricing and
7 marketing efforts.” Respondent F45 told the prospective franchise that there was “[a]bsolutely nothing
8 stopping you replicating this success, this is why you pay a franchise fee (proven standardization).”

9 12. In an email to another prospective franchisee, Respondent F45 stated that their marketing
10 success case studies did not include their “top/most successful studio openings,” including two Washington
11 franchises that opened with more than 280 members.

12 13. Respondent F45 did not disclose to prospective franchisees that, despite the number of
13 memberships sold, these franchises had not yet become profitable, and that one of these franchisees had
14 spent substantially more money than what Respondent F45 required to advertise his franchises. Respondent
15 F45 also did not disclose that the attrition rate these franchises experienced was larger than what Respondent
16 F45 represented in its month-to-month projections.

17 14. Respondent F45 sent material to prospective franchisees intended to help them secure
18 franchise locations. Respondent F45 repeated in this material the profitability claims it made elsewhere,
19 and stated there had been no closures of F45 franchises since its launch. Respondent F45 did not disclose
20 that the lack of closures was in part attributable to it assuming ownership of some of these franchises.

21 15. Some of the materials Respondent F45 sent included endorsements of the franchise by
22 National Basketball Association celebrities, including players, a coach, and a team owner. Franchisors are
23 required to disclose information in the FDD such as compensation or other benefits given to such public

1 figures by the franchisor. Until 2019, Respondent F45 stated in its FDDs filed with the Securities Division
2 that it does not use public figures to promote its franchises. In the 2019 FDD Respondent F45 filed with the
3 Securities Division, Respondent F45 only disclosed the interest in its holding company owned by a film
4 celebrity, stating it does not otherwise use public figures to promote its franchises.

5 16. In reality, Respondent F45 made agreements with the NBA-associated public figures in 2016
6 and 2017 and agreed to compensate them for their franchise promotion activities, in some instances
7 compensating the public figure for the number of franchises sold in a geographic area.

8 17. Respondent F45 required prospective franchisees to make a \$2,000.00 refundable deposit to
9 reserve their franchise territory before providing them with the full FDD and other information. Franchisors
10 are required to provide prospective franchisees its current FDD fourteen calendar days before the
11 prospective franchisee makes any payment to a franchisor or affiliate in connection with the proposed
12 franchise sale.

13 18. Among the statutes with which Respondent F45 is required to comply is RCW 19.100.180,
14 also known as the “Franchisee Bill of Rights.” The Franchisee Bill of Rights prescribes certain requirements
15 governing the relationship between franchisors and their franchisees for the purpose of ensuring the parties
16 deal with the other in good faith. Included in its provisions is a prohibition on a franchisor from “restrict[ing]
17 or inhibit[ing] the right of the franchisees to join an association of franchisees.”

18 19. In approximately January 2020, a group of F45 franchisees, including a Washington
19 franchisee, formed such a franchisee association under the umbrella of the American Association of
20 Franchisees and Dealers (AAFD). The AAFD sent a letter to Respondent F45’s management announcing
21 the formation of an F45 franchisee association and expressed an intent to collaborate with F45’s
22 management. This letter did not identify any leaders of the association.
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1 20. Approximately three months later, at the end of March 2020, the AAFD sent another letter to
2 Respondent F45’s management. This letter was signed by two leaders of the franchisee association,
3 including a Washington franchisee.

4 21. Shortly after receiving this letter, Respondent F45’s legal department sent a letter to the
5 Washington franchisee announcing that it was giving him “final notice” regarding breaches of his franchise
6 agreement, and stated that it could terminate his franchise agreement 30 days after this notice. Respondent
7 F45 had not previously sent the Washington franchisee any notice of these purported breaches, and had
8 previously discussed compensating the franchisee for the activities it later stated was in violation of its
9 franchise agreement once the franchisee was identified as a leader in the independent franchisee association.

10 22. The Washington franchisee regularly consulted with and trained other F45 franchisees on how
11 to sell more studio memberships for their franchises. Respondent F45 had expressed support of the
12 franchisee’s consulting work as far back as June 2018, and, in the months prior to its final notice, took
13 actions to explore a formal consulting relationship, including requesting feedback from franchisees the
14 Washington franchisee had consulted with and then, after receiving feedback, requesting that the
15 Washington franchisee provide it with a proposed compensation structure.

16 23. Respondent F45 maintained that it had not yet terminated the franchisee, but then finalized its
17 termination of the Washington franchisee’s agreement in July 2020. In a negotiation related to the
18 termination, Respondent F45 gave the Washington franchisee the option to sell his franchisee or allow it to
19 close, and he ultimately sold his franchisee.

20 Based upon the above findings of fact, the following conclusions of law are made:
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1 **CONCLUSIONS OF LAW**

2 1. The offer or sale of franchises as described above constitutes the offer or sale of a franchise
3 as defined in RCW 19.100.010(6), RCW 19.100.010(12), and RCW 19.100.010(17).

4 2. The offer and sale of said franchises was in violation of RCW 19.100.170(1) because
5 Respondent F45 made untrue statements of material fact or omitted material facts to the Division in its
6 franchise registration applications.

7 3. The offer and sale of said franchises was in violation of RCW 19.100.170(2) because
8 Respondent F45 made untrue statements of material fact or omitted to state material facts necessary to
9 make the statements, in light of the circumstances in which they were made, not misleading.

10 4. The offer and sale of said franchises was in violation of RCW 19.100.080 because
11 Respondent F45 required prospective franchisees to make payments to Respondent F45 in connection
12 with the proposed franchise sale before providing a copy of its current franchise disclosure document to
13 them.

14 5. Respondent F45 violated RCW 19.100.180(2)(a) because it restricted or inhibited the right
15 of a franchisee to join an association of franchisees.

16 **CONSENT ORDER**

17 Based upon the foregoing and finding it in the public interest:

18 IT IS AGREED AND ORDERED that Respondent F45, and its agents and employees, shall each
19 cease and desist from offering or selling franchises in violation of RCW 19.100.170, the violations section
20 of the Franchise Investment Protection Act of Washington.
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1 IT IS FURTHER AGREED AND ORDERED that Respondent F45, and its agents and employees,
2 shall each cease and desist from offering or selling franchises in violation of RCW 19.100.080, the franchise
3 disclosure document section of the Franchise Investment Protection Act of Washington.

4 IT IS FURTHER AGREED AND ORDERED that Respondent F45, and its agents and employees,
5 shall each cease and desist from violations of RCW 19.100.180, the franchisee bill of rights section of the
6 Franchise Investment Protection Act of Washington.

7 IT IS FURTHER AGREED AND ORDERED that Respondent F45 shall be liable for and shall pay
8 investigative costs of \$15,437.50 prior to the entry of this Order.

9 IT IS FURTHER AGREED AND ORDERED that Respondent F45 has sent by electronic mail, to
10 the email address franchisees included on their signed franchise agreement, a copy of this Order, along with
11 an offer of rescission, to all franchisees in Washington that entered into a Franchise Agreement during the
12 period that the materials identified in Paragraphs 6-16 were in use, specifically prior to December 31, 2019.

13 IT IS FURTHER AGREED AND ORDERED that Respondent F45 shall provide the Securities
14 Division proof it sent a copy of this Order and offer of rescission to all franchisees owning a franchise in
15 Washington that entered into a Franchise Agreement prior to December 31, 2019, prior to the entry of this
16 Order.

17 IT IS FURTHER AGREED that the Securities Division has jurisdiction to enter this Order.

18 IT IS FURTHER AGREED that Respondent F45 enters into this Order freely and voluntarily and
19 with a full understanding of its terms and significance.

20 IT IS FURTHER AGREED that, in consideration of the foregoing, Respondent F45 waives its right
21 to a hearing and to judicial review of this matter.

22 **WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.**

23

Signed this 12th day of October, 2022.

Signed by:

Approved as to form by:

F45 Training, Inc.

By /s/ Patrick Grosso
Chief Legal Officer

/s/ Rodger D. Moss, Jr., Attorney for Respondent
153915 (Florida Bar No.)
1632462 (DC Bar No.)

SIGNED and ENTERED this 18th day of October, 2022.



/s/ William M. Beatty
Securities Administrator

Approved by:

Presented by:

/s/ Brian J. Guerard
Chief of Enforcement

/s/ Patrick Stickney
Financial Legal Examiner