# 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 by:

Order No. S-23-3534-23-CO01

CONSENT ORDER

F45 Training Incorporated,

Respondent.

### INTRODUCTION

Pursuant to the Franchise Investment Protection Act, RCW 19.100, the Securities Division and F45 Training Incorporated do hereby enter into this Consent Order in settlement of the matters alleged herein. F45 Training Incorporated neither admits nor denies the Findings of Fact and Conclusions of Law as stated below.

#### FINDINGS OF FACT

## Respondent

1. Respondent F45 Training Incorporated is a Delaware entity formed on March 25, 2015, with its principal place of business in Austin, Texas. Respondent F45 sells franchises for exercise training businesses that do business under the mark "F45 Training."

#### **Nature of Conduct**

2. On October 18, 2022, the Securities Division entered into a Consent with F45 Training, Inc. The Securities Division alleged that Respondent made unlawful and unsupported financial performance representations to prospective Washington franchisees between November 2015 and December 2019. Particularly, Respondent claimed, through advertising, web videos, and direction communications, and without providing a reasonable basis or substantiation of these claims, that franchisees could quickly achieve high profits if they purchased and operated one of Respondent's franchised locations. Respondent also omitted

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material information when it claimed to prospective franchisees during its sales process that nearby units were successful, including by failing to inform prospective franchisees that these locations were not profitable as of that time. The Securities Division additionally alleged the Respondent made untrue statements of material fact and/or omitted material facts to the Division when it stated in its franchise registration filings that it did not provide financial performance representations to prospective franchisees, while at the same time making these representations during its sales process. As additional violations, the Securities Division alleged that Respondent failed to disclose, as required in the Franchise Disclosure Document ("FDD"), that it had paid certain public figures, who were players, coach, and a team owner in the National Basketball Association, to promote sales of its franchise units, and that Respondent was in violation of the law when it required prospective franchisees to make certain payments to it before it provided them with its current franchise disclosure document. Further, the Securities Division alleged that Respondent was in violation of the RCW 19.100.180, the Franchisee Bill of Rights, when it terminated a Washington franchisee shortly after the franchisee was identified as a leader in a newly-formed F45 franchisee association, thus inhibiting the franchisee's right under the law to join such an association. Without admitting or denying the Securities Division's allegations, Respondent agreed to cease and desist from violations of RCW 19.100.170, the violations section of the Franchise Investment Protection Act of Washington; RCW 19.100.080, the franchise disclosure document section of the Franchise Investment Protection Act of Washington; and RCW 19.100.180, the franchisee bill of rights section of the Franchise Investment Protection Act of Washington. Respondent agreed to pay \$15,437.50 to the Division in investigative cost recovery, and to send a copy of the order and an offer to rescind the franchise agreement to all franchisees who entered into a franchise agreement in Washington before December 31, 2019.

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3. During the period August 2022 through December 2022, in connection with the offer and sale of franchises, F45 provided several Washington franchisees FDDs that disclosed an administrative action purportedly filed against it by the Securities Division in the following manner:

"On May 11, 2022, F45 signed a Consent Order ("Consent Order") with the Washington State Department of Financial Institutions Securities Division (Order No.: S-19-2681-19-CO01). The department alleged F45's franchise disclosure document for a period was not compliant with the Franchise Investment Protection Act of Washington. F45 denied these allegations. F45 agreed to pay \$15,437.50 and offer rescission to seven franchisees in Washington in connection with the consent order."

F45 falsely stated to offerees and purchasers that it had entered into a consent order dated May 11, 2022. F45 did enter into a Consent Order with the Securities Division on October 18, 2022. F45 misleadingly described the terms of the Consent Order in its FDDs by stating that it denied the allegations when the express terms of the Order prepared by the Securities Division stated that F45 neither admits nor denies the Findings of Fact and Conclusions of Law set forth in the Order. F45 failed to disclose that it was ordered to cease and desist from violating RCW 19.100.170(1) because it made untrue statements of material fact or omitted material facts to the Division in its franchise registration applications; RCW 19.100.080 because it required prospective franchisees to make payments to F45 in connection with proposed franchise sales before providing a copy of its current FDD to them; and RCW 19.100.180(2)(a) because it restricted or inhibited the right of a franchisee to join an association of franchisees.

## **CONCLUSIONS OF LAW**

1. The offer and/or sale of the F45 franchises described above constitutes the offer and/or sale of a franchise as defined in RCW 19.100.010(6), RCW 19.100.010(12), and RCW 19.100.010(17).

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1 2	2. F45 violated RCW 19.100.170, the antifraud section of the Franchise Investment Protection Act, by making untrue statements of material fact or omitting to state material facts necessary to make		
3 4	statements made, in light of the circumstances in which they were made, not misleading.		
5	Based upon the foregoing and finding it in the public interest:		
6	CONSENT ORDER		
7	IT IS AGREED AND ORDERED that Respondent F45 Training Incorporated, and their agents an		
8	employees, shall each cease and desist from violating RCW 19.100.170, the antifraud section of the Franchis		
9	Investment Protection Act.		
10	IT IS AGREED that Respondent F45 Training Incorporated shall be liable for and pay investigative		
11	costs in the amount of \$2,675.		
12	IT IS AGREED that Respondent F45 Training Incorporated enters into this Consent Order freely and		
13	voluntarily and with a full understanding of its terms and significance.		
14	IT IS AGREED that the Securities Division has jurisdiction to enter this order.		
15	IT IS AGREED that in consideration of the foregoing, the Respondent F45 Training Incorporate		
16	waives its right to a hearing and to judicial review of this matter pursuant to RCW 19.100.260 and		
17	Chapter 34.05 RCW.		
8	WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.		
19	Signed this <u>20th</u> day of <u>November</u> , 2023		
20	F45 Training Incorporated		
21	/s/		
22	Signed by: Elizabeth Hebers, Associate General Counsel		
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	CONSENT ORDER  DEPARTMENT OF FINANCIAL INSTITUTION Securities Divisio 150 Isaael RD SV		

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2	SIGNED and ENTERED this <u>4th</u> day o	<u>December</u> , 2023.
3		/s/
4		/s/ William M. Beatty Securities Administrator
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	Brian Guerard	/s/ Martin Cordell
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16	Huong Lam	
	Financial Legal Examiner Supervisor	
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