

1 JENNIFER RUMBERGER  
Deputy Commissioner  
2 THERESA LEETS  
Assistant Chief Counsel  
3 GILLIAN G.M. SMALL (State Bar No. 161425)  
Senior Counsel  
4 Department of Financial Protection and Innovation  
One Sansome Street, Suite 600  
5 San Francisco, California 94104  
6 Telephone: (415) 972-8533

7 Attorneys for Complainant

8  
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 Complainant, ) CONSENT ORDER  
14 v. )  
15 AGELESS FITNESS CORP., doing business )  
as AGELESS FITNESS. )  
16 Respondent. )  
17 )  
18 )

19  
20 This Consent Order is entered into between the Commissioner of Financial Protection and  
21 Innovation (Commissioner), and Ageless Fitness Corp. (Ageless Fitness), (collectively, Parties) and  
22 is made with respect to the following facts:

23 **I.**

24 **RECITALS**

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

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<sup>1</sup> All further statutory references are to the Corporations Code unless otherwise indicated.

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

6 B. At all relevant times, Ageless Fitness was and is a California corporation with a  
7 principal place of business located at 20 W. Junipero Street, Santa Barbara, California 93105. At all  
8 relevant times, Ageless Fitness sells franchises offering fitness programs, luxury personal training  
9 experience, exercise programs and progressions for senior clients.

10 C. At all relevant times, Brenda Roxie Samaniego (Roxie Samaniego), was an individual  
11 and partner at Roxie Samaniego CPA, P.C., a professional corporation (Samaniego P.C.), doing  
12 business at 3123 Savannah Avenue, El Paso, Texas 79930. On October 29, 2004, Roxie Samaniego  
13 was certified and registered with the Texas State Board of Public Accountancy (TSBPA). On  
14 December 12, 2018, Samaniego P.C. was registered with the TSBPA. A true and correct copy of  
15 Roxie Samaniego's and Samaniego P.C.'s license history from the official TSBPA public website at  
16 <https://www.tsbpa.texas.gov> is attached hereto and incorporated by reference herein as "Exhibit A".

17 D. On February 29, 2020, Samaniego P.C.'s license expired. On February 28, 2021,  
18 Roxie Samaniego's license expired. On March 11, 2021, the TSBPA revoked both Roxie  
19 Samaniego's and Samaniego P.C.'s licenses, based upon violations regarding competence,  
20 discreditable acts, responses, conduct indicating lack of fitness to serve the public as a professional  
21 accountant, and/or violation of a rule of professional conduct adopted by the TSBPA.

22 E. Pursuant to section 31200, it is unlawful for any person willfully to make any untrue  
23 statement of a material fact in any application, notice or report filed with the Commissioner under  
24 the FIL, or willfully omit to state in any such application, notice, or report any material fact which is  
25 required to be stated therein or fail to notify the Commissioner of any material change as required by  
26 section 31123.

27 F. On April 29, 2021, Ageless Fitness filed an initial application for registration with the  
28 Department to offer and sell franchises in California (2021 Application). The 2021 Application

1 included an auditor’s consent and an FDD containing audited financial statements accompanied by  
2 an independent auditor’s report signed on March 14, 2021, by Samaniego P.C. as the firm  
3 conducting the audit and by Roxie Samaniego as the certified public accountant conducting the audit  
4 (Financial Statements). The Financial Statements included a balance sheet as of December 31, 2020,  
5 and the related statement of operations, members equity, and cash flows for the period of December  
6 31, 2020, and related notes. The independent auditor’s report contained an unqualified audit opinion  
7 on the Financial Statements.

8 G. Ageless Fitness included the auditor’s consent and Financial Statements with  
9 accompanying independent auditor’s report in its 2021 Application with the Department, even  
10 though Samaniego P.C.’s license expired on February 29, 2020, Roxie Samaniego’s license expired  
11 on February 28, 2021, and both Samaniego P.C.’s and Roxie Samaniego’s licenses were revoked by  
12 the TSBPA on March 11, 2021. Ageless Fitness asserts that it included the auditor’s consent and  
13 Financial Statements with accompanying independent auditor’s report in its 2021 Application  
14 without knowledge as to Samaniego, P.C.’s and Roxie Samaniego’s revoked and/or expired  
15 licensure status.

16 H. The Commissioner finds that Ageless Fitness’s failure to disclose that Samaniego  
17 P.C.’s license expired on February 29, 2020, Roxie Samaniego’s license expired on February 28,  
18 2021, and Samaniego P.C.’s and Roxie Samaniego’s licenses were both revoked by the TSBPA on  
19 March 11, 2021, when submitting the Financial Statements and audit report in the 2021 Application,  
20 is an omission of a material fact under the FIL, in violation of section 31200.

21 I. The Commissioner also finds that the inclusion of the Financial Statements in the  
22 2021 Application accompanied by Samaniego P.C.’s and Roxie Samaniego’s independent auditor’s  
23 report asserting that the Financial Statements were audited when Samaniego P.C. and Roxie  
24 Samaniego were not qualified to conduct audits is an untrue statement of a material fact in an  
25 application filed with the Commissioner, in violation of section 31200.

26 J. NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions  
27 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 [findings in paragraphs A through I 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 applicable law.

2. Desist and Refrain Order. Pursuant to Corporations Code section 31406, Ageless Fitness Corp., doing business as Ageless Fitness, is hereby ordered to desist and refrain from the violations Corporations Code section 31200 set forth herein. The issuance of this order is necessary, in the public interest, for the protection of investors, and is consistent with the purposes, policies, and provisions of the Franchise Investment Law.

3. Penalties. Ageless Fitness shall pay an administrative penalty of \$5,000 (Penalties) no later than fifteen (15) days after the effective date of this Consent Order as defined in Paragraph 21 (Effective Date). Penalties must be made payable in the form of a cashier's check or Automated Clearing House deposit to the Department and transmitted to the attention of Accounting at the Department of Financial Protection and Innovation, 2101 Arena Boulevard, Sacramento, California 95834. Notice of the payment must be concurrently sent via email to Gillian G.M. Small, Senior Counsel, at [Gillian.Small@dfpi.ca.gov](mailto:Gillian.Small@dfpi.ca.gov). Ageless Fitness acknowledges that the Commissioner is ready, willing, and able to proceed with the filing of an administrative enforcement action on the charges contained in this Consent Order. Ageless Fitness hereby waives the right to any hearings, and to any reconsideration, appeal, or other right to review which may be afforded pursuant to the FIL, the Administrative Procedure Act (APA), the Code of Civil Procedure (CCP), or any other provision of law. Ageless Fitness further expressly waives any requirement for the filing of an accusation pursuant to Government Code section 11415.60, subdivision (b). By waiving such rights, Ageless Fitness effectively consents to this Consent Order becoming final.

4. Failure to Comply with Consent Order. Ageless Fitness agrees that if it fails to comply with the terms of this Consent Order, the Commissioner may, in addition to all other available remedies it may invoke under the FIL, summarily suspend or revoke Ageless Fitness's

1 franchise registration (if applicable) or deny Ageless Fitness’s FIL applications (if applicable), until  
2 Ageless Fitness is in compliance. Ageless Fitness waives any notice and hearing rights to contest  
3 such summary actions by the Commissioner, which may be afforded under the FIL, APA, CCP, or  
4 any other provision of law.

5 5. Information Willfully Withheld or Misrepresented. This Consent Order may be  
6 revoked, and the Commissioner may pursue any and all remedies available under law against  
7 Ageless Fitness if the Commissioner discovers that Ageless Fitness knowingly or willfully withheld  
8 or misrepresented information used for and relied upon in this Consent Order.

9 6. Future Actions by Commissioner. If Ageless Fitness fails to comply with any terms  
10 of the Consent Order, the Commissioner may institute proceedings for any and all violations  
11 otherwise resolved by this Consent Order. The Commissioner reserves the right to bring any future  
12 actions against Ageless Fitness or any of its partners, owners, officers, shareholders, directors,  
13 employees, or successors for any and all unknown violations of the FIL or any other law under the  
14 Commissioner’s jurisdiction.

15 7. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner’s  
16 ability to assist any other government agency (whether city, county, state, or federal) with any  
17 administrative, civil, or criminal action brought by that agency against Ageless Fitness or any other  
18 person based upon any of the activities alleged in this matter or otherwise.

19 8. Headings. The headings to the paragraphs of this Consent Order are inserted for  
20 convenience only and will not be deemed a part hereof or affect the construction or interpretation of  
21 the provisions hereof.

22 9. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in  
23 interest.

24 10. Reliance. Each of the Parties represents, warrants, and agrees that in executing this  
25 Consent Order, it has relied solely on the statements set forth herein and the advice of its own  
26 counsel. Each of the Parties further represents, warrants, and agrees that in executing this Consent  
27 Order, it has placed no reliance on any statement, representation, or promise of any other party, or  
28 any other person or entity not expressly set forth herein, or upon the failure of any party or any

1 other person or entity to make any statement, representation, or disclosure of anything whatsoever.  
2 The Parties have included this clause: (1) to preclude any claim that any party was in any way  
3 fraudulently induced to execute this Consent Order; and (2) to preclude the introduction of parol  
4 evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

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

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

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

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

24 15. Effect Upon Future Proceedings. If Ageless Fitness applies for any license,  
25 registration, permit, or qualification under the Commissioner’s current or future jurisdiction, or is  
26 the subject of any future action by the Commissioner to enforce this Consent Order, then the subject  
27 matter hereof shall be admitted for the purpose of such application(s) or enforcement proceeding(s).  
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1           16.    Voluntary Order. Ageless Fitness enters into this Consent Order voluntarily and  
2 without coercion and acknowledges that no promises, threats, or assurances have been made by the  
3 Commissioner or any officer, or agent thereof, about this Consent Order. The Parties each  
4 represent and acknowledge that he, she, or it is executing this Consent Order completely voluntarily  
5 and without any duress or undue influence of any kind from any source.

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

8           To Ageless Fitness:           Evan M. Goldman, Esq.  
9    A.Y. Strauss Attorneys at Law  
10   101 Eisenhower Parkway, Suite 412  
11   Roseland, New Jersey 07068  
12   egoldman@aystrauss.com

13           To the Commissioner:        Gillian. G.M. Small, Senior Counsel  
14   Department of Financial Protection and Innovation  
15   One Sansome Street, Suite 600  
16   San Francisco, California 94104  
17   Gillian.Small@dfpi.ca.gov

18           18.    Signatures. A fax, scanned, or electronic signature shall be deemed the same as an  
19 original signature.

20           19.    Public Record. Ageless Fitness hereby acknowledges that this Consent Order is and  
21 will be a matter of public record.

22           20.    Effective Date. This Consent Order shall become final and effective when signed by  
23 all Parties and delivered by the Commissioner’s agent via e-mail to Ageless Fitness’s agent, Evan  
24 M. Goldman, Esq. at egoldman@aystrauss.com.  
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1           21.    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           Dated: 11/2/2021

CHRISTOPHER S. SHULTZ  
Acting Commissioner of Financial Protection and  
Innovation

7           By: \_\_\_\_\_

JENNIFER RUMBERGER  
Deputy Commissioner

11           Dated: 11/2/2021

AGELESS FITNESS CORP., doing business as  
AGELESS FITNESS

14           By: \_\_\_\_\_

EMMANUEL VERDUZCO  
Chief Executive Officer