

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.),¹ and registering the offer and sale of franchises

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¹ 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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2 **II.**

3 **TERMS AND CONDITIONS**

4 1. **Purpose.** This Consent Order resolves the issues before the Commissioner [findings
5 in paragraphs A through I above] in a manner that avoids the expense of a hearing and other
6 possible court proceedings, protects consumers, is in the public interest, and is consistent with the
7 purposes and provisions of the applicable law.

8 2. **Desist and Refrain Order.** Pursuant to Corporations Code section 31406, Ageless
9 Fitness Corp., doing business as Ageless Fitness, is hereby ordered to desist and refrain from the
10 violations Corporations Code section 32100 set forth herein. The issuance of this order is
11 necessary, in the public interest, for the protection of investors, and is consistent with the purposes,
12 policies, and provisions of the Franchise Investment Law.

13 3. **Penalties.** Ageless Fitness shall pay an administrative penalty of \$5,000 (Penalties)
14 no later than fifteen (15) days after the effective date of this Consent Order as defined in Paragraph
15 21 (Effective Date). Penalties must be made payable in the form of a cashier's check or Automated
16 Clearing House deposit to the Department and transmitted to the attention of Accounting at the
17 Department of Financial Protection and Innovation, 2101 Arena Boulevard, Sacramento, California
18 95834. Notice of the payment must be concurrently sent via email to Gillian G.M. Small, Senior
19 Counsel, at Gillian.Small@dfpi.ca.gov. Ageless Fitness acknowledges that the Commissioner is
20 ready, willing, and able to proceed with the filing of an administrative enforcement action on the
21 charges contained in this Consent Order. Ageless Fitness hereby waives the right to any hearings,
22 and to any reconsideration, appeal, or other right to review which may be afforded pursuant to the
23 FIL, the Administrative Procedure Act (APA), the Code of Civil Procedure (CCP), or any other
24 provision of law. Ageless Fitness further expressly waives any requirement for the filing of an
25 accusation pursuant to Government Code section 11415.60, subdivision (b). By waiving such rights,
26 Ageless Fitness effectively consents to this Consent Order becoming final.

27 4. **Failure to Comply with Consent Order.** Ageless Fitness agrees that if it fails to
28 comply with the terms of this Consent Order, the Commissioner may, in addition to all other

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

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

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

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

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

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

25 10. Reliance. Each of the Parties represents, warrants, and agrees that in executing this
26 Consent Order, it has relied solely on the statements set forth herein and the advice of its own
27 counsel. Each of the Parties further represents, warrants, and agrees that in executing this Consent
28 Order, it has placed no reliance on any statement, representation, or promise of any other party, or

1 any other person or entity not expressly set forth herein, or upon the failure of any party or any
2 other person or entity to make any statement, representation, or disclosure of anything whatsoever.
3 The Parties have included this clause: (1) to preclude any claim that any party was in any way
4 fraudulently induced to execute this Consent Order; and (2) to preclude the introduction of parol
5 evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

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

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

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

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

25 15. Effect Upon Future Proceedings. If Ageless Fitness applies for any license,
26 registration, permit, or qualification under the Commissioner’s current or future jurisdiction, or is
27 the subject of any future action by the Commissioner to enforce this Consent Order, then the subject
28 matter hereof shall be admitted for the purpose of such application(s) or enforcement proceeding(s).

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