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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 SEND ME A TRAINER FRANCHISING,)
16 LLC., doing business as SEND ME A)
TRAINER)
17 Respondent.)
18

19 This Consent Order is entered into between the Commissioner of Financial Protection and
20 Innovation (Commissioner), and Send Me A Trainer Franchising, LLC., doing business as Send Me
21 A Trainer (SMAT) (collectively, Parties) and is 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
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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, SMAT was and is a Delaware limited liability company with a
7 principal place of business located at 1775 Tysons Blvd, McLean, Virginia 22102. At all relevant
8 times, SMAT sells franchises that provide in-home personal training services to consumers.

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

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

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

26 F. On October 8, 2019, SMAT filed an application for registration with the Department
27 to offer and sell franchises in California (2019 Application). The 2019 Application included an
28 auditor's consent and an FDD containing audited financial statements accompanied by an

1 independent auditor's report signed by Samaniego P.C. as the firm conducting the audit (2019
2 Financial Statements). The 2019 Financial Statements included a balance sheet as of August 31,
3 2019, and the related statement of operations, members equity, and cash flows for the period of
4 December 20, 2019, through December 30, 2020, and related notes. The independent auditor's
5 report contained an unqualified audit opinion on the 2019 Financial Statements. On August 2, 2020,
6 the Department issued an order making this registration effective, thereby allowing SMAT to offer
7 and sell of franchises in California from August 2, 2020, to April 20, 2021.

8 G. On April 19, 2021, SMAT filed another application for registration to offer and sell
9 franchises in California (2021 Application). The 2021 Application included an auditor's consent and
10 an FDD containing audited financial statements accompanied by an independent auditor's report
11 signed by Samaniego P.C. as the firm conducting the audit (2019-2020 Financial Statements). The
12 2019-2020 Financial Statements included a balance sheet as of December 31, 2019, to December 31,
13 2020, related statement of operations, members equity, cash flows for the period of December 31,
14 2019, to December 31, 2020, and related notes. The independent auditor's report contained an
15 unqualified audit opinion on the 2019-2020 Financial Statements. On May 13, 2021, the
16 Department issued an order making this registration effective, thereby allowing SMAT to offer and
17 sell franchises in California from May 13, 2021, to April 20, 2022.

18 H. SMAT included the auditor's consent and financial Statements with accompanying
19 independent auditor's report in its 2019 Application and 2021 Application with the Department,
20 even though Samaniego P.C.'s license expired on February 29, 2020, and both Samaniego P.C.'s and
21 Roxie Samaniego's licenses were revoked by the TSBPA on March 11, 2021. SMAT failed to
22 disclose to the Commissioner that Samaniego P.C. was not licensed by the TSBPA and properly
23 update their applications once Samaniego P.C.'s and Roxie Samaniego's licenses were expired and
24 revoked.

25 I. Pursuant to section 31201, it is unlawful for any person to offer or sell a franchise in
26 California by means of any written or oral communication not enumerated in section 31200 which
27 includes an untrue statement of a material fact or omits to state a material fact necessary in order to
28 make the statement made, in light of the circumstances under which they were made, not misleading.

1 J. SMAT included the auditor’s consent and financial statements with accompanying
2 independent auditor’s report in its 2019 Application and 2021 Application with the Department,
3 even though Samaniego P.C.’s license expired on February 29, 2020, and both Samaniego P.C.’s and
4 Roxie Samaniego’s licenses were revoked by the TSBPA on March 11, 2021. From March 2020 to
5 July 2021, SMAT distributed the FDD which included the offending 2019-2020 Financial
6 Statements to at least two (2) franchisees during the offer and sale of a SMAT franchise.

7 K. The Commissioner finds that the failure to disclose in the both the 2019 and 2021
8 Applications that Samaniego P.C.’s license expired on February 29, 2020, Roxie Samaniego’s
9 license expired on February 28, 2021, and Samaniego P.C.’s and Roxie Samaniego’s licenses were
10 both revoked by the TSBPA on March 11, 2021, is an omission of a material fact under the FIL, in
11 violation of section 31200.

12 L. The Commissioner also finds that the inclusion of the 2019 and 2019-2020 Financial
13 Statements in the 2019 Application and the 2021 Application accompanied by Samaniego P.C.’s
14 independent auditor’s report stating that such 2019 and 2019-2020 Financial Statements were
15 audited when Samaniego P.C. was not qualified to conduct audits is an untrue statement of a
16 material fact in an application filed with the Commissioner, in violation of section 31200.

17 M. The Commissioner finally finds that SMAT offered and sold franchises using an
18 FDD containing an untrue statement of a material fact, since the FDD contained 2019 and 2019-
19 2020 Financial Statements accompanied by Samaniego’s P.C.’s independent auditor’s report stating
20 that the Financials were audited when Samaniego P.C. and/or Roxie Samaniego was not qualified to
21 conduct audits, in violation of section 31201.

22 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set
23 forth herein, the Parties agree as follows:

24
25 **II.**

26 **TERMS AND CONDITIONS**

27 1. Purpose. This Consent Order resolves the issues before the Commissioner [findings
28 in paragraphs A through M above] in a manner that avoids the expense of a hearing and other

1 possible court proceedings, protects consumers, is in the public interest, and is consistent with the
2 purposes and provisions of the applicable law.

3 2. Desist and Refrain Order. Pursuant to Corporations Code section 31406, Send Me A
4 Trainer Franchising, LLC., doing business as Send Me A Trainer, is hereby ordered to desist and
5 refrain from four (4) violations of Corporations Code section 31200 and two (2) violations of
6 Corporations Code section 31201 set forth herein and from violating the Franchise Investment Law.
7 The issuance of this order is necessary, in the public interest, for the protection of investors, and is
8 consistent with the purposes, policies, and provisions of the Franchise Investment Law.

9 3. Penalties. SMAT shall pay an administrative penalty of \$15,000 (Penalties). The
10 Penalties must be made payable in the form of a cashier's check or Automated Clearing House
11 deposit to the Department and transmitted to the attention of Accounting-Legal, Department of
12 Financial Protection and Innovation, 2101 Arena Boulevard, Sacramento, California 95834. Notice
13 of the payment must be concurrently sent via email to Marisa I. Urteaga-Watkins, Esq. at
14 marisa.urteaga-watkins@dfpi.ca.gov. Failure to pay Penalties in a timely manner shall be deemed to
15 be a material breach of this Consent Order.

16 4. Cancellation and Refund Offer. SMAT agrees to make offers (Cancellation Offers)
17 within thirty (30) days after the effective date of this Consent Order as defined in Paragraph 23
18 (Effective Date). to all franchisees listed in the franchisee list (Franchisee List), attached hereto and
19 incorporated by reference herein as "Exhibit B", to cancel their franchise agreements and obtain a
20 refund all initial franchise fees paid by such franchisees. All refunds shall be made within ten (10)
21 calendar days from the date the SMAT receives any acceptance of the Cancellation and Refund
22 Offer. The form of Cancellation Offer shall be in the form approved by the Commissioner
23 (Cancellation Form), attached hereto and incorporated by reference herein as "Exhibit C" and shall
24 be sent to franchisees on the Franchisee List by certified mail. No credits or benefits paid to, or
25 received by, a franchisee shall offset any refund payment. This provision shall apply to all
26 California franchisees who purchased a Send Me A Trainer franchise regardless of whether they
27 were terminated on or before the Effective Date, including any that are eligible but may have been
28 omitted from the Exhibit C, according to proof. Within sixty (60) days after the Effective Date,

1 SMAT shall submit to the Commissioner satisfactory documentation evidencing each franchisee’s
2 response to the Cancellation Offer via email Marisa I. Urteaga-Watkins, Esq. at marisa.urteaga-
3 watkins@dfpi.ca.gov. SMAT is responsible for ensuring that any refund payment owed to any
4 franchisee that has not been cashed within one hundred eighty (180) days of the Effective Date of
5 this Consent Order shall escheat to the State of California in accordance with the Unclaimed
6 Property Law.

7 5. Post-Effective Amendment to Current Registration. SMAT hereby agrees that it shall
8 cease the offer or sale of franchises in California until it has filed a post-effective amendment
9 application in accordance with section 31123 to its currently effective registration (identified by the
10 Department as app-20953) containing new audited financial statements and otherwise complying
11 with the FIL and the Department has issued an order registering such post-effective amendment.

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

20 7. Failure to Comply with Consent Order. SMAT agrees that if it fails to comply with
21 the terms of this Consent Order, the Commissioner may, in addition to all other available remedies it
22 may invoke under the FIL, summarily suspend or revoke SMAT’s franchise registration (if
23 applicable) or deny SMAT’s FIL applications (if applicable), until SMAT is in compliance. SMAT
24 waives any notice and hearing rights to contest such summary actions by the Commissioner, which
25 may be afforded under the FIL, APA, CCP, or any other provision of law.

26 8. Information Willfully Withheld or Misrepresented. This Consent Order may be
27 revoked, and the Commissioner may pursue any and all remedies available under law against
28

1 SMAT, if the Commissioner discovers that SMAT knowingly or willfully withheld or
2 misrepresented information used for and relied upon in this Consent Order.

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

9 10. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner’s
10 ability to assist any other government agency (whether city, county, state, or federal) with any
11 administrative, civil, or criminal action brought by that agency against SMAT, or any other person
12 based upon any of the activities alleged in this matter or otherwise.

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

16 12. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
17 interest.

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

27 14. Waiver, Amendments, and Modifications. No waiver, amendment, or modification
28 of this Consent Order will be valid or binding unless it is in writing and signed by each of the

1 Parties. The waiver of any provision of this Consent Order will not be deemed a waiver of any
2 other provision. No waiver by either Party of any breach of, or of compliance with, any condition
3 or provision of this Consent Order by the other Party will be considered a waiver of any other
4 condition or provision or of the same condition or provision at another time.

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

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

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

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

22 19. Voluntary Order. SMAT enters into this Consent Order voluntarily and without
23 coercion and acknowledges that no promises, threats, or assurances have been made by the
24 Commissioner or any officer, or agent thereof, about this Consent Order. The Parties each
25 represent and acknowledge that he, she, or it is executing this Consent Order completely voluntarily
26 and without any duress or undue influence of any kind from any source.

27 20. Notice. Any notice required under this Consent Order shall be provided to each
28 party at the following addresses:

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To SMAT: Ms. Regina Amolsch, Esq.
Plave Koch, PLC.
12005 Sunrise Valley Drive
Reston, VA 20191
ramolsch@plavekoch.com

To the Commissioner: Marisa I. Urteaga-Watkins, Esq.,
Department of Financial Protection and Innovation
2101 Arena Blvd.
Sacramento, California 95834
marisa.urteaga-watkins@dfpi.ca.gov

- 21. Signatures. A fax, scanned, or electronic signature shall be deemed the same as an original signature.
- 22. Public Record. SMAT hereby acknowledges that this Consent Order is and will be a matter of public record.
- 23. Effective Date. This Consent Order shall become final and effective when signed by all Parties and delivered by the Commissioner’s agent via e-mail to SMAT’s agent, Ms. Regina Amolsch, Esq. at ramolsch@plavekoch.com.
- 24. Authority to Sign. Each signatory hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Consent Order and undertake the obligations set forth herein.

Dated: 10/29/2021 CHRISTOPHER S. SHULTZ
Acting Commissioner of Financial Protection and Innovation

By: _____

JENNIFER RUMBERGER
Deputy Commissioner

Dated: 10/29/2021 SEND ME A TRAINER FRANCHISING, LLC.,
doing business as SEND ME A TRAINER

By: _____

MUHSSIN EL-YACOUBI
Chief Financial Officer

EXHIBIT A TO CONSENT ORDER



Texas State Board of Public Accountancy

William Treacy, Executive Director

Office - ROXIE SAMANIEGO, CPA, P.C.

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Firm License ID

C10325

Firm name

ROXIE SAMANIEGO, CPA, P.C.

Resident manager

Ms. SAMANIEGO

Location

3123 SAVANNAH AVE

EL PASO TX 79930

Phone: (915)274-6073

Date registered

12/20/2018

License expiration date

02/29/2020

Status

Revoked

History of disciplinary actions

Complaint 2003-0009L was opened on 03/18/2020 and was closed on 03/11/2021 with a resolution, Revocation.

Violation(s) Regarding:

- Competence
- Discreditable acts
- Discreditable acts
- Discreditable acts
- Responses
- Violation of a rule of professional conduct adopted by the board
- Conduct indicating lack of fitness to serve the public as a professional accountant

Complaint 2005-0008L was opened on 05/05/2020 and was closed on 03/11/2021 with a resolution, Revocation.

Violation(s) Regarding:

- Competence
- Discreditable acts
- Discreditable acts
- Discreditable acts
- Discreditable acts
- Responses

- Violation of a rule of professional conduct adopted by the board
- Conduct indicating lack of fitness to serve the public as a professional accountant

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EXHIBIT B TO CONSENT ORDER

FRANCHISEE LIST

1. Ms. Nadia Popova
2. Mr. Clifford Zane Daugherty

EXHIBIT C TO CONSENT ORDER

Sample Offer of Cancellation and Refund To Be Used By The Franchisor

RE: Offer of Cancellation of the Franchise Agreement and Refund of the Initial Franchise Fees for Send Me A Trainer – Cancellation Notice

Dear Franchisee,

As you know, in order to offer and sell franchises in California, we are required to register with the Department of Financial Protection and Innovation (DFPI). Our [REDACTED] Application(s) for franchise registration included financial statements issued by Brenda Roxie Samaniego and Samaniego CPA, P.C. On February 29, 2020, Samaniego P.C.'s license expired. On February 28, 2021, Roxie Samaniego's license expired. On March 11, 2021, the Texas State Board of Public Accountancy (TSBPA) revoked both Brenda Roxie Samaniego's and Samaniego P.C.'s licenses, based upon violations regarding competence, discreditable acts, responses, conduct indicating lack of fitness to serve the public as a professional accountant, and/or violation of a rule of professional conduct adopted by the TSBPA.

We used the reports in our [REDACTED] Application(s) which resulted in a violation of the California Franchise Investment Law.

In October 2021, the Department entered into a Consent Order with us, in which we agreed to offer you the opportunity to cancel your Send Me A Trainer franchise agreement and obtain a full refund of the initial franchise fee paid for the purchase of your franchise. (Please see the attached the Consent Order).

If you would like to cancel your Send Me A Trainer franchise agreement and obtain a refund, we will refund you the total initial franchise fees that you paid to us within ten (10) calendar days from the date we receive your refund request. This means that your franchise agreement will be cancelled, and you will have no

further obligations or rights to operate your franchise under the Send Me A Trainer franchise brand and system.

Please let us know within thirty (30) calendar days from receipt of this Cancellation Notice whether you want to cancel your franchise agreement and obtain a refund. You may respond via email, or by signing below and mailing the form to us. If you have any questions about what this means, please do not hesitate to let us know by calling us at [REDACTED] or via e-mail at [REDACTED].

Sincerely,

FRANCHISOR NAME

Signatory

Address

email