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Commissioner
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8 Attorneys for Complainant

9 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
10 OF THE STATE OF CALIFORNIA

11 In the Matter of:)
12)
13 THE COMMISSIONER OF FINANCIAL)
PROTECTION AND INNOVATION,)
14) CONSENT ORDER
Complainant,)
15 v.)
16 NEAUMIXFIT FRANCHISE LLC,)
17)
Respondent.)
18)
19)

20 This Consent Order is entered into between the Commissioner of Financial Protection and
21 Innovation (Commissioner) and Neaumixfit Franchise LLC (Respondent) (Commissioner and
22 Respondent are collectively referred to herein as Parties) and is made with respect to the following
23 facts:

24 I.

25 RECITALS

26 A. The Commissioner is the head of the Department of Financial Protection and
27 Innovation (Department) and is responsible for administering and enforcing the Franchise
28

1 Investment Law (FIL) (Corp. Code, § 31000 et seq.),¹ and registering the offer and sale of franchises
2 in California. To register a franchise, a franchisor must file an application that includes a Franchise
3 Disclosure Document (FDD) with the Department for review, in accordance with sections 31111 and
4 31114. The FIL requires franchisors to disclose certain material information that is intended to
5 provide prospective franchisees with facts upon which to make an informed decision to purchase a
6 franchise, as stated in section 31001.

7 B. At all relevant times, Respondent was and is a California limited liability company
8 with a principal place of business located at 1060 S. Pine Canyon Circle, Anaheim, California
9 92807. At all relevant times, Respondent has sold franchises to operate a fitness studio offering a
10 mix of Pilates, TRX, Cycle, Barre, and Yoga, and other exercise programs through live instructional
11 group and individual classes under the name “Neaumixfit Studio.”

12 C. At all relevant times, David A. Schroeder (David Schroeder), was an individual and
13 resident manager of D.A. Schroeder CPA PLLC, a professional LLC (Schroeder CPA), doing
14 business at 1610 Eastwood, Houston, Texas, 7702. On November 10, 2008, Davis Schroeder was
15 certified and registered with the Texas State Board of Public Accountancy (TSBPA). On March 17,
16 2017, Schroeder CPA was registered with the TSBPA. A true and correct copy of David
17 Schroeder’s and Schroeder CPA’s license history from the official TSBPA public website at
18 <https://www.tsbpa.texas.gov> is attached hereto and incorporated by reference herein as **Exhibit A**.

19 D. On June 30, 2018, Schroeder CPA’s license expired. On February 28, 2019, David
20 Schroeder’s license expired. On September 20, 2018, and again on July 15, 2021, the TSBPA
21 suspended both David Schroeder’s and Schroeder CPA’s licenses, based upon violations regarding
22 discreditable acts, conduct indicating lack of fitness to serve the public as a professional accountant,
23 and violation of a rule of professional conduct adopted by the TSBPA.

24 E. Pursuant to section 31200, it is unlawful for any person willfully to make any untrue
25 statement of a material fact in any application, notice or report filed with the Commissioner under
26 the FIL, or willfully omit to state in any such application, notice, or report any material fact which is
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¹ All further statutory references are to the Corporations Code unless otherwise indicated.

1 required to be stated therein or fail to notify the Commissioner of any material change as required by
2 section 31123.

3 F. On September 30, 2021, Respondent filed an application for registration with the
4 Department to offer and sell franchises in California (2021 Application). The 2021 Application
5 included an auditor's consent and an FDD containing audited financial statements accompanied by
6 an independent auditor's report signed by Schroder CPA as the firm conducting the audit (2021
7 Financial Statements). The 2021 Financial Statements included a Balance Sheet and Income
8 Statements presented on a comparative basis , a Statement of Cash Flows, and a Statement of
9 Owner's Equity for the fiscal years ended June 30, 2020 and June 30, 2021. The independent
10 auditor's report contained an unqualified audit opinion on the 2021 Financial Statements.

11 G. Respondent included the auditor's consent and 2021 Financial Statements with
12 accompanying independent auditor's report in its 2021 Application with the Department even though
13 Schroder CPA's license expired on June 30, 2018, David Schroeder's license expired on February
14 28, 2019, and both Schroder CPA and David Schroeder's licenses were both suspended twice by the
15 TSBPA on September 20, 2018 and again on July 15, 2021. Respondent failed to disclose to the
16 Commissioner that Schroder CPA was not licensed by the TSBPA at the time the 2021 Application
17 was filed with the Department.

18 H. The Commissioner finds that the failure to disclose in the 2021 Application that
19 Schroder CPA's license expired on June 30, 2018, David Schroeder's license expired on February
20 28, 2019, and Schroder CPA and David Schroeder's licenses were both suspended twice by the
21 TSBPA on September 20, 2018 and again on July 15, 2021, is an omission of a material fact under
22 the FIL, in violation of section 31200.

23 I. The Commissioner also finds that the inclusion of the 2021 Financial Statements in
24 the 2021 Application accompanied by Schroder CPA's independent auditor's report stating that
25 such 2021 Financial Statements were audited when Schroder CPA was not qualified to conduct
26 audits is an untrue statement of a material fact in an application filed with the Commissioner, in
27 violation of section 31200.
28

1 J. NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions
2 set forth herein, the Parties agree as follows:

3 **II.**

4 **TERMS AND CONDITIONS**

5 1. Purpose. This Consent Order resolves the issues before the Commissioner,
6 described in the Recitals above, in a manner that avoids the expense of a hearing and other possible
7 court proceedings, protects consumers, is in the public interest, and is consistent with the purposes
8 and provisions of the applicable law.

9 2. Desist and Refrain Order. Pursuant to section 31406, Neaumixfit Franchise LLC is
10 hereby ordered to desist and refrain from the violations set forth herein, in violation of Corporations
11 Code section 31200, and from any violations of the Franchise Investment Law. The issuance of this
12 order is necessary, in the public interest, for the protection of investors, and is consistent with the
13 purposes, policies, and provisions of the Franchise Investment Law.

14 3. Penalties. Respondent shall pay an administrative penalty of \$5,000.00 (Penalties) no
15 later than fifteen (15) days after the effective date of this Consent Order as defined in paragraph 22
16 (Effective Date). The Penalties must be made payable in the form of a cashier's check or Automated
17 Clearing House deposit to the Department and transmitted to the attention of Accounting-Legal at
18 the Department of Financial Protection and Innovation, 2101 Arena Boulevard, Sacramento,
19 California 95834. Notice of the payment must be concurrently sent via email to Lulu Gomez at
20 lulu.gomez@dfpi.ca.gov. Failure to pay Penalties in a timely manner shall be deemed to be a
21 material breach of this Consent Order.

22 4. Pre-Effective Amendment to Pending Application. Respondent hereby agrees that it
23 shall file a pre-effective amendment to the franchise registration application currently pending with
24 the Department (identified by the Department as app-22347), disclosing this Consent Order in Item 3
25 and otherwise complying with the FIL within sixty (60) days after the Effective Date.

26 5. Waiver of Hearing Rights. Respondent acknowledges that the Commissioner is
27 ready, willing, and able to proceed with the filing of an administrative enforcement action on the
28 charges contained in this Consent Order. Respondent hereby waives the right to any hearings, and to

1 any reconsideration, appeal, or other right to review which may be afforded pursuant to the FIL, the
2 Administrative Procedure Act (APA), the Code of Civil Procedure (CCP), or any other provision of
3 law. Respondent further expressly waives any requirement for the filing of any accusation pursuant
4 to Government Code section 11415.60, subdivision (b). By waiving such rights, Respondent
5 effectively consents to this Consent Order becoming final.

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

13 7. Information Willfully Withheld or Misrepresented. This Consent Order may be
14 revoked, and the Commissioner may pursue any and all remedies available under law against
15 Respondent, if the Commissioner discovers that Respondent knowingly or willfully withheld or
16 misrepresented information used for and relied upon in this Consent Order.

17 8. Future Actions by Commissioner. If Respondent fails to comply with any terms of
18 the Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
19 resolved by this Consent Order. The Commissioner reserves the right to bring any future actions
20 against Respondent, or any of its partners, owners, officers, shareholders, directors, employees, or
21 successors for any and all unknown violations of the FIL or any other law under the Commissioner’s
22 jurisdiction.

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

1 10. Headings. The headings to the paragraphs of this Consent Order are inserted for
2 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
3 the provisions hereof.

4 11. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
5 interest.

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

15 13. Waiver, Amendments, and Modifications. No waiver, amendment, or modification
16 of this Consent Order will be valid or binding unless it is in writing and signed by each of the
17 Parties. The waiver of any provision of this Consent Order will not be deemed a waiver of any
18 other provision. No waiver by either Party of any breach of, or of compliance with, any condition
19 or provision of this Consent Order by the other Party will be considered a waiver of any other
20 condition or provision or of the same condition or provision at another time.

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

27 15. Governing Law. This Consent Order will be governed by and construed in
28 accordance with California law. Each of the Parties hereto consents to the jurisdiction of such

1 court, and hereby irrevocably waives, to the fullest extent permitted by law, the defense of an
2 inconvenient forum to the maintenance of such action or proceeding in such court.

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

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

10 18. Voluntary Order. Respondent enters into this Consent Order voluntarily and without
11 coercion and acknowledges that no promises, threats, or assurances have been made by the
12 Commissioner or any officer, or agent thereof, about this Consent Order. The Parties each
13 represent and acknowledge that he, she, or it is executing this Consent Order completely voluntarily
14 and without any duress or undue influence of any kind from any source.

15 19. Notice. Any notice required under this Consent Order shall be provided to each
16 party at the following addresses:

17 To Respondent: Tim Pickwell
18 Pickwell Law Group
19 Hacienda Del Mar
20 12625 High Bluff Drive, Suite 108 B
21 San Diego, CA, 92130
22 tpickwell@pickwelllaw.com

23 To the Commissioner: Lulu Gomez, Senior Counsel
24 Department of Financial Protection and Innovation
25 320 West Fourth Street, Suite 750
26 Los Angeles, CA, 90013
27 lulu.gomez@dfpi.ca.gov

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

21 21. Public Record. Respondent hereby acknowledges that this Consent Order is and will
be a matter of public record.

1 22. Effective Date. This Consent Order shall become final and effective when signed by
2 all Parties and delivered by the Commissioner’s agent via e-mail to Respondent’s agent, Tim
3 Pickwell at tpickwell@pickwelllaw.com.

4 23. Authority to Sign. Each signatory hereto covenants that he/she possesses all
5 necessary capacity and authority to sign and enter into this Consent Order and undertake the
6 obligations set forth herein.

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8 Dated: 6/6/2022

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection
and Innovation

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10
11 By: _____
12 THERESA LEETS
13 Assistant Chief Counsel

14
15 Dated: 5/31/2022

NEAUMIXFIT FRANCHISE LLC

16
17 By: _____
18 MELISSA CHAVEZ
19 President