

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General



In the Matter of Aquila Fitness Consulting Systems, Ltd.

SETTLEMENT AGREEMENT

The Attorney General for the District of Columbia, on behalf of the District of Columbia (“District”), and Respondent Aquila Fitness Consulting Systems, Ltd. (“Respondent”) (together, the “Parties”), hereby enter into this Settlement Agreement, and agree as follows:

I. THE PARTIES

1. The Attorney General for the District of Columbia is the chief legal officer for the District of Columbia. The Attorney General has general charge and conduct of all legal business of the District and all suits initiated by and against the District and is responsible for upholding the public interest.

2. Respondent is a Delaware corporation that operates at several locations in the District and maintains its headquarters at 1221 Brickell Avenue, Suite 1060, Miami, FL 33131.

II. COVERED CONDUCT

3. The District alleges that from 2019 through 2022, Respondent’s use of noncompete agreements and litigation threats to compel continued performance of fixed-term service contracts constituted unlawful restraints of trade and violated the District’s ban on non-compete agreements.

See D.C. Code § 28-4501, et seq.; D.C. Code § 32-581.01., et seq.

4. The District also alleges that from January 2019 through 2022, Respondent failed to timely pay wages upon discharge to employees in violation of the District’s Wage Payment and Collection Law (“WPCL”). *See* D.C. Code § 32-1303.

5. Respondent denies the District’s allegations. Nothing contained in this Settlement Agreement is or may be construed to be an admission by Respondent of any violation of law or regulation, any other matter of fact or law, or any liability or wrongdoing.

III. DEFINITIONS

6. “**Effective Date**” shall be the last date upon which any party executes the Settlement Agreement.

7. “**Eligible Employee**” is an employee eligible to receive a payment pursuant to this Settlement Agreement.

8. “**Non-Compete Agreement**” and “**Non-Compete Provision**” shall have the same meanings as those terms are defined in D.C. Code § 32-581.01 and shall include any non-solicitation provisions that have the effect of prohibiting an employee from performing work for another for pay or from operating the employee’s own business.

9. “**Fixed-Term Service Contract**” refers to an agreement requiring an employee to work for an employer for a fixed term of duration.

IV. INJUNCTIVE TERMS

10. Respondent agrees to immediately cease its use of non-compete agreements for current or future employees who work in the District and do not meet the definition of “highly compensated employees” under D.C. Code § 32-581.01(10).

11. Respondent agrees to provide notice to all of its employees in the District who signed or otherwise entered a non-compete agreement or provision in calendar years 2020 through

2022 that they are no longer bound by any non-compete agreements they previously entered into with Respondent; *provided*, Respondent is not required to provide such notice to “highly compensated employees,” as defined by D.C. Code § 32-581.01(10).

12. Respondent agrees not to threaten litigation against any District employee(s) that give notice of their intent to quit Respondent’s employment (a) to enforce a non-compete agreement or (b) to compel the completion of a fixed-term service contract.

V. PAYMENT TERMS

13. **Payments to Eligible Employees.** Respondent shall make payments totaling **\$21,229.17** to Eligible Employees. Respondent shall be responsible for distribution of these payments and will manage the distribution as follows:

- a. *Distribution of Payments.* Within forty-five (45) days after the Effective Date, Respondent shall distribute payments to Eligible Employees consistent with the amounts listed as due to each Eligible Employee under Appendix A.
- b. *Records and Reporting.* Respondent shall record the dates and methods (*i.e.*, direct deposit or cashed check) on which payments were distributed to Eligible Employees. Within 180 days of the Effective Date, Respondent shall provide the District with a final report that shows all payments distributed to Eligible Employees and all payments remaining uncashed by Eligible Employees (the total of which is referred to as the “Undistributed Funds”).
- c. *Payment of Undistributed Funds to the District.* Within 30 days after providing the records required by paragraph (c) above, Respondent shall make a payment to the District in the amount of the Undistributed Funds. Payments made to the District pursuant to this term may be used for any lawful purpose, including, but not limited to: deposit to the District’s litigation support fund or restitution fund; defrayal of the costs of the inquiry leading hereto; defrayal of the costs of administration or distribution; or for other uses permitted by District law, at the sole discretion of the Attorney General for the District of Columbia.

14. **Payment to the District.** Respondent shall also pay **\$4,500.00** to the District as a civil penalty, within forty-five (45) days of the Effective Date.

15. All payments to the District shall be made by cashier’s check made payable to “D.C. Treasurer” and delivered to Conny Tello, Office of Attorney General for the District of

Columbia, 400 6th Street NW, 10th Floor, Washington, DC 20001, unless another method of payment is specified by the District.

VI. RELEASE

16. The Parties have agreed to the terms of this Settlement Agreement to resolve the District's allegations against Respondent concerning the Covered Conduct. In exchange for the performance of Respondent's obligations under this Settlement Agreement, and upon payment of all amounts due under this Agreement, the District hereby releases Respondent from any and all claims that the Attorney General could have asserted under District law for claims arising out of the Covered Conduct.

VII. ADDITIONAL TERMS

17. This Settlement Agreement shall be considered effective and fully executed on the Effective Date. This Settlement Agreement may be executed in counterparts, and a facsimile or .pdf signature shall be deemed to be, and shall have the same force and effect, as an original signature. Copies of signature pages transmitted electronically shall have the same effect as originals of those signature pages.

18. Respondent shall not knowingly permit third parties authorized by Respondent to act on its behalf to engage in practices that would be violative of this Settlement Agreement.

19. This Settlement Agreement represents the full and complete terms of the settlement entered by the Parties. In any action undertaken by the Parties, neither prior versions of this Settlement Agreement nor prior versions of any of its terms may be introduced for any purpose whatsoever.

20. All notices sent pursuant to this Settlement Agreement shall be provided to the following address via first class and electronic mail, unless a different address is specified in writing by the party changing such address:

Graham Lake
Chief, Workers' Rights and Antifraud Section
Office of the Attorney General
400 6th St., NW, 10th Floor
Washington, D.C. 20001
Graham.Lake@dc.gov

Counsel for the District of Columbia

Tina M. Maiolo
Carr Maloney P.C.
2000 Pennsylvania Avenue, N.W., Suite 8001
Washington, D.C. 20006
Tina.Maiolo@carrmaloney.com

Counsel for Respondent

21. Any failure by any party to this Settlement Agreement to insist upon the strict performance by any other party of any of the provisions of this Settlement Agreement shall not be deemed a waiver of any of the provisions of this Settlement Agreement, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Settlement Agreement.

22. If any clause, provision or section of this Settlement Agreement shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Settlement Agreement and this Settlement Agreement shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.


23. Nothing in this Settlement Agreement shall be construed as relieving Respondent of the obligation to comply with all state and federal laws, regulations or rules, nor shall any of the

provisions of this Settlement Agreement be deemed to be permission to engage in any acts or practices prohibited by such laws, regulations, or rules.

24. Respondent shall provide a copy of this Settlement Agreement to each of its current and future principals, officers, directors, and managers having decision-making authority with respect to the subject matter of this Settlement Agreement.

25. Respondent shall not form a separate entity or corporation for the purpose of engaging in acts or practices in whole or in part that are prohibited in this Settlement Agreement.

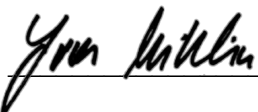
KARL A. RACINE
Attorney General for the District of Columbia



Graham Lake
Chief, Workers' Rights and Antifraud Section
Office of the Attorney General
400 6th St., NW, 10th Floor
Washington, D.C. 20001

Date: 11/7/2022

Counsel for the District of Columbia



Yvan Miklin, Pres/ CEO
Respondent Signatory

Date: 11/2/2022