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Acting Commissioner of Financial Protection and Innovation
2 COLLEEN MONAHAN
Deputy Commissioner
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5 Department of Financial Protection and Innovation
6 2101 Arena Blvd.
7 Sacramento, California 95834

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 THE COMMISSIONER OF FINANCIAL)
PROTECTION AND INNOVATION,)
13) CONSENT ORDER
Complainant,)
14 v.)
)
15 TOMMY’S EXPRESS, LLC,)
16)
Respondent.)
17)
18)

19 This Consent Order is entered into between the Commissioner of Financial Protection and
20 Innovation (Commissioner) and Tommy’s Express, LLC (TE) and together with Commissioner,
21 (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
27 in California. To register a franchise, a franchisor must file an application that includes a Franchise
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¹ All further statutory references are to the Corporations Code unless otherwise indicated.

1 Disclosure Document (FDD) with the Department for review, in accordance with sections 31111 and
2 31114. The FIL requires franchisors to disclose certain material information that is intended to
3 provide prospective franchisees with facts upon which to make an informed decision to purchase a
4 franchise, as stated in section 31001.

5 B. At all relevant times, TE is a Michigan limited liability company at 240 East 8th
6 Street Holland, Michigan 49423, doing business in California. At all relevant times, TE offers car
7 wash franchises to California investors. At all relevant times, TE was registered to offer and sell TE
8 franchises in California by the Department from June 15, 2020, to April 20, 2021, by way of
9 Application No. 18435 filed on June 14, 2020 (2020 Application). The 2020 Application included
10 copies of the FDD and franchise agreement that TE was to use with California investors.

11 C. Pursuant to section 31110, it is unlawful for any person to offer or sell any franchise
12 in this state unless the offer of the franchise has been registered under this part or exempted.

13 1. On or about December 27, 2022, TE sold at least one (1) TE franchise to a
14 California investor located in Sherman Oaks, California. At the time of this offer and sale, TE was
15 not registered with the Department to offer and/or sell franchises in California.

16 D. Pursuant to Corporations Code section 31200, it is unlawful for any person willfully
17 to make any untrue statement of a material fact in any application, notice or report filed with the
18 commissioner under this law, or willfully to omit to state in any such application, notice, or report
19 any material fact which is required to be stated therein or fail to notify the Commissioner of any
20 material change as required by section 31123.

21 1. From at least November 2017 to April 20, 2021, TE was registered with the
22 Department to offer and sell franchises pursuant to the FIL by way of four (4) FIL applications filed
23 with the Department.

24 2. The Federal Trade Commission Franchise Rule, NASAA Franchise
25 Commentary and the FIL require franchisors to disclose in Item 2 of their franchise disclosure
26 document (FDD) filed with their FIL application with the Department, the franchisor's business
27 experience. Specifically, franchisors must disclose by name and position the franchisor's director's
28

1 trustees, general partners, principal officers, and any other individuals who will have management
2 responsibility relating to the sale or operation of franchises offered.

3 3. The Federal Trade Commission Franchise Rule, NASAA Franchise
4 Commentary and the FIL also require franchisors to disclose in Item 4 of their FDD filed with their
5 FIL application with the Department the bankruptcy history of any person listed in Item 2 for ten
6 (10) years from the date of bankruptcy.

7 4. In each of the four (4) FIL applications FDD Item 2 filed with the
8 Department, TE listed Mike Lemmen as Brand President for TE. Mike Lemmen was and is an
9 individual residing in Holland, Michigan (MLemmen). MLeMmen has management responsibility
10 relating to the sale or operation of TE franchises as Brand President.

11 5. In each of the four (4) FIL applications FDD Item 4 filed with the
12 Department, TE did not list any bankruptcy information asserting “No bankruptcy information is
13 required to be disclosed in this Item.”

14 6. However, in September 2012, MLeMmen filed for voluntary Chapter 7
15 personal bankruptcy in the United States Bankruptcy Court for the Western District of Michigan,
16 Case No. 12-08073-jrh. MLeMmen’s bankruptcy was discharged on January 27, 2013. (BK). TE
17 failed to disclose the BK as required in Item 4 in TE’s four (4) filed FDD’s. And, misrepresented to
18 the Department in those four (4) applications that “no bankruptcy information is required to be
19 disclosed in this Item.”

20 7. In or about September 2022 to December 2022, TE presented a 2022 FDD to
21 a California investor located in Sherman Oaks, California that was not filed with the Department,
22 thereby failing to disclose to the Commissioner all the contents in the 2022 FDD.

23 The Commissioner finds that TE offered and/or sold at least one (1) TE franchise without
24 first being registered with the Department in violation of section 31110.

25 The Commissioner also finds that TE willfully made untrue statements of material fact in at
26 least four (4) instances in violation of section 31200.

27 The Commissioner finally finds that TE willfully omitted to state a material fact in at least
28 four (4) instances in violation of section 31200.

1 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set
2 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, Tommy’s Express, LLC, is
10 hereby ordered to desist and refrain from the violations of Corporations Code section 31200 set
11 forth herein, and from any violations of the FIL. The issuance of this order is necessary, in the
12 public interest, for the protection of investors, and is consistent with the purposes, policies, and
13 provisions of the FIL.

14 3. Penalties. Pursuant to Corporations Code section 31406, Tommy’s Express, LLC.
15 shall pay to the Department administrative penalties in the amount of eleven thousand dollars
16 (\$11,000), no later than fifteen (15) days, after the Effective Date of this Consent Order as defined in
17 paragraph 21.

18 4. Waiver of Hearing Rights. TE acknowledges that the Commissioner is ready,
19 willing, and able to proceed with the filing of an administrative enforcement action on the charges
20 contained in this Consent Order. TE hereby waives the right to any hearings, and to any
21 reconsideration, appeal, or other right to review which may be afforded pursuant to the FIL, the
22 California Administrative Procedure Act (APA), the Code of Civil Procedure (CCP), or any other
23 provision of law. TE further expressly waives any requirement for the filing of any accusation
24 pursuant to Government Code section 11415.60, subdivision (b). By waiving such rights, TE
25 effectively consents to this Consent Order and all of its terms becoming final.

26 5. Failure to Comply with Consent Order. TE agrees that if it fails to comply with the
27 Desist and Refrain Order in this Consent Order, the Commissioner may, in addition to all other
28 available remedies it may invoke under the FIL, summarily suspend, revoke, or deny its FIL

1 registration (if applicable). TE stipulates to the finality of any such FIL registration suspensions,
2 revocations, or denials that the Commissioner may order. TE waives any notice and hearing rights
3 to contest such summary suspensions, revocations, or denials which may be afforded under the FIL,
4 the APA, the CCP, or any other provision of law in connection therewith.

5 6. 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 TE, if
7 the Commissioner discovers that TE knowingly or willfully withheld or misrepresented information
8 used for and relied upon in this Consent Order.

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

15 8. 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 TE, or any other entity or
18 person based upon any of the activities alleged in this matter or otherwise.

19 9. 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 10. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
23 interest.

24 11. 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 12. 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 13. 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 14. 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 15. 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 16. Effect Upon Future Proceedings. If TE applies for any license, registration, permit,
25 or qualification under the Commissioner’s current or future jurisdiction, or is the subject of any
26 future action by the Commissioner to enforce this Consent Order, then the subject matter hereof
27 shall be admitted for the purpose of such application(s) or enforcement proceeding(s).
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1 17. Voluntary Agreement. TE enters into this Consent Order voluntarily and without
2 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 18. Notice. Any notice required under this Consent Order shall be provided to each
7 party at the following addresses:

8 To TE: Abhishek Dube
9 Partner, International Commercial
10 Baker & McKenzie LLP
11 815 Connecticut Avenue, N.W.
12 Washington, District of Columbia 20006
13 abhi.dube@bakermckenzie.com

14 To the Commissioner: Marisa I. Urteaga-Watkins, Esq.
15 Department of Financial Protection and Innovation
16 2101 Arena Boulevard
17 Sacramento, California 95834
18 marisa.urteaga-watkins@dfpi.ca.gov

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

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

23 21. Effective Date. This Consent Order shall become final and effective when signed by
24 all Parties and delivered by the Commissioner’s agent via e-mail to TE agent, Abhishek Dube, at
25 abhi.dube@bakermckenzie.com.

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1 22. 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.

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5 Dated: 1/29/2025

KC MOHSENI
Acting Commissioner of Financial Protection
and Innovation

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8 By: _____
COLLEEN MONAHAN
9 Deputy Commissioner

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11
12 Dated: 1/28/2025

TOMMY’S EXPRESS, LLC

13
14
15 By: _____
ALEXANDER W. LEMMEN
16 Chief Executive Officer