

1 5. At all relevant times, Tracy Emery Smith (Smith) purported to be the Chief Executive
2 Officer of Downkicker, DK Development, Downkicker Holding, and Sharp Investor (collectively,
3 Companies).

4 6. Beginning at least as early as 2017, Smith and the Companies offered or sold
5 securities, in the form of investment contracts or promissory notes, in California.

6 7. The purported purpose of the securities offering was to raise funds from investors to
7 renovate houses and/or refurbish mobile homes, and resell the properties at a profit.

8 8. The Companies purported to engage in real estate gap funding that would connect
9 house renovators with capital loans to complete renovation and refurbishing projects. There were
10 several ways to invest, including but not limited to: (1) buying common stocks in, or becoming a
11 partner with one of the Companies; (2) investing in one of the Companies' funds that offered a fixed
12 rate of return, or (3) purchasing shares of one of the Companies with a 8-15% rate of return.

13 9. In connection with the offer or sale of these securities, Smith and the Companies made
14 the following untrue statements of material facts or failed to disclose the following material facts:

- 15 a) There was no risk in investing and investors would have a fixed rate of return between
16 8-15%. Investors did not receive any return or their initial investment amount.
- 17 b) From 2010 through 2016, the State of California Board of Equalization, State of
18 California Franchise Tax Board, and Internal Revenue Service recorded notices of tax
19 liens against Smith for unpaid taxes, penalties, and interest in the approximate amount
20 of \$388,432.00.
- 21 c) On September 30, 2014, Smith was convicted of felony arson.
- 22 d) On April 23, 2010, a default judgement was entered against Smith in the Superior
23 Court of California, County of San Francisco – Case No. CGC-090-493242.
- 24 e) Smith failed to disclose Chapter 7 and Chapter 11 bankruptcy filings in the United
25 States Bankruptcy Court, Eastern District of California: (i) Case No. 16-90856-E-7;
26 (ii) Case No. 15-27284-D-11; and (iii) Case No. 15-91087-D-11.

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- i. Case No. 16-90856-E-7 was filed on September 19, 2016, by Smith for relief under Chapter 7 of the United States Bankruptcy Code. The case was dismissed on January 16, 2017, due to Smith's failure to appear at the meeting of creditors.
- ii. Case No. 15-27284-D-11 was filed on September 16, 2015, by Consolidated Reliance, Inc. for relief under Chapter 11 of the Bankruptcy Code. Smith signed the petition in Case No. 15-27284-D-11 as the Chief Executive Officer of debtor Consolidated Reliance, Inc. The case was dismissed on April 7, 2016.
- iii. According to the Statement of Financial Affairs filed in Case No. 15-27284-D-11, Smith owned 70% of the equity in debtor Consolidated Reliance, Inc.
- iv. According to the status conference report filed in Case No. 15-27284-D-11, the primary business of Consolidated Reliance, Inc. involved the purchase of real estate at distressed prices, the remodeling of the homes or commercial buildings on top of the real property, and then reselling the properties at a profit.
- v. Case No. 15-91087-D-11 was filed on November 10, 2015, by Spyglass Equities, Inc. for relief under Chapter 11 of the Bankruptcy Code. The case was dismissed on May 4, 2016.
- vi. According to the Statement of Financial Affairs filed in Case No. 15-91087-D-11, Smith was the Chief Executive Officer of debtor Spyglass Equities, Inc.
- vii. According to the status conference report filed in Case No. 15-91087-D-11, the primary business of Spyglass Equities, Inc. involved the purchase of real estate at distressed prices, the remodeling of the homes or commercial buildings on top of the real property, and then reselling the properties at a profit.

Based on the foregoing findings, the Commissioner is of the opinion that Tracy Emery Smith, Downkicker Investments, Inc., DK Development Fund #2, LLC, Downkicker Holding Corp., and Sharp Investors, Inc., aka Sharp Investor, Inc. offered or sold securities in this state by means of oral or written communications which included untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, in violation of Corporations Code section 25401.

1 Pursuant to Corporations Code section 25532, Tracy Emery Smith, Downkicker Investments,
2 Inc., DK Development Fund #2, LLC, Downkicker Holding Corp., and Sharp Investors, Inc., aka
3 Sharp Investor, Inc. are hereby ordered to desist and refrain from offering or selling or buying or
4 offering to buy any security in the State of California, including but not limited to investment
5 contracts or promissory notes, by means of any written or oral communication which includes an
6 untrue statement of a material fact or omits to state a material fact necessary in order to make the
7 statements made, in the light of the circumstances under which they were made, not misleading.

8 This Order is necessary, in the public interest, for the protection of investors and consistent
9 with the purposes, policies and provisions of the Corporate Securities Law of 1968.

10 Dated: October 23, 2020
11 Sacramento, California

MANUEL P. ALVAREZ
Commissioner of

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13 By _____
14 MARY ANN SMITH
15 Deputy Commissioner
16 Enforcement Division
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