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8
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 DETAIL GARAGE, LLC., doing business as)
16 DETAIL GARAGE, and SMART, LLC., doing)
business as SMART, formerly known as Smart,)
17 Inc.,)

18 Respondents.)
19 _____)

20 This Consent Order is entered into between the Commissioner of Financial Protection and
21 Innovation (Commissioner), Detail Garage, LLC., doing business as Detail Garage (DG) and Smart,
22 LLC., doing business as Smart, formerly known as Smart, Inc. (Smart), (collectively, Parties) and is
23 made with respect to the following 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
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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 which includes a Uniform
3 Franchise Disclosure Document (FDD) with the Department for review and approval, in accordance
4 with sections 31111 and 31114. The FIL requires franchisors to disclose certain material
5 information which is intended to provide prospective franchisees with facts upon which to make an
6 informed decision to purchase a franchise, as stated in section 31001.

7 B. The Commissioner is also responsible for administering and enforcing the California
8 Financing Law (CFL) (Fin. Code §22000 et seq.). No person shall engage in the business of a
9 finance lender or broker, including providing loans to consumers, without obtaining a CFL license
10 from the Commissioner, unless exempt, in accordance with Financial Code section 22100.

11 C. At all relevant times, DG was and is a California limited liability company, with a
12 principal place of business located at 14108 S. Western Avenue, Gardena, California 90249. At all
13 relevant times, DG sells franchises that provide auto detailing services and supplies to consumers.

14 D. At all relevant times, Smart was and is a California limited liability company,
15 formerly known as Smart, Inc., a California corporation, with a principal place of business located at
16 14108 S. Western Avenue, Gardena, California 90249. Smart manufactures and distributes car care
17 products under various brands. Smart was and is an affiliate of DG, since 2016.

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

23 F. On April 20, 2018, DG filed a renewal application for registration to offer and sell
24 franchises in California. On April 23, 2018, the Department approved the renewal application (2018
25 FDD) and granted a registration, thereby permitting DG to engage in the offer and/or sale of
26 franchises in California from April 23, 2018, to April 22, 2019. In Item 1 of the 2018 FDD, DG
27 disclosed the following: “We have no parent.” On April 18, 2019, DG filed a renewal application for
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¹ All further statutory references are to the Corporations Code unless otherwise indicated.

1 registration to offer and sell franchises in California. On April 20, 2019, the Department approved
2 the renewal application (2019 FDD) and granted a registration, thereby permitting DG to engage in
3 the offer and/or sale of franchises in California from April 18, 2019, to April 20, 2020. In Item 1 of
4 the 2019 FDD, DG disclosed the following: “We have no parent.”

5 G. In April 2020, DG disclosed to the Department that, as of March 2018, DG was a
6 subsidiary entity. CG Group Holdings, LLC., a Delaware limited liability company, was the parent
7 company of DG as of March 2018. However, in the 2018 FDD and the 2019 FDD, DG failed to
8 disclose that CG Group Holdings, LLC. was the parent of DG. DG also misrepresented to the
9 Commissioner that DG had no parent entity, when, in fact, it did have a parent entity.

10 H. From 2015 to at least May 2021, DG filed initial and renewal applications for
11 registration to the Department to offer and sell franchises in California. These applications include
12 the following application numbers: App-4965; App- 8735; App-11812; App-14821; and App-18307
13 (collectively, Applications). The Applications were approved by the Commissioner. In App-8735
14 and App-11812 Item 10, DG states in part:

15 “Depending on your credit, our affiliate Smart, Inc. may offer you
16 financing on inventory and product sales to you in an amount up to
17 \$50,000. Smart, Inc. charges interest at six percent (6%) on the
18 balance owed, and typically amortizes the amount financed over 36
19 months. You will pay Smart, Inc. equal installments monthly until the
20 balance is zero.... and sign an Inventory Purchase Agreement and
Promissory Note....the Guarantor of the Franchise Agreement must
also guaranty the promissory note. There is no penalty for pre-paying
the loan.”

21 In App-4965, Item 10, DG states:

22 “We do not offer direct or indirect financing for any amount due under
23 the Franchise Agreement or Area Development Agreement. We do not
24 guarantee your note, lease or any other obligation Depending on your
25 credit, our affiliate. Smart, Inc may offer financing or extended
26 payment terms on inventory and product sales to you. Interest rates
27 may vary but will be between 3.5% to 8.0% depending on your credit
28 and the amount our affiliate finances.”

29 However, DG failed to disclose in the Applications that Smart was not a licensed CFL
30 lender.

1 I. The Commissioner finds that DG, in at least nine (9) instances, willfully made an
2 untrue statement of a material fact in any application, notice or report filed with the Commissioner
3 or willfully omitted to state in any such application, notice, or report any material fact which is
4 required to be stated therein or failed to notify the Commissioner of any material change as required
5 by section 31123, in violation of section 31200.

6 J. Pursuant to Financial Code section 22100, no person shall engage in the business of a
7 finance lender without obtaining a license from the Commissioner. Pursuant to Financial Code
8 section 22009, a finance lender or broker is any person who is engaged in the business of making
9 consumer or commercial loans.

10 K. From March 2016 to at least June 2020, Smart entered into at least twenty-seven (27)
11 “inventory purchase agreements” and related “promissory note(s)” (PAPN) with DG franchisees.
12 Smart charged DG franchisees interest on each PAPN ranging from six percent (6%) to ten percent
13 (10%) per annum for the duration of each PAPN. Smart also required that monthly payments be
14 made by each DG franchisee on each respective PAPN balance. Smart did not consider PAPN to be
15 a loan, it considered it a credit sale; so Smart did not seek a CFL license.

16 L. Although Smart labeled the transactions as PAPN, the Commissioner finds that the
17 transactions were and are loans under the CFL. The Commissioner also finds that Smart engaged in
18 the business of a finance lender or broker by making the PAPN loans to DG Franchisees from 2016
19 to at least June 2020.

20 M. Smart has not been issued a license at any time by the Commissioner authorizing
21 Smart to engage in the business of a finance lender or broker under the CFL, nor is Smart exempt
22 from the licensing requirements of Financial Code section 22100.

23 N. The Commissioner finds that Smart, in at least twenty-seven (27) instances, engaged
24 in the business of a finance lender without obtaining a license from the Commissioner, without being
25 exempt, in violation of Financial Code section 22100.

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

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II.

TERMS AND CONDITIONS

1. Purpose. This Consent Order resolves the issues before the Commissioner [findings in paragraphs A through N above] in a manner that avoids the expense of a hearing and other possible court proceedings, protects consumers, is in the public interest, and is consistent with the purposes and provisions of the applicable law.

2. Desist and Refrain Order as to Detail Garage, LLC. Pursuant to Corporations Code sections 31402 and 31406, Detail Garage, LLC., doing business as Detail Garage is hereby ordered to desist and refrain from the violations of Corporations Code section 31200, as set forth herein and any other violations of the Franchise Investment Law. The issuance of this order is necessary, in the public interest, for the protection of investors and is consistent with the purposes, policies, and provisions of the Franchise Investment Law.

3. Desist and Refrain Order as to Smart, LLC. Pursuant to Financial Code section 22712, Smart, LLC., doing business as Smart, formerly known as Smart, Inc., is hereby ordered to desist and refrain from the violations of Financial Code section 22100, as set forth herein and any other violations of the California Financing Law. The issuance of this order is necessary, in the public interest, for the protection of California borrowers, and is consistent with the purposes, policies, and provisions of the California Financing Law.

4. Penalties as to Detail Garage, LLC. DG shall pay an administrative penalty of \$5,000 (DG Penalties) no later than fifteen (15) days after the effective date of this Consent Order as defined in Paragraph 23 (Effective Date). The DG Penalties must be made payable in the form of a cashier's check or Automated Clearing House deposit to the Department and transmitted to the attention of Accounting at the Department of Financial Protection and Innovation, 2101 Arena Boulevard, Sacramento, California 95834. Notice of the payment must be concurrently sent via email to Marisa I. Urteaga-Watkins, Esq. at marisa.urteaga-watkins@dfpi.ca.gov. Failure to pay Penalties in a timely manner shall be deemed to be a material breach of this Consent Order.

5. Penalties as to Smart, LLC. Smart shall pay an administrative penalty of \$10,000 (Smart Penalties) no later than fifteen (15) days after the effective date of this Consent Order as

1 defined in Paragraph 23 (Effective Date). The Smart Penalties must be made payable in the form of
2 a cashier's check or Automated Clearing House deposit to the Department and transmitted to the
3 attention of Accounting at the Department of Financial Protection and Innovation, 2101 Arena
4 Boulevard, Sacramento, California 95834. Notice of the payment must be concurrently sent via
5 email to Marisa I. Urteaga-Watkins, Esq. at marisa.urteaga-watkins@dfpi.ca.gov. Failure to pay
6 Penalties in a timely manner shall be deemed to be a material breach of this Consent Order.

7 6. Waiver of Hearing Rights. DG and Smart acknowledge that the Commissioner is
8 ready, willing, and able to proceed with the filing of an administrative enforcement action on the
9 charges contained in this Consent Order. DG and Smart hereby waive the right to any hearings, and
10 to any reconsideration, appeal, or other right to review which may be afforded pursuant to the FIL,
11 CFL, the Administrative Procedure Act (APA), the Code of Civil Procedure (CCP), or any other
12 provision of law. DG and Smart further expressly waive any requirement for the filing of an
13 Accusation pursuant to Government Code section 11415.60, subdivision (b). By waiving such
14 rights, DG and Smart effectively consent to this Consent Order becoming final. DG and Smart may
15 exercise their right to deny civil liability and any related or possible remedies sought in any civil
16 action brought by someone other than the Commissioner.

17 7. Failure to Comply with Consent Order. DG and Smart agree that if DG and Smart
18 fail to comply with the terms of this Consent Order, the Commissioner may, in addition to all other
19 available remedies it may invoke under the FIL and/or the CFL, summarily suspend/revoke any FIL
20 registration or CFL license (if applicable), summarily and permanently bar DG and/or Smart from
21 offering and selling franchises in California, or engaging in the business of making loans in
22 California, or deny FIL and/or CFL applications (if applicable). DG and Smart waive any notice
23 and hearing rights to contest such summary actions by the Commissioner which may be afforded
24 under the FIL, the CFL, the APA, the CCP, or any other provision of law in connection therewith.

25 8. Information Willfully Withheld or Misrepresented. This Consent Order may be
26 revoked, and the Commissioner may pursue any and all remedies available under law against DG
27 and Smart if the Commissioner discovers that DG and Smart knowingly or willfully withheld or
28 misrepresented information used for and relied upon in this Consent Order.

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

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

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

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

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

25 14. Waiver, Amendments, and Modifications. No waiver, amendment, or modification
26 of this Consent Order will be valid or binding unless it is in writing and signed by each of the
27 Parties. The waiver of any provision of this Consent Order will not be deemed a waiver of any
28 other provision. No waiver by either Party of any breach of, or of compliance with, any condition

1 or provision of this Consent Order by the other Party will be considered a waiver of any other
2 condition or provision or of the same condition or provision at another time.

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

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

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

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1 18. Effect Upon Future Proceedings. If DG and/or Smart applies for any license,
2 registration, permit, or qualification under the Commissioner’s current or future jurisdiction, or is
3 the subject of any future action by the Commissioner to enforce this Consent Order, then the subject
4 matter hereof shall be admitted for the purpose of such application(s) or enforcement proceeding(s).

5 19. Voluntary Order. DG and Smart enter this Consent Order voluntarily and without
6 coercion and acknowledge that no promises, threats or assurances have been made by the
7 Commissioner or any officer, or agent thereof, about this Consent Order. The Parties each represent
8 and acknowledge that he, she or it is executing this Consent Order completely voluntarily and
9 without any duress or undue influence of any kind from any source.

10 20. Notice. Any notice required under this Consent Order shall be provided to each
11 Party at the following addresses:

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13 To DG and Smart: Patrick W. Kelly, Esq.
14 Snell & Wilmer, LLP.
15 City National, 2 CAL
16 350 South Grand Avenue, Suite 3100
17 Los Angeles, California 90071
18 pkelly@swlaw.com

19 To the Commissioner: Marisa I. Urteaga-Watkins, Esq.,
20 Department of Financial Protection and Innovation
21 2101 Arena Blvd.
22 Sacramento, California 95834
23 marisa.urteaga-watkins@dfpi.ca.gov

24 21. Signatures. A fax or electronic mail signature shall be deemed the same as an
25 original signature.

26 22. Public Record. DG and Smart hereby acknowledges that this Consent Order is and
27 will be a matter of public record.

28 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 DG and Smart’s agent, Patrick
Kelly, Esq. pkelly@swlaw.com.

1 24. 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: 10/6/2021

CHRISTOPHER S. SHULTZ
Acting Commissioner of Financial Protection and
Innovation

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8 By: _____

JENNIFER RUMBERGER
Deputy Commissioner

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12 Dated: 10/5/2021

DETAIL GARAGE, LLC., doing business as DETAIL
GARAGE

13
14
15 By: _____

16 DAVID KNOTEK
17 Chief Executive Officer

18
19 Dated: 10/5/2021

SMART, LLC., doing business as SMART, formerly
known as SMART, INC.

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21
22 By: _____

23 DAVID KNOTEK
24 Chief Executive Officer