

**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**  
**Civil Division**

<p><b>DISTRICT OF COLUMBIA</b></p> <p style="text-align:center"><b>PLAINTIFF,</b></p> <p style="text-align:center">v.</p> <p><b>SMILEDIRECTCLUB, INC. <i>et. al</i></b></p> <p style="text-align:center"><b>DEFENDANTS.</b></p>	<p>Case No.: 2022-CAB-005671</p> <p>Judge: Carl E. Ross</p>
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**CONSENT JUDGMENT AND ORDER**

Plaintiff District of Columbia, by and through its Office of Attorney General’s Office of Consumer Protection (the “District”), brought this action for violations of the District of Columbia Consumer Protection Procedures Act, D.C. Code § 28-3901, *et seq.* (“CPPA”). The District and Defendants SmileDirectClub, Inc., SDC Financial, LLC, and SmileDirectClub, LLC (collectively, “SDC”), stipulate to the entry of this Consent Judgment and Order (“Consent Order”) to resolve all matters in dispute in this action between them and agree as follows:

**THE PARTIES**

1. Plaintiff the District of Columbia, a municipal corporation empowered to sue and be sued, is the local government for the territory constituting the permanent seat of the government of the United States. The District is represented by and through its chief legal officer, the Attorney General 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. D.C. Code § 1-301.81(a)(1). The Attorney General is specifically authorized to enforce the District’s consumer protection laws, including the CPPA, pursuant to D.C. Code § 28-3909.

2. Defendants SDC have offered, advertised, and provided oral care products and services to thousands of District residents, including aligners—which they market as an alternative to traditional orthodontics.

### **ALLEGATIONS**

3. This Court has jurisdiction over this matter.
4. The District filed its Complaint against Defendants SDC in the Superior Court for the District of Columbia.
5. The District’s Complaint alleges that SDC engaged in deceptive and unfair practices in violation of the District’s CPPA, including as set forth in D.C. Code § 28-3904(e), (f) and (f-1), in their offer and provision of oral care products to District consumers. Specifically, the District’s Complaint alleges that SDC’s use of non-disclosure agreements, which are titled “General Releases,” suppresses negative, public information about the harm that some consumers experience through the use of SDC’s products and services. The District alleges that this suppression of public information harmed consumers by creating a deceptively positive impression of consumers’ experiences with SDC and by consequently subjecting some consumers to actual harm and injury from the use of SDC’s products. Additionally, the District alleges that SDC’s use of General Releases was inconsistent with its advertised policies under its Lifetime Smile Guarantee.
6. SDC expressly denies the allegations in the Complaint and expressly denies that they have violated the Lifetime Smile Guarantee or have violated any law or engaged in any deceptive or unfair practices.
7. The Parties have agreed to the relief set forth in this Consent Order in order to fully resolve this matter.

## **DEFINITIONS**

8. “Consumer” shall mean all persons who reside in the District of Columbia and purchase oral care products from SDC and shall incorporate the definition of the term “consumer” in D.C. Code § 28-3901(a)(2).
9. “General Release” or “GR” shall mean any document signed by an SDC customer resolving or relating to a dispute or complaint that includes a release of claims.
10. “SDC,” shall mean Defendants SmileDirectClub, Inc., SDC Financial, LLC, and SmileDirectClub, LLC and includes any and all names under which they have conducted business; any entity located in the United States owned, operated, or controlled by SDC; any predecessor or successor entity located in the United States; and their affiliates, their respective employees, agents, contractors, representatives, affiliates, assignors, officers, directors, and any and all individuals or entities engaged directly or indirectly by SDC in the provision of its services and products.
11. Notwithstanding the above paragraph 10, the term “SDC” shall not include independent orthodontists or dentists who provide services through SDC’s telehealth platform.

## **INJUNCTIVE TERMS**

12. SDC will not engage in any act or practice in violation of the CPPA in connection with their offer, provision, or advertisement of oral care products to Consumers.
13. SDC will abide by its “Lifetime Smile Guarantee” for so long as the Lifetime Smile Guarantee remains in existence and provide customers who return unused aligners in the United States with a full refund if they request such refund within 30 days of their receipt of aligners from SDC, or a pro-rata refund if they request such a refund more than 30 days after their receipt of the aligners, and will not require any such customers to sign a GR containing any of the provisions

set forth in Paragraph 14 as a condition of receiving a refund or other compensation. This requirement specifically includes, though is not limited to, SDC's customers who complain of dissatisfaction with SDC's aligners, dental or gum problems, negative health consequences, or who threaten litigation against SDC.

14. SDC will not include any of the following provisions in its future GRs nationally going forward, except as otherwise provided herein:

- a. a requirement to keep the existence of SDC's GR confidential or to not share it publicly,
- b. a requirement to keep information concerning the consumer's transaction with SDC confidential or to not share that information publicly,
- c. a requirement to not post any information or reviews regarding the consumer's transaction with SDC on social media or elsewhere,
- d. a requirement to not post any information or reviews regarding the existence of SDC's GR on social media or elsewhere,
- e. a requirement to delete or eliminate any social media or other public postings concerning SDC or its products or services,
- f. a requirement not to make, publish, or communicate any negative or disparaging statements or opinions about SDC or its products or services,
- g. a requirement to not file any new complaints concerning SDC or its products or services with local, state, or federal agencies or regulators or the Better Business Bureau ("BBB") or similar third-party consumer review organizations,
- h. a requirement to withdraw any filed complaints concerning SDC or its

products or services with local, state, or federal agencies or regulators or the BBB or similar consumer review organizations, and

- i. a requirement to not lodge any future complaints concerning SDC or its products or services.

15. Notwithstanding the restrictions set forth in paragraph 14 above, SDC, or an orthodontist or dentist treating patients through the SDC platform, reserve the right to include a release of claims against SDC as part of its GRs and to require the customer to keep confidential the amount of any compensation or remuneration conveyed to the customer under the terms of a GR.
16. SDC agrees to waive and not enforce the provisions containing any of the requirements set forth in the preceding paragraph, in any and all GRs that consumers have signed anywhere in the United States, with the exception of those consumers (i) who sign a GR as a result of active litigation in which the consumer was represented by an attorney, or (ii) who have received more than \$5,000 in compensation from SDC.
17. SDC will send a notice to all consumers in the United States who have signed GRs about this relief, in an email or letter that it will first submit to OAG for prior approval within thirty (30) days of the Effective Date of this Consent Order. Within thirty (30) days of the Effective Date of this Consent Order, SDC will send the notice to all Consumers in the District of Columbia who signed a GR. SDC will send the notice to all consumers within the United States but outside of the District of Columbia who signed a GR, with the exception of consumers who signed a GR as a result of active litigation in which the consumer was represented by an attorney or have received more than \$5,000 in compensation from SDC, within ninety (90) days of the Effective Date of this Consent Order. SDC will email this notification to all consumers for whom it has an email address. The content of the notification will be in the body of the email, rather than as an

attachment. SDC will copy the District on all emails that it sends to consumers at oag.sdc@dc.gov. If SDC does not have an email for a consumer, or an email sent to a consumer is returned as undeliverable, it will send the notification via mail to the consumer's last known address. SDC will send a report to the District of all notices mailed to consumers, containing the name and address of the consumer as well as the date of the mailing, within thirty (30) days of the mailing.

18. SDC reserves the right to include any of the clauses in paragraph 14 above, in the GRs of consumers who (i) sign a GR as a result of active litigation in which the consumer is represented by any attorney, or (ii) receive more than \$5,000 in compensation from SDC going forward. The monetary threshold for this carve-out will rise proportionately based upon any increase in the cost of the aligners.
19. SDC will regularly audit the reviews on its website and social media platforms in the ordinary course of business to ensure that negative or critical reviews of SDC's products and services are not constrained on the media that it controls, except as otherwise provided herein.
20. SDC will not use GRs in any way to block or impede consumers in the United States from posting any negative consumer reviews of SDC or its products or services on SDC's website or social media, or on other websites or social media platforms, except in those cases (i) where a GR is a product of active litigation in which the consumer is represented by an attorney, or (ii) where a customer has received or does receive \$5,000 or more in compensation or remuneration as part of a GR; provided that SDC is permitted to require the customer to keep confidential the amount of any compensation or remuneration conveyed to the customer under the terms of the GR.
21. The terms of this Consent Order will not prohibit SDC from continuing to screen reviews for

profanities, inappropriate content, fake customer reviews, or irrelevant content to prevent the display of such reviews on smiledirectlcub.com.

### **FINANCIAL PAYMENT**

22. Within 30 days of the Effective Date of this Consent Order, SDC will pay \$500,000 to the District. The District may use any portion of the funds that it receives for any lawful purposes at the sole discretion of the Attorney General for the District of Columbia. Defendant agrees to cooperate with the District in obtaining any modification to the language of this paragraph needed to facilitate the administration of the District's payment under this paragraph.
23. In agreeing to the payment amount above, the District has relied upon SDC's representations that as of the time of this Consent Order they operate at a financial deficit. The Parties agree that if that representation is proven untrue, it shall constitute a material violation of this Consent Order and the District may seek an additional amount in civil penalties from SDC.

### **GENERAL PROVISIONS**

24. A default in SDC's payment obligation under this Agreement that is not cured within three business days of when the payment is due will constitute a violation of this Consent Order.
25. The Effective Date shall be the last date on which a Party to this agreement signs this Consent Order.
26. Unless otherwise set forth above, SDC shall implement all changes required by this Consent Order within thirty (30) days of the Effective Date of this Consent Order.
27. SDC shall not cause or encourage third parties or knowingly permit third parties acting on its behalf to engage in practices from which SDC is prohibited by this Consent Order.
28. This Consent Order represents the full and complete terms of the settlement entered into by the Parties.
29. In entering into this Consent Order, the Parties are neither extinguishing any rights otherwise

available to Consumers, nor creating any rights not otherwise available under the laws of the District of Columbia.

30. This Court retains jurisdiction over this Consent Order and the Parties for the purpose of enforcing this Consent Order and for the purpose of granting such additional relief as may be necessary and appropriate. The Parties may agree in writing, through their counsel, to an extension of any time period in this Consent Order without a court order.

31. This Consent Order may be executed in counterparts, and a facsimile, electronic, or .pdf signature shall be deemed to be, and shall have the same force and effect, as an original signature.

32. All notices sent pursuant to this Consent Order shall be provided to the following address via first class and e-mail, unless a different address is specified in writing by the party changing such address:

Wendy J. Weinberg  
Senior Assistant Attorney General  
Office of the Attorney General  
400 Sixth Street, N.W., 10<sup>th</sup> Floor  
Washington, D.C. 20001  
Wendy.weinberg@dc.gov

*For the Plaintiff District of Columbia*

Ryan J. Strasser  
Partner  
Troutman Pepper Hamilton Sanders LLP  
1001 Haxall Point, 15th Floor  
Richmond, VA 23219  
ryan.strasser@troutman.com

*For the Defendants SDC*

33. Any failure by any party to this Consent Order to insist upon the strict performance by any other



party of any of the provisions of this Consent Order shall not be deemed a waiver of any of the provisions of this Consent Order, 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 Consent Order.

34. If any clause, provision, or section of this Consent Order 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 Consent Order and this Consent Order shall be construed and enforced as if such illegal, invalid, or unenforceable clause, section, or other provision had not been contained herein.
35. Nothing in this Consent Order shall be construed as relieving SDC of the obligation to comply with all state and federal laws, regulations, or rules, nor shall any of the provisions of this Consent Order be deemed to be permission to engage in any acts or practices prohibited by such laws, regulations, or rules.
36. This Consent Order is not intended for use by any third party in any other proceeding and expressly is not intended to create any third-party beneficiaries.
37. SDC shall deliver a copy of this Consent Order to each of its current and future principals, officers, directors, and managers having decision-making authority with respect to the subject matter of this Consent Order.
38. SDC shall not participate, directly or indirectly, in any activity or 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 Consent Order or for any other purpose that would otherwise circumvent any part of this Consent Order or the spirit or purposes of this Consent Order.
39. This Consent Order finally disposes of all claims by the Parties, and the District shall release

SDC from all claims that the Attorney General asserted or could have asserted under the D.C. Consumer Protection Procedures Act, D.C. Code §§ 28-3901 *et seq.*, based on the facts alleged in the Complaint. Similarly, SDC releases the District from all claims that it asserted or could have asserted based upon this litigation and investigation.

BRIAN L. SCHWALB  
Attorney General for the District of Columbia

JENNIFER JONES  
Deputy Attorney General  
Public Advocacy Division

/s/  
ADAM TEITELBAUM (#1015715)  
Director, Office of Consumer Protection

Date: June 22, 2023

/s/  
WENDY J. WEINBERG (#445460)  
Senior Assistant Attorney General  
Office of the Attorney General  
400 Sixth Street, N.W., 10<sup>th</sup> Floor  
Washington, D.C. 20001

Date: June 22, 2023

Griffin Simpson (#1753943)  
Assistant Attorney General

**For Plaintiff District of Columbia**



Susan Greenspon Rammelt  
Chief Legal Officer, EVP Business Affairs

Date: June 21, 2023

**For the Defendant SDC**



**Counsel to Defendants SMILEDIRECTCLUB, INC.; SMILEDIRECTCLUB, LLC;  
and SDC FINANCIAL, LLC**

Ryan Strasser, Partner  
Troutman Pepper Hamilton Sanders LLP

Date: June 21, 2023

**IT IS SO ORDERED, ADJUDGED, AND DECREED.**

\_\_\_\_\_  
Date

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**Judge Carl E. Ross**