

1 MARY ANN SMITH
Deputy Commissioner
2 DANIEL P. O'DONNELL
Assistant Chief Counsel
3 CHARLES CARRIERE (State Bar No. 285837)
Senior Counsel
4 TREVOR J. CARROLL (State Bar No. 306425)
Counsel
5 Department of Business Oversight
One Sansome Street, Suite 600
6 San Francisco, California 94104
Telephone: (415) 972-8570
7 Facsimile: (415) 972-8550

8 Attorneys for Complainant

9
10 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
11 OF THE STATE OF CALIFORNIA
12

13 In the Matter of:) NMLS ID NO.: 1646325
14 THE COMMISSIONER OF BUSINESS)
OVERSIGHT,) CONSENT ORDER
15)
16 Complainant,)
17 v.)
18 HIGHER EDUCATION SERVICING)
CORPORATION,)
19 Respondent.)
20)
21)

22 The Commissioner of Business Oversight (Commissioner) and Higher Education Servicing
23 Corporation (HESC) enter into this Consent Order (the Consent Order) with respect to the following
24 facts:

25 ///
26 ///
27 ///
28 ///

1
2
3 **I.**

4 **RECITALS**

5 A. The Commissioner has jurisdiction over the licensing and regulation of student loan
6 servicing in this state under the Student Loan Servicing Act (SLSA) (Fin. Code, § 28100 et seq.)
7 and Title 10 of the California Code of Regulations (CCR) (Cal. Code Regs., § 2032 et seq.).

8 B. HESC is a Texas corporation with its principal place of business at 4381 West Green
9 Oaks Boulevard, Suite 200, Arlington, Texas 76016.

10 C. Phillip Wambsganss is HESC's Executive Director and, as such, is authorized to
11 enter into the Consent Order on behalf of HESC.

12 D. Starting July 1, 2018, the SLSA became effective and required that all persons
13 engaged in the business of servicing student loans in California must be licensed, with limited
14 exceptions.

15 E. HESC did not apply for licensure or obtain a Student Loan Servicing License by the
16 effective date of July 1, 2018.

17 F. At all relevant times herein, HESC did not hold any license issued by the
18 Commissioner under the authority of the SLSA.

19 G. In response to an inquiry, HESC informed the Commissioner that from at least July
20 1, 2018 through the present, HESC serviced student loans in California. As such, the Commissioner
21 finds that HESC violated Financial Code section 28102, subdivision (a) by engaging in the business
22 of servicing student loans in this state without first obtaining a license from the Commissioner.

23 H. The Commissioner finds that this action is appropriate, in the public interest, and
24 consistent with the purposes fairly intended by the policy and provisions of this law.

25 I. Without admitting or denying the above findings, HESC agrees to enter this Consent
26 Order for purposes of resolving this matter without the expense and uncertainty of further
27 proceedings.

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

II.

TERMS AND CONDITIONS

1
2 1. Purpose. This Consent Order resolves the issues before the Commissioner in a
3 manner that avoids the expense of a hearing and other possible court proceedings, protects
4 consumers, is in the public interest, and is consistent with the purposes, policies, and provisions of
5 the SLSA.

6 2. Desist and Refrain Order. Pursuant to Financial Code section 28160, HESC is hereby
7 ordered to desist and refrain from engaging in the business of servicing student loans in California
8 without first obtaining a license, in violation of Financial Code section 28102, subdivision (a). This
9 Desist and Refrain Order shall be effective 120 days after the Effective Date of this Consent Order
10 as defined in Paragraph 23.

11 3. Interpretation of Desist and Refrain Order for Borrowers Who Move to California.
12 HESC shall not be deemed to be in violation of the Desist and Refrain Order provided for in
13 Paragraph 2 with respect to borrowers who obtain student loans for education outside of California
14 who subsequently relocate to California, if, within 30 days of HESC receiving notice that a
15 borrower resides in California, HESC transfers servicing responsibilities for that borrower to a
16 student loan servicer that is licensed under the SLSA or otherwise exempt from licensure.

17 4. Penalty. HESC shall pay a penalty of \$30,000.00 to the Commissioner (Penalty)
18 within 30 days of the Effective Date, as defined in Paragraph 23 below (Effective Date). The
19 Penalty should be made payable in the form of a cashier's check or Automated Clearing House
20 deposit to the Department of Business Oversight and transmitted to the attention of Accounting –
21 Litigation, at the Department of Business Oversight, 2101 Arena Boulevard, Sacramento, California
22 95834. Notice of such payment must be concurrently sent to Trevor J. Carroll, Counsel, Department
23 of Business Oversight, Enforcement Division, 2101 Arena Boulevard, Sacramento, California
24 95834.

25 5. Waiver of Hearing Rights. HESC acknowledges the Commissioner is ready, willing,
26 and able to proceed with the filing of an administrative enforcement action on the charges contained
27 in this Consent Order. HESC hereby waives the right to any hearings, and to any reconsideration,
28 appeal, or other right to review which may be afforded pursuant to the SLSA, the California

1 Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of
2 law. HESC further expressly waives any requirement for the filing of an Accusation pursuant to
3 Government Code section 11415.60, subdivision (b). By waiving such rights, HESC effectively
4 consents to this Consent Order and Desist and Refrain Order becoming final.

5 6. Full and Final Settlement. The parties hereby acknowledge and agree that this
6 Consent Order is intended to constitute a full, final, and complete resolution and settlement of the
7 SLSA violation alleged by the Commissioner in Paragraph G above, and that no further proceedings
8 or actions will be brought by the Commissioner in connection with its findings under the SLSA or
9 any other provision of law, excepting therefrom any proceeding to enforce compliance with the
10 terms of this Consent Order.

11 7. Information Willfully Withheld. This Consent Order may be revoked, and the
12 Commissioner may pursue any and all remedies available under law against HESC if the
13 Commissioner discovers that HESC knowingly or willfully withheld or misrepresented information
14 used for and relied upon in this Consent Order.

15 8. Future Actions by Commissioner. If HESC fails to comply with any terms of the
16 Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
17 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions
18 permitted by law against HESC, or any of its partners, owners, officers, shareholders, directors,
19 employees, or successors for any and all unknown violations of the SLSA.

20 9. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner's
21 ability to assist a government agency (whether city, county, state, or federal) with any
22 administrative, civil or criminal action brought by that agency against HESC or any other person
23 based upon any of the activities alleged in this matter or otherwise.

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

27 11. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
28 interest.

1 12. Reliance. Each of the parties represents, warrants, and agrees that in executing this
2 Agreement it has relied solely on the statements set forth herein and the advice of its own counsel.
3 Each of the parties further represents, warrants, and agrees that in executing this Agreement it has
4 placed no reliance on any statement, representation, or promise of any other party, or any other
5 person or entity not expressly set forth herein, or upon the failure of any party or any other person
6 or entity to make any statement, representation or disclosure of anything whatsoever. The parties
7 have included this clause: (1) to preclude any claim that any party was in any way fraudulently
8 induced to execute this Agreement; and (2) to preclude the introduction of parol evidence to vary,
9 interpret, supplement, or contradict the terms of this Agreement.

10 13. Waiver, Amendments, and Modification. No waiver, amendment, or modification of
11 this Consent Order will be valid or binding unless it is in writing and signed by each of the parties.
12 The waiver of any provision of this Consent Order will not be deemed a waiver of any other
13 provision. No waiver by either party of any breach of, or of compliance with, any condition or
14 provision of this Agreement by the other party will be considered a waiver of any other condition or
15 provision or of the same condition or provision at another time.

16 14. Full Integration. This Consent Order is the final written expression and the complete
17 and exclusive statement of all the agreements, conditions, promises, representations, and covenant
18 between the parties with respect to the subject matter hereof, and supersedes all prior or
19 contemporaneous agreements, negotiations, representations, understandings, and discussions
20 between and among the parties, their respective representatives, and any other person or entity, with
21 respect to the subject matter covered hereby.

22 15. Governing Law. This Consent Order will be governed by and construed in
23 accordance with California law.

24 16. Counterparts. This Consent Order may be executed in one or more separate
25 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall
26 together constitute a single document.

27 17. Effect Upon Future Proceedings. If HESC applies for any license, permit or
28 qualification under the Commissioner's current or future jurisdiction, or are the subject of any future

1 action by the Commissioner to enforce this Consent Order, then the subject matter hereof shall be
2 admitted for the purpose of such application(s) or enforcement proceeding(s).

3 18. Third Parties. This Consent Order does not create or give rise to any private rights or
4 remedies against HESC, create any liability for HESC, or limit defenses of HESC for any person or
5 entity not a party to this Consent Order.

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

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

13
14 To Higher Education Servicing Corporation: Higher Education Servicing Corporation
15 Phillip Wambsganss, Executive Director
16 4381 West Green Oaks Boulevard, Suite 200
17 Arlington, Texas 76016
18 phillipw@hescloans.com

19 To the Commissioner: Trevor J. Carroll, Counsel
20 Department of Business Oversight
21 2101 Arena Boulevard
22 Sacramento, California 95834
23 trevor.carroll@dbo.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. HESC acknowledges that the Consent Order and Desist and Refrain
27 Order shall be matters 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 Phillip Wambsganss at
phillipw@hescloans.com.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

24. Authority to Sign. Each signatory hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Consent Order and undertake the obligations set forth herein.

Dated: September 4, 2020

MANUEL P. ALVAREZ
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: September 3, 2020

HIGHER EDUCATION SERVICING CORPORATION

By _____
PHILLIP WAMBSGANSS
Executive Director