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11 Attorneys for Complainant

12 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION  
13 OF THE STATE OF CALIFORNIA

14 In the Matter of:

15 THE COMMISSIONER OF FINANCIAL  
16 PROTECTION AND INNOVATION,

17 Complainant,

18 v.

19 HIGHER EDUCATION LOAN AUTHORITY  
20 OF THE STATE OF MISSOURI (MOHELA),

21 Respondent.

CONSENT ORDER

22  
23 The Commissioner of Financial Protection and Innovation (Commissioner) and Higher  
24 Education Loan Authority of the State of Missouri (MOHELA or Respondent) (collectively, the  
25 Parties) enter this Consent Order with respect to the following facts:

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I.

**RECITALS**

The Commissioner finds as follows:

A. The Commissioner has jurisdiction over the licensing and regulation of persons and entities engaged in the business of servicing student loans under the California Student Loan Servicing Act (SLSA) (Cal. Fin. Code § 28100 et seq.).

B. The Commissioner also has jurisdiction over the regulation of persons who engage, have engaged, or propose to engage in offering or providing a consumer financial product or service in California and affiliated service providers under the California Consumer Financial Protection Law (CCFPL), (Cal. Fin. Code §§ 90000-90019).

C. Respondent is a federal student loan servicer and holds a license under the Student Loan Servicing Act to service student loans in California with a principal place of business at Spirit Drive, Chesterfield, MO 63005.

D. Under Financial Code section 28130, subdivision (b), SLSA licensees are required to file any report required by the Commissioner. Cal. Fin. Code § 28130(b).

E. Under the CCFPL, it is unlawful for a “covered person” to “[e]ngage, have engaged, or propose to engage in any unlawful, unfair, deceptive, or abusive act or practices with respect to consumer financial products or services.” Cal. Fin. Code § 90003(a)(1).

F. A “covered person” is “[a]ny person that engages in offering or providing a consumer financial product or service to a resident of this state.” Cal. Fin. Code § 90005(f)(1).

G. A “consumer financial product or service” is generally a “financial product or service that is delivered, offered, or provided for use by consumers primarily for person, family, or household purposes.” Cal. Fin. Code § 90005(e)(1).

H. “Financial product or service” includes, among other things, “[e]xtending credit and servicing extensions of credit[.]” Cal. Fin. Code § 90005(k)(1)

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2 I. Respondent is a “covered person” that offers a consumer financial product or service  
3 to California consumers under the CCFPL because it engages in servicing California consumers’  
4 student loans—extensions of credit. *See* Cal. Fin. Code § 90005(k)(1).

5 J. On or about April 19, 2022, the United States Department of Education announced it  
6 would conduct a “One-Time Revision of IDR Payments to Address Past Inaccuracies<sup>1</sup>” (One-Time  
7 Payment Count Adjustment). Part of the adjustment promised borrowers that they would receive  
8 credit “toward IDR forgiveness,” including payments borrowers made on Federal Family Education  
9 Loan Program (FFEL) loans, Perkins loans, and Higher Education Assistance Loan[s] (HEAL)  
10 prior to consolidating the loans into a Direct Loan to obtain loan forgiveness. The One-Time  
11 Payment Count Adjustment is “a tailored response to specific issues identified in the long-term  
12 tracking of progress toward forgiveness on IDR plans as well as the use of deferment and  
13 forbearance that should not have occurred.” 88 Fed. Reg. 43853 (July 10, 2023).

14 K. To take advantage of the One-Time Payment Count Adjustment,  
15 the Department of Education has urged borrowers to “submit a loan consolidation application by  
16 April 30, 2024.”<sup>2</sup>

17 L. On February 23, 2024, the Commissioner requested Respondent to produce a report with  
18 the names and email addresses of all California student loan borrowers with commercially held  
19 FFEL, HEAL, and Perkins loans by March 8, 2024 (“Commercial Loan Borrower Report”).

20 M. On March 6, 2024, the Commissioner sent an email to remind Respondent that the  
21 Commercial Loan Borrower Report was due on March 8, 2024.

22 N. On March 8, 2024, MOHELA acknowledged receipt of the request.

23 O. On or about March 8, 2024, the Commissioner sent another email to Respondent to  
24 inform Respondent that the Commissioner had not received the Commercial Loan Borrower Report.

25 P. On March 22, 2024, the Commissioner issued a final letter informing MOHELA that its  
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27 <sup>1</sup> *See* April 19, 2022 announcement: <https://www.ed.gov/news/press-releases/department-education-announces-actions-fix-longstanding-failures-student-loan-programs>.

28 <sup>2</sup> <https://studentaid.gov/announcements-events/idr-account-adjustment>

1 failure to produce the Commercial Loan Borrower Report by March 25, 2024 and pay accrued  
2 penalties would result in issuance of a public action and assessment of penalties accruing on a daily  
3 basis.

4 Q. On March 25, 2024, MOHELA produced the Commercial Loan Borrower Report, which  
5 was seventeen days late.

6 Respondent Asserts as Follows:

7 (i) that it has on multiple occasions over the last few months advised California student loan  
8 borrowers of the “One-time Payment Count Adjustment” and the need to submit a loan  
9 consolidation application by April 30, 2024;

10 (ii) that its delay in providing the Commercial Loan Borrowers Report to the Commissioner was  
11 caused by the time needed for an analysis of privacy and related laws that might impact  
12 turning the borrower information over to the Commissioner.

13 R. Without admitting or denying the Commissioner’s Findings and Conclusions, as set  
14 forth above, the parties desire to enter this consent order which the Commissioner finds is in the  
15 public interest.

16 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions  
17 contained herein, the Commissioner and MOHELA agree to the following.

18 **II.**

19 **TERMS AND CONDITIONS**

20 1. Purpose. This Consent Order resolves the issues before the Commissioner relative to  
21 the Commercial Loan Borrower Report as set forth in Recitals P and Q in a manner that avoids the  
22 expense of a hearing and other possible court proceedings, protects consumers, is in the public  
23 interest, and is consistent with the purposes, policies, and provisions of the SLSA and the CCFPL.

24 2. Respondent Agrees to timely produce any legally required reports, documents and  
25 answers as requested by the Commissioner.

26 3. Penalty. Respondent agrees to pay a penalty of \$27,500.00 within 30 days of the  
27 Effective Date set forth in Paragraph 19. The penalty shall be paid by ACH transfer, under the  
28 instructions which shall be separately provided, and payable to the Department of Financial

1 Protection and Innovation, Accounting – Enforcement Division, Department of Financial  
2 Protection & Innovation, 2101 Arena Boulevard, Sacramento, California 95834. Notice of such  
3 payment shall be sent concurrently to the attention of Joshua Schieber, Senior Counsel, at  
4 Josh.Schieber@dfpi.ca.gov.

5 4. Waiver of Hearing Rights. MOHELA acknowledges the Commissioner is ready,  
6 willing, and able to proceed with the filing of an administrative enforcement action on the matter  
7 set forth in Recital Q contained in this Consent Order. MOHELA hereby waives the right to any  
8 hearings, and to any reconsideration, appeal, or other right to review which may be afforded  
9 pursuant to the CCFPL, the California Administrative Procedure Act, the California Code of Civil  
10 Procedure, or any other provision of law, including those rights under Financial Code section  
11 90015, and to judicial review of this matter pursuant to Code of Civil Procedure section 1094.5  
12 with respect to the issuance of this Consent Order.. MOHELA further expressly waives any  
13 requirement for the filing of an Accusation pursuant to Government Code section 11415.60,  
14 subdivision (b). By waiving such rights, MOHELA effectively consents to this Consent Order  
15 becoming final.

16 5. Full and Final Settlement. The Parties hereby acknowledge and agree that this  
17 Consent Order is intended to constitute a full, final, and complete resolution of the matter  
18 described herein, and that no further proceedings or actions will be brought by the Commissioner  
19 in connection with these matters under the SLSA, CCFPL or any other provision of law, excepting  
20 therefrom any proceeding to enforce compliance with the terms of this Consent Order.

21 6. Failure to Comply with Consent Order. MOHELA agrees that if it fails to comply  
22 with the terms of this Consent Order, the Commissioner may institute proceedings for any and all  
23 violations otherwise resolved under this Consent Order. The Commissioner reserves the right to  
24 bring any future actions against MOHELA, for any and all unknown violations of the SLSA or  
25 CCFPL. Notwithstanding this consent order, MOHELA reserves the right to raise legal defenses  
26 that it could have raised as to the subject of this Consent Order to any possible future actions by  
27 the Commissioner.

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1           7.     Information Willfully Withheld or Misrepresented. This Consent Order may be  
2 rescinded, and the Commissioner may pursue any and all remedies available under law against  
3 Respondent if the Commissioner discovers that Respondent knowingly or willfully withheld or  
4 misrepresented information used for and relied upon in this Consent Order.

5           8.     Assisting Other Agencies. Nothing in this Consent Order limits the  
6 Commissioner’s ability to assist any other government agency (city, county, state, or federal) with  
7 any prosecution, administrative, civil or criminal brought by that agency against Respondent or  
8 any other person based upon any of the activities alleged in this matter or otherwise.

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

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

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

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

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

7           14.    Governing Law. This Consent Order will be governed by and construed in  
8 accordance with California law.

9           15.    Counterparts. This Consent Order may be executed in one or more separate  
10 counterparts, each of which will be deemed an original when so executed. Such counterparts  
11 together will be deemed to constitute a single document.

12           16.    Notice. Any notice required under this Consent Order shall be provided to each party  
13 by email and overnight mail/courier, service at the following addresses.

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15           To MOHELA:                   Paul J. Mosquera,  
16    Chief Compliance and Risk Officer  
17    MOHELA  
18    Attn: Scott Lause  
19    633 Spirit Drive  
20    Chesterfield, MO, 63005  
21    ScottLa@Mohela.com

22           To the Commissioner:           Joshua Schieber  
23    Senior Counsel, Enforcement Division  
24    Department of Financial Protection and Innovation  
25    One Sansome Street, Ste. 600  
26    San Francisco, California 94104  
27    Josh.Schieber@dfpi.ca.gov

28           17.    Signatures. A fax or electronic-mail signature will be deemed an original signature.  
The parties to this agreement have consented to execute this agreement by electronic means  
pursuant to the California Uniform Electronic Transactions Act, Cal. Civil Code sections 1633.1 *et*  
*seq.*

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1 18. Public Record. Respondent hereby acknowledges that this Consent Order is a  
2 matter of public record.

3 19. Effective Date. This Consent Order shall become final and effective when signed  
4 by all parties and delivered by the Commissioner’s agent via e-mail to Scott Lause at  
5 ScottLa@Mohela.com.

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

9 The Commissioner asserts that this Consent Order is in the public interest, is necessary for  
10 the protection of investors, and is consistent with the purposes, policies, and provisions of the SLSA  
11 and the CCFPL.

14 Dated: April 24, 2024



CLOTHILDE V. HEWLETT  
Commissioner of Financial Protection and Innovation

17 By: \_\_\_\_\_  
18 Mary Ann Smith  
19 Deputy Commissioner  
20 Enforcement Division

22 Dated: April 23, 2024

HIGHER EDUCATION LOAN AUTHORITY OF  
THE STATE OF MISSOURI (MOHELA)

24 By: \_\_\_\_\_  
25 Name: Paul J. Mosquera  
26 Title: Chief Compliance and Risk Management Officer  
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