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7 Attorneys for Complainant

8 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
9 OF THE STATE OF CALIFORNIA

10 In the Matter of the Student Loan Servicing) NMLS ID NO.: 2120180
11 Act license application of:)
12 MERATAS INC.) CONSENT ORDER
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19 This Consent Order (Consent Order) is entered into by and between the Commissioner of
20 Financial Protection and Innovation (Commissioner) and Meratas Inc. (Meratas).

21 I.

22 **RECITALS**

23 *Meratas & ISAs*

24 A. Meratas is a New York corporation with a principal place of business at 317 West
25 Ave., #113342, Stamford, Connecticut 06902.

26 B. Darius Goldman (Goldman) is the founder and Chief Executive Officer of Meratas.
27 Goldman is duly authorized to enter into this Consent Order on behalf of Meratas.

1 C. Meratas provides a full-service software platform that allows a variety of schools
2 and other institutions to issue their students an education-financing product called an income share
3 agreement (ISA).

4 D. Generally, under an ISA, a student agrees to repay a school a fixed percentage of the
5 student’s future gross income after graduation, but only if the student is employed and making more
6 than an agreed-upon amount.

7 E. Historically, ISA issuers—the schools and skills-training courses—have not treated
8 ISAs as “loans” or “credit,” and have typically not implemented certain state and federal laws that
9 regulate “loans” or “credit.” Instead, ISA issuers usually maintain that ISAs are *contingent* debt,
10 not true “loans” or “credit,” because, if a student does not find employment, the student may owe
11 nothing under the ISA.

12 F. Meratas services ISAs and other forms of credit on behalf of the schools and other
13 institutions that issue ISAs or extend other forms of credit directly to students.

14 G. Meratas does not issue ISAs or extend other forms of credit to students. Meratas
15 also does not purchase or acquire any interest in already-issued ISAs or other already-made
16 extensions of credit.

17 H. Utilizing the Nationwide Multistate Licensing System (NMLS), Meratas applied for
18 a license to service “student loans” under the California Student Loan Servicing Act (SLSA) on
19 April 19, 2021 (Application).

20 *SLSA Legal Standards: ISAs are “student loans” for purposes of the SLSA*

21 I. The Commissioner has jurisdiction over the licensing and regulation of persons
22 engaged in the business of servicing “student loans” under the Student Loan Servicing Act (SLSA)
23 (Fin. Code, § 28100 et seq.).

24 J. As a licensing and remedial statute, the SLSA should be construed broadly to
25 effectuate its purposes. (*Hughes v. Bd. of Architectural Exam’rs* (1998) 17 Cal.4th 763, 786
26 [“[W]hen the Legislature’s intent is to protect . . . the public rather than to serve punitive interests,
27 that body additionally intends . . . that the law be interpreted broadly so that particular licensees not
28 be able easily to evade the statute’s protective purposes.”]; *Sternberg v. Cal. St. Bd. of Pharmacy*

1 (2015) 239 Cal.App.4th 1159, 1171 [“[W]e interpret licensing statutes broadly”]; *Komarova v.*
2 *Nat’l Credit Acceptance, Inc.* (2009) 175 Cal.App.4th 324, 340 [noting that a remedial statute
3 “should be interpreted broadly in order to effectuate its purpose”].)

4 K. A “student loan” under the SLSA is credit that is extended “solely for use to finance
5 a postsecondary education.” (Fin. Code, § 28104, subd. (l).) The SLSA defines “student loans” by
6 the purpose for which financing is used, not in strict accordance with the labels or titles attached to
7 a financing agreement, which might otherwise allow a financier to dictate regulatory protections.

8 L. “Student loan” under the SLSA generally encompasses “any loan” or “extension of
9 credit,” while expressly excluding only a handful of very specific types of credit, such as residential
10 mortgages. (See Fin. Code, § 28104, subd. (l).) Notably, the SLSA does *not* exclude contingent
11 debt generally nor ISAs specifically. (Accord Fin. Code, § 90005, subd. (g-h & (k)(1) [“[e]xtending
12 credit and servicing extensions of credit” includes extending and servicing “any obligation of a
13 person to pay another person money regardless of whether the obligation is absolute or contingent, .
14 . . is fixed, [or] contingent”].) Indeed, the Legislature intended the SLSA to encompass contingent
15 debt, as federal student loans are similarly contingent in nature given the availability of income-
16 based payment plans and other options for students to extinguish their obligations without repaying
17 the amount advanced.

18 M. Consequently, the Commissioner finds that ISAs made solely for use to finance a
19 postsecondary education are “student loans” for the purposes of the SLSA.

20 Meratas’ License Application

21 N. Acting in good faith and relying upon the Commissioner’s SLSA application
22 instructions in NMLS, Meratas did not submit audited financial statements and did not report its
23 ISA servicing activity as part of its initial Application.

24 O. Nevertheless, as part of the application process, the Commissioner requested that
25 Meratas submit audited financial statements and a revised Supplemental Information Form
26 containing details on Meratas’ ISA servicing activity (Request).

27 P. Meratas agreed to fulfill the Request; however, Meratas and the Commissioner (the
28 Parties) require additional time to confer and ensure that audited financial statements are able to be

1 submitted and that serviced ISAs are appropriately and accurately reported under the SLSA, its
2 implementing regulations, and the Commissioner’s pre-existing instructions and reporting
3 requirements.

4 Q. As a result, the Parties desire to have Meratas’ Application approved and Meratas’
5 SLSA license issued during the pendency of conferrals on the Request.

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

8 1. Purpose. The Commissioner finds that entering into this Consent Order is in the
9 public interest and consistent with the purposes fairly intended by the policies and provisions of the
10 SLSA.

11 2. ISA Reporting. While licensed under the SLSA in any capacity, and until a change
12 in applicable law or regulation, Meratas agrees that it shall report to the Commissioner any ISAs it
13 services as “student loans” for purposes of the SLSA.

14 3. No Servicing of Unenforceable ISAs. While licensed under the SLSA in any
15 capacity, Meratas agrees that it shall not service any ISAs or other forms of credit extended to
16 California consumers that have been determined or declared unenforceable or void by the DFPI or
17 any regulatory agency that licenses, charters, registers, or otherwise approves the issuer of the ISA.

18 4. Conditional Approval of Pending Application and Issuance of Conditional License.
19 In consideration of Meratas’ agreement to the issuance of this Consent Order, and other relief as
20 provided for in this Consent Order, the Commissioner hereby agrees to conditionally approve
21 Meratas’ Application and to issue a conditional SLSA license to Meratas (Conditional License)
22 within five business days from the Effective Date of this Consent Order. The Conditional License
23 shall expire within one year of the Effective Date of this Consent Order.

24 5. Conditions for Issuance of Regular License. By March 15, 2022, Meratas agrees to
25 submit audited financial statements demonstrating satisfaction of Financial Code section 28112,
26 subdivision (c), for the calendar year 2021 (Audited Financials). The Commissioner further agrees
27 to issue Meratas a regular, unconditional SLSA license within 5 business days of the
28 Commissioner’s approval of Meratas’ Audited Financials.

1 6. Failure to Comply with Consent Order. Meratas agrees that, if it fails to comply
2 with Paragraphs 2, 3, and 5 of this Consent Order, the Commissioner may, following 20 business
3 days from Meratas’ receipt of notice from the Commissioner of Meratas’ failure to comply, in
4 addition to all other available remedies it may invoke under the SLSA, summarily suspend any
5 SLSA license of Meratas until Meratas is in compliance. In such case, Meratas waives any notice
6 and hearing rights to contest such remedies which may be afforded under the SLSA, the
7 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
8 provision of law in connection therewith.

9 7. Independent Legal Advice. Each party represents that it has received independent
10 advice from its counsel or representatives regarding the advisability of executing this Consent
11 Order.

12 8. Reliance. Each party represents that in executing this Consent Order it has relied
13 solely on the statements in this Consent Order and on the advice of its counsel or representatives.
14 Each party also represents that it has not relied on any statement or promise not contained in this
15 Consent Order from any other person or on the failure of such person to make a statement or
16 promise. The Parties have included this clause to preclude any claim that a party was fraudulently
17 induced to execute this Consent Order.

18 9. Integration. This Consent Order is the final written expression and the complete and
19 exclusive statement of all the agreements, conditions, promises, representations, and covenants
20 between the Parties concerning its subject matter and supersedes all discussion regarding such
21 subject matter between the Parties, their representatives, and any other person. The Parties have
22 included this clause to preclude the introduction of parol evidence to vary, interpret, supplement, or
23 contradict the terms of this Consent Order.

24 10. No Presumption Against Drafting Party. Each party acknowledges that it has had the
25 opportunity to draft, review, and edit the language of this Consent Order. Accordingly, the Parties
26 intend that no presumption for or against the drafting party will apply in construing any part of this
27 Consent Order. The Parties waive the benefit of Civil Code section 1654 as amended or
28 corresponding provisions of any successor statute, which provide that in cases of uncertainty,

1 language of a contract should be interpreted most strongly against the party that caused the
2 uncertainty to exist.

3 11. Waiver, Amendments, and Modifications. No waiver, amendment, or modification
4 of this Consent Order will be valid or binding unless it is in writing and signed by all Parties
5 affected by it. Waiver of a provision of this Consent Order will not be deemed a waiver of any
6 other provision.

7 12. Headings. The headings in this Consent Order are for convenience only and do not
8 affect its meaning.

9 13. Governing Law. This Consent Order will be governed by and construed in
10 accordance with the laws of the State of California.

11 14. Authority to Sign. Each party represents that the person signing this Consent Order
12 on its behalf has the authority and capacity to do so.

13 15. Voluntary Agreement. Meratas enters into this Consent Order voluntarily and
14 without coercion and acknowledges that no promises, threats, or assurances about this Consent
15 Order have been made by the Commissioner or any of her officers or agents.

16 16. Counterparts. This Consent Order may be executed in any number of counterparts,
17 each of which will be deemed an original when executed. All counterparts together will be deemed
18 to constitute a single document.

19 17. Signatures. A signature delivered by facsimile or electronic mail will be deemed an
20 original signature.

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

24 19. Public Record. Meratas acknowledges that this Consent Order shall be a matter of
25 public record.

26 20. Effective Date. This Consent Order will become effective on the date it is signed by
27 all Parties and delivered by the Commissioner to Meratas' counsel by electronic mail at
28 mearley@mofa.com.

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Dated: August 5, 2021

CHRIS SHULTZ
Acting Commissioner of Financial Protection and
Innovation

By: _____
MARY ANN SMITH
Deputy Commissioner

Dated: August 3, 2021

MERATAS, INC.

By: _____
DARIUS GOLDMAN
Chief Executive Officer

Approved as to form:

Dated: August 3, 2021

By: _____
Maria B. Earley
MORRISON & FOERSTER LLP