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8 Attorneys for Complainant

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

11 In the Matter of: ) CONSENT ORDER  
12 )  
13 THE COMMISSIONER OF FINANCIAL )  
PROTECTION AND INNOVATION, )  
14 )  
Complainant, )  
15 v. )  
16 EDVISIO, INC., )  
17 Respondent. )  
18 \_\_\_\_\_ )

19  
20 This Consent Order (Consent Order) is entered into by and between the Commissioner of  
21 Financial Protection and Innovation (Commissioner) and EDVISIO, Inc. (EDVISIO) (collectively,  
22 the Parties), and is made with respect to the following facts:

23 **I.**

24 **Recitals**

25 A. The Commissioner has jurisdiction over the regulation of persons engaged in offering  
26 or providing a consumer financial product or service in California and affiliated service providers  
27 under the California Consumer Financial Protection Law (CCFPL) (Financial Code § 90000 et seq.).

28 B. A “service provider” is “any person that provides a material service to a covered

1 person in connection with the offering or provision by that covered person of a consumer financial  
2 product or service,” including a person that “[p]articipates in designing, operating, or maintaining the  
3 consumer financial product or service.” (Fin. Code, § 90005, subd. (n)(1)(A).)

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

6 D. Under the CCFPL, it is unlawful for a “service provider” to “[e]ngage, have engaged,  
7 or propose to engage in any unlawful, unfair, deceptive, or abusive act or practice with respect to  
8 consumer financial products or services.” (Fin. Code, § 90003, subd. (a)(1).)

9 E. A “consumer financial product or service” is generally a “financial product or service  
10 that is delivered, offered, or provided for use by consumers primarily for personal, family, or  
11 household purposes.” (Fin. Code, § 90005, subd. (e)(1).)

12 F. “Financial product or service” includes, among other things, “[e]xtending credit and  
13 services extensions of credit, including acquiring, purchasing, selling, brokering extensions of  
14 credit.” (Fin. Code, § 90005, subd. (k)(1).) “Credit” means the right granted by a person to another  
15 person to defer payment of a debt, incur debt and defer its payment, or purchase property or services  
16 and defer payment for those purchases. (Fin. Code, § 90005, subd. (g).)

17 G. EDVISIO is a Delaware corporation with a principal place of business at 10620  
18 Treena Street, Suite 230, PMB 2508, San Diego, California 92131. From October 3, 2007, to  
19 September 20, 2021, EDVISIO was known as Education Loan Source, Inc. EDVISIO provides partner  
20 schools and other education providers with a software platform to allow those schools and providers  
21 to issue installment contracts to their students to finance the cost of an educational program. In  
22 general, EDVISIO’s installment contracts are contracts in which a student promises to repay the costs  
23 of the educational program to the school in regular installments.

24 H. Since at least January 2021, a cosmetic laser school (School) offered prospective  
25 students, some of which were California residents, the option of financing the cost of its educational  
26 program through an installment contract (Contract).

27 I. EDVISIO designed and created the Contract for the School.

28 J. The Contract designed and created includes a provision entitled “PROMISE TO

1 PAY,” which states, in part, that “this extension of credit is a qualified educational loan and is subject  
2 to the limitations on dischargeability in bankruptcy contained in Section 523(a)(8) of the United  
3 States Bankruptcy Code” (Bankruptcy Non-Dischargeability Provision).

4 K. The Bankruptcy Non-Dischargeability Provision is misleading because, contrary to the  
5 Bankruptcy Non-Dischargeability Provision, the Contract is not a “qualified educational loan,” as  
6 defined in section 221(d)(1) of the Internal Revenue Code of 1986, and is not subject to the  
7 limitations on dischargeability pursuant to section 523(a)(8) of the United States Bankruptcy Code.

8 L. The Contract’s Bankruptcy Non-Dischargeability Provision is material because it  
9 affects a student’s understanding of their rights under the Contract.

10 M. The Contract is an extension of credit, and therefore a “consumer financial product”  
11 covered by the CCFPL.

12 N. The School is a “covered person” under the CCFPL because it engages in offering or  
13 providing consumer financial products or services to California residents.

14 O. EDVISIO is a “service provider” under the CCFPL because it provides a material  
15 service to a covered person by participating in designing, operating, or maintaining a consumer  
16 financial product or service.

17 P. Based on the above, the Commissioner is of the opinion that EDVISIO violated  
18 Financial Code section 90003, subdivision (a)(1), by engaging, having engaged, or proposing to  
19 engage in deceptive practices with respect to consumer financial products or services.

20 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set  
21 forth herein, the parties agree as follows:

22 **II.**

23 **Terms and Conditions**

24 1. **Purpose.** This Consent Order resolves the issues before the Commissioner in a manner  
25 that avoids the expense of a hearing and other possible court proceedings, protects consumers, is in  
26 the public interest, and is consistent with the purposes and provisions of the CCFPL.

27 2. **Finality of Consent Order.** EDVISIO agrees to comply with this Consent Order and  
28 stipulates this Consent Order is hereby deemed final.

1           3.       Desist and Refrain Order. Pursuant to Financial Code section 90015, subdivision  
2 (d)(1), EDVISIO is hereby ordered to desist and refrain from violating Financial Code section 90003,  
3 subdivision (a)(1), by engaging, having engaged, or proposing to engage in any unlawful, unfair,  
4 deceptive, or abusive act or practice with respect to consumer financial products or services,  
5 including representing to prospective students that the Contract is a qualified educational loan and  
6 subject to the limitations on dischargeability in bankruptcy contained in section 523(a)(8) of the  
7 United States Bankruptcy Code, unless section 523(a)(8) of the United States Bankruptcy Code  
8 actually applies to the contract in question.

9           4.       Regulatory Compliance Review. EDVISIO agrees to retain a third-party to undertake  
10 and complete a review of the terms of the Contract to ensure that the Contract complies with all  
11 applicable laws, including without limitation the California Retail Installment Sales Act (or Unruh  
12 Act), California Education Code, California Consumer Financial Protection Law, the federal Truth in  
13 Lending Act, and all regulations promulgated thereunder (Regulatory Compliance Review).  
14 EDVISIO agrees to provide a written certification to the Department, within 60 days of the Effective  
15 Date of this Order, as defined in Paragraph 22, that the Regulatory Compliance Review was  
16 completed.

17           5.       Waiver of Hearing Rights. EDVISIO acknowledges the Commissioner is ready,  
18 willing, and able to proceed with the filing of an administrative enforcement action on the charges  
19 contained in this Consent Order. EDVISIO hereby waives the right to any hearings, and to any  
20 reconsideration, appeal, or other right to review which may be afforded pursuant to the CCFPL, the  
21 California Administrative Procedure Act, the California Code of Civil Procedure, or any other  
22 provision of law, including those rights under Financial Code section 90015, and to judicial review of  
23 this matter pursuant to Code of Civil Procedure section 1094.5 with respect to the issuance of this  
24 Consent Order and the Desist and Refrain Order contained herein. EDVISIO further expressly waives  
25 any requirement for the filing of an Accusation pursuant to Government Code section 11415.60,  
26 subdivision (b). By waiving such rights, EDVISIO effectively consents to this Consent Order and  
27 Desist and Refrain Order becoming final.

28           6.       Information Willfully Withheld or Misrepresented. This Consent Order may be

1 revoked, and the Commissioner may pursue any and all remedies available under the law against  
2 EDVISIO, if the Commissioner discovers that EDVISIO knowingly or willfully withheld or  
3 misrepresented information used for and relied upon in this Consent Order.

4 7. Future Actions by Commissioner. If EDVISIO fails to comply with any term of this  
5 Consent Order, the Commissioner may institute proceedings for any and all violations otherwise  
6 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions  
7 against EDVISIO for any and all unknown violations of the CCFPL.

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

12 9. No Representation of Approval of Business Model or Practices. Nothing in this  
13 Consent Order shall prevent the Commissioner from asserting at any time in the future that the  
14 Contract offered by EDVISIO requires licensure or registration with the Department under any law  
15 under the Department's jurisdiction. Nothing in this Consent Order shall be interpreted as the  
16 Commissioner's approval of EDVISIO's business model or conclusion that the model complies with  
17 state or federal law or regulations.

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

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

23 12. Reliance. Each of the parties represents, warrants, and agrees that in executing this  
24 Consent Order it has relied solely on the statements set forth herein and the advice of its own counsel.  
25 Each of the parties further represents, warrants, and agrees that in executing this Consent Order it has  
26 placed no reliance on any statement, representation, or promise of any other party, or any other  
27 person or entity not expressly set forth herein, or upon the failure of any party or any other person or  
28 entity to make any statement, representation or disclosure of anything whatsoever. The parties have

1 included this clause: (1) to preclude any claim that any party was in any way fraudulently induced to  
2 execute this Consent Order; and (2) to preclude the introduction of parol evidence to vary, interpret,  
3 supplement, or contradict the terms of this Consent Order.

4 13. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of  
5 this Consent Order will be valid or binding unless it is in writing and signed by each of the parties.  
6 The waiver of any provision of this Consent Order will not be deemed a waiver of any other  
7 provision. No waiver by any party of any breach of, or of compliance with, any condition or  
8 provision of this Consent Order by any other party will be considered a waiver of any other condition  
9 or provision or of the same condition or provision at another time.

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

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

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

23 17. Effect Upon Future Proceedings. If EDVISIO applies for any license, permit,  
24 qualification, or registration under the Commissioner's current or future jurisdiction, or is the subject  
25 of any future action by the Commissioner to enforce this Consent Order, then the subject matter  
26 hereof shall be admitted for the purpose of such application(s) or enforcement proceeding(s).

27 18. Voluntary Agreement. EDVISIO enters into this Consent Order voluntarily and  
28 without coercion and acknowledges that no promises, threats or assurances have been made by the

1 Commissioner or any officer, or agent thereof, about this Consent Order. The parties each represent  
2 and acknowledge that he, she or it is executing this Consent Order completely voluntarily and  
3 without any duress or undue influence of any kind from any source.

4 19. Notice. Any notice required under this Consent Order shall be provided to each party  
5 at the following addresses:

6 To EDVISIO, Inc: Daniel T. Plunkett, Esq.  
7 McGlinchey Stafford PLLC  
8 601 Poydras Street, Suite 1200  
9 New Orleans, LA 70130  
dplunkett@mcglinchey.com

10 To the Commissioner: Trevor J. Carroll, Counsel  
11 Department of Financial Protection and Innovation  
12 2101 Arena Boulevard  
13 Sacramento, CA 95834  
trevor.carroll@dfpi.ca.gov

14 20. Signatures. A fax or electronic mail signature shall be deemed the same as an original  
15 signature.

16 21. Public Record. EDVISIO acknowledges that this Consent Order is and will be a matter  
17 of public record.

18 22. Effective Date. This Consent Order shall become final and effective when signed by  
19 all parties and delivered by the Commissioner’s agent via e-mail to EDVISIO at  
20 dplunkett@mcglinchey.com.

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

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24. Independent Legal Advice. EDVISIO represents, warrants, and agrees that it has received independent advice from its attorney(s) and/or representatives with respect to the advisability of executing this Consent Order.

CLOTHILDE V. HEWLETT  
Commissioner of Financial Protection and Innovation

Dated: January 14, 2022

By: \_\_\_\_\_  
MARY ANN SMITH  
Deputy Commissioner

EDVISIO, INC.

Dated: January 13, 2022

By: \_\_\_\_\_  
FABRIZIO BALESTRI  
CEO

Approved as to form:

Dated: January 14, 2022

By: \_\_\_\_\_  
DANIEL T. PLUNKETT, ESQ.  
McGlinchey Stafford PLLC  
Attorney for EDVISIO, Inc.