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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 NATIONAL LASER INSTITUTE, LLC,)
17 Respondent.)

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19
20 This Consent Order (Consent Order) is entered into by and between the Commissioner of
21 Financial Protection and Innovation (Commissioner) and National Laser Institute, LLC (NLI)
22 (collectively, 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. Under the CCFPL, it is unlawful for a “covered person” to “[e]ngage, have engaged,

1 or propose to engage in any unlawful, unfair, deceptive, or abusive act or practice with respect to
2 consumer financial products or services.” (Fin. Code, § 90003, subd. (a)(1).)

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

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

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

13 F. At all relevant times, NLI was an Arizona limited liability company with a principal
14 place of business at 16601 North 90th Street, Scottsdale, Arizona 85260. NLI operates cosmetic laser
15 schools in locations across several states.

16 G. Since at least January 2021, NLI offered prospective students, some of which were
17 California residents, the option of financing the cost of NLI’s program through a contract in which
18 the student promises to repay NLI in monthly installments (Contract).

19 H. The Contract includes a provision entitled “PROMISE TO PAY,” which states, in
20 part, that “this extension of credit is a qualified educational loan and is subject to the limitations on
21 dischargeability in bankruptcy contained in Section 523(a)(8) of the United States Bankruptcy Code”
22 (Bankruptcy Non-Dischargeability Provision).

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

27 J. The Contract’s Bankruptcy Non-Dischargeability Provision is material because it
28 affects a student’s understanding of their rights under the Contract.

1 K. The Contract is an extension of credit, and therefore a “consumer financial product”
2 covered by the CCFPL.

3 L. NLI is a “covered person” under the CCFPL because it engages in offering or
4 providing consumer financial products or services to California residents.

5 M. Based on the above, the Commissioner is of the opinion that NLI violated Financial
6 Code section 90003, subdivision (a)(1), by engaging, having engaged, or proposing to engage in
7 deceptive practices with respect to consumer financial products or services.

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

10 **II.**

11 **Terms and Conditions**

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

15 2. Finality of Consent Order. NLI agrees to comply with this Consent Order and
16 stipulates this Consent Order is hereby deemed final.

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

25 4. Notice to Students. NLI agrees to provide California consumers, who entered into a
26 Contract, with notice of this Consent Order and notice that the Contract’s Bankruptcy Non-
27 Dischargeability Provision is not accurate. NLI agrees to provide this notice to California consumers
28 within 60 days of the Effective Date of this Order, as defined in Paragraph 22. This notice shall be

1 sent to each consumer’s last known email address. NLI shall submit to the Commissioner proof of
2 service of this notice for each California consumer.

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

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

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

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

25 9. No Representation of Approval of Business Model or Practices. Nothing in this
26 Consent Order shall prevent the Commissioner from asserting at any time in the future that the
27 Contract offered by NLI requires licensure or registration with the Department under any law under
28 the Department’s jurisdiction. Nothing in this Consent Order shall be interpreted as the

1 Commissioner’s approval of NLI’s business model or conclusion that the model complies with state
2 or federal law or regulations.

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

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

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

17 13. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
18 this Consent Order will be valid or binding unless it is in writing and signed by each of the parties.
19 The waiver of any provision of this Consent Order will not be deemed a waiver of any other
20 provision. No waiver by any party of any breach of, or of compliance with, any condition or
21 provision of this Consent Order by any other party will be considered a waiver of any other condition
22 or provision or of the same condition or provision at another time.

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

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

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

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

12 18. Voluntary Agreement. NLI enters into this Consent Order voluntarily and without
13 coercion and acknowledges that no promises, threats or assurances have been made by the
14 Commissioner or any officer, or agent thereof, about this Consent Order. The parties each represent
15 and acknowledge that he, she or it is executing this Consent Order completely voluntarily and
16 without any duress or undue influence of any kind from any source.

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

19 To National Laser Institute, LLC: Kevin Piecuch, Esq.
20 Drake & McCormick, PLC
21 174 Ridge Road
22 Grosse Pointe Farms, MI 48236
kevin@drakeandmccormick.com

23 To the Commissioner: Trevor J. Carroll, Counsel
24 Department of Financial Protection and Innovation
25 2101 Arena Boulevard
26 Sacramento, CA 95834
trevor.carroll@dfpi.ca.gov

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

1 21. Public Record. NLI acknowledges that this Consent Order is and will be a matter of
2 public record.

3 22. Effective Date. This Consent Order shall become final and effective when signed by
4 all parties and delivered by the Commissioner’s agent via e-mail to NLI at
5 kevin@drakeandmccormick.com.

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

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

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation

15 Dated: February 7, 2022

By: _____
MARY ANN SMITH
Deputy Commissioner

NATIONAL LASER INSTITUTE, LLC

20 Dated: February 7, 2022

By: _____
LOUIS SILBERMAN
CEO

22 Approved as to form:

24 Dated: February 7, 2022

By: _____
KEVIN PIECUCH, ESQ.
Drake & McCormick, PLC
Attorney for National Laser Institute, LLC