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

13 In the Matter of:) CFL LICENSE NO.: 603J754
14)
15 THE COMMISSIONER OF FINANCIAL)
PROTECTION AND INNOVATION,)
16)
17 Complainant,) CONSENT ORDER
18 v.)
19 SCHOLARSHIP AMERICA, INC.,)
20 Respondent.)
21)

22 This Consent Order is entered into between the Commissioner of Financial Protection and
23 Innovation (Complainant or Commissioner) and Respondent Scholarship America, Inc.
24 (Respondent) and is made with respect to the following facts:

25 **I.**

26 **Recitals**

27 A. The Commissioner has jurisdiction over the licensing and regulation of persons and
28 entities engaged in the business of finance lending or brokering under the California Financing Law

1 (CFL) (Fin. Code, § 22000 et seq.).

2 B. Respondent is a corporation with a principal place of business at One Scholarship
3 Way, Saint Peter, Minnesota, 56082.

4 C. Respondent is licensed as a finance broker under the CFL with main license number
5 603J754.

6 D. Richard Greene is the Chief Financial Officer of the Respondent and is authorized to
7 enter into this Consent Order on behalf of the Respondent.

8 E. Respondent operates no branch offices in California.

9 F. In accordance with Financial Code section 22159, CFL licensees must file an annual
10 report with the Commissioner by March 15 of each year (Annual Report).

11 G. On January 5, 2022, the Commissioner notified CFL licensees of the March 15, 2022
12 deadline to file their annual reports by sending notice to the email address each CFL licensee must
13 establish for communications from the Commissioner (designated email address) pursuant to the
14 Commissioner’s Order on Electronic Communications, dated November 22, 2013. The notification
15 again warned that the Commissioner could assess monetary penalties for untimely filing or failing to
16 file pursuant to Financial Code section 22715(b).

17 H. On February 17, 2022, the Commissioner again notified CFL licensees of the March
18 15, 2022 deadline to file their annual reports by sending notice to the email address each CFL
19 licensee established pursuant to the Commissioner’s Order on Electronic Communications, dated
20 November 22, 2013. The notification warned that the Commissioner could assess penalties and
21 summarily revoke licenses for untimely filing or failing to file pursuant to Financial Code section
22 22715.

23 I. On March 2, 2022, the Commissioner again notified CFL licensees of the March 15,
24 2022 deadline to file their annual reports by sending notice to the email address each CFL licensee
25 established pursuant to the Commissioner’s Order on Electronic Communications, dated November
26 22, 2013. The notification warned that the Commissioner could assess penalties and summarily
27 revoke licenses for untimely filing or failing to file pursuant to Financial Code section 22715.

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1 J. As of March 15, 2022, Respondent had not filed its Annual Report with the
2 Commissioner. As a result, the Commissioner issued a notice on March 18, 2022 to Respondent to
3 Respondent’s email address established pursuant to the Commissioner’s Order on Electronic
4 Communications, dated November 22, 2013, advising Respondent that it should file its annual report
5 by or before March 30, 2022 or else its license would be summarily revoked pursuant to Financial
6 Code section 22715 (Notice email).

7 K. As of March 30, 2022, Respondent had not filed its Annual Report with the
8 Commissioner as directed in the Notice Letter. As a result, on April 19, 2022, the Commissioner
9 issued an Order Summarily Revoking California Finance Lenders License and/or Broker license
10 pursuant to Financial Code Section 22715 for CFL License Number 603J754 (Summary Revocation
11 Order).

12 L. Upon receiving the Summary Revocation Order(s), Respondent timely notified the
13 Commissioner that Respondent was requesting a hearing on the Summary Revocation Order(s).

14 M. On May 4, 2022, Respondent submitted its Annual Report, which was due on March
15 15, 2022, 35 business days late. Pursuant to Financial Code Section 22715, the maximum penalty
16 that may be imposed for filing 35 business days late is \$15,500.00 (\$100 per business day for the
17 first five business days and \$500 per business day thereafter up to a maximum of \$25,000).

18 N. In connection with these proceedings, Respondent represented to the Commissioner
19 that it had taken no new applications under its license.

20 O. Pursuant to California Code of Regulations, title 10 (CCR), section 1422.4,
21 subdivision (b)(3), all finance lenders and broker licensees not currently on the Nationwide
22 Multistate Licensing System (NMLS) were required to transition to the NMLS by December 31,
23 2021, by filing an application in the NMLS in accordance with CCR section 1422.5. Respondent has
24 yet to transition to the NMLS in violation of CCR section 1422.4.

25 P. The Commissioner finds that entering into this Consent Order is in the public interest
26 and consistent with the purposes fairly intended by the policies and provisions of the CFL.

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

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II.

Terms and Conditions

1. Purpose. The parties intend to resolve this matter for the purpose of judicial economy and expediency and without the uncertainty and expense of a hearing or other litigation.

2. Order Rescinding Revocation Order. The Commissioner hereby rescinds the Summary Revocation Order which had been issued on April 19, 2022 (Summary Revocation Order).

3. Administrative Penalty. Respondent shall pay an administrative penalty of \$5,000.00 no later than 15 days after the effective date of this Consent Order as defined in paragraph 26 (Effective Date). The penalty must be made payable in the form of a cashier’s check or Automated Clearing House deposit to the Department of Financial Protection and Innovation and transmitted to the attention of Accounting – Litigation, Department of Financial Protection and Innovation, 2101 Arena Boulevard, Sacramento, California 95834. Notice of the payment must be concurrently sent to Afsaneh Eghbaldari, Senior Counsel, Department of Financial Protection and Innovation, 1455 Frazee Road, Suite 315, San Diego, California 92108.

4. Transition to NMLS. Respondent shall transition to the NMLS by filing an application in the NMLS in accordance with CCR section 1422.5 no later than 30 days after the Effective Date of this Consent Order.

5. Failure to Pay Administrative Penalty and Transition to NMLS. If Respondent fails to comply with paragraphs 3 and 4, the Commissioner may summarily suspend Respondent from engaging in business under its license until it provides evidence of compliance to the Commissioner’s satisfaction. Respondent hereby waives any notice or hearing rights afforded under the Administrative Procedure Act, including Government Code section 11415.60, subdivision (b); Code of Civil Procedure; or any other provision of law to contest the summary suspension contemplated by this paragraph.

6. Waiver of Hearing Rights. Respondent acknowledges the Commissioner is ready, willing, and able to proceed with a hearing on the Summary Revocation Order on the charges contained in this Consent Order. Respondent hereby waives the right to any hearings, and to any reconsideration, appeal, or other right to review which may be afforded pursuant to the CFL, the

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

6 7. Full and Final Resolution. The parties hereby acknowledge and agree that this
7 Consent Order is intended to constitute a full and final resolution of the violations described herein,
8 and that no further proceedings or actions will be brought by the Commissioner in connection with
9 these matters except under the CFL or any other provision of law, or excepting therefrom any
10 proceeding to enforce compliance with the terms of this Consent Order.

11 8. Failure to Comply with Consent Order. Respondent agrees that if it fails to comply
12 with the terms of this Consent Order, the Commissioner may, in addition to all other available
13 remedies it may invoke under the CFL, summarily suspend/ revoke the CFL license of Respondent
14 until Respondent is in compliance. Respondent waives any notice and hearing rights to contest such
15 summary suspensions/revocations which may be afforded under the CFL, the California
16 Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law
17 in connection therewith.

18 9. Information Willfully Withheld or Misrepresented. This Consent Order may be
19 revoked, and the Commissioner may pursue any and all remedies available under law against
20 Respondent if the Commissioner discovers that Respondent knowingly or willfully withheld or
21 misrepresented information used for and relied upon in this Consent Order.

22 10. Future Actions by Commissioner. If Respondent fails to comply with the terms of the
23 Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
24 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions
25 against Respondent, or any of its partners, owners, officers, shareholders, directors, employees or
26 successors for any and all unknown violations of this CFL.

27 11. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner's
28 ability to assist any other government agency (city, county, state or federal) with any prosecution,

1 administrative, civil or criminal action brought by that agency against the Respondent, or any other
2 person based on any of the activities alleged in this matter or otherwise.

3 12. No Presumption Against Drafter. Each party acknowledges that it has had the
4 opportunity to draft, review, and edit the language of this Consent Order. Accordingly, the parties
5 intend no presumption for or against the drafting party will apply in construing any part of this
6 Consent Order. The parties waive the benefit of Civil Code section 1654 as amended or
7 corresponding provisions of any successor statute, which provide that in cases of uncertainty,
8 language of a contract should be interpreted most strongly against the party who caused the
9 uncertainty to exist.

10 13. Independent Legal Advice. Each of the parties represents, warrants, and agrees that it
11 has had the opportunity to receive independent advice from an attorney(s) and/or representatives
12 with respect to the advisability of executing this Consent Order.

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

16 15. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
17 interest.

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

27 17. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
28 this Consent Order will be valid or binding unless it is in writing and signed by each of the parties.

1 The waiver of any provision of this Consent Order will not be deemed a waiver of any other
2 provision. No waiver by either party of any breach of, or of compliance with, any condition or
3 provision of this Consent Order by the other party will be considered a waiver of any other condition
4 or provision or of the same condition or provision at another time.

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

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

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

18 21. Effect Upon Future Proceedings. If Respondent applies for any license, permit or
19 qualification under the Commissioner’s current jurisdiction, or are the subject of any future action by
20 the Commissioner to enforce this Consent Order, then the subject matter hereof shall be admitted for
21 the purpose of such application(s) or enforcement proceeding(s).

22 22. Voluntary Agreement. Respondent hereby enters into this Consent Order voluntarily
23 and without coercion and acknowledges that no promises, threats, or assurances have been made by
24 the Commissioner or any officer, or agent thereof, about this Consent Order. The parties each
25 represent and acknowledge that he, she or it is executing this Consent Order completely voluntarily
26 and without any duress or undue influence of any kind from any source.

27 23. Notice. Any notice required under this Consent Order shall be provided to each party
28 at the following addresses:

To Respondent: Scholarship America, Inc.
c/o Richard Greene, Chief Financial Officer
One Scholarship Way
Saint Peter, Minnesota 56082
rgreene@scholarshipamerica.org

To the Commissioner: Afsaneh Eghbaldari, Senior Counsel
Department of Financial Protection and Innovation
1455 Frazee Road, Suite 315
San Diego, California 92108
affi.eghbaldari@dfpi.ca.gov

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

25. Public Record. Respondent hereby acknowledges that the Consent Order is and will be a matter of public record.

26. 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 Respondent at the following email address: rgreene@scholarshipamerica.org.

27. 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: May 16, 2022

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation



By: _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: May 16, 2022

Scholarship America, Inc.

By: _____
RICHARD GREENE
Chief Financial Officer
Scholarship America, Inc.