

1 CLOTHILDE V. HEWLETT
Commissioner
2 MARY ANN SMITH
Deputy Commissioner
3 DANIEL P. O’DONNELL
Assistant Chief Counsel
4 JOSH SCHIEBER (State Bar No. 276397)
Senior Counsel
5 Department of Financial Protection and Innovation
One Sansome Street, Suite 600
6 San Francisco, California 94104
Telephone: (415) 349-1243
7 Facsimile: (415) 972-8500

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 THE COMMISSIONER OF FINANCIAL)
PROTECTION AND INNOVATION,)
13 Complainant,)
14 v.)
15 NES GROUP LLC doing business as)
CAPITAL LIBERTY,)
16 Respondent.)
17)
18)

19 This Consent Order is entered into between the Commissioner of Financial Protection and
20 Innovation (Commissioner) and NES Group LLC doing business as Capital Liberty (NES Group)
21 (collectively, the Parties), and is made with respect to the following facts.

22 **I.**

23 **Recitals**

24 A. The Commissioner has jurisdiction over the licensing and regulation of persons
25 engaged in the business of servicing student loans in California under the Student Loan Servicing
26 Act (SLSA) (Cal. Fin. Code §§ 28100-28104 (West 2018)).

27 B. The Commissioner also has jurisdiction over the regulation of persons engaged in
28 offering or providing a consumer financial product or service in California and affiliated service

1 providers under the California Consumer Financial Protection Law (CCFPL) (Cal. Fin. Code §§
2 90000-90019 (West 2020)). A “covered person” is “[a]ny person that engages in offering or
3 providing a consumer financial product or service to a resident of this state.” Cal. Fin. Code
4 § 90005(f)(1).

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

8 D. An unlawful act or practice includes any act that can be called a business practice
9 and that at the same time is forbidden by federal, state, or local law. *See Smith v. State Farm Mutual*
10 *Automobile Ins. Co.*, 93 Cal.App.4th 700, 717-718 (2001) [defining an unlawful act or practice
11 under California’s Unfair Competition Law, Bus. & Prof. Code § 17200].

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

15 F. “Financial product or service” includes, among other things, “[p]roviding financial
16 advisory services . . . including . . . [p]roviding services to assist a consumer with debt management
17 or debt settlement, modifying the terms of any extension of credit, or avoiding foreclosure.” Cal.
18 Fin. Code § 90005(k)(8)(B).

19 G. The Telemarketing Sales Rule (TSR) (16 C.F.R. §§ 310.1-310.9 (2010)) is the
20 implementing regulation of the federal Telemarketing and Consumer Fraud and Abuse Prevention
21 Act (Telemarketing Act) (15 U.S.C. §§ 6101-6108 (1994)). Under section 3(c) of the Telemarketing
22 Act (15 U.S.C. § 6102(c)) and section 18(d)(3) of the Federal Trade Commission Act (FTC Act) (15
23 U.S.C. § 57a(d)(3) (1914)), a violation of the TSR constitutes an unfair or deceptive act or practice
24 in or affecting commerce in violation of section 5(a) of the FTC Act (15 U.S.C. § 45(a)).

25 H. It is a violation of the TSR for any seller or telemarketer to request or receive
26 payment of any fee or consideration for any debt-relief service until and unless: (1) the “seller or
27 telemarketer has renegotiated, settled, reduced, or otherwise altered the terms of at least one debt
28 pursuant to a settlement agreement, debt management plan, or other such valid contractual

1 agreement executed by the customer;” and, (2) the “customer has made at least one payment
2 pursuant to that settlement agreement, debt management plan, or other valid contractual agreement
3 between the customer and the creditor or debt collector.” 16 C.F.R. § 310.4(a)(5)(i).

4 I. Under the TSR, “debt relief service” is “any program or service represented, directly
5 or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of
6 the debt between a person and one or more unsecured creditors or debt collectors, including, but not
7 limited to, a reduction in the balance, interest rate, or fees owed by a person to an unsecured
8 creditor or debt collector.” 16 C.F.R. § 310.2(o).

9 J. Under the TSR, a “seller” is “any person who, in connection with a telemarketing
10 transaction, provides, offers to provide, or arranges for others to provide goods or services to the
11 customer in exchange for consideration.” 16 C.F.R. § 310.2(dd).

12 K. Under the TSR, a “telemarketer” is “any person who, in connection with
13 telemarketing, initiates or receives telephone calls to or from a customer.” 16 C.F.R. § 310.2(ff).

14 L. Under the TSR, “telemarketing” is, in relevant part, “a plan, program, or campaign
15 which is conducted to induce the purchase of goods or services . . . by use of one or more
16 telephones and which involves more than one interstate telephone call.” 16 C.F.R. § 310.2(gg).

17 M. Following an investigation by the Commissioner, the Commissioner made the
18 following findings of fact (Findings):

19 i. NES Group is a California limited liability company formed on April 3, 2019,
20 with its principal place of business at 3972 Barranca Parkway, Suite J156, Irvine, California 92606.

21 ii. NES Group does or did business as Capital Liberty, Capital Liberty, LLC,
22 capitalliberty.org, and capitalsupportnet.com.

23 iii. NES Group marketed its student loan document preparation assistance
24 services to consumers through telephone calls and the websites capitalliberty.org and
25 capitalsupportnet.com.

26 iv. From about April 3, 2019 through May 20, 2021, NES Group engaged in the
27 business of assisting federal-student-loan borrowers, including California residents, with the process
28

1 of preparing and submitting applications to the U.S. Department of Education for loan consolidation,
2 income-driven repayment (IDR) plans, loan forgiveness, and other debt relief.

3 v. At least 139 California consumers enrolled to receive NES Group’s services.
4 Upon initial enrollment, consumers were required to pay up-front servicing fees of between \$30.00
5 and \$1,495.00.

6 vi. For every consumer that enrolled to receive NES Group’s services, NES
7 Group requested and received all or a portion of the servicing fee before NES Group prepared and
8 submitted the applications to the U.S. Department of Education for loan consolidation, income-
9 driven repayment (IDR) plans, loan forgiveness, and other debt relief.

10 vii. From about April 3, 2019, through May 20, 2021, NES Group collected at
11 least \$70,980.89 in upfront servicing fees from consumers.

12 viii. NES Group contends that it enrolled its last customer in or about August 2020
13 and that it stopped receiving consumer payments in or about May 2021.

14 ix. After consumers were approved for repayment plans or programs, NES Group
15 provided ongoing assistance with the annual process of preparing and submitting documents for
16 recertifying consumers’ income, family size, and marital status, which the Department of Education
17 uses to recalculate monthly payment amounts.

18 N. Based on the above, the Commissioner is of the opinion that NES Group engaged in
19 the business of servicing student loans in California by interacting with California borrowers with
20 the goal of avoiding default on their student loans. *See* Cal. Fin. Code § 28104(k)(3); Cal. Code
21 Regs., tit. 10, § 2041(b); 20 U.S.C. § 1083(e)(3)(C); 34 C.F.R. §§ 682.205(a)(5)(C), 682.411(d)(1).

22 O. NES Group has never been issued a license by the Commissioner under the SLSA
23 and is not authorized to engage in business as a student loan servicer in California.

24 P. Based on the above, the Commissioner is of the opinion that NES Group engaged in
25 the business of servicing student loans in California without a license from the Commissioner in
26 violation of Financial Code section 28102, subdivision (a).

27 Q. Based on the above, the Commissioner is also of the opinion that:
28

1 i. NES Group is a “covered person” under the CCFPL because it has engaged in
2 offering or providing consumer financial products or services to California residents, including
3 financial advisory services such as assisting consumers with debt management or debt settlement
4 and modifying the terms of any extension of credit. Cal. Fin. Code § 90005(k)(8).

5 ii. NES Group is a seller or telemarketer that provided, offered to provide, or
6 arranged for others to provide debt relief services within the meaning of the TSR.

7 iii. NES Group requested and received from customers advance fees for debt
8 relief services in violation of title 16 of Code of Federal Regulations part 310.4(a)(5).

9 O. Based on the above, the Commissioner is of the opinion that NES Group has engaged
10 in unlawful acts or practices (through its above-stated violations of the FTC Act) with respect to
11 consumer financial products or services in violation of Financial Code section 90003, subdivision
12 (a)(1).

13 P. The Commissioner finds that entering into this Consent Order is in the public interest
14 and consistent with the purposes and provisions of the SLSA and CCFPL.

15 NOW, THEREFORE, in consideration of the foregoing and the terms and conditions set
16 forth herein, the Parties agree as follows.

17 **II.**

18 **Terms and Conditions**

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

23 2. Desist and Refrain Orders. Under Financial Code section 28160, NES Group doing
24 business as Capital Liberty and its members, managers, and officers are hereby ordered to desist
25 and refrain from engaging in the business of servicing student loans in California without a license
26 from the Commissioner in violation of Financial Code section 28102, subdivision (a). Further,
27 under Financial Code section 90015, subdivision (d), NES Group doing business as Capital Liberty
28 and its members, managers, and officers are hereby ordered to desist and refrain from violating

1 Financial Code section 90003, subdivision (a)(1), including, without limitation, requesting and
2 receiving advance fees for debt relief services in violation of the TSR (16 C.F.R. § 310.4).

3 3. Consumer Refunds. Under Financial Code section 90012, subdivision (b)(2), NES
4 Group agree to issue refunds for all fees it collected from California consumers from April 3, 2019
5 through the Effective Date in Paragraph 29, in the amount of \$66,935.14 and for which NES Group
6 has not already provided a consumer refund, by no later than 60 calendar days after the Effective
7 Date (Refunds). All Refunds shall be paid directly to consumers with a check sent by mail to the
8 customer’s last known address or by Automated Clearing House (ACH) transfer based upon the
9 consumer’s last known bank account information, unless new bank account information has been
10 provided by the consumer to NES Group pursuant to Paragraph 5.

11 4. Notice to Commissioner. No later than 90 calendar days after the Effective
12 Date, notice of the refund payments shall be sent to the Commissioner at the Notice address
13 provided below. With its notice, NES Group shall provide a report containing the consumer’s name,
14 the date the refund was issued, the amount of the refund, and an indication of whether the refund
15 payment was accepted by the consumer’s bank.

16 5. Notice to Consumer. At least seven business days before the issuance of the Refunds,
17 NES Group shall send a notice to each consumer owed a refund for which NES Group has such
18 contact information. Such notice shall be sent to the consumer’s last-known email address. The
19 notice shall state:

20 Pursuant to a settlement with the California Department of Financial
21 Protection and Innovation, NES Group LLC doing business as Capital
22 Liberty (Capital Liberty) is issuing you a refund of all fees you paid to
23 Capital Liberty. This refund will be sent by check or Automated
24 Clearing House (ACH) transfer to the bank account that you provided
25 to Capital Liberty. If you would like to update your account
26 information before the refund is processed, or if you would prefer to
27 receive a check via U.S. mail, please contact us immediately at (949)
28 771-6991 or via e-mail at capitalliberty.info@gmail.com.

26 6. No Consumer Waiver. Payment to a consumer of any Refund under this Consent
27 Order shall not be conditioned on a consumer waiving any right.

28 7. Handling of Unclaimed Refunds. NES Group shall escheat any returned or

1 unclaimed Refunds to the State Controller’s Office within the time period provided under section
2 1520 of the Unclaimed Property Law (Cal. Civ. Proc. Code §§ 1510-1519.5).

3 8. Payment of Penalty. Under Financial Code section 90012, subdivision (c), NES
4 Group shall pay the Commissioner a Penalty of \$22,500.00 no later than 10 days of the Effective
5 Date set forth in Paragraph 29. The Penalty shall be paid by ACH transfer, under the instructions
6 which shall be separately provided, and payable to the Department of Financial Protection and
7 Innovation, Accounting – Enforcement Division, Department of Financial Protection & Innovation,
8 2101 Arena Boulevard, Sacramento, California 95834. Notice of such payment shall be sent
9 concurrently to the attention of Josh Schieber, Senior Counsel, at Josh.Schieber@dfpi.ca.gov.

10 9. Rescission of Agreements. Under Financial Code section 90012, subdivision (b)(1),
11 all agreements NES Group entered with California consumers regarding its services (Agreements)
12 are hereby rescinded. NES Group shall not assign, sell, or transfer the Agreements to any other
13 entity, nor shall NES Group charge or collect any additional payments under the Agreements.

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

19 11. Waiver of Hearing Rights. NES Group acknowledges that the Commissioner is
20 ready, willing, and able to proceed with the filing of an administrative enforcement action on the
21 findings described in the recitals above. NES Group hereby waives the right to any hearings and to
22 any reconsideration, appeal, or other right to review which may be afforded by the SLSA, CCFPL,
23 California Administrative Procedure Act (APA), California Code of Civil Procedure (CCP), or any
24 other provision of law. By waiving such rights, NES Group effectively consents to the finality of
25 this Consent Order and the orders to desist and refrain contained in it.

26 12. Failure to Comply with Consent Order. NES Group and its members, managers, and
27 officers agrees that if it fails to comply with the terms of this Consent Order, the Commissioner
28 may pursue any remedies available under the SLSA, CCFPL, or any other provision of law until

1 NES Group is in compliance. NES Group waives any notice and hearing rights which may be
2 afforded under the SLSA, CCFPL, APA, CCP, or any other provision of law.

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

7 14. Future Actions by Commissioner. If NES Group fails to comply with any terms of
8 this Consent Order, the Commissioner may institute proceedings for any and all violations
9 otherwise resolved under this Consent Order. The Commissioner reserves the right to bring any
10 future actions against NES Group for any and all unknown violations of the SLSA or CCFPL.

11 15. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner’s
12 ability to assist any other government agency (city, county, state, or federal) with any
13 administrative, civil, or criminal prosecution brought by that agency against NES Group or any
14 other person based upon any of the activities alleged in this matter or otherwise.

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

18 17. Binding. This Consent Order is binding on all heirs, assigns, or successors in
19 interest.

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

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

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

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

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

18 23. Mandatory Disclosure in Future Applications. NES Group agrees to disclose this
19 Consent Order in any application for a license, permit, or qualification under the Commissioner’s
20 current or future jurisdiction.

21 24. Effect Upon Future Proceedings and Future Application. If NES Group applies for
22 any license, permit, or qualification under the Commissioner’s current or future jurisdiction or is the
23 subject of any future action by the Commissioner to enforce this Consent Order, then the subject
24 matter hereof shall be admitted for the purpose of such application or action. Notwithstanding the
25 foregoing, conduct described in this Consent Order will not be considered grounds for automatic
26 denial in determining whether to approve any future application by NES Group for a license under
27 the SLSA.

28 25. Voluntary Agreement. NES Group enters this Consent Order voluntarily and without

1 coercion and acknowledges that no promises, threats, or assurances have been made by the
2 Commissioner or any officer or agent thereof about this Consent Order. The Parties each represent
3 and acknowledge that he, she, or it is executing this Consent Order completely voluntarily and
4 without any duress or undue influence of any kind from any source.

5 26. Notice. Any notice required under this Consent Order shall be provided to NES
6 Group at Michael A. Thurman, Esq., Thurman Legal, 1055 East Colorado Boulevard, 5th Floor,
7 Pasadena, California 91106 or michael@thurmanlegal.com or to the Commissioner at Josh
8 Schieber, Senior Counsel, Department of Financial Protection and Innovation, One Sansome Street,
9 Suite 600, San Francisco, California 94104 and Josh.Schieber@dfpi.ca.gov.

10 27. Signatures. A scanned or electronic mail signature shall be deemed an original
11 signature.

12 28. Public Record. NES Group hereby acknowledges that this Consent Order is and will
13 be a matter of public record.

14 29. Effective Date. This Consent Order shall become final and effective when signed by
15 all Parties and delivered by the Commissioner’s agent via electronic mail to Respondent’s counsel
16 at michael@thurmanlegal.com.

17 30. Authority to Sign. Each signatory hereto covenants that he or she possesses all
18 necessary capacity and authority to sign and enter into this Consent Order and undertake the
19 obligations set forth herein.

20 Dated: March 10, 2023

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation

21
22 By: _____
23 MARY ANN SMITH
24 Deputy Commissioner

25 Dated: March 6, 2023

NES GROUP LLC

26
27 By: _____
28 NITZAN COHEN
Managing Member