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

<p>12 In the Matter of:</p> <p>13 THE COMMISSIONER OF FINANCIAL PROTECTION AND INNOVATION,</p> <p>14</p> <p>15 Complainant,</p> <p>16 v.</p> <p>17 FLOCKJAY, INC.,</p> <p>18 Respondent.</p> <p>19</p> <hr/>	<p>) DESIST AND REFRAIN ORDER WITH CLAIM FOR ANCILLARY RELIEF AND PENALTY ASSESSMENT</p> <p>) (Fin. Code, § 90015, subds. (b), (d)(1), (e))</p>
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21 The Commissioner of the Department of Financial Protection and Innovation
22 (Commissioner) finds as follows:

23 **INTRODUCTION**

24 1. The Commissioner has jurisdiction over the regulation of persons who engage, have
25 engage, and propose to engage in offering or providing a consumer financial product or service in
26 California and affiliated service providers under the California Consumer Financial Protection Law
27 (CCFPL), Cal. Fin. Code §§ 90000-90019.

28 2. At all relevant times, Flockjay, Inc. (Flockjay) is a business entity incorporated in
Delaware with a purported principal address of 440 N. Barranca Avenue, #3881, Covina, California
1

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2 91723.

3 3. Shaan Hathiramani (Hathiramani) is Flockjay’s owner and Chief Executive Officer.

4 **FINDINGS**

5 4. Flockjay is a private postsecondary educational institution, or an online academy, that
6 purports to train jobseekers to work as sales development representative a technology companies
7 through a 10-week education course entitled “Flockjay Sales Development Representative
8 Program.” The cost of tuition to attend said education course ranged from \$5,000.00 to \$7,650.00.

9 5. In order to finance the cost of attendance for its online course, Flockjay offered
10 Deferred Tuition Agreements (DTA) to its students. Under the terms of the DTA, Flockjay agreed
11 to defer tuition payments, contingent on the student’s future earnings. That student committed to
12 paying Flockjay a fixed amount each month toward the cost of attending Flockjay, up to a maximum
13 number of payments and a maximum amount, on the condition that the student’s income is equal or
14 above the monthly equivalent of \$40,000.00 annually. The DTAs offered by Flockjay to California
15 consumers did not contain any notice provision informing the students of their right to assert against
16 the holder of DTA or credit contract, signed by the student to finance the cost of the educational
17 program, all the claims and defenses that they could assert against Flockjay, up to the amount they
18 have already paid under the DTA.

19 6. Flockjay began offering its education course and financing to students starting before
20 March of 2020 through at least August 2021.

21 7. On or around October 21, 2020, the Bureau of Private Post-Secondary Education
22 (BPPE or Bureau) issued a Citation and Order of Abatement against Flockjay and owner Shaan
23 Hathiramani (Citation). The Citation provided that the Bureau determined that Flockjay was
24 operating “without Bureau approval and is not exempt under any provision of the Private
25 Postsecondary Act of 2009.” (BPPE Citation: Assessment of Fine and Order of Abatement, Citation
26 No. 2021129, p. 1, Oct. 21, 2020.) The Citation ordered Flockjay to cease to operate as a private
27 postsecondary educational institution, and to discontinue recruiting or enrolling students and cease
28 all instructional services and advertising in any form or type of media, until such time as an approval

1 to operate was obtained from the Bureau. The Citation then assessed an administrative fine of
2 \$15,000.00 for the violation.

3 8. On October 14, 2021, following an informal telephone conference held in the matter
4 against Flockjay and Hathiramani, a modification of the Citation was issued. The BPPE upheld its
5 findings that Flockjay was operating without BPPE approval and ordered Flockjay to cease to
6 operate as a private postsecondary educational institution. However, in light of new facts presented
7 at the conference, the administrative fine was modified from \$15,000.00 to \$10,000.00.

8 9. At no point in Flockjay’s history has Flockjay held approval from the BPPE to
9 operate as a private postsecondary educational institution, nor has Flockjay been exempt under any
10 provision of the Private Postsecondary Act of 2009. Cal. Educ. Code § 94800 *et seq.*

11 10. At least 40 California residents have entered into a DTA with Flockjay from January
12 2021 through present to finance the cost of tuition ranging from \$5,000.00 to \$7,650.00.

13 **APPLICABLE LAW - CCFPL**

14 11. The Commissioner has jurisdiction over the regulation of person engaged in the
15 offering or providing of a consumer financial product or service in California and affiliated service
16 providers under the California Consumer Financial Protection Law (CCFPL), Cal. Fin. Code
17 § 90000 *et seq.*

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

21 13. Under the CCFPL, it is also unlawful for a covered person or service provider to
22 “offer or provide to a consumer any financial product or service not in conformity with any
23 consumer financial law or otherwise commit any act or omission in violation of a consumer financial
24 law.” Cal. Fin. Code § 90003 (a)(2).

25 14. A “covered person” is “[a]ny person that engages in offering or providing a consumer
26 financial product or service to a resident of this state.” Cal. Fin. Code § 90005(f)(1).

1 15. A “consumer financial product or service” is generally a “financial product or service
2 that is delivered, offered, or provided for use by consumers primarily for person, family, or
3 household purposes.” Cal. Fin. Code § 90005(e)(1).

4 16. “Financial Product or service” includes, among other things, “[e]xtending credit and
5 servicing extensions of credit[.]” Cal. Fin. Code § 90005(k)(1).

6 17. “Credit” means “the right granted by a person to another person to defer payments of
7 a debt, incur debt and defer its payment, or purchase property or services and defer payment for
8 those purchases.” Cal. Fin. Code § 90005(g).

9 18. “Debt” is defined to include “*any obligation* of a person to pay another person money
10 regardless of *whether the obligation is absolute or contingent*, has been reduced to judgment, is
11 fixed, *contingent*, matured, unmatured, disputed, undisputed, secured, or unsecured and includes any
12 obligation that gives rise to right of an equitable remedy for breach of performance if the breach
13 gives rise to a right of payment.” Cal. Fin. Code § 90005(h) (emphasis added).

14 19. California Financial Code section 90015(d) provides:

15 (1) If, in the opinion of the department, any person engages, has
16 engaged, or proposes to engage in any activity prohibited by Section
17 90003 or 90004, or an activity, act, practice, or course of business
18 that violates a law, rule, order, or any condition imposed in writing
19 on the person by the department, the department may issue an order
20 ,650.00.directing the person to desist and refrain from engaging in
21 the activity, act, practice, or course of business.

22 (2) If that person fails to file a written request for a hearing within
23 30 days from the date of service of the order, the order shall be
24 deemed a final order of the commissioner.

25 20. California Financial Code section 90015(c) provides in relevant part “[a]fter notice
26 and an opportunity to be heard, the commissioner may, by order, assess penalties under subdivision
27 (c) of Section 90012.” Cal. Fin. Code, § 90015, subd. (c).

28 21. California Financial Code section 90012(c) provides in relevant part:

 In any civil or administrative action brought pursuant to this
 division, the following penalties shall apply:

1 (1) Any person that violates, through any act or omission, any
2 provision of this division shall forfeit and pay a penalty pursuant to
3 this subdivision.

4 (A) The penalty amounts are as follows:

5 (i) For any violation of this division, rule or final order, or
6 condition imposed in writing by the department, a penalty may not
7 exceed the greater of either five thousand dollars (\$5,000) for each
8 day during which the violation or failure to pay continues, or two
9 thousand five hundred dollars (\$2,500) for each act or omission in
10 violation

11 22. In any administrative action under Financial Code section 90015, the Commissioner
12 may include a claim for ancillary relief as provided in section 90012(b). Cal. Fin. Code § 90015(e).

13 23. Relief may include, but is not limited to “[r]efund of moneys or return of real
14 property,” restitution, and “[d]isgorgement or compensation for unjust enrichment, with any
15 disgorged amounts returned to the affected consumers, to the extent practicable.” Cal. Fin. Code
16 § 90012(b).

17 **APPLICABLE LAW – California Private Postsecondary Act of 2009**

18 24. California’s Private Postsecondary Act of 2009, Cal. Educ. Code § 94800 *et seq.*,
19 regulates private postsecondary educational institutions operating in California. California
20 Education Code section 94886 provides that “[e]xcept as exempted in Article 4, commencing with
21 Section 94874) or in compliance with the transition provisions in Article 2 (commencing with
22 Section 94802), a person shall not open, conduct, or do business as a private postsecondary
23 educational institution in this state without obtaining an approval to operate under this chapter.” Cal.
24 Educ. Code § 94886.

25 25. Section 94917.5 of the California Education Code provides that “approved to
26 operate” or “approved” means that “an institution has received authorization pursuant to this chapter
27 to offer to the public and to provide postsecondary educational programs.” Cal. Educ. Code
28 § 94917.5.

29 26. Section 94869 of the California Education Code provides that “to operate” means “to
30 establish, keep, or maintain any facility or location in this state where, or from which, or through
31 which, postsecondary educational programs are provided.” Cal. Educ. Code § 94969.

1 27. Section 94916 of the California Education Code states that “[a]n institution extending
2 credit or lending money to an individual for institutional and noninstitutional charges for an
3 educational program shall cause any note, instrument, or other evidence of indebtedness taken in
4 connection with that extension of credit or loan to be conspicuously marked on its face in at least 12-
5 point type with the following notice:

6 “NOTICE”

7 “You may assert against the holder of the promissory note you signed in
8 order to finance the cost of the educational program all of the claims and
9 defenses that you could assert against this institution, up to the amount you
have already paid under the promissory note.”

10 28. An “institution” means “any private postsecondary educational institution, including
11 its branch campuses and satellite locations.” Cal. Educ. Code § 94843.

12 29. A “private postsecondary educational institution” means “a private entity with a
13 physical presence in this state that offers postsecondary education to the public for an institutional
14 charge.” Cal. Educ. Code § 94857.

15 30. “Institutional charges” means “charges for an educational program paid directly to an
16 institution.” Cal. Educ. Code § 94844.

17 31. Section 94917 of the Education Code states that “[a] note, instrument, or other
18 evidence of indebtedness relating to payment for an educational program is not enforceable by an
19 institution unless, at the time of execution of the note, instrument, or other evidence of indebtedness,
20 the institution held an approval to operate.” Cal. Educ. Code § 94917.

21 **APPLICABLE LAW – Federal Holder-in-Due-Course Rule**

22 32. The Federal Trade Commission’s (FTC) “Trade Regulation Rule Concerning
23 Preservation of Consumers’ Claims and Defenses,” also known as the FTC’s “Holder in Due
24 Course Rule” protects consumers when merchants sell a consumers’ credit contract to other lenders.
25 Specifically, it preserves consumers’ right to assert the same legal claims and defenses against
26 anyone who purchases the credit contract, as they would have against the seller who originally
27 provided the credit. 16 C.F.R. § 433 *et seq.*

1 is in violation of California Financial Code section 90003(a)(2) by offering or providing to a
2 consumer a financial product or service not in conformity with, or otherwise committed any act or
3 omission in violation of, the following consumer financial laws:

- 4 i. Education Code section 94916;
- 5 ii. 16 C.F.R. § 433.2(a).

6 37. Pursuant to Financial Code section 90015(d)(1), Flockjay, Inc., is hereby ordered to
7 desist and refrain from violation Financial Code sections 90003(a)(1) and 90003(a)(2) by: (1)
8 operating as a private postsecondary educational institution without holding approval from the BPPE
9 in violation of Education Code section 94886 and issuing unenforceable financing to students in the
10 form of DTAs to attend its education course pursuant to Education Code section 94917; (2) failing to
11 provide within its DTAs notice provisions as required by consumer financial laws found under
12 Education Code section 94916 and 16 C.F.R. § 433.2(a).

13 38. This Desist and Refrain Order is necessary, in the public interest and consistent with
14 the purposes, policies, and provisions of the CCFPL. This Desist and Refrain Order shall remain in
15 full force and effect until further order of the Commissioner.

16 **CLAIM FOR ANCILLARY RELIEF – CCFPL [Cal. Fin. Code § 90015(e)]**

17 39. Based on the foregoing, the Commissioner is of the opinion that Flockjay collected
18 payment amounts for unenforceable financing pursuant to California Education Code section 94917
19 from California consumers from January 1, 2021, through present in connection with acts or
20 practices that violated Financial Code section 90003(a)(1).

21 40. Pursuant to Financial Code section 90012(b), all financing agreements, including but
22 not limited to DTAs, issued by Flockjay, Inc., to California consumers to finance post private
23 secondary education after January 1, 2021, are hereby rescinded and no entity has a right to collect
24 or receive any amounts due, charges, or fees that may be outstanding.

25 41. Pursuant to Financial Code section 90012(b), Flockjay, Inc., is hereby ordered to
26 refund all payments collected from all California consumers from January 1, 2021, through present.
27 Flockjay, Inc., shall pay each of the refunds directly to the respective consumers no later than April
28 17, 2023. No later than May 15, 2023, notice of the refund payments shall be sent to Josh Schieber,

1 Senior Counsel, Department of Financial Protection and Innovation, Enforcement Division, 1
2 Sansome Street, Suite 600, San Francisco, California 94104.

3 **ASSESSMENT OF PENALTY – CCFPL [Cal. Fin. Code § 90015(c)]**

4 42. Based on the foregoing, the Commissioner is of the opinion that Flockjay violated
5 Financial Code sections 90003(a)(1) and 90003(a)(2) on at least 40 separate occasions by: (1) having
6 engaged in unlawful acts or practices by operating as a private postsecondary educational institution
7 without holding approval from the BPPE in violation of Education Code section 94886, and issuing
8 unenforceable financing to students in the form of DTAs to attend its education course pursuant to
9 Education Code section 94917; (2) offering or providing to a consumer a financial product or service
10 not in conformity with, or otherwise committed any act or omission in violation of, the following
11 consumer financial laws, in failing to provide the notice within its issued DTAs as required by
12 California Education Code section 94916 and 16 C.F.R. § 433.2(a).

13 43. Pursuant to Financial Code section 90012(c) and after due consideration of possible
14 mitigating factors and other appropriateness considerations per subdivision (c)(1)(B), Flockjay, Inc.,
15 is hereby ordered to pay the Commissioner a penalty of \$100,000.00 no later than May 15, 2023.
16 This penalty shall be paid with a cashier’s check made payable to the Department of Financial
17 Protection and Innovation. The cashier’s check shall be mailed to the attention of “Accounting—
18 Litigation” at Department of Financial Protection and Innovation, 2101 Arena Boulevard,
19 Sacramento, California 95834-2036. Notice of such payment shall be forwarded to Josh Schieber,
20 Senior Counsel, Department of Financial Protection and Innovation, Enforcement Division, 1
21 Sansome Street, Suite 600, San Francisco, California 94104.

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23 Dated: March 16, 2023

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and
Innovation



24
25
26 By: _____
27 Mary Ann Smith
28 Deputy Commissioner of Enforcement