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11 Attorneys for Complainant

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

14 In the Matter of:

15 THE COMMISSIONER OF FINANCIAL  
PROTECTION AND INNOVATION,

16 Complainant,

17 v.

18 FLOCKJAY, INC.,

19 Respondent.  
20

SETTLEMENT AGREEMENT

21 The Commissioner of Financial Protection and Innovation (Commissioner) and Flockjay,  
22 Inc. (Flockjay or Respondent) (collectively, the Parties) enter this Settlement Agreement  
23 (Settlement Agreement) with respect to the following facts:  
24

25 **I.**

26 **RECITALS**

27 A. The Commissioner has jurisdiction over the regulation of persons who engage, have  
28 engaged, and propose to engage in offering or providing a consumer financial product or service in

1 California and affiliated service providers under the California Consumer Financial Protection Law  
2 (CCFPL), Cal. Fin. Code §§ 90000-90019.

3 B. Respondent is a “covered person” under the CCFPL because it has offered a  
4 consumer financial product or service to California consumers. *See* Cal. Fin. Code § 90005(k)(1).

5 C. Respondent operated a private postsecondary educational institution, or an online  
6 academy, that purported to train jobseekers to work as sales development representatives at  
7 technology companies through a 10-week education course entitled “Flockjay Sales Development  
8 Representative Program.” The cost of tuition to attend said education course ranged from  
9 \$5,000.00 to \$7,650.00.

10 D. In order to finance the cost of attendance for its online course, Flockjay offered  
11 different types of financing agreements to its students, including a Deferred Tuition Agreements  
12 (DTA) and an Income Share Agreement (ISA). Under the terms of the DTA and ISA, Flockjay  
13 agreed to defer tuition payments, contingent on the student’s future earnings. That student  
14 committed to paying Flockjay a fixed amount each month toward the cost of attending Flockjay’s  
15 education course, up to a maximum number of payments and a maximum amount, on the condition  
16 that the student’s income is equal or above the monthly equivalent of \$40,000.00 annually. The  
17 financing offered by Flockjay to California consumers did not contain what the Commissioner  
18 describes as a “notice provision,” which would have informed students of their right to assert  
19 against the holder of financing or credit contract, signed by the student to finance the cost of the  
20 educational program, all the claims and defenses that they could assert against Flockjay, up to the  
21 amount they have already paid under the financing agreement.

22 E. Flockjay began offering its education course and financing to students starting  
23 approximately January of 2019 through at least August 2021.

24 F. On or around October 21, 2020, the Bureau of Private Post-Secondary Education  
25 (BPPE or Bureau) issued a Citation and Order of Abatement against Flockjay and owner Shaan  
26 Hathiramani (Citation). The Citation provided that the Bureau determined that Flockjay was  
27 operating “without Bureau approval and is not exempt under any provision of the Private  
28 Postsecondary Act of 2009.” (BPPE Citation: Assessment of Fine and Order of Abatement,

1 Citation No. 2021129, p. 1, Oct. 21, 2020.) The Citation ordered Flockjay to cease to operate as a  
2 private postsecondary educational institution, to discontinue recruiting or enrolling students, and to  
3 cease all instructional services and advertising in any form or type of media, until such time as an  
4 approval to operate was obtained from the Bureau. The Citation then assessed an administrative  
5 fine of \$15,000.00 for the violation. Flockjay contends that, because the Citation was only sent in  
6 hard copy to an old address during the pandemic, it did not receive a copy of it until approximately  
7 May 2021.

8 G. On October 14, 2021, the BPPE modified its Citation and found that Flockjay was  
9 operating without BPPE approval and ordered Flockjay to cease to operate as a private  
10 postsecondary educational institution. It also reduced the ordered fine from \$15,000.00 to  
11 \$10,000.00.

12 H. Flockjay received approval to operate as a private-post secondary education institute  
13 by the BPPE on September 12, 2022. Flockjay did not receive or hold BPPE approval prior to this  
14 date.

15 I. Between the period of January of 2019 through the present, California residents  
16 entered into DTAs and ISAs with Flockjay to finance the cost of tuition ranging from \$5,000.00 to  
17 \$7,650.00, totaling \$1,092,923.00 financed by California consumers (Financing Agreements).

18 J. The Commissioner finds that entering into this Settlement Agreement is in the public  
19 interest and consistent with the purposes fairly intended by the policies and provisions of the  
20 CCFPL.

21 K. Without admitting or denying the Commissioner’s Findings and Conclusions, as set  
22 forth above, Flockjay desires to enter this Consent Order.

23 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions  
24 contained herein, the Commissioner and Flockjay agree to the following.

25 **II.**

26 **TERMS AND CONDITIONS**

27 1. Purpose. This Settlement Agreement resolves the issues before the Commissioner in  
28 a manner that avoids the expense of a hearing and other possible court proceedings, protects

1 consumers, is in the public interest, and is consistent with the purposes, policies, and provisions of  
2 the CCFPL.

3 2. Order to Desist and Refrain. Under Financial Code section 90015(d)(1), Flockjay,  
4 Inc., is hereby ordered to desist and refrain from violating Financial Code sections 90003(a)(1) and  
5 90003(a)(2) by: (1) operating as a private postsecondary educational institution without holding  
6 approval from the BPPE in violation of Education Code section 94886 and issuing unenforceable  
7 financing to students in the form of DTAs to attend its education course pursuant to Education Code  
8 section 94917; (2) failing to provide within its DTAs notice provisions as required by consumer  
9 financial laws found under Education Code section 94916 and 16 C.F.R. § 433.2(a).

10 3. Rescission. Pursuant to Financial Code section 90015(e) and 90012(b)(1), all  
11 Financing Agreements between Flockjay and any California consumer entered into between  
12 January 1, 2019, through the present are hereby rescinded, and the collective outstanding balance  
13 amounting to \$643,249.00 shall be void, unenforceable, and uncollectable by Flockjay or any third  
14 party. Respondent shall not assign, sell, or transfer the Financing Agreements to any other entity,  
15 nor shall Respondent charge or collect any additional payment pursuant to the Financing  
16 Agreements that may be outstanding.

17 4. Refunds. Within sixty (60) calendar days of the Effective Date of this Settlement  
18 Agreement, as defined in paragraph 25, Flockjay shall issue partial refunds, which amounts taken  
19 together are equal to the refund amount of \$65,000.00, to each California consumer who entered  
20 into a DTA or ISA, and made payments on financing in the form of such agreements to Flockjay, on  
21 or after January 1, 2021 (Refunds). Flockjay shall issue Refunds on a pro-rata basis to all eligible  
22 California consumers. The Refunds shall comprise a percentage of the total refund amount,  
23 distributed to each consumer in proportion to the amount they each paid to Flockjay.

24 5. Refund Notice and Instructions. Each Refund shall be made to the eligible  
25 California consumer by ACH on file with Flockjay, or if the ACH is no longer operational, by  
26 check to the consumer's last known mailing address, or such updated mailing address as can be  
27 identified through customary address verification means and will be accompanied by a letter or  
28 email letter in the form provided in Paragraph 8. Flockjay shall bear the cost of all expenses related

1 to providing the Refunds described herein, including, but not limited to, the costs of mailing and  
2 stopping payment on outstanding checks that are not returned or cashed.

3 6. Refund Report. No later than ninety (90) calendar days after the Effective Date,  
4 Flockjay shall submit a report containing, at a minimum, the following information and  
5 documentation: Borrower name; Borrower address; Borrower email address; Borrower phone  
6 number, financed amount; date financed; refund amount; date the refund was issued; whether by  
7 check or via ACH transaction; the check number; and an indication as to whether the check was  
8 cashed or ACH transaction successfully transferred funds. Notice of any Refunds, including the  
9 borrower's name, last known address, and total refund amount, shall be sent to Kelly Suk,  
10 Senior Counsel at the e-mail address noted in Paragraph 22.

11 7. Unclaimed Refunds. Respondent shall escheat any unclaimed Refunds to the  
12 California State Controller's Office within the period provided by Code of Civil Procedure section  
13 1520 of the Unclaimed Property Law (Code Civ. Proc. § 1500 *et seq.*). In the event of escheatment,  
14 notice of escheatment shall be sent to the Commissioner at the Notice address in paragraph 22  
15 within seven calendar days of escheatment.

16 8. Notice to Consumer. No later than thirty (30) calendar days after the Effective Date  
17 of this Settlement Agreement, Respondent shall send to each California consumer identified in  
18 paragraph 4, to the last known email address, a notice containing the following language:

19  
20 Pursuant to the settlement with the California Department of  
21 Financial Protection and Innovation, Flockjay, Inc., is refunding a  
22 percentage of payments made by you to Flockjay. You will receive  
23 a refund in the amount of \$XXXX.XX. All agreements between you  
24 and Flockjay are hereby rescinded. Please contact Flockjay  
25 immediately at [xxx] to confirm your current mailing address or  
26 confirm your ACH information.

27 9. Penalties. The Commissioner hereby imposes a penalty of \$100,000.00 on  
28 Respondent pursuant to California Financial Code section 90012(c) ("Penalty"), which would only  
become due and owing if Flockjay fails to make refunds and provide notice in accordance with  
paragraphs 4-8 above Should Flockjay make refunds in accordance with the aforementioned

1 paragraphs the Commissioner shall waive collection of the Penalty. For avoidance of doubt, this  
2 penalty would not be triggered just because certain California consumers who have been notified  
3 in good faith pursuant to paragraph 8 have not responded to such notices or failed to claim their  
4 pro-rated refunds.

5 10. Withdraw of Request for Hearing and Waiver of Hearing Rights. Respondent  
6 hereby withdraws its Notice of Defense and request for an administrative hearing on the  
7 Accusation. Respondent acknowledges that the Commissioner is ready, willing and able to  
8 proceed with the administrative action described above, and Respondent hereby waives the right to  
9 a hearing, and to any reconsideration, appeal, or other right to review which may be afforded  
10 pursuant to the CCFPL; the California Administrative Procedure Act, the California Code of Civil  
11 Procedure, or any other provision of law; and by waiving such rights, Respondent effectively  
12 consents to this Agreement becoming final.

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

19 12. Information Willfully Withheld or Misrepresented. This Settlement Agreement  
20 may be rescinded and the Commissioner may pursue any and all remedies available under law  
21 against Respondent if the Commissioner discovers that Respondent knowingly or willfully  
22 withheld or misrepresented information used for and relied upon in this Settlement Agreement.

23 13. Assisting Other Agencies. Nothing in this Settlement Agreement limits the  
24 Commissioner's ability to assist any other government agency (city, county, state, or federal) with  
25 any prosecution, administrative, civil or criminal brought by that agency against Respondent or  
26 any other person based upon any of the activities alleged in this matter or otherwise.

27 14. Headings. The headings to the paragraphs of this Settlement Agreement are  
28 inserted for convenience only and will not be deemed a part hereof or affect the construction or

1 interpretation of the provisions hereof.

2 15. Binding. This Settlement Agreement is binding on all heirs, assigns, and/or  
3 successors in interest.

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

14 17. Waiver, Amendments, and Modifications. No waiver, amendment, or modification  
15 of this Settlement Agreement will be valid or binding unless it is in writing and signed by each of  
16 the Parties. The waiver of any provision of this Settlement Agreement will not be deemed a  
17 waiver of any other provision. No waiver by either party of any breach of, or of compliance with,  
18 any condition or provision of this Settlement Agreement by the other party will be considered a  
19 waiver of any other condition or provision or of the same condition or provision at another time.

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

26 19. Governing Law. This Settlement Agreement will be governed by and construed in  
27 accordance with California law. Each of the parties hereto consents to the jurisdiction of any  
28 court, and hereby irrevocably waives, to the fullest extent permitted by law, the defense of an

1 inconvenient forum to the maintenance of such action or proceeding in such court.

2 20. Effect Upon Future Proceedings. If Respondent applies for any license, permit or  
3 qualification under the Commissioner’s current or future jurisdiction, or are the subject of any  
4 future action by the Commissioner to enforce this Settlement Agreement, then the subject matter  
5 hereof shall be admitted for the purpose of such application(s) or enforcement proceedings(s).

6 21. Counterparts. This Settlement Agreement may be executed in one or more separate  
7 counterparts, each of which will be deemed an original when so executed. Such counterparts  
8 together will be deemed to constitute a single document.

9 22. Notice. Any notice required under this Settlement Agreement shall be provided to  
10 each party by email and overnight mail/courier service at the following addresses.

11 To Flockjay: Shaan Hathiramani, CEO Flockjay  
12 Attn: Patrick Hammon  
13 2550 Hanover Street  
14 Palo Alto, CA 94304-1115  
Patrick.hammon@pillsburylaw.com

15 To the Commissioner: Kelly Suk  
16 Senior Counsel, Enforcement Division  
17 Department of Financial Protection and Innovation  
18 320 West Fourth Street,  
Los Angeles, California 90013  
Kelly.suk@dfpi.ca.gov

19 23. Signatures. A fax or electronic-mail signature will be deemed an original signature.  
20 The parties to this agreement have consented to execute this agreement by electronic means  
21 pursuant to the California Uniform Electronic Transactions Act, Cal. Civil Code sections 1633.1 *et*  
22 *seq.*

23 24. Public Record. Respondent hereby acknowledges that this Settlement Agreement is  
24 a matter of public record.

25 25. Effective Date. This Settlement Agreement shall become final and effective when  
26 signed by all parties and delivered by the Commissioner’s agent via e-mail to Patrick Hammon at  
27 patrick.hammon@pillsburylaw.com.

28 26. Authority to Sign. Each signatory hereto covenants that he/she possesses all



1 necessary capacity and authority to sign and enter into this Settlement Agreement and undertake the  
2 obligations set forth herein.

3 This Settlement Agreement is in the public interest, is necessary for the protection of  
4 investors, and is consistent with the purposes, policies, and provisions of the CCFPL.

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6 Dated: December 15, 2023

CLOTHILDE V. HEWLETT  
Commissioner of Financial Protection and Innovation



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By: \_\_\_\_\_  
Mary Ann Smith  
Deputy Commissioner  
Enforcement Division

13 Dated: December 15, 2023

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Flockjay, Inc.

By: \_\_\_\_\_

Name: Shaan Hathiramani

Title: CEO