

1 CLOTHILDE V. HEWLETT
Commissioner
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Deputy Commissioner
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5 Department of Financial Protection and Innovation
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7 Attorneys for Complainant

8
9 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
10 OF THE STATE OF CALIFORNIA

11 In the Matter of:)
) DESIST AND REFRAIN ORDER; ORDER
12 THE COMMISSIONER OF FINANCIAL) ASSESSING PENALTIES AND CLAIM FOR
PROTECTION AND INNOVATION,) ANCILLARY RELIEF (Cal. Fin. Code 28170,
13) Cal. Fin. Code, §§ 90015 and 90012)
14 Complainant,)
15 v.)
)
16 FINANCIAL ENHANCEMENT SERVICES,)
INC.,)
17)
18 Respondent.)
)
19)
20)

21 The Commissioner of Financial Protection and Innovation (Commissioner) finds the
22 following:

23 **I.**

24 **Introduction**

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

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II.

Factual Background

2. At all relevant times, Financial Enhancement Services Inc. (FES) is a Florida corporation operating at the following address: 8359 Beacon Blvd #315 Fort Myers, Florida 33907.

3. Raymond Del Valle (Valle) is the President and Joe Coto (Coto) is the Vice President of FES.

4. At all relevant times, FES operates the website www.fesinc.org. The website advertised “We’ll meticulously assess your eligibility for various loan forgiveness options and income-driven repayment plans, stop wage garnishment, and even provide a brief pause in student loan payments while your application processes, ensuring you explore every avenue for debt relief.”

5. Beginning in at least July 2022, FES contacted California consumers via outbound telemarketing calls regarding their services.

6. In connection with telemarketing and debt relief services offered by FES to at least nineteen California consumers, FES has misrepresented, directly or indirectly, expressly or by implication, material aspects of their debt relief services, including but not limited to:

- a. Falsely claiming that FES was working under the guidance of the United States Department of Education (U.S. Department of Education). In fact, FES was not working under the guidance of the U.S. Department of Education, and had no affiliation, relationship, or contract with the U.S. Department of Education or federal student loan servicers.
- b. Falsely claiming that FES’ services are from the U.S. Department of Education. In fact, FES was not providing services directly from the U.S. Department of Education, and had no affiliation, relationship, or contract with the U.S. Department of Education or federal student loan servicers.
- c. Falsely claiming that FES provides student loan forgiveness, and that consumers could not apply directly for enrollment in various federal student loan forgiveness programs and income-driven repayment programs such as the Saving on Valuable Education (SAVE) Plan without the services of FES. In fact, consumers can apply

1 for federal student loan forgiveness programs and income-driven repayment plans
2 directly through the U.S. Department of Education or their student loan servicers at
3 no cost to the consumer. These programs do not require the assistance of a third-
4 party company or payment of application fees.

- 5 d. Making false statements regarding their role with the U.S. Department of Education
6 and sole ability to enroll consumers in the SAVE plan, which enabled them to obtain
7 customer information of a financial institution, such as credit or debit card numbers,
8 bank account numbers, and routing numbers.
- 9 e. Falsely informing consumers that if they pay for FES services, they are guaranteed to
10 receive student loan forgiveness or have their student loan payments reduced.
- 11 f. Encouraging consumers to provide FES with their Federal Student Aid
12 (<https://studentaid.gov>) password and username. The Federal Student Aid password
13 and username allow access to consumer’s student loan information and payment plan
14 confirmation.
- 15 g. Falsely claiming that they would assume all responsibility for student loan servicing
16 when they failed to contact the consumer’s student loan servicer and directed the
17 consumer to ignore all communications from their student loan servicer.

18 7. In Student Loan Service Agreements (Service Agreements) sent to customers, FES
19 stated that it provides the following services: “conduct financial analysis of the Client’s current
20 financial circumstances” and “discuss with the client the various options that may be available to the
21 Client regarding their outstanding student loan(s).”

22 8. The Service Agreements state that, “FES shall promptly contact the Client’s existing
23 servicer(s) and request forbearance or deferment of the client’s current student loan payment(s)
24 during the processing of the application.”

25 9. FES requires customers to pay at least one installment of \$199 or \$299 that goes
26 towards either the \$600 Pro Premium program fee or the \$900 Pro Ultra program fee that is collected
27 in advance of providing any services, including altering the terms of the consumer’s student loans
28 and/or before the consumer made any payments pursuant to a settlement agreement, debt

1 management plan, or other valid contractual agreement between the consumer and U.S. Department
2 of Education.

3 10. In at least one instance, where a consumer declined FES' services on the phone call
4 and told FES not to charge the consumer for their services, FES charged the consumer \$500 the next
5 day, without authorization, for FES' services.

6 11. FES requested payment from at least twenty-one California consumers in the course
7 of telemarketing its services and charged at least twenty-one California consumers for assistance
8 with student loan modification or forgiveness services before the borrowers' student loans were
9 successfully modified or forgiven.

11 III.

12 Applicable Law – TSR

13 12. The Telemarketing Sales Rule (TSR) (16 C.F.R. §§ 310.1-310.9) is the implementing
14 regulation of the federal Telemarketing and Consumer Fraud and Abuse Prevention Act
15 (Telemarketing Act) (15 U.S.C. §§ 6101-6108). Pursuant to section 3(c) of the Telemarketing Act
16 (15 U.S.C. § 6102(c)) and section 18(d)(3) of the Federal Trade Commission Act (FTC Act) (15
17 U.S.C. § 57a(d)(3)), a violation of the TSR constitutes an unfair or deceptive act or practice in or
18 affecting commerce in violation of section 5(a) of the FTC Act (15 U.S.C. § 45(a)).

19 13. It is a violation of the TSR for any seller or telemarketer to request or receive
20 payment of any fee or consideration for any debt relief service until and unless: (1) the "seller or
21 telemarketer has renegotiated, settled, reduced, or otherwise altered the terms of at least one debt
22 pursuant to a settlement agreement, debt management plan, or other such valid contractual
23 agreement executed by the customer;" and (2) the "customer has made at least one payment pursuant
24 to that settlement agreement, debt management plan, or other valid contractual agreement between
25 the customer and the creditor or debt collector." 16 C.F.R. § 310.4(a)(5)(i).

26 14. It is also a violation of the TSR for any seller or telemarketer to misrepresent directly
27 or by implication any material aspect of any debt relief service, including but not limited to, a
28 seller's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or

1 government entity, and any material aspect of any debt relief service, including but not limited to,
2 the amount of money or the percentage of the debt amount that a customer may save by using such
3 service. 16 C.F.R. § 310.3(a)(2)(vii) & (x).

4 15. 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 creditor
8 or debt collector.” 16 C.F.R. § 310.2(o).

9 16. 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(ee).

12 17. 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(gg).

14 18. 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 telephones
16 and which involves more than one interstate telephone call.” 16 C.F.R. § 310.2(hh).

17 V.

18 **Applicable Law – Impersonation Rule**

19 19. The Impersonation Rule, promulgated by the FTC under Section 18 of the FTC Act,
20 15 U.S.C. § 57a, became effective on April 1, 2024, and remains in full force and effect. The
21 Impersonation Rule is codified at 16 C.F.R. Part 461.

22 20. Section 461.2(b) of the Impersonation Rule prohibits “materially misrepresent[ing],
23 directly or by implication, affiliation with, including endorsement or sponsorship by, a government
24 entity or officer thereof, in or affecting commerce as commerce is defined in the Federal Trade
25 Commission Act (15 U.S.C. 44).”

26 21. The Impersonation Rule defines “materially” to mean “likely to affect a person’s
27 choice of, or conduct regarding, goods or services.” 16 C.F.R. § 461.1. The Impersonation Rule
28

1 defines “government” to include “federal, state, local, and tribal governments as well as agencies
2 and departments thereof.” 16 C.F.R. § 461.1.

3 22. Pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the
4 Impersonation Rule constitutes an unfair or deceptive act or practice in or affecting commerce, in
5 violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

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7 **VI.**

8 **Applicable Law – GLBA**

9 23. Section 521(a) of the Gramm-Leach-Bliley Act (GLB Act), 15 U.S.C. § 6821(a),
10 prohibits any person from “obtaining or attempting to obtain...customer information of a financial
11 institution relating to another person...by making a false, fictitious, or fraudulent statement or
12 representation to a customer of a financial institution.”

13 24. The GLB Act defines “customer” to mean “with respect to a financial institution, any
14 person (or authorized representative of a person) to whom the financial institution provides a product
15 or service, including that of acting as a fiduciary.” 15 U.S.C. § 6827(1).

16 25. The GLB Act defines “customer information of a financial institution” as “any
17 information maintained by or for a financial institution which is derived from the relationship
18 between the financial institution and a customer of a financial institution and is identified with the
19 customer.” 15 U.S.C. § 6827(2).

20 26. The GLB Act defines “financial institution” to include “any institution engaged in
21 the business of providing financial services to customers who maintain a credit, deposit, trust, or
22 other financial account or relationship with the institution.” 15 U.S.C. § 6827(4)(A).

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24 **IV.**

25 **Applicable Law – CCFPL**

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

1 28. For any person who knowingly or recklessly provides substantial assistance to a
2 covered person or service provider in violation of subdivision (a), or any rule or order issued
3 thereunder, the provider of that substantial assistance shall be deemed to be in violation of that
4 section to the same extent as the person to whom that assistance is provided. Cal. Fin. Code,
5 § 90003, subd. (b).

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

8 30. A “consumer financial product or service” is generally a “financial product or service
9 that is delivered, offered, or provided for use by consumers primarily for personal, family, or
10 household purposes.” Cal. Fin. Code, § 90005, subd. (e)(1).

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

15 32. Under Financial Code section 90015, subdivision (d), if, in the opinion of the
16 Commissioner, any person engages, has engaged, or proposes to engage in any activity prohibited by
17 section 90003 or 90004, the Commissioner “may issue an order directing the person to desist and
18 refrain from engaging in the activity, act, practice, or course of business.”

19 33. In any administrative action under Financial Code section 90015, the Commissioner
20 may include a claim for ancillary relief as provided in section 90012, subdivision (b). Cal. Fin. Code,
21 § 90015, subd. (e).

22 34. Relief may include, but is not limited to, “[r]escission or reformation of contracts.”
23 “[r]efund of moneys[,]” and “[m]onetary penalties.” Cal. Fin. Code, § 90012, subd. (b)(1), (2), (8).

24 35. Under Financial Code section 90012, subdivision (c), in any administrative action
25 brought pursuant to the CCFPL, any person that violates, through any act or omission, any provision
26 of the CCFPL shall forfeit and pay a penalty not exceeding \$2,500.00 for each act or omission in
27 violation of the CCFPL. Cal. Fin. Code, § 90012, subd. (c)(1)(A)(i).

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VII.

Desist and Refrain Order – CCFPL

36. FES is a “covered person” under the CCFPL that engages in offering or providing consumer financial products or services to California consumers, including, but not limited to, financial advisory services such as assisting consumers with debt management or debt settlement and modifying the terms of any extension of credit relating to student loans. Cal. Fin. Code, § 90005, subd. (k)(8)(B).

37. FES is a seller and telemarketer that provided, offered to provide, or arranged for others to provide debt relief services within the meaning of the TSR.

38. FES requested or received from at least twenty-one California consumers advance fees for debt relief services in violation of the TSR, 16 C.F.R. § 310.4(a)(5).

39. FES has deceptively misrepresented, directly or indirectly, expressly or by implication, material aspects in the telemarketing of and otherwise of their debt relief services to at least nineteen California consumers, in violation of the TSR, 15 C.F.R. § 310.4(a)(2)(vii) & (x); the Impersonation Rule under Section 18 of the FTC Act; and Section 521(a) of the Gramm-Leach-Bliley Act.

40. Based on the foregoing, the Commissioner is of the opinion that FES is a covered person or service provider that engaged in or is proposing to engage in unlawful acts and practices, in violation of California Financial Code section 90003(a)(1). Further, the Commissioner finds that FES violated Financial Code section 90003(a)(2) by offering or providing to a consumer a financial product or service not in conformity with, or otherwise committed any act or omission in violation of, the following consumer financial laws:

- a. Section 310.4(a)(5)(i) of the TSR (“Abusive telemarketing acts or practices”);
- b. Sections 310.3(a)(2)(vii) & (x) of the TSR (“Deceptive telemarketing acts or practices”);
- c. The Impersonation Rule under Section 18 of the FTC Act, 15 U.S.C. § 57a; and
- d. Section 521(a) of the GLB Act.

41. Pursuant to Financial Code section 90015(d)(1), FES and its managers, officers,

1 directors, agents, or employees, are hereby ordered to desist and refrain from engaging in, or
2 proposing to engage in, unlawful acts or practices in with respect to consumer financial products or
3 services in violation of California Financial Code section 90003(a)(1), or offering or providing to a
4 consumer any financial product or service not in conformity with any consumer financial laws,
5 including but not limited to the following:

6 e. Section 310.4(a)(5)(i) of the TSR (“Abusive telemarketing acts or practices”);

7 f. Sections 310.3(a)(2)(vii) & (x) of the TSR (“Deceptive telemarketing acts or
8 practices”);

9 g. The Impersonation Rule under Section 18 of the FTC Act, 15 U.S.C. § 57a; and

10 h. Section 521(a) of the GLB Act.

11 42. Furthermore, based on the foregoing findings, the Commissioner is of the opinion
12 that FES is a covered person or service provider that engaged in deceptive acts or practices with
13 respect to consumer financial products or services in violation of the California Financial Code
14 section 90003(a)(1).

15 43. Pursuant to Financial Code section 90015(d)(1), FES and its managers, officers,
16 directors, agents, or employees, are hereby ordered to desist and refrain from engaging in, or
17 proposing to engage in, deceptive acts or practices with respect to consumer financial products or
18 services in violation of California Financial Code section 90003(a)(1) (collectively with the above,
19 CCFPL Order).

20 44. This CCFPL Order is necessary, in the public interest, and consistent with the
21 purposes, policies, and provisions of the CCFPL. This CCFPL Order shall remain in full force and
22 effect until further order of the Commissioner.

23
24 **VIII.**

25 **Claims for Ancillary Relief – CCFPL**

26 45. Based on the foregoing, the Commissioner is of the opinion that FES engaged in
27 unlawful acts or practices in violation of Financial Code section 90003(a)(1), including but not
28 limited to, section 310.4(a)(5)(i) of the TSR; section 310.3(a)(2)(vii) & (x) of the TSR; the

1 Impersonation Rule; and the GLB Act. Additionally, the Commissioner is of the opinion that FES
2 engaged in deceptive acts and practices in violation of Financial Code section 90003(a)(1).

3 46. Pursuant to Financial Code section 90015, subdivision (e), and Financial Code
4 section 90012, subdivision (b)(1), the Commissioner hereby orders that all agreements between FES
5 and California consumers relating to the performance of debt relief, debt management, or debt
6 consulting services by FES (Agreements) are rescinded. FES shall not assign, sell, or transfer the
7 rescinded Agreements to any other entity, nor shall FES, or any other entity, charge or collect any
8 payments from California consumers pursuant to the rescinded Agreements.

9 47. Pursuant to Financial Code section 90012(b), FES is hereby ordered to refund all
10 unlawful fees collected from California consumers in violation of the CCFPL from January 1, 2021,
11 through the date of this Order. FES shall pay each of the refunds directly to the respective
12 consumers no later than October 18, 2024. No later than November 01, 2024, notice of the refund
13 payments shall be sent to Safa Sajadi, Senior Counsel, Department of Financial Protection and
14 Innovation, Enforcement Division, 320 W. 4th Street, Suite 750, Los Angeles, California 90013.

15 IX.

16 Assessment of Penalties – CCFPL

17 48. Based on the foregoing and pursuant to Financial Code sections 90015(c) and
18 90012(b)(8), and after due consideration of possible mitigating factors and other appropriate
19 considerations per subdivision (c)(1)(B), FES, and/or FES's officers, successors, and assigns, by
20 whatever names they might be known, jointly and severally, are hereby ordered to pay the
21 Commissioner a penalty of \$242,500.00 for at least 21 violations of section 310.4(a)(5)(i) of the
22 Telemarketing Sales Rule and therefore Financial Code sections 90003(a)(1) & (a)(2) for engaging
23 in unlawful acts and practices; at least nineteen violations of sections 310.4(a)(2)(vii) & (x) of the
24 TSR and therefore Financial Code sections 90003(a)(1) & (a)(2) for engaging in unlawful acts and
25 practices; at least nineteen violations of the Impersonation Rule and therefore Financial Code
26 sections 90003(a)(1) & (a)(2) for engaging in unlawful acts and practices; at least nineteen violations
27 of section 521(a) of the GLB Act and therefore Financial Code sections 90003(a)(1) & (a)(2) for
28 engaging in unlawful acts and practices; and at least nineteen violations of Financial Code section
90003(a)(1) for engaging in deceptive acts and practices, due and payable to the Commissioner

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within 30 days of this Order. The cashier’s check shall be mailed to the attention of “Accounting—
Litigation” at Department of Financial Protection and Innovation, 2101 Arena Boulevard,
Sacramento, California 95834-2036. Notice of such payment shall be forwarded to Safa Sajadi,
Senior Counsel, by email at: Safa.Sajadi@dfpi.ca.gov.

Dated: September 17, 2024
Sacramento, California

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation



By: _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division