**UNITED STATES OF AMERICA**
**BUREAU OF CONSUMER FINANCIAL PROTECTION**

ADMINISTRATIVE PROCEEDING
File No. 2019-BCFP-0011

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| **In the Matter of:**<br><br>**EDMISTON MARKETING, LLC, d/b/a EASY MILITARY TRAVEL; AND BRANDON EDMISTON** | **CONSENT ORDER** |

The Bureau of Consumer Financial Protection (Bureau) has reviewed the marketing and lending activities of Edmiston Marketing, LLC, d/b/a Easy Military Travel (Corporate Respondent, as defined below), and Brandon Edmiston (Individual Respondent, as defined below) (collectively, Respondents, as defined below) and has identified the following law violations. Corporate Respondent has violated the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5531, 5536; the Truth in Lending Act (TILA), 15 U.S.C. § 1604(a), and Regulation Z 12 C.F.R. §§ 1026.18(b)-(e), (g) & (h); and the Telemarketing Sales Rule (TSR), 16 C.F.R. §§ 310.3(a)(1)(i). Individual Respondent has violated the CFPA, 12 U.S.C. §§ 5531, 5536; and the TSR, 16 C.F.R. §§ 310.3(b). Under §§ 1053 and

1055 of the CFPA, 12 U.S.C. §§ 5563, 5565, the Bureau issues this Consent Order (Consent Order).

## I.

## Jurisdiction

1. The Bureau has jurisdiction over this matter under §§ 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563, 5565; § 108 of TILA, 15 U.S.C. § 1607; and § 6 of the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. § 6105(d).

## II.

## Stipulation

2. Respondents have executed a "Stipulation and Consent to the Issuance of a Consent Order," dated September 27, 2019 (Stipulation), which is incorporated by reference and is accepted by the Bureau. By this Stipulation, Respondents have consented to the issuance of this Consent Order by the Bureau under §§ 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563, 5565, without admitting or denying any of the findings of fact or conclusions of law, except that Respondents admit the facts necessary to establish the Bureau's jurisdiction over Respondents and the subject matter of this action.

## III.

## Definitions

3. The following definitions apply to this Consent Order:

a. "Affected Consumers" includes all consumers who financed airline tickets with Corporate Respondent from July 21, 2011 to December 31, 2016 and who were charged a mark-up on such tickets that exceeded the mark-up charged to consumers who made payment outright, typically with debit or credit cards, to Corporate Respondent.

b. "Clearly and prominently" means:

i. in textual communications (e.g., printed publications or words displayed on the screen of an electronic device), a type-size and location sufficiently noticeable for an ordinary consumer to read and comprehend it and in print that contrasts with the background on which it appears;

ii. in communications disseminated orally or through audible means (e.g., radio or streaming audio), a volume and cadence sufficient for an ordinary consumer to hear and comprehend it;

iii. in all instances, presented before the consumer incurs any financial obligation, in an understandable language and syntax, and with nothing contrary to, inconsistent with, or in mitigation

of the disclosures used in any communication with the consumer.

c. "Consumer Lending" means: (1) granting a consumer the right, for primarily personal, family, or household purposes, to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment for such purchases; and (2) purchasing accounts or debts generated as described in subsection (1), above. "Consumer Lending" shall not include any act or omission related to the granting or collection of any receivable owed to a business, person, or other entity whose primary business or personal purpose is not to engage in Consumer Lending.

d. "Corporate Respondent" means Edmiston Marketing, LLC, d/b/a Easy Military Travel, and its successors and assigns.

e. "Effective Date" means the date on which the Consent Order is issued.

f. "Enforcement Director" means the Assistant Director of the Office of Enforcement for the Bureau of Consumer Financial Protection, or his or her delegate.

g. "Family Member" means a spouse, unremarried widow or widower, former spouse, sibling, parent, or child of a member or former member of a uniformed service.

h. "Individual Respondent" means Brandon Edmiston.

i. "Related Consumer Action" means a private action by or on behalf of one or more consumers or an enforcement action by another governmental agency brought against any Respondent based on substantially the same facts as described in Section IV of this Consent Order.

j. "Respondents" means Corporate Respondent and Individual Respondent.

## IV.

## Bureau Findings and Conclusions

The Bureau finds the following:

4. Corporate Respondent was a limited-liability corporation headquartered in Murray, Kentucky and incorporated in Kentucky. It was dissolved in Kentucky effective July 1, 2016.

5. Individual Respondent was the sole owner and principal officer of Corporate Respondent. Individual Respondent formulated, directed, controlled, or participated in the practices of Corporate Respondent.

6. Around 2010, under the direction and ownership of Individual Respondent, Corporate Respondent began selling and financing airline tickets to military servicemembers and their families and did so until 2016. Most of the tickets financed by servicemembers were repaid using allotments, payments made directly from the military to the creditor from amounts drawn out of servicemembers' paychecks.

7. Corporate Respondent advertised its services over the internet, but it typically facilitated its sales by telephone and often interacted with consumers on the telephone.

8. Corporate Respondent provided financing to consumers in two ways. From about 2010 through 2016, Corporate Respondent provided finance contracts on which another company served as creditor, essentially serving as a broker for that finance company. In addition, from about 2013 to 2016, Corporate Respondent originated financing to certain consumers where it was the creditor.

9. Corporate Respondent was a "covered person" as that term is defined by 12 U.S.C. § 5481(6).

10. From its inception around 2010 until its dissolution in 2016, Corporate Respondent was under the direction and control of Individual Respondent. Individual Respondent formulated, directed, controlled or participated in the

practices of Corporate Respondent relevant to this Consent Order. When Corporate Respondent ceased doing business in 2016, Respondent personally assumed its outstanding debts.

11. Because Individual Respondent served as an officer and manager of Corporate Respondent, he is a "related person" under the CFPA, and as such, he is deemed a "covered person" under the CFPA. 12 U.S.C. § 5481(25).

12. Corporate Respondent was a creditor for purposes of TILA because it regularly extended consumer credit that was subject to a finance charge or was payable by written agreement in more than four installments, and was the entity to whom the obligation was initially payable. 12 C.F.R. § 1026.2(a)(17).

13. Corporate Respondent was both a "seller" and "telemarketer" under the TSR because it offered to provide and did provide financing for flight travel in exchange for money by initiating outbound calls to consumers who had provided their contact information via Corporate Respondent's website. 16 C.F.R. § 310.2(dd) & (ff).

14. In connection with the loans Corporate Respondent issued, Corporate Respondent failed to include in the documentation provided to consumers:

    a. the actual finance charge as a dollar amount;

b. a description of the "Total Amount Financed"; and

c. a total of payments or an equivalent disclosure, or description of that term.

15. The actual finance charge, as well as the annual percentage rate (APR), Corporate Respondent provided to consumers also failed to include a mark-up that Corporate Respondent imposed on tickets purchased using financing.

16. While a majority of the tickets it sold were financed, in 2012, Corporate Respondent also began accepting upfront payment, typically with debit or credit cards, for airline tickets. Corporate Respondent charged a flat fee of $39.99, and occasionally $79.98 for multi-ticket transactions, when consumers paid up front. But for tickets purchased using financing, Corporate Respondent charged a mark-up that was a percentage of the cost of the ticket, on average 109% of the cost. Therefore, consumers who financed their purchases paid on average about double the amount paid by consumers who purchased their tickets outright.

17. Individual Respondent was responsible for the mark-up policy and practice by Corporate Respondent. Among other things, he created the mathematical formula the company used to determine how to mark up the airline-ticket prices for consumers who financed their purchases and set the fees charged to consumers who paid outright for their tickets. Individual Respondent also

generated the form contracts used by Corporate Respondent for financing airline tickets.

18. Corporate Respondent would contact consumers over the phone about ticket sales and financing. When consumers asked Corporate Respondent's employees what their monthly cost of credit was—sometimes by asking for the interest rate, and sometimes by asking how much the loan would cost them—Corporate Respondent's employees were instructed to respond, and did respond, that the monthly interest rate was 2%. In some instances, employees told consumers that the rate was 2.5%. In making these statements, Corporate Respondent's employees were not instructed to provide, and did not provide, the APR. Moreover, in many cases, a monthly interest rate of 2% or even 2.5% was inaccurate.

19. Individual Respondent, among other things, worked to create the employee manuals containing the scripted sales pitches and scripted answers to anticipated consumer questions, including the representation that the monthly interest rate of the financing for airline tickets was 2%. Individual Respondent also monitored calls to ensure that they were consistent with the employee manuals.

## Findings and Conclusions as to Violations of the Truth-in-Lending Act (Corporate Respondent)

20. TILA and its implementing regulation, Regulation Z, require that a business or individual that extends closed-end credit make disclosures "clearly and conspicuously in writing, in a form that the consumer may keep." 12 C.F.R. § 1026.17(a)(1).

21. Corporate Respondent was a provider of closed-end credit as defined by Regulation Z because it did not reasonably contemplate repeated transactions and did not make credit available during the plan term to the consumer to the extent that any outstanding balance was repaid. Instead, Corporate Respondent required its repeat finance customers to be approved for new credit in order to finance additional ticket purchases. 12 C.F.R. § 1026.2(a)(10) & (20).

### *Failure to disclose the true finance charge and annual percentage rate, in violation of Regulation Z*

22. Regulation Z requires a provider of closed-end credit to disclose "[t]he finance charge, using that term, and a brief description such as 'the dollar amount the credit will cost you.'" 12 C.F.R. § 1026.18(d).

23. Regulation Z defines "finance charge" as "the cost of consumer credit as a dollar amount." 12 C.F.R. § 1026.4(a). "It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by

the creditor as an incident to or a condition of the extension of credit. It does not include any charge of a type payable in a comparable cash transaction." *Id.*

24. Regulation Z also requires a provider of closed-end credit to disclose "[t]he annual percentage rate, using that term, and a brief description such as 'the cost of your credit as a yearly rate.'" 12 C.F.R. § 1026.18(e).

25. A statement of APR in a regular closed-end transaction is generally considered accurate if it is not "more than 1/8 of 1 percentage point above or below the annual percentage rate" determined as the yearly cost of credit. 12 C.F.R. § 1026.22(a)(2).

26. Consumers who paid up front using debit or credit cards, and who were charged a mark-up of a flat fee, made payments that were equivalent to cash transactions from the perspective of Corporate Respondent, because Corporate Respondent realized payment immediately.

27. The difference in the mark-up amount assessed to consumers who financed their ticket purchases, and the mark-up amount assessed to consumers who paid outright, was a finance charge that should have been disclosed by Corporate Respondent in its contracts with consumers.

28. Corporate Respondent's finance contracts did not disclose the true finance charge in a dollar amount. Corporate Respondent disclosed a "minimum

finance charge" of $0.50. The actual finance charge, however, was always significantly greater than $0.50.

29. Corporate Respondent not only failed to disclose the true finance charge on the travel loan contracts, it also failed to incorporate the true finance charge when calculating the APR that was disclosed on the travel loan contracts to consumers.

30. As a result, when the true finance charge is factored into the calculation of the APRs, Corporate Respondent's contracts understate the APR by more than 1/8 of 1 percentage point in every instance.

31. As a result of the conduct described above, Corporate Respondent violated 12 C.F.R. § 1026.18(d), 12 C.F.R. § 1026.18(e), and 12 C.F.R. § 1026.17(a)(1).

***Failure to disclose the amount financed, in violation of Regulation Z***

32. Regulation Z requires a provider of closed-end credit to disclose "[t]he amount financed, using that term, and a brief description such as the amount of credit provided to you or on your behalf." 12 C.F.R. § 1026.18(b).

33. From around 2013 to 2016, in connection with the extension of credit, Corporate Respondent failed to disclose the amount financed or a brief description of that term in its finance contracts with consumers.

34. As a result of the conduct described above, Corporate Respondent violated 12 C.F.R. § 1026.18(b) and 12 C.F.R. § 1026.17(a)(1).

***Failure to disclose the total of payments, in violation of Regulation Z***

35. Regulation Z requires a provider of closed-end credit to disclose "[t]he total of payments, using that term, and a descriptive explanation such as 'the amount you will have paid when you have made all scheduled payments.'" 12 C.F.R. § 1026.18(h).

36. From around 2013 to 2016, in connection with the extension of credit, Corporate Respondent failed to disclose in the documentation provided to consumers the total amount a consumer would pay when accounting for both the amount financed and the interest accrued on that amount in the event that a consumer made all scheduled payments. Corporate Respondent thus failed to disclose the total of payments, and failed to provide a descriptive explanation of that term.

37. As a result of the conduct described above, Corporate Respondent violated 12 C.F.R. § 1026.18(h) and 12 C.F.R. § 1026.17(a)(1).

***Oral representations regarding cost of credit, including failure to disclose APR, in violation of Regulation Z***

38. Regulation Z provides that "[i]n an oral response to a consumer's inquiry about the cost of closed-end credit, only the annual percentage rate shall be

stated, except that a simple annual rate or periodic rate also may be stated if it is applied to an unpaid balance." 12 C.F.R. § 1026.26(b).

39. From around 2013 to 2016, in connection with the extension of closed-end credit, Corporate Respondent failed to state the known APR in oral responses to consumers' inquiries about the cost of closed-end credit.

40. As a result of the conduct described above, by orally disclosing a monthly interest rate in response to consumer inquiries without also stating the APR, Corporate Respondent violated 12 C.F.R. § 1026.26(b).

**Findings and Conclusions as to Violations of the Consumer Financial Protection Act (Corporate Respondent and Individual Respondent)**

41. Sections 1031 and 1036(a)(1)(B) of the CFPA prohibit covered persons from engaging "in any unfair, deceptive, or abusive act or practice." 12 U.S.C. §§ 5531, 5536(a)(1)(B).

42. An act or practice is deceptive under the CFPA if (i) there is a representation or omission of information that is likely to mislead consumers acting reasonably under the circumstances; and (ii) that information is material to consumers.

***Deceptive statements regarding finance charge and APR, in violation of the CFPA (Corporate Respondent and Individual Respondent)***

43. From as early as July 21, 2011 to 2016, in connection with the extension of credit, Corporate Respondent, under the control and direction of Individual Respondent, significantly understated the true APR associated with the travel financing extended to consumers and omitted the disclosure of the finance charge, which was a charge associated only with the cost of airline tickets purchased through credit financing.

44. The finance charge, as disclosed by the documents provided to consumers by Corporate Respondent, was inaccurately low. It did not include the additional mark-up of the airline ticket that consumers were assessed if they financed the airline tickets provided by Corporate Respondent. The finance charge should have included the amount of the mark-up over the price of the airline ticket minus the flat fee that was charged to consumers who paid up front, typically using debt or credit cards.

45. As with the finance charge, the APR disclosed on the finance contracts provided to consumers by Corporate Respondent was inaccurately low. A correct calculation of the APR should have included the additional mark-up of the airline ticket that consumers were assessed if they financed the airline tickets provided by Corporate Respondent.

46. The inaccurate documentation was generated under the direction of Individual Respondent and was provided to consumers under the direction and control of Individual Respondent. Individual Respondent also determined and set the mark-up amounts.

47. The APR and finance charge disclosed to consumers by Corporate Respondent under the control and direction of Individual Respondent were likely to mislead a reasonable consumer because they were incorrect and, in fact, significant understatements of the true APR and finance charge.

48. The understatement of the APR and the finance charge was material to consumers. It was an express statement that concerned cost and was likely to affect a consumer's conduct or decision regarding whether to enter into a loan with Corporate Respondent.

49. As a result of the conduct described above, Respondents engaged in deceptive acts and practices in violation of 12 U.S.C. § 5536(a)(1)(B).

***Deceptive statements regarding monthly interest rate, in violation of the CFPA (Corporate Respondent and Individual Respondent)***

50. From around 2013 to 2016, in connection with the extension of credit, Corporate Respondent, pursuant to the direction and control of Individual Respondent, misrepresented the monthly rate associated with consumers' finance contracts.

51. When responding by telephone to consumer inquiries about the cost of credit, Corporate Respondent's employees were instructed to and did provide a monthly rate that was inaccurate for all or nearly all of the finance contracts it offered. Representatives told consumers that the monthly interest rate was 2%, or sometimes 2.5%, when for most of the contracts the interest rate on the face of the contract was more.

52. Furthermore, when accounting for the mark-up on credit transactions, a finance charge that should have been included in the calculation of the consumer's APR, the monthly rates were even higher, and therefore the monthly rate of 2% or 2.5% was inaccurately low with respect to all consumers.

53. Individual Respondent drafted the employee manuals that contained the instruction to represent to consumers that the monthly rate for financing by Corporate Respondent was 2%, and Individual Respondent monitored employee calls to ensure that calls were conducted to his satisfaction.

54. For consumers whose interest rates were not equal to the monthly rate disclosed by Corporate Respondent's representatives, the monthly rate disclosed was likely to mislead a reasonable consumer into believing that his or her interest rate was lower than it actually was.

55. For consumers who inquired about the cost of their loans or the cost of credit of the loans, the monthly rate disclosed was likely to mislead a reasonable consumer into believing that the APR was lower than it actually was.

56. The incorrect monthly rate was material to consumers because it led consumers to believe they were paying less for credit than they truly were.

57. As a result of the conduct described above, Respondents engaged in deceptive acts and practices in violation of 12 U.S.C. § 5536(a)(1)(B).

***Substantial assistance to Corporate Respondent's deceptive statements, in violation of the CFPA (Individual Respondent)***

58. The CFPA prohibits any person from "knowingly or recklessly provid[ing] substantial assistance to a covered person or service provider" who engages in unfair, deceptive, or abusive acts or practices. 12 U.S.C. § 5536(a)(3).

59. Individual Respondent knew, or was reckless with respect to the fact, that the representations by Corporate Respondent in connection with the finance charge and APR charged to consumers in credit transactions were inaccurate and deceptive.

60. Individual Respondent provided substantial assistance to Corporate Respondent in connection with these deceptive acts and practices. From as early as July 21, 2011 to December 31, 2016, he was responsible for determining the mark-up amount for both consumers who paid for their tickets with upfront cash transactions and for consumers who paid for their

tickets with credit transactions. Individual Respondent also generated the form contracts that Corporate Respondent used for travel financing, which contained representations reflecting the finance charge and APR charged to a consumer in a credit transaction.

61. Individual Respondent knew, or was reckless with respect to the fact, that the representations by Corporate Respondent to consumers about their monthly interest rate were deceptive.

62. Individual Respondent provided substantial assistance to Corporate Respondent in connection with these deceptive acts and practices. He created the employee manuals in use by Corporate Respondent that contained the scripts used by customer service representatives. Individual Respondent managed the operations of Corporate Respondent and generated some of the form finance contracts, most of which reflected APRs of 26.99%, 29.99%, or 36%. The corresponding monthly rate for such finance contracts is greater than 2%, and the 2.5% disclosure was not accurate for finance contracts with APRs of 36%. To the extent that the APR should have included the hidden finance charge, both the 2% and the 2.5% monthly rate were inaccurate.

63. In the above ways, Individual Respondent associated himself with Corporate Respondent's deceptive acts and practices, participated in them to bring the

acts and practices about, and sought by his actions to make the acts and practices succeed.

64. Accordingly, as a result of the conduct described above, Individual Respondent substantially assisted Corporate Respondent in engaging in deceptive acts and practices, in violation of 12 U.S.C. § 5536(a)(3).

**Findings and Conclusions as to Violations of the Telemarketing Sales Rule (Corporate Respondent and Individual Respondent)**

***Failure to disclose total costs, in violation of the TSR's prohibition on deceptive statements (Corporate Respondent)***

65. The TSR prohibits "sellers" and "telemarketers" from "failing to disclose truthfully, in a clear and conspicuous manner . . . [t]he total costs to purchase, receive, or use . . . any goods or services that are the subject of the sales offer . . . ." 16 C.F.R. § 310.3(a)(1)(i).

66. In the course of telemarketing travel financing from as early as July 21, 2011 to 2016, Corporate Respondent failed to disclose truthfully, in a clear and conspicuous manner, the total costs to consumers of purchasing airline tickets through financing. Specifically, Corporate Respondent failed to disclose the actual total of payments as required by 12 C.F.R. § 1026.18(h).

67. Therefore, consumers were not informed, in a clear and conspicuous manner, about how much in total costs they were expected to pay for the

airline tickets, inclusive of the price they were charged for the airline tickets and interest.

68. As a result of the conduct described above, Corporate Respondent engaged in practices that violated the TSR, 16 C.F.R. § 310.3(a)(1)(i).

***Substantial Assistance to Corporate Respondent's failure to disclose total costs in violation of the TSR (Individual Respondent)***

69. It is prohibited under the TSR "for a person to provide substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice" that violates, among other things, the requirement under 16 C.F.R. § 310.3(a)(1)(i) that the total costs to purchase the services that are the subject of the sales offer be disclosed. 16 C.F.R. § 310.3(b).

70. Individual Respondent substantially assisted Corporate Respondent's failure to disclose truthfully, in a clear and conspicuous manner, the total costs to consumers of purchasing airline tickets through financing.

71. Individual Respondent knew or consciously avoided knowing that Corporate Respondent was engaged in such deceptive acts or practices. From as early as July 21, 2011 to December 31, 2016, he provided substantial assistance or support, including by managing the operations of Corporate Respondent, generating the form finance contracts, authoring employee manuals,

regularly overseeing telemarketing calls, and making decisions regarding the overall business model.

72. Accordingly, as a result of the conduct described above, Individual Respondent engaged in practices that violated the TSR, 16 C.F.R. § 310.3(b).

## ORDER

## V.

## Conduct Provisions

**IT IS ORDERED**, under §§ 1053 and 1055 of the CFPA, that:

73. Respondents, whether acting directly or indirectly, are permanently restrained from Consumer Lending targeted to servicemembers and their Family Members. Nothing in this Consent Order shall be read as an exception to this Paragraph.

74. Corporate Respondent and its officers, agents, servants, employees, and attorneys who have actual notice of this Consent Order, whether acting directly or indirectly, in connection with the advertising, marketing, promotion, offering for sale, or performance of Consumer Lending, may not violate 12 C.F.R. §§ 1026.17(a)(1), 1026.18(b), 1026.18(d), 1026.18(e), and 1026.26(b).

75. Respondents, and as well as Corporate Respondent's officers, agents, servants, employees, and attorneys who have actual notice of this Consent Order, whether acting directly or indirectly, in connection with the advertising, marketing, promotion, offering for sale, or performance of Consumer Lending, may not misrepresent, or assist others in misrepresenting, expressly or impliedly, the interest rate, finance charge, APR, or any other fact material to consumers concerning consumer loans, such as the total costs or any material restrictions, limitations, or conditions.

## VI.

## Compliance Plan

**IT IS FURTHER ORDERED** that:

76. To the extent Corporate Respondent resumes operations in Consumer Lending, at least 60 days before doing so, Corporate Respondent must submit to the Enforcement Director, for review and determination of non-objection, a comprehensive compliance plan designed to ensure that Corporate Respondent's marketing, offering, and provision of consumer loans comply with applicable Federal consumer protection laws and the terms of this Consent Order (Compliance Plan). The Compliance Plan must include, at a minimum:

a. detailed steps, including the development and implementation of policies and procedures, for addressing each action required by this Consent Order, including steps to ensure Corporate Respondent is not engaged in Consumer Lending targeted to servicemembers and their Family Members; and

b. specific timeframes and deadlines for implementing the steps described above.

77. The Enforcement Director will have the discretion to make a determination of non-objection to the Compliance Plan or direct Corporate Respondent to revise it. If the Enforcement Director directs Corporate Respondent to revise the Compliance Plan, Corporate Respondent must make the revisions and resubmit the Compliance Plan to the Enforcement Director within 30 days.

78. After receiving notification that the Enforcement Director has made a determination of non-objection to the Compliance Plan, Corporate Respondent must implement and adhere to the steps, recommendations, deadlines, and timeframes outlined in the Compliance Plan.

## VII.

## Order to Pay Redress

**IT IS FURTHER ORDERED** that:

79. A judgment for equitable monetary relief and damages is entered in favor of the Bureau and against Respondents in the amount of three million, four hundred and sixty-eight thousand two hundred twenty-four dollars and forty cents ($3,468,224.40); however, full payment of this judgment will be suspended upon satisfaction of the obligations in Paragraphs 92 through 94 of Section X [Additional Monetary Provisions] and subject to Section VIII [Effect of Misrepresentation or Omission of Financial Condition] of this Consent Order.].

80. With regard to any redress that Respondents pay under this Section [Order to Pay Redress], if Respondents receive, directly or indirectly, any reimbursement or indemnification from any source, including but not limited to payment made under any insurance policy, or if Respondents secure a tax deduction or tax credit with regard to any federal, state, or local tax, Respondents must: (a) immediately notify the Enforcement Director in writing, and (b) within 10 days of receiving the funds or monetary benefit, Respondents must transfer to the Bureau the full amount of such funds or monetary benefit (Additional Payment) to the Bureau or to the Bureau's agent according to the Bureau's wiring instructions. After the Bureau receives the Additional Payment, the amount of the suspended judgment

referenced in Paragraph 79 will be reduced by the amount of the Additional Payment.

81. Any funds received by the Bureau in satisfaction of this judgment will be deposited into a fund or funds administered by the Bureau or to the Bureau's agent according to applicable statutes and regulations to be used for redress for injured consumers, including but not limited to refund of moneys, restitution, damages, or other monetary relief, and for any attendant expenses for the administration of any such redress.

82. If the Bureau determines, in its sole discretion, that redress to consumers is wholly or partially impracticable or if funds remain after redress is completed, the Bureau will deposit any remaining funds in the U.S. Treasury as disgorgement. Respondents will have no right to challenge any actions that the Bureau or its representatives may take under this Section.

83. Payment of redress to any Affected Consumer under this Consent Order may not be conditioned on that Affected Consumer waiving any right.

## VIII.

### Effect of Misrepresentation or Omission Regarding Financial Condition

**IT IS FURTHER ORDERED** that:

84. The Bureau's agreement to issue this Consent Order is expressly premised on the truthfulness, accuracy, and completeness of Respondents' financial

statements and supporting documents submitted to the Bureau on or about June 21, 2019, which Respondents assert are truthful, accurate, and complete.

85. If the Bureau in its sole discretion determines that Respondents have failed to disclose any material asset or that any of its financial statements contain any material misrepresentation or omission, including materially misstating the value of any asset, then the suspension of the monetary judgment entered in Section VII [Order to Pay Redress] will be terminated, and the Bureau can seek to enforce in any Federal district court in a district in which the Respondents are located or reside or are doing business, as immediately due and payable the full judgment entered in Section VII of this Consent Order, three million, four hundred and sixty-eight thousand two hundred twenty-four dollars and forty cents ($3,468,224.40), less any amounts paid under Section VII of the Consent Order.

86. After the reinstatement of the monetary judgment under this Section, the Bureau will be entitled to interest on the judgment, computed from the date of entry of this Consent Order, at the rate prescribed by 28 U.S.C. § 1961, as amended, on any outstanding amounts not paid.

## IX.

## Order to Pay Civil Money Penalties

**IT IS FURTHER ORDERED** that:

87. Under § 1055(c) of the CFPA, 12 U.S.C. § 5565(c), by reason of the violations of law described in Section IV [Findings Section] of this Consent Order, taking into account the factors in 12 U.S.C. § 5565(c)(3), and having an inability to pay based on sworn financial statements provided to the Bureau on June 21, 2019, Respondents must pay a civil money penalty of $1 to the Bureau.

88. Within 10 days of the Effective Date, Respondents must pay the civil money penalty by wire transfer to the Bureau or to the Bureau's agent in compliance with the Bureau's wiring instructions.

89. The civil money penalty paid under this Consent Order will be deposited in the Civil Penalty Fund of the Bureau as required by § 1017(d) of the CFPA, 12 U.S.C. § 5497(d).

90. Respondents must treat the civil money penalty paid under this Consent Order as a penalty paid to the government for all purposes. Regardless of how the Bureau ultimately uses those funds, Respondents may not:

    a. claim, assert, or apply for a tax deduction, tax credit, or any other tax benefit for any civil money penalty paid under this Consent Order; or

b. seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made under any insurance policy, with regard to any civil money penalty paid under this Consent Order.

91. To preserve the deterrent effect of the civil money penalty in any Related Consumer Action, Respondents may not argue that Respondents are entitled to, nor may Respondents benefit by, any offset or reduction of any compensatory monetary remedies imposed in the Related Consumer Action because of the civil money penalty paid in this action. If the court in any Related Consumer Action offsets or otherwise reduces the amount of compensatory monetary remedies imposed against Respondents based on the civil money penalty paid in this action or based on any payment that the Bureau makes from the Civil Penalty Fund, Respondents must, within 30 days after entry of a final order granting such offset or reduction, notify the Bureau, and pay the amount of the offset or reduction to the U.S. Treasury. Such a payment will not be considered an additional civil money penalty and will not change the amount of the civil money penalty imposed in this action.

## X.

## Additional Monetary Provisions

**IT IS FURTHER ORDERED** that:

92. In the event of any default on Respondents' obligations to make payment under this Consent Order, interest, computed under 28 U.S.C. § 1961, as amended, will accrue on any outstanding amounts not paid from the date of default to the date of payment, and will immediately become due and payable.

93. Respondents must relinquish all dominion, control, and title to the funds paid to the fullest extent permitted by law and no part of the funds may be returned to Respondents.

94. Under 31 U.S.C. § 7701, Respondents, unless they already have done so, must furnish to the Bureau their taxpayer identifying numbers, which may be used for purposes of collecting and reporting on any delinquent amount arising out of this Consent Order.

95. Within 30 days of the entry of a final judgment, consent order, or settlement in a Related Consumer Action, Respondents must notify the Enforcement Director of the final judgment, consent order, or settlement in writing. That notification must indicate the amount of redress, if any, that Respondents paid or are required to pay to consumers and describe the consumers or classes of consumers to whom that redress has been or will be paid.

## XI.

## Reporting Requirements

**IT IS FURTHER ORDERED** that:

96. Respondents must notify the Bureau of any development that may affect compliance obligations arising under this Consent Order, including but not limited to, resumption of operations, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor company; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Consent Order; the filing of any bankruptcy or insolvency proceeding by or against Respondents; or a change in Respondents' names or addresses. Respondents must provide this notice, if practicable, at least 30 days before the development, but in any case no later than 14 days after the development.

97. Within 7 days of the Effective Date, Respondents must:

a. designate at least one telephone number and email, physical, and postal address as points of contact, which the Bureau may use to communicate with Respondents;

b. identify all businesses for which Individual Respondent is the majority owner, or that Individual Respondent directly or indirectly

controls, by all of their names, telephone numbers, and physical, postal, email, and Internet addresses;

c. describe the activities of each such business, including the products and services offered, and the means of advertising, marketing, and sales; and

d. describe in detail Individual Respondent's involvement in any business for which he performs services in any capacity or which he wholly or partially owns, including Individual Respondent's title, role, responsibilities, participation, authority, control, and ownership.

98. Respondents must report any change in the information required to be submitted under Paragraph 97 at least 30 days before the change or as soon as practicable after the learning about the change, whichever is sooner.

99. Within 90 days of the Effective Date, and again one year after the Effective Date, Individual Respondent must submit to the Enforcement Director an accurate written compliance progress report (Compliance Report), which, at a minimum:

a. lists each applicable paragraph and subparagraph of the Consent Order and describes in detail the manner and form in which Individual Respondent has complied with each such paragraph and subparagraph; and

100. attaches a copy of each Order Acknowledgment obtained under Section XII [Order Distribution and Acknowledgment], unless previously submitted to the Bureau. If Corporate Respondent resumes operations, within 90 days after submitting its Compliance Plan, and again one year after submitting its Compliance Plan, Corporate Respondent must submit to the Enforcement Director an accurate written compliance progress report (Compliance Report), which, at a minimum:

a. lists each applicable paragraph and subparagraph of the Consent Order and describes in detail the manner and form in which Corporate Respondent has complied with each such paragraph and subparagraph;

b. describes in detail the manner and form in which Corporate Respondent has complied with the Compliance Plan; and

101. attaches a copy of each Order Acknowledgment obtained under Section XII [Order Distribution and Acknowledgment], unless previously submitted to the Bureau.

## XII.

## Order Distribution and Acknowledgment

**IT IS FURTHER ORDERED** that:

102. Within 21 days of the Effective Date, Respondents must submit to the Enforcement Director an acknowledgment of receipt of this Consent Order, sworn under penalty of perjury.

103. Within 30 days of the Effective Date, Individual Respondent, for any business for which he is the majority owner or which he directly or indirectly controls, must deliver a copy of this Consent Order to any managers, employees, service providers, or other agents and representatives who have responsibilities related to the subject matter of the Consent Order.

104. For 5 years from the Effective Date, Individual Respondent, for any business for which he is the majority owner or which he directly or indirectly controls, must deliver a copy of this Consent Order to any such business entity, any future officers, as well as to any managers, employees, service providers, or other agents and representatives who will have responsibilities related to the subject matter of the Consent Order before they assume their responsibilities.

105. If Corporate Respondent resumes operations, before any such resumption, Corporate Respondent must deliver a copy of this Consent Order to any

managers, employees, service providers, or other agents and representatives who have responsibilities related to the subject matter of the Consent Order.

106. If Corporate Respondent resumes operations, for 5 years from resumption of operations, Corporate Respondent must deliver a copy of this Consent Order to any business entity resulting from any change in structure referred to in Section XI [Reporting Requirements], any future officers, as well as to any managers, employees, service providers, or other agents and representatives who will have responsibilities related to the subject matter of the Consent Order before they assume their responsibilities.

107. Respondents must secure a signed and dated statement acknowledging receipt of a copy of this Consent Order, ensuring that any electronic signatures comply with the requirements of the E-Sign Act, 15 U.S.C. § 7001 *et seq.*, within 60 days of delivery, from all persons receiving a copy of this Consent Order under this Section.

## XIII.

## Recordkeeping

**IT IS FURTHER ORDERED** that:

108. Individual Respondent must create, or if already created, must retain for the duration of the Consent Order, for any business for which Individual Respondent is a majority owner or which he directly or indirectly controls,

and to the extent that Corporate Respondent resumes operations, Corporate Respondent must create, or if already created, must retain for the duration of the Consent Order, the following business records:

a. all documents and records necessary to demonstrate full compliance with each provision of this Consent Order, including all submissions to the Bureau; and

b. copies of all sales scripts; training materials; advertisements; websites; and other marketing materials relating to the subject of this Consent Order, including any such materials used by a third party on behalf of Respondents.

109. Individual Respondent, and Corporate Respondent to the extent it resumes operations, must retain the documents identified in Paragraph 108 for the duration of the Consent Order.

110. Individual Respondent, and Corporate Respondent to the extent it resumes operations, must make the documents identified in Paragraph 108 available to the Bureau upon the Bureau's request.

## XIV.

## Notices

**IT IS FURTHER ORDERED** that:

111. Unless otherwise directed in writing by the Bureau, Respondents must provide all submissions, requests, communications, or other documents relating to this Consent Order in writing, with the subject line, "*In re Edmiston Marketing, LLC*, File No. 2019-BCFP-0011-," and send them by overnight courier or first-class mail to the below address and contemporaneously by email to Enforcement_Compliance@cfpb.gov:

Assistant Director for Enforcement
Bureau of Consumer Financial Protection
ATTENTION: Office of Enforcement
1700 G Street, N.W.
Washington D.C. 20552

## XV.

## Cooperation with the Bureau

**IT IS FURTHER ORDERED** that:

112. Respondents must cooperate fully to help the Bureau determine the identity and location of, and the amount of injury sustained by, each Affected Consumer. Respondents must provide such information in their or their agents' possession or control within 14 days of receiving a written request from the Bureau.

## XVI.

## Compliance Monitoring

**IT IS FURTHER ORDERED** that:

113. Within 14 days of receipt of a written request from the Bureau, Respondents must submit additional Compliance Reports or other requested non-privileged information related to requirements of this Consent Order, which must be made under penalty of perjury; provide sworn testimony related to requirements of this Consent Order and Respondents' compliance with those requirements; and produce non-privileged documents related to requirements of this Consent Order and Respondents' compliance with those requirements.

114. For purposes of this Section, the Bureau may communicate directly with Individual Respondent, unless Individual Respondent retains counsel related to these communications.

115. Respondents must permit Bureau representatives to interview about the requirements of this Consent Order and Respondents' compliance with those requirements any employee or other person affiliated with Respondents who has agreed to such an interview. The person interviewed may have counsel present.

116. Nothing in this Consent Order will limit the Bureau's lawful use of civil investigative demands under 12 C.F.R. § 1080.6 or other compulsory process.

## XVII.

## Modifications to Non-Material Requirements

**IT IS FURTHER ORDERED** that:

117. Respondents may seek a modification to non-material requirements of this Consent Order (*e.g.*, reasonable extensions of time and changes to reporting requirements) by submitting a written request to the Enforcement Director.

118. The Enforcement Director may, in his or her discretion, modify any non-material requirements of this Consent Order (*e.g.*, reasonable extensions of time and changes to reporting requirements) if he or she determines good cause justifies the modification. Any such modification by the Enforcement Director must be in writing.

## XVIII.

## Administrative Provisions

**IT IS FURTHER ORDERED** that:

119. The provisions of this Consent Order do not bar, estop, or otherwise prevent the Bureau, or any other governmental agency, from taking any other action against Respondents, except as described in Paragraph 120.

120. The Bureau releases and discharges Respondents from all potential liability for law violations that the Bureau has or might have asserted based on the practices described in Section IV [Findings Section] of this Consent Order, to the extent such practices occurred before the Effective Date and the Bureau knows about them as of the Effective Date. The Bureau may use the practices described in this Consent Order in future enforcement actions against Respondents and their affiliates, including, without limitation, to establish a pattern or practice of violations or the continuation of a pattern or practice of violations or to calculate the amount of any penalty. This release does not preclude or affect any right of the Bureau to determine and ensure compliance with the Consent Order or to seek penalties for any violations of the Consent Order.

121. This Consent Order is intended to be, and will be construed as, a final Consent Order issued under § 1053 of the CFPA, 12 U.S.C. § 5563, and expressly does not form, and may not be construed to form, a contract binding the Bureau or the United States.

122. This Consent Order will terminate 5 years from the Effective Date. The Consent Order will remain effective and enforceable until such time, except to the extent that any provisions of this Consent Order have been amended,

suspended, waived, or terminated in writing by the Bureau or its designated agent.

123. Calculation of time limitations will run from the Effective Date and be based on calendar days, unless otherwise noted.

124. Should Respondents seek to transfer or assign all or part of their operations that are subject to this Consent Order, Respondents must, as a condition of sale, obtain the written agreement of the transferee or assignee to comply with all applicable provisions of this Consent Order.

125. The provisions of this Consent Order will be enforceable by the Bureau. For any violation of this Consent Order, the Bureau may impose the maximum amount of civil money penalties allowed under § 1055(c) of the CFPA, 12 U.S.C. § 5565(c). In connection with any attempt by the Bureau to enforce this Consent Order in federal district court, the Bureau may serve Respondents wherever Respondents may be found and Respondents may not contest that court's personal jurisdiction over Respondents.

126. This Consent Order and the accompanying Stipulation contain the complete agreement between the parties. The parties have made no promises, representations, or warranties other than what is contained in this Consent Order and the accompanying Stipulation. This Consent Order and the

accompanying Stipulation supersede any prior oral or written communications, discussions, or understandings.

127. Nothing in this Consent Order or the accompanying Stipulation may be construed as allowing Respondents, or Corporate Respondent's officers or employees, to violate any law, rule, or regulation.

**IT IS SO ORDERED**, this 21st day of November, 2019.

Kathleen L. Kraninger
Director
Bureau of Consumer Financial Protection