

NO. CIVIL ACTION NO. 13-CI-00220

JEFFERSON CIRCUIT COURT
DIVISION SEVEN (7)
JUDGE AUDRA ECKERLECOMMONWEALTH OF KENTUCKY
*EX REL. ANDY BESHEAR, ATTORNEY
GENERAL*

PLAINTIFF

v.

THE SULLIVAN UNIVERSITY
SYSTEM,
INC. d/b/a SPENCERIAN COLLEGE

DEFENDANT

CONSENT JUDGMENT

Comes the Plaintiff, the Commonwealth of Kentucky *ex rel.* Andy Beshear, Attorney General, ("the Attorney General" or "the Office of the Attorney General") by and through counsel, and tenders this Consent Judgment for approval and entry by this Court. The Office of the Attorney General filed a Complaint in this action on January 15, 2013, for civil penalties, permanent injunction and other relief in this matter pursuant to the Kentucky Consumer Protection Act (KCPA), KRS 367.110, *et seq.*, alleging Defendant committed violations of the KCPA. By Agreed Order entered April 30, 2018, the First Amended Complaint ("Complaint") was filed. Defendant denies all allegations contained in the Complaint and denies having violated the KCPA.

Plaintiff and Defendant have agreed to the Court's entry of this Consent Judgment for the purposes of settlement only, without this Consent Judgment constituting evidence against or any admission by any party, and without trial or adjudication of any issue of fact or law.

I. PREAMBLE

1.1 Plaintiff, the Commonwealth of Kentucky, acting by and through then-Attorney General Jack Conway, commenced this action on the 15th day of January, 2013, after having

conducted an investigation under the KCPA regarding Defendant's practices and policies pertaining to the operations of Spencerian College. Attorney General Andy Beshear was substituted as Plaintiff of record on July 5, 2016.

1.2 Defendant is willing to enter into a Consent Judgment regarding the matters investigated by the Attorney General and as alleged in the Plaintiff's Complaint, and agrees to the entry of this Consent Judgment in order to resolve the Complaint under the KCPA and arrive at a complete and total settlement and resolution as is reflected herein, thereby avoiding unnecessary expense, inconvenience, and uncertainty.

1.3 By entering into this Consent Judgment, Plaintiff and Defendant agree to all such court approvals, provided that there are no modifications to the terms of this Consent Judgment without the express written consent of Plaintiff and Defendant.

1.4 Defendant recognizes and states that this Consent Judgment is entered into voluntarily and that no promises or threats have been made by the Attorney General's Office, or any member, officer, agent or representative thereof to induce Defendant to enter into this Consent Judgment.

1.5 Defendant represents and warrants that it is represented by legal counsel, that it is fully advised of its legal rights in this matter, and that the person signing below is fully authorized to act on its behalf.

1.6 Defendant further acknowledges that this Consent Judgment is not severable or divisible, except that if any provision herein is found to be legally insufficient or unenforceable, the remaining provisions shall continue in full force and effect.

1.7 Nothing in this Consent Judgment shall be construed as a waiver of, or limitation on Defendant's rights to defend itself from or to make agreements in any private individual or

class action, state or federal claim, suit or proceeding relating to the existence, subject matter or terms of this Judgment.

1.8 Nothing in this Consent Judgment shall be construed to affect or deprive any private right of action that any consumer, person or entity may assert against the Defendant, or that any local, state, federal or other governmental entity may hold against Defendant, except as otherwise provided by law and as explicitly released in this Consent Judgment.

1.9 Nothing in this Consent Judgment shall create a private cause of action or confer any right to any third party for violation of the terms of this Judgment, except that the Plaintiff may file a motion to enforce the terms of this Judgment.

1.10 The titles of sections of this Consent Judgment are for convenience purposes only and are not intended by Defendant or the Plaintiff to lend meaning to the actual terms of this Judgment.

1.11 Nothing herein relieves Defendant of its duty to comply with applicable laws of the Commonwealth and all federal or local laws, regulations, ordinances, and codes, nor constitutes authorization by the Attorney General for the Defendant to engage in acts or practices prohibited by such laws. Nothing in this Judgment shall require Defendant to (a) take an action that is prohibited by any federal or state law or regulation; or (b) fail to take an action that is required by a federal or state law or regulation.

1.12 Any failure by the Plaintiff to insist upon the strict performance by Defendant of any of the provisions of this Consent Judgment shall not be deemed a waiver of any of the provisions of this Judgment, and notwithstanding such failure, Plaintiff shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Consent Judgment, and Plaintiff may seek the imposition of any applicable penalties, including but not

limited to contempt, civil penalties and/or the payment of attorney's fees to the Commonwealth, to the extent authorized by law, and other remedies authorized by law.

1.13 Time shall be of the essence with respect to each provision of this Judgment that requires action to be taken by Defendant within a stated time period or upon a specified date.

1.14 This Consent Judgment sets forth the entire agreement between the parties, and there are no representations, agreements, arrangements, or understandings, oral or written, between the parties relating to the subject matter of this Judgment which are not fully expressed herein or attached hereto.

1.15 Plaintiff and Defendant further agree that this Court shall retain jurisdiction of this action for the purpose of implementing and enforcing or modifying the terms and conditions of this Consent Judgment and for all other purposes. The parties may meet and confer prior to seeking a ruling from the Court.

1.16 The parties agree to reasonably cooperate to carry out the above duties in compliance with the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. §1232g; 34 CFR Part 99).

WHEREAS the Court approves the terms of the Parties' agreement and adopts them as its own determination of the Parties' respective rights and obligations;

NOW THEREFORE, for purposes of effecting the Consent Judgment, it is therefore **ORDERED, ADJUDGED AND DECREED** that:

II.

GENERAL

2.1 Defendant, The Sullivan University System, Inc. d/b/a Spencerian College, is a corporation and has its principal office at 3101 Bardstown Road, Louisville, Kentucky 40205. The Sullivan University System, Inc. owned and operated the post-secondary career Spencerian

College which had locations in Louisville and Lexington. Spencerian College ceased enrolling students on June 22, 2018.

2.2 This Court has jurisdiction over the subject matter, issues and parties to this Consent Judgment and venue is proper in Jefferson County, Kentucky pursuant to KRS 367.190.

2.3 Certain provisions of Kentucky's Consumer Protection Act govern some of Defendant's business practices.

2.4 The Kentucky Attorney General is the proper party to commence these proceedings under the authority of KRS 367.190 and by virtue of his statutory and common law authority to protect the interests of the citizens of the Commonwealth of Kentucky.

III. DEFINITIONS

3.1 **"Active Repayment"** shall mean any CEF Loan on which a Qualifying Former Student is paying.

3.2 **"Borrower or co-signor"** shall mean a borrower or co-signor to a loan of a Qualifying Former Student.

3.3 **"Effective Date"** shall mean the date of entry by the Court.

3.4 **"CEF Loan"** shall mean the Career Education Funds Loan made by Defendant to a Qualifying Former Student attending Spencerian College.

3.5 **"Qualifying Former Student"** shall mean any one who received a CEF Loan from January 1, 2007 until December 31, 2011.

3.6 **"Record Date"** shall mean September 21, 2018.

IV. SETTLEMENT TERMS

Loan Forgiveness

4.1 Prior to the date of execution of this agreement, Defendant has produced to Plaintiff certain documentation regarding CEF Loans extended by Defendant from January 1, 2007 through December 31, 2011, which covers the time period during which Plaintiff alleges in its Complaint that Defendant's actions violated the Kentucky Consumer Protection Act. This documentation is a material factor upon which Plaintiff has reasonably relied, constituting Defendant's express representations regarding the quantity, nature, value and status of each of these CEF Loans. Defendant expressly represents that the overall value of these CEF Loans total One Million, Seven Hundred Fifty-Five Thousand Eight Hundred Sixty-Three Dollars and Ten Cents (\$1,755,863.10) comprised of 668 loans to 668 individual students. These amounts and CEF Loans do not include debt that students may separately owe to the federal government pursuant to a federal student loan, or other third party lender not affiliated with Defendant pursuant to a private student loan, as the parties hereto are not authorized to affect or compromise such loans.

4.2 Within ten (10) days of the Effective Date, in settlement of this action, and without admitting any liability, Defendant will forgive, release, discharge, relinquish and forgo collection of the balance owed on the CEF Loans owed to Defendant. Defendant agrees to direct any third party providing collection services regarding the CEF Loans to cease collections and to take any and all necessary steps to obviate any interest of such third party in the collection of the CEF Loans including the dismissal of any litigation and the removal of any wage garnishments. Defendant will take all necessary steps to ensure that the CEF Loans will not be re-sold, compromised, or otherwise transferred, assigned or negotiated in any way that would cause

further collection effort against any Qualifying Former Student. The CEF Loans subject to this provision are represented by Defendant to be in the amount and collection statuses identified in subparagraphs a, b and c as set forth below and as detailed in the documentation provided to Plaintiff as described in Paragraph 4.1.

a. Based upon Defendant's express representations, of the foregoing 668 CEF Loans totaling \$1,755,863.10, since June 25, 2018, 6 Loans totaling \$21,118.18 have been paid in full, 27 Loans totaling \$25,889.09 have been compromised as settled (partial payment); and 6 Loans totaling \$26,225.32 have been discharged in bankruptcy.

b. Based upon Defendant's express representations, of the foregoing 668 CEF Loans totaling \$1,755,863.10 seventy (70) CEF Loans totaling \$297,440.93 to Qualifying Former Students have been placed with a third party for collection. Defendant will direct any third party with an interest in these 70 loans to cease collections and will take all steps necessary to obviate any interest of such third party in the collection of the CEF Loans and will take all necessary steps to ensure that these loans will not be re-sold, compromised, or otherwise transferred, assigned or negotiated in any way that would cause further collection effort against any Qualifying Former Student.

c. Based upon Defendant's express representations, of the foregoing 668 CEF Loans totaling \$1,755,863.10, 559 CEF Loans totaling \$1,385,189.58 are in Active Repayment by Qualifying Former Students to Spencerian. Defendant will forgive, release, discharge, relinquish and forgo collection of the CEF Loans owed to Defendant and will take all other actions as set forth herein.

Credit Reporting

4.3 Within ten (10) days of the Effective Date, Defendant also agrees to direct at Defendant's own expense any credit reporting agencies to which it reported information to remove any such negative information regarding each Qualifying Former Student whose debt has been discharged pursuant to the terms of this Judgment.

Transcripts

4.4 To the extent the transcript of any Qualifying Former Student has been withheld due to non-payment of any CEF Loan, Defendant also agrees to release the transcript upon the student's request, at no cost to the student for a period of three (3) years from the Effective Date.

4.5 Records retention. Defendant agrees to retain all records relevant to its performance under the Consent Judgment for a period of not less than three (3) years from the Effective Date.

COMPLIANCE PLAN**Written Notice**

5.1 Within thirty (30) days of the Effective Date, the Attorney General shall send by U.S. First Class mail a notice to Qualifying Former Students listed on the information provided by Defendant which will include the most recently available postal address as contained on the Defendant or servicer's system of record. The notice shall contain the following information:

- a. The outstanding amount owed under each CEF Loan as of the Record Date by such Borrower;
- b. The fact that each such amount has been discharged in full and such student (and any cosigner or guarantor) no longer owes any amounts under his or her CEF Loan;
- c. The fact that the discharge and cancellation of the amounts owed for each such CEF Loan is pursuant to this Consent Judgment;
- d. The fact that the student (and any cosigner or guarantor) will not be subjected to any future debt-collection or credit-reporting activities related to each such CEF Loan;

e. That Defendant will send notice to each credit reporting agency to whom it or its agents have sent information about the debt and direct that any negative information be deleted;

f. Notice of contact information for the Attorney General, should the student have questions about the terms of this notice; and

g. That the student's Spencerian transcript will be provided upon the student's request or the request of a post-secondary institution in which the student is enrolling at no charge to the student for a period of three (3) years.

5.2 The notice shall further inform the student that if the student finds that the amounts owed to Defendant by the student are still erroneously appearing on the student's credit report after one hundred and twenty (120) days, the student shall notify Defendant. Once notified, Defendant shall promptly and properly notify the appropriate credit-reporting agency, whether directly or indirectly, of any changes to be made to the credit reporting resulting from the application of the terms of this Consent Judgment.

5.3 The notice shall provide a Point of Contact for Defendant, as designated by Defendant within 10 days of the Effective Date, for making a request to correct a credit report, or for any additional inquiries about the student's account or transcript.

5.4 Upon a written request of the Plaintiff, Defendant will provide an attestation regarding the debt relief, credit reporting, and release of transcripts and/or will provide other requested documentation regarding the implementation of the terms this Judgment in a reasonably timely manner.

5.5 Any CEF Loan amounts paid after the Record Date will be refunded.

V. RELEASE

6.1 Upon entry of this Consent Judgment, and effective upon full compliance with the requirements of Paragraphs 4 through 5.5 herein the Commonwealth of Kentucky *ex rel.* Andy Beshear, Attorney General, releases and forever discharges the Defendant and its respective directors, officers, shareholders, employees, agents, representatives, executors or executrixes,

successors, predecessors, insurers and attorneys, and assigns ("Released Parties"), from the following: all civil claims, causes of actions, damages, restitution, fines, costs, injunctions and penalties that were asserted or could have been asserted against the Released Parties under the Kentucky Consumer Protection Act, KRS 367.110 *et seq.*, or at common law based on the allegations in the Complaint prior to the date of this Consent Judgment, whether known or unknown, foreseen or unforeseen. Released Claims do not include claims for violation of this Consent Judgment or claims pursuant to any other statute or regulation (including, without limitation, tax laws, and criminal statutes and codes).

VI. ENFORCEMENT

7.1 In the event the Attorney General has provided written notice to Defendant of an alleged substantial violation of the Consent Judgment and Defendant has failed to cure the alleged substantial violation within thirty (30) days of the notice, upon motion of the Attorney General, the Court may impose a penalty for each substantial violation of the Consent Judgment and any other remedy allowed by law if it concludes that the Defendant has committed a substantial violation of this Consent Judgment pursuant to KRS 367.990.

7.2 Nothing in this Consent Judgment shall constitute an admission of wrongdoing, evidence of any liability, fault, or wrongdoing, nor shall anything in this Consent Judgment be construed or used as a waiver or limitation of any defense otherwise available to Defendant or of Defendant's right to defend itself from or against any private individual or class claims or suits. The Court has made no finding that Defendant has used or employed a method, act or practice declared unlawful by Kentucky Consumer Protection Act, KRS 367.110, *et seq.* The parties agree that the provisions of this Consent Judgment are solely for purposes of settling this matter.

7.3 The Court retains jurisdiction over this action in order to take any further action deemed necessary to enforce or modify this Consent Judgment, including but not limited to the application of KRS 367.990 and KRS 367.190 to award the Commonwealth judgment to the extent permitted by law for any costs, including attorney's fees, it incurs in the event of noncompliance by Defendants.

VII. MISCELLANEOUS

8.1 The mailing of a copy of this signed and filed Consent Judgment to Defendant or its attorneys shall constitute notice and acceptance by Defendant of all the terms of this Consent Judgment; Defendant has waived the necessity of having a copy of this Consent Judgment served upon it. Any notice to the Defendant given pursuant to this Consent Judgment shall be made via certified mail to:

The Sullivan University System, Inc.
3101 Bardstown Road
Louisville, KY 40205
Attn: Glenn D. Sullivan, President

with a copy to:

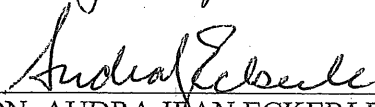
Wyatt, Tarrant & Combs, LLP
500 West Jefferson Street, Suite 2800
Louisville, KY 40202
Attn: Grover C. Potts, Jr.

8.2 This Judgment shall bind Defendant and its successors, agents, employees, officers, directors, parent companies, subsidiaries and assigns Defendant shall be responsible for insuring compliance with the terms of this Consent Judgment but shall not be binding on any unrelated third-party purchaser or of any asset of Defendant or any unrelated third-party.

8.3 Neither Defendant nor anyone acting on its behalf, shall state or imply or cause to be stated that this Consent Judgment constitutes approval, authorization or endorsement by the Plaintiff of any act or conduct of Defendant.

8.4 Neither Plaintiff nor anyone acting on his behalf, shall state or imply or cause to be stated that this Consent Judgment constitutes any admission of liability or wrongdoing of any act or conduct of Defendant.

IT IS SO ORDERED this 3rd day of January, 2019


HON. AUDRA JEAN ECKERLE, JUDGE
JEFFERSON CIRCUIT COURT, DIV. 7

**JOINTLY APPROVED AND
SUBMITTED FOR ENTRY:**

ANDY BESHEAR. ATTORNEY GENERAL

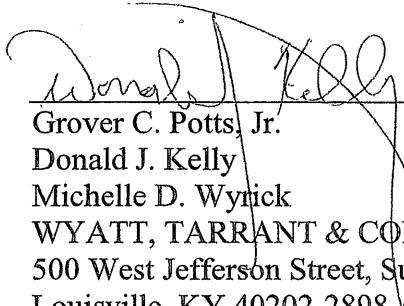
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DATE SIGNED: 1/3/19

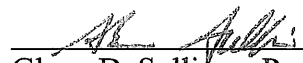
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BY:



Glenn D. Sullivan, President
The Sullivan University System

DATE SIGNED: 12-12-18

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