

**ORDER NO. 2018-023**

**IN THE MATTER OF:**

**ZENPAYROLL, INC., DBA GUSTO  
SAN FRANCISCO, CALIFORNIA**

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**BEFORE:**

**THE BANKING**

**COMMISSIONER OF TEXAS**

**AUSTIN, TRAVIS COUNTY, TEXAS**

**CONSENT ORDER**

On this day, in the matter of ZenPayroll, Inc., dba Gusto (Gusto or Respondent) was submitted to me, Charles G. Cooper, Banking Commissioner (Commissioner) of the State of Texas, for consideration and action.

1. Gusto is a Delaware corporation with its primary place of business in San Francisco, California.
2. Gusto offers payroll services to employers in all 50 states and the District of Columbia through its website, [www.gusto.com](http://www.gusto.com).
3. The Texas Department of Banking (Department) has jurisdiction over Gusto and the subject matter of this proceeding pursuant to Texas Finance Code (Finance Code) Chapter 151 (Chapter 151). The Commissioner has the authority to issue this Consent Order (Order) and to assess administrative penalties pursuant to Finance Code §§ 151.706 and 151.707.
4. Gusto has been properly notified of its right to an administrative hearing under Chapter 151.
5. The undersigned representative of Gusto has full authority to enter into and bind Gusto to the terms and conditions of this Consent Order.
6. The statutory provisions at issue in this matter include, but are not limited to, Finance Code §§ 151.301, 151.302, 151.702, 151.706, and 151.707.
7. Any violation of this Order could subject Gusto to additional regulatory or enforcement actions authorized by Chapter 151 and other provisions of Texas law. Nothing in this Order diminishes the regulatory or enforcement powers of the Department, the Commissioner, or the Finance Commission of Texas under Chapter 151 or other applicable law.
8. For purposes of this proceeding, Gusto knowingly and voluntarily waives:

- a. Service upon Gusto of this Order;
  - b. The right to present defenses to the allegations in this proceeding;
  - c. Notice and hearing prior to imposition of this Order;
  - d. The filing of proposed findings of fact and conclusions of law;
  - e. The issuance of a proposal for decision by an administrative law judge;
  - f. The filing of exceptions and briefs with respect to such proposal for decision;
  - g. Any review of this Order by the Texas Finance Commission; and
  - h. Judicial review of this Order as provided by Texas Government Code §2001.171 et seq., and any other challenge to the validity of this Order.
9. Gusto and the Commissioner agree to this Order solely for the purpose of this proceeding, and without Gusto admitting or denying any violations of law or regulations. This Order does not constitute an admission by Gusto that Chapter 151 or a rule adopted or order issued under Chapter 151 has been violated.
10. The Commissioner has considered this matter and finds as follows:
- a. Gusto is a payroll services company that targets small businesses seeking all-in-one HR solutions, including payroll processing. Gusto's general payroll service process is as follows: Gusto debits the employer-client's bank account and then receives and holds those funds in its own bank account. When they become due, Gusto then distributes those funds to the appropriate parties, including its clients' employees, contractors, and taxing authorities.
  - b. In May 2018, Gusto requested a determination from the Department as to whether the payroll processing services they offer obligates them to obtain a money services license in Texas. On May 23, 2018, the Department wrote to Gusto, informing them that they needed to obtain a license to continue offering their services in Texas.
  - c. On July 9, 2018, the Department issued Gusto a temporary license to conduct money transmission.
  - d. Under Finance Code § 151.301(b)(4), money transmission means "the receipt of money or monetary value by any means in exchange for a promise to make the money or monetary value available at a later time or different location." The Finance Code defines engaging in the business of money transmission as receiving compensation or expecting to receive compensation, directly or indirectly, for conducting money transmission. Finance Code § 151.302(b). By receiving its

employer-clients' funds in exchange for a promise to distribute those funds at a later time or different location, Gusto is conducting money transmission.

- e. Finance Code § 151.302(a) provides that “a person may not engage in the business of money transmission or advertise, solicit, or hold itself out as a person that engages in the business of money transmission” without a license unless it is an authorized delegate of a license holder, is excluded from licensure under Chapter 151, or has been granted an exemption under Chapter 151.
  - f. As described above, Gusto is conducting money transmission in Texas. Prior to July 9, 2018, the Department had not licensed Gusto; Gusto is not an authorized delegate of a license holder; Gusto is not excluded from licensure under Chapter 151; and Gusto has not been granted an exemption under Chapter 151. Consequently, the Commissioner finds that Gusto is in violation of Finance Code § 151.302.
  - g. As required by Finance Code § 151.707(d), the Commissioner has considered the seriousness of the violations, Gusto’s compliance history, and Gusto’s good faith in attempting to comply with Chapter 151. The Commissioner finds that Gusto’s violations were moderate because Gusto conducted money transmission activities in Texas for business clients without a license, and without the compliance protections of an anti-money laundering program. Additionally, the Commissioner finds Gusto’s prior compliance history unacceptable because it conducted money transmission without a license. The Commissioner does however find that Gusto demonstrated good faith in contacting the Department to seek a determination as to whether they needed to obtain a money transmission license.
  - h. Based on these findings and based on the representations made by Gusto as to the volume of transactions and length of time it has been conducting an unlicensed money transmission business in Texas, the Commissioner finds that a penalty of \$118,419.02 is appropriate.
- 11. Gusto has agreed to comply with the terms that are set out in the Order below.
  - 12. Nothing in this Order shall prohibit Gusto from obtaining a money transmission license from the Department in the future.
  - 13. This Order does not restrict the Department with respect to any enforcement action or other recourse regarding any past, current, or future violations by Gusto that come to

the attention of the Department, following the resolution of Gusto's prior activity addressed by executing this Order. Nothing herein shall be construed to limit Gusto's right to contest any future finding or determination of non-compliance.

**Order**

It is hereby ORDERED, ADJUDGED and DECREED that:

1. Within 10 days of the effective date of this Order, Respondent will pay \$118,419.02 to the Department as an administrative penalty under Texas Finance Code § 151.707.
2. Respondent will fulfill all of the requirements to obtain a license to conduct money transmission in Texas as detailed in Chapter 151 of the Texas Finance Code. In the event that Respondent elects to withdraw its license application or Respondent's license application is suspended pursuant to Texas Finance Code § 151.204, determined abandoned pursuant to 7 Texas Administrative Code § 33.13(g)(1), or denied pursuant to Texas Finance Code § 151.205, Respondent will do the following:
  - a. Within 15 days of the Department's notification to Respondent of said withdrawal, suspension, abandonment or denial, notify its existing Texas customers that it will cease providing money transmission to them. This notification must be made in writing, and a copy of the notice must be sent contemporaneously to the Department;
  - b. Within 60 days of the Department's notification to Respondent of said withdrawal, suspension, abandonment or denial, cease and desist from engaging in the unauthorized business of money transmission in Texas and have returned to its customers all customer funds held by Respondent; and
  - c. Within seven days of achieving full compliance with this paragraph, Respondent must confirm to the Department in writing that it has ceased all unlicensed activities in Texas.

**Effective Date**

This Order against Gusto is effective on the date signed by the Commissioner and is final and non-appealable as of that date.

Signed on this 29<sup>th</sup> day of August, 2018.

/s/ Charles G. Cooper

Charles G. Cooper

Commissioner, Department of Banking

**AGREED AS TO FORM AND SUBSTANCE**

ZenPayroll, Inc., dba Gusto

By: /s/ Mike Dinsdale

Date: August 21, 2018

**APPROVED AS TO FORM:**

/s/ Marcus Adams

Assistant General Counsel  
Texas Department of Banking

Date: August 29, 2018