

ORDER NO. 2020-013

IN THE MATTER OF:

**THE ULTIMATE SOFTWARE
GROUP, INC.
WESTON, FLORIDA**

**§ BEFORE:
§
§ THE BANKING
§ COMMISSIONER OF TEXAS
§ AUSTIN, TRAVIS COUNTY, TEXAS**

CONSENT ORDER

On this day, in the matter of The Ultimate Software Group, Inc. (Respondent) was submitted to me, Charles G. Cooper, Banking Commissioner (Commissioner) of the State of Texas, for consideration and action.

1. Respondent is a Delaware corporation with its primary place of business in Weston, Florida.
2. Respondent offers human capital management solutions to business customers through its UltiPro® product. These services include payroll, tax, and wage garnishment payment services (the Payment Services).
3. The Texas Department of Banking (Department) has jurisdiction over Respondent 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. Respondent has been properly notified of its right to an administrative hearing under Chapter 151.
5. The undersigned representative of Respondent has full authority to enter into and bind Respondent 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 Respondent 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, Respondent knowingly and voluntarily waives:
 - a. Service upon Respondent 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. Respondent and the Commissioner agree to this Order solely for the purpose of this proceeding, and without Respondent admitting or denying any violations of law or regulations. This Order does not constitute an admission by Respondent 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. In providing the Payment Services, Respondent debits customers' bank accounts with their authorization in advance of designated payroll dates. The amount debited covers any applicable payroll tax, garnishment, employee pay, and any other applicable

customer liabilities covered by the Respondent. The funds are then held by Respondent before being distributed to the appropriate parties.

- b. In October 2018, the Department wrote to Respondent, inquiring about its possible money transmission services. Respondent responded to that letter, detailing the products and services it offers. On April 26, 2019, the Department issued Respondent a determination letter stating that Respondent needed to obtain a money transmission license to continue offering its Payment Services to Texas headquartered customers.
- c. On January 24, 2020, Respondent filed a temporary license application with the Department. The application was approved, and a temporary license was issued, on January 27, 2020.
- 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). The Department has concluded that by receiving its Texas headquartered customers’ funds in exchange for a promise to distribute those funds at a later time or different location to the Texas headquartered customers’ employees and/or taxing/garnishment authorities, Respondent is conducting money transmission in Texas.
- 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, the Department has concluded that: (i) Respondent is conducting money transmission in Texas; (ii) prior to January 27, 2020, the Department had not licensed Respondent; (iii) Respondent is not an authorized delegate of a license holder; (iv) Respondent is not excluded from licensure under Chapter 151; and (v) Respondent has not been granted an exemption under Chapter 151. Consequently, the Commissioner finds that Respondent 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, Respondent's compliance history, and Respondent's good faith in attempting to comply with Chapter 151.
 - h. Based on these findings and based on the representations made by Respondent 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 \$191,250.00 is appropriate.
11. Respondent has agreed to comply with the terms that are set out in the Order below.
 12. Nothing in this Order shall prohibit Respondent 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 other violations by Respondent not now known to the Department that come to the attention of the Department. Nothing herein shall be construed to limit Respondent's right to contest any future finding or determination of non-compliance.

Order

It is hereby ORDERED, ADJUDGED and DECREED that:

1. Within 10 business days of the effective date of this Order, Respondent will pay \$191,250.00 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 business days of the Department's notification to Respondent of said withdrawal, suspension, abandonment or denial, notify its existing Texas headquartered customers that it will cease providing the Payment Services 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 return Texas customer funds held by Respondent to its existing Texas headquartered customers; and
 - c. Within seven business 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 Respondent is effective on the date signed by the Commissioner and is final and non-appealable as of that date.

Signed on this 24th day of April, 2020.

/s/ Charles G. Cooper
Charles G. Cooper
Commissioner, Department of Banking

AGREED AS TO FORM AND SUBSTANCE

The Ultimate Software Group, Inc.

By: /s/ Elizabeth M. McCarron
Name: Elizabeth M. McCarron

Date: April 22, 2020

APPROVED AS TO FORM:

/s/ Michael K. O'Neal
Michael K. O'Neal
Winstead PC
Counsel for The Ultimate Software Group, Inc.

Date: April 22, 2020

/s/ Catherine Reyer for
Marcus Adams
Assistant General Counsel
Texas Department of Banking

Date: April 23, 2020