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

11 In the Matter of:)
12 THE COMMISSIONER OF FINANCIAL) DESIST AND REFRAIN ORDER AND
PROTECTION AND INNOVATION,) ORDER ASSESSING PENALTIES
13)
14 Complainant,) (Cal. Fin. Code § 90015(b), (c), (d)(1))
v.)
15 ALLEN AND ASSOCIATES,)
16 Respondent.)
17)
18)
19)

20
21 The Complainant, the Commissioner of Financial Protection and Innovation
22 (Commissioner) of the Department of Financial Protection and Innovation (Department), is
23 informed and believes, and based on such information and belief, finds as follows:

24 **I.**

25 **Introduction**

26 1. The Commissioner has jurisdiction over the licensing and regulation of persons
27 engaged in the business of debt collection in California under the Debt Collection Licensing Act
28 (DCLA) (Cal. Fin. Code §§ 100000-100025).

1 e. The second representative told the consumer, in violation of California Civil
2 Code section 1788.13(j) of the Rosenthal Act, that if she did not pay this debt, she would be sued.

3 f. The second representative omitted the following notice regarding time-barred
4 debt which is required to be made pursuant to California Civil Code section 1788.14,
5 subdivision (d)(2):

6 The law limits how long you can be sued on a debt. Because of the age of your debt,
7 we will not sue you for it, and we will not report it to any credit reporting agency.”

8 6. No complaint or case number was provided by Allen and Associates or its
9 representatives.

10 7. The aforementioned misrepresentations were material and likely to mislead a
11 consumer acting reasonably under the circumstances, constituting deceptive acts or practices, in
12 violation of California Financial Code section 90003(a)(1).

13 8. Allen and Associates used false, deceptive or misleading representation or means in
14 connection with the collection of a debt, in violation of title 15 of the United States Code section
15 1692e(2) and (10) of the Fair Debt Collection Practices Act (FDCPA) (15 U.S.C. §§ 1692 to
16 1692p).

17 9. Allen and Associates violated California Civil Code section 1788.17 by failing to
18 provide at least one California consumer, within five days of the initial communication about the
19 debt, with written notification as required by title 15 of the United States Code section 1692g(a) of
20 the FDCPA.

21 Failure to Submit License Application in Violation of the DCLA

22 10. The DCLA, which became effective on January 1, 2021, requires persons engaged in
23 the business of debt collection in California to be licensed beginning on January 1, 2022, pursuant
24 to California Financial Code section 100001(a).

25 11. The Commissioner has not issued a license to Allen and Associates, authorizing it to
26 engage in the business of debt collection under the DCLA. Furthermore, Allen and Associates has
27 not applied for a license under the DCLA. Allen and Associates is not exempt from the licensing
28 requirements of California Financial Code section 100001.

(k) “Financial product or service” means: . . . (1) Extending credit and servicing extensions of credit, including acquiring, purchasing, selling, brokering extensions of credit, other than solely extending commercial credit to a person who originates consumer credit transactions . . . (10) Collecting debt related to any consumer financial product or service

20. California Financial Code section 90003(a) provides in relevant part:

(a) It is unlawful for a covered person or service provider, as defined in subdivision (f) of Section 90005, to do any of the following:

(1) Engage, have engaged, or propose to engage in any unlawful, unfair, deceptive, or abusive act or practice with respect to consumer financial products or services.

(2) Offer or provide to a consumer any financial product or service not in conformity with any consumer financial law or otherwise commit any act or omission in violation of a consumer financial law

21. California Financial Code section 90005(f) provides in relevant part:

(f) “Covered person” means, to the extent not preempted by federal law, any of the following: (1) Any person that engages in offering or providing a consumer financial product or service to a resident of this state

22. The following laws are consumer financial laws within the meaning of California Financial Code section 90003(a)(2): the DCLA, the Rosenthal Act, and the FDCPA.

23. Section 1788.13 of the Rosenthal Act provides in relevant part:

No debt collector shall collect or attempt to collect a consumer debt by means of the following practices: . . . (i) The false representation of the true nature of the business or services being rendered by the debt collector; (j) The false representation that a legal proceeding has been, is about to be, or will be instituted unless payment of a consumer debt is made

24. Section 1788.14 of the Rosenthal Act provides in relevant part:

No debt collector shall collect or attempt to collect a consumer debt by means of the following practices: . . . (d) Sending a written communication to a debtor in an attempt to collect a time-barred debt without providing the debtor with one of the following written notices:

(2) If the debt is past the date for obsolescence set forth in Section 605(a) of the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681c), the following notice shall be included in the first written communication provided to the debtor after the date for obsolescence:

“The law limits how long you can be sued on a debt. Because of the age of your debt, we will not sue you for it, and we will not report it to any credit reporting agency.”

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25. Section 1788.17 of the Rosenthal Act provides in relevant part:
Notwithstanding any other provision of this title, every debt collector collecting or attempting to collect a consumer debt shall comply with the provisions of Sections 1692b to 1692j, inclusive, of, and shall be subject to the remedies in Section 1692k of, Title 15 of the United States Code . . .

26. Section 1692e of the FDCPA provides in relevant part:
A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section: . . . (2) The false representation of— (A) the character, amount, or legal status of any debt. . . (10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer . . .

27. Section 1692g of the FDCPA provides in relevant part:
(a) Notice of debt; contents
Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing--
(1) the amount of the debt;
(2) the name of the creditor to whom the debt is owed;
(3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;
(4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and
(5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor. . .

28. California Financial Code section 90015(d), provides:
(1) If, in the opinion of the department, any person engages, has engaged, or proposes to engage in any activity prohibited by Section 90003 or 90004, the department may issue an order directing the person to desist and refrain from engaging in the activity, act, practice, or course of business.
(2) If that person fails to file a written request for a hearing within 30

1 days from the date of service of the order, the order shall be deemed a
2 final order of the commissioner.

3 29. California Financial Code section 90015(c) provides, “[a]fter notice and an
4 opportunity to be heard, the commissioner may, by order, assess penalties.”

5 30. California Financial Code section 90012(c) provides, in relevant part:

6 In any civil or administrative action brought pursuant to this division, the
7 following penalties shall apply:

8 (1) Any person that violates, through any act or omission, any provision of
9 this division shall forfeit and pay a penalty pursuant to this subdivision.

10 (A) The penalty amounts are as follows:

11 (i) For any violation of this division, rule or final order, or condition
12 imposed in writing by the department, a penalty may not exceed the
13 greater of either five thousand dollars (\$5,000) for each day during which
14 the violation or failure to pay continues, or two thousand five hundred
15 dollars (\$2,500) for each act or omission in violation

16 **IV.**

17 **Desist and Refrain Order**

18 31. Based on the foregoing findings, the Commissioner is of the opinion that Allen and
19 Associates is a covered person or service provider that engaged in unlawful acts or practices, in
20 violation of California Financial Code section 90003(a)(1). Further, the Commissioner finds that
21 Allen and Associates violated California Financial Code section 90003(a)(2) by offering or
22 providing to a consumer a financial product or service not in conformity with, or otherwise
23 committed any act or omission in violation of, the following consumer financial laws:

- 24 a. Section 100001(a) of the DCLA;
- 25 b. Section 1788.13 (i) and (j) of the Rosenthal Act;
- 26 c. Section 1788.14 (d) of the Rosenthal Act
- 27 d. Section 1788.17 of the Rosenthal Act;
 - 28 i. Section 1692e(2) and (10) of the FDCPA; and
 - ii. Section 1692g(a) of the FDCPA.

32. Pursuant to California Financial Code section 90015(d)(1), Allen and Associates and
its managers, officers, directors, agents, or employees, are hereby ordered to desist and refrain from
engaging in, or proposing to engage in, unlawful acts or practices in collecting or attempting to

1 collect any consumer debt in violation of California Financial Code section 90003(a)(1), or offering
2 or providing to a consumer any financial product or service not in conformity with any consumer
3 financial laws, including but not limited to the following:

- 4 a. Section 100001(a) of the DCLA;
- 5 b. Section 1788.13 (i) and (j) of the Rosenthal Act;
- 6 c. Section 1788.14 (d) of the Rosenthal Act
- 7 d. Section 1788.17 of the Rosenthal Act;
 - 8 i. Section 1692e(2) and (10) of the FDCPA; and
 - 9 ii. Section 1692g(a) of the FDCPA.

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

14 34. Pursuant to California Financial Code section 90015(d)(1), Allen and Associates and
15 its managers, officers, directors, agents, or employees, are hereby ordered to desist and refrain from
16 engaging in, or proposing to engage in, deceptive acts or practices in collecting or attempting to
17 collect any consumer debt in violation of California Financial Code section 90003(a)(1).

18 35. This Desist and Refrain Order is necessary, in the public interest and consistent with
19 the purposes, policies, and provisions of the CCFPL. This Desist and Refrain Order shall remain in
20 full force and effect until further order of the Commissioner.

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V.

Order Assessing Penalties

36. Pursuant to California Financial Code section 90015(c) and section 90012(c), and after due consideration of possible mitigating factors and other appropriateness considerations per California Financial Code section 90012(c)(1)(B), Allen and Associates is hereby ordered to pay the Commissioner a penalty of \$30,000.00 within 30 days of the date of this order. This penalty shall be made payable in the form of an Automated Clearing House deposit or cashier’s check made payable to the Department of Financial Protection and Innovation. 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 concurrently sent to Jari M. Binder via e-mail at jari.binder@dfpi.ca.gov.

Dated: June 5, 2023
San Francisco, California

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation



By: _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division