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8 Attorneys for Complainant

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

<p>11 In the Matter of:</p> <p>12 THE COMMISSIONER OF FINANCIAL</p> <p>13 PROTECTION AND INNOVATION,</p> <p>14 Complainant,</p> <p>15 v.</p> <p>16 MOSS WESTINGHOUSE AND</p> <p>17 ASSOCIATES; and PRODIGY PORTFOLIO</p> <p>18 MANAGEMENT,</p> <p>19 Respondents.</p>	<p>) DESIST AND REFRAIN ORDER AND</p> <p>) ORDER ASSESSING PENALTIES</p> <p>) (Cal. Fin. Code, § 90015(b), (c), (d)(1))</p>
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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. When the Consumer requested documentation validating the purported debt,
2 Mark stated the Consumer could accept the offer of \$649.89 without documentation today, or he
3 could instead get served with legal paperwork and have to pay the full \$1,469.10 plus court costs
4 and attorneys' fees;

5 f. When asked whether the purported debt was too old to sue on, Mark stated
6 that the statute of limitations does not apply because these were "hard money cash loans;"

7 g. Mark stated that they only take cases they are guaranteed to win, and it is
8 impossible for them to lose in court;

9 h. When the Consumer requested Moss Westinghouse's website or address,
10 Mark refused to provide this information;

11 i. When the Consumer stated he wanted time to consider the offer by Moss
12 Westinghouse, Mark provided his direct phone number, (949) 561-3731;

13 j. The Consumer called the number Mark provided, (949) 561-3731, stating
14 that he was hesitant to provide his banking or credit card information over the phone without proof
15 of the debt; Mark responded that the Consumer would be sued in a few days and his wages would
16 be garnished.

17 6. On or around September 1, 2022, the Consumer called the phone number provided
18 by Mark, (949) 561-3731, and was told by a person identifying himself as Ray Stewart that Mark
19 was "no longer with us." After the Consumer provided the reference number, 399521, Ray Stewart
20 stated that the Consumer's purported debt was \$1,469.10, payable by nine monthly payments of
21 \$163.23, or a "one-time settlement of \$649.89 for full payment." Similar to what Mark stated on or
22 around June 10, 2022, Ray Stewart stated that the purported debt was a Speedy Cash loan originally
23 from September 16, 2013.

24 7. Ray Stewart also stated:

25 We are a litigation firm, so what happens is a group of investors purchase
26 the account, they send out notices, whoever responds they resolve it,
27 whoever doesn't because it's under \$5,000 they go ahead and file a civil
28 case, which relinquishes them from hiring an attorney and you don't have
to hire an attorney because it is small claims. A representative will go
down prior to a judgment being placed which would be an additional fee
for the person representing the company.

1 8. On or around November 1, 2022, the Consumer again called the phone number
2 provided by Mark, (949) 561-3731, and spoke with a person identifying himself as Jason. After the
3 Consumer provided the reference number, 399521, Jason stated, “Mr. Stewart is not available, but I
4 can help you with that.” Jason stated that according to the Consumer’s “file,” the total balance was
5 \$1,469.10, but he could settle today for \$649.89, or set up a payment plan. Jason stated that the
6 first option is over a nine-month period paying \$163.23 per month, and the second option is over a
7 six-month period paying \$244.85 per month.

8 9. When the Consumer stated he would make a one-time payment of \$649.89, Jason
9 stated he would receive an email from Bob Moss in about 30 minutes.

10 10. On or around November 1, 2022, the Consumer received an email from
11 www.hellosign.com that stated, “Bob Moss (bxm@prodigy-pm.com) has requested a signature.”
12 Clicking on a “Review & Sign” link, the Consumer received a document with the header, “Moss
13 Westinghouse & Associates, 4533 MacArthur Blvd., Suite 332, Newport Beach, CA 92660”
14 (Settlement Offer). The Settlement Offer stated that the original creditor was “Speedy Rapid
15 Cash,” the current creditor was “Moss Westinghouse & Associates,” and the current balance was
16 \$1,469.10. The Settlement Offer further stated:

17 We would like to make the following Settlement Offer concerning this
18 account. We are authorized to accept the sum of \$649.89 as a compromise
19 in full on the above referenced account. To accept this offer and complete
20 this agreement, your payment(s) must post to your account on or before
21 the following dates. There will be a total of 1 payment. . . . Payment (\$) \$649.89 . . . Due Date 11/01/2022 . . . Upon full payment, and conclusion
22 of the settlement, we may notify credit reporting agencies that the debt is
23 paid in full . . . However, if the settlement amount is not received timely,
24 we reserve the right to withdraw the offer and the settlement agreement
25 will be considered as null and void and our client may then pursue the full
26 amount of the unpaid obligation. This is a one-time offer and is non-
27 negotiable.

28 ***Prodigy Portfolio Management (PPM)*** will appear on your bank
statement as our payment processor. You must sign and date the
agreement prior to the release of liability. Should you require additional
assistance regarding your file you may contact the undersigned
administrator.

Sincerely,

1 Jason Caruso
2 Legal Administrator
3 Contact (949) 354-6449

4 11. The Settlement Offer sent to the Consumer by Moss Westinghouse and PPM failed
5 to state that they are a debt collector attempting to collect a debt and that any information obtained
6 will be used for that purpose, in violation of Civil Code section 1788.17 of the Rosenthal Fair Debt
7 Collections Practices Act (Rosenthal Act) (Cal. Civ. Code §§ 1788 – 1788.33), which incorporates
8 15 U.S.C. section 1692e(11) of the Fair Debt Collection Practices Act (FDCPA) (15 U.S.C. §§
9 1692 – 1692p).

10 12. Moss Westinghouse failed to provide at least one California resident with any
11 written notification that included the following information required pursuant to 15 U.S.C. section
12 1692g(a) of the FDCPA within five days of its initial communication regarding the alleged debt, in
13 violation of California Civil Code section 1788.17: (1) the amount of the debt; (2) the name of the
14 creditor to whom the debt is owed; (3) a statement that unless the consumer, within thirty days after
15 receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be
16 assumed to be valid by the debt collector; (4) a statement that if the consumer notifies the debt
17 collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the
18 debt collector will obtain verification of the debt or a copy of a judgment against the consumer and
19 a copy of such verification or judgment will be mailed to the consumer by the debt collector; and
20 (5) a statement that, upon the consumer’s written request within the thirty-day period, the debt
21 collector will provide the consumer with the name and address of the original creditor, if different
22 from the current creditor.

23 13. As of September 29, 2023, despite not signing the Settlement Offer, the Consumer
24 had not been sued “in a few days” from June 10, 2022, as threatened by Mark, indicating this was a
25 false representation that a legal proceeding has been, is about to be, or will be instituted unless
26 payment of a consumer debt is made, in violation of California Civil Code section 1788.13,
27 subdivision (j) of the Rosenthal Act and 15 U.S.C. section 1692e(5) of the FDCPA.

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1 14. Moreover, Mark’s threat on or around June 10, 2022 that the Consumer’s wages
2 would be garnished for nonpayment of the consumer debt violated California Civil Code section
3 1788.10, subdivision (e) of the Rosenthal Act and 15 U.S.C. section 1692e(4) of the FDCPA.

4 15. Based on the claim by Mark and Ray Stewart that the purported debt was a Speedy
5 Cash loan from on or around September 16, 2013, Moss Westinghouse’s failure to include the
6 required notice that the law limits how long the Consumer can be sued on a debt and because of the
7 age of the debt the debt collector will not sue the Consumer for it in their written communication to
8 the Consumer in an attempt to collect a time-barred debt the, violated California Civil Code section
9 1788.14, subdivision (d). Moreover, threatening to sue to collect a time-barred debt violated 12
10 C.F.R. part 1006.26(b) of Regulation F (12 C.F.R. part 1006), implementing the FDCPA.

11 16. Mark’s claim on or around June 10, 2022, that the Consumer would be sued and
12 have to pay court costs and attorneys’ fees if the Consumer requested debt validation rather than
13 accepting the offer of \$649.89 without debt validation was a false representation in violation of
14 California Civil Code section 1788.13, subdivision (e).

15 17. The false representations made by Mark on behalf of Moss Westinghouse were
16 material and likely to mislead a consumer acting reasonably under the circumstances, constituting
17 deceptive acts or practices, in violation of California Financial Code section 90003, subdivision
18 (a)(1).

19 Unlicensed Activity in Violation of the DCLA

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

23 19. The Commissioner has not issued a license to Moss Westinghouse or PPM,
24 authorizing either of them to engage in the business of debt collection under the DCLA.
25 Furthermore, neither Moss Westinghouse nor PPM has applied for a license under the DCLA.
26 Neither Moss Westinghouse nor PPM is exempt from the licensing requirements of California
27 Financial Code section 100001.

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1 conditions of any financial transaction, or any account, product, or service
2 related thereto, with respect to a consumer . . .

3 (e) “Consumer financial product or service” means either of the following:
4 (1) A financial product or service that is delivered, offered, or provided for
5 use by consumers primarily for personal, family, or household purposes . .

6 (f) “Covered person” means, to the extent not preempted by federal law,
7 any of the following: (1) Any person that engages in offering or providing
8 a consumer financial product or service to a resident of this state . . . (3)
9 Any *service provider* to the extent that the person engages in the offering
10 or provision of its own consumer financial product or service . . .

11 (k) “Financial product or service” means . . . (10) *Collecting debt* related
12 to any consumer financial product or service (Emphasis added.)

13 27. California Financial Code section 90003, subdivision (a) provides in relevant part:

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

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

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

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

25 29. California Civil Code section 1788.2, subdivision (c) of the Rosenthal Act provides:

26 The term “debt collector” means any person who, in the ordinary course of
27 business, regularly, on behalf of that person or others, engages in debt
28 collection. The term includes any person who composes and sells, or
offers to compose and sell, forms, letters, and other collection media used
or intended to be used for debt collection.

30. California Civil Code section 1788.10, subdivision (e) of the Rosenthal Act
provides:

No debt collector shall collect or attempt to collect a consumer debt by
means of the following conduct: . . . (e) The threat to any person that

1 nonpayment of the consumer debt may result in the arrest of the debtor or
2 the seizure, garnishment, attachment or sale of any property or the
3 garnishment or attachment of wages of the debtor, unless such action is in
fact contemplated by the debt collector and permitted by the law.

4 31. California Civil Code section 1788.13 of the Rosenthal Act provides in relevant part:

5 No debt collector shall collect or attempt to collect a consumer debt by
6 means of the following practices: . . . (e) The false representation that the
7 consumer debt may be increased by the addition of attorney’s fees,
8 investigation fees, service fees, finance charges, or other charges if, in
9 fact, such fees or charges may not legally be added to the existing
10 obligation . . . (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

11 32. California Civil Code section 1788.14 of the Rosenthal Act provides in relevant part:

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

15 (1) If the debt is not past the date for obsolescence set forth in Section
16 605(a) of the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681c), the
17 following notice shall be included in the first written communication
provided to the debtor after the debt has become time-barred:

18 “The law limits how long you can be sued on a debt. Because of the age of
19 your debt, we will not sue you for it. If you do not pay the debt, [insert
20 name of debt collector] may [continue to] report it to the credit reporting
agencies as unpaid for as long as the law permits this reporting”

21 33. California Civil Code section 1788.17 of the Rosenthal Act provides in relevant part:

22 Notwithstanding any other provision of this title, every debt collector
23 collecting or attempting to collect a consumer debt shall comply with the
24 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

25 34. 15 U.S.C. section 1692e of the FDCPA provides in relevant part:

26 A debt collector may not use any false, deceptive, or misleading
27 representation or means in connection with the collection of any debt.
28 Without limiting the general application of the foregoing, the following
conduct is a violation of this section: . . .

1 (4) The representation or implication that nonpayment of any debt will
2 result in the arrest or imprisonment of any person or the seizure,
3 garnishment, attachment, or sale of any property or wages of any person
4 unless such action is lawful and the debt collector or creditor intends to
5 take such action.

6 (5) The threat to take any action that cannot legally be taken or that is not
7 intended to be taken . . .

8 (11) The failure to disclose in the initial written communication with the
9 consumer and, in addition, if the initial communication with the consumer
10 is oral, in that initial oral communication, that the debt collector is
11 attempting to collect a debt and that any information obtained will be used
12 for that purpose, and the failure to disclose in subsequent communications
13 that the communication is from a debt collector, except that this paragraph
14 shall not apply to a formal pleading made in connection with a legal action
15

16 35. 15 U.S.C. section 1692g of the FDCPA provides in relevant part:

17 (a) Notice of debt; contents

18 Within five days after the initial communication with a consumer in
19 connection with the collection of any debt, a debt collector shall, unless
20 the following information is contained in the initial communication or the
21 consumer has paid the debt, send the consumer a written notice
22 containing--

23 (1) the amount of the debt;

24 (2) the name of the creditor to whom the debt is owed;

25 (3) a statement that unless the consumer, within thirty days after receipt of
26 the notice, disputes the validity of the debt, or any portion thereof, the debt
27 will be assumed to be valid by the debt collector;

28 (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 . .
..

36. 12 C.F.R. part 1006.26(b) of Regulation F provides:

Legal actions and threats of legal actions prohibited. A debt collector
must not bring or threaten to bring a legal action against a consumer to
collect a time-barred debt. This paragraph (b) does not apply to proofs of
claim filed in connection with a bankruptcy proceeding.

- 1 37. California Financial Code section 90015, subdivision (d), provides:
2 (1) If, in the opinion of the department, any person engages, has
3 engaged, or proposes to engage in any activity prohibited by Section
4 90003 or 90004, the department may issue an order directing the person
5 to desist and refrain from engaging in the activity, act, practice, or
6 course of business.
7 (2) If that person fails to file a written request for a hearing within 30
8 days from the date of service of the order, the order shall be deemed a
9 final order of the commissioner.

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

- 12 39. California Financial Code section 90012, subdivision (c) provides, in relevant part:
13 In any civil or administrative action brought pursuant to this division, the
14 following penalties shall apply:

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

17 (A) The penalty amounts are as follows:

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

23 IV.

24 **Desist and Refrain Order**

25 40. Based on the foregoing findings, the Commissioner is of the opinion that Moss
26 Westinghouse and PPM are each covered persons and/or service providers that engaged in unlawful
27 acts or practices, in violation of California Financial Code section 90003, subdivision (a)(1), and
28 offered or provided to a consumer any financial product or service not in conformity with any
consumer financial law or otherwise committed any act or omission in violation of a consumer
financial law, in violation of California Financial Code section 90003, subdivision (a)(2), including
but not limited to the following:

- a. California Financial Code section 100001, subdivision (a) of the DCLA;
b. California Civil Code section 1788.17 of the Rosenthal Act;

1 c. 15 U.S.C. section 1692e(11) of the FDCPA.

2 41. Pursuant to California Financial Code section 90015, subdivision (d)(1), Moss
 3 Westinghouse and PPM and their managers, officers, directors, agents, or employees, are hereby
 4 ordered to desist and refrain from engaging in, or proposing to engage in, unlawful acts or practices
 5 in collecting or attempting to collect any consumer debt in violation of California Financial Code
 6 section 90003, subdivision (a)(1), or offer or provide to a consumer any financial product or service
 7 not in conformity with any consumer financial laws, including but not limited to the following:

8 a. California Financial Code section 100001, subdivision (a) of the DCLA;

9 b. California Civil Code section 1788.17 of the Rosenthal Act;

10 c. 15 U.S.C. section 1692e(11) of the FDCPA.

11 42. In addition to the violations noted above in paragraphs 40 and 41, based on the
 12 foregoing findings, the Commissioner is of the opinion that Moss Westinghouse is a covered person
 13 and/or service provider that engaged the following in unlawful acts or practices, in violation of
 14 California Financial Code section 90003, subdivision (a)(1), and offered or provided to a consumer
 15 any financial product or service not in conformity with any consumer financial law or otherwise
 16 committed any act or omission in violation of a consumer financial law, in violation of California
 17 Financial Code section 90003, subdivision (a)(2), including but not limited to the following:

18 a. California Civil Code section 1788.10, subdivision (e) of the Rosenthal Act;

19 b. California Civil Code section 1788.13, subdivisions (e) and (j) of the Rosenthal Act;

20 c. California Civil Code section 1788.14, subdivision (d) of the Rosenthal Act;

21 d. California Civil Code section 1788.17 of the Rosenthal Act;

22 e. 15 U.S.C. section 1692g(a) of the FDCPA;

23 f. 15 U.S.C. section 1692e(4) and (5) of the FDCPA;

24 g. 12 C.F.R. part 1006.26(b) of Regulation F.

25 43. Pursuant to California Financial Code section 90015, subdivision (d)(1), Moss
 26 Westinghouse and its managers, officers, directors, agents, or employees, are hereby ordered to
 27 desist and refrain from engaging in, or proposing to engage in, unlawful acts or practices in
 28 collecting or attempting to collect any consumer debt in violation of California Financial Code

1 section 90003, subdivision (a)(1), or offer or provide to a consumer any financial product or service
2 not in conformity with any consumer financial laws, including but not limited to the following:

- 3 a. California Civil Code section 1788.10, subdivision (e) of the Rosenthal Act;
- 4 b. California Civil Code section 1788.13, subdivisions (e) and (j) of the Rosenthal Act;
- 5 c. California Civil Code section 1788.14, subdivision (d) of the Rosenthal Act;
- 6 d. California Civil Code section 1788.17 of the Rosenthal Act;
- 7 e. 15 U.S.C. section 1692g(a) of the FDCPA;
- 8 f. 15 U.S.C. section 1692e(4) and (5) of the FDCPA;
- 9 g. 12 C.F.R. part 1006.26(b) of Regulation F.

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

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

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

22 V.

23 **Order Assessing Penalties – CCFPL (Cal. Fin. Code § 90015(c))**

24 47. Pursuant to California Financial Code section 90015, subdivision (c) and section
25 90012, subdivision (c), and after due consideration of possible mitigating factors and other
26 appropriateness considerations listed in section 90012, subdivision (c)(1)(B), Moss Westinghouse is
27 hereby ordered to pay the Commissioner a penalty of \$37,500.00 within 30 days of the date of this
28 order. This penalty shall be made payable in the form of an Automated Clearing House deposit or

1 cashier’s check made payable to the Department of Financial Protection and Innovation. The
2 cashier’s check shall be mailed to the attention of “Accounting – Litigation” at Department of
3 Financial Protection and Innovation, 2101 Arena Boulevard, Sacramento, California 95834-2036.
4 Notice of such payment shall be concurrently sent to Sophia C. Kim via e-mail at
5 Sophia.Kim@dfpi.ca.gov.

6 48. Pursuant to California Financial Code section 90015, subdivision (c) and section
7 90012, subdivision (c), and after due consideration of possible mitigating factors and other
8 appropriateness considerations listed in section 90012, subdivision (c)(1)(B), PPM is hereby
9 ordered to pay the Commissioner a penalty of \$7,500.00 within 30 days of the date of this order.
10 This penalty shall be made payable in the form of an Automated Clearing House deposit or
11 cashier’s check made payable to the Department of Financial Protection and Innovation. The
12 cashier’s check shall be mailed to the attention of “Accounting – Litigation” at Department of
13 Financial Protection and Innovation, 2101 Arena Boulevard, Sacramento, California 95834-2036.
14 Notice of such payment shall be concurrently sent to Sophia C. Kim via e-mail at
15 Sophia.Kim@dfpi.ca.gov.

16
17 Dated: October 23, 2023
18 Los Angeles, California

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation



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21 By: _____
22 MARY ANN SMITH
23 Deputy Commissioner
24 Enforcement Division
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