

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

<p>In the Matter of:</p> <p>THE COMMISSIONER OF FINANCIAL PROTECTION AND INNOVATION,</p> <p style="padding-left: 40px;">Complainant,</p> <p style="padding-left: 80px;">v.</p> <p>SMOOT INVESTMENTS INC.,</p> <p style="padding-left: 40px;">Respondent.</p>	<p>) DCLA LICENSE NO.: 12280-99</p> <p>) DESIST AND REFRAIN ORDER AND ORDER ASSESSING PENALTIES</p> <p>) (Cal. Fin. Code § 90015(b), (c), (d)(1))</p>
--	---

The Complainant, the Commissioner of Financial Protection and Innovation (Commissioner) of the Department of Financial Protection and Innovation (Department) is informed and believes, and based upon such information and belief, alleges and charges Smoot Investments Inc. (Respondent) as follows:

I.

Introduction

1. The Commissioner has jurisdiction over the licensing and regulation of persons engaged in the business of debt collection in California under the Debt Collection Licensing Act (DCLA) (Cal. Fin. Code §§ 100000 – 100025) and the rules and regulations promulgated thereunder.

2. The Commissioner also has jurisdiction over the regulation of persons who engage, have engaged, and propose to engage in offering or providing a consumer financial product or service in California and affiliated service providers under the California Consumer Financial Protection Law (CCFPL) (Cal. Fin. Code §§ 90000 – 90019).

3. Respondent is a West Virginia corporation.

4. Respondent is a debt collector licensed by the Commissioner under the DCLA with license number(s) 12280-99. Respondent’s principal place of business is 3000 Smoot Road, Smoot, WV 24977.

1 II.

2 **Factual Background**

3 5. Respondent collects debt related to a consumer financial product or service as
4 defined in California Financial Code section 90005(k)(10), including but not limited to extensions
5 of credit.

6 6. California Financial Code section 100021(a) requires all DCLA licensees to file an
7 annual report with the Commissioner, on or before March 15, that contains all relevant information
8 that the Commissioner reasonably requires concerning the business and operations conducted by the
9 licensee in the state during the preceding calendar year, including information regarding collection
10 activity (Annual Report).

11 7. Pursuant to California Financial Code section 100015(a), the Commissioner is
12 authorized to establish relationships or contracts with the Nationwide Multistate Licensing System
13 & Registry (NMLS)³⁴ to collect and maintain records and process transaction fees or other fees
14 related to licensees or other persons subject to this division. Pursuant to California Code of
15 Regulations, title 10, section 1850.16, the licensee shall establish an email for communications
16 from the Commissioner (Designated Email Address). The email account shall be established and
17 monitored in accordance with the requirements in California Financial Code section 331.5. By
18 registering the Designated Email Address, the applicant consents to receive information from the
19 Commissioner at that email address, including, but not limited to, assessment notices.

20 8. On September 16, 2024, the Commissioner instructed all DCLA licensees via their
21 Designated Email Address to verify that their current Designated Email Address meets the
22 requirements and to update as needed.

23 9. On October 17, 2024, the Commissioner notified all DCLA licensees who had not
24 yet provided a Designated Email Address via the email listed under Primary Company Contact on
25 NMLS that they must provide a Designated Email Address immediately.

26 _____
27 ³⁴ NMLS stands for Nationwide Multistate Licensing System & Registry and is the system of record for non-depository,
28 financial services licensing or registration in participating agencies, including the District of Columbia and U.S.
Territories of Puerto Rico, the U.S. Virgin Islands, and Guam. In these jurisdictions, NMLS is the official system for
companies and individuals seeking to apply for, amend, renew and surrender licenses authorities managed through
NMLS.

1 10. On December 6, 2024, the Commissioner provided all DCLA licensees via the
2 Designated Email Address with a sample of the Annual Report stating that detailed filing
3 instructions and access to the Annual Report will be provided on January 2, 2025. The email
4 reminded DCLA licensees that if they were licensed as of December 31, 2024, they must file the
5 Annual Report via the DFPI Self-Service Portal by March 15, 2025.

6 11. Also on December 6, 2024, the Commissioner again notified all DCLA licensees
7 who had not yet provided a Designated Email Address via the email listed under Primary Company
8 Contact on NMLS that they must provide a Designated Email Address immediately. The
9 Commissioner also provided these licensees with a sample of the Annual Report stating that
10 detailed filing instructions and access to the Annual Report will be provided on January 2, 2025, but
11 they will not receive detailed filing instructions and access to the annual report without a
12 Designated Email Address. The email reminded the DCLA licensees that if they were licensed as
13 of December 31, 2024, they must file the Annual Report via the DFPI Self-Service Portal by March
14 15, 2025.

15 12. On January 3, 2025, the Commissioner notified all DCLA licensees via the
16 Designated Email Address that the Annual Report was accessible via the DFPI Self-Service Portal
17 and provided instructions for filing the Annual Report.

18 13. On February 14, 2025, the Commissioner again reminded all DCLA licensees via the
19 Designated Email Address that all DCLA licensees must file the Annual Report by the deadline of
20 March 15, 2025.

21 14. On March 3, 2025, the Commissioner gave a final reminder to all DCLA licensees
22 via the Designated Email Address that all DCLA licensees who were licensed as of December 31,
23 2024, must file the Annual Report by the deadline of March 15, 2025, stating that failure to file the
24 Annual Report may subject the DCLA licensee to suspension, revocation, penalties, or other
25 enforcement action.

26 15. As of March 16, 2025, Respondent, who was licensed as of February 13, 2024, had
27 not filed its Annual Report with the Commissioner, in violation of California Financial Code
28 section 100021(a). As a result, on March 18, 2025 the Commissioner issued a Notice of Failure to

1 File Annual Report by March 15, 2025 (Failure Notice) to Respondent via certified mail and
2 Designated Email Address or the email listed under Company Contact on NMLS notifying
3 Respondent that the Department will issue a Desist and Refrain Order and Order Assessing
4 Penalties under California Financial Code section 90015(c) and (d)(1) and will also move to revoke
5 Respondent’s DCLA license under California Financial Code sections 100003(b)(3) and
6 100003.3(b)(1) if the Annual Report is not filed before March 28, 2025.

7 16. On or around March 27, 2025, or 9 calendar day(s) after the Failure Notice,
8 Respondent filed its Annual Report with the Commissioner, in violation of California Financial
9 Code section 100021(a).

10 **III.**

11 **Applicable Laws**

12 17. California Financial Code section 90005 provides in relevant part:

13 (d) “Consumer financial law” means a federal or California law that
14 directly and specifically regulates the manner, content, or terms and
15 conditions of any financial transaction, or any account, product, or service
related thereto, with respect to a consumer . . .

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

19 (f) “Covered person” means, to the extent not preempted by federal law,
20 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 . . .

21 (k) “Financial product or service” means . . . (1) Extending credit and
22 servicing extensions of credit . . . (10) **Collecting debt** related to any
consumer financial product or service . . . (Emphasis added.)

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

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

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

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

4 19. The DCLA and regulations promulgated thereunder are consumer financial laws
5 within the meaning of California Financial Code section 90003(a)(2).

6 20. California Financial Code section 100003 provides, in pertinent part:

7 (b) Without limitation, the functions, powers, and duties of the
8 commissioner include all of the following:

9 (3) To revoke or suspend any license for a violation of this division or a
10 violation of Title 1.6C (commencing with Section 1788) or Title 1.6C.5
11 (commencing with Section 1788.50) of Part 4 of Division 3 of the Civil
12 Code

13 21. California Financial Code section 100003.3 provides, in pertinent part:

14 (b) The commissioner may suspend or revoke a license if, after notice and
15 an opportunity for hearing, the commissioner finds any of the following:

16 (1) The licensee violated this division or a regulation adopted or an order
17 issued under this division

18 22. California Financial Code section 100021 provides, in pertinent part:

19 (a) A licensee shall file an annual report with the commissioner, on or
20 before March 15, that contains all relevant information that the
21 commissioner reasonably requires concerning the business and operations
22 conducted by the licensee in the state during the preceding calendar year,
23 including information regarding collection activity. The report shall, at
24 minimum, require disclosure of all of the following information:

25 (1) The total number of California debtor accounts purchased or collected
26 on in the preceding year.

27 (2) The total dollar amount of California debtor accounts purchased in the
28 preceding year.

(3) The face value dollar amount of California debtor accounts in the
licensee's portfolio in the preceding year.

(4) The total dollar amount of California debtor accounts collected in the
preceding year, and the total dollar amount of outstanding debt that
remains uncollected.

(5) The total dollar amount of net proceeds generated by California debtor
accounts in the preceding year.

(6) Whether or not the licensee is acting as a debt collector, debt buyer, or
both.

(7) The case number of any action in which the licensee was held liable by
final judgment under Title 1.6C (commencing with Section 1788) or Title
1.6C.5 (commencing with Section 1788.50) of Part 4 of Division 3 of the

Civil Code

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

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

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

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

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

(A) The penalty amounts are as follows:

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

IV.

Desist and Refrain Order

26. Based on the foregoing findings, the Commissioner is of the opinion that Respondent is a covered person that engaged in unlawful acts or practices, in violation of California Financial Code section 90003(a)(1), and 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, including but not limited to California Financial Code section 100021(a) of the DCLA, in violation of California Financial Code section 90003(a)(2).

