

Unlicensed Activity in Violation of the DCLA

7. The DCLA, which became effective on January 1, 2021, requires persons engaged in the business of debt collection in California to be licensed beginning on January 1, 2022, pursuant to Financial Code section 100001, subdivision (a). However, a debt collector who submits an application prior to January 1, 2022, i.e., by December 31, 2021, shall be allowed to operate pending the approval or denial of the application, pursuant to Financial Code section 100000.5, subdivision (c).

8. ASG failed to submit an application for a debt collector license by December 31, 2021, which would have allowed it to continue operating as a debt collector in California from January 1, 2022, pending the approval or denial of its application.

9. Beginning in or around November 2021 through at least April 2022, despite lacking licensure or a pending application, ASG engaged in the business of debt collection in this state by attempting to collect a debt from at least one California consumer, in violation of Financial Code section 100001, subdivision (a), and engaged in additional unlawful and/or deceptive acts or practices, as described in paragraphs 5 and 6 above.

10. As of the current date, ASG has never been issued a license to engage in the business of debt collection in California, and there is no application pending denial or approval by the Department permitting it to engage in debt collection in California from January 1, 2022.

III.

Applicable Laws

11. Financial Code section 100001, subdivision (a) of the DCLA provides that “[n]o person shall engage in the business of debt collection in this state without first obtaining a license.”

12. Financial Code section 100000.5, subdivision (c) provides that “[t]he commissioner shall allow any debt collector that submits an application prior to January 1, 2022, to operate pending the approval or denial of the application.”

13. Financial Code section 100002, subdivision (h) defines “debt” as “money, property, or their equivalent that is due or owing or alleged to be due or owing from a natural person to another person.”

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14. Financial Code section 100002, subdivision (f) provides:

“Consumer debt” or “consumer credit” as means money, property, or their equivalent, due or owing, or alleged to be due or owing, from a natural person by reason of a consumer credit transaction. The term “consumer debt” includes a mortgage debt. The term “consumer debt” includes “charged-off consumer debt” as defined in Section 1788.50 of the Civil Code.

15. Financial Code section 100002, subdivision (i) defines “debt collection” as “any act or practice in connection with the collection of consumer debt.”

16. Financial Code section 100002, subdivision (j) provides:

“Debt collector” means any person who, in the ordinary course of business, regularly, on the person’s own behalf or on behalf of others, engages in debt 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. The term “debt collector” includes “debt buyer” as defined in Section 1788.50 of the Civil Code.

17. Financial Code section 90005, subdivision (e) defines “consumer financial product or service” as including “[a] financial product or service that is delivered, offered, or provided for use by consumers primarily for personal, family, or household purposes.”

18. Financial Code section 90005, subdivision (k) provides, in relevant part:

(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

19. Financial Code section 90003, subdivision (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

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20. Financial Code section 90005, subdivision (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

21. The following laws are consumer financial laws within the meaning of Financial Code section 90003, subdivision (a)(2): the DCLA, Rosenthal Fair Debt Collection Practices Act (Rosenthal Act) (Civ. Code, § 1788 et seq.), and the Fair Debt Collection Practices Act (FDCPA) (15 U.S.C. § 1692 et seq.).

22. Civil Code 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 . . .

23. 15 U.S.C. 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....

24. Financial Code section 90015, subdivision (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.

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

26. Financial Code section 90012, subdivision (c) provides, in relevant part:

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

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

3 (A) The penalty amounts are as follows:

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

9 **IV.**

10 **Desist and Refrain Order**

11 27. Based on the foregoing findings, the Commissioner is of the opinion that ASG
12 Recovers is a covered person or service provider that engaged in unlawful acts or practices, in
13 violation of Financial Code section 90003, subdivision (a)(1), and offered or provided to a
14 consumer any financial product or service not in conformity with any consumer financial law or
15 otherwise committed any act or omission in violation of a consumer financial law, in violation of
16 Financial Code section 90003, subdivision (a)(2), including but not limited to the following:

- 17 a. Financial Code section 100001, subdivision (a) of the DCLA;
- 18 b. Civil Code section 1788.17 of the Rosenthal Act;
- 19 c. 15 U.S.C. section 1692e (2) of the FDCPA.

20 28. Pursuant to Financial Code section 90015, subdivision (d)(1), ASG Recovers a.k.a.
21 ASG Recoveries LLC and its managers, officers, directors, agents, or employees, are hereby
22 ordered to desist and refrain from engaging in, or proposing to engage in, unlawful acts or practices
23 in collecting or attempting to collect any consumer debt in violation of Financial Code section
24 90003, subdivision (a)(1), or offering or providing to a consumer any financial product or service
25 not in conformity with any consumer financial laws, including but not limited to the following:

- 26 a. Financial Code section 100001, subdivision (a) of the DCLA;
- 27 b. Civil Code section 1788.17 of the Rosenthal Act;
- 28 c. 15 U.S.C. section 1692e (2) of the FDCPA.

29 29. Furthermore, based on the foregoing findings, the Commissioner is of the opinion
30 that ASG is a covered person or service provider that engaged in deceptive acts or practices with

1 respect to consumer financial products or services in violation of Financial Code section 90003,
2 subdivision (a)(1).

3 30. Pursuant to Financial Code section 90015, subdivision (d)(1), ASG Recovers a.k.a.
4 ASG Recoveries LLC and its managers, officers, directors, agents, or employees, are hereby
5 ordered to desist and refrain from engaging in, or proposing to engage in, deceptive acts or practices
6 in collecting or attempting to collect any consumer debt in violation of Financial Code section
7 90003, subdivision (a)(1).

8 31. This Desist and Refrain Order is necessary, in the public interest and consistent with
9 the purposes, policies, and provisions of the CCFPL. This Desist and Refrain Order shall remain in
10 full force and effect until further order of the Commissioner.

11 **V.**

12 **Order Assessing Penalties – CCFPL (Fin. Code, § 90015, subd. (c))**

13 32. Pursuant to Financial Code section 90015, subdivision (c) and section 90012,
14 subdivision (c), and after due consideration of possible mitigating factors and other appropriateness
15 considerations per subdivision (c)(1)(B), ASG Recovers a.k.a. ASG Recoveries LLC is hereby
16 ordered to pay the Commissioner a penalty of \$15,000.00 within 30 days of the date of this order.
17 This penalty shall be made payable in the form of an Automated Clearing House deposit or
18 cashier’s check made payable to the Department of Financial Protection and Innovation. The
19 cashier’s check shall be mailed to the attention of “Accounting – Litigation” at Department of
20 Financial Protection and Innovation, 2101 Arena Boulevard, Sacramento, California 95834-2036.
21 Notice of such payment shall be concurrently sent to Trevor J. Carroll via e-mail at
22 trevor.carroll@dfpi.ca.gov.

23 Dated: July 21, 2022
24 San Diego, California

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation



25
26
27 By: _____
28 MARY ANN SMITH
Deputy Commissioner
Enforcement Division