1 2	CLOTHILDE V. HEWLETT Commissioner MARY ANN SMITH			
3	Deputy Commissioner DANIEL P. O'DONNELL			
4	Assistant Chief Counsel TREVOR J. CARROLL (State Bar No. 306425)			
5	Counsel Department of Financial Protection and Innovation			
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8	Attorneys for Complainant			
9	BEFORE THE DEPARTMENT OF FINA	ANCIAL PROTECTION AND INNOVATION		
10	OF THE STATE OF CALIFORNIA			
11	In the Matter of:) AGENCY FILE NO.: 33517		
12	THE COMMISSIONER OF FINANCIAL))		
13	PROTECTION AND INNOVATION,) DESIST AND REFRAIN ORDER AND) ORDER ASSESSING PENALTIES		
14	Complainant, v.) (Fin. Code, § 90015, subds. (b), (c), (d)(1))		
15	ASG RECOVERS, a.k.a.)		
16	ASG RECOVERIES LLC,))		
17	Respondent.))		
18))		
19		<u>(</u>)		
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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	<u>Introduction</u>			
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) (Fin. Code, § 100000 et seq.).			

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- 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) (Fin. Code, § 90000 et seq.). Collecting debt relating to a consumer financial product or service is conduct covered by the CCFPL. (Fin. Code, § 90005, subd. (k)(10).)
- 3. At all relevant times, ASG Recovers a.k.a. ASG Recoveries LLC (ASG) was a business entity of unknown type with an unknown principal place of business. There is no limited liability company registered with the California Secretary of State using the name ASG Recoveries. ASG operates a website at www.asgrecovers.com.

II.

Factual Background

- 4. Beginning in or around November 2021 through at least April 2022, ASG engaged in the business of debt collection in California as further described below.
- 5. On or around November 2021, ASG began contacting at least one California consumer (Consumer A) by placing telephone calls and leaving voicemail messages (Voicemails) containing unlawful and/or deceptive statements in an attempt to collect a consumer debt, as follows:
- a. The caller falsely claimed that Consumer A purportedly owed a debt related to a payday loan;
 - b. The caller falsely claimed that ASG had been retained to collect this debt;
- c. The caller threatened to refer Consumer A to ASG's legal department if Consumer A did not respond to ASG's collection attempts; and
- d. The caller threatened to refer Consumer A to the IRS for legal action and claimed that ASG would issue an IRS Form 1099-C to Consumer A if the consumer did not pay.
- 6. ASG's Voicemails contained misrepresentations and omissions that were material and likely to mislead a consumer acting reasonably under the circumstances, constituting deceptive acts or practices, in violation of Financial Code section 90003, subdivision (a)(1).

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 owning 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) pro	oviaes:
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"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:

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- (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

- 27. Based on the foregoing findings, the Commissioner is of the opinion that ASG Recovers is a covered person or service provider that engaged in unlawful acts or practices, in violation of Financial Code section 90003, subdivision (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, in violation of Financial Code section 90003, subdivision (a)(2), including but not limited to the following:
 - a. Financial Code section 100001, subdivision (a) of the DCLA;
 - b. Civil Code section 1788.17 of the Rosenthal Act;
 - c. 15 U.S.C. section 1692e (2) of the FDCPA.
- 28. Pursuant to Financial Code section 90015, subdivision (d)(1), ASG Recovers a.k.a. ASG Recoveries LLC 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 collect any consumer debt in violation of Financial Code section 90003, subdivision (a)(1), or offering or providing to a consumer any financial product or service not in conformity with any consumer financial laws, including but not limited to the following:
 - a. Financial Code section 100001, subdivision (a) of the DCLA;
 - b. Civil Code section 1788.17 of the Rosenthal Act;
 - c. 15 U.S.C. section 1692e (2) of the FDCPA.
- 29. Furthermore, based on the foregoing findings, the Commissioner is of the opinion that ASG is a covered person or service provider that engaged in deceptive acts or practices with

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er financial products or services in violation of Financial Code section 90003,

- rsuant to Financial Code section 90015, subdivision (d)(1), ASG Recovers a.k.a. LLC and its managers, officers, directors, agents, or employees, are hereby and refrain from engaging in, or proposing to engage in, deceptive acts or practices empting to collect any consumer debt in violation of Financial Code section n(a)(1).
- is Desist and Refrain Order is necessary, in the public interest and consistent with cies, and provisions of the CCFPL. This Desist and Refrain Order shall remain in ct until further order of the Commissioner.

V.

der Assessing Penalties – CCFPL (Fin. Code, § 90015, subd. (c))

rsuant to Financial Code section 90015, subdivision (c) and section 90012, d after due consideration of possible mitigating factors and other appropriateness subdivision (c)(1)(B), ASG Recovers a.k.a. ASG Recoveries LLC is hereby Commissioner a penalty of \$15,000.00 within 30 days of the date of this order. be made payable in the form of an Automated Clearing House deposit or ade payable to the Department of Financial Protection and Innovation. The all be mailed to the attention of "Accounting – Litigation" at Department of on and Innovation, 2101 Arena Boulevard, Sacramento, California 95834-2036. yment shall be concurrently sent to Trevor J. Carroll via e-mail at oi.ca.gov.

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San Diego, California

CLOTHILDE V. HEWLETT

Commissioner of Financial Protection and Innovation



By:	
MARY ANN SMITH	
Deputy Commissioner	
Enforcement Division	