

1 CLOTHILDE V. HEWLETT
Commissioner
2 MARY ANN SMITH
Deputy Commissioner
3 MIRANDA LeKANDER
Assistant Chief Counsel
4 JARI BINDER (State Bar No. 333694)
Counsel
5
6 Department of Financial Protection and Innovation
One Sansome Street, Suite 600
7 San Francisco, California 94104-4448
Telephone: (415) 471-0919
8

9 Attorneys for Complainant

10
11 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
12 OF THE STATE OF CALIFORNIA

13 In the Matter of:)
14) AGENCY FILE NO.: 31792
15 THE COMMISSIONER OF FINANCIAL)
PROTECTION AND INNOVATION,) DESIST AND REFRAIN ORDER AND
16) ORDER ASSESSING PENALTIES
Complainant,) (Fin. Code, § 90015, subds. (b), (c), (d)(1))
17 v.)
18)
PINNACLE ASSETS AND RECOVERY)
19 a.k.a. PINNACLE MEDIATION GROUP,)
20 Respondent.

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 regulation of persons who engage, have
27 engaged, and propose to engage in offering or providing a consumer financial product or service in
28 California and affiliated service providers under the California Consumer Financial Protection Law

1 (CCFPL) (Fin. Code, § 90000 et seq.). Collecting debt relating to a consumer financial product or
2 service is conduct covered by the CCFPL. (Fin. Code, § 90005, subd. (k)(10).)

3 2. At all relevant times, Pinnacle Assets and Recovery a.k.a. Pinnacle Mediation Group
4 (Pinnacle) is a Florida entity of unknown form, with a purported mailing address at P.O. Box 1725,
5 Jacksonville, Florida, 32034.

6 **II.**

7 **Factual Background**

8 3. In or around December 2021, Pinnacle engaged in “debt collection,” which is
9 defined in Civil Code section 1788.2, subdivision (b), of the Rosenthal Fair Debt Collection
10 Practices Act (Civ. Code, § 1788 et seq.) (Rosenthal Act) as “any act or practice in connection with
11 the collection of consumer debts.”

12 4. Civil Code section 1788.2, subdivision (f) defines “consumer debt” as “money,
13 property, or their equivalent, due or owing or alleged to be due or owing from a natural person by
14 reason of a consumer credit transaction” and includes mortgage debt.

15 5. On or around December 3, 2021, Pinnacle contacted at least one California
16 consumer (Consumer) by placing numerous telephone calls from various numbers. Pinnacle left a
17 voicemail stating that it wanted to talk to the Consumer about “reassignment of a personal business
18 matter.”

19 6. Beginning on or around December 3, 2021, through December 17, 2021, Pinnacle
20 placed phone calls, left voicemails, and sent letters to the Consumer that included material
21 misrepresentations and omissions likely to mislead a consumer acting reasonably under the
22 circumstances and constituting deceptive acts or practices, in violation of Financial Code section
23 90003, subdivision (a)(1), as further described below:

24 a. On or around December 13, 2021, the Consumer called Pinnacle and spoke
25 to a representative identifying herself as “Nicole Allen” (Allen). Allen represented to the Consumer
26 that she was working as a “mediator” on behalf of a loan company, rather than a debt collector, in
27 violation of Civil Code section 1788.13, subdivision (i).

28 ///

1 b. Allen misleadingly told the Consumer that he would be sued by Pinnacle in
2 regards to a personal loan, contrary to a statement made by the alleged creditor that they had no
3 loan on record under his name, in violation of 15 U.S.C. section 1692e(2) and (5) of the Fair Debt
4 Collection Practices Act (FDCPA) (15 U.S.C. § 1692 et seq.) and Civil Code section 1788.13,
5 subdivision (j).

6 c. When the Consumer asked for more information regarding the loan, Allen
7 refused to provide any further details to verify the alleged debt.

8 d. In multiple phone calls from on or around December 13, 2021 through
9 December 17, 2021, Allen, on behalf of Pinnacle, violated 15 U.S.C. section 1692e (7) by falsely
10 implying that the Consumer was committing a criminal offense by “defrauding a financial
11 institution.” Allen also falsely stated that no statute of limitation applied to this alleged offense and
12 that failure to pay would result in a lawsuit, in violation of 15 U.S.C. section 1692e (2), (5) and
13 Civil Code sections 1788.10, subdivision (b), and 1788.13, subdivision (j).

14 e. When the Consumer asked for more time to verify the debt, Allen claimed
15 that if the Consumer did not call back by the end of the day, Pinnacle would sue the Consumer and
16 he would be liable for additional court costs of \$1,500.00, thereby falsely representing the
17 character, amount, or legal status of the alleged debt and/or compensation that may be lawfully
18 received by Pinnacle, in violation of 15 U.S.C. section 1692e (2) and (5), and falsely representing
19 that a legal proceeding will be instituted unless payment is made, in violation of Civil Code section
20 1788.13, subdivision (j).

21 f. December 13, 2021, Pinnacle sent an email to the Consumer attaching a letter
22 that violated 15 U.S.C. section 1692e (2), (5), and Civil Code sections 1788.10, subdivision (b), and
23 1788.13, subdivision (j), by making misleading statements, including but not limited to the
24 following:

25 i. “Once your final payment has cleared the account will be reported
26 paid in full, zero balance to the proper credit reporting agencies, if applicable.”

27 ///
28 ///

1 ii. “If for any reason this transaction is returned by your financial
2 institution, you will be responsible for all pre-set actions that have already been disclosed on
3 previous recordings.”

4 g. Pinnacle left multiple threatening voicemails for the Consumer, stating that
5 the Consumer would be served at any minute, in violation of 15 U.S.C. section 1692e (2) and (5)
6 and Civil Code section 1788.13, subdivision (j).

7 h. Allen left the Consumer a voicemail falsely stating that he would be served at
8 work if he failed to pay, in violation of Civil Code section 1788.13, subdivision (j).

9 7. On or around December 17, 2021, the Consumer and Pinnacle entered into an
10 agreement to pay Pinnacle \$400.00 up front, with the next payment of \$905.00 to be withdrawn on
11 December 31, 2021, for a total of \$1,305.00. Allen told the Consumer that if the funds are not
12 available, Pinnacle will sue the Consumer and no settlement will be accepted, in violation of
13 15 U.S.C. section 1692e (2) and Civil Code section 1788.13, subdivision (j).

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

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

III.

Applicable Laws

9. 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.”

10. 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

11. 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

12. 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

13. The Rosenthal Act and the FDCPA are consumer financial laws within the meaning of Financial Code section 90003, subdivision (a)(2).

14. Civil Code section 1788.10 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 conduct ... (b) The threat that the failure to pay a consumer debt will result in an accusation that the debtor has committed a crime where such accusation, if made, would be false

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 15. Civil Code 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
- 16. 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 ...
- 17. 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 ... (5) The threat to take any action that cannot legally be taken or that is not intended to be taken ... (7) The false representation or implication that the consumer committed any crime or other conduct in order to disgrace the consumer
- 18. 15 U.S.C. 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

- b. Civil Code section 1788.13, subdivisions (i) and (j) of the Rosenthal Act;
- c. Civil Code section 1788.17 of the Rosenthal Act;
- d. 15 U.S.C. section 1692g (a) of the FDCPA;
- e. 15 U.S.C. section 1692e (2), (5) and (7) of the FDCPA.

23. Pursuant to Financial Code section 90015, subdivision (d)(1), Pinnacle Recovery and Associates aka Pinnacle Mediation Group, 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 offer or provide to a consumer any financial product or service not in conformity with any consumer financial laws, including but not limited to the following:

- a. Civil Code section 1788.10, subdivision (b) of the Rosenthal Act;
- b. Civil Code section 1788.13, subdivisions (i) and (j) of the Rosenthal Act;
- c. Civil Code section 1788.17 of the Rosenthal Act;
- d. 15 U.S.C. section 1692g (a) of the FDCPA;
- e. 15 U.S.C. section 1692e (2), (5) and (7) of the FDCPA.

24. Furthermore, based on the foregoing findings, the Commissioner is of the opinion that Pinnacle Assets and Recovery a.k.a. Pinnacle Mediation Group is a covered person or service provider that engaged in deceptive acts or practices with respect to consumer financial products or services in violation of Financial Code section 90003, subdivision (a)(1).

25. Pursuant to Financial Code section 90015, subdivision (d)(1), Pinnacle Assets and Recovery aka Pinnacle Mediation Group, is hereby ordered to desist and refrain from engaging in, or proposing to engage in, deceptive acts or practices in collecting or attempting to collect any consumer debt in violation of Financial Code section 90003, subdivision (a)(1).

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

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

V.

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

27. Pursuant to Financial Code section 90015, subdivision (c) and section 90012, subdivision (c), and after due consideration of possible mitigating factors and other appropriateness considerations per subdivision (c)(1)(B), Pinnacle Recovery and Associate, aka Pinnacle Mediation Group, is hereby ordered to pay the Commissioner a penalty of \$52,500.00 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: July 21, 2022
San Francisco, California

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation



By: _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division