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8 Attorneys for Complainant

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

11	In the Matter of:)	
12)	
13	THE COMMISSIONER OF FINANCIAL PROTECTION AND INNOVATION,)	DESIST AND REFRAIN ORDER AND ORDER ASSESSING PENALTIES
14	Complainant,)	
15	v.)	(Fin. Code, § 90015, subs. (b), (c) (d)(1))
16	ANDREW LAW FIRM a.k.a. ACS INCORPORATED,)	
17	Respondent.)	
18)	
19)	

20
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, an entity holding itself out as “Andrew Law Firm” and/or
4 “ACS Incorporated” (Andrew Law Firm) contacted California residents claiming to be a law firm
5 acting to collect a debt on behalf of creditors. Andrew Law Firm contacted the California residents
6 using email addresses including, but not limited to, andrew.law.firm02@gmail.com and
7 ace.settlement@ace-cash-services.com, and misrepresented holding physical office addresses,
8 which in truth belonged to other unrelated businesses.

9 **II.**

10 **Factual Background**

11 3. Beginning in or around November 2021, Andrew Law Firm contacted at least one
12 California consumer by sending emails containing unlawful and/or deceptive statements in an
13 attempt to collect a consumer debt.

14 4. A representative claiming to be “Patrick Spencer” of Andrew Law Firm’s
15 “settlement team” told the California consumer that failure to repay a debt of \$6,300.00 would
16 result in an arrest, legal proceedings, and attorney’s fees. In fact, this was a false representation that
17 a legal proceeding has been, is about to be, or will be instituted unless payment of a consumer debt
18 is made, in violation of Civil Code 1788.13, subdivision (j) of the Rosenthal Fair Debt Collection
19 Practices Act (Rosenthal Act) (Civ. Code, § 1788 et seq.).

20 5. In addition, the aforementioned misrepresentation that failure to pay would result in
21 arrest of the consumer, as such action was not in fact contemplated by the debt collector or
22 permitted by the law, violated Civil Code section 1788.10, subdivision (e) of the Rosenthal Act.

23 6. Furthermore, Andrew Law Firm failed to state that it was attempting to collect a debt
24 and that any information obtained will be used for that purpose, in violation of Civil Code section
25 1788.17, which incorporates 15 U.S.C. section 1692e(11) of the Fair Debt Collection Practices Act
26 (FDCPA) (15 U.S.C. § 1692 et seq.).

27 7. Andrew Law Firm and its representative, Patrick Spencer, made a false representation
28 of the true nature of the business or services being rendered by the debt collector by asserting they

1 were a law firm with a “settlement team” attempting to settle a purported debt on behalf of creditors,
2 in violation of Civil Code section 1788.13, subdivision (i).

3 8. The aforementioned misrepresentations, including but not limited to representing
4 itself as a “law firm,” were material and likely to mislead a consumer acting reasonably under the
5 circumstances, constituting deceptive acts or practices, in violation of Financial Code section
6 90003, subdivision (a)(1).

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

20 **III.**

21 **Applicable Laws**

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

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

26 (k) “Financial product or service” means: . . . (1) Extending credit and
27 servicing extensions of credit, including acquiring, purchasing, selling,
28 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

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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. 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

14. The following laws are consumer financial laws within the meaning of Financial Code section 90003, subdivision (a)(2):

15. 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: . . . (e) The threat to any person that nonpayment of the consumer debt may result in the arrest of the debtor . . . unless such action is in fact contemplated by the debt collector and permitted by the law.

16. 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

17. 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 . . .

18. 15 U.S.C. section 1692e of the FDCPA provides in relevant part:

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A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt . . .
(11) The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector

19. 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 . .

20. 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.

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

- 3 a. Civil Code section 1788.10, subdivision (e) of the Rosenthal Act;
- 4 b. Civil Code section 1788.13, subdivisions (i) and (j) of the Rosenthal Act;
- 5 c. Civil Code section 1788.17 of the Rosenthal Act;
- 6 d. 15 U.S.C. section 1692g(a) of the FDCPA;
- 7 e. 15 U.S.C. section 1692e(11) of the FDCPA.

8 25. Furthermore, based on the foregoing findings, the Commissioner is of the opinion
9 that Andrew Law Firm is a covered person or service provider that engaged in deceptive acts or
10 practices with respect to consumer financial products or services in violation of Financial Code
11 section 90003, subdivision (a)(1).

12 26. Pursuant to Financial Code section 90015, subdivision (d)(1), Andrew Law Firm
13 a.k.a. ACS Incorporated and its managers, officers, directors, agents, or employees, are hereby
14 ordered to desist and refrain from engaging in, or proposing to engage in, deceptive acts or practices
15 in collecting or attempting to collect any consumer debt in violation of Financial Code section
16 90003, subdivision (a)(1).

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

20 **V.**

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

22 28. Pursuant to Financial Code section 90015, subdivision (c) and section 90012,
23 subdivision (c), and after due consideration of possible mitigating factors and other appropriateness
24 considerations listed in section 90012, subdivision (c)(1)(B), Andrew Law Firm a.k.a. ACS
25 Incorporated is hereby ordered to pay the Commissioner a penalty of \$7,500.00 within 30 days of
26 the date of this order. This penalty shall be made payable in the form of an Automated Clearing
27 House deposit or cashier’s check made payable to the Department of Financial Protection and
28 Innovation. The cashier’s check shall be mailed to the attention of “Accounting – Litigation” at

1 Department of Financial Protection and Innovation, 2101 Arena Boulevard, Sacramento, California
2 95834-2036. Notice of such payment shall be concurrently sent to Taylor Herrlinger via e-mail at
3 Taylor.Herrlinger@dfpi.ca.gov.

4 Dated: August 31, 2022
5 Sacramento, California

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation



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8 By: _____
9 MARY ANN SMITH
10 Deputy Commissioner
11 Enforcement Division
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