

1 CLOTHILDE V. HEWLETT
 Commissioner
 2 MARY ANN SMITH
 Deputy Commissioner
 3 MIRANDA LEKANDER
 Assistant Chief Counsel
 4 SALLY HONG (State Bar No. 317754)
 Counsel
 5
 6 Department of Financial Protection and Innovation
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 9 Attorneys for Complainant

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

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 14 In the Matter of:)
)
 15 THE COMMISSIONER OF FINANCIAL) DESIST AND REFRAIN ORDER and
 PROTECTION AND INNOVATION,) ORDER ASSESSING PENALTIES
 16)
 17 Complainant,)
 v.)
 18)
 19 KEPLER & STONE LAW GROUP,) (Cal. Fin. Code § 90015 (b), (c), (d)(1))
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 20 Respondent.)
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 25 The Complainant, the Commissioner of Financial Protection and Innovation (Commissioner)
 26 of the Department of Financial Protection and Innovation (Department), is informed and believes,
 27 and based on such information and belief, finds the following:

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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).

2. The Commissioner 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. At all relevant times, Kepler & Stone Law Group (Kepler & Stone) was a business entity of unknown form, with a purported mailing address at 700 E Main Street, Suite 2487, Richmond, Virginia 23219. Kepler & Stone operates a website at <https://keplerstone.com/>.

II.

Factual Background

4. Kepler & Stone is a debt collector as defined in California Civil Code section 1788.2(c) of the Rosenthal Fair Debt Collection Practices Act (Rosenthal Act) (Cal. Civ. Code §§ 1788-1788.33).

5. On May 23, 2022, Kepler & Stone sent a letter to a California resident (Consumer) attempting to collect a purported debt. However, the letter did not include a notice explaining that the letter was sent as an attempt to collect debt.

6. On June 1, 2022, the Consumer made a follow-up call to Kepler & Stone, whereupon a representative named “Ben” informed the Consumer that the debt was from 2008. When the Consumer stated that the referenced account was so old that they could not collect on it, “Ben” informed the Consumer that the debt account was closed and sent a follow-up link allowing the Consumer to confirm that the account was closed.

False, Threatening Communications in Debt Collection

7. The letter sent by Kepler & Stone contained numerous sections that made the letter seem official and were threatening:

- 1 a. The section on the left corner of the letter read “Official Business, Penalty for
2 Private Use;”
- 3 b. The name on the letterhead indicated that the sender was a “Law Group;”
- 4 c. The letter was titled “Notification of Lawsuit Filing and Civil Complaint;”
- 5 d. On the top right corner, a section titled “FILE SUMMARY” listed a purported
6 cash advance loan followed by the words “Description: NSF Fraud;”
- 7 e. The letter contained threats to contact the Consumer’s employer, sister, and
8 another person whom the Consumer did not recognize if “this matter [should] go to trial;”
- 9 f. The letter was allegedly “CC’d” to several entities, including the “United
10 States District Court for California,” “Transunion,” and “Experian;” and,
- 11 g. The letter claimed that if the Consumer failed to respond, Kepler & Stone
12 would file a lawsuit against the Consumer in “a District Court of the United States.”
- 13 8. The letter also contained false representations, including but not limited to:
 - 14 a. That it was the “second notice,” when in fact it was Kepler & Stone’s first
15 contact with the Consumer; and,
 - 16 b. That the letter constituted a legal proceeding when, in fact, Kepler & Stone
17 did not commence or serve the Consumer with notice of any legal action.
- 18 9. The Commissioner finds that the letter sent by Kepler & Stone to the Consumer
19 violated provisions of the Rosenthal Act, which prohibits the following:
 - 20 a. Threatening to collect or attempt to collect a consumer debt by means of
21 communicating with an employer regarding the alleged debt unless such communication is necessary
22 to the collection of the alleged debt or unless the debtor or his/her attorney has consented in writing
23 to such communication, in violation of California Civil Code sections 1788.10(f) and 1788.12(a);
 - 24 b. Threatening to collect or attempt to collect a consumer debt by
25 communicating information regarding the consumer debt to any member of the debtor’s family,
26 other than the debtor’s spouse or parents or guardian, prior to obtaining a judgment against the
27 debtor, except where the purpose of communication is to locate the debtor or unless the debtor or
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1 his/her attorney has consented in writing to such communication, in violation of California Civil
2 Code sections 1788.10(f) and 1788.12(b);

3 c. Falsely representing that a legal proceeding has been or is about to be
4 instituted unless payment is made, in violation of California Civil Code section 1788.13(j);

5 d. Failing to notify the Consumer when attempting to collect on an obsolete debt
6 that because of the age of the debt the debt collector will not sue for it, in violation of California
7 Civil Code section 1788.14(d)(2); and,

8 e. In collecting or attempting to collect a consumer debt, failing to comply with
9 provisions of sections 1692b to 1692j of the Fair Debt Collection Practices Act (FDCPA), in
10 violation of California Civil Code section 1788.17.

11 10. The letter sent by Kepler & Stone violated provisions of the FDCPA, including but
12 not limited to the following:

13 a. Using false, deceptive or misleading representation or means in connection
14 with the collection of any debt, in violation of title 15 of the United States Code section 1692e; and,

15 b. Failing to provide certain notices within five days after the initial
16 communication with a consumer in an attempt to collect debt, in violation of title 15 of the United
17 States Code section 1692g.

18 Failure to Submit License Application in Violation of the DCLA

19 11. The DCLA, which became effective on January 1, 2021, requires persons engaged in
20 the business of debt collection in California to be licensed beginning on January 1, 2022, pursuant to
21 California Financial Code section 100001(a). However, a debt collector who submits an application
22 prior to January 1, 2022 shall be allowed to operate pending the approval or denial of the application
23 pursuant to California Financial Code section 100000.5(c).

24 12. Kepler & Stone has failed to submit an application for a debt collector license. From
25 January 1, 2022 through at least May 2022, there was no application pending the approval or denial
26 of its application.

27 13. In or around May 2022, despite lacking licensure or a pending application, Kepler &
28 Stone engaged in the business of debt collection in this state by attempting to collect a debt from at

1 least one California consumer, in violation of California Financial Code section 100001(a), by
2 sending a collection letter to the California consumer for an alleged debt of \$620.68, stating, among
3 other things, “It is imperative that you mail your balance in full today to the above address in order
4 to prevent this action, or that you call our office upon receipt of this notice.”

5 **III.**

6 **Applicable Law**

7 14. California Financial Code section 100001(a) provides that “[n]o person shall engage
8 in the business of debt collection in this state without first obtaining a license.”

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

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

15 17. California Financial Code section 100002(f) provides:

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

22 18. California Financial Code section 100002(i) defines “debt collection” as “any act or
23 practice in connection with the collection of consumer debt.”

24 19. California Financial Code section 100002(j) provides:

25 “Debt collector” means any person who, in the ordinary course of
26 business, regularly, on the person’s own behalf or on behalf of others,
27 engages in debt collection. The term includes any person who composes
28 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.

20. California Financial Code section 90005 provides in relevant part:

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

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

7 (f) “Covered person” means, to the extent not preempted by federal law,
8 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 . . .

9 (k) “Financial product or service” means . . . (10) *Collecting debt* related
10 to any consumer financial product or service (emphasis added.)

11 21. California Financial Code section 90003(a) provides in relevant part:

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

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

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

18 22. The DCLA, the Rosenthal Act, and the FDCPA are consumer financial laws within
19 the meaning of California Financial Code section 90003(a)(2).

20 23. Section 1788.2(c) of the Rosenthal Act provides:

21 The term “debt collector” means any person who, in the ordinary course of
22 business, regularly, on behalf of that person or others, engages in debt
23 collection. The term includes any person who composes and sells, or
24 offers to compose and sell, forms, letters, and other collection media used
or intended to be used for debt collection.

25 24. Section 1788.10(f) of the Rosenthal Act provides, “No debt collector shall collect or
26 attempt to collect a consumer debt by means of the following conduct: . . . (f) The threat to take any
27 action against the debt which is prohibited by this title.”

28 25. Section 1788.12 of the Rosenthal Act provides in relevant part:

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No debt collector shall collect or attempt to collect a consumer debt by means of the following practices: (a) Communicating with the debtor’s employer regarding the debtor’s consumer debt unless such a communication is necessary to the collection of the debt, or unless the debtor or his attorney has consented in writing to such communication. A communication is necessary to the collection of the debt only if it is made for the purposes of verifying the debtor’s employment, locating the debtor, or effecting garnishment, after judgment, of the debtor’s wages, or in the case of a medical debt for the purpose of discovering the existence of medical insurance . . . (b) Communicating information regarding a consumer debt to any member of the debtor’s family, other than the debtor’s spouse or the parents or guardians of the debtor . . . prior to obtaining a judgment against the debtor, except where the purpose of the communication is to locate the debtor, or where the debtor or his attorney has consented in writing to such communication . . .

26. Section 1788.13(j) 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: . . . 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.”

27. Section 1788.14 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: . . . (d) Sending a written communication to a debtor in an attempt to collect a time-barred debt without providing the debtor with one of the following written notices: . . . (2) If the debt is past the date for obsolescence set forth in Section 605(a0 of the Fair Credit Reporting Act (15 U.S.C. Sec. 1681c), the following notice shall be included in the first written communication provided to the debtor after the date for obsolescence: “The law limits how long you can be sued on a debt. Because of the age of your debt, we will not sue you for it, and we will not report it to any credit reporting agency.”

28. 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 . . .

29. 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

1 conduct is a violation of this section: (2) The false representation of (a) the
2 character, amount, or legal status of any debt . . . (3) The false
3 representation or implication that any individual is an attorney or that any
4 communication is from an attorney . . . (5) The threat to take any action
5 that cannot legally be taken or that is not intended to be taken . . . (9) The
6 use or distribution of any written communication which simulates or is
7 falsely represented to be a document authorized, issued, or approved by any
8 court, official, or agency of the United States or any State, or which creates
9 a false impression as to its source, authorization, or approval . . . (11) The
10 failure to disclose in the initial written communication with the consumer
11 and, in addition, if the initial communication with the consumer is oral, in
12 that initial oral communication, that the debt collector is attempting to
13 collect a debt and that any information obtained will be used for that
14 purpose, and the failure to disclose in subsequent communications that the
15 communication is from a debt collector . . . (13) The false representation or
16 implication that documents are legal process

11 30. Section 1692g of the FDCPA provides in relevant part:

12 (a) Notice of debt; contents

13 Within five days after the initial communication with a consumer in
14 connection with the collection of any debt, a debt collector shall, unless
15 the following information is contained in the initial communication or the
16 consumer has paid the debt, send the consumer a written notice
17 containing--

18 (1) the amount of the debt;

19 (2) the name of the creditor to whom the debt is owed;

20 (3) a statement that unless the consumer, within thirty days after receipt of
21 the notice, disputes the validity of the debt, or any portion thereof, the debt
22 will be assumed to be valid by the debt collector;

23 (4) a statement that if the consumer notifies the debt collector in writing
24 within the thirty-day period that the debt, or any portion thereof, is
25 disputed, the debt collector will obtain verification of the debt or a copy of
26 a judgment against the consumer and a copy of such verification or
27 judgment will be mailed to the consumer by the debt collector; and

28 (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...

31. 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, or an activity, act, practice, or course of business that violates a
law, rule, order, or any condition imposed in writing on the person by the
department, the department may issue an order directing the person to

1 desist and refrain from engaging in the activity, act, practice, or course of
2 business.

3 (2) If that person fails to file a written request for a hearing within 30 days
4 from the date of service of the order, the order shall be deemed a final
order of the commissioner.

5 32. California Financial Code section 90015(c) provides, “[a]fter notice and an
6 opportunity to be heard, the commissioner may, by order, assess penalties under subdivision (c) of
7 Section 90012.

8 33. California Financial Code section 90012(c) provides in relevant part:

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

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

13 (A) The penalty amounts are as follows:

14 (i) For any violation of this division, rule or final order, or condition
15 imposed in writing by the department, a penalty may not exceed the
16 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

17 **IV.**

18 **Desist and Refrain Order**

19 34. Based on the foregoing findings, the Commissioner is of the opinion that Kepler &
20 Stone Law Group is a covered person or service provider that engaged in unlawful acts or practices
21 with respect to consumer financial products or services in violation of California Financial Code
22 section 90003 (a)(1). Further, the Commissioner finds that Kepler & Stone Law Group
23 violated California Financial Code section 90003(a)(2) by offering or providing to a consumer a
24 financial product or service not in conformity with, or otherwise committed any act or omission in
25 violation of, the following consumer financial laws:

- 26 a. Section 100001(a) of the DCLA;
27 b. Sections 1788.10(f) and 1788.12(a) and (b) of the Rosenthal Act;
28 c. Section 1788.13(j) of the Rosenthal Act;

1 d. Section 1788.14(d) of the Rosenthal Act; and
2 e. Section 1788.17 of the Rosenthal Act;
3 i. Section 1692e(2), (3), (5), (9), (11), and (13) of the FDCPA; and,
4 ii. Section 1692g(a) of the FDCPA.
5 35. Pursuant to California Financial Code section 90015(d)(1), Kepler & Stone Law
6 Group and its managers, officers, directors, agents, or employees, are hereby ordered to desist and
7 refrain from engaging in, or proposing to engage in, unlawful acts or practices in collecting or
8 attempting to collect any consumer debt in violation of California Financial Code section
9 90003(a)(2), including but not limited to violating the following:

- 10 a. Section 100001(a) of the DCLA;
- 11 b. Sections 1788.10(f) and 1788.12(a) and (b) of the Rosenthal Act;
- 12 c. Section 1788.13(j) of the Rosenthal Act;
- 13 d. Section 1788.14(d) of the Rosenthal Act; and
- 14 e. Section 1788.17 of the Rosenthal Act;
 - 15 i. Sections 1692e(2), (3), (5), (9), (11), and (13) of the FDCPA; and,
 - 16 ii. Section 1692g(a) of the FDCPA.

17 36. Furthermore, based on the foregoing findings, the Commissioner is of the opinion that
18 Kepler & Stone Law Group is a “covered person” or service provider that engaged in deceptive acts
19 or practices with respect to “consumer financial products or services” in violation of California
20 Financial Code section 90003(a)(1).

21 37. Pursuant to California Financial Code section 90015(d)(1), Kepler & Stone Law
22 Group and its managers, officers, directors, agents, or employees, are hereby ordered to desist and
23 refrain from engaging in, or proposing to engage in, deceptive acts or practices in collecting or
24 attempting to collect any consumer debt in violation of California Financial Code section 90003
25 (a)(1).

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1 38. This Order is necessary, in the public interest, for the protection of consumers and
2 consistent with the purposes, policies, and provisions of the California Consumer Financial
3 Protection Law. This Order shall remain in full force and effect until further order of the
4 Commissioner.

5 **V.**

6 **Order Assessing Penalties**

7 39. Pursuant to California Financial Code sections 90015(c) and 90012(c), and after due
8 consideration of possible mitigating factors and other appropriateness considerations per California
9 Financial Code section 90012(c)(1)(B), Kepler and Stone Law Group is hereby ordered to pay an
10 administrative penalty of \$30,000.00 to the Commissioner within 30 days of the date of this order.
11 The penalty shall be made payable in the form of an Automated Clearing House deposit or cashier's
12 check payable to the Department of Financial Protection and Innovation and transmitted to the
13 attention of "Accounting – Litigation," at the Department of Financial Protection and Innovation,
14 2101 Arena Boulevard, Sacramento, California 95814-2306. Notice of the payment must be
15 concurrently sent to the Commissioner's Enforcement Counsel Sally Hong via e-mail at
16 Sally.Hong@dfpi.ca.gov.

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18 Dated: October 11, 2022
19 San Francisco, California

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation



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21
22 By: _____
23 MARY ANN SMITH
24 Deputy Commissioner
25 Enforcement Division
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