

1 CLOTHILDE V. HEWLETT
Commissioner
2 MARY ANN SMITH
Deputy Commissioner
3 DANIEL P. O'DONNELL
Assistant Chief Counsel
4 TREVOR J. CARROLL (State Bar No. 306425)
Counsel
5 Department of Financial Protection and Innovation
1455 Frazee Road, Suite 315
6 San Diego, California 92108
Telephone: (916) 936-7651
7 Facsimile: (619) 209-3612

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 THE COMMISSIONER OF FINANCIAL)	DESIST AND REFRAIN ORDER AND
13 PROTECTION AND INNOVATION,)	ORDER ASSESSING PENALTIES
14 Complainant,)	(Cal. Fin. Code § 90015(b), (c), (d)(1))
15 v.)	
16 SMITH GREGORY LLC,)	
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 licensing and regulation of persons
27 engaged in the business of debt collection in California under the Debt Collection Licensing Act
28 (DCLA) (Cal. Fin. Code §§ 100000-100025).

1 1692 to 1692p), within five days of its initial communication regarding the alleged debt, in violation
2 of California Civil Code section 1788.17: (1) the amount of the debt; (2) the name of the creditor to
3 whom the debt is owed; (3) a statement that unless the consumer, within thirty days after receipt of
4 the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be
5 valid by the debt collector; (4) a statement that if the consumer notifies the debt collector in writing
6 within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will
7 obtain verification of the debt or a copy of a judgment against the consumer and a copy of such
8 verification or judgment will be mailed to the consumer by the debt collector; and (5) a statement
9 that, upon the consumer's written request within the thirty-day period, the debt collector will
10 provide the consumer with the name and address of the original creditor, if different from the
11 current creditor.

12 Failure to Submit License Application in Violation of the DCLA

13 8. The DCLA, which became effective on January 1, 2021, requires persons engaged in
14 the business of debt collection in California to be licensed beginning on January 1, 2022, pursuant
15 to California Financial Code section 100001(a). However, a debt collector who submits an
16 application prior to January 1, 2022, i.e., by December 31, 2021, shall be allowed to operate
17 pending the approval or denial of the application, pursuant to California Financial Code section
18 100000.5(c).

19 9. As of the current date, Smith Gregory failed to submit an application for a debt
20 collector license. From January 1, 2022 through at least April 2022, there was no application
21 pending denial or approval by the Department permitting Smith Gregory to engage in debt
22 collection in California.

23 10. Beginning in or around November 2021 through at least April 2022, despite lacking
24 licensure or a pending application during that period starting from January 1, 2022, Smith Gregory
25 engaged in the business of debt collection in this state by attempting to collect a debt from at least
26 one California consumer, in violation of California Financial Code section 100001(a), and engaged
27 in additional unlawful and/or deceptive acts or practices, as described in paragraphs 5 through 7
28 above.

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

11. California Financial Code section 100001(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. California Financial Code section 100000.5(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. California Financial Code section 100002(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.”

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

16. California Financial Code section 100002(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. California Financial Code section 90005(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. California Financial Code section 90005(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. California Financial Code section 90003(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

20. California Financial Code section 90005(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 California Financial Code section 90003(a)(2): the DCLA, the Rosenthal Act, and the FDCPA.

22. 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: . . . (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

23. 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

24. 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—
2 (A) the character, amount, or legal status of any debt....

3 25. Section 1692g of the FDCPA provides in relevant part:

4 (a) Notice of debt; contents

5 Within five days after the initial communication with a consumer in
6 connection with the collection of any debt, a debt collector shall, unless
7 the following information is contained in the initial communication or the
8 consumer has paid the debt, send the consumer a written notice
9 containing--

10 (1) the amount of the debt;

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

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

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

20 (5) a statement that, upon the consumer's written request within the thirty-
21 day period, the debt collector will provide the consumer with the name
22 and address of the original creditor, if different from the current creditor...

23 26. California Financial Code section 90015(d), provides:

24 (1) If, in the opinion of the department, any person engages, has
25 engaged, or proposes to engage in any activity prohibited by Section
26 90003 or 90004, the department may issue an order directing the person
27 to desist and refrain from engaging in the activity, act, practice, or
28 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.

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

29 28. California Financial Code section 90012(c) provides, in relevant part:

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

(1) Any person that violates, through any act or omission, any provision of

1 this division shall forfeit and pay a penalty pursuant to this subdivision.

2 (A) The penalty amounts are as follows:

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

8 **IV.**

9 **Desist and Refrain Order**

10 29. Based on the foregoing findings, the Commissioner is of the opinion that Smith
11 Gregory LLC is a covered person or service provider that engaged in unlawful acts or practices, in
12 violation of California Financial Code section 90003(a)(1). Further, the Commissioner finds that
13 Smith Gregory LLC violated California Financial Code section 90003(a)(2) by offering or
14 providing to a consumer a financial product or service not in conformity with, or otherwise
15 committed any act or omission in violation of, the following consumer financial laws:

- 16 a. Section 100001(a) of the DCLA;
- 17 b. Section 1788.13(j) of the Rosenthal Act;
- 18 c. Section 1788.17 of the Rosenthal Act;
- 19 d. Section 1692e(2)(A) of the FDCPA;
- 20 e. Section 1692g(a) of the FDCPA.

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

- 27 a. Section 100001(a) of the DCLA;
- 28 b. Section 1788.13(j) of the Rosenthal Act;
- c. Section 1788.17 of the Rosenthal Act;

1 d. Section 1692e(2)(A) of the FDCPA;

2 e. Section 1692g(a) of the FDCPA.

3 31. Furthermore, based on the foregoing findings, the Commissioner is of the opinion
4 that Smith Gregory LLC is a covered person or service provider that engaged in deceptive acts or
5 practices with respect to consumer financial products or services in violation of California Financial
6 Code section 90003(a)(1).

7 32. Pursuant to California Financial Code section 90015(d)(1), Smith Gregory LLC and
8 its managers, officers, directors, agents, or employees, are hereby ordered to desist and refrain from
9 engaging in, or proposing to engage in, deceptive acts or practices in collecting or attempting to
10 collect any consumer debt in violation of California Financial Code section 90003(a)(1).

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

14 **V.**

15 **Order Assessing Penalties**

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

25

26 ///

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

Dated: October 11, 2022
San Diego, California



CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation

By: _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division