

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)
Senior 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)	
13	THE COMMISSIONER OF FINANCIAL PROTECTION AND INNOVATION,)	DESIST AND REFRAIN ORDER AND ORDER ASSESSING PENALTIES
14	Complainant,)	
15	v.)	(Cal. Fin. Code § 90015(b), (c), (d)(1))
16	AMHERST AND ASSOCIATES,)	
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 violation of California Civil Code section 1788.17: (1) the amount of the debt; (2) the name of the
2 creditor to whom the debt is owed; (3) a statement that unless the consumer, within thirty days after
3 receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be
4 assumed to be valid by the debt collector; (4) a statement that if the consumer notifies the debt
5 collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the
6 debt collector will obtain verification of the debt or a copy of a judgment against the consumer and
7 a copy of such verification or judgment will be mailed to the consumer by the debt collector; and
8 (5) a statement that, upon the consumer’s written request within the thirty-day period, the debt
9 collector will provide the consumer with the name and address of the original creditor, if different
10 from the current creditor.

11 Failure to Submit License Application in Violation of the DCLA

12 8. The DCLA, which became effective on January 1, 2021, requires persons engaged in
13 the business of debt collection in California to be licensed beginning on January 1, 2022, pursuant
14 to California Financial Code section 100001(a).

15 9. The Commissioner has not issued a license to Amherst and Associates, authorizing it
16 to engage in the business of debt collection under the DCLA. Furthermore, Amherst and Associates
17 has not applied for a license under the DCLA. Amherst and Associates is not exempt from the
18 licensing requirements of California Financial Code section 100001.

19 10. In or around August 2022, Amherst and Associates engaged in the business of debt
20 collection in this state by attempting to collect a debt from at least one California consumer, in
21 violation of California Financial Code section 100001(a), and engaged in additional unlawful
22 and/or deceptive acts or practices, as described in paragraphs 5 through 7 above.

23 **III.**

24 Applicable Laws

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

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

1 person.”

2 13. California Financial Code section 100002(f) provides:

3 “Consumer debt” or “consumer credit” as means money, property, or their
4 equivalent, due or owing, or alleged to be due or owing, from a natural
5 person by reason of a consumer credit transaction. The term “consumer
6 debt” includes a mortgage debt. The term “consumer debt” includes
7 “charged-off consumer debt” as defined in Section 1788.50 of the Civil
8 Code.

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

9 15. California Financial Code section 100002(j) provides:

10 “Debt collector” means any person who, in the ordinary course of
11 business, regularly, on the person’s own behalf or on behalf of others,
12 engages in debt collection. The term includes any person who composes
13 and sells, or offers to compose and sell, forms, letters and other collection
14 media used or intended to be used for debt collection. The term “debt
15 collector” includes “debt buyer” as defined in Section 1788.50 of the Civil
16 Code.

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

18 17. California Financial Code section 90005(k) provides, in relevant part:

19
20 (k) “Financial product or service” means: . . . (1) Extending credit and
21 servicing extensions of credit, including acquiring, purchasing, selling,
22 brokering extensions of credit, other than solely extending commercial
23 credit to a person who originates consumer credit transactions . . . (10)
24 Collecting debt related to any consumer financial product or service

24 18. California Financial Code section 90003(a) provides in relevant part:

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

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

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

3 19. California Financial Code section 90005(f) provides in relevant part:

4 (f) “Covered person” means, to the extent not preempted by federal law,
5 any of the following: (1) Any person that engages in offering or providing
6 a consumer financial product or service to a resident of this state

7 20. The following laws are consumer financial laws within the meaning of California
8 Financial Code section 90003(a)(2): the DCLA, the Rosenthal Act, and the FDCPA.

9 21. Section 1788.13 of the Rosenthal Act provides in relevant part:

10 No debt collector shall collect or attempt to collect a consumer debt by
11 means of the following practices: . . . (j) The false representation that a
12 legal proceeding has been, is about to be, or will be instituted unless
payment of a consumer debt is made

13 22. Section 1788.17 of the Rosenthal Act provides in relevant part:

14 Notwithstanding any other provision of this title, every debt collector
15 collecting or attempting to collect a consumer debt shall comply with the
16 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 23. Section 1692e of the FDCPA provides in relevant part:

18 A debt collector may not use any false, deceptive, or misleading
19 representation or means in connection with the collection of any debt.
20 Without limiting the general application of the foregoing, the following
21 conduct is a violation of this section: . . . (2) The false representation of—
(A) the character, amount, or legal status of any debt....

22 24. Section 1692g of the FDCPA provides in relevant part:

23 (a) Notice of debt; contents
24 Within five days after the initial communication with a consumer in
25 connection with the collection of any debt, a debt collector shall, unless
26 the following information is contained in the initial communication or the
27 consumer has paid the debt, send the consumer a written notice
28 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...

25. 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, 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.

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

27. 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 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

28. Based on the foregoing findings, the Commissioner is of the opinion that Amherst and Associates is a covered person or service provider that engaged in unlawful acts or practices, in violation of California Financial Code section 90003(a)(1). Further, the Commissioner finds that Amherst and Associates violated California Financial Code section 90003(a)(2) by offering or

1 providing to a consumer a financial product or service not in conformity with, or otherwise
2 committed any act or omission in violation of, the following consumer financial laws:

- 3 a. Section 100001(a) of the DCLA;
- 4 b. Section 1788.13(j) of the Rosenthal Act;
- 5 c. Section 1788.17 of the Rosenthal Act;
- 6 d. Section 1692e(2)(A) of the FDCPA;
- 7 e. Section 1692g(a) of the FDCPA.

8 29. Pursuant to California Financial Code section 90015(d)(1), Amherst and Associates
9 and its managers, officers, directors, agents, or employees, are hereby ordered to desist and refrain
10 from engaging in, or proposing to engage in, unlawful acts or practices in collecting or attempting
11 to collect any consumer debt in violation of California Financial Code section 90003(a)(1), or
12 offering or providing to a consumer any financial product or service not in conformity with any
13 consumer financial laws, including but not limited to the following:

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

19 30. Furthermore, based on the foregoing findings, the Commissioner is of the opinion
20 that Amherst and Associates is a covered person or service provider that engaged in deceptive acts
21 or practices with respect to consumer financial products or services in violation of California
22 Financial Code section 90003(a)(1).

23 31. Pursuant to California Financial Code section 90015(d)(1), Amherst and Associates
24 and its managers, officers, directors, agents, or employees, are hereby ordered to desist and refrain
25 from engaging in, or proposing to engage in, deceptive acts or practices in collecting or attempting
26 to collect any consumer debt in violation of California Financial Code section 90003(a)(1).

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