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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:) DESIST AND REFRAIN ORDER and
15 THE COMMISSIONER OF FINANCIAL) ORDER ASSESSING PENALTIES
16 PROTECTION AND INNOVATION,)
17 Complainant,)
18 v.) (Cal. Fin. Code § 90015 (b), (c), (d)(1))
19 FRANKLIN, MOSS & ASSOCIATES,)
20 Respondent.)
21)
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23)

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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

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3 1. The Commissioner has jurisdiction over the licensing and regulation of persons
4 engaged in the business of debt collection in California under the Debt Collection Licensing Act
5 (DCLA) (Cal. Fin. Code §§ 100000-100025).

6 2. The Commissioner has jurisdiction over the regulation of persons who engage, have
7 engaged, and propose to engage in offering or providing a consumer financial product or service in
8 California and affiliated service providers under the California Consumer Financial Protection Law
9 (CCFPL) (Cal. Fin. Code §§ 90000-90019).

10 3. At all relevant times, Franklin, Moss & Associates (Franklin Moss) was a corporation
11 formed in Delaware, with a purported mailing address at 3524 Silverside Road Suite 35B,
12 Wilmington, DE 19810-4929. The registered agent for Franklin Moss is Advantage Delaware LLC.
13 Franklin Moss operates a website at www.franklinmossandassociates.com.

II.

Factual Background

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16 4. Beginning in at least May 2022 and through September 2022, Franklin Moss engaged
17 in the business of debt collection in California as defined in California Civil Code section 1788.2(c)
18 of the Rosenthal Fair Debt Collection Practices Act (Rosenthal Act) (Cal. Civ. Code §§ 1788-
19 1788.33).

20 5. On or around May 9, 2022, Franklin Moss called a California consumer (Consumer
21 A), attempting to collect a purported debt. When Consumer A picked up the phone, a “Robert Wolf”
22 identified himself as the case manager for Franklin Moss and informed Consumer A that he was
23 calling her about her delinquent Wells Fargo account in the amount of \$900 that was subsequently
24 sold to his law firm. Robert Wolf also claimed that Franklin Moss now owned all rights to collect
25 the amount due from the Consumer.

26 6. Although Robert Wolf claimed that Franklin Moss had previously sent her multiple
27 notices, Consumer A had not received any correspondence from Franklin Moss prior to the
28 May 2022 phone call.

1 7. When Consumer A explained to Robert Wolf that she never had a Wells Fargo
2 account, Robert Wolf continued to insist that she had a Wells Fargo account and that she owed
3 money on it.

4 8. When Consumer A subsequently explained that she would need to contact Wells
5 Fargo in order to confirm whether she had an outstanding account with Wells Fargo, Robert Wolf
6 suddenly offered to reduce the \$900 amount owed to \$500. When Consumer A continued to insist
7 on confirming with Wells Fargo first, Robert Wolf further pressured Consumer A by stating that if
8 she failed to call him back within one hour, her current bank account would be seized by the
9 government and that she would not be able to open another bank account. Robert Wolf did not
10 explain his basis for his belief as to why or how the government would be able to seize her bank
11 account.

12 9. Consumer A thereafter called Wells Fargo, upon which she confirmed that she never
13 had a Wells Fargo account that became delinquent.

14 10. Consumer A did not receive any written notice within five days of the phone call with
15 Franklin Moss.

16 11. Subsequently, Franklin Moss contacted other California consumers and attempted to
17 collect on allegedly delinquent accounts that purportedly originated with Wells Fargo. In each case,
18 when the California consumer explained that they never had a Wells Fargo account or that the one
19 they had closed over a decade ago, the Franklin Moss representative threatened the California
20 consumer with legal action.

21 12. The Commissioner finds that the phone calls by Franklin Moss to the California
22 consumers violated provisions of the Rosenthal Act, which prohibits the following:

23 a. Threatening that nonpayment of the alleged debt may result in the seizure of
24 Consumer A's bank account, in violation of California Civil Code section 1788.10(e);

25 b. False representing that a legal proceeding has been, is about to be, or will be
26 instituted unless payment of a consumer debt is made, in violation of California Civil Code section
27 1788.13(j);

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1 c. Falsely representing that a consumer debt has been, is about to be, or will be
2 sold, assigned or referred to a debt collector for collection, in violation of California Civil Code
3 section 1788.13(k); and

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

7 13. Franklin Moss further violated provisions of the FDCPA, including but not limited to
8 the following:

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

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

14 Failure to Submit License Application in Violation of the DCLA

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

18 15. The Commissioner has not issued a license to Franklin Moss, authorizing it to
19 engage in the business of debt collection under the DCLA. Furthermore, Franklin Moss has not
20 applied for a license under the DCLA. Franklin Moss is not exempt from the licensing requirements
21 of California Financial Code section 100001.

22 16. Starting in or around May 2022, Franklin Moss engaged in the unlicensed business of
23 debt collection in this state by attempting to collect a debt from several California consumers, in
24 violation of California Financial Code section 100001(a), for alleged delinquent Wells Fargo
25 accounts.

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III.

Applicable Law

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

18. 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.”

19. 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.

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

21. 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.

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

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

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

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(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 . . .

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

23. 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

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

25. Section 1788.10(e) 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 or the seizure, garnishment, attachment or sale of any property or the garnishment or attachment of wages of the debtor, unless such action is in fact contemplated by the debt collector and permitted by the law . . .

26. 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; (k) The false representation that a consumer debt has been, is about to be, or will be sold, assigned or referred to a debt collector for collection.

27. 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 . . .

28. 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. 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 . . . (4) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action. (5) The threat to take any action that cannot legally be taken or that is not intended to be taken . . . (10) The use of any false representation of deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer . . .

29. 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...

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

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(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.

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

32. 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

33. Based on the foregoing findings, the Commissioner is of the opinion that Franklin, Moss & Associates is a covered person or service provider that engaged in unlawful acts or practices with respect to consumer financial products or services in violation of California Financial Code section 90003(a)(1). Further, the Commissioner finds that Franklin, Moss & Associates violated California Financial section 90003(a)(2) by offering or providing to a consumer a financial product or service not in conformity with, or otherwise committed any act or omission in violation of, the following consumer financial laws:

- a. Section 1000001(a) of the DCLA;
- b. Sections 1788.10(e) of the Rosenthal Act;
- c. Section 1788.13(j) and (k) of the Rosenthal Act; and
- d. Section 1788.17 of the Rosenthal Act;
 - i. Section 1692e(2), (4), (5), and (10) of the FDCPA; and
 - ii. Section 1692g(a) of the FDCPA.

1 34. Pursuant to California Financial Code section 90015(d)(1), Franklin, Moss &
2 Associates and its managers, officers, directors, agents, or employees, are hereby ordered to desist
3 and refrain from engaging in, or proposing to engage in, unlawful acts or practices in collecting or
4 attempting to collect any consumer debt in violation of California Financial Code section
5 90003(a)(2), including but not limited to violating the following:

- 6 a. Section 1000001(a) of the DCLA;
- 7 b. Sections 1788.10(e) of the Rosenthal Act;
- 8 c. Section 1788.13(j) and (k) of the Rosenthal Act; and
- 9 d. Section 1788.17 of the Rosenthal Act;
 - 10 i. Section 1692e(2), (4), (5), and (10) of the FDCPA; and
 - 11 ii. Section 1692g(a) of the FDCPA.

12 35. Furthermore, based on the foregoing findings, the Commissioner is of the opinion that
13 Franklin, Moss & Associates is a “covered person” or service provider that engaged in deceptive acts
14 or practices with respect to “consumer financial products or services” in violation of California
15 Financial Code section 90003(a)(1).

16 36. Pursuant to California Financial Code section 90015(d)(1), Franklin, Moss &
17 Associates and its managers, officers, directors, agents, or employees, are hereby ordered to desist
18 and refrain from engaging in, or proposing to engage in, deceptive acts or practices in collecting or
19 attempting to collect any consumer debt in violation of California Financial Code section 90003
20 (a)(1).

21 37. This Order is necessary, in the public interest, for the protection of consumers and
22 consistent with the purposes, policies, and provisions of the California Consumer Financial
23 Protection Law. This Order shall remain in full force and effect until further order of the
24 Commissioner.

25 **V.**

26 **Order Assessing Penalties**

27 38. Pursuant to California Financial Code sections 90015(c) and 90012(c), and after due
28 consideration of possible mitigating factors and other appropriateness considerations per California

1 Financial Code section 90012(c)(1)(B), Franklin, Moss & Associates is hereby ordered to pay an
2 administrative penalty of \$22,500.00 to the Commissioner within 30 days of the date of this order.
3 The penalty shall be made payable in the form of an Automated Clearing House deposit or cashier's
4 check payable to the Department of Financial Protection and Innovation and transmitted to the
5 attention of "Accounting – Litigation," at the Department of Financial Protection and Innovation,
6 2101 Arena Boulevard, Sacramento, California 95814-2306. Notice of the payment must be
7 concurrently sent to the Commissioner's Enforcement Counsel Sally Hong via e-mail at
8 Sally.Hong@dfpi.ca.gov.

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10 Dated: January 30, 2023
11 San Francisco, California

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation



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13 By: _____
14 MARY ANN SMITH
15 Deputy Commissioner
16 Enforcement Division
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