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 Commissioner  
 2 MARY ANN SMITH  
 Deputy Commissioner  
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 Counsel  
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 6 Department of Financial Protection and Innovation  
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 9 Attorneys for Complainant

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

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 14 In the Matter of: )  
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 15 THE COMMISSIONER OF FINANCIAL ) DESIST AND REFRAIN ORDER and  
 PROTECTION AND INNOVATION, ) ORDER ASSESSING PENALTIES  
 16 )  
 17 Complainant, )  
 v. )  
 18 )  
 19 MARVIN MCCALL AND ASSOCIATES, ) (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 (CCFPPL) (Cal. Fin. Code §§ 90000-90019).

3. At all relevant times, Marvin, McCall and Associates (Marvin McCall), a.k.a. AF Solutions, was a business entity of unknown form, with a purported mailing address at 3281 E. Guasti Road, Suite 700, Ontario, California 91761 and an email address at mmandassociates@protonmail.com.

**II.**

**Factual Background**

4. Marvin McCall 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 or around October 17, 2022, Marvin McCall called a California resident (Consumer) multiple times and eventually left a voicemail informing her that Marvin McCall was reviewing the Consumer’s case for “consideration of legal action, including the filing of a lawsuit and a complaint with the court.” When the Consumer called back, the representative on the phone explained that she was a process server with court papers and that a process server had already made an attempt to deliver court papers to the Consumer’s house. The Consumer explained that she had not seen the process server come by despite being at home during the day.

6. Upon hearing the Consumer’s skeptical response, the representative on the phone informed the Consumer that she would be transferred to the legal department, whereupon a “Valerie Sanchez” picked up the phone. Ms. Sanchez then proceeded to explain that the Consumer had an

1 outstanding debt with US Bank in Idaho for over \$1,000 and that the Consumer would be sued for  
2 theft and possibly fraud. When the Consumer denied owing a debt to U.S. Bank, Ms. Sanchez  
3 proceeded to read out the Consumer’s identifying information, including her Social Security number  
4 and her birthdate, as confirmation that the U.S. Bank debt belonged to the Consumer. The  
5 Consumer then asked for corroborating information to be emailed to her for confirmation of the  
6 validity of the debt.

7 7. On October 17, 2022, Marvin McCall emailed a letter to the Consumer attempting to  
8 collect a purported debt. The letter states that Marvin McCall “represents the current owner of  
9 [Consumer’s] account, to whom [the Consumer is] indebted in the amount **\$1,226.14.**” The letter  
10 proceeds to demand a payment by October 17, 2022, threatening to “withdraw the offer” and  
11 “pursue the full amount of the unpaid obligation in a court of law.”

12 8. The letter from Marvin McCall included a request to initial an authorization form that  
13 would authorize AF Solutions to charge the card for the \$1,226.14 sought by Marvin McCall.

14 9. The letter also stated, “This Is An Attempt To Collect a Debt. Any Information  
15 Obtained Will Be Used For That Purpose.” However, nowhere on the letter was Marvin McCall’s  
16 California debt collector license number displayed.

17 10. Lastly, the letter appeared to be sent by an attorney for the following reasons:

18 a. The letter was signed by Valerie Sanchez, a person who worked for the legal  
19 department according to the Marvin McCall representative the Consumer initially spoke with;

20 b. The scales of justice symbol, commonly associated with legal matters, is  
21 located on the top left corner of the letter; and

22 c. The Consumer had previously received a voicemail from Marvin McCall  
23 threatening legal action if she did not respond in a timely manner.

24 11. No attorney of the name “Valerie Sanchez” is licensed to practice in California.

25 12. The Consumer did not receive any debt verification document showing that the US  
26 Bank debt was the Consumer’s.

27 13. The Commissioner finds that the debt collection activities and the letter sent by  
28 Marvin McCall violated provisions of the Rosenthal Act, which prohibits the following:

1 a. Threatening that the failure to pay a consumer debt will result in an accusation  
2 that the debtor has committed a crime where such accusation, if made, would be false, in violation of  
3 California Civil Code sections 1788.10(b);

4 b. Failing to display the California license number of the collector in at least 12-  
5 point type when sending written or digital communication, in violation of California Civil Code  
6 sections 1788.11(f);

7 c. Falsely representing that collection letters, notices or other printed forms are  
8 being sent by or on behalf of a claim, credit, audit or legal department, in violation of California  
9 Civil Code section 1788.13(h);

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

12 e. Falsely representing that a consumer debt has been sold, assigned, or referred  
13 to a debt collector for collection, in violation of California Civil Code section 1788.13(k);

14 f. Sending a communication which gives the appearance of being authorized,  
15 issued, or approved by an attorney when it is not, in violation of California Civil Code section  
16 1788.16; and

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

20 14. The debt collection practices by Marvin McCall violated provisions of the FDCPA,  
21 including but not limited to the following:

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

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

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Failure to Submit License Application in Violation of the DCLA

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

16. The Commissioner has not issued a license to Marvin McCall, authorizing it to engage in the business of debt collection under the DCLA. Furthermore, Marvin McCall has not applied for a license under the DCLA. Marvin McCall is not exempt from the licensing requirements of California Financial Code section 100001.

17. In or around October 2022, despite lacking licensure or a pending application, Marvin McCall engaged in the unlicensed business of debt collection in this state by attempting to collect a debt from at least one California consumer, in violation of California Financial Code section 100001(a), by calling a California consumer and sending a collection letter to a California consumer for an alleged debt of \$1,226.14, stating, “This Is An Attempt To Collect a Debt. Any Information Obtained Will Be Used For That Purpose.”

**III.**

**Applicable Law**

18. 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.”

19. 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.”

20. 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.

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

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22. 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.

23. 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 . . .  
(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.)

24. 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 . . . .

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

26. Section 1788.2(c) of the Rosenthal Act provides:  
The term “debt collector” means any person who, in the ordinary course of business, regularly, on behalf of that person or others, engages in debt

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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.

27. Section 1788.10(b) 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: . . . (b) The threat that the failure to pay a consumer debt will result in an accusation that the debtor has committed a crime where such accusation, if made, would be false.”

28. Section 1788.11(f) 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: . . . (f) Sending written or digital communication to the person that does not display the California license number of the collector in at least 12-point type.”

29. 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: . . . (h) The false representation that collection letters, notices or other printed forms are being sent by or on behalf of a claim, credit, audit or legal department; (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.”

30. Section 1788.16 of the Rosenthal Act provides in relevant part:  
It is unlawful, with respect to attempted collection of a consumer debt, for a debt collector, creditor, or an attorney, to send a communication which simulates legal or judicial process or which gives the appearance of being authorized, issued, or approved by a governmental agency or attorney when it is not. Any violation of the provisions of this section is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars (\$2,500) or by both.

31. 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 . . .

32. 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 . . . (3) The false representation or implication that any individual is an attorney or that any communication is from an attorney . . . (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 or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer. . . .

33. 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...

34. 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.

(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.



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

4           36.     California Financial Code section 90012(c) provides in relevant part:

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

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

9                 (A) The penalty amounts are as follows:

10                (i) For any violation of this division, rule or final order, or condition  
11 imposed in writing by the department, a penalty may not exceed the  
12 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 . . . .

13   **IV.**

14   **Desist and Refrain Order**

15           37.     Based on the foregoing findings, the Commissioner is of the opinion that Marvin,  
16 McCall and Associates is a covered person or service provider that engaged in unlawful acts or  
17 practices with respect to consumer financial products or services in violation of California Financial  
18 Code section 90003 (a)(1) and offered or provided to a consumer any financial product or service not  
19 in conformity with any consumer financial law or otherwise committed any act or omission in  
20 violation of a consumer financial law, in violation of California Financial Code section 90003(a)(2),  
21 including but not limited to the following:

- 22                a.     Section 1000001(a) of the DCLA;
- 23                b.     Section 1788.10(b) of the Rosenthal Act;
- 24                c.     Section 1788.11(f) of the Rosenthal Act;
- 25                d.     Section 1788.13(h), (j), (k) of the Rosenthal Act;
- 26                e.     Section 1788.16 of the Rosenthal Act; and
- 27                f.     Section 1788.17 of the Rosenthal Act;
- 28    i.    Section 1692e(2), (3), (5), and (10) of the FDIPA; and

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ii. Section 1692g(a) of the FDCPA.

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

- a. Section 1000001(a) of the DCLA;
- b. Section 1788.10(b) of the Rosenthal Act;
- c. Section 1788.11(f) of the Rosenthal Act;
- d. Section 1788.13(h), (j), (k) of the Rosenthal Act;
- e. Section 1788.16 of the Rosenthal Act; and
- f. Section 1788.17 of the Rosenthal Act;
  - i. Section 1692e(2), (3), (5), and (10) of the FDCPA; and
  - ii. Section 1692g(a) of the FDCPA.

39. Furthermore, based on the foregoing findings, the Commissioner is of the opinion that Marvin, McCall and Associates is a “covered person” or service provider that engaged in deceptive acts or practices with respect to “consumer financial products or services” in violation of California Financial Code section 90003(a)(1).

40. Pursuant to California Financial Code section 90015(d)(1), Marvin, McCall and Associates a.k.a. AF Solutions and its managers, officers, directors, agents, or employees, are hereby ordered to desist and refrain from engaging in, or proposing to engage in, deceptive acts or practices in collecting or attempting to collect any consumer debt in violation of California Financial Code section 90003 (a)(1).

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

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V.

**Order Assessing Penalties**

42. Pursuant to California Financial Code sections 90015(c) and 90012(c), and after due consideration of possible mitigating factors and other appropriateness considerations per California Financial Code section 90012(c)(1)(B), Marvin, McCall and Associates a.k.a. AF Solutions is hereby ordered to pay an administrative penalty of \$30,000.00 to the Commissioner within 30 days of the date of this order. The penalty shall be made payable in the form of an Automated Clearing House deposit or cashier’s check payable to the Department of Financial Protection and Innovation and transmitted to the attention of “Accounting – Litigation,” at the Department of Financial Protection and Innovation, 2101 Arena Boulevard, Sacramento, California 95814-2306. Notice of the payment must be concurrently sent to the Commissioner’s Enforcement Counsel Sally Hong via e-mail at Sally.Hong@dfpi.ca.gov.

Dated: January 30, 2023  
San Francisco, California

CLOTHILDE V. HEWLETT  
Commissioner of Financial Protection and Innovation



By: \_\_\_\_\_  
MARY ANN SMITH  
Deputy Commissioner  
Enforcement Division