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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	)	
13 PROTECTION AND INNOVATION,	)	DESIST AND REFRAIN ORDER AND
	)	ORDER ASSESSING PENALTIES
14 Complainant,	)	
15 v.	)	(Fin. Code, § 90015, subs. (b), (c) (d)(1))
16 HOROWITZ, COHEN & ASSOCIATES	)	
17 AND RYAN EUBANKS,	)	
18 Respondents.	)	
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) (Fin. Code §§ 100000-100025).





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- 12. 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.
- 13. Financial Code section 100002(i), defines “debt collection” as “any act or practice in connection with the collection of consumer debt.”
- 14. 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.
- 15. 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 . . . (1) extending credit and servicing extensions of credit. . . (10) *Collecting debt* related to any consumer financial product or service . . . . (emphasis added.)
- 16. 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

1 products or services.

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

5 17. The following laws are consumer financial laws within the meaning of Financial  
6 Code section 90003, subdivision (a)(2):

7 18. Civil Code section 1788.10 of the Rosenthal Act provides in relevant part:

8 No debt collector shall collect or attempt to collect a consumer debt by  
9 means of the following conduct: . . . (e) The threat to any person that  
10 nonpayment of the consumer debt may result in the arrest of the debtor...  
11 unless such action is in fact contemplated by the debt collector and  
permitted by the law.

12 19. Civil Code section 1788.13 of the Rosenthal Act provides in relevant part:

13 No debt collector shall collect or attempt to collect a consumer debt by  
14 means of the following practices: . . . (e) The false representation that the  
15 consumer debt may be increased by the addition of attorney’s fees;... (i)  
16 The false representation of the true nature of the business or services being  
17 rendered by the debt collector; (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 . . . .

18 20. Civil Code section 1788.17 of the Rosenthal Act provides in relevant part:

19 Notwithstanding any other provision of this title, every debt collector  
20 collecting or attempting to collect a consumer debt shall comply with the  
21 provisions of Sections 1692b to 1692j, inclusive, of, and shall be subject  
22 to the remedies in Section 1692k of, Title 15 of the United States Code . . .

23 21. 15 U.S.C. section 1692e of the FDCPA provides in relevant part:

24 A debt collector may not use any false, deceptive, or misleading  
25 representation or means in connection with the collection of any debt . . .  
26 (11) The failure to disclose in the initial written communication with the  
27 consumer and, in addition, if the initial communication with the consumer  
28 is oral, in that initial oral communication, that the debt collector is  
attempting to collect a debt and that any information obtained will be used  
for that purpose, and the failure to disclose in subsequent communications  
that the communication is from a debt collector . . . .

22. 15 U.S.C. section 1692g of the FDCPA provides in relevant part:

1 (a) Notice of debt; contents

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

- 7 (1) the amount of the debt;  
8 (2) the name of the creditor to whom the debt is owed;  
9 (3) a statement that unless the consumer, within thirty days after receipt of  
10 the notice, disputes the validity of the debt, or any portion thereof, the debt  
11 will be assumed to be valid by the debt collector;  
12 (4) a statement that if the consumer notifies the debt collector in writing

13 within the thirty-day period that the debt, or any portion thereof, is  
14 disputed, the debt collector will obtain verification of the debt or a copy of  
15 a judgment against the consumer and a copy of such verification or  
16 judgment will be mailed to the consumer by the debt collector; and  
17 (5) a statement that, upon the consumer's written request within the thirty-  
18 day period, the debt collector will provide the consumer with the name  
19 and address of the original creditor, if different from the current creditor . .

20 23. Financial Code section 90015, subdivision (d), provides:

21 (1) If, in the opinion of the department, any person engages, has  
22 engaged, or proposes to engage in any activity prohibited by Section  
23 90003 or 90004, the department may issue an order directing the person  
24 to desist and refrain from engaging in the activity, act, practice, or  
25 course of business.

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

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

31 25. Financial Code section 90012, subdivision (c) provides, in relevant part:

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

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

36 (A) The penalty amounts are as follows:

37 (i) For any violation of this division, rule or final order, or condition  
38 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**

26. Based on the foregoing findings, the Commissioner is of the opinion that Horowitz, Cohen & Associates and Ryan Eubanks are covered persons or service providers that engaged in unlawful acts or practices, in violation of Financial Code section 90003, subdivision (a)(1), and offered or provided to a consumer any financial product or service not in conformity with any consumer financial law or otherwise committed any act or omission in violation of a consumer financial law, in violation of Financial Code section 90003, subdivision (a)(2), including but not limited to the following:

- a. Civil Code section 1788.10, subdivision (e) of the Rosenthal Act;
- b. Civil Code section 1788.13, subdivisions (e), (i), and (j) of the Rosenthal Act;
- c. Civil Code section 1788.17 of the Rosenthal Act;
- d. 15 U.S.C. section 1692g(a) of the FDCPA;
- e. 15 U.S.C. section 1692e(11) of the FDCPA.

27. Pursuant to Financial Code section 90015, subdivision (d)(1), Horowitz, Cohen & Associates 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 Financial Code section 90003, subdivision (a)(1), or offer or provide to a consumer any financial product or service not in conformity with any consumer financial laws, including but not limited to the following:

- a. Civil Code section 1788.10, subdivision (e) of the Rosenthal Act;
- b. Civil Code section 1788.13, subdivisions (e), (i), and (j) of the Rosenthal Act;
- c. Civil Code section 1788.17 of the Rosenthal Act;
- d. 15 U.S.C. section 1692g(a) of the FDCPA;
- e. 15 U.S.C. section 1692e(11) of the FDCPA.

28. Furthermore, based on the foregoing findings, the Commissioner is of the opinion

1 that Horowitz, Cohen & Associates and Ryan Eubanks are a covered persons or service providers  
2 that engaged in deceptive acts or practices with respect to consumer financial products or services  
3 in violation of Financial Code section 90003, subdivision (a)(1).

4 29. Pursuant to Financial Code section 90015, subdivision (d)(1), Horowitz, Cohen &  
5 Associates and its managers, officers, directors, agents, or employees, are hereby ordered to desist  
6 and refrain from engaging in, or proposing to engage in, deceptive acts or practices in collecting or  
7 attempting to collect any consumer debt in violation of Financial Code section 90003, subdivision  
8 (a)(1).

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

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V.

**Order Assessing Penalties – CCFPL (Fin. Code, § 90015, subd. (c))**

31. Pursuant to Financial Code section 90015, subdivision (c) and section 90012, subdivision (c), and after due consideration of possible mitigating factors and other appropriateness considerations listed in section 90012, subdivision (c)(1)(B), Horowitz, Cohen & Associates and Ryan Eubanks, jointly and severally, are hereby ordered to pay the Commissioner a penalty of \$12,500.00 within 30 days of the date of this order. This penalty shall be made payable in the form of an Automated Clearing House deposit or cashier’s check made payable to the Department of Financial Protection and Innovation. The cashier’s check shall be mailed to the attention of “Accounting – Litigation” at Department of Financial Protection and Innovation, 2101 Arena Boulevard, Sacramento, California 95834-2036. Notice of such payment shall be concurrently sent to Galen Yun via e-mail at Galen.Yun@dfpi.ca.gov.

Dated: March 2, 2023  
Sacramento, California

CLOTHILDE V. HEWLETT  
Commissioner of Financial Protection and Innovation



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