(DCLA) (Fin. Code §§ 100000-100025).

1	CLOTHILDE V. HEWLETT			
2	Commissioner MARY ANN SMITH			
	Deputy Commissioner			
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9	BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION			
10	OF THE STATE OF CALIFORNIA			
11	T. d. M. C.			
12	In the Matter of:	) )		
13	THE COMMISSIONER OF FINANCIAL PROTECTION AND INNOVATION,	) DESIST AND REFRAIN ORDER AND ORDER ASSESSING PENALTIES		
14	Complainant,	(Fin. Code, § 90015, subds. (b), (c) (d)(1))		
15	LSG & PARTNERS, LLC,	(		
16		) )		
17	Respondent.			
18		) )		
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20		,		
21	The Complainant, the Commissioner of	Financial Protection and Innovation		
22	The Complainant, the Commissioner of Financial Protection and Innovation  (Commissioner) of the Department of Financial Protection and Innovation (Department) is			
	(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	<u>Introduction</u>			
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			

- 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 (CCFPL) (Fin. Code, § 90000 et seq.). Collecting debt relating to a consumer financial product or service is conduct covered by the CCFPL. Cal. Fin. Code § 90005(k)(10). The CCFPL defines consumer financial product or service to include, among other things, "extending credit or servicing extensions of credit." Cal. Fin. Code § 90005(k)(1).
- 3. At all relevant times, an entity holding itself out as "LSG & Partners, LLC" (LSG) contacted at least one California consumer claiming to be a law firm acting to collect a debt on behalf of creditors. LSG contacted the California resident using phone numbers including, but not limited to, 864-263-3995 and 855-750-3392.

### II.

# **Factual Background**

- 4. Beginning in or around July 2022, LSG contacted at least one California consumer by making unlawful and/or deceptive statements over the phone in an attempt to collect a consumer debt.
- 5. A person claiming to be "Angela Gains" of the "Judgements and Liens Department" located at the San Francisco Superior Court, told the California consumer that a judgement for "an attempt to defraud a business" resulting from failure to pay a debt relating to a payday loan had been rendered against them. This was a communication with the consumer other than in the name of the debt collector or the person on whose behalf the debt collector is acting in violation of Civil Code 1788.13, subdivision (a) of the Rosenthal Fair Debt Collection Practices Act (Rosenthal Act) (Civ. Code, § 1788 et seq.).
- 6. A person claiming to be "William Gantt," an "attorney" for LSG, told the California consumer that they missed a court date relating to their failure to pay the alleged debt. In fact, this was a false representation that a legal proceeding has been, is about to be, or will be instituted unless payment of a consumer debt is made, in violation of Civil Code 1788.13, subdivision (j) of the Rosenthal Act.

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- 7. In addition, the aforementioned misrepresentation that failure to pay would result in wage garnishment and placement of liens on personal property was not in fact contemplated by the debt collector or permitted by law, and therefore violated Civil Code section 1788.10, subdivision (e) of the Rosenthal Act.
- 8. LSG, made a false representation of the true nature of the business or services being rendered by the debt collector by asserting they were a law firm with a "debt mediation team" attempting to settle a purported debt on behalf of creditors, in violation of Civil Code section 1788.13, subdivision (i).
- 9. The aforementioned misrepresentations, including but not limited to representing itself as a law firm attempting to collect debt, were material and likely to mislead a consumer acting reasonably under the circumstances, constituting deceptive acts or practices, in violation of Financial Code section 90003, subdivision (a)(1).
- 10. LSG failed to provide at least one California consumer with any written notification that included the following information required pursuant to 15 U.S.C. section 1692g(a) of the FDCPA within five days of its initial communication regarding the alleged debt, in violation of Civil Code section 1788.17: (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 (1692g Notice).

III.

### **Applicable Laws**

Financial Code section 100001(a) of the DCLA provides that "[n]o person shall 11.

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engage in the business of debt collection in this state without first obtaining a license."

- 12. Financial Code section 100002(h) defines "debt" as "money, property, or their equivalent that is due or owning or alleged to be due or owing from a natural person to another person."
  - 13. 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.

- 14. Financial Code section 100002(i), defines "debt collection" as "any act or practice in connection with the collection of consumer debt."
  - 15. 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.

- 16. 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.)
- 17. Financial Code section 90003(a) provides in relevant part:

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- (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 . . . .
- 18. The following laws are consumer financial laws within the meaning of Financial Code section 90003, subdivision (a)(2):
  - 19. Civil Code section 1788.10 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 . . . 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. . . ..

20. Civil Code 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: (a) Any communication with the debtor other than in the name either of the debt collector or the person on whose behalf the debt collector is acting;...(i) The false representation of the true nature of the business or services being 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; (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....

21. Civil Code 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 . . .

- 22. 15 U.S.C. 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

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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.

Financial Code section 90015, subdivision (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.
- 24. Financial Code section 90015, subdivision (c) provides, "[a]fter notice and an opportunity to be heard, the commissioner may, by order, assess penalties."
  - 25. Financial Code section 90012, subdivision (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 . . . .

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IV.

## **Desist and Refrain Order**

- 26. Based on the foregoing findings, the Commissioner is of the opinion that LSG is a covered person or service provider 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:
  - Civil Code section 1788.10, subdivision (e) of the Rosenthal Act; a.
  - Civil Code section 1788.13, subdivisions (a), (i), (j), and (k) of the Rosenthal b. Act:
  - Civil Code section 1788.17 of the Rosenthal Act; c.
  - d. 15 U.S.C. section 1692g(a) of the FDCPA;
- 27. Pursuant to Financial Code section 90015, subdivision (d)(1), LSG 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:
  - Civil Code section 1788.10, subdivision (e) of the Rosenthal Act; a.
  - Civil Code section 1788.13, subdivisions (a), (i), (j), and (k) of the Rosenthal b. Act:
  - Civil Code section 1788.17 of the Rosenthal Act; c.
  - d. 15 U.S.C. section 1692g(a) of the FDCPA;
- 28. Furthermore, based on the foregoing findings, the Commissioner is of the opinion that LSG 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 Financial Code section 90003, subdivision (a)(1).

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- 29. Pursuant to Financial Code section 90015, subdivision (d)(1), LSG 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 Financial Code section 90003, subdivision (a)(1).
- 30. This Desist and Refrain Order is necessary, in the public interest and consistent with the purposes, policies, and provisions of the CCFPL. This Desist and Refrain Order shall remain in 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), LSG & Partners, LLC is hereby ordered to pay the Commissioner a penalty of \$15,000.00 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**