28

1	CLOTHILDE V. HEWLETT	
	Commissioner	
2	MARY ANN SMITH	
3	Deputy Commissioner AMY J. WINN	
	Assistant Chief Counsel	
4	JARI M. BINDER (State Bar No. 333694)	
_	Counsel	
5	Department of Financial Protection and Innov One Sansome Street, Suite 600	ation
6	San Francisco, California 94104	
	Telephone: (415) 471-0919	
7		
0	Attorneys for Complainant	
8	REFORE THE DEPARTMENT OF FIN	JANCIAL PROTECTION AND INNOVATION
9	BEFORE THE BEFARTMENT OF THE	VANCIAL I ROTLETION AND INNOVATION
	OF THE STA	ΓE OF CALIFORNIA
10		
11	In the Matter of:)
11	in the watter or.	
12	THE COMMISSIONER OF FINANCIAL) DESIST AND REFRAIN ORDER AND
10	PROTECTION AND INNOVATION,	ORDER ASSESSING PENALTIES
13	Complainant,) (C-1 E:- C-1- 8 00015(h) (-) (4)(1))
14	V.) (Cal. Fin. Code § 90015(b), (c), (d)(1))
		ý ,
15	ALLEN AND ASSOCIATES,	
16	Respondent.	
10	respondent)
17)
18		
10)
19		
20		
20		
21	The Complainant, the Commissioner of	f Financial Protection and Innovation
	(Commissioner) of the Department of Financia	al Protection and Innovation (Department) is
22	(Commissioner) of the Department of Financia	at 1 rotection and finiovation (Department), is
23	informed and believes, and based on such info	ormation and belief, finds as follows:
23		T
24		I.
25	Int	troduction
23		
26	1. The Commissioner has jurisdic	tion over the licensing and regulation of persons

1

engaged in the business of debt collection in California under the Debt Collection Licensing Act

(DCLA) (Cal. Fin. Code §§ 100000-100025).

28

1

2

3

4

5

6

7

8

9

- 2. The Commissioner also 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) (Cal. Fin. Code §§ 90000-90019). Collecting debt relating to a consumer financial product or service is conduct covered by the CCFPL. (Cal. Fin. Code § 90005(k)(10)).
- 3. At all relevant times, Allen and Associates was a business entity of unknown origin with an alleged principal place of business at 222 S. Main Street, 5th Floor Salt Lake City, Utah 84101, and several different telephone numbers, including 1-866-401-0414.

II.

Factual Background

- Beginning at least as early as June 2022, Allen and Associates engaged in the 4. business of debt collection in California as further described below.
- 5. In or around June 27, 2022, Allen and Associates contacted at least one California consumer by telephone calls and made unlawful and/or deceptive statements in attempts to collect a consumer debt, as follows:
- A representative from Allen and Associates called the consumer's family a. member to collect a credit card debt from 2001 that the consumer settled with the original creditor in 2007;
- b. The representative falsely claimed to the consumer's family member that Allen and Associates had been assigned to collect on this debt;
- The representative made a false representation to the consumer's family c. member that a legal proceeding had been, was about to be, or would be instituted unless the consumer paid the purported debt, in violation of California Civil Code section 1788.13(j) of the Rosenthal Fair Debt Collection Practices Act (Rosenthal Act) (Cal. Civ. Code §§ 1788-1788.33).
- d. The consumer telephoned Allen and Associates and was transferred to a different representative. This representative claimed, in violation of California Civil Code section 1788.13, subdivision (i), that Allen and Associates was a "mitigating party" for another individual that was attempting to collect this debt.

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

- The second representative told the consumer, in violation of California Civil e. Code section 1788.13(j) of the Rosenthal Act, that if she did not pay this debt, she would be sued.
- f. The second representative omitted the following notice regarding time-barred debt which is required to be made pursuant to California Civil Code section 1788.14, subdivision (d)(2):

The law limits how long you can be sued on a debt. Because of the age of your debt, we will not sue you for it, and we will not report it to any credit reporting agency."

- No complaint or case number was provided by Allen and Associates or its 6. representatives.
- 7. The aforementioned misrepresentations were material and likely to mislead a consumer acting reasonably under the circumstances, constituting deceptive acts or practices, in violation of California Financial Code section 90003(a)(1).
- 8. Allen and Associates used false, deceptive or misleading representation or means in connection with the collection of a debt, in violation of title 15 of the United States Code section 1692e(2) and (10) of the Fair Debt Collection Practices Act (FDCPA) (15 U.S.C. §§ 1692 to 1692p).
- 9. Allen and Associates violated California Civil Code section 1788.17 by failing to provide at least one California consumer, within five days of the initial communication about the debt, with written notification as required by title 15 of the United States Code section 1692g(a) of the FDCPA.

Failure to Submit License Application in Violation of the DCLA

- 10. 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).
- 11. The Commissioner has not issued a license to Allen and Associates, authorizing it to engage in the business of debt collection under the DCLA. Furthermore, Allen and Associates has not applied for a license under the DCLA. Allen and Associates is not exempt from the licensing requirements of California Financial Code section 100001.

	O
	7
	8
	9
1	0
1	1
1	2
1	3
1	4
1	5
1	6
1	7
1	8
1	9
2	0
2	1
2	2
2	3
2	4
2	5
2	6

28

1

2

3

4

5

12. In or around June 27, 2022, Allen and Associates engaged in the 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), and engaged in additional unlawful and/or deceptive acts or practices, as described in paragraphs 4 through 11 above.

III.

Applicable Laws

- 13. California Financial Code section 100001(a) of the DCLA provides that "[n]o person shall engage in the business of debt collection in this state without first obtaining a license."
- 14. California 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."
 - 15. 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.
- 16. California Financial Code section 100002(i) defines "debt collection" as "any act or practice in connection with the collection of consumer debt."
 - 17. 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.
- 18. California Financial Code section 90005(e) defines "consumer financial product or service" as including "[a] financial product or service that is delivered, offered, or provided for use by consumers primarily for personal, family, or household purposes."
 - 19. California Financial Code section 90005(k) provides, in relevant part:

	1	
1		(k) "Financial product or service" means: (1) Extending credit and servicing extensions of credit, including acquiring, purchasing, selling,
$\begin{bmatrix} 2 \\ 2 \end{bmatrix}$		brokering extensions of credit, other than solely extending commercial credit to a person who originates consumer credit transactions (10)
3 4		Collecting debt related to any consumer financial product or service
5	20.	California Financial Code section 90003(a) provides in relevant part:
6		(a) It is unlawful for a covered person or service provider, as defined in
7		subdivision (f) of Section 90005, to do any of the following:
8		(1) Engage, have engaged, or propose to engage in any unlawful, unfair, deceptive, or abusive act or practice with respect to consumer financial
9		products or services.
10		(2) Offer or provide to a consumer any financial product or service not in
11		conformity with any consumer financial law or otherwise commit any act or omission in violation of a consumer financial law
12	21.	California Financial Code section 90005(f) provides in relevant part:
13		(f) "Covered person" means, to the extent not preempted by federal law,
14		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
15	22.	The following laws are consumer financial laws within the meaning of California
16		le section 90003(a)(2): the DCLA, the Rosenthal Act, and the FDCPA.
17		
18	23.	Section 1788.13 of the Rosenthal Act provides in relevant part:
19		No debt collector shall collect or attempt to collect a consumer debt by means of the following practices: (i) The false representation of the
20		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,
21		or will be instituted unless payment of a consumer debt is made
22	24.	Section 1788.14 of the Rosenthal Act provides in relevant part:
23		No debt collector shall collect or attempt to collect a consumer debt by means of the
24		following practices: (d) Sending a written communication to a debtor in an attempt to collect a time-barred debt without providing the debtor with one of the following written notices:
25		
26		(2) If the debt is past the date for obsolescence set forth in Section 605(a) of the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681c), the following notice shall be included in the first written communication provided to the debtor of or the date.
27		be included in the first written communication provided to the debtor after the date for obsolescence:
28		"The law limits how long you can be sued on a debt. Because of the age of your debt, we will not sue you for it, and we will not report it to any credit reporting agency."
		we will not sue you for it, and we will not report it to any credit reporting agency.

2	2
3	3
4	1
5	5
6	5
7	7
8	3
ç)
1()
11	
12	2
13	3
14	ļ
15	5
16	6
17	7
18	3
19)
20)
21	l
22	2
23	3
24	ļ
25	5
26	5
27	7

1

25. 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 . . .

26. Section 1692e of the FDCPA provides in relevant part:

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....(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 . . .

- 27. 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...
- 28. 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

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2

3

4

5

6

7

8

days	from	the	date	of	service	e of	the	order,	the	order	shall	be	deemed	la
final	order	of t	he co	om	missio	ner.								

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

- 31. Based on the foregoing findings, the Commissioner is of the opinion that Allen 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 Allen and Associates violated California Financial Code 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 100001(a) of the DCLA;
 - b. Section 1788.13 (i) and (j) of the Rosenthal Act;
 - c. Section 1788.14 (d) of the Rosenthal Act
 - d. Section 1788.17 of the Rosenthal Act;
 - i. Section1692e(2) and (10) of the FDCPA; and
 - ii. Section 1692g(a) of the FDCPA.
- 32. Pursuant to California Financial Code section 90015(d)(1), Allen and 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

6	collect any co	onsumer	debt in violation of California Financial Code section 90003(a)(1), or offering				
6	or providing to a consumer any financial product or service not in conformity with any consumer						
1	financial laws	s, includ	ling but not limited to the following:				
		a.	Section 100001(a) of the DCLA;				
		b.	Section 1788.13 (i) and (j) of the Rosenthal Act;				
		c.	Section 1788.14 (d) of the Rosenthal Act				
		d.	Section 1788.17 of the Rosenthal Act;				
			i. Section1692e(2) and (10) of the FDCPA; and				
			ii. Section 1692g(a) of the FDCPA.				
	33.	Furthe	ermore, based on the foregoing findings, the Commissioner is of the opinion				
t	that Allen and	d Assoc	iates is a covered person or service provider that engaged in deceptive acts or				
1	practices with	n respec	t to consumer financial products or services in violation of California Financial				
6	Code section	90003(a	a)(1).				
	34.	Pursua	ant to California Financial Code section 90015(d)(1), Allen and Associates and				
i	its managers,	officers	s, directors, agents, or employees, are hereby ordered to desist and refrain from				
6	engaging in,	or propo	osing to engage in, deceptive acts or practices in collecting or attempting to				
6	collect any co	onsumer	debt in violation of California Financial Code section 90003(a)(1).				
	35.	This I	Desist and Refrain Order is necessary, in the public interest and consistent with				
t	the purposes,	policies	s, and provisions of the CCFPL. This Desist and Refrain Order shall remain in				
ı	full force and	effect ı	antil further order of the Commissioner.				
١	11						
١	11						
١	11						
١	11						
١	11						
\	11						
١	11						

V.

Order Assessing Penalties

36. Pursuant to California Financial Code section 90015(c) and section 90012(c), and after due consideration of possible mitigating factors and other appropriateness considerations per California Financial Code section 90012(c)(1)(B), Allen and Associates is hereby ordered to pay the Commissioner a penalty of \$30,000.00 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 Jari M. Binder via e-mail at jari.binder@dfpi.ca.gov.

Dated: June 5, 2023 San Francisco, California



CLOTHILDE V. HEWLETT

Commissioner of Financial Protection and Innovation

By: ______ MARY ANN SMITH Deputy Commissioner Enforcement Division