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I.

Recitals

This Consent Order is made with reference to the following:

Legal Background

A. 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).

B. 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 related to a consumer financial product or service is conduct covered by the CCFPL. (Cal. Fin. Code § 90005(k)(10).)

C. At all relevant times, FAN is and was a Delaware limited liability company with a principal place of business at 1055 Parsippany Boulevard, Suite 410, Parsippany, New Jersey 07054.

Applicable Law – DCLA

D. Under the DCLA, “[n]o person shall engage in the business of debt collection in this state without first obtaining a license.” (Cal. Fin. Code § 100001(a)).

E. The DCLA provides that “[t]he commissioner shall allow any debt collector that submits an application prior to January 1, 2022, to operate pending the approval or denial of the application.” (Cal. Fin. Code § 100001(c)).

F. “Debt” is defined 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.” (Cal. Fin. Code § 100002(h)).

G. “Consumer debt” or “consumer credit” is defined as “ 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.” (Cal. Fin. Code § 100002(f)).

H. The DCLA defines “debt collection” as “any act or practice in connection with the

1 collection of consumer debt.” (Cal. Fin. Code § 100002(i)).

2 I. “Debt collector” means “any person who, in the ordinary course of business,
3 regularly, on the person’s own behalf or on behalf of others, engages in debt collection. The term
4 includes any person who composes and sells, or offers to compose and sell, forms, letters and other
5 collection media used or intended to be used for debt collection. The term “debt collector” includes
6 “debt buyer” as defined in Section 1788.50 of the Civil Code.” (Cal. Fin. Code § 100002(j)).

7 ***Applicable Law – CCFPL***

8 J. Under the CCFPL, it is unlawful for a “covered person” to do any of the following:
9 “(1) Engage, have engaged, or propose to engage in any unlawful, unfair, deceptive, or abusive act
10 or practice with respect to consumer financial products or services. (2) Offer or provide to a
11 consumer any financial product or service not in conformity with any consumer financial law or
12 otherwise commit any act or omission in violation of a consumer financial law” (Cal. Fin. Code
13 § 90003(a)(1) and (a)(2)).

14 K. A “covered person” includes “[a]ny person that engages in offering or providing a
15 consumer financial product or service to a resident of this state.” (Cal. Fin. Code § 90005 (f)(1)).

16 L. A “consumer financial product or service” is generally a “financial product or service
17 that is delivered, offered, or provided for use by consumers primarily for personal, family, or
18 household purposes.” (Cal. Fin. Code § 90005(e)(1)).

19 M. “Financial product or service” includes, among other things, “[p]roviding financial
20 advisory services . . . including . . . Collecting debt related to any consumer financial product or
21 service” (Cal. Fin. Code § 90005(k)(10)).

22 N. Under California Financial Code section 90015, subdivision (d), if, in the opinion of
23 the Commissioner, any person engages, has engaged, or proposes to engage in any activity
24 prohibited by section 90003 or 90004, the Commissioner “may issue an order directing the person to
25 desist and refrain from engaging in the activity, act, practice, or course of business.” (Cal. Fin. Code
26 § 90015(d)).

27 O. Under Financial Code section 90012, subdivision (c), in any administrative action
28 brought pursuant to the CCFPL, any person that violates, through any act or omission, any provision

1 of the CCFPL shall forfeit and pay a penalty not exceeding \$2,500.00 for each act or omission in
2 violation of the CCFPL. (Cal. Fin. Code § 90012(c)(1)(A)(i)).

3 ***Applicable Law – Rosenthal Fair Debt Collection Practices Act (Cal. Civ. Code §§ 1788 –***
4 ***1788.33) (Rosenthal)***

5 P. California Civil Code section 1788.14 provides, in relevant part:

6 No debt collector shall collect or attempt to collect a consumer debt by
7 means of the following practices:

8 (a) Obtaining an affirmation from a debtor of a consumer debt that has
9 been discharged in bankruptcy, without clearly and conspicuously
10 disclosing to the debtor, in writing, at the time the affirmation is sought,
11 the fact that the debtor is not legally obligated to make an affirmation . . .

12 (d) Sending a written communication to a debtor in an attempt to collect a
13 time-barred debt without providing the debtor with one of the following
14 written notices: (1) If the debt is not past the date for obsolescence set
15 forth in Section 605(a) of the federal Fair Credit Reporting Act (15 U.S.C.
16 Sec. 1681c), the following notice shall be included in the first written
17 communication provided to the debtor after the debt has become time-
18 barred: “The law limits how long you can be sued on a debt. Because of
19 the age of your debt, we will not sue you for it. If you do not pay the debt,
20 [insert name of debt collector] may [continue to] report it to the credit
21 reporting agencies as unpaid for as long as the law permits this reporting. .
22 . . .

23 Q. California Civil Code section 1788.17 provides, in relevant part, “Notwithstanding
24 any other provision of this title, every debt collector collecting or attempting to collect a consumer
25 debt shall comply with the provisions of Sections 1692b to 1692j, inclusive, of, and shall be subject
26 to the remedies in Section 1692k of, Title 15 of the United States Code”

27 ***Applicable Law – Fair Debt Buying Practices Act (Cal. Civ. Code §§ 1788.50 – 1788.66)***
28 ***(FDBPA)***

R. California Civil Code section 1788.52 provides, in relevant part:

(c) A debt buyer shall provide the information or documents identified in
subdivisions (a) and (b) to the debtor without charge within 15 calendar
days of receipt of a debtor's written request for information regarding the
debt or proof of the debt. If the debt buyer cannot provide the information
or documents within 15 calendar days, the debt buyer shall cease all
collection of the debt until the debt buyer provides the debtor the
information or documents described in subdivisions (a) and (b). Except as

1 provided otherwise in this title, the request by the debtor shall be
2 consistent with the validation requirements contained in Section 1692g of
3 Title 15 of the United States Code. A debt buyer shall provide all debtors
4 with whom it has contact an active postal address to which these requests
5 can be sent. A debt buyer may also provide an active email address to
6 which these requests can be sent and through which information and
7 documents can be delivered, if the parties agree.

8 (d)(1) A debt buyer shall include with its first written communication with
9 the debtor in no smaller than 12-point type, a separate prominent notice
10 that provides:

11 “You may request records showing the following: (1) that [insert name of
12 debt buyer] has the right to seek collection of the debt; (2) the debt
13 balance, including an explanation of any interest charges and additional
14 fees; (3) the date of default or the date of the last payment; (4) the name of
15 the charge-off creditor and the account number associated with the debt;
16 (5) the name and last known address of the debtor as it appeared in the
17 charge-off creditor’s or debt buyer’s records prior to the sale of the debt,
18 as appropriate; and (6) the names of all persons or entities that have
19 purchased the debt. You may also request from us a copy of the contract
20 or other document evidencing your agreement to the debt.

21 “A request for these records may be addressed to: [insert debt buyer’s
22 active mailing address and email address, if applicable].”

23 (2) When collecting on a time-barred debt where the debt is not past the
24 date for obsolescence provided for in Section 605(a)(a) of the federal Fair
25 Credit Reporting Act (15 U.S.C. Sec. 1681c):

26 “The law limits how long you can be sued on a debt. Because of the age of
27 your debt, we will not sue you for it. If you do not pay the debt, [insert
28 name of debt buyer] may [continue to] report it to the credit reporting
agencies as unpaid for as long as the law permits this reporting.”

***Applicable Law – Fair Debt Collection Practices Act (15 U.S.C. §§ 1692 – 1692p) (FDCPA) and
Regulation F (12 C.F.R. part 1006)***

S. 15 U.S.C. section 1692e 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; or . . .

1 (11) The failure to disclose in the initial written communication with the
2 consumer and, in addition, if the initial communication with the consumer
3 is oral, in that initial oral communication, that the debt collector is
4 attempting to collect a debt and that any information obtained will be used
5 for that purpose, and the failure to disclose in subsequent communications
6 that the communication is from a debt collector, except that this paragraph
7 shall not apply to a formal pleading made in connection with a legal action
8

9 T. 12 C.F.R. section 1006.18 provides, in relevant part, “(b) False, deceptive,
10 or misleading representations . . . (2) A debt collector must not falsely represent: (i) the
11 character, amount, or legal status of any debt”

12 U. 12 C.F.R. section 1006.34 provides, in relevant part:

13 (a) Validation information required – (1) In general. Except as provided in
14 paragraph (a)(2) of this section, a debt collector must provide a consumer
15 with the validation information required by paragraph (c) of this section
16 either: (i) By sending the consumer a validation notice in the manner
17 required by § 1006.42: (A) In the initial communication, as defined in
18 paragraph (b)(2) of this section; or (B) Within five days of that initial
19 communication; or (ii) By providing the validation information orally in
20 the initial communication . . .

21 (c) Validation information. Pursuant to paragraph (a)(1) of this section, a
22 debt collector must provide the following validation information . . .

23 (3) Information about consumer protections.

24 (i) The date that the debt collector will consider the end date of the
25 validation period

26 ***Commissioner’s Findings***

27 V. FAN is a debt collector and debt buyer within the meaning of California Financial
28 Code section 100002(j) of the DCLA, defining “debt collector” as 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 and includes “debt buyer” as defined in section 1788.50 of the FDBPA.

W. On or around December 21, 2021, FAN filed an application for a debt collection
license pursuant to Cal. Fin. Code § 100001(a) (Application). As of August 23, 2023, the
Application was deemed abandoned by the Department. FAN does not currently hold any licenses
with the Department.

X. On or around March 9, 2023, FAN mailed a California resident (Consumer A) a

1 letter stating, “As of March 9, 2023, you owed: \$106,242.56. Between 12/12/2015 and today:
2 Unpaid principal balance: \$73,829.97 Total amount of the debt now: \$106,242.56. Please mail
3 all payments to the above address as of the date stated in your good-bye letter” In fact, the
4 debt referenced by FAN was discharged in bankruptcy on or around May 9, 2016. This was a
5 misrepresentation of the legal status of Consumer A’s debt in violation of California Civil Code
6 section 1788.17, incorporating 15 U.S.C. section 1692e(2)(A) and 12 C.F.R. section
7 1006.18(b)(2)(i). The letter also failed to provide Consumer A with a notice saying that the debt
8 was time-barred and that FAN would not sue him for it, in violation of California Civil Code
9 section 1788.14(d)(1).

10 Y. FAN did not provide Consumer A in its first written communication a separate
11 prominent notice pursuant to California Civil Code section 1788.52(d)(1) that he may request
12 records showing the following: (1) that FAN has the right to seek collection of the debt; (2) the debt
13 balance, including an explanation of any interest charges and additional fees; (3) the date of default
14 or date of the last payment; (4) the name of the charge-off creditor and account number associated
15 with the debt; (5) the name and last known address of the debtor as it appeared in the charge-off
16 creditor’s or debt buyer’s records prior to the sale of the debt, as appropriate; and (6) the names of
17 all persons or entities that have purchased the debt, as well as a copy of the contract or other
18 document evidencing his agreement to the debt.

19 Z. On March 30, 2023, FAN emailed Consumer A stating, “To the extent that you may
20 have received a discharge in bankruptcy this communication should not be construed as an intent to
21 subject you to personal liability for the discharged debt.” However, the email also presented
22 Consumer A with a “present statement showing the current amounts due on the second mortgage
23 lien,” which was a discharged debt, and stated that the communication was from a “debt collector
24 and any information obtained will be used for that purpose.” These conflicting statements were
25 deceptive, in violation of Cal. Fin. Code § 90003(a)(1).

26 AA. On or around March 29, 2023, a representative of FAN left a voicemail message for
27 Consumer A stating that FAN is not a collection agency or servicing company. Referencing the
28 second mortgage debt, the representative of FAN stated, “Your account has been past due since

1 2015 . . . we will not accept no payment on this account” The representative of FAN failed to
2 state the communication is from a debt collector, in violation of California Civil Code section
3 1788.17 incorporating 15 U.S.C. section 1692e(11). Failing to state the communication was from a
4 debt collector while also stating that FAN is not a collection agency or servicing company was also
5 deceptive, in violation of California Financial Code section 90003(a)(1).

6 BB. FAN did not include in any validation notice sent to Consumer A the date that FAN
7 would consider the end date of the validation period, in violation of 12 C.F.R. section
8 1006.34(c)(3)(i).

9 CC. FAN did not provide Consumer A with information or documents validating the debt
10 within 15 calendar days of receipt of Consumer A’s written request for information regarding the
11 debt or proof of the debt, in violation of California Civil Code section 1788.52(c).

12 DD. FAN did not provide Consumer A with the notice that when collecting on a time-
13 barred debt where the debt is not past the date for obsolescence provided for in Section 605(a) of
14 the federal Fair Credit Reporting Act that they will not sue him for it, in violation of California
15 Civil Code section 1788.52(d)(2).

16 EE. On or around August 23, 2023, a representative of FAN emailed Consumer A
17 offering a 12-month forbearance agreement. This email did not clearly and conspicuously disclose
18 that Consumer A is not legally obligated to make an affirmation of the debt by entering into a
19 forbearance agreement, in violation of California Civil Code section 1788.14(a). On August 31,
20 2023, the representative of FAN emailed Consumer A the aforementioned short-term forbearance
21 agreement without clearly and conspicuously disclosing that Consumer A is not legally obligated to
22 make an affirmation of the debt, again in violation of California Civil Code section 1788.14(a).
23 Moreover, as FAN’s Application was withdrawn as of August 23, 2023, the above-mentioned
24 communications to Consumer A were unlicensed debt collection activity, in violation of California
25 Financial Code section 100001(a).

26 FF. Despite being unlicensed, on or around September 18, 2023, FAN collected
27 approximately \$1,055.00 from a California consumer (Consumer B) pursuant to a loan modification
28 agreement executed on or around August 12, 2021, in violation of California Financial Code section

1 100001(a).

2 NOW THEREFORE, in consideration of the foregoing, and the terms and conditions set
3 forth herein, the parties agree as follows:

4 **II.**

5 **Terms and Conditions**

6 1. **Purpose.** This Consent Order resolves the issues before the Commissioner, set forth
7 in paragraphs A to FF, above, in a manner that avoids the expense of a hearing and other possible
8 court proceedings, protects consumers, is in the public interest, and is consistent with the purposes,
9 policies, and provisions of the DCLA and CCFPL.

10 2. **Finality of Consent Order.** FAN agrees to comply with the terms and conditions of
11 this Consent Order and stipulates that this Consent Order is hereby deemed final.

12 3. **Desist and Refrain Order.** Pursuant to Financial Code section 90015, subdivision
13 (d), FAN is hereby ordered to desist and refrain from engaging in the business of debt collection in
14 this state without first obtaining a license, in violation of California Financial Code section
15 100001(a), and is ordered to desist and refrain from engaging in unlawful and deceptive acts and
16 practices with respect to consumer financial products or services in violation of the California
17 Financial Code section 90003(a)(1). FAN is also hereby ordered to desist and refrain from offering
18 or providing to a consumer any financial product or service not in conformity with the following
19 consumer financial laws, in violation of California Financial Code section 90003(a)(2): California
20 Civil Code sections 1788.14(a) and (d)(1), 1788.17, 1788.52(c), (d)(1), and (d)(2); 15 U.S.C.
21 section 1692(e)(2)(A) and (e)(11); and 12 C.F.R. sections 1006.18(b)(2)(i) and 1006.34. This desist
22 and refrain order is final and effective from the effective date of this Consent Order, as defined in
23 paragraph 24 (Effective Date).

24 4. **Waiver of Hearing Rights.** FAN acknowledges that the Commissioner is ready,
25 willing, and able to proceed with the filing of an enforcement action upon the charges contained in
26 this Consent Order. FAN hereby waives the right to any hearings, and to any reconsideration,
27 appeal, or other right to review which may be afforded pursuant to the DCLA, CCFPL, the
28 California Administrative Procedure Act, the California Code of Civil Procedure, or any other

1 provision of law. By waiving such rights, FAN effectively consents to this Consent Order, and the
2 Desist and Refrain Order contained herein, becoming final.

3 5. Administrative Penalty. FAN shall pay an administrative penalty of \$30,000.00 by
4 no later than December 20, 2023. The penalty shall be made payable in the form of a cashier’s
5 checks or Automated Clearing House deposit to the Department of Financial Protection and
6 Innovation transmitted to the attention of Accounting – Litigation, at the Department of Financial
7 Protection and Innovation, 2102 Arena Boulevard, Sacramento, California 95834. Notice of the
8 payment shall be concurrently sent via email to Jari.Binder@dfpi.ca.gov.

9 6. Full and Final Settlement. The parties hereby acknowledge and agree that this
10 Consent Order is intended to constitute a full, final, and complete resolution of the findings
11 contained herein, and that no further proceedings or actions will be brought by the Commissioner in
12 connection with the findings under the DCLA, CCFPL or any other provision of law, excepting
13 therefrom any proceeding to enforce compliance with the terms of this Consent Order.

14 7. Failure to Comply with Consent Order. FAN agrees that, if it fails to comply with
15 the terms of this Consent Order, the Commissioner may avail herself of any remedies she has under
16 the DCLA, CCFPL, or any other provision of law, until FAN is in compliance. FAN waives any
17 notice and hearing rights which may be afforded under the DCLA, CCFPL, the California
18 Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of
19 law, that the Commissioner may use to ensure compliance with this Consent Order.

20 8. Effect Upon Future Proceedings. If FAN applies for any license, permit or
21 qualification under the Commissioner’s current or future jurisdiction, or is the subject of any future
22 action by the Commissioner to enforce this Consent Order, then the subject matter hereof shall be
23 admitted for the purpose of such application(s) or enforcement proceeding(s).

24 9. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
25 interest.

26 10. Information Willfully Withheld or Misrepresented. This Consent Order may be
27 rescinded by the Commissioner, and the Commissioner may pursue any and all remedies available
28 under the law against FAN, if the Commissioner discovers that FAN knowingly, or willfully

1 withheld or misrepresented information used for and relied upon in this Consent Order.

2 11. Commissioner’s Duties. Nothing in this Consent Order limits the Commissioner’s
3 ability to assist any other government agency with any action brought by that agency (city, county,
4 state or federal) with any prosecution, administrative, civil, and/or criminal brought by any such
5 agency against FAN, including an action based on any of the acts, omissions, or events described in
6 this Consent Order.

7 12. Independent Legal Advice. Each party represents that he or she has received
8 independent advice from its counsel or representatives regarding the advisability of executing this
9 Consent Order.

10 13. Reliance. Each of the parties represents, warrants, and agrees that in executing this
11 Consent Order he or she has relied solely on the statements set forth herein and the advice of his or
12 her own counsel. Each of the parties further represents, warrants, and agrees that in executing this
13 Consent Order he or she has placed no reliance on any statement, representation, or promise of any
14 other party, or any other person or entity not expressly set forth herein, or upon the failure of any
15 party or any other person or entity to make any statement, representation or disclosure of anything
16 whatsoever. The parties have included this clause: (1) to preclude any claim that any party was in
17 any way fraudulently induced to execute this Consent Order; and (2) to preclude the introduction of
18 parol evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

19 14. Waiver, Amendments, and Modifications. No waiver, amendment, or modification
20 of this Consent Order will be valid or binding unless it is in writing and signed by each of the
21 parties. The waiver of any provision of this Consent Order will not be deemed a waiver of any
22 other provision. No waiver by either party of any breach of, or of compliance with, any condition
23 or provision of this Consent Order by the other party will be considered a waiver of any other
24 condition or provision or of the same condition or provision at another time.

25 15. Full Integration. This Consent Order is the final written expression and the complete
26 and exclusive statement of all the agreements, conditions, promises, representations, and covenants
27 between the parties with respect to the subject matter hereof, and supersedes all prior or
28 contemporaneous agreements, negotiations, representations, understandings, and discussions

1 between and among the parties, their respective representatives, and any other person or entity, with
2 respect to the subject matter covered hereby.

3 16. No Presumption Against Drafting Party. Each party acknowledges that he or she has
4 had the opportunity to draft, review, and edit the language of this Consent Order. Accordingly, the
5 parties intend that no presumption for or against the drafting party will apply in construing any part
6 of this Consent Order. The parties waive the benefit of California Civil Code section 1654 as
7 amended or corresponding provisions of any successor statute, which provide that in cases of
8 uncertainty, language of a contract should be interpreted most strongly against the party that caused
9 the uncertainty to exist.

10 17. Headings. The headings in this Consent Order are for convenience only and will not
11 be deemed a part hereof or affect the construction or interpretation of the provisions hereof.

12 18. Governing Law. This Consent Order shall be construed and enforced in accordance
13 with and governed by California law. Each of the parties hereto consents to the jurisdiction of such
14 court in California, administrative or otherwise, best suited to handle any action or proceeding
15 under this Consent Order, and hereby irrevocably waives, to the fullest extent permitted by law, the
16 defense of an inconvenient forum to the maintenance of such action or proceeding in such court.

17 19. Voluntary Agreement. FAN enters into this Consent Order voluntarily and without
18 coercion and acknowledges that no promises, threats or assurances have been made by the
19 Commissioner or any officer, or agent thereof, about this Consent Order. The parties each represent
20 and acknowledge that he, she, or it is executing this Consent Order completely voluntarily and
21 without any duress or undue influence of any kind from any source.

22 20. Notice. Any notice required under this Consent Order shall be provided to each party
23 at the following addresses.

24 To FAN: First American National, LLC
25 1055 Parsippany Boulevard, Suite 410
26 Parsippany, New Jersey 07054.

27 To the Commissioner: Jari Binder, Counsel
28 Department of Financial Protection and Innovation
One Sansome Street, Suite 600
San Francisco, California 94104

Jari.binder@dfpi.ca.gov

21. Counterparts. This Consent Order may be executed in any number of counterparts, each of which will be deemed an original when executed. All counterparts together will be deemed to constitute a single document.

22. Signatures. A signature delivered by facsimile or email will be deemed an original signature.

23. Public Record. FAN acknowledges that this Consent Order is and will be a matter of public record.

24. Effective Date. This Consent Order will become effective on the date it is signed by all parties and delivered by the Commissioner to the FAN by electronic mail at jhavens@mdefault.com.

25. Authority to Sign. Each signatory hereto covenants that he or she possesses all necessary capacity and authority to sign and enter into this Consent Order and undertake the obligations set forth herein.

Dated: November 16, 2023

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: November 15, 2023

FIRST AMERICAN NATIONAL, LLC

By _____
JEFF HAVENS
Vice President