

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

<p>In the Matter of:</p> <p>THE COMMISSIONER OF FINANCIAL PROTECTION AND INNOVATION,</p> <p style="padding-left: 40px;">Complainant,</p> <p style="padding-left: 80px;">v.</p> <p>LEWIS, MILLER &amp; COMPANY, INC.,</p> <p style="padding-left: 40px;">Respondent.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>DCLA LICENSE NO.: 10370-99</p> <p>DESIST AND REFRAIN ORDER AND ORDER ASSESSING PENALTIES</p> <p>(Cal. Fin. Code § 90015(b), (c), (d)(1))</p>
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The Complainant, the Commissioner of Financial Protection and Innovation (Commissioner) of the Department of Financial Protection and Innovation (Department) is informed and believes, and based upon such information and belief, alleges and charges Lewis, Miller & Company, Inc. (Respondent) as follows:

**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) and the rules and regulations promulgated thereunder.

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).

3. Respondent is a Delaware corporation.

4. Respondent is a debt collector licensed by the Commissioner under the DCLA with license number 10370-99. Respondent’s principal place of business is 191 Lathrop Way Suite J, Sacramento, California 95815.

1 II.

2 **Factual Background**

3 5. Respondent collects debt related to a consumer financial product or service as  
4 defined in California Financial Code section 90005(k)(10), including but not limited to extensions  
5 of credit.

6 6. California Financial Code section 100021(a) requires all DCLA licensees to file an  
7 annual report with the Commissioner, on or before March 15, that contains all relevant information  
8 that the Commissioner reasonably requires concerning the business and operations conducted by the  
9 licensee in the state during the preceding calendar year, including information regarding collection  
10 activity (Annual Report).

11 7. On September 11, 2023, the Commissioner notified all DCLA licensees via the  
12 email listed under Primary Company Contact on the Nationwide Multistate Licensing System and  
13 Registry (NMLS)<sup>1</sup> that they must establish an email for communications from the Commissioner  
14 (Designated Email Address) pursuant to the Commissioner’s Order on Electronic Communications,  
15 dated November 22, 2013.

16 8. On November 8, 2023, the Commissioner notified all DCLA licensees via email  
17 listed under Primary Company Contact on NMLS that all debt collectors licensed prior to January  
18 1, 2024 must file the Annual Report by March 15, 2024 through the DFPI Self-Service Portal, and  
19 instructions for accessing the DFPI Self-Service Portal would be sent to the Designated Email  
20 Address in December 2023.

21 9. On December 4, 2023, the Commissioner notified all DCLA licensees via the  
22 Designated Email Address or email listed under Primary Company Contact on NMLS if a  
23 Designated Email Address was not yet provided, that this was the last opportunity to provide a  
24 Designated Email Address to receive the draft of the Annual Report. The DCLA licensee had one  
25 week to complete the process for providing a Designated Email Address.

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27 <sup>1</sup> NMLS stands for Nationwide Multistate Licensing System & Registry and is the system of record for non-depository,  
28 financial services licensing or registration in participating agencies, including the District of Columbia and U.S.  
Territories of Puerto Rico, the U.S. Virgin Islands, and Guam. In these jurisdictions, NMLS is the official system for  
companies and individuals seeking to apply for, amend, renew and surrender licenses authorities managed through  
NMLS.

1           10.     On December 18, 2023, the Commissioner notified all DCLA licensees via the  
2 Designated Email Address or email listed under Primary Company Contact on NMLS if they had  
3 still not provided a Designated Email Address with a sample of the Annual Report stating that  
4 detailed filing instructions and access to the Annual Report will be provided on January 2, 2024.  
5 The email reminded DCLA licensees that if they were licensed as of December 31, 2023, they must  
6 file the Annual Report via the DFPI Self-Service Portal by March 15, 2024.

7           11.     On January 2, 2024, the Commissioner notified all DCLA licensees via the  
8 Designated Email Address or email listed under Primary Company Contact on NMLS if they had  
9 still not provided a Designated Email Address that the Annual Report was accessible via the DFPI  
10 Self-Service Portal and provided instructions for filing the Annual Report.

11           12.     On February 12, 2024, the Commissioner reminded all DCLA licensees via the  
12 Designated Email Address or email listed under Primary Company Contact on NMLS if they had  
13 still not provided a Designated Email Address that all DCLA licensees who were licensed as of  
14 December 31, 2023, must file the Annual Report by the deadline of March 15, 2024, and provided a  
15 correction to the instructions for filing the Annual Report.

16           13.     On March 1, 2024, the Commissioner again reminded all DCLA licensees via the  
17 Designated Email Address or email listed under Primary Company Contact on NMLS if they had  
18 still not provided a Designated Email Address that all DCLA licensees who were licensed as of  
19 December 31, 2023, must file the Annual Report by the deadline of March 15, 2024, stating that  
20 failure to file the Annual Report may subject the DCLA licensee to suspension, revocation,  
21 penalties, or other enforcement action

22           14.     As of March 26, 2024, Respondent, who was licensed as of June 19, 2023, had not  
23 filed its Annual Report with the Commissioner, in violation of California Financial Code section  
24 100021(a). As a result, on April 4, 2024, the Commissioner issued a Notice of Failure to File  
25 Annual Report by March 15, 2024 (Failure Notice) to Respondent via certified mail, U.S. mail, and  
26 Designated Email Address or the email listed under a Company Contact on NMLS notifying  
27 Respondent that the Department will issue a Desist and Refrain Order and Order Assessing  
28 Penalties under California Financial Code section 90015(c) and (d)(1) and will also move to revoke

1 Respondent’s DCLA license under California Financial Code sections 100003(b)(3) and  
2 100003.3(b)(1) if the Annual Report is not filed before April 14, 2024.

3 15. As of April 14, 2024, or 10 calendar days after the Failure Notice, Respondent had  
4 still not filed its Annual Report with the Commissioner, in continuing violation of California  
5 Financial Code section 100021(a).

6 **III.**

7 **Applicable Laws**

8 16. California Financial Code section 90005 provides in relevant part:

9 (d) “Consumer financial law” means a federal or California law that  
10 directly and specifically regulates the manner, content, or terms and  
11 conditions of any financial transaction, or any account, product, or service  
related thereto, with respect to a consumer . . .

12 (e) “Consumer financial product or service” means either of the following:  
13 (1) A financial product or service that is delivered, offered, or provided for  
use by consumers primarily for personal, family, or household purposes . . .

14 (f) “Covered person” means, to the extent not preempted by federal law,  
15 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 . . .

16 (k) “Financial product or service” means . . . (1) Extending credit and  
17 servicing extensions of credit . . . (10) **Collecting debt** related to any  
18 consumer financial product or service . . . (Emphasis added.)

19 17. California Financial Code section 90003 (a) provides in relevant part:

20 (a) It is unlawful for a covered person or service provider, as defined in  
21 subdivision (f) of Section 90005, to do any of the following:

22 (1) Engage, have engaged, or propose to engage in any unlawful, unfair,  
23 deceptive, or abusive act or practice with respect to consumer financial  
products or services.

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

26 18. The DCLA and regulations promulgated thereunder are consumer financial laws  
27 within the meaning of California Financial Code section 90003(a)(2).

28 19. California Financial Code section 100003 provides, in pertinent part:

1 (b) Without limitation, the functions, powers, and duties of the  
2 commissioner include all of the following:

3 (3) To revoke or suspend any license for a violation of this division or a  
4 violation of Title 1.6C (commencing with Section 1788) or Title 1.6C.5  
5 (commencing with Section 1788.50) of Part 4 of Division 3 of the Civil  
6 Code . . . .

7 20. California Financial Code section 100003.3 provides, in pertinent part:

8 (b) The commissioner may suspend or revoke a license if, after notice and  
9 an opportunity for hearing, the commissioner finds any of the following:

10 (1) The licensee violated this division or a regulation adopted or an order  
11 issued under this division . . . .

12 21. California Financial Code section 100021 provides, in pertinent part:

13 (a) A licensee shall file an annual report with the commissioner, on or  
14 before March 15, that contains all relevant information that the  
15 commissioner reasonably requires concerning the business and operations  
16 conducted by the licensee in the state during the preceding calendar year,  
17 including information regarding collection activity. The report shall, at  
18 minimum, require disclosure of all of the following information:

19 (1) The total number of California debtor accounts purchased or collected  
20 on in the preceding year.

21 (2) The total dollar amount of California debtor accounts purchased in the  
22 preceding year.

23 (3) The face value dollar amount of California debtor accounts in the  
24 licensee’s portfolio in the preceding year.

25 (4) The total dollar amount of California debtor accounts collected in the  
26 preceding year, and the total dollar amount of outstanding debt that  
27 remains uncollected.

28 (5) The total dollar amount of net proceeds generated by California debtor  
accounts in the preceding year.

(6) Whether or not the licensee is acting as a debt collector, debt buyer, or  
both.

(7) The case number of any action in which the licensee was held liable by  
final judgment under Title 1.6C (commencing with Section 1788) or Title  
1.6C.5 (commencing with Section 1788.50) of Part 4 of Division 3 of the  
Civil Code . . . .

22. 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.

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

4 23. California Financial Code section 90015(c) provides, “[a]fter notice and an  
5 opportunity to be heard, the commissioner may, by order, assess penalties.”

6 24. California Financial Code section 90012(c) provides, in relevant part:

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

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

11 (A) The penalty amounts are as follows:

12 (i) For any violation of this division, rule or final order, or condition  
13 imposed in writing by the department, a penalty may not exceed the  
14 greater of either five thousand dollars (\$5,000) for each day during which  
15 the violation or failure to pay continues, or two thousand five hundred  
16 dollars (\$2,500) for each act or omission in violation . . . .

17 **IV.**

18 **Desist and Refrain Order**

19 25. Based on the foregoing findings, the Commissioner is of the opinion that  
20 Respondent is a covered person that engaged in unlawful acts or practices, in violation of California  
21 Financial Code section 90003(a)(1), and offered or provided to a consumer any financial product or  
22 service not in conformity with any consumer financial law or otherwise committed any act or  
23 omission in violation of a consumer financial law, including but not limited to California Financial  
24 Code section 100021(a) of the DCLA, in violation of California Financial Code section  
25 90003(a)(2).

26 26. Pursuant to California Financial Code section 90015(d)(1), Respondent and its  
27 managers, officers, directors, agents, or employees, are hereby ordered to desist and refrain from  
28 engaging in, or proposing to engage in, unlawful acts or practices, 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 California Financial Code section 100021(a) of the DCLA, in violation of California  
Financial Code section 90003.

