

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="text-align: center;">v.</p> <p>NATIONAL CREDIT AUDIT CORPORATION,</p> <p style="padding-left: 40px;">Respondent.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>DCLA LICENSE NO.: 10096-99</p> <p>DESIST AND REFRAIN ORDER AND ORDER ASSESSING PENALTIES</p> <p>(Cal. Fin. Code § 90015(b), (c), (d)(1))</p>
---	--	---

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 National Credit Audit Corporation (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 an Illinois corporation.

4. Respondent is a debt collector licensed by the Commissioner under the DCLA with license number 10096-99. Respondent’s principal place of business is 12770 Coit Rd, 10th Floor, Dallas, Texas 75251.

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)¹ 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.

26
27 ¹ 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 January 4, 2023, had not
23 filed its Annual Report with the Commissioner, in violation of California Financial Code section
24 100021(a).

25 15. On or around April 3, 2024, or nine calendar days after March 25, 2024, Respondent
26 filed its Annual Report with the Commissioner.

27 **III.**

28 **Applicable Laws**

- 1 16. California Financial Code section 90005 provides in relevant part:
- 2 (d) “Consumer financial law” means a federal or California law that
- 3 directly and specifically regulates the manner, content, or terms and
- 4 conditions of any financial transaction, or any account, product, or service
- 5 related thereto, with respect to a consumer . . .
- 6 (e) “Consumer financial product or service” means either of the following:
- 7 (1) A financial product or service that is delivered, offered, or provided for
- 8 use by consumers primarily for personal, family, or household purposes . .
- 9 .
- 10 (f) “Covered person” means, to the extent not preempted by federal law,
- 11 any of the following: (1) Any person that engages in offering or providing
- 12 a consumer financial product or service to a resident of this state . . .
- 13 (k) “Financial product or service” means . . . (1) Extending credit and
- 14 servicing extensions of credit . . . (10) **Collecting debt** related to any
- 15 consumer financial product or service (Emphasis added.)

- 16 17. California Financial Code section 90003 (a) provides in relevant part:
- 17 (a) It is unlawful for a covered person or service provider, as defined in
- 18 subdivision (f) of Section 90005, to do any of the following:
- 19 (1) Engage, have engaged, or propose to engage in any unlawful, unfair,
- 20 deceptive, or abusive act or practice with respect to consumer financial
- 21 products or services.
- 22 (2) Offer or provide to a consumer any financial product or service not in
- 23 conformity with any consumer financial law or otherwise commit any act
- 24 or omission in violation of a consumer financial law

25 18. The DCLA and regulations promulgated thereunder are consumer financial laws

26 within the meaning of California Financial Code section 90003(a)(2).

- 27 19. California Financial Code section 100003 provides, in pertinent part:
- 28 (b) Without limitation, the functions, powers, and duties of the
- commissioner include all of the following:
- (3) To revoke or suspend any license for a violation of this division or a
- violation of 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

20. California Financial Code section 100003.3 provides, in pertinent part:
- (b) The commissioner may suspend or revoke a license if, after notice and
- an opportunity for hearing, the commissioner finds any of the following:

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

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

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

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

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

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

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

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

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

23 (7) The case number of any action in which the licensee was held liable by
24 final judgment under Title 1.6C (commencing with Section 1788) or Title
25 1.6C.5 (commencing with Section 1788.50) of Part 4 of Division 3 of the
26 Civil Code

27 22. California Financial Code section 90015(d) provides:

28 (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.

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

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

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

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

5 (A) The penalty amounts are as follows:

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

11 **IV.**

12 **Desist and Refrain Order**

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

20 26. Pursuant to California Financial Code section 90015(d)(1), Respondent and its
21 managers, officers, directors, agents, or employees, are hereby ordered to desist and refrain from
22 engaging in, or proposing to engage in, unlawful acts or practices, or offer or provide to a consumer
23 any financial product or service not in conformity with any consumer financial laws, including but
24 not limited to California Financial Code section 100021(a) of the DCLA, in violation of California
25 Financial Code section 90003.

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

V.

Order Assessing Penalties – CCFPL (Cal. Fin. Code § 90015(c))

1 28. Pursuant to California Financial Code section 90015(c) and section 90012(c), and
2 after due consideration of possible mitigating factors and other appropriateness considerations listed
3 in section 90012(c)(1)(B), Respondent is hereby ordered to pay the Commissioner a penalty of
4 \$2,500.00 within 30 days of the date of this order. This penalty shall be made payable in the form
5 of an Automated Clearing House deposit or cashier’s check made payable to the Department of
6 Financial Protection and Innovation. The cashier’s check shall be mailed to the attention of
7 “Accounting – Litigation” at Department of Financial Protection and Innovation, 2101 Arena
8 Boulevard, Sacramento, California 95834-2036. Notice of such payment shall be concurrently sent
9 to Melinda Lee via e-mail at Melinda.Lee@dfpi.ca.gov.

10 Dated: April 15, 2024
11 Sacramento, California

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation



12
13
14 By: _____
15 MELINDA LEE
16 Deputy Commissioner
17 Debt Collection Licensing Act
18
19
20
21
22
23
24
25
26
27
28