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The California Association of Collectors (“CAC”) is a not-for-profit California statewide association of collection agencies, which collect debts assigned to them for collection purposes by original creditors, debt buyers and governmental agencies. CAC provides educational opportunities and conferences for its members, and it engages in legislative advocacy efforts on behalf of its members.

Throughout 2020, CAC worked very closely with Senator Robert Wieckowski and his staff in negotiating the provisions of SB 908, the Debt Collection Licensing Act (“Act”). These efforts culminated in CAC sending a letter of support for SB 908 to Governor Newsom.

CAC has reviewed the Proposed Rulemaking under the California Consumer Financial Protection Law: Consumer Complaints (PRO 03-21) issued by the Department of Financial Protection and Innovation (“DFPI”) and, assuming the DFPI anticipates applying the proposed regulations in PRO 03-21 to collection agencies, offers the below comments to the DFPI’s Proposed.

### **General Comments.**

Generally, the obligations of PRO 03-21 are inconsistent with the requirements mandated by, and the complaint processes established by the CFPB. The processes outlined in PRO 03-21 for covered persons are overly burdensome, costly and, in this strict liability environment, potentially very damaging. Standardization and consistency are paramount in the development of an effective and useful consumer portal. And, such a portal should exclude “inquiries” given their nebulous and ambiguous definition.

In order to provide clarity and consistency with the reporting processes, the DFPI should manage a complaint portal that receives consumers’ complaints, and not “inquiries,” and is consistent with the terminology utilized by the CFPB. In directing complaints to its portal, the DFPI will have the ability to pull analytics from consumer complaints, including but not limited to complaint types and frequency.

#### **1. Rule 90008.2: Definitions.**

The definition of “inquiry” is rather broad and, based on the proposed requirements for tracking “inquiries,” PRO 03-21 will impose unrealistic requirements on covered persons. For example, when a consumer who wants to make a payment (in part or in full) asks how much is owed or to whom the payment should be made (e.g., either the collection agency or the owner of the debt), will the covered person be required to treat that as an “inquiry” under the proposed regulations?

In actual practice, tracking “inquiries” will be burdensome on the DFPI and covered persons. A complaint portal maintained by the DFPI should be the sole source of actual complaints or disputes with regards to the actions of covered persons.

## 2. **Rule 90008.3: Complaint Processes & Procedures.**

- Subsection (a)(2) requires that all written communications to each consumer shall disclose “the procedures for filing complaints with the covered person both orally and in writing.” As noted above, there should be one repository of complaints regarding PRO 03-21, a portal maintained by the DFPI.

Starting on November 30, 2021, debt collectors will be required to comply with Regulation F of the CFPB (“Reg F”), with links to the CFPB and a checklist for consumers’ disputes. Here is a link to the sample notice that must be use by debt collectors—<https://www.consumerfinance.gov/rules-policy/final-rules/debt-collection-practices-regulation-f-2020-12/>

PRO-31 will require additional notices and links regarding the dispute process. How will these layers of different notices with different links assist the least sophisticated consumers?

If the DFPI elects to proceed with PRO 03-21 as drafted, CAC requests that the DFPI specify what it wants in the disclosure described in Rule 90008.3(a)(2), or that it provide a short form notice regarding this proposed obligation. Having specificity in this matter will aid covered persons and consumers significantly.

- Subsection (a)(3) requires covered persons to display “prominently” a link to the complaint form. Please provide guidance on what this means. May the link be placed anywhere on the main page of a covered person’s website? Is a specific location on the main page required for the display to be “prominent”? Can the DFPI provide an example of the prominent display that would satisfy this proposed regulation?
- Subsection (a)(4) requires a covered person to maintain a toll-free telephone number for a complainant to file oral complaints with a “live representative.” This is a trap for covered persons as any consumer can claim that she/he made an oral complaint and, in this strict liability environment, not requiring a written complaint may expose the honest covered person to significant liability against the unscrupulous claim of an oral complaint.

Many of the CAC’s members are small businesses with five or fewer persons and some are sole proprietors. Additionally, as has been widely reported, virtually all employers are experiencing challenges in finding people to hire. With this as a backdrop, does this proposed regulation anticipate that all calls to the complaint phone number will be answered by a person rather than a voicemail? That is unrealistic for all covered persons.

- Subsection (a)(6) states that covered persons shall not impose a time limit for complainants to make a complaint. This regulation may be interpreted to create a

limitless time period for complaints. That is excessive, will require covered persons to maintain all of its records forever and will potentially expose covered persons to administrative actions and liability, in the context of strict liability statutes, for a never-ending period of time. Without a limitation, for example, a complaint could be filed many years after the alleged improper conduct and even after corrective action has been taken or long after the account in question has been paid, closed, charged off, removed, or discharged in bankruptcy. A limitation of a reasonable number of years on a time period for complaints is appropriate.

- Subsection (b)(1) and other sections mandate that certain actions be taken within three calendar days. This timeframe is unrealistically short. This timeline fails to account for holidays. For example, if a complaint is received on the day before Thanksgiving (which usually has a four-calendar-day holiday) or the date before a nationally recognized three-day weekend, must the covered person respond during the holiday? Further, this timeframe fails to take into consideration that many covered persons will be small businesses (with five or fewer persons) and some are sole proprietorships. Realistically, the three calendar-day timeframe should be extended to fifteen days to be consistent with the CFPB and to allow covered persons to obtain the information and documentation needed to reply to the consumer.
- Subsection (c)(1)(A) states that no investigation is needed if the covered person makes a full and prompt refund to the complainant of the amount at issue. This regulation is unclear in the context of a debt collector. Debt is assigned to a third-party collection agency by a creditor or debt buyer who remains the owner of the debt. The owner of the debt, rather than the debt collector, determines whether a debt is cancelled, adjusted or reduced. Further this regulation requires a refund in order to preclude an investigation. In reality, disputes between consumers and debt collectors, if valid, result in a deletion of the credit reporting on the debt at issue or an adjustment in the amount reported. This regulation does not address the realities of the resolution of valid disputes between consumers and debt collectors since it references refunds as the only method to avoid an investigation.
- Subsection (c)(1)(B) requires a thorough investigation of all relevant documents and “of the individuals involved in the complaint.” In what manner and to what extent is a covered person supposed to investigate thoroughly the individuals involved? Is the covered person required to investigate the consumer or the owner of the debt? This proposed obligation to thoroughly investigate the individuals involved is rather unclear and, in the context of strict liability, could be troubling for covered persons.
- Subsection (c)(7)(C) states that, when corrective action is needed, remedies include adjustments, credits, or refunds. As noted above, valid disputes between consumers and debt collectors usually are resolved by deleting the credit reporting or making an adjustment in the amount being reported, rather than refunds.
- Subsection (c)(3) and other sections refer to the “officer” of the covered person. This is limiting and does not reflect reality. Limited liability companies often do not

have officers; rather, they have managers or members who have operational responsibilities. Also, sole proprietors and partnerships do not have officers.

- Subsection (d)(1) states that a covered person shall respond in writing with a final decision on “all issues” within fifteen calendar days of receiving the complaint. Fifteen calendar days is an unrealistically short timeframe for debt collectors who routinely rely on third parties for information and documentation from third parties to address and resolve consumer disputes. Subsection (d)(1)(A) allows for an extension of an additional fifteen days but the covered person is obligated to document the delay and note the reason, and government creditor often take sixty days or more to provide requested information and documentation. A more realistic approach is simply to allow thirty days for a final decision to be rendered and, if no such decision is timely rendered, all collection activity must be paused until the final decision is rendered.
- Subsection (d)(1)(B) shortens the timeframe for a covered person to render a final decision to seven days when a complainant claims financial hardship. This extremely short timeframe is unrealistic, burdensome, and potentially damaging to the debt collector in this strict liability setting since debt collectors must rely on third parties for information and documentation to respond to a consumer’s complaint. Further, a consumer may claim financial hardship orally with no documentation to substantiate this claim. This subsection should be deleted.

### **3. Section 90008.4: Inquiry Processes and Procedures.**

This section concerns “inquiries” and places a multitude of new and detailed obligations and reporting requirements on covered persons concerning any “inquiry” of a consumer. As noted above, given the extremely broad definition of “inquiry,” debt collectors may have to develop and maintain an entire database just for these requirements and will have to commit staff simply to address these requirements. This will prove costly, especially to the many small businesses in California that provide debt collection support to creditors and government agencies.

Debt collectors strive to have communication with consumers. This allows for outstanding accounts to be addressed and, when appropriate, for the details of any credit reporting to be corrected. In the course of this communication, consumers who are legitimately attempting to address outstanding accounts may make a number of inquiries. These proposed regulations, because the term “inquiries” is so broadly stated, mandate that debt collectors document and categorize even the most innocuous inquiries and store the records relating to each such inquiry for years to come.

In the past several years, the credit and collection industry has seen a number of companies develop a business model aimed at getting collection agencies (and other furnishers of account information to the credit reporting agencies) to delete consumers’ credit reports based solely on sending repetitive dispute letters that the senders know are frivolous and involve legitimately owed debt. It’s a sort of war of attrition. Many of CAC’s members receive hundreds of these bogus disputes each month.

The proposed regulations that mandate a detailed comprehensive tracking and chronicling of each and every dispute or inquiry – even if they are repetitive and/or clearly frivolous – will be unduly burdensome and very costly for the DFPI and covered persons, particularly for the smaller collection agencies. Additionally, since this is a strict liability environment, these requirements will prove to be damaging.

CAC appreciates the opportunity to provide these comments to PRO 03-21. Please contact Tom Griffin, CAC's legal counsel (\_\_\_\_\_ or \_\_\_\_\_), with any questions you may have regarding the above comments.

Respectfully Submitted,

/s/

Cindy Yaklin, President  
California Association of Collectors