October 5, 2021

Department of Financial Protection and Innovation
Attention: Sandra Sandoval
300 S. Spring Street, Suite 15513
Los Angeles, California 90013
regulations@dfpi.ca.gov.
VIA ELECTRONIC TRANSMISSION

COMMENTS, ANALYSIS, AND RECOMMENDATIONS FROM CONSUMER, SMALL BUSINESS, AND LOW-INCOME GROUPS TO INVITATION FOR COMMENTS ON PROPOSED SECOND RULEMAKING UNDER THE DEBT COLLECTION LICENSING ACT (FILE NO. PRO 05-21)

INTRODUCTION

Supporters of SB 908 (Wieckowski), including the undersigned, submitted lengthy comments in June in response to the Department of Financial Protection and Innovation's ("Department") first set of proposed rules overseeing debt collection and, respectfully, the undersigned were disappointed that the regulations finally promulgated did not adopt the consumer-protecting approaches recommended, including useful rules long and uncontroversially in effect in other states. The undersigned therefore:

- support a second round of much-needed debt collection rule-making

- offer answers to the Department's questions with some suggestions for proposed regulatory language based upon those answers, and
- reaffirms in its second round of rule-making that the Department adopt their recommendations from their June 1st submission (provided, with some modest changes, as an appendix below).

THE IMPORTANCE OF OFFERING IN A SECOND ROUND OF REGULATIONS

The Department will of course be familiar with the comprehensive data that impelled the enactment of SB 908. For the regulatory record and to underscore the importance of offering at least as much protection to California consumers from debt collector abuses as consumers residing in other states, it is warranted briefly to re-capitulate why licensing of debt collectors is so important and, therefore, why the proposed regulations should include the best examples available from other states' regulatory designs in the best spirit of the "states as laboratories" school of thought:

- Even before the pandemic plunged large swaths of consumers into debt and unemployment, Americans held more than $13 trillion in debt.[1]

- Debt collection abuses have long been a top complaint from consumers. From July 2011 to March of 2018, the Consumer Financial Protection Bureau (CFPB) received approximately 400,500 debt collection complaints, representing 27 percent of the total complaints received, second most of all complaints received. Most troubling, a plurality of those complaints (39%) were about efforts to collect a debt not owed.[2]

- Debt collection abuses disproportionately affect and afflict communities that can least afford to have their credit reports ruined, their bank accounts garnished, or their coping skills severely tested; namely, historically economically disadvantaged communities and the poor who struggle to avoid homelessness, hunger, and fall prey to desperate and poverty-causing measures (e.g., payday lending) just to survive.[3]

- Self-help is not a realistic option for these consumers. While existing state and federal laws prohibit debt collectors from abusive, unfair, and deceptive practices, the available financial penalties are insufficient to incentivize attorneys to take on private cases involving those of limited means where, by definition, the actual damages available from which a contingency fee may be obtained are

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[1] See, Assembly Banking and Finance Committee analysis, supra, at p. 3

[2] https://files.consumerfinance.gov/f/documents/bcfp_complaint-snapshot_debt-collection_052018.pdf[2] https://www.consumerfinance.gov/about-us/newsroom/cfpb-report-finds-debt-collection-tops-older-consumer- complaints/

[3] https://www.nclc.org/images/Fact-Sheet-Racial-Disparities-in-Debt-Collection.pdf

modest. As quoted on page 4 of the Assembly Committee on Banking and Finance analysis cited in this document, The Public Law Center observed:

> While California has had laws on the books requiring fair debt collection practices since 1977, our laws do little to stem the bad behavior they prohibit. This is because the law requires the consumer to sue the debt collection company. In other words, a consumer who has been harassed, threatened, misled, ripped off, or wrongfully accused of owing a debt, must seek to enforce the law herself.
>
> Most consumers do not have the means to vindicate their rights under the law. Even for the few who could afford a lawyer, it isn't financially worth the time and cost it takes to bring a lawsuit against a collection agency who violated their consumer rights by collecting against the wrong person, attempting to collect on a debt already paid, inflating the amount of money owed, or misrepresenting why they were repeatedly calling. So consumers never bother to sue or they give up.

- And, as observed in the same analysis, "Licensing laws are the primary mechanism that states use to supervise and regulate providers of financial services and products."[4]

APPLICABLE LAW RELATED TO THE DEPARTMENT'S DISCRETION TO PROMULGATE THE ADVOCATES' SECOND RULE-MAKING RECOMMENDATIONS.

By any measure, these just-discussed statutes offer the Department exceptionally broad enabling authority, easily authorizing the suggestions to the proposed regulations inspired by other states' rules, urged upon the Department in June, and reiterated here. As the leading California administrative law case teaches:

> It is a "black letter" proposition that there are two categories of administrative rules and that the distinction between them derives from their different sources and ultimately from the constitutional doctrine of the separation of powers. One kind — quasi-legislative rules — represents an authentic form of substantive lawmaking: Within its jurisdiction, the agency has been delegated the Legislature's lawmaking power. … Because agencies granted such substantive rulemaking power are truly "making law," their quasi-legislative rules have the dignity of statutes. When a court assesses the validity of such rules, the scope of its review is narrow. If satisfied that the rule in question lay within the lawmaking authority delegated by the Legislature, and that it is reasonably necessary to implement the purpose of the statute, judicial review is at an end.

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[4] Assembly Banking and Finance Committee analysis, *supra*, at p. 4

> We summarized this characteristic of quasi-legislative rules in *Wallace Berrie & Co. v. State Bd. of Equalization* (1985) [citation]: "[I]n reviewing the legality of a regulation adopted pursuant to a delegation of legislative power, the judicial function is limited to determining whether the regulation (1) is 'within the scope of the authority conferred'" [citation] and (2) is "reasonably necessary to effectuate the purpose of the statute" [citation].' [Citation.] 'These issues do not present a matter for the independent judgment of an appellate tribunal; rather, both come to this court freighted with [a] strong presumption of regularity....' [Citation.] Our inquiry necessarily is confined to the question whether the classification is 'arbitrary, capricious or [without] reasonable or rational basis.' [citations].)"

Yamaha Corp. of America v. State Bd. of Equalization (1998) 19 Cal.4th 1, 10-11. Functionally, the broader the terms being construed through regulation the greater the discretion a regulator has to interpret them free from judicial second-guessing. An instructive example comes from the case of *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216, 280. In that case, the California Supreme Court upheld as against a vigorously pressed insurance industry challenge a highly complicated, multi-page ratemaking formula statutorily enabled by eye-of-the-beholder," "unfair"-like statutory words commanding that "[n]o rate shall be approved or remain in effect which is excessive, inadequate, or unfairly discriminatory."

The administrative law principles and authorities described in *20th Century* that afforded the Insurance Commissioner so much judicial deference in interpreting "excessive, inadequate, and unfairly discriminatory" by regulation would with equal weight compel judicial deference to regulations promulgated pursuant to even broader statutes enabling the Department:

- To specify "***factors that the commissioner will consider in denying a license*****,** including, but not limited to, the harm to the consumer,

- To obtain "[a]ny ***other documents, information, or evidence that the commissioner deems relevant to the inquiry or investigation***

- To make a "***finding that the business will be operated honestly, fairly, efficiently, and in accordance with the requirements of this division."***

- To use powers that are "***[w]ithout limitation***" when it comes to "refus[ing] to issue a license as provided in this division" and "to require" whatever information from applicants the Department in its discretion and in service to the "paramount public interest" the Department deems necessary to "ascertain the experience, background, honesty, truthfulness, integrity, and competency of an applicant".

ANSWERS TO THE DEPARTMENT'S QUESTIONS

Benchmarked by the Department's broad regulatory discretion to promulgate debt collection-related regulations , and the unrefuted breadth and depth of Californian's consumer and small business debt even before what has just been confirmed as the nation's most deadly pandemic, the undersigned address the specific questions posed by the Department related to a second round of regulations.

A. QUESTIONS REGARDING THE SCOPE OF THE DEBT COLLECTION LICENSING LAW ("DCLA")

DEPARTMENT QUESTION: ***The DCLA defines several terms in Financial Code section 100002, including "debt," "debt collection," "person," "consumer credit transaction," "debt collector," and "debt buyer." Which of these definitions, if any, are unclear? Are the definitions of these terms the same as those in the Rosenthal Act and Fair Debt Buyer Practices Act ("FDBPA")?***

ANSWER: For discussion purposes, the definitions of "debt," "debt collection," "person," "consumer credit transaction," "debt collector," and "debt buyer" are excerpted here for ease of comparison and so they may be discussed distinctly.

1. "Debt"

DCLA, Financial Code section 100002

> (h) "Debt" means money, property, or their equivalent that is due or owning or alleged to be due or owing from a natural person to another person.

Rosenthal Act, Civil Code section 1788.2

> (d) The term "debt" means money, property, or their equivalent that is due or owing or alleged to be due or owing from a natural person to another person.

FDBPA, Civil Code section 1788.50

> (a) As used in this title:
> (2) "Charged-off consumer debt" means a consumer debt that has been removed from a creditor's books as an asset and treated as a loss or expense. …
> (c) Terms defined in Title 1.6C (commencing with Section 1788) shall apply to this title.

Through Civil Code section 1788.50(c) the definition of "consumer debt" in the FDBPA is the same as in the Rosenthal Act (the Act that "commenc[es] with Section 1788"). The Rosenthal Act defines "consumer debt" in section 1788.2 (f) as:

(f) The terms "consumer debt" and "consumer credit" mean 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.

COMMENT: There is no conflict between the definitions and none are unclear.

First, the definitions of "debt" in DCLA and Rosenthal Act are textually nearly identical and are functionally identical. Second, there is no definition of simple "debt" in the FDBPA but that Act, in the quoted Civil Code section 1788.50(c), makes the definitions of the Rosenthal Act applicable and, so, make the Rosenthal's definition of "debt" applicable to the FDBPA, as well.

SUGGESTION 1: ***Include A Definition Of "Debt" That Expressly Includes Rental Debt, Including COVID-19 Rental Debt, For Clarity And To Reflect Recent Changes In Law.***

Enforcement and laudable notice to the regulated community would be facilitated if the Department were to promulgate a regulation offering an "including, but not limited to definition of "consumer debt" that includes rental debt, especially COVID-19 rental debt.

Recent changes to California law clarify that unpaid rent that went unpaid because of the pandemic have, by operation of law, been legally transformed into "consumer debts," for purposes of the Department's enforcement regardless of the fact that when the rent obligation was incurred they were not, at the time, incurred "on credit" through a "consumer credit transaction" as defined in section 100002(e) Said more simply, when the rents were incurred they would not have qualified as "consumer debt." By operation of law, they do now.

This is the result of AB 3088 (Chiu), enacted as an urgency measure. In that measure, the Legislature converted unpaid COVID-19 rent into "consumer debt." This does not have to be inferred. The Legislative history is plain. the Consider the Senate Judiciary Committee s analysis of AB 3088 which repeatedly states that the bill would by operation of law transform unpaid rents into "consumer debt". With highlights and emphases supplied, it states:

> This bill:
>
> 10) Establishes a legal framework to address circumstances where a tenant has fallen behind on rent or other payment obligations under the lease due to financial hardship caused by the COVID-19 pandemic as follows:
>
> a) provided the tenant follows specified procedures, including providing specified documentation of the hardship if the tenant is a high-income tenant, as defined, then:
>
> i) unpaid rent and other payment obligations under the lease accrued between March 1, 2020 and August 31, 2020 **are converted to consumer debts** and cannot form the basis for an eviction ever;

ii) unpaid rent and other payment obligations under the lease accrued between September 1, 2020 and January 31, 2021 cannot form the basis for an eviction until after January 31, 2021.

In addition, if the tenant pays at least 25 percent of any amount that the landlord demands after it comes due, the remaining unpaid balance **is converted to consumer debt** and cannot form the basis for an eviction ever;[5] …

At its most basic, this bill provides a pathway for tenants enduring financial hardship due to the COVID-19 pandemic to remain in their homes through the end of January 2021. However, the bill does not "forgive" or "cancel" any payment obligations that a tenant has under the lease. Instead, depending on the circumstances, **some or all of any unpaid amount essentially turns into consumer debt, meaning that the landlord can sue the tenant for failing to pay the money and can use any of the standard legal methods (bank levy, wage garnishment, etc.) to collect it**, but the unpaid amount **cannot serve as a basis for throwing the tenant out of the home**.[6] …

If the tenant returns the signed declaration of COVID-19 related financial hardship to the landlord within the fifteen days given, then the tenant receives protection against eviction. How long that protection lasts depends on when the unpaid rent accrued. For unpaid rent and other charges that accrued between March 1, 2020 and August 31, 2020, returning a signed declaration of COVID-19 related financial hardship permanently protects the tenant against eviction. **The tenant still owes that money to the landlord, but it becomes consumer debt: something the landlord can sue the tenant for if the tenant does not pay it back voluntarily, but not the basis for an eviction.** For unpaid rent and other charges that accrue between September 1, 2020 and January 31, 2021, returning a signed declaration of COVID-19 related financial hardship only protects the tenant against eviction until February 1, 2021. However, if the tenant returns the signed declaration of COVID-19 related financial hardship and also manages, before February 1, 2021, to pay the landlord at least 25 percent of the rent still due for September 1, 2020 to January 31, 2021 period, then the tenant is permanently protected against eviction for failure to pay the balance. **That balance is not forgiven or cancelled, though. It, too, becomes consumer debt that the tenant can be sued for if the tenant does not eventually pay it voluntarily.**

The Senate Appropriations analysis (August 30, page 3) and the Senate Floor analysis (August 31, 2020, pages 4, 6, and 8) say the same thing, And, ***no amendments were made to the bill after these analyses were written.***

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[5] 2019-2020 Regular Session AB 3088 (Chiu) Version: August 28, 2020 Hearing Date: August 29, 2020, at p. 4. Emphasis and highlight supplied.

[6] *Ibid.,* at p. 7.

Moreover, Civil Code section 1788.66, enacted as a part of the FDBPA, treats this kind of debt as any other when it places specific restrictions on the sale or assignment of the rental debt:

> Notwithstanding any other law, a person shall not sell or assign any **unpaid COVID-19 rental debt**, as defined in Section 1179.02 of the Code of Civil Procedure, for the time period between March 1, 2020, and September 30, 2021, of any person who would have qualified for rental assistance funding provided by the Secretary of the Treasury pursuant to Section 501 of Subtitle A of Title V of Division N of the federal Consolidated Appropriations Act, 2021 (Public Law 116-260) or Section 3201 of Subtitle B of Title III of the federal American Rescue Plan Act of 2021 (Public Law 117-2), if the person's household income is at or below 80 percent of the area median income for the 2020 or 2021 calendar year.[7]

The equation of unpaid rent to "consumer debt" is not just true by operation of law. It is also trueas a matter of fact. The hallmark of a "consumer credit transaction" is the notion of "credit"; a person obtaining and being able to use for personal use a monetary benefit now with an obligation to pay it later. That is exactly how AB 3088 works in the real-world.

Finally, any regulatory interpretation of AB 3088 that does not acknowledge and embrace the legal transformation of unpaid rents into consumer debt would undermine the entire purpose of the bill. If the rents owed are not "consumer debts," then they must still be unpaid rents subjecting tenants to eviction. That is the opposite of the purpose of AB 3088 which was to prevent epic, unprecedented, mass economically and socially destabilizing evictions. For this reason, legally converting the nature of the obligation from unpaid rents to consumer debt is an essential feature of AB 3088, which is why the Senate Judiciary Committee is right and so explicit on that point. For the same, Ensuring thist devastation does not occur after-the-fact through collections unlawfully initiated and conducted remains a top shelf priority for all those in government, and, respectfully, must be a top tier priority for the Department. [8]

SUGGESTION 2: For all these reasons, the undersigned suggest inserting a new section 1850(e) as follows:

> (e) "Consumer debt" includes COVID-19 rental debt as defined in California Code of Civil Procedure section 1779.01.

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[7] Emphasis added. *See* Civil Code section 1788.65 for an example of how these unpaid rents are decreed to be "debts": "(a) Notwithstanding any other law, a person shall not sell or assign any unpaid COVID-19 rental debt, as defined in Section 1179.02 of the Code of Civil Procedure, for the time period between March 1, 2020, and June 30, 2021.(b) This section shall remain in effect until July 1, 2021, and as of that date is repealed." *See also* Code of Civil Procedure sections 871.10, 1161.2.5 (same).

2. "Debt collection"

DCLA, Financial Code section 100002

> (i) "Debt collection" means any act or practice in connection with the collection of consumer debt.

Rosenthal Act, Civil Code section 1788.2

(b) The term "debt collection" means any act or practice in connection with the collection of consumer debts.

FDBPA, Civil Code section 1788.50

(c) Terms defined in Title 1.6C (commencing with Section 1788) shall apply to this title.

COMMENT: There is no conflict between the definitions as only one exists. The definition of "debt collection" is sufficiently clear to notify businesses of the activity covered and to not be a barrier to identifying unlawful conduct to promote effective enforcement.

3. "Person"

DCLA, Financial Code section 100002

> (p) "Person" means a natural person, partnership, corporation, limited liability company, trust, estate, cooperative, association, or other similar entity.

Rosenthal Act, Civil Code section 1788.2

> (g) The term "person" means a natural person, partnership, corporation, limited liability company, trust, estate, cooperative, association, or other similar entity.

FDBPA, Civil Code section 1788.50

The FDBPA's definition of "person" is the same as the definition in the Rosenthal Act through section 1788.50 (c) ("Terms defined in Title 1.6C (commencing with Section 1788) shall apply to this title.)

COMMENT: There is no conflict between the definitions. Nor is there ambiguity. The statutory definition of "person" is sufficiently clear to notify businesses of the activity covered and to not be a barrier to identifying unlawful conduct to promote effective enforcement.

4. "Consumer credit transaction"

DCLA, Financial Code section 100002

> (e) "Consumer credit transaction" means a transaction between a natural person and another person in which property, services, or money is acquired on credit by that natural person from the other person primarily for personal, family, or household purposes.

Rosenthal Act, Civil Code section 1788.2

> (e) The term "consumer credit transaction" means a transaction between a natural person and another person in which property, services, or money is acquired on credit by that natural person from the other person primarily for personal, family, or household purposes.

FDBPA, Civil Code section 1788.50

The FDBPA does not have a unique definition of "consumer credit transaction." It does, however, in (a)(2) use the undefined phrase "consumer transaction". ("In an action brought by a debt buyer on a consumer debt: (a) The complaint shall allege all of the following:… (2) The nature of the underlying debt and the consumer transaction or transactions from which it is derived, in a short and plain statement.").[9] Beyond this, the FDBPA relies on the definitions of the Rosenthal Act, as discussed.

COMMENT: We recommend against defining "consumer credit transaction" unless it is done consistent with the recommendation in response to the next question; that the regulation adopt a definition of the Rosenthal Act Civil Code section 1788.50's undefined phrase "on credit" that harmonizes with the definition of "credit" in Financial Code section 90005(g), as discussed below in connection with Suggestion 5.

5. "Debt collector"

DCLA, Financial Code section 100002

> (j) "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.**

(Emphasis added).

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[9] This Act also uses the phrase "consumer debt" ((a) As used in this title: … (2) "Charged-off consumer debt" means a consumer debt that has been removed from a creditor's books as an asset and treated as a loss or expense."

"Debt buyer" under Civil Code section 1788.50 is defined as:

> (1) "Debt buyer" means a person or entity that is regularly engaged in the business of purchasing charged-off consumer debt for collection purposes, whether it collects the debt itself, hires a third party for collection, or hires an attorney-at-law for collection litigation. "Debt buyer" does not mean a person or entity that acquires a charged-off consumer debt incidental to the purchase of a portfolio predominantly consisting of consumer debt that has not been charged off.

Rosenthal Act, Civil Code section 1788.2

> (c) The term "debt collector" means any person who, in the ordinary course of business, regularly, on behalf of that person or 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.

FDBPA, Civil Code section 1788.50

The FDBPA does not have a unique definition of "debt collector." It does, however, refer to collection of debts at least fifteen times. The absence of a definition does not mean that the FDBPA's use of the words "collect" or "collection" in relation to debts is unclear. The FDBPA, through section 1788.50 (c) ("Terms defined in Title 1.6C (commencing with Section 1788) shall apply to this title.), adopts those definitions in the Rosenthal Act and, as excerpted above, thus the Rosenthal Act's definition controls. Moreover, as the bolded language above shows, the DCLA expressly states that "debt collector" includes "debt buyer" under the FDBPA.

COMMENT: There is no conflict between the definitions. For the reasons discussed, they are nearly verbatim the same and functionally identical. However, the current section 1850 regulatory definitions of "Debt Collector and "Debt Buyer" for no articulated reason exempt those who purchase debt to sell it to others. Those who *collect* consumer debt are definitionally covered as "debt collectors". Those who *purchase charged off consumer debt to collect it* are also covered as "debt buyers. But those who purchase charged off consumer debt not to collect upon it but to sell it to others are not clearly covered by any current definition. Clearly, such persons are "buyers" – they have bought debt for the purposes of being able to sell it to collectors. There is no other way to earn money from the purchase of the debt. Respectfully, to avoid a toe hold for unlicensed activity and to prevent defenses against efforts to stop unlicensed activity based upon regulatory uncertainty, coverage should be self-evident.

SUGGESTION 3: Proposed regulation (proposed additions in bold):

> (h) "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 **both a** "debt buyer" **and a person who purchases debt but does not engage in debt collection but purchases the debt to sell to another person to engage in debt collection.**

SUGGESTION 4: ***Rent Collections By Attorneys***

We ask the Department to clarify that a debt collector incudes attorneys acting to collect COVID-19 rent debt. While this is already the law, a specifying it would offer welcome clarity for those attorneys, law firms, and their staff who may not otherwise be aware of the change in law treating COVID-19 unpaid rent as debts. Granted, attorneys should already be aware of their debt collection obligations as attorneys and their staff are subject to the Rosenthal Act's restrictions through Business & Professions Code section 6077.5 which in pertinent part expressly covers attorneys and their staff and provides:

> An attorney and his or her employees who are employed primarily to assist in the collection of a consumer debt owed to another, as defined by Section 1788.2 of the Civil Code , shall comply with all of the following:
> (a) The obligations imposed on debt collectors pursuant to Article 2 (commencing with Section 1788.10) of Title 1.6C of Part 4 of Division 3 of the Civil Code.
> (b) Any employee of an attorney who is not a licensee of the State Bar of California, when communicating with a consumer debtor or with any person other than the debtor concerning a consumer debt, shall identify himself or herself, by whom he or she is employed, and his or her title or job capacity.

Furthermore, the Rosenthal Act used to exempt attorneys expressly but it has been amended to repeal that express exemption. No longer exempt, they are now therefore covered. Law firms, too, are covered by the Rosenthal Act.[10]

But, additional – if redundant – clarity on this point in a second round of regulations would be welcome, as evidenced by the Department itself needing to remind and caution future license applicants about

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[10] *Compare* current Civil Code section 1788.2(c) ("(c) The term 'debt collector' means any person who, in the ordinary course of business, regularly, on behalf of that person or 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.) with prior law ("Notably, the RFDCPA excludes attorneys from the definition of "debt collectors" while the FDCPA does not. Compare Cal. Civ.Code § 1788.2(c) ('the term … does not include an attorney or counselor at law')." *Moriarity v. Henriques* (E.D.Cal. 2011)2011 WL 4769270. The same court noted that even while the attorney exemption existed, courts had properly interpreted the Rosenthal Act to cover and regulate the acts of law firms. "On the other hand, district courts throughout the Ninth Circuit have found that a law firm is a 'debt collector' within the meaning of the RFDCPA: 'The statute merely states that it does not apply to 'attorney' or 'counselor at law;' it does not outright exclude law firms. Since the legislature specifically excluded attorneys from the statute but was silent with respect to law firms, this Court presumes that the legislature did not intend to exclude law firms.'") *Ibid.* The FDBPA likewise and expressly includes attorneys. Civil Code section 1788.50 (a)(1) provides: (a) As used in this title: (1) "Debt buyer" means a person or entity that is regularly engaged in the business of purchasing charged-off consumer debt for collection purposes, whether it collects the debt itself, hires a third party for collection, or hires an attorney-at-law for collection litigation."

COVID-19 rent protections.[11] Reiterating these authorities in regulations that earn deference from courts will both facilitate enforcement and provide consumers and regulated entities a set of regulations that are in and of themselves complete; that do not require a reader of the regulations to review the codes in addition to the regulations to determine how to comply with applicable law.

6. "Debt buyer"

DCLA, Financial Code section 100002

[No definition] However:

> (j) "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.**

Rosenthal Act, Civil Code section 1788.2

[No definition]

FDBPA, Civil Code section 1788.50

> (a) As used in this title:
> (1) "Debt buyer" means a person or entity that is regularly engaged in the business of purchasing charged-off consumer debt for collection purposes, whether it collects the debt itself, hires a third party for collection, or hires an attorney-at-law for collection litigation. "Debt buyer" does not mean a person or entity that acquires a charged-off consumer debt incidental to the purchase of a portfolio predominantly consisting of consumer debt that has not been charged off.

COMMENT: There is no conflict between the definitions.

DEPARTMENT QUESTION ***The DCLA states that "[n]o person shall engage in the business of debt collection in this state without first obtaining a license pursuant to this division." Fin. Code § 100001, subd. (a). Are regulations needed to clarify the term "engage in the businessof debt collection"?***

ANSWER: Yes. It is simply good governance not to require regulated entities or consumers to hunt through the codes to determine whether debts that are not the first kind of debts that come to mind are in

[11] "DFPI Reminds Debt Collectors about Renter Protections for COVID-19 Rental Debt" (April 9, 2021) https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/04/2021-04-06-DFPI-Notice-to-Debt-Collectors-re-SB-91-rev-04.05.21-002.pdf

fact "debts" for the Department's oversight, regulatory, and enforcement purposes. A review of the applicable definitional codes with key words bolded reveals why a regulation defining "engage in the business of debt collection" would be wise, benefitting the Department, regulated businesses, consumers, courts, stakeholders; everyone.

Financial Code section 10002(j) introduces the phrase in its definition of a ""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."**

Financial Code section 100002(i), in turn, defines "debt collection" as any act or practice in connection with the collection of **consumer debt**."

Financial Code section 100002(f) then defines "consumer debt" 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.**"

Financial Code section 100002(e) next defines "consumer credit transaction" as "a transaction between a natural person and another person in which property, services, or money is acquired **on credit** by that natural person from the other person primarily for personal, family, or household purposes."

But what does "on credit" mean? As seen by tracing these definitions, the meaning of "engage in the business of debt collection" hinges upon the meaning of that phrase. When it comes to determining what "engag[ing] in debt collection" means, the words "on credit" are, to borrow a phrase, Ground Zero.

However, the DCLA does not define "on credit" meaning the Department has discretion and latitude to define it when defining in regulation what it means to "engage in the business of debt collection."

The division just before the DCLA (codified at Division 24) is the California Consumer Financial Protection Law, a law enacted at the same time as the DCLA. Although the definitions in that division are intended for that division, it would be odd if the Legislature intended definitions of "credit" to differ between the two divisions which were enacted concurrently in the same Legislative session to be administered by the same Department. Indeed, only the clearest statutory indication that the Legislature intended the definitions of "credit" to differ should prevail over a harmonizing regulatory definition because statutes or statutory sections relating to the same subject must be construed together and harmonized if possible *Mannheim v. Superior Court* (1970) 3 Cal. 3d 678, 687; *County of Placer v. Aetna Cas. etc. Co.* (1958) 50 Cal. 2d 182, 188-189. Here, it is not just possible but sensible.

Financial Code section 90005 defines "credit" broadly as:

> (g) "Credit" means the right granted by a person to another person to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer

payment for those purchases.[12]

Thus, COVID-19 rental debts, medical debt, bail debt, HOA debts, fines and fees owed are all indisputably kinds of "credit;" namely, "right[s] granted by a person to another person to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment for those purchases."

Finally, in ascertaining legislative intent, the courts should consider not only the words used, but should also take into account other matters, such as the object in view, the evils to be remedied, the history of the times, legislation upon the same subject, public policy and contemporaneous construction *Alford v. Pierno* (1972) 27 Cal. App. 3d 682, 688; *Estate of Jacobs* (1943) 61 Cal. App. 2d 152, 155

Here, the Legislature's aim was to regulate those who "engage" in the business of "debt collection." There is no indication from the plain text of the DCLA or its legislative history that abuses of ***debt collection*** should be differently regulated and overseen based on, say, whether the underlying debt incurred was for medicines or HOA dues. Are debt collectors less abusive in efforts to collect some kind of debts than others? Nothing in text or history hints at such. The Legislature meant to regulate through licensure the operations and behavior of "debt collectors" and "debt buyers." Absent a clear legislative intent in text or history to differentiate between debt collectors based on the underlying credits they seek to collect, the meaning of "on credit" should not exclude any kind of "credit."

SUGGESTION 5 is to promulgate two defining regulations reading as follows:

> (i) "Engage in debt collection" means a debt collector who seeks to collect consumer debt. …
>
> (o) "On credit" means the right granted by a person to another person to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment for those purchases.

DEPARTMENT QUESTION: ***The DCLA defines a debt collector as "any person who, in the ordinary courseof business, regularly, on behalf of that person or others, engages in debt collection." Fin. Code § 100002, subd. (j). Are regulations needed to clarify the term "in the ordinary course of business" or "regularly"?***

ANSWER: This is best left to *ad hoc* enforcement and adjudication as any formulaic definition will cause regulated entities to game the definition by adjusting their practices to appear to be just below whatever more exact threshold is promulgated.

DEPARTMENT QUESTION: ***Financial Code section 100001, subdivisions (b)(1) and (c) provide exemptions from the DCLA. Is further clarification needed regarding whichentities or transactions***

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[12] *See also*, Civil Code section 1799.90(a)(4) and the correlating definition of "creditor" in (b).

are exempt?

ANSWER: The exemptions are clear and need no refinement or elaboration.

DEPARTMENT QUESTION: ***The DCLA defines a "debtor" as "a natural person from whom a debt collector seeks to collect a consumer debt that is due or owing or alleged tobe due or owing from the person." Fin. Code § 100002, subd. (k). Is the term "due or owing" clear?***

ANSWER: The terms are sufficiently clear. Any effort to pursue a more precise definition could lead to being under-inclusive, in abrogation of the plain language and intent of the Legislature which intended a broad reach for the statute; a reach as broad as the words used will permit.

DEPARTMENT QUESTION: ***The DCLA grants the Department authority to enforce the Rosenthal Act andthe FDBPA against persons required to be licensed under the DCLA and persons expressly exempt from licensure, including certain federally-regulated entities. Fin. Code § 100005, subd. (b) and Fin. Code § 100001, subd. (b)(2). Is further clarification needed regarding against whom the Department can enforce the Rosenthal Act and the FDBPA?***

ANSWER: Yes, it would be useful for the Department to clarify in its second round of regulations that the Department has the authority to require the licensure of businesses that extend bail debt. The proposed definitions in Suggestion 5 above accomplish this.

B. QUESTIONS RELATED TO ANNUAL REPORTING

DEPARTMENT QUESTION: ***What terms in Financial Code section 100021 need clarification and how should those terms be defined?***

ANSWER: At this time, we do not see the need for regulatory clarification.

DEPARTMENT QUESTION: ***Is there additional information the Department should require from licensees in their annual reports?***

ANSWER: Yes. The Department should require licensees to provide information about the volume of debt attempting to be collected, not just the volume collected. Only the debt a company is trying to collect can reveal, for the Department's prioritization purposes and for the purpose of permitting a comparison by advocates, stakeholders, and decision-makers whether Department enforcement is congruent to where the greatest harm might exist.

C. QUESTIONS RELATED TO BONDING

DEPARTMENT QUESTION: ***Should the Department require higher bond amounts pursuant to FinancialCode section 100019, subdivision (e)(2)?***

ANSWER: Yes, as we explained in detail in our June correspondence, following the lead of other states and common sense, the regulations should memorialize that the bonds are for the benefit of consumers. As we wrote in June (and as replicated below):

> Also missing from the proposed section 1850.50 is an express statement of who is the intended beneficiary of the bond; namely, consumers. Consider North Carolina's memorialization of this at N.C.G.S. § 58-70-20:
>
> The bond shall expressly provide that the bond is for the benefit of any person, firm or corporation for whom the collection agency engages in the collection of accounts.
>
> The **thirteenth and fourteenth** amendment requests are to proposed section 1850.50 and would read as follows:
>
> **§ 1850.50. Surety Bond.**
>
> (a) All surety bonds, amendments, cancellations, notices of claims, and information related to surety bonds such as riders and endorsements shall be filed with NMLS for transmission to the Commissioner **and shall expressly provide that the bond is for the benefit of any person, firm or corporation for whom the collection agency engages in the collection of accounts and all persons with respect to whom the licensee collects or attempts to collect a debt, with first priority to consumers.**

DEPARTMENT QUESTION If the Department should require higher bond amounts, what amounts are appropriate and how should they relate to the number of affiliates under the license and the dollar amount of consumer debt collected by the licensee? Specifically:

At what point should the bond amounts begin to increase?

ANSWER: Bond amounts should increase 1) based on the number of affiliates under the license, 2) based on the collection activity, and 3) based on the average number of lawsuits filed by a debt collector each month.

What formula is appropriate for calculating the higher bond amount?

ANSWER: The bond should increase when 1) affiliates are added, 2) average monthly collections increase above a certain threshold, or 3) average monthly lawsuits increase above a certain threshold.

Increasing the bond amount based on certain thresholds follows and improves upon other states' bond structures including Hawaii, which increases the bond by $15,000 for each additional office a debt

collector opens in the state[13] and Maine, which increases the bond amount based on average gross monthly collections.[14] The population of both residents and debt collectors in California justify a higher top-level bond amount, and the known volume of debt collection case filings in the state further requires that a debt collection company's bond is increased based on how many collection actions they file. This is especially important given so many of these collection actions result in default judgments as a result of problems with service and language access.

Should the amounts be set based on tiers? If so, what should be theboundaries between the tiers?

ANSWER: Yes.

Licensee and affiliates	Bond Amount
Licensee with more than 10 affiliates	$150,000
Licensee with five to 10 affiliates	$125,000
Licensee with one to five affiliates	$75,000
Licensee with no affiliates	$25,000

Monthly Collections	Bond Amount
> $40,000	$150,000
$30,000 – $40,000	$125,000
$20,000 – $30,000	$75,000
$10,000 – $20,000	$50,000
< $10,000	$25,000

Monthly Lawsuits Filed	Bond Amount

[13] HI Rev. Stat § 443B-5 (2017) ("§443B-5 Bond. (a) Each collection agency shall file and maintain with the director a bond in the penal sum of $25,000 for the first office in this State and $15,000 for each additional office in this State.") Subject to changes pursuant to HRS 23G-15.

[14] "When debt collectors renew their license with the Bureau of Consumer Credit Protection, the amount of the bond depends on the company's gross monthly Maine collections for the previous year. The Bureau of Consumer Credit Protection separates the bond amount into brackets based on average monthly collections on behalf of Maine consumers:" https://www.maine.gov/pfr/consumercredit/faqs/debt_collector_faq.htm#f, Me. Code R. 030-300-section 1.E.2.)

> 250	$150,000
151-249	$125,000
76-150	$75,000
26-75	$50,000
< 25	$25,000

To the extent the bond amounts conflict, the greater should apply. For example, if a Licensee has no affiliates but has more than $40,000.00 in gross monthly collections, the bond amount is $150,000. If a Licensee has no affiliates, has less than $40,000 in gross monthly collection, but files more than 250 debt collection cases each month, the bond amount is $150,000.

CONCLUSION

The undersigned advocates thank the Department for inviting comments on a much-needed second round of debt collection regulations. For SB 908 to fulfill even the barest minimum of its promises, additional regulations such as those described here and as were described in our June comments, are needed.

Elizabeth Gonzalez
Directing Attorney of Consumer Law Unit
Public Law Center

Robert Herrell
Executive Director
Consumer Federation of California

Ted Mermin
Director
California Low-Income Consumer Coalition

Kat Taylor
Office of Kat Taylor

Rosemary Shahan
President
Consumers for Auto Reliability and Safety

Heidi Pickman
Vice President, Engagement & External Affairs
California Association for Micro Enterprise Opportunity

Marisabel Torres
Director of California Policy
Center for Responsible Lending

Stephanie Carroll
Directing Attorney, Consumer Rights & Economic Justice
Public Counsel

APPENDIX: EXCERPTS FROM JUNE 2021 COMMENTS [*MODIFICATIONS NOTED*]

THE LEGISLATURE UNDERSTOOD IN ENACTING SB 908 THE IMPORTANCE AND WISDOM OF EMBRACING OTHER STATES' EXPERIENCE TO OFFER CALIFORNIANS PROTECTION COMPARABLE TO THOSE ENJOYED IN OTHER STATES.

Supporters of SB 908 and its author foundationally argued that California's failure to oversee debt collection when so many other states had long done so was unjustifiable. This failure, it was argued, left California consumers for no considered reason far more exposed to debt collector abuses than their fellow American citizens. The author's official fact sheet, for example, spotlighted the states and even cities that licensed debt collectors.[15] Likewise, the committee analyses of SB 908 showcased the oversight of other states, with the Assembly Banking Committee (for example) observing:

> California is one of sixteen states that do not license debt collectors, and many of the 34 states that license debt collectors also have their own fair debt collection laws. In these cases, a licensing law is not a substitute for a fair debt collection law, but rather a complement that helps the state to better protect consumers by providing additional tools to improve compliance with fair debt collection laws.[16]

The Department's first set of adopted regulations for subchapter 11.3 of Title 10 of the California Code of Regulations, section 1850, *et seq*.[17], failed to seize upon the many examples of effective licensing statutes and regulations used to protect vulnerable consumers by regulators in other states. This omission, respectfully, cannot be supported. Aligning California's oversight in broad strokes was the motivating intent behind the legislation. It makes sense that the debt collection regimes of other states should serve as a benchmark for what constitutes a minimally protective floor for California's new debt collection licensing program. Finally, incorporating beneficial debt collection licensure best practices from other states should be uncontroversial, given that the regulated industry must already have settled upon compliance practices in those states.

THE APPLICABLE STATUTORY ENABLING AUTHORITIES OFFER THE DEPARTMENT A BROAD PLATFORM TO ADOPT SENSIBLE, PRO-CONSUMER RULES IN A SECOND ROUND OF RULE-MAKING

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[15] 'Thirty-four (34) states and the District of Columbia license debt collectors: Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Oregon, Rhode Island, South Dakota, Tennessee, Utah, Washington, West Virginia, Wisconsin, Wyoming. Even New York City, Chicago, and Carson City license debt collectors." Senate Bill 908 Fact Sheet, Office of Senator Bob Wieckowski

[16] Assembly Committee on Banking and Finance analysis of SB 908 (August 12, 2020), at pp.4-5.

[17] Hereafter, "section" references will be referring to the sections of these proposed regulations.

The debt collector licensing statutes afford the maximum possible authority to the Department to promulgate implementing regulations according to the Department's reasonable discretion, including regulations modeled on those long in existence in other states. With emphases supplied, observe the near complete absence of discretion-constraining language in the following foundational enabling statutes found in the Financial Code:

First, consider Financial Code section 100003(a) which in relevant part reads:

> The commissioner shall administer this division and may adopt rules and regulations, and issue orders, consistent with that authority.
>
> (b) ***Without limitation***, the functions, powers, and duties of the commissioner include all of the following:
>
> (1) To issue or to refuse to issue a license as provided in this division. …
>
> (6) To prescribe the form of and to receive applications for licenses and reports, books, and records required to be made or retained by a licensee. …
>
> (8) ***To require information with regard to an applicant that the commissioner may deem necessary, with regard for the paramount public interest in ascertaining the experience, background, honesty, truthfulness, integrity, and competency of an applicant for collecting consumer debt, and if an applicant is an entity other than an individual, in ascertaining the honesty, truthfulness, integrity, and competency*** of officers, directors, or managing members of the corporation, association, or other entity, or the general partners of a partnership.

The Department's powers are "[w]ithout limitation" when it comes to "refus[ing] to issue a license as provided in this division", "[t]o prescribe the form" and, critically, "to require" whatever information from applicants the Department in its discretion and in service to the "paramount public interest" the Department deems necessary to "ascertain":

> the experience, background, honesty, truthfulness, integrity, and competency of an applicant for collecting consumer debt, and if an applicant is an entity other than an individual, in ascertaining the honesty, truthfulness, integrity, and competency of officers, directors, or managing members" of applicants.

Said plainly, under this statute it is reposed to the Department's sound and expert discretion what information is and is not properly required of an applicant to test the applicant's "experience, background, honesty, truthfulness, integrity, and competency". This is clear and broad authority granted to the Department.

Second, in weighing whether a received application meets the requirements established by the Department, the Department, pursuant to Financial Code section 100004(a)(1)):

> may access, receive, and use ***any*** books, accounts, records, files, documents, information, or evidence that relates to debt collection, including, ***but not limited*** to, any of the following relating to the intent to, or the practice of, collecting consumer debt:
>
> (A) Criminal, civil, and administrative history information.
>
> (B) Personal history and experience information, including, but not limited to, independent credit reports obtained from a consumer reporting agency.
>
> (C) ***Any other documents, information, or evidence that the commissioner deems relevant to the inquiry or investigation*** regardless of the location, possession, control, or custody of those documents, information, or evidence.

Under these two statutes, then, the Department is broadly empowered to establish categorical rules by which an applicant's "experience, background, honesty, truthfulness, integrity, and competency" are to be judged and by which the Department is empowered to review almost every possible document to determine whether those categorical rules are met. No other boundary on the Department's discretion on these matters is found other than those broad standards written here.

Third and lastly, Financial Code section 100012(b) ties the requirements excerpted above together to establish the grounds for denying a license:

> After notice and an opportunity for a hearing the commissioner may deny an application for a license for any of the following reasons:
>
> (3) The applicant or any principal officer, director, general partner, managing member, or individual owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests or equity securities of the applicant, has violated, ***or is not in material compliance with this division***, or an order or rule of the commissioner.
>
> (4) ***A material requirement for issuance of a license has not been met***, provided that a written notice of a material omission shall first be sent to the applicant with an opportunity to correct the omission prior to the applicant's denial**.** …
>
> (7) The commissioner, ***based on its investigation of the applicant***, ***is unable to find that*** the financial responsibility, criminal records, experience, character, and general fitness of the applicant and its general partners, managing members, principal officers and directors, and individuals owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests or equity securities of ***the applicant, support a finding that the business will be operated honestly, fairly, efficiently, and in accordance with the requirements of this division.***

(8) The commissioner may adopt regulations ***specifying the factors that the commissioner will consider in denying a license*****,** including, but not limited to, the harm to the consumer, the frequency of prior violations, and the number of prior disciplinary actions taken against the licensee in California or in other states.

This statute explicitly permits a license to be denied for failure to meet "factors" specified by Department "regulations." It also permits a license application to be rejected for failing to meet a "material requirement" which, of course, pursuant to these authorities, may include those requirements established by regulation pursuant to the statutes discussed and cited above. Importantly, the statute also clearly permits a license to be rejected if the Department in its cannot determine whether an applicant will be "operated honestly, fairly, efficiently, and in accordance with the requirements of this division." Of course, the Department is free to reject an application on such grounds in its *ad hoc* judgment but reducing at least some of the "factors" informing that judgment to regulation is both fairer to regulated entities, by allowing applicants to comport their applications to known requirements, and to consumers, who more easily can measure the Department's approvals against memorialized, transparent and publicly accessible standards.

CALIFORNIANS EXPOSED TO DEBT COLLECTION SHOULD HAVE NO LESS PROTECTION THAN RESIDENTS OF OTHER STATES AND THE LEGISLATURE HAS VESTED THE DEPARTMENT WITH THE POWER TO ENSURE THEY ARE NOT.

More than legislative history instructs the Department to look to other states to ensure California's consumers are not more exposed to abusive debt collection practices than those in residing in other states. Financial Code section 100012(b)(5) (emphasis supplied) provides that an application may be denied if

(5) The applicant or any principal officer, director, general partner, managing member, or individual owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests or equity securities of the applicant, has violated this division or the rules thereunder, ***or any similar regulatory scheme of this or a foreign jurisdiction.*** …

This statutory language underscores the importance of California adopting the beneficial regulatory strategies used in other states to ensure that California's licensure application standards are in text "similar" to those "regulatory schemes" of "foreign jurisdictions" so that applications may incontestably be denied based on a California regulation without having to litigate "similarity." In other words, as the statute commands a review of other states' "similar" regulations to test whether an application should be denied, it makes sense by regulation to ensure the similarity is properly memorialized in California regulation to avoid having to litigate what is and is not "similar."

Doing so is consistent with one of the objectives for the proposed regulations as stated in the Notice, which is to "[s]pecify the acts that may constitute grounds for the Commissioner to deny a license."

For all these reasons, the undersigned have as an Appendix attached their recommendations for proposed changes to existing regulation based upon the statutes and regulations in other states.

RECOMMENDATIONS

RECOMMENDATION 1:

There is a possible hole in the definitions of debt collector and debt buyer requiring a modest addition to the proposed regulations. Those who *collect* consumer debt are definitionally covered by proposed section 1850(h). Those who *purchase charged off consumer debt to collect it* are also covered, under the same proposed section, subdivision (h). But those who purchase debt not to collect upon it but to sell it to others are not clearly covered by any current definition. Respectfully, to avoid unlicensed activity and to prevent defenses against efforts to stop unlicensed activity based upon regulatory uncertainty, coverage should be self-evident.

The **first** amendment recommended is to section 1850(h) and would read:

> (h) "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 consumer 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 **both a** "debt buyer" **and a person who purchases consumer debt but does not engage in debt collection but purchases the debt to sell to another person to engage in debt collection.**

RECOMMENDATION 2:

Financial Code section 100007(b) provides that the application fee "shall be determined by the department." The amount of the application fee is thus reposed to the discretion of the Department, in

the context of other applicable laws aimed at avoiding fees grossly disproportionate to the service or license or registration being provided and the due diligence by the governmental entity leading up to such provision.

Application fees are an important source of revenue for the Department financing the thoroughness of its application reviews and its enforcement for debt collectors that violate the law. For these reasons, the proposed application fee of $350 is far too low when compared to the application fees charged in lower cost states with far fewer consumers to protect. For example, Arizona, with a statewide population smaller than that of Los Angeles County,[18] requires that "[e]ach original application shall be accompanied by a nonrefundable fee of one thousand five hundred dollars."[19] North Carolina requires a fee of at least $1,000 before allowing a collection agency to operate within the state.[20]

In the alternative, the current $350 fee should be charged for each affiliate applying to operate under a single license.

The **second** amendment recommended is to section 1850.7(a) and would read:

§ 1850.7. License Application for Debt Collector.

(a) … For affiliates seeking to be licensed under a single license, each affiliate must file a Form MU1 and comply with all licensing requirements except for the application fee, which is a single ~~**$350**~~ **$1,500** fee for the Form MU1 filings. The Department of Financial Protection and Innovation will issue a single license listing the names of all the affiliates. An affiliate may be licensed under only one debt collector license.

RECOMMENDATION 3:

The proposed regulations properly require the Department to approve names, including fictitious business names, of applicants and, thus, licensees. However, the regulations do not establish a standard for evaluating or rejecting proposed names. That omission should be rectified to provide an explicit legal basis for rejections the Department can point to and rely upon if challenged. As well, the regulations do not as clearly as they should prohibit applicants and, thus, licensees, from using names

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[18] Arizona's population is about 7.29 million. Los Angeles County's about 10 million.

[19] https://dfi.az.gov/collection-agencies-dfi

[20] N.C.G.S. section 58-70-35. Application fee issuance of permit contents and duration. (a) Upon the filing of the application and information required by this Article, the applicant shall pay a nonrefundable fee of one thousand dollars ($1,000), and no permit may be issued until this fee is paid. Fees collected under this subsection shall be credited to the Insurance Regulatory Fund created under G.S. 58-6-25. A summary chart of state application fees can be found here: https://www.creditinfocenter.com/legal/collection-agency-requirements.shtml

that have not been approved or have been rejected by the Department. Here, Connecticut's regulations are exemplary and the language recommended below is modeled virtually verbatim from that state.

The **third** amendment recommended is to section 18507(1)(B) and (C) and would read:

§ 1850.7. License Application for Debt Collector.

(B) An applicant shall not engage in debt collection using a fictitious business name until the Commissioner approves the use of the name **as not a name likely to cause a consumer or debtor to be misled, confused, mistaken, or deceived.**

NOTE: The phrase "misled, confused, mistaken, or deceived" is from Business & Professions Code section 14704 regulating the solicitation of financial services. More generally, the use of the standards "misleading" and "confusing" are commonplace in a variety of code sections. A text search of the word "misleading" in the Official California Legislative website in just the Business & Professions and Civil Codes yield 17 pages worth of results. As for "confusing," the word is used in 19 different sections in just those two codes and is used specifically in licensing.[21]

(C) No person licensed to act within this state as a consumer collection agency shall do so under any other name or at any other place of business than that named in the license. No licensee may use any name other than its legal name or a fictitious name approved by the Commissioner, provided such licensee may not use its legal name if the Commissioner disapproves use of such name. [22]

RECOMMENDATIONS 4, 5, AND 6:

Other states with far longer experience licensing debt collectors wisely require two kinds of additional and specific kinds of disclosures that should be included in the proposed regulations to offer California consumers no less protection than that afforded residents of other states:

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[21] *See*, for example, Business & Professions Code section 5058.

[22] Compare Conn. Agencies Regs. section 36a-801: "(i) No person licensed to act within this state as a consumer collection agency shall do so under any other name or at any other place of business than that named in the license. No licensee may use any name other than its legal name or a fictitious name approved by the commissioner, provided such licensee may not use its legal name if the commissioner disapproves use of such name."

- **Colorado** requires applicants to designate a "collections manager" similar to a "pharmacist-in-charge" in California pharmacy law.[23] (Colo. Rev. Stat. § 5-16-119 (I): "Employ a collections manager who shall be responsible for the actions of the debt collectors in that office.") The laudable, enforcement-facilitating point of such managers is that they, with incontestable precision, allow a licensing agency like the Department to identify one person in every office who is personally accountable to a licensing authority for the lawfulness of debt collection operations there, thus (i) preventing defenses to enforcement actions based upon a "that's not my department" kind of responsibility-deflecting defense and (ii) providing a needed personal incentive for individuals to resist pressure from corporate superiors to violate the law.

  The proposed regulations come close to adopting this requirement by proposing that applicants designate "branch managers" but the proposed regulations do not clarify the accountability of such managers as needed, as in Colorado.

- **Arizona, Colorado, Maine, Minnesota, New Mexico, Nebraska, Tennessee and Washington** all specifically require or permit financial statements to be provided upon initial or renewal application while Colorado requires a verified financial statement. The absence of such an explicit requirement or permission in the proposed regulations is, respectfully, a quite significant omission, possibly blinding the Department to whether the applicant has the financial

[23] California Business and Professions Code Section 4036.5.

wherewithal to operate in a sober, patient, and non-predatory manner that methodically complies with the many operational requirements of California law.[24]

An addition is required to proposed section 1850.7(15) addressing "Supplemental Information." That proposed regulation requires that an applicant disclose the amount collected in the prior year in California. It would, however, be helpful for the Department in assessing the adequacy of the bond required and in prioritizing application processing is an application also disclosed the size of the portfolio of debt owed by California residents which is under collection of the applicant. This information is required in the annual report under Financial Code section 10021(a)(1)-(3), but it is not included in the proposed regulation's list of application content. It should be.

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[24] **Arizona**, A.R.S. section 32-1025: "A. Except as provided in section 32-4301, a person desiring to secure renewal of a collection agency license shall file a financial statement, make a renewal application to the department and pay the fees prescribed in section 6-126 not later than January 1 of each year on forms prescribed by the superintendent setting forth verified information to assist the superintendent in determining whether or not the applicant is in default of or in violation of the terms of this chapter and whether the applicant is still meeting the requirements of this chapter. If the renewal applicant is unable to make a financial statement at the time of filing the application, the applicant may make a written request for an extension of time to file such financial report, and if the extension is granted the applicant shall file a financial statement no later than March 1." **Colorado**, Rev. Stat. section 5-16-119 "(b) A duly verified financial statement for the previous year."/ **Maine**, M.R.S.A section1131: "A. The superintendent may require such financial statements and references of all applicants for a license as the superintendent deems necessary and may make or cause to be made an independent investigation concerning the applicant's reputation, integrity, competence and net worth. The investigation may cover all managerial personnel employed by or associated with the applicant. If the applicant is a debt buyer, the superintendent shall require documentation that the debt buyer has conducted a criminal background check prior to employment on every officer or employee of the debt buyer who engages in the active collection of debt for the debt buyer or has access to consumer credit information."/**Minnesota**, M.S. section 332.33:"The commissioner may require financial statements and references of all applicants for a license or registration as the commissioner considers necessary. The commissioner may make or cause to be made an independent investigation concerning the applicant's reputation, integrity, competence, and net worth, at the expense of the applicant for the initial investigation, not to exceed $500, and for that purpose may require a deposit against the cost of the investigation as the commissioner considers adequate. The investigation may cover all managerial personnel employed by or associated with the applicant."/ **New Mexico**, N.M. Code R. section 61-18A-9: "Financial statement. The application for a collection agency license shall be accompanied by a financial statement of the applicant up to not more than sixty days prior to date of application for a new license or renewal, showing the assets and liabilities of the applicant and truly reflecting that that applicant's net worth is not less than the sum of ten thousand dollars ($10,000), and that its liquid assets are not less than one thousand dollars ($1,000) available for use in licensee's business. The financial statement shall be sworn to by the applicant, if the applicant is an individual or by a partner, director, manager or trustee in its behalf, if the applicant is a partnership, corporation or unincorporated association. The information contained in the financial statement shall be confidential and not a public record"/**Nebraska**, Neb. Admin. Code. 004.01: "Before being considered by the Board, every application for a collection agency license shall include the following information and meet the following requirements:...(H) Financial statement of corporation or business."/**Tennessee**, Tenn. Comp. R. & Regs. 20-01-.01:"(1) Upon receipt of a completed application for a license as a collection service, the Collection Service Board (or its designees) shall commence an investigation to determine the applicant's fitness to engage in the collection service business. Such investigation shall include, but not be limited to: (a) Verification of the applicant's financial statement (b) Evaluation of the applicant's financial responsibility with verification through a credit bureau report."/**Washington**, RCW 19.16.245: "No licensee shall receive any money from any debtor as a result of the collection of any claim until he, she, or it shall have submitted (GH- the idea that meeting all requirements is a precondition on collecting any money is useful and could be used overall rather than just on financial statement requirement.) a financial statement showing the assets and liabilities of the licensee truly reflecting that the licensee's net worth is not less than the sum of seven thousand five hundred dollars, in cash or its equivalent, of which not less than five thousand dollars shall be deposited in a bank, available for the use of the licensee's business. Any money so collected shall be subject to the provisions of RCW 19.16.430(2). The financial statement shall be sworn to by the licensee, if the licensee is an individual, or by a partner, officer, or manager in its behalf if the licensee is a partnership, corporation, or unincorporated association. The information contained in the financial statement shall be confidential and not a public record, but is admissible in evidence at any hearing held, or in any action instituted in a court of competent jurisdiction, pursuant to the provisions of this chapter: PROVIDED, That this section shall not apply to those persons holding a valid license issued pursuant to this chapter on July 16, 1973."

Thus, the **fourth** amendment recommended is to section 1850.7(a)(10) and would read:

(10) BUSINESS ACTIVITIES: In addition to the identification of business activities required on Form MU1, an applicant shall file with NMLS a detailed description of the applicant's business activities that includes the following information: …

(F) The name, mobile phone number, address, physical address, and email address of the manager for every office or unit, including branch managers, who shall be responsible for the actions of debt collectors working in that office or unit. [25]

NOTE: Relatedly, we observe that the requirement that "[a]n applicant shall register its branch offices by filing with NMLS a Form MU3 for each branch office" from section 1850.7(a)(16) of the proposed regulations is precedented. [26]

The **fifth** amendment recommended is to section 1850.7(a)(15) and would read:

(15) SUPPLEMENTAL INFORMATION: An applicant shall file information on debt collection activities as of the prior year-end directly with the Commissioner by emailing the following information to the Debt Collection Licensing Program at DebtCollectionLicensing@dfpi.ca.gov:

- The total dollar amount of debt collected from consumers as of the prior calendar year-end. The information is required to determine whether a higher surety bond amount may be required pursuant to California Financial Code section 100019, subdivision (e)(2).

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[25] Copied nearly verbatim from Colo. Rev. Stat. section 5-16-119, quoted above in the text.

[26] Colorado law requires notice of branch offices, making investigations and enforcement far easier and less cumbersome. (Colo. Rev. Stat. section 5-16-119 (6) "A collection agency with branch offices must notify the administrator in writing of the location of each branch office within thirty days after the branch office commences business.")

- The total dollar amount of net proceeds generated by California debtor accounts (i.e., from accounts that are owned by consumers who reside in California at the time the consumer made a payment on the account) as of the prior calendar year-end. The information is required to calculate the licensee's assessment for the year of licensing pursuant to California Financial Code section 100020, subdivision (a).

- **To provide the Commissioner an opportunity to assess the size of the applicant's debt collection activities for purposes of assessing an appropriate bond and to prioritize the processing of applications, the face value of California debtor accounts in the licensee's portfolio in the preceding year as described in Financial Code section 10021(3).**

The **sixth** amendment recommended is to section 1850.7(a)(17) and would read:

(17) BANK ACCOUNT/QUALIFYING INDIVIDUAL: An applicant is not required to provide bank account information in Section 10 of Form MU1 or information on a qualifying individual in Section 17 of Form MU1. **However, the Commissioner may require such financial statements, proof of insurance, and references of all applicants or for a license or direct owner, executive officer, or indirect owner as the Commissioner deems necessary and may make or cause to be made an independent investigation concerning the applicant's or direct owner's, executive officer's, or indirect owner's reputation, integrity, competence and net worth. The investigation may cover all managerial personnel employed by or associated with the applicant.**

RECOMMENDATION 7:

As a part of initial licensure, Arkansas, Michigan, New Mexico, and Wyoming sensibly require key business managers to take and pass a test that demonstrates an understanding of state debt collection licensing law and requirements and, of course, state and federal debt collection laws protecting consumers such as the state and federal FDCPAs and California's unfair competition law. California consumers and the Department would benefit from such an "ounce of prevention" kind of training requirement. Consider the Arkansas example at Ark. Code. Section 17-24-101:

B. The proposed manager of each new Agency or branch office shall be required to pass a written examination, prepared by the Director and approved by the Board, in order to assure that said manager is versed in the laws and Rules and Regulations which regulate the activities of Collection Agencies.[27]

The **seventh** amendment recommended is to section 1850.7 to add a new (a)(19) which would read:

(19) Every manager, including branch managers, with supervisorial duties over those who engage in debt collection shall be required prior to an application being granted, to pass a written examination, prepared by the Commissioner, in order to assure that a manager is versed in the laws, rules, regulations, that regulate the activities of licensed debt collectors, including federal and California laws prescribing fair debt collection practices. The examination may be provided and taken online.

[NOTE: ***RECOMMENDATIONS 8 AND 9 FROM THE JUNE SUBMISSION HAVE BEEN DELETED AS REDUNDANT OF INFORMATION SOUGHT IN THE MU FORMS*****]**

RECOMMENDATIONS 9, 10, 11, AND 12:

Between the grounds for denial of a license specified in Financial Code section 100012 and those set forth in the draft, the proposed regulations mostly capture the grounds used in other states to deny an

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[27] California pharmacists-in-charge and structural pest control managers-in-charge must likewise pass examinations. (California Business and Professions Code, Division 2, Chapter 9 and Division 3, Chapter 14, respectively.)
See also: **Michigan**, M.C.L. section 339.912: "An applicant for a collection agency manager's license shall take a written examination developed by the department to test the applicant's knowledge of the collection agency business, collection practices, customs and ethics, and the laws and rules relating to the operations of collection agencies."/**New Mexico**, N.M. Code. R. section 61-18A-10: "Manager's license and examination. A. An applicant for a manager's license shall be examined concerning his competency, experience and knowledge of law and regulations by the director and on such pertinent subjects as the director shall require. B. Examinations shall be practical in character and of such length, scope and character as the director deems necessary to determine the fitness of applicants to engage in the general collection agency business. Both questions and answers shall be in the English language. C. The director shall prepare or cause to be prepared all examination material. The number and character of the questions, examination procedure, method of grading and the passing grade to be attained by successful applicants shall be determined by the director. D. The examination papers of any person shall be kept for a period of one year and may then be destroyed. The examination papers shall be open to inspection during the one-year period only by the director, the staff of the financial institutions division of the regulation and licensing department and by the applicant or by someone appointed by the latter to inspect them, or by a court of competent jurisdiction in a proceeding where the contents of the papers are properly involved."/**Wyoming**, Wyo. Code. R. section 33-11-107: "(c) All applicants shall have an established office in Wyoming with a bona fide resident of Wyoming as a resident manager of the office. All resident managers shall pass an examination as prescribed by the board to determine the fitness of the resident manager to conduct a collection agency business."

application for a debt collector's license.[28] Only three requirements are omitted that should be included:

- Following the example of several states, the Commissioner should examine whether the applicant's net worth is sufficient to ensure that it is not a "fly-by-night" operation but one, instead, sufficiently capitalized so that it can obey legal requirements without confronting cash-flow crises.[29]

- The Commissioner should expressly be permitted to reject an application if the requirements for self-reporting of prior civil lawsuits and administrative discipline (suggested above) have been violated.

- The Commissioner should expressly be permitted to reject an application based upon the histories of direct owners, executive officers, or indirect owners *individually* – their individual records must clearly be a sufficient ground to deny an application. Financial Code section 100012 permits the Department to deny a license based on certain prior activities of owners, control persons, general partners, and managing members. Proposed section 1850.15(b) describes those factors in terms of the prior record of the applicant and omits references to the activities of the associated persons. Clarifying that the Department may also consider the activities of associated persons in applying the factors would bring the factors into closer alignment with the statute and would ensure that the factors are not thought to narrow the statute.

Moreover, one modest drafting clarification to proposed section 1850.15 would improve the section. It

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[28] *See,* for e.g., **Massachusetts:** 209 CMR 18.04:"(c) within ten years prior to the filing of the application, (1) been convicted of or pleaded nolo contendere to a felony, (2) had any adverse judgments entered against it in any court action or in any administrative enforcement action, in any jurisdiction, based upon allegations of fraud, misrepresentation, or dishonesty, or (3) committed any act involving dishonesty, fraud, or deceit, which act is substantially related to the qualifications, functions, or duties of a person engaged in the business of a debt collector."/ **Idaho:** Idaho Code Ann. section 26-2227:"(k) Has had a license substantially equivalent to a license under this act issued by another state revoked, suspended or denied."

[29] While we endorse an analysis of net worth inspired by other states' examples we reject a mechanical, one-size-fits-all identification of what capitalization is adequate to satisfy the Commissioner which has lead other states to adopt minimums that would be preposterously low for a state the size of California. See, **New Mexico**, N.M. Code R. section 61-18A-9: "The application for a collection agency license shall be accompanied by a financial statement of the applicant up to not more than sixty days prior to date of application for a new license or renewal, showing the assets and liabilities of the applicant and truly reflecting that that applicant's net worth is not less than the sum of ten thousand dollars ($10,000), and that its liquid assets are not less than one thousand dollars ($1,000) available for use in licensee's business."/ **North Dakota**, N.D.A.C. section 13-05-04.2:"Minimum net worth required. A minimum net worth must be continuously maintained by every licensee in accordance with this section. 1. Minimum net worth must be maintained in the amount of twenty-five thousand dollars. 2. If the net worth of a licensee falls below the minimum net worth as set forth in subsection 1, the licensee shall provide a plan, subject to the approval of the commissioner, to increase the licensee's net worth to an amount in conformance with this section. Submission of a plan under this section must be made within twenty business days of a notice from the commissioner that the licensee is not in compliance with subsection 1. If the licensee does not submit a plan under this section, fails to comply with an approved plan, or has repeated violations of subsection 1, the commissioner may revoke the license."/ **Washington,** RCW 19.16.245:"No licensee shall receive any money from any debtor as a result of the collection of any claim until he, she, or it shall have submitted a financial statement showing the assets and liabilities of the licensee truly reflecting that the licensee's net worth is not less than the sum of seven thousand five hundred dollars, in cash or its equivalent, of which not less than five thousand dollars shall be deposited in a bank, available for the use of the licensee's business."

respectfully should be clearer than it is that the bases for license denial in proposed section1850.15*(a)* are sufficient whether or not the factors in 1850.15*(b)* also apply. Currently, proposed section 1850.15(a) cross references Financial Code 100012(b)(1)-(7) as bases for license denial. Proposed section 1850.15(b) sets forth the additional factors the Commissioner will consider in license denial. It would be useful to clarify what is already implied here, as between the to subdivisions: that the statutory bases in (a) are sufficient, standing alone, to reject an application regardless of whether the application also fails to satisfy the additional application of the factors in (b).

Based on the foregoing discussion, the **ninth, tenth, eleventh, and twelfth** amendment requests are to proposed section 1850.15 and would read as follows:

§ 1850.15. Denial of License Application.

(c) The Commissioner may deny an application for a license for any of the reasons in Section 100012, subdivision (b)(1) through (b)(7) of the Financial Code **regardless of whether the applicant satisfies any or all of the factors set forth in (b).**

(d) The Commissioner will consider the following factors in deciding whether to deny a license to an applicant, or applicants in the case of affiliates seeking to be licensed under the same license:

(1) The nature and seriousness of the applicant's prior violations involving dishonesty, fraud, or deceit that are substantially related to the qualifications, functions or duties of a person engaged in the business of debt collection.

(2) The harm to consumers from the applicant's prior violations **or activities** involving dishonesty, fraud, or deceit that are substantially related to the qualifications, functions or duties of a person engaged in the business of debt collection.

(3) The number and frequency of the applicant's prior violations **or activities**[30] involving dishonesty, fraud, or deceit that are substantially related to the qualifications, functions or duties of a person engaged in the business of debt collection.

(4) The number of prior disciplinary actions taken against the applicant by regulatory agencies in California or other states.

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30 "Or activities" added from the June submission so, for example, the Department could review serial and serious settlements of lawsuits or enforcement actions where, as a part of the settlement, no liability or violation was conceded.

(5) Whether permitting an affiliate or affiliates to be licensed under the same license would violate or facilitate the violation of other laws.

(6) Whether the net worth or insurance of the applicant is sufficient to sustain debt collection practices that meet the requirements of state and federal law.

(7) Whether the application failed to disclose information required by section

(1) **18507(a)(19),**.

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(e) The Commissioner may deny an application for a license based on the prior Violations,, disciplinary action or activities s of a single affiliate under the application **or of a direct owner, executive officer, or indirect owner**.

RECOMMENDATIONS 13 AND 14:

The draft regulations at proposed section 1850.50 properly recognize the critical role surety bonds play in protecting consumers from the worst actors; those whose actions cause them to have their licenses revoked, thereby forcing them out of business. Without sufficient bond security, the Department could be placed between the rock of protecting future consumers by revoking a license and the hard place of putting a licensee out of business thereby denying already-harmed consumers a source of compensation for the wrongs they have suffered. Almost, if not every other, licensing state has a bond requirement.

What is missing from proposed section 1850.50 is a more certain and, for consumers, reassuring regulation calling for the escalation of bonding as debt collection activity increases in the proposed subdivision (h). Take the example of Minnesota. M.S. section 332.34 provides:

> The commissioner of commerce shall require each collection agency licensee to file and maintain in force a corporate surety bond, in a form to be prescribed by, and acceptable to, the commissioner, and in a sum of at least $50,000 plus an additional $5,000 for each $100,000 received by the collection agency from debtors located in Minnesota during the previous calendar year, less commissions earned by the collection agency on those collections for the previous calendar year. The total amount of the bond shall not exceed $100,000.

These amounts are self-evidently too low for a state with nearly 40 million residents. However, the *approach* is the right one and it is sufficiently important that more specificity than currently exists in the proposed subdivision (h) is respectfully warranted.

Also missing from the proposed section 1850.50 is an express statement of who is the intended beneficiary of the bond; namely, consumers. Consider North Carolina's memorialization of this at N.C.G.S. § 58-70-20:

> The bond shall expressly provide that the bond is for the benefit of any person, firm or corporation for whom the collection agency engages in the collection of accounts.

The **thirteenth and fourteenth** amendment requests are to proposed section 1850.50 and would read as follows:

§ 1850.50. Surety Bond.

(f) All surety bonds, amendments, cancellations, notices of claims, and information related to surety bonds such as riders and endorsements shall be filed with NMLS for transmission to the Commissioner **and shall expressly provide that the bond is for the benefit of any person, firm or corporation for whom the collection agency engages in the collection of accounts and all persons with respect to whom the licensee collects or attempts to collect a debt, with first priority to consumers.**

(g) The surety bond shall be in the form of the "electronic surety bond form," titled "SURETY BOND, DEBT COLLECTION LICENSING ACT LICENSEE BOND", ESB Form Version 1 Effective 07/01/2021, NMLS Version: CA-DFPI – 07/01/2021, incorporated herein by reference in its entirety.

(h) For purposes of obtaining a license, an applicant shall initially file a surety bond of at least ~~**$25,000 or such higher amount**~~ [31]**as the Commissioner may set for the reasons described in (g).**

(i) The Commissioner may set a higher minimum surety bond amount for a licensee based on the total dollar amount of consumer debt collected by the licensee **or such other factors as the Commissioner finds necessary to protect the persons, firms or corporations for**

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[31] Deleted from the June submission to permit the bond amounts proposed in response to the Department's questions, discussed above.

whom the collection agency engages in the collection of accounts and all persons with respect to whom the applicant or licensee collects or attempts to collect a debt. Upon notification by the Commissioner of the new surety bond amount, the licensee shall file the new surety bond with NMLS

(h) The Commissioner ~~may~~ **shall require the applicant to sign an acknowledgement as a part of the application that the Commissioner will not less than every two years review each applicant's bond and shall have the discretion as a condition of continued licensure to change the amount of a licensee's surety bond based upon any changes to the total dollar amount of consumer debt collected by the licensee or upon such other factors as the Commissioner deems necessary to protect the persons, firms or corporations for whom the collection agency engages in the collection of accounts and all persons with respect to whom the applicant or licensee collects or attempts to collect a debt, with first priority to consumers.**[32]

CONCLUSION: BEWARE OF "SEWER SERVICE".

It is useful, in conclusion, to contextualize the importance of these regulations by recalling the example of the debt collection company Leucadia and its menagerie of subsidiaries. The company was caught engaging it what was dubbed "sewer service;" a pun based on the filing of affidavits falsely asserting that consumers had been served a notice of a collection lawsuit. The debt collector could then - based on a lie that itself is based on a brazen abuse of legal process - win a default judgment against the consumer, without the consumer ever knowing their life was in the process of being devastated. Only when their pay was docked, their credit ruined, or a prized job opportunity lost, would many consumers discover too late about this corporate abuse.[33]

As Susan Shinn of the New Economy Project was quoted as saying: "They were lying to the courts, they were getting judgments, and then they were wreaking havoc on people's lives by freezing their bank accounts, garnishing their paychecks, having these judgments deny people an opportunity at an apartment or at a job." [34]

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22 Licensing is essentially about the standards that govern legally exclusive entry to a business or profession at the front-end and the standards by which a business or individual licensee is required to end participation on the back-end. While recognizing that these proposed regulations address the standards for applying for licensure, the undersigned welcome the opportunity in the near future to discuss with the Department the content of regulations addressing suspension, revocation, and impairment of licenses. Such regulations should continue the arc created by these regulations such that the Department persists in placing consumer protection at the heart of the debt collection licensing act.

[33] https://www.reuters.com/article/debtcollection-decision/us-court-allows-sewer-service-debt-collection-class-action-idUSL1N0VK19N20150210

[34] https://www.thenation.com/article/archive/debt-trap/

Eventually, a class action settlement provided after-the-fact restitution to about 75,000 individuals and vacated bogus default judgments for another 195,000 people. But, in truth, much of the damage done – certainly not the stress, the sunk hours of wasted self-help -- was not and can never be undone by the settlement.

Licensure is about harm ***prevention.*** The Commission is to be commended in an excellent first series of steps towards implementing a debt collection licensing program in California. California consumers do, however, deserve more. They deserve at least what the consumers of other states enjoy when it comes to preventing harm to them. The Department should only be approving for licensure those applicants who, to coin a guiding phrase, can demonstrate the highest level of honesty, truthfulness, integrity, and competency. Our neighbors – California's consumers – deserve no less.