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July 22, 2022

Commissioner of Financial Protection and Innovation      *By e-mail to regulations@dfpi.ca.gov*  
Attn: Sandra Sandoval, Regulations Coordinator  
300 South Spring Street, 15th Floor  
Los Angeles, CA 90013

**Re:    Invitation for Comments on Proposed Rulemaking Under the California  
Consumer Financial Protection Law: Consumer Complaints (Pro 03-21)**

Dear Ms. Sandoval,

This follow-up letter is submitted on behalf of my clients as a supplement to my earlier comment letter on PRO 03-21, dated June 28, 2022. I am submitting these comments in direct response to the communication I received from the Department on July 13, 2022, in response to the Public Records Act request I filed on June 22, 2022. Because this letter is submitted in the collective interests of the clients described in my previous comment letter, it will also use the first person plural to set forth comments to the Proposal. While I deplore the contents of the response to my PRA request, I acknowledge and appreciate the courtesy of the opportunity to submit additional comments at this time.

**Summary**

The Department has failed to properly quantify the cost of PRO 03-21 and to properly estimate its impact on existing and new businesses, on the retention of existing jobs, and on the creation of new jobs. Thus, the impact of the Proposal rests upon mere assertion rather than on research or evidence. The proposed regulation should be withdrawn, its impact researched, ~~then~~ reconsidered in its entirety, and only reintroduced once the significant flaws have been addressed.

**The Department's Response to My PRA Request Dated June 22, 2022**

The PRA Request June 22, 2022, asked for the bases and the specific location of the information upon which the factual assertions that informed the Proposal rested. The Department's Response cited comments it previously received in connection with the Proposal as the sole basis on which it had based the findings and assertions in its Proposal. The Department concluded that because no prior comments had enumerated the specific cost to comply with the

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proposed regulations, it could reasonably conclude that the compliance cost is insignificant and that its impact on existing and new businesses was similarly minor and absorbable. We believe that logic to be seriously flawed. Through its response to my PRA request, the Department is stating that the absence of responses to questions the Proposal did not require commenters to answer can be used to conclude that the answer is “insignificant.” One cannot prove a negative through the absence of information; that is faulty logic.

### **Factual Assertions**

Briefly, then, we will assert the following, supported by our individual and collective experience, and our communications with other stakeholders:

1. There is no factual basis for the Department’s stated determination that the Proposal will not have a significant, statewide, adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. In fact, we assert the opposite based on our internal discussions and our discussions with other industry stakeholders.
2. There is no factual basis for the Department’s stated determination that the Proposal will not have a negative impact on small businesses. To the contrary, we assert, based on our internal discussions and our discussions with other industry stakeholders, that the Proposal will be sufficient to force at least some small businesses out of business.
3. There is no factual basis for the Department’s stated estimate that a representative covered person could incur initial costs of \$2,500 and annual costs thereafter of \$4,000 to comply with the Proposal. To the contrary, we assert, based on our internal discussions and our discussions with other industry stakeholders, that the initial and ongoing costs of compliance will be several multiples of those figures.
4. There is no factual basis for the Department’s stated determination that most of these compliance costs will be absorbable, because covered persons already receive, evaluate, investigate, track, respond to, and monitor consumer complaints and inquiries to some degree. To the contrary, we assert, based on our internal discussions and our discussions with other industry stakeholders, that the costs of the unnecessary, burdensome, and excessively prescriptive compliance requirements set forth in the Proposal will be large and ongoing.
5. There is no factual basis for the Department’s stated determination that the cost and availability of live representatives to handle complaints as set forth in the Proposal “should be absorbable as most covered persons already have staff on hand to perform these tasks, which are a part of everyday customer service.” To the contrary, we assert, based on our internal discussions and our discussions with other industry stakeholders, that the imposition of these complex, time-consuming, and time-prescribed additional

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- duties will constitute a significant burden on stakeholders who are already experiencing shrinkage of their businesses.
6. There is no factual basis for the Department's stated determination that the cost and availability of live representatives to provide translation and interpretation services to specified consumers will be absorbable because covered persons subject to this requirement are already providing translations to their customers. To the contrary, we assert that these costs will be significant, based on our internal discussions and our discussions with other industry stakeholders. The cost of offering a static form in another language is far different from the cost of maintaining a staff to discuss complaints on an essentially instantaneous turnaround basis, as required by the Proposal. The Department's assertion that providing live representatives capable of communicating in other languages is an absorbable cost not only displays an ignorance of how financial service business operate, but an ignorance of the complexity of providing a full range of services in multiple languages.
  7. There is no factual basis for the Department's stated determinations that the Proposal (a) may create jobs but will not eliminate jobs within California; (b) will not eliminate existing businesses within California; (c) will not affect the expansion of businesses currently doing business within California; and (d) will benefit the health and welfare of California residents, worker safety, and the state's environment. To the contrary, for all of the reasons previously stated, we assert that the Proposal will eliminate existing businesses and their jobs, restrict the expansion of existing businesses, and discourage new businesses from forming in the state.
  8. There is no factual basis for the Department's stated determinations that it is necessary for the health, safety, or welfare of the people of this state that the reports required by ~~in~~ the Proposal be submitted at the frequency specified in the Proposal. To the contrary, based on our internal discussions and our discussions with other industry stakeholders, we assert that the unreasonably burdensome reporting requirements contained in the Proposal will result in large and unnecessary costs that will drive at least some stakeholders out of business; and that the Proposal, as drafted, will not provide sufficient incremental public benefit to offset its significant costs.
  9. Our previous comment letter, and several other stakeholder comments, have fully disproven the Department's assertion that no reasonable alternative has otherwise been identified and brought to its attention that would be more effective in carrying out the purpose of the Proposal in as effective, less burdensome, and more cost-effective a manner.

### **Request for Abeyance and Further Review**

Based on the above, it is clear that the factual bases cited in for Proposal are fatally flawed. Accordingly, request that the Department conduct an appropriate level of research and outreach to

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stakeholders before proceeding to issue a revised version of the Proposal. The comments set forth in our previous letter are reiterated.

Thank you very much for the consideration of these comments.

Sincerely,

/s/ *R. P. Soter, Jr.*

R. Paul Soter, Jr.