From:
To: DFPI Regulations
Cc:
Subject: COMMENTS to Proposed Regulations Under the Debt Collection Licensing Act
Date: Wednesday, July 3, 2024 2:50:18 PM

Dear Sirs or Madams

I am taking this opportunity to ask some questions and make comments on this new area of regulation with respect to some of the square pegs and round hole experiences we are having with understanding and compliance in this new area of the law.

To preface, we are a litigation law firm that represents secured luxury automobile finance companies that own the note and are secured parties. These code sections read like the collection activity is directed to unsecured debt collectors and does not translate well when dealing with secured debt, and the recovery of said security. The contract for the debt is not assigned nor sold to our firm, ***we do not buy/purchase debt***. When we are referred a matter from our client(s), we file a lawsuit for the recovery of the vehicle that would include a request for a Judgment for money for any balance owed, ***in favor of our client***. If the subject vehicle is recovered, our firm's client takes possession of and sells the vehicle, with all sale proceeds controlled and paid directly to the client by an outside auto auction for the benefit of our client and as an offset to any debt owed by the debtor; our firm ***does not retain any sale proceeds***. Our firm ***does not retain a percentage or commission for the sale/value of the vehicle.*** All professional services are billed on an hourly basis or pre-set flat fee rate for professional services rendered that are not tied to the amount of any balance owed or money damages requested or awarded by the court. Costs charged to our clients are costs that we have already paid to our vendor for the benefit of our client, and our client later reimburses our firm these advanced costs.

That being said, in review of the modifications to the text of the proposed regulations under the Debt Collection Act, we find some inconsistencies and an inequitable application of the annual fee calculation.

***Added section (p)*:**

It defines **"net proceeds** generated by California debtor accounts" as the amount ***"retained"*** by a debt collector "***from its California debt collection activity"***. [Emphasis added]

***Added subsection (3)*:**

Identifies all other debt collectors, which disputedly our firm falls under this definition, and indicates that the annual fee will be based as "*equal to the amount a collector* ***receives from its clients, regardless of fee structure, before deducting costs and expenses"***. [Emphasis added] In other words, the **"gross proceeds"** charged, not the previously stated **"net proceeds."**

Section (p) in confusing because it states that the amounts to be calculated for the annual fee will be the **"net proceeds"** generated from ***"California debt collection activity"***, however subsection (3) indicates that the fee will be based upon the amount a firm ***"receives from its clients, regardless of fee structure" AND "before deducting costs and expenses"***. [Emphasis added] So, it would seem that an annual fee will be based upon a firm's ***gross*** fees and costs collected and not the ***net*** fees, as our firm is reimbursed the costs it advances for the client for litigation, so it is an inequitable penalty to base the annual fee to include the amount of costs our firm advances for the client, that is subject to reimbursement. To not deduct the reimbursed costs and expenses would be to base the annual fee on money expended for the benefit of the client, not retained by the firm. This cannot be what is intended by the foregoing, but that is how it reads. For example, if a client is charged $1,500 in professional fees, but then the firm advances and pays the client's litigation costs of $500, the foregoing would seem to read that the annual license fee would be based upon $2,000, when $500 of that amount was advanced costs of the firm's own money. This cannot be the intent and meaning that the annual fee will be based upon **"net proceeds"** and yet, appears to include the debt collector's own money. [Emphasis added]

***§1850.70 – Annual Reports*:**
For the annual reporting requirements identified in (d) (1) – (3), we are also a bit confused on how to gather and calculate debtor accounts. As mentioned above, we represent secured luxury automobile vehicle finance companies for the recovery of vehicles and then judgments that include possession of the vehicle and/or money. Our firm does not ***"actively"*** collect on these money judgments. After the judgment is obtained, it is perfected through the recording of a real property lien and then archived to monitor for the 10-year renewal period. If during that 10-year renewal period our office is contacted, for example by an escrow company through the sale of real property and funds are actually received, we would then consider this as ***"collected"*** monies. But our firm is passive during this 10 years, and our client asks us to "close our files" unless money comes in later and it is re-opened, but we are not actively engaging in any active debt collection activity.

Should only the judgments obtained on behalf of our clients be considered that fall under:

(d)(1) judgments collected in full;
(d)(2) judgments resolved for less than the full amount; and
(d)(3) judgment where some monies were collected but a balance remains.

Rather than ***all*** judgments obtained with no activity.

Relating to section (g), it indicates that *"the face value dollar amount"* are all accounts in the licensee's portfolio in the preceding year ***"regardless of when the accounts entered the portfolio"***.

Does *“regardless of when the accounts entered the portfolio”* mean no matter when the judgment was obtained during the preceding year or include all judgments obtained prior to the preceding year?

Relating to section (h), similar question as for section (g), asking for the number of accounts:

Would this be the total of each and every judgment obtained on behalf of our clients in the preceding year, regardless of collection activity?

It seems that this regulation and annual reporting is more focused on “debt purchasing” collection attorneys of unsecured debt, rather than litigation attorneys whose practice is to recovery secured collateral, hence confusion of some of these rules.

Thank you for considering these questions and request for clarification.

Respectfully,

Rebecca A. Caley
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Debt Collector License #:
Email:
