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RECEIVABLES MGMT. ASSOC. INTL.
SETTING THE GLOBAL STANDARD

TESTIMONY OF DONALD MAURICE
IN OPPOSITION
To
PART LL of S7508 / A9508
February 13, 2020

Chairpersons Krueger and Weinstein and distinguished members of the Committee, it is an honor to address you this morning. The Receivables Management Association International, also known as RMAI, is a national nonprofit trade association representing over 550 companies that purchase or support the purchase, sale, and collection of performing and nonperforming receivables on the secondary market. Our membership includes banks, nonbank lenders, debt buying companies, collection agencies, and collection law firms.

RMAI Supports Licensure of Debt Collectors and Debt Buyers

RMAI fully supports licensure of debt collectors and companies whose principal business is the purchase and collection of defaulted consumer receivables.[1] Licensure protects consumers and creates a significant barrier for bad actors. While much the bill is consistent with licensing requirements in other states, it contains several provisions that are highly problematic and harmful to consumers.

Extraordinary Communication Restrictions Harm Consumers

A. The 2/7 Communication Cap Harms Consumers

Although the proposed communication restrictions sometime mirror those present in the federal Fair Debt Collection Practices Act and debt collection regulations promulgated by the New York City Department of Community Affairs, the proposal would impose several new, material restrictions adverse to consumers. Under proposed Section 300, sub. 3, (a), a debt collector would be

[1] RMAI issued a press release on June 17, 2020 supporting Governor Cuomo's licensing proposal which is publicly available at https://rmaintl.org/press-releases/rmai-supports-new-yorks-efforts-to-license-debt-collectors/.

limited to two communications with a consumer in a seven-day period. The communications are not tied to a particular debt or type of communication. "Communication" is proposed to have the same meaning under the New York proposal as presently exists in the FDCPA. Letters, telephone calls, emails and text messages that "convey[] information regarding debt, directly or indirectly" would all count towards this cap.

When commencing communications with a consumer for the first time, debt collectors typically make two collection contacts in the first seven days – usually a telephone call followed by a letter. Under the proposed restriction, if the consumer debtor calls the debt collector in response to either communication within the seven-day period, the debt collector is prohibited from communicating with the consumer. Imagine a consumer who is facing the repossession of her automobile. She has already received a letter from a debt collector (repossession agent) stating an immediate payment is needed to avoid repossession and she notes on her telephone's caller ID an unanswered call from the same collector. Concerned and wanting to avoid repossession, she immediately calls the debt collector in the hope of working out a lower payment. This bill would prohibit the debt collector from communicating with her. The letter and unanswered call are the totality of communications permitted by the proposed seven-day cap. No communication is permissible absent the consumer's prior written consent or a court order. The result does not bode well for our hypothetical consumer.

We see no reason honest, hard-working consumers should suffer such harsh results. Consumers seeking to resolve their delinquent accounts or avoid embarrassing judicial and non-judicial collection efforts should not be hamstrung from communicating with their creditor's agents.

B. **The Opt-In Requirements Harm Consumers in Much the Same Way**

Suppose in the prior example, the consumer contacted the debt collector by email, text or from a telephone at their workplace, and requested the debt

collector to respond in like fashion with the much-needed payoff information. Even if the seven-day cap had expired, the debt collector could not respond to any of these requests under the proposed legislation. This is because a debt collector cannot communicate with a consumer by any electronic means or at the consumer's place of work unless the consumer has provided the debt collector with *prior written consent* to make that communication. And, even worse for the consumer, if the consumer had agreed with her creditor to such communications, in writing, as a term of the very loan now in collection, that consent is meaningless because the proposal does not extend that prior written consent to the creditor's agent under the proposed restriction.

We do not believe the bill intended for any of these harmful results. To be sure, debt collectors receive countless communications initiated by consumers who are simply seeking to resolve their delinquencies and sometimes, because of prospective employment opportunities or loan commitments, need an immediate response. Honest, hard-working New Yorkers struggling to make a better life do not deserve to have their efforts shut down by restrictions designed to protect them in the first place.

C. **Electronic Communications Benefit the Disabled, Persons for Whom English is a Second Language and Afford Consumers Greater Control When Interacting with Debt Collectors.**

As noted, the proposal prohibits electronic communications unless the consumer provides prior written consent directly to the debt collector. This is an extraordinary barrier to the use of technology designed to enhance the accuracy and integrity of the collection process. Electronic communications come in many forms – email, text and web portals all fall within this space. Many financial services companies based in New York, and many RMAI members are among them, are leaders in the use of technology to enhance customer experience.

But electronic communications mean far more to those challenged by physical disabilities. For the physically disabled, a trip to a mailbox can be difficult.[2] For the visually impaired, electronic communications make communications more accessible and less costly.[3] For example, consumers suffering visual disabilities can use functions already existing in widely used email products that convert text and images to spoken words.[4]

And if English is not the consumer's primary language, electronic communications can be easily converted to any language.[5]

Electronic communications can also enhance the accuracy and integrity of debt collection. When telephone numbers and physical addresses are reassigned after the consumer changes their number or moves, it creates the possibility that an unintended recipient will receive a call or letter. However, email addresses are generally not reassigned, even if the creator ceases using it, creating little to no

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[2] *See, e.g., If I have Hardship or Medical Problems, how do I request Door Delivery?*, United States Postal Service, Nov. 1, 2018 FAQ, Article Number 000003397, Customer Information publicly available at https://faq.usps.com/s/article/If-I-have-Hardship-or-Medical-Problems-how-do-I-request-Door-Delivery and last accessed Feb. 12, 2020.

[3] *See e.g., Optical Character Recognition Systems,* American Foundation for the Blind, publicly available at https://www.afb.org/node/16207/optical-character-recognition-systems noting the costs for equipment to allow the visually impaired to convert documents to speech and last accessed Feb. 12, 2020.

[4] *See, e.g., Make your Outlook email accessible to people with disabilities,* Microsoft Corporation, publicly available at https://support.office.com/en-us/article/make-your-outlook-email-accessible-to-people-with-disabilities-71ce71f4-7b15-4b7a-a2e3-cf91721bbacb and last accessed Feb. 12, 2020; *List of Computer Screen Readers for Visually Impaired,* Disabled Word (Aug. 6, 2014) publicly available at https://www.disabled-world.com/assistivedevices/computer/screen-readers.php and last accessed Feb. 12, 2020.

[5] Jennifer Van Grove, *Google Translate Now Included in Gmail,* Mashable (May 19, 2009) publicly available at https://mashable.com/2009/05/19/gmail-message-translate/ and last accessed Feb. 12, 2020, *Translator for Outlook,* Microsoft Corporation, publicly available at https://support.office.com/en-us/article/translator-for-outlook-3d7e12ed-99d6-406e-a453-b9db0d9653fa and last accessed Feb. 12, 2020; Connie Loizos, *TexTranslator automatically translates texts for users*, TechCrunch (May 14, 2017) publicly available at https://techcrunch.com/2017/05/14/textranslator/ and last accessed Feb. 12, 2020.

chance of accidental disclosure to a third party. As such, emails are an inherently safe form of communication.[6]

The proposed law would relegate debt collection communications to telephone and letter, typical for the early 20th century. Communication technologies have fundamentally changed since then as is evidenced by the United States Postal Service reporting a 23 percent decline in household mail containing correspondence or transactions since 2007 alone (which does not include advertising, periodicals, packages or unclassified mail).[7] Consumers prefer electronic communications. One reason may be that accessing an email account is entirely in the control of the consumer.[8] The consumer can choose when to open an email in much the same way that the consumer can choose whether to open a letter. The same cannot be said of a telephone call from a debt collector. As for unauthorized access to an email account, the consumer has ultimate privacy control if they enable password access to the account, which is arguably more secure than a letter in a mailbox or a residential phone line in a shared residence.

As compared to telephone communications, a consumer can also choose when and how to respond to an email. For example, rather than engage in voice communications, consumers may prefer non-verbal communications when engaging debt collectors. The proposed rule prevents a consumer from choosing

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[6] William P. Hoffman, Comment: Recapturing The Congressional Intent Behind The Fair Debt Collection Practices Act, 29 St. Louis U. Pub. L. Rev. 549, 574 n. 25, at 574 ("In addition, the FDCPA should give the same presumption of privacy to email that it gives to collection efforts sent by U.S. Mail.") and calling for Congress to amend the FDCPA to provide for limited content messages that are not "communications" for use in voicemail, email and text messages because "[a]llowing collectors the opportunity to leave messages for debtors is instrumental in creating a meaningful dialogue between the two parties."

[7] John Mazzone and Samie Rehman, *The Household Diary Study: Mail Use & Attitudes in FY 2017*, United States Postal Service, p.1 (March 2018) ("In part, the decline in correspondence is a continuation of long term trends but it is also strongly related to changing demographics and new technologies.").

[8] Bureau of Consumer Financial Protection, Notice of Proposed Rule, Debt Collection Practices (Regulation F) 84 FR 23274, 23327 (May 21, 2019) ("Moreover, consumers generally should be able to manage over the-shoulder risk by choosing where and when to read electronic communications and how to configure their devices.").

to engage the debt collector in this manner, absent providing prior written consent.

Aside from the immediate harm these restrictions will bear upon New York consumers, we are concerned that they will also serve to deny New Yorkers from future, innovative technologies that will benefit the wider consumer financial services marketplace.[9]

D. Proposed 300, sub. 3, (d) Would Expose Consumer's Private Information

If a consumer disputes a debt, the bill proposes that a debt collector must provide the consumer with "documents that verify the disputed consumer debt." A consumer who receives a misdirected debt collection communication will likely dispute the debt. In such situations, it is not unusual for the consumer to simply state to the debt collector that she "disputes the debt," without conveying information to put the debt collector on notice that it has reached the wrong person. When receiving such disputes, debt collectors will provide information concerning the subject debt, such as an account number, rather than disclose documents such as account applications, which can contain sensitive financial information, telephone numbers, histories of purchases and the like. This risk has been recognized by the Eighth Circuit Court of Appeals when affirming a federal district court's decision finding a debt collector acted consistent with fundamental privacy considerations by not to providing sensitive documents in response to a consumer's debt collection dispute.[10]

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[9] Diego Zuluaga, *Access Vs. Restrictions: Two Approaches to Consumer Protection,* Alt-M Ideas for an Alternative Monetary Future (Feb. 7, 2020) ("Another problem with the restrictive approach is that it acts as a hurdle to competitive innovation. If a specific part of the market for financial services is expensive, unpleasant, unreliable, or otherwise subpar, an open environment is the likeliest to improve it, as challengers vie to take custom[ers] away from incumbents.") publicly available at https://www.alt-m.org/2020/02/07/access-vs-restrictions-two-approaches-to-consumer-protection/ and last accessed Feb. 12, 2020.

[10] *Dunham v. Portfolio Recovery Assocs., LLC*, 663 F.3d 997, 1003-04 (8th Cir. 2011)("A contrary conclusion under these facts would require PRA to send Dunham the [*1004] true debtor's personal payment information. This information could possibly include such confidential information as the debtor's full social security number, credit

Other states who have proposed such a document requirement, such as Maine, ultimately decided not to impose the requirement after considering the substantial risk to unintended disclosure of consumer information.

The Proposed Regulation Does Not Consider Existing Conflicting New York Regulation

New York City, through its Department of Consumer Affairs (NYCDCA), as well as the cities of Buffalo and Yonkers all license debt collectors. [11] Each has a comprehensive regulatory structure regulating debt collectors.[12] Conflicts are inevitable. For example, the proposed bill prohibits a debt collector from communicating with a consumer more than twice in a seven-day period. NYDCA's rules have a similar prohibition but allow a debt collector to communicate with the consumer more than twice within this period if that communication "is in response to an oral or written communication from the consumer," for example.[13] In other matters, the NYCDCA imposes requirements not found in the proposed bill.

RMAI believes the regulations should be harmonized to avoid substantial confusion. A single, state-wide licensure and regulatory framework will bring certainty to both debt collectors and consumers and better ensure wider compliance for all New Yorkers as opposed to a fragmented patchwork of conflicting regulatory schemes that would exist if the bill were to become law.

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score, or credit history. The FDCPA does not require such a result where the alleged debtor, as here, could sufficiently dispute the payment obligation by looking at the last four digits of the true debtor's social security number.").

[11] *See* New York City Administrative Code 20-488, *et seq.*; R.C.N.Y. § 2-190, *et seq.*; R.C.N.Y. 5-76, *et seq.;* City of Buffalo Code, Ch. 140; City of Yonkers Code, Art. XVIII, § 31, et seq.

[12] *Id.*

[13] Compare R.C.N.Y. § 5-77(b)(1)(iv) with proposed § 300, sub. 3, (a).

ABOUT RMAI

RMAI is the national nonprofit trade association representing over 500 companies that purchase or support the purchase, sale, and collection of performing and nonperforming receivables on the secondary market. Our membership includes banks, nonbank lenders, debt buying companies, collection agencies, and collection law firms.

RMAI members interact with millions of consumers every year concerning all aspects of consumer credit. It is because of this extraordinary level of interaction that perhaps no other industry knows the concerns of consumers in debt collection better than RMAI members. RMAI has zero tolerance for bad actors and criminals who take advantage of any consumer but especially those who are the most vulnerable.

RMAI is therefore a strong proponent of fairness in debt collection. And it has done much to advance consumer protection.

RMAI launched the Receivables Management Certification Program in 2013 with the stated mission that the program would "provide enhanced consumer protections through rigorous and uniform industry standards of best practice." The program certifies collection agencies, debt buying companies, collection law firms, and brokers in the United States.

The federal Consumer Financial Protection Bureau (CFPB) and the Federal Trade Commission (FTC) were immensely supportive of this initiative and provided feedback along the way, which has been incorporated in the program. Today, RMAI has the single most comprehensive program in the nation that not only ensures its member companies are compliant with state and federal laws and regulations but that they exceed those requirements.

RMAI continues to engage with regulators and legislators at both the federal and state levels to bring about laws and regulations that offer enhanced consumer protections.

For further information, contact David Reid, Director of Government Affairs and Policy at dreid@rmaintl.org or (916) 482-2462,

ABOUT DONALD MAURICE

Donald Maurice is a partner at Maurice Wutscher LLP, a law firm with offices throughout the United States. Don has practiced in consumer financial services law for over four decades. He is a Regent of the American College of Consumer Financial Services Lawyers and serves on the Governing Committee of the Conference on Consumer Finance Law. He formerly chaired the Debt Collection Practices and Bankruptcy Subcommittee of the American Bar Association and serves as outside counsel to Receivables Management Association International, the trade association for debt purchasers. In the course of his career Don has authored numerous works on consumer financial protection law and attorney ethics and speaks regularly on these subjects. He is admitted to the Bars of Massachusetts, New York, New Jersey and the District of Columbia. He is editor of the Consumer Financial Services Blog (cfsblog.com). Don can be reached at dmaurice@mauricewutscher.com or (212) 960-3503.