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SUPERIOR COURT
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BY RONALD R. CARPENTER

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No. 88414-5

SUPREME COURT OF THE STATE OF WASHINGTON

KELLI GRAY, et al.,

Plaintiffs,

v.

SUTTELL & ASSOCIATES, et al.,

Defendants.

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**AMICUS CURIAE MEMORANDUM OF
NORTHWEST JUSTICE PROJECT**

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I. INTRODUCTION

The United States District Court for the Eastern District of Washington certified to this Court the question of whether debt buyers, such as Midland Funding, LLC, can “file lawsuits in Washington on delinquent consumer accounts without being licensed as a collection agency as defined by RCW 19.16.100(2)?” The answer to this question affects many Northwest Justice Project (“NJP”) clients. For the reasons set forth in the Petitioner’s brief and those delineated below, the certified question should be answered in the affirmative – yes, debt buyers, such as Midland Funding, LLC, must be licensed as collection agencies or they cannot be allowed to file collection suits in Washington.

II. INTEREST AND IDENTITY OF AMICI

NJP is a statewide not-for-profit organization that provides free civil legal services to low-income people throughout Washington. NJP has many clients subjected to the collection practices of debt buyers, including clients in lawsuits with Midland Funding, LLC, one of the parties in this case.¹ This memorandum is being submitted pursuant to RAP 10.1(e), 10.6 and 13.4(h).

¹ See, e.g., *Asset Acceptance, LLC v. De Impala*, Snohomish County Superior Court Case No. 08-2-10144-2; *Brink v. Asset Acceptance, LLC*, United States District Court for the Western District of Washington Case No. 2:13-cv-00821; *Midland Funding, LLC v. Asegahagne*, King County Superior Court Case No. 12-2-20475-6; and *Portfolio*

III. DISCUSSION

A. **Washington’s Collection Agency Act includes debt buyers within the definition of “collection agency.”**

When the language of a statutory provision is clear and unambiguous, a court must derive its meaning from the wording of the provision alone.² Here, the relevant portion of the Collection Agency Act (“CAA”) is clear. RCW 19.16.100,³ in relevant part provides:

- (2) “Collection agency” means and includes:
 - (a) Any person directly or indirectly engaged in soliciting claims for collection, or collecting or attempting to collect claims owed or due or asserted to be owed or due another person.

The definition of a “collection agency” in RCW 19.16.100(2) covers two distinct types of entities: (1) those “soliciting claims for collection” and (2) those “collecting or attempting to collect claims owed or due or asserted to be owed or due another person.”⁴ Debt buyers “solicit claims for collection” within the meaning of the statute because

Recovery Associates, LLC v. Crystal A. Thompson, Snohomish County Superior Court Case No. 12-2-08590-9.

² *Cerrillo v. Esparza*, 158 Wn.2d 194, 201, 142 P.3d 155 (2006).

³ As noted in subsequent section III. C., effective October 1, 2013, the CAA will be amended.

⁴ The inclusion of a comma in RCW 19.16.100(2)(a) after “soliciting claims for collection” supports the argument that there are two types of entities, one of which is debt buyers, who are included in the definition of a collection agency. Moreover, this Court has a “very high regard for the lowly comma.” *Peters v. Watson Co.*, 40 Wn.2d 121, 123, 241 P.2d 441 (1952).

they seek to purchase (i.e., solicit) claims from creditors that they later try to collect for themselves.

Therefore, since RCW 19.16.110 provides that no person shall act as a collection agency “without first having applied for and obtained a [collection agency] license,” Midland Funding, LLC, has no right to file collection lawsuits in Washington prior to obtaining a Washington collection agency license.

B. The provision in the Collection Agency Act that provides for the licensing of debt buyers is of substantive importance.

The CAA provides substantive protections for Washington residents facing debt collection. For example, RCW 19.16.250 delineates 25 prohibited practices that create civil liability for licensed collection agencies. Furthermore, a licensed collection agency’s violation of any of these prohibited practices gives rise to a claim under Washington’s Consumer Protection Act.⁵ These robust consumer protections constitute a vital component of the CAA. As noted by Division I of the Washington Court of Appeals, the area of debt collection industry is heavily regulated because of the “abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors.”⁶

⁵ See RCW 19.16.440.

⁶ *Stephens v. Omni Ins. Co.*, 138 Wn. App 151, 172, 159 P.3d 10 (2007).

However, the list of prohibited practices in the CAA applies only to licensees and employees of licensees.⁷ If debt buyers are not required to be licensed as collection agencies, they will not be subject to the consumer safeguards that the legislature imposes on the debt collection industry. This would be a loss for Washington consumers and inconsistent with the purpose of the CAA. As the Federal Trade Commission has noted, “[t]he most significant change in the debt collection business in recent years has been the advent and growth of debt buying.”⁸ Moreover, a decision that debt buyers are not subject to the CAA will have the perverse effect of disadvantaging collection agencies that comply with the CAA’s licensing requirements and consumer protections.

This Court’s review of the licensing requirement is especially important at this time and in this case because violations of the CAA are infrequently brought to the attention of courts. Debt buyers win a significant number of their collection lawsuits by default judgment. In 2009, the Federal Trade Commission convened a series of roundtables to

⁷ The preface to the prohibited practices section of the CAA reads: “No licensee or employee of a licensee shall:” See RCW 19.16.250.

⁸ FEDERAL TRADE COMMISSION, THE STRUCTURE AND PRACTICES OF THE DEBT BUYING INDUSTRY 1 (2013), available at <http://www.ftc.gov/os/2013/01/debtbuyingreport.pdf>.

examine debt collection litigation.⁹ According to the panelists participating in these roundtables, 60 to 65 percent of consumer debt collection lawsuits result in defaults, with most panelists indicating that the rate in their jurisdictions was close to 90 percent.¹⁰ These national statistics are consistent with NJP's observations in Washington.

NJP reviewed the lawsuits filed by one debt buyer during one month in a single county. During March of 2012, the debt buyer in question filed 135 lawsuits in King County Superior Court, and in those cases the debt buyer obtained 102 default judgments.¹¹ Furthermore, in 70 of these cases where default judgments were obtained, writs of garnishment were issued. Consequently, judgment-proof defendants who have nothing left to lose are not the only ones subjected to defaults – most defaulted debtors still end up with wages or bank accounts being garnished.

⁹ See FEDERAL TRADE COMMISSION, REPAIRING A BROKEN SYSTEM: PROTECTING CONSUMERS IN DEBT LITIGATION AND ARBITRATION ii (2010) available at <http://www.ftc.gov/os/2010/07/debtcollectionreport.pdf>.

¹⁰ See *id.* at 7.

¹¹ See Second Supplemental Declaration of Marie Nguyen at ¶¶ 3-5, *Portfolio Recovery Associates, LLC v. Alexander*, King County Superior Court Case No. 12-2-10731-1 (Jan. 31, 2012), a copy of which (without the attachments) is attached as Appendix I-2.

C. This case has not been rendered moot by recent legislation.

House Bill 1822 is scheduled to become effective on October 1, 2013.¹² It amends the CAA by adding language that explicitly requires all entities that purchase debt to obtain a collection agency license. This amendment clearly applies the requirements of the CAA to debt buyers.

While the amendment ensures that in the future it will be frivolous for debt buyers to argue that they do not need a license, the licensing issue now before this Court is not moot. Debt buyers, such as Midland Funding, LLC, brought numerous collection actions against consumers in Washington prior to the amendment of the CAA. Therefore, the amendments to the CAA regarding the licensing of debt buyers do not forestall the possibility of effective relief for the parties of this action or others who have previously been sued by an unlicensed debt buyer.

The “central question of all mootness problems is whether changes in the circumstances that prevailed at the beginning of litigation have forestalled any occasion for meaningful relief.”¹³ That is not the case here. At issue in the instant case is the meaning of the CAA at the time Midland Funding, LLC, attempted to collect on debts allegedly owed by

¹² A copy of House Bill 1822 is attached as Appendix 3-15.

Kelli Gray and other similarly situated persons and those attempts were prior to the amendment of the CAA.

D. The Collection Agency Review Board has not determined that debt buyers are excluded from the licensing requirement.

Midland Funding, LLC, incorrectly argued to the United States District Court that “the Washington Collection Agency Board has long determined that a debt buyer need not be licensed.”¹⁴ To the contrary, on September 28, 2012, the Board (including the collection industry members) unanimously approved the following resolution:

The Board should continue to review issues related to what extent debt buyers are collection agencies pursuant to RCW 19.16, and that the Board’s current and past minutes are not intended for use as a persuasive authority on these issues.¹⁵

In short, the Board has not determined the issue that is now before this Court.

Moreover, even if the Board had tried to resolve the issue, such a resolution would not be binding on this Court. The Board’s powers are defined by two statutes: RCW 19.16.351 and 18.235.030. Pursuant to

¹³ See *City of Sequim v. Malkasian*, 157 Wn.2d 251, 259, 138 P.3d 943 (2006); 13A CHARLES ALAN WRIGHT, ARTHUR R. MILLER & EDWARD H. COOPER, FEDERAL PRACTICE AND PROCEDURE, § 3533.3 (1984).

¹⁴ ECF 428 at p. 5. The Board was created to investigate complaints against licensed collection agencies. See RCW 19.16.351 and 18.235.030(2).

¹⁵ A copy of the Board’s minutes of September 28, 2012 are attached as Appendix 16-18, and as of June 5, 2012 were accessible at

RCW 19.16.351, the Board has an advisory role to provide recommendations to the Department of Licensing regarding collection agency policy and administering the Collection Agency Act. Pursuant to RCW 18.235.030, the Department of Licensing may empower Board members to “direct investigations” or “perform any duty or authority within the board's or commission's jurisdiction.” Outside the administration of its own organization, the Board has no rule-making authority and the Board’s meetings have no legal significance.

E. Other courts have concluded that debt buyers are collection agencies.

This Court has ultimate authority to interpret the CAA; however, in doing so it may be helpful for this Court to take note of two federal court decisions, and one Superior Court decision, in which the courts reviewed the language in the CAA and concluded that debt buyers are required to be licensed as collection agencies.

One of the federal cases is *Semper v. JBC Legal Group*.¹⁶ JBC Legal Group (“JBC”) is a law firm that attempted to collect a claim asserted to be owed to a “closely related” entity, which was a debt buyer. In determining that JBC was subject to the CAA, the United States District

<http://www.dd.wa.gov/business/collectionagency/colboard.html>. In addition, the substance of the Board minutes was part of the trial court’s record. See ECF 431.

¹⁶ No. C04-2240L, 2005 WL 2172377, at *3 (W.D. Wash. Sept. 6, 2005).

Court for the Western District of Washington did not focus on whether JBC is a law firm, or even whether JBC collected the claim on behalf of a third-party, which was a questionable legal issue given the close relationship between JBC and the debt buyer. Instead, the fundamental inquiry was whether JBC's collection activities were "directly related to the operation of a business other than that of a collection agency."¹⁷

Holding that JBC was subject to the CAA, the court examined the character of the debt JBC sought to collect. JBC's affiliated debt buyer had "purchased the alleged debt from a third-party merchant for the sole purpose of collecting on the instrument."¹⁸ Any collection that JBC would have performed for this debt could not be related to "a business other than that of a collection agency."¹⁹ Importantly, the court held in dicta that if the affiliated company had not been a debt buyer, JBC likely would not have been subject to the CAA. Thus, *Semper* stands for the proposition that debt acquired by a debt buyer is debt that is directly related to the operation of a collection agency business and is subject to the CAA. The United States District Court further made clear that there are no exceptions to the collection agency definition that would apply to debt buyers.

¹⁷ *Id.*; Collection Agency Act, RCW 19.16.250.

¹⁸ *Semper*, 2005 WL 2172377, at *3.

¹⁹ *Id.*

The other federal case is *In Re Krysl*,²⁰ where a debt buyer purchased a third party debt from an asbestos removal company. When the debtors filed for bankruptcy, the debt buyer commenced an adversary proceeding to exempt the debt from discharge. The debtor defendants moved to dismiss the adversary proceeding on the grounds that the debt buyer was an unlicensed collection agency. The bankruptcy court analyzed Oregon's definition of a "collection agency" under its collection agency law as it existed in 2004. At that time, Oregon law defined a collection agency in an almost identical manner as the version of Washington's CAA relevant to this case. The Oregon statute defined a "collection agency" as "any person directly or indirectly engaged in soliciting claims for collection, or collecting or attempting to collect claims owed, due or asserted to be owed or due to another person or to a public body."²¹ Based on the language of the Oregon statute, the bankruptcy court concluded that a debt buyer is a collection agency.

The state court case is *Portfolio Recovery Associates, LLC v. Alexander*, where the King County Superior Court concluded that a debt buyer who collects on claims in Washington is required to be licensed as collection agency under the CAA. In so doing, the Honorable Michael

²⁰ 304 B.R. 425 (Or. 2004).

²¹ See ORS 697.005(1)(a) as was in effect in 2004.

Trickey dismissed a collection suit filed by a debt buyer, Portfolio Recovery Associates, LLC, who did not at the time have a Washington collection agency license.²² Specifically, the court concluded that, “[t]he statute is unambiguous. The scope of the statute is not limited to third party collection agencies.”²³

In addition, the rulings in *Semper, In Re Krysl*, and *Portfolio Recovery Associates, LLC v. Alexander* are compatible with federal court decisions that have concluded that debt buyers are covered by the federal Fair Debt Collection Practice Act (“FDCPA”).²⁴ The FDCPA applies to any “debt collector” and the FDCPA defines “debt collector”²⁵ to include “any business the principal purpose of which is the collection of any debts.”²⁶ Therefore, federal courts have held that debt buyers are debt collectors who are subject to the FDCPA.²⁷

²² A copy of Judge Trickey’s decision is attached hereto as Appendix 19-23. *See* Order Granting Defendant’s Motion for Summary Judgment Dismissing Plaintiffs Claim and Order Granting Plaintiff’s Motion to Supplement Record at 4, *Portfolio Recovery Associates, LLC v. Alexander*, No. 12-2-10730-1 SEA (Jan. 9, 2013). This case is cited strictly as a recent example of how Washington trial courts have analyzed the issue and is not intended to be construed as persuasive authority.

²³ *Id.*

²⁴ 15 U.S.C. §§1601 *et seq.*

²⁵ 15 U.S.C. §1692(a)-(f).

²⁶ 15 U.S.C. §1692(a)(6).

²⁷ *See, e.g., McKinney v. Cadleway Props., Inc.*, 548 F.3d 496, 500 (7th Cir. 2008).

F. There is no burden that outweighs the benefit of the licensing requirement.

The benefit of requiring a collection agency license for parties, such as debt buyers who are "engaged in soliciting claims for collection," is not outweighed by any corresponding burden.²⁸ On one side of the balance, the Legislature has determined that the operation of a collection agency in Washington without a Washington collection agency license is an unfair practice.²⁹ On the other side of the balance, the process of procuring a collection agency license is not onerous. Debt buyers can obtain a collection agency license without difficulty. Indeed, debt buyers other than Midland Funding, LLC, have navigated through Washington's licensing requirements and have obtained Washington collection agency licenses.³⁰ Moreover, it is a matter of public record that Midland Funding,

²⁸ The CAA: (1) defines a collection agency, in RCW 19.16.100(2)(a), to include "[a]ny person directly or indirectly engaged in soliciting claims for collection, or ..."; (2) requires, in RCW 19.16.100, that no person shall act in Washington as a collection agency without first obtaining a Washington collection agency license; and (3) defines, in RCW 19.16.100(1), "person" to include all business entities.

²⁹ See RCW19.16.440.

³⁰ It is a matter of public record that Portfolio Recovery Associates, LLC, was issued a Washington collection agency license on May 15, 2013, and that Asset Acceptance, LLC, was issued a Washington collection agency license on May 21, 2013. See <http://bls.dor.wa.gov/LicenseSearch> and Appendix 24 and 25. Further, it is a matter of public record that Portfolio Recovery Associates, LLC, and Asset Acceptance, LLC, admit to being debt buyers. See *Brink v. Asset Acceptance, LLC*, United States District Court for the Western District of Washington Case No. 2:13-cv-00821; *Portfolio Recovery Associates, LLC v. Alexander*, No. 12-2-10730-1 SEA (Jan. 9, 2013). Finally, even though Asset Acceptance, LLC, Midland Funding, LLC, and Portfolio Recovery Associates, LLC, all identify themselves on their websites as debt buyers, the only one of

LLC, has obtained collection agency licenses in other states in which it does business.³¹

G. Any exclusion of debt buyers from the licensing requirements undermines consumers' rights.

If debt buyers are outside the scope of Washington's CAA, then Washington consumers who deal with these entities find themselves entirely reliant on the FDCPA for relief from unfair and deceptive acts and practices. Moreover, if the CAA does not apply to debt buyers, Washington consumers face two major impediments in seeking relief from debt buyers when those residents suffer from damages caused by the unfair business practices of debt buyers.

First, while there is a four year statute of limitations for violations of the CAA, the FDCPA has only a one year statute of limitations.³² In addition, after one year, the consumer's ability to vacate a judgment is

the three that has not obtained a Washington collection agency license is Midland Funding, LLC. See Appendix 26, 27 and 28.

³¹ It is a matter of public record that Midland Funding, LLC, has collection agency licenses in other states. Midland Funding, LLC, is licensed as a collection agency in other states, including Colorado, Indiana, and Maryland. See, e.g., <http://www.coloradoattorneygeneral.gov/sites/default/files/uploads/cab/CabReport.pdf>; http://www.in.gov/apps/sos/securities/sos_securities; <http://www.dllr.state.md.us/finance/industry/licsearch.shtml>.

³² There is a one year statute of limitations for FDCPA actions. See 15 U.S.C. §1692 k. There is a four year statute of limitations for violations of the CAA, which are *per se* violations of Washington's Consumer Protection Act. See RCW 19.16.440 and 19.86.120.

limited to jurisdictional grounds alone.³³ Thus, debt buyers can sit on a default judgment and watch a consumer's ability to vacate the default judgment expire with the FDCPA statute of limitations.

Second, debt buyers can raise federal jurisdictional defenses to FDCPA lawsuits where the underlying state court collection lawsuit resulted in entry of a default judgment. The *Rooker-Feldmen* doctrine arguably prohibits a federal court from redressing an injury "caused by" a state court judgment.³⁴ In cases where a default judgment is entered, debt buyers argue to federal courts that any harms based on claims that were inflated, barred by the statute of limitations, filed in an improper venue, raised against the wrong debtors or included unauthorized attorneys fees and interest, are "caused by" the state court judgment despite the unfair practices employed to obtain the judgment.³⁵ Therefore, if the CAA does not apply to debt buyers, Washington consumers get left in the awkward position of being required to discover and vacate a default judgment –

³³ CR 60(b).

³⁴ See *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284, 125 S. Ct. 1517, 161 L. Ed. 2d 454 (2005).

³⁵ See e.g., *Moriarity v. Henriques*, 2013 WL 1704937, 6 (E.D. Cal., 2013) (alleged wrong person was named in a default judgment); *Grant v. Unifund CCR Partners*, 842 F. Supp. 2d 1234 (C.D. Cal., 2012) (alleged not served); *Bryant v. Gordon & Wong Law Grp., P.C.*, 681 F. Supp. 2d 1205 (E.D. Cal., 2010) (alleged not served); *Williams v. Cavalry Portfolios Servs., LLC*, 2010 WL 2889656, (C.D. Cal., 2010) (alleged identity theft debt); *Fleming v. Gordon & Wong Law Grp., P.C.*, 723 F. Supp. 2d 1219, 1223 (N.D. Cal., 2010) (alleged unlawful post judgment interest applied).

which may include unlawful amounts or be based on false affidavits –
within one year if they want to obtain relief from unfair business practices.

IV. CONCLUSION

The Court should rule that the CAA (as it existed before and after
it was amended in 2013) requires debt buyers, such as Midland Funding,
LLC, to have a Washington Collection Agency license before filing
collection actions in Washington courts.

RESPECTFULLY SUBMITTED this 12th day of June, 2013.

NORTHWEST JUSTICE PROJECT

By Frederick P. Corbit
Frederick P. Corbit, WSBA #10999

CERTIFICATE OF SERVICE

I certify that I mailed or caused to be mailed a copy of the
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PROJECT*” postage prepaid, via U.S. mail on the 12TH day of June,
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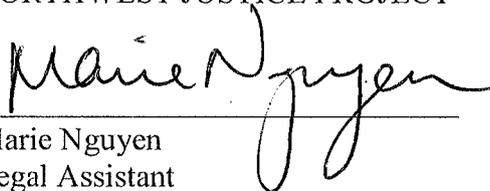
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SIGNED at Seattle, Washington, this 12TH day of June, 2013.

NORTHWEST JUSTICE PROJECT


Marie Nguyen
Legal Assistant

APPENDIX

App 1-2	Second Supplemental Declaration of Marie. (King County Superior Court Case No. 12-2-10730-1 SEA).
App 3-15	Substitute House Bill 1822.
App 16-18	Collection Agency Board Meeting Minutes.
App 19-23	Order Granting Defendant's Motion for Summary Judgment Dismissing Plaintiff's Claim and Order Granting Plaintiff's Motion to Supplement Record. (King County Superior Court Case No. 12-2-10730-1 SEA).
App 24	Licensing record for Portfolio Recovery Associates, LLC.
App 25	Licensing record for Asset Acceptance, LLC.
App 26	Web page for Portfolio Recover Associates, LLC.
App 27	Web page for Asset Acceptance, LLC.
App 28	Web page for Midland Funding, LLC.

The Honorable Michael J. Trickey
Hearing Date: February 15, 2013
Hearing Time: 2:00 p.m.
Room: W-711

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

PORTFOLIO RECOVERY ASSOCIATES, LLC,

Plaintiff,

vs.

LORETTA ALEXANDER and JOHN DOE
ALEXANDER, and the marital community comprised
thereof,

Defendants.

No. 12-2-10730-1 SEA

SECOND SUPPLEMENTAL
DECLARATION OF
MARIE NGUYEN

I, Marie Nguyen, declare as follows:

1. I am over the age of 18 and am competent to testify in court.
2. I am a legal assistant in the King County office of the Northwest Justice Project and make this declaration based on my personal knowledge.

3. I searched for cases filed by Portfolio Recovery Associates, LLC ("PRA"), in various counties in Washington. I conducted my search by accessing the website of "Washington Courts – Search Case Records." From my review of these records I was able to find 135 cases filed by PRA in King County Superior Court in the month of March of 2012. Also, I was able to review the King County Superior Court docket for those 135 cases. True

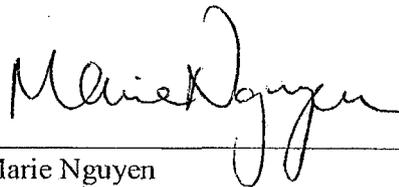
1 copies of the 135 dockets, which I obtained online from the King County Superior Court, are
2 attached hereto.

3 4. In the 135 cases mentioned above, PRA obtained at least 102 defaults. The
4 difference between the number of cases filed and the number of defaults can partially be
5 explained by the fact that in some cases the motions for default had not been decided in time to
6 be included in the records I reviewed, and in other cases the defendant filed for bankruptcy.

7 5. In 70 of the cases in which a default was entered, there is a record that a writ of
8 garnishment was issued.

9 I declare under the penalty of perjury of the laws of the State of Washington that the
10 foregoing is true and correct.

11 Executed in Seattle, Washington, this 31st day of January, 2013.

12
13 

14 Marie Nguyen
15 Legal Assistant

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1822

Chapter 148, Laws of 2013

63rd Legislature
2013 Regular Session

DEBT COLLECTION PRACTICES

EFFECTIVE DATE: 07/28/13 - Except sections 1 and 3, which become effective 10/01/13.

Passed by the House March 9, 2013
Yeas 97 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 17, 2013
Yeas 48 Nays 0

BRAD OWEN

President of the Senate

Approved May 7, 2013, 2:05 p.m.

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1822** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

May 7, 2013

Secretary of State
State of Washington

SUBSTITUTE HOUSE BILL 1822

Passed Legislature - 2013 Regular Session

State of Washington 63rd Legislature 2013 Regular Session

By House Judiciary (originally sponsored by Representative Stanford)

READ FIRST TIME 02/22/13.

1 AN ACT Relating to debt collection practices; amending RCW
2 19.16.100, 19.16.250, and 19.16.260; and providing an effective date.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 19.16.100 and 2003 c 203 s 1 are each amended to read
5 as follows:

6 Unless a different meaning is plainly required by the context, the
7 following words and phrases as hereinafter used in this chapter shall
8 have the following meanings:

9 (1) "Person" includes individual, firm, partnership, trust, joint
10 venture, association, or corporation.

11 (2) "Collection agency" means and includes:

12 (a) Any person directly or indirectly engaged in soliciting claims
13 for collection, or collecting or attempting to collect claims owed or
14 due or asserted to be owed or due another person;

15 (b) Any person who directly or indirectly furnishes or attempts to
16 furnish, sells, or offers to sell forms represented to be a collection
17 system or scheme intended or calculated to be used to collect claims
18 even though the forms direct the debtor to make payment to the creditor

1 and even though the forms may be or are actually used by the creditor
2 himself or herself in his or her own name;

3 (c) Any person who in attempting to collect or in collecting his or
4 her own claim uses a fictitious name or any name other than his or her
5 own which would indicate to the debtor that a third person is
6 collecting or attempting to collect such claim;

7 (d) Any person or entity that is engaged in the business of
8 purchasing delinquent or charged off claims for collection purposes,
9 whether it collects the claims itself or hires a third party for
10 collection or an attorney for litigation in order to collect such
11 claims.

12 (3) "Collection agency" does not mean and does not include:

13 (a) Any individual engaged in soliciting claims for collection, or
14 collecting or attempting to collect claims on behalf of a licensee
15 under this chapter, if said individual is an employee of the licensee;

16 (b) Any individual collecting or attempting to collect claims for
17 not more than one employer, if all the collection efforts are carried
18 on in the name of the employer and if the individual is an employee of
19 the employer;

20 (c) Any person whose collection activities are carried on in his,
21 her, or its true name and are confined and are directly related to the
22 operation of a business other than that of a collection agency, such as
23 but not limited to: Trust companies; savings and loan associations;
24 building and loan associations; abstract companies doing an escrow
25 business; real estate brokers; property management companies collecting
26 assessments, charges, or fines on behalf of condominium unit owners
27 associations, associations of apartment owners, or homeowners'
28 associations; public officers acting in their official capacities;
29 persons acting under court order; lawyers; insurance companies; credit
30 unions; loan or finance companies; mortgage banks; and banks;

31 (d) Any person who on behalf of another person prepares or mails
32 monthly or periodic statements of accounts due if all payments are made
33 to that other person and no other collection efforts are made by the
34 person preparing the statements of account;

35 (e) An "out-of-state collection agency" as defined in this chapter;
36 or

37 (f) Any person while acting as a debt collector for another person,
38 both of whom are related by common ownership or affiliated by corporate

1 control, if the person acting as a debt collector does so only for
2 persons to whom it is so related or affiliated and if the principal
3 business of the person is not the collection of debts.

4 (4) "Out-of-state collection agency" means a person whose
5 activities within this state are limited to collecting debts from
6 debtors located in this state by means of interstate communications,
7 including telephone, mail, or facsimile transmission, from the person's
8 location in another state on behalf of clients located outside of this
9 state, but does not include any person who is excluded from the
10 definition of the term "debt collector" under the federal fair debt
11 collection practices act (15 U.S.C. Sec. 1692a(6)).

12 (5) "Claim" means any obligation for the payment of money or thing
13 of value arising out of any agreement or contract, express or implied.

14 (6) "Statement of account" means a report setting forth only
15 amounts billed, invoices, credits allowed, or aged balance due.

16 (7) "Director" means the director of licensing.

17 (8) "Client" or "customer" means any person authorizing or
18 employing a collection agency to collect a claim.

19 (9) "Licensee" means any person licensed under this chapter.

20 (10) "Board" means the Washington state collection agency board.

21 (11) "Debtor" means any person owing or alleged to owe a claim.

22 (12) "Commercial claim" means any obligation for payment of money
23 or thing of value arising out of any agreement or contract, express or
24 implied, where the transaction which is the subject of the agreement or
25 contract is not primarily for personal, family, or household purposes.

26 **Sec. 2.** RCW 19.16.250 and 2011 1st sp.s. c 29 s 2 are each amended
27 to read as follows:

28 No licensee or employee of a licensee shall:

29 (1) Directly or indirectly aid or abet any unlicensed person to
30 engage in business as a collection agency in this state or receive
31 compensation from such unlicensed person: PROVIDED, That nothing in
32 this chapter shall prevent a licensee from accepting, as forwarder,
33 claims for collection from a collection agency or attorney whose place
34 of business is outside the state.

35 (2) Collect or attempt to collect a claim by the use of any means
36 contrary to the postal laws and regulations of the United States postal
37 department.

1 (3) Publish or post or cause to be published or posted, any list of
2 debtors commonly known as "bad debt lists" or threaten to do so. For
3 purposes of this chapter, a "bad debt list" means any list of natural
4 persons alleged to fail to honor their lawful debts. However, nothing
5 herein shall be construed to prohibit a licensee from communicating to
6 its customers or clients by means of a coded list, the existence of a
7 check dishonored because of insufficient funds, not sufficient funds or
8 closed account by the financial institution servicing the debtor's
9 checking account: PROVIDED, That the debtor's identity is not readily
10 apparent: PROVIDED FURTHER, That the licensee complies with the
11 requirements of subsection (10)(e) of this section.

12 (4) Have in his or her possession or make use of any badge, use a
13 uniform of any law enforcement agency or any simulation thereof, or
14 make any statements which might be construed as indicating an official
15 connection with any federal, state, county, or city law enforcement
16 agency, or any other governmental agency, while engaged in collection
17 agency business.

18 (5) Perform any act or acts, either directly or indirectly,
19 constituting the unauthorized practice of law.

20 (6) Advertise for sale or threaten to advertise for sale any claim
21 as a means of endeavoring to enforce payment thereof or agreeing to do
22 so for the purpose of soliciting claims, except where the licensee has
23 acquired claims as an assignee for the benefit of creditors or where
24 the licensee is acting under court order.

25 (7) Use any name while engaged in the making of a demand for any
26 claim other than the name set forth on his or her or its current
27 license issued hereunder.

28 (8) Give or send to any debtor or cause to be given or sent to any
29 debtor, any notice, letter, message, or form, other than through proper
30 legal action, process, or proceedings, which represents or implies that
31 a claim exists unless it shall indicate in clear and legible type:

32 (a) The name of the licensee and the city, street, and number at
33 which he or she is licensed to do business;

34 (b) The name of the original creditor to whom the debtor owed the
35 claim if such name is known to the licensee or employee: PROVIDED,
36 That upon written request of the debtor, the licensee shall provide
37 this name to the debtor or cease efforts to collect on the debt until
38 this information is provided;

1 (c) If the notice, letter, message, or form is the first notice to
2 the debtor or if the licensee is attempting to collect a different
3 amount than indicated in his or her or its first notice to the debtor,
4 an itemization of the claim asserted must be made including:

5 (i) Amount owing on the original obligation at the time it was
6 received by the licensee for collection or by assignment;

7 (ii) Interest or service charge, collection costs, or late payment
8 charges, if any, added to the original obligation by the original
9 creditor, customer or assignor before it was received by the licensee
10 for collection, if such information is known by the licensee or
11 employee: PROVIDED, That upon written request of the debtor, the
12 licensee shall make a reasonable effort to obtain information on such
13 items and provide this information to the debtor;

14 (iii) Interest or service charge, if any, added by the licensee or
15 customer or assignor after the obligation was received by the licensee
16 for collection;

17 (iv) Collection costs, if any, that the licensee is attempting to
18 collect;

19 (v) Attorneys' fees, if any, that the licensee is attempting to
20 collect on his or her or its behalf or on the behalf of a customer or
21 assignor; and

22 (vi) Any other charge or fee that the licensee is attempting to
23 collect on his or her or its own behalf or on the behalf of a customer
24 or assignor;

25 (d) If the notice, letter, message, or form concerns a judgment
26 obtained against the debtor, no itemization of the amounts contained in
27 the judgment is required, except postjudgment interest, if claimed, and
28 the current account balance;

29 (e) If the notice, letter, message, or form is the first notice to
30 the debtor, an itemization of the claim asserted must be made including
31 the following information:

32 (i) The original account number or redacted original account number
33 assigned to the debt, if known to the licensee or employee: PROVIDED,
34 That upon written request of the debtor, the licensee must make a
35 reasonable effort to obtain this information or cease efforts to
36 collect on the debt until this information is provided; and

37 (ii) The date of the last payment to the creditor on the subject
38 debt by the debtor, if known to the licensee or employee: PROVIDED,

1 That upon written request of the debtor, the licensee must make a
2 reasonable effort to obtain this information or cease efforts to
3 collect on the debt until this information is provided.

4 (9) Communicate in writing with a debtor concerning a claim through
5 a proper legal action, process, or proceeding, where such communication
6 is the first written communication with the debtor, without providing
7 the information set forth in subsection (8)(c) of this section in the
8 written communication.

9 (10) Communicate or threaten to communicate, the existence of a
10 claim to a person other than one who might be reasonably expected to be
11 liable on the claim in any manner other than through proper legal
12 action, process, or proceedings except under the following conditions:

13 (a) A licensee or employee of a licensee may inform a credit
14 reporting bureau of the existence of a claim. If the licensee or
15 employee of a licensee reports a claim to a credit reporting bureau,
16 the licensee shall, upon receipt of written notice from the debtor that
17 any part of the claim is disputed, notify the credit reporting bureau
18 of the dispute by written or electronic means and create a record of
19 the fact of the notification and when the notification was provided;

20 (b) A licensee or employee in collecting or attempting to collect
21 a claim may communicate the existence of a claim to a debtor's employer
22 if the claim has been reduced to a judgment;

23 (c) A licensee or employee in collecting or attempting to collect
24 a claim that has not been reduced to judgment, may communicate the
25 existence of a claim to a debtor's employer if:

26 (i) The licensee or employee has notified or attempted to notify
27 the debtor in writing at his or her last known address or place of
28 employment concerning the claim and the debtor after a reasonable time
29 has failed to pay the claim or has failed to agree to make payments on
30 the claim in a manner acceptable to the licensee, and

31 (ii) The debtor has not in writing to the licensee disputed any
32 part of the claim: PROVIDED, That the licensee or employee may only
33 communicate the existence of a claim which has not been reduced to
34 judgment to the debtor's employer once unless the debtor's employer has
35 agreed to additional communications.

36 (d) A licensee may for the purpose of locating the debtor or
37 locating assets of the debtor communicate the existence of a claim to

1 any person who might reasonably be expected to have knowledge of the
2 whereabouts of a debtor or the location of assets of the debtor if the
3 claim is reduced to judgment, or if not reduced to judgment, when:

4 (i) The licensee or employee has notified or attempted to notify
5 the debtor in writing at his or her last known address or last known
6 place of employment concerning the claim and the debtor after a
7 reasonable time has failed to pay the claim or has failed to agree to
8 make payments on the claim in a manner acceptable to the licensee, and

9 (ii) The debtor has not in writing disputed any part of the claim.

10 (e) A licensee may communicate the existence of a claim to its
11 customers or clients if the claim is reduced to judgment, or if not
12 reduced to judgment, when:

13 (i) The licensee has notified or attempted to notify the debtor in
14 writing at his or her last known address or last known place of
15 employment concerning the claim and the debtor after a reasonable time
16 has failed to pay the claim or has failed to agree to make payments on
17 the claim in a manner acceptable to the licensee, and

18 (ii) The debtor has not in writing disputed any part of the claim.

19 (11) Threaten the debtor with impairment of his or her credit
20 rating if a claim is not paid: PROVIDED, That advising a debtor that
21 the licensee has reported or intends to report a claim to a credit
22 reporting agency is not considered a threat if the licensee actually
23 has reported or intends to report the claim to a credit reporting
24 agency.

25 (12) Communicate with the debtor after notification in writing from
26 an attorney representing such debtor that all further communications
27 relative to a claim should be addressed to the attorney: PROVIDED,
28 That if a licensee requests in writing information from an attorney
29 regarding such claim and the attorney does not respond within a
30 reasonable time, the licensee may communicate directly with the debtor
31 until he or she or it again receives notification in writing that an
32 attorney is representing the debtor.

33 (13) Communicate with a debtor or anyone else in such a manner as
34 to harass, intimidate, threaten, or embarrass a debtor, including but
35 not limited to communication at an unreasonable hour, with unreasonable
36 frequency, by threats of force or violence, by threats of criminal
37 prosecution, and by use of offensive language. A communication shall
38 be presumed to have been made for the purposes of harassment if:

1 (a) It is made with a debtor or spouse in any form, manner, or
2 place, more than three times in a single week, unless the licensee is
3 responding to a communication from the debtor or spouse;

4 (b) It is made with a debtor at his or her place of employment more
5 than one time in a single week, unless the licensee is responding to a
6 communication from the debtor;

7 (c) It is made with the debtor or spouse at his or her place of
8 residence between the hours of 9:00 p.m. and 7:30 a.m. A call to a
9 telephone is presumed to be received in the local time zone to which
10 the area code of the number called is assigned for landline numbers,
11 unless the licensee reasonably believes the telephone is located in a
12 different time zone. If the area code is not assigned to landlines in
13 any specific geographic area, such as with toll-free telephone numbers,
14 a call to a telephone is presumed to be received in the local time zone
15 of the debtor's last known place of residence, unless the licensee
16 reasonably believes the telephone is located in a different time zone.

17 (14) Communicate with the debtor through use of forms or
18 instruments that simulate the form or appearance of judicial process,
19 the form or appearance of government documents, or the simulation of a
20 form or appearance of a telegraphic or emergency message.

21 (15) Communicate with the debtor and represent or imply that the
22 existing obligation of the debtor may be or has been increased by the
23 addition of attorney fees, investigation fees, service fees, or any
24 other fees or charges when in fact such fees or charges may not legally
25 be added to the existing obligation of such debtor.

26 (16) Threaten to take any action against the debtor which the
27 licensee cannot legally take at the time the threat is made.

28 (17) Send any telegram or make any telephone calls to a debtor or
29 concerning a debt or for the purpose of demanding payment of a claim or
30 seeking information about a debtor, for which the charges are payable
31 by the addressee or by the person to whom the call is made: PROVIDED,
32 That:

33 (a) This subsection does not prohibit a licensee from attempting to
34 communicate by way of a cellular telephone or other wireless device:
35 PROVIDED, That a licensee cannot cause charges to be incurred to the
36 recipient of the attempted communication more than three times in any
37 calendar week when the licensee knows or reasonably should know that

1 the number belongs to a cellular telephone or other wireless device,
2 unless the licensee is responding to a communication from the debtor or
3 the person to whom the call is made.

4 (b) The licensee is not in violation of (a) of this subsection if
5 the licensee at least monthly updates its records with information
6 provided by a commercial provider of cellular telephone lists that the
7 licensee in good faith believes provides reasonably current and
8 comprehensive data identifying cellular telephone numbers, calls a
9 number not appearing in the most recent list provided by the commercial
10 provider, and does not otherwise know or reasonably should know that
11 the number belongs to a cellular telephone.

12 (c) This subsection may not be construed to increase the number of
13 communications permitted pursuant to subsection (13)(a) of this
14 section.

15 (18) Call, or send a text message or other electronic communication
16 to, a cellular telephone or other wireless device more than twice in
17 any day when the licensee knows or reasonably should know that the
18 number belongs to a cellular telephone or other wireless device, unless
19 the licensee is responding to a communication from the debtor or the
20 person to whom the call, text message, or other electronic
21 communication is made. The licensee is not in violation of this
22 subsection if the licensee at least monthly updates its records with
23 information provided by a commercial provider of cellular telephone
24 lists that the licensee in good faith believes provides reasonably
25 current and comprehensive data identifying cellular telephone numbers,
26 calls a number not appearing in the most recent list provided by the
27 commercial provider, and does not otherwise know or reasonably should
28 know that the number belongs to a cellular telephone. Nothing in this
29 subsection may be construed to increase the number of communications
30 permitted pursuant to subsection (13)(a) of this section.

31 (19) Intentionally block its telephone number from displaying on a
32 debtor's telephone.

33 (20) In any manner convey the impression that the licensee is
34 vouched for, bonded to or by, or is an instrumentality of the state of
35 Washington or any agency or department thereof.

36 (21) Collect or attempt to collect in addition to the principal
37 amount of a claim any sum other than allowable interest, collection
38 costs or handling fees expressly authorized by statute, and, in the

1 case of suit, attorney's fees and taxable court costs. A licensee may
2 collect or attempt to collect collection costs and fees, including
3 contingent collection fees, as authorized by a written agreement or
4 contract, between the licensee's client and the debtor, in the
5 collection of a commercial claim. The amount charged to the debtor for
6 collection services shall not exceed thirty-five percent of the
7 commercial claim.

8 (22) Procure from a debtor or collect or attempt to collect on any
9 written note, contract, stipulation, promise or acknowledgment under
10 which a debtor may be required to pay any sum other than principal,
11 allowable interest, except as noted in subsection (21) of this section,
12 and, in the case of suit, attorney's fees and taxable court costs.

13 (23) Bring an action or initiate an arbitration proceeding on a
14 claim when the licensee knows, or reasonably should know, that such
15 suit or arbitration is barred by the applicable statute of limitations.

16 (24) Upon notification by a debtor that the debtor disputes all
17 debts arising from a series of dishonored checks, automated
18 clearinghouse transactions on a demand deposit account, or other
19 preprinted written instruments, initiate oral contact with a debtor
20 more than one time in an attempt to collect from the debtor debts
21 arising from the identified series of dishonored checks, automated
22 clearinghouse transactions on a demand deposit account, or other
23 preprinted written instruments when: (a) Within the previous one
24 hundred eighty days, in response to the licensee's attempt to collect
25 the initial debt assigned to the licensee and arising from the
26 identified series of dishonored checks, automated clearinghouse
27 transactions on a demand deposit account, or other preprinted written
28 instruments, the debtor in writing notified the licensee that the
29 debtor's checkbook or other series of preprinted written instruments
30 was stolen or fraudulently created; (b) the licensee has received from
31 the debtor a certified copy of a police report referencing the theft or
32 fraudulent creation of the checkbook, automated clearinghouse
33 transactions on a demand deposit account, or series of preprinted
34 written instruments; (c) in the written notification to the licensee or
35 in the police report, the debtor identified the financial institution
36 where the account was maintained, the account number, the magnetic ink
37 character recognition number, the full bank routing and transit number,
38 and the check numbers of the stolen checks, automated clearinghouse

1 transactions on a demand deposit account, or other preprinted written
2 instruments, which check numbers included the number of the check that
3 is the subject of the licensee's collection efforts; (d) the debtor
4 provides, or within the previous one hundred eighty days provided, to
5 the licensee a legible copy of a government-issued photo
6 identification, which contains the debtor's signature and which was
7 issued prior to the date of the theft or fraud identified in the police
8 report; and (e) the debtor advised the licensee that the subject debt
9 is disputed because the identified check, automated clearinghouse
10 transaction on a demand deposit account, or other preprinted written
11 instrument underlying the debt is a stolen or fraudulently created
12 check or instrument.

13 The licensee is not in violation of this subsection if the licensee
14 initiates oral contact with the debtor more than one time in an attempt
15 to collect debts arising from the identified series of dishonored
16 checks, automated clearinghouse transactions on a demand deposit
17 account, or other preprinted written instruments when: (i) The
18 licensee acted in good faith and relied on their established practices
19 and procedures for batching, recording, or packeting debtor accounts,
20 and the licensee inadvertently initiates oral contact with the debtor
21 in an attempt to collect debts in the identified series subsequent to
22 the initial debt assigned to the licensee; (ii) the licensee is
23 following up on collection of a debt assigned to the licensee, and the
24 debtor has previously requested more information from the licensee
25 regarding the subject debt; (iii) the debtor has notified the licensee
26 that the debtor disputes only some, but not all the debts arising from
27 the identified series of dishonored checks, automated clearinghouse
28 transactions on a demand deposit account, or other preprinted written
29 instruments, in which case the licensee shall be allowed to initiate
30 oral contact with the debtor one time for each debt arising from the
31 series of identified checks, automated clearinghouse transactions on a
32 demand deposit account, or written instruments and initiate additional
33 oral contact for those debts that the debtor acknowledges do not arise
34 from stolen or fraudulently created checks or written instruments; (iv)
35 the oral contact is in the context of a judicial, administrative,
36 arbitration, mediation, or similar proceeding; or (v) the oral contact
37 is made for the purpose of investigating, confirming, or authenticating
38 the information received from the debtor, to provide additional

1 information to the debtor, or to request additional information from
2 the debtor needed by the licensee to accurately record the debtor's
3 information in the licensee's records.

4 (25) Submit an affidavit or other request pursuant to chapter 6.32
5 RCW asking a superior or district court to transfer a bond posted by a
6 debtor subject to a money judgment to the licensee, when the debtor has
7 appeared as required.

8 **Sec. 3.** RCW 19.16.260 and 2011 c 336 s 521 are each amended to
9 read as follows:

10 No collection agency or out-of-state collection agency may bring or
11 maintain an action in any court of this state involving the collection
12 of its own claim or a claim of any third party without alleging and
13 proving that he, she, or it is duly licensed under this chapter and has
14 satisfied the bonding requirements hereof, if applicable: PROVIDED,
15 That in any case where judgment is to be entered by default, it shall
16 not be necessary for the collection agency or out-of-state collection
17 agency to prove such matters.

18 A copy of the current collection agency license or out-of-state
19 collection agency license, certified by the director to be a true and
20 correct copy of the original, shall be prima facie evidence of the
21 licensing and bonding of such collection agency or out-of-state
22 collection agency as required by this chapter.

23 NEW SECTION. **Sec. 4.** Sections 1 and 3 of this act take effect
24 October 1, 2013.

Passed by the House March 9, 2013.

Passed by the Senate April 17, 2013.

Approved by the Governor May 7, 2013.

Filed in Office of Secretary of State May 7, 2013.



STATE OF WASHINGTON
DEPARTMENT OF LICENSING

PO Box 9027 • Olympia, Washington 98507-9027

**COLLECTION AGENCY BOARD
MEETING MINUTES**

DATE: September 28, 2012
TIME: 9:00 a.m.
LOCATION: Department of Licensing
405 Black Lake Blvd SW
1st Floor, Conference Room 2105
Olympia, WA 98504

Members

Present: Robert Fuller, Chair
Fred Corbit, Public Member
Richard L. Marker, Public Member
Scott Wiswall, Licensee Member
Araceli Lamb, Licensee Member

Staff

Present: Margaret Eby, Administrator
Margaret Vogell, Program Manager
Joan Hill, Board Clerk
Bruce Turcott, Assistant Attorney General to the Board
Eric Sonju, Assistant Attorney General

Public

Present: Lisa Erwin, AAG, Consumer Protection Division
Brian Fair, Public
Mike Roskam, Public
Ray Henning, Public
Greg Luhn, Public

1. Call to Order 9:03 a.m.

1.1 Introductions

1.2 Approval of Agenda: Approved as presented.

1.3 Approval of Minutes, February 10, 2012 Meeting.

Ms. Lamb pointed out that there needed to be a correction on Page 2, 2.2 of the February 10, 2012, meeting minutes. The correction is noted as the FDGPA not FDCA.

MOTION: A motion was moved and seconded, amending the minutes to reflect the correction. The meeting minutes are approved as corrected.

2. Old Business

2.1 Report on Collection Agency and Debt Buyer Complaints

Lisa Erwin, AAG, representing the Consumer Protection Division, distributed a handout that represents the complaints received by the AGO from 2010 through July 2012. Discussion followed with questions from the Board. Program Manager, Margaret Vogeli, explained the process for investigation of complaints at DOL.

2.2 Assistant Attorney General Update – AAG Bruce Turcott

Mr. Turcott stated there are no updates for discussion at this time.

2.3 Executive Report – Administrator Margaret Eby

The Board must adopt rules for Time, Place and Manner. The rules are in the drafting stage at this time.

Ms. Eby distributed Court Order No. 09-2-41204-9SEA, Hellickson vs. DOL and NW Multiple Listing Service.

2.4 Program Report – Program Manager Margaret Vogeli

Ms. Vogeli distributed handout that shows case activity statistics.

She presented a request to the Board to adopt and file CR101. CR102 will follow shortly after the approval.

MOTION: A motion was moved and seconded to begin the rule-making process for Time, Place and Manner rule.

CLOSED SESSION

3. Legal Issues, Confer with AAG –

4. New Business

4.1 Mr. Corbit stated that at this time the Board is not intending to use the debt buyer policy from the 2004 minutes. In the past, attorneys have used the minutes out of context.

MOTION: The Board should continue to review issues related to what extent debt buyers are collection agencies pursuant to RCW 19.16, and that the Board's current and past minutes are not intended for use as a persuasive authority on these issues. The Motion was made, seconded and unanimously approved by the Board.

4.2 Report on Debt Buyers – Ray Herining, Washington Collectors Association (WCA)

Discussion followed.

4.3 Ms. Vogeli distributed letter from Barron & Newburger, PC, requesting the Board consider, in its new business, resolving to exempt collection law firms from licensure. Mr. Turcott will assist in a response within 30 days.

5. Other Business

5.1 Action Items from this Meeting

Response to Barron & Newburger letter – Margaret Vogeli

5.2 Agenda Items for Next Meeting

Debt Buyers

5.3 Ms. Araceli Lamb's Gubernatorial appointment expires December 31, 2012. She will need to reapply for the Governor's appointment.

6. Adjournment

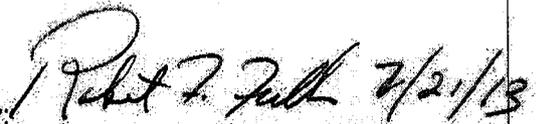
The meeting was adjourned at 11:18 a.m.

Submitted by:


Joan Hill

2/21/13
Date

Approved By:


Robert F. Fuller

Date

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The Honorable Michael J. Trickey
Re-Noted for Hearing: December 21, 2012 at 1:30 p.m.¹
With Oral Argument
Presented by Plaintiff

SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

PORTFOLIO RECOVERY ASSOCIATES,
LLC,

Plaintiff,

v.

LORETTA ALEXANDER and JOHN DOE
ALEXANDER, and the marital community
comprised thereof,

Defendants.

NO. 12-2-10730-1 SEA

**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT DISMISSING
PLAINTIFF'S CLAIM AND ORDER
GRANTING PLAINTIFF'S MOTION
TO SUPPLEMENT RECORD**

Clerk's Action Required

THIS MATTER came before the Court on Defendant's Motion for Summary Judgment Dismissing Plaintiff's Claim and Plaintiff's Motion to Supplement Record for oral argument on December 21, 2012.¹ The court took the matter under advisement.

The Court has considered:

- (1) Defendant's Motion for Summary Judgment Dismissing Plaintiff's Claim with Appendices A-C dated October 9, 2012;
- (2) Declaration of Frederick P. Corbit dated October 9, 2012;

¹ See Order Regarding Motion for Continuance dated November 15, 2012 (sub. nom. 17).

- 1 (3) Declaration of Marie Nguyen dated October 9, 2012 with Exhibits A-E;
- 2 (4) Plaintiff's Response to Summary Judgment Motion dated November 2, 2012;
- 3 with Exhibits 1-6;
- 4 (5) Declaration of Roger E. Rahlfs dated November 2, 2012 with Exhibits 1-4;
- 5 (6) Declaration of Richard Drowley dated November 5, 2012 with Exhibit 1;
- 6 (7) Defendant's Rebuttal to Plaintiff's Objection to Motion for Partial Summary
- 7 Judgment dated November 9, 2012 with Appendix;
- 8 (8) Plaintiff's Supplemental Brief in Opposition to Defendant's Motion for Partial
- 9 Summary Judgment dated December 3, 2012 with Appendix A (Non-
- 10 Washington Authority Cited) and Appendix B (Plaintiff's Motion to Supplement
- 11 Record);
- 12 (9) Declaration of Chris B. Graves dated November 30, 2012 with Exhibits 1-3;
- 13 (10) Declaration of Franci Wayland dated November 30, 2012 with Exhibits 1-2;
- 14 (11) Declaration of Steven R. Zahn dated November 30, 2012;
- 15 (12) Declaration of Stephen C. Willey dated December 3, 2012 with Exhibits 1-29;
- 16 (13) Defendant's Reply to Plaintiff's Supplemental Brief and Appendix both dated
- 17 December 14, 2012 with ,
- 18 (14) Declaration of Adam Mayle dated December 12, 2012 with Exhibits 1-4;
- 19 (15) Defendant's Rebuttal to Portfolio Recovery Associates' Late Evidence Objection
- 20 dated December 28, 2012.
- 21 (16) Plaintiff's Reply to Defendant's Rebuttal Regarding Evidentiary Objection dated
- 22 January 8, 2013.

23 The Court is familiar with the files and pleadings in this matter, is fully advised, and

24 now rules as set forth below.

25 The Court GRANTS Plaintiff's Motion to Supplement the Record Regarding

26 Defendant's Motion for Partial Summary Judgment.

27

1 The Court OVERRULES Defendant's objection made at oral argument to paragraph 3
2 of Fred Corbett's Declaration of October 9, 2012 regarding a resolution of the Washington
3 State Collection Agency Review Board Minutes. The objection was waived having not been
4 made in a pleading prior to oral argument.²

5 The Court reaches the merits of the Defendant's Motion for Partial Summary Judgment
6 by noting first that there are no material facts in dispute. The Plaintiff, Porfolio Recovery
7 Associates LLC, states in the Complaint for Money Due on Credit Account that it is a
8 "purchaser or assignee of the Defendant's credit account with WELLS FARGO BANK, N.A."
9 The Defendant in her answer does not deny that allegation.

10 Although Plaintiff maintained in its initial Response to the Defendant's Summary
11 Judgment Motion that there is no evidence Plaintiff "engaged in soliciting claims for
12 collection" under RCW 19.16.100(2)(a), the Plaintiff in its Supplemental Brief in Opposition
13 to Defendant's Motion for Summary Judgments states that "there are no material facts in
14 dispute." That latter statement is consistent with the facts described in the pleadings submitted
15 for purposes of this summary judgment motion and in particular in the Plaintiff's Declaration of
16 Chris B. Graves dated November 30, 2012 explaining how Plaintiff came to own Defendant's
17 Wells Fargo credit card "receivable." There are no factual inferences to resolve in favor of
18 Plaintiff as the non-moving party.

19 The result is that the motion presents a legal question: Did Plaintiff act as a "collection
20 agency" by "directly or indirectly" engaging in "soliciting claims for collection" under RCW
21 19.16.100(2)(a) in this case? The question raises the issue of how to interpret this statute. "A
22 court must construe a statute according to its plain language, and statutory construction is
23 unnecessary and improper when the wording of a statute is unambiguous." Marriage of Kinnan,
24 131 Wn. App. 738, 751, 129 P.3d 807 (2006), citing State v. Parada, 75 Wn. App. 224, 230,

25
26 ² The Court of Appeals has held that motions to strike factual matters submitted for summary judgment motions
27 are not appropriate since the standard of appellate review is de novo. Cameron v. Murray, 151 Wn. App. 646, 658,
214 P.2d 150 (2009), rev. den., 168 Wn.2d 1018 (2010). However, an objection to the admissibility of facts may
be made in a "reply brief rather by a separate motion" which was not done here. Id.

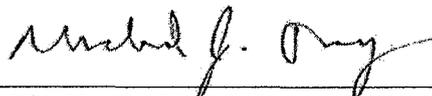
1 877 P.2d 231 (1994). The court concludes that this statute is unambiguous. The scope of the
2 statute is not limited to third party collection agencies. RCW 19.16.100(2)(a) includes
3 Plaintiff's business regardless of the fact that Plaintiff now owns the receivable. It is a
4 "rational, sensible construction" of the statute as well. Marriage of Kinnan, 131 Wn. App. at
5 751. Furthermore, none of the exclusions in RCW 19.16.100(3) apply. Plaintiff is a
6 "collection agency" in this case for purposes of the statute.

7 The unambiguous nature of RCW 19.16.100(2)(a) means the court need not rely upon
8 the Department of Licensing's Collection Agency Board construction of the statute. Only when
9 the court concludes a statute is ambiguous should the court give "great weight" to the
10 interpretation of the agency charged with "administration and enforcement." Hama Hama v.
11 Shorelines Hearings Bd., 85 Wn.2d 441, 448, 536 P.2d 157 (1975). The extensive history
12 Plaintiff and Defendant presented to the Court of Collection Agency Board decisions and
13 discussion, including the statement in Mr. Corbit's October 9, 2012 declaration, is not relevant
14 to the Court's decision in this motion.

15 Since the Plaintiff is not licensed as a collection agency, Plaintiff may not maintain the
16 action to collect the claim against the Defendant. RCW 19.16.260. The Court therefore
17 GRANTS the Defendant's Motion for Summary Judgment Dismissing Plaintiff's Claim.

18 IT IS SO ORDERED.

19 Dated this 9th day of January 2013.

21 

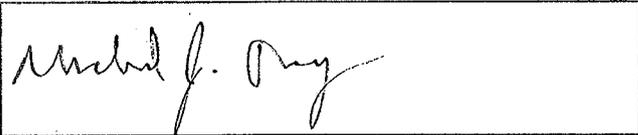
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23 The Honorable Michael J. Trickey

King County Superior Court
Judicial Electronic Signature Page

Case Number: 12-2-10730-1
Case Title: PORTFOLIO RECOVERY ASSOC VS ALEXANDER

Document Title: ORDER GRANTING SJ MOTION

Signed by Judge: Michael Trickey
Date: 1/9/2013 11:16:42 AM

A rectangular box containing a handwritten signature in black ink. The signature appears to be "Michael J. Trickey".

Judge Michael Trickey

This document is signed in accordance with the provisions in GR 30.

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Search Business Licenses

License Information:

Entity Name: PORTFOLIO RECOVERY ASSOCIATES, LLC
Business Name: PORTFOLIO RECOVERY ASSOCIATES, LLC
License Type: Washington State Business
Entity Type: Limited Liability Company
UBI: 603095769 Business ID:001 Location ID:0003
Status: To check the status of this company, go to [Secretary of State](#) and [Department of Revenue](#).

Location Address:
 512 BELL ST
 EDMONDS, WA, 98020-3147

Mailing Address:
 140 CORPORATE BLVD
 NORFOLK, VA, 23502-4952

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	Status	Expires	First Issued
Licenses Held at this location Collection Agency	Active	03/31/2014	05/15/2013
Registered Trade Names: PORTFOLIO RECOVERY ASSOCIATES, LLC	Active	N/A	02/19/2012

Governing People:
 JUDITH SCOTT

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License Information:

Entity Name: ASSET ACCEPTANCE, LLC
Business Name: ASSET ACCEPTANCE, LLC
License Type: Washington State Business
Entity Type: Limited Liability Company
UBI: 603014423 Business ID:001 Location ID:0001
Status: To check the status of this company, go to [Secretary of State](#) and [Department of Revenue](#).

Location Address:
 28405 VAN DYKE AVE
 WARREN, MI, 48093-7132

Mailing Address:
 28405 VAN DYKE AVE
 WARREN, MI, 48093-7132

	Status	Expires	First Issued
Licenses Held at this location			
Collection Agency	Active	03/31/2014	05/21/2013

Governing People:
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**Portfolio
Recovery
Associates**

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Our Business

Core Asset Acquisitions

Bankruptcy Services

Government Services

Location Services

CCB

Mackenzie Hall

Management

Locations

PRA Timeline

Social Responsibility

PRA companies offer a broad range of debt purchase and business service solutions to a diversified base of financial institutions and government clients.

PRA's debt purchasing subsidiaries are among the leading debt buyers in the U.S. They purchase consumer and small business accounts that have been charged off from the books of major banks, retailers, credit unions, consumer and auto finance companies, telecommunications, utility providers, student loan lenders, and other businesses. They also purchase accounts that have established repayment commitments through bankruptcy court proceedings.

Our debt buying business lines are:

Core Asset Acquisitions: Purchase of defaulted, consumer and small business accounts from the largest lenders in the U.S. To understand how Portfolio Recovery Associates, LLC helps consumers manage debt, visit the [Customers](#) section.

Bankruptcy Services: Purchase, collection and servicing of bankrupt consumer debt.

Our fee-for-service businesses are:

PRA Government Services: Fee and tax revenue administration, audit and revenue discovery/recovery services for local governments.

PRA Location Services: Vehicle location, skip-tracing and collateral recovery for auto lenders, insurance companies, law enforcement, and other clients.

Claims Compensation Bureau: Class action claims filing on behalf of institutional investors and non-securities clients.

Mackenzie Hall Holdings Ltd.: Contingent collection and purchase of defaulted consumer debt in the United Kingdom.

Portfolio Recovery Associates, Inc., 120 Corporate Boulevard, Norfolk, Virginia 23502, USA. (757) 519-9300.
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Who We Are

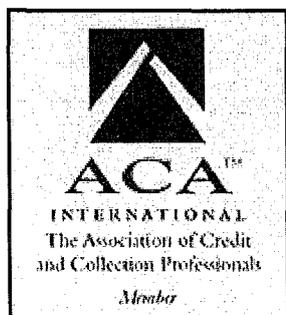
Asset Acceptance is a leading purchaser and collector of charged-off consumer debt. We help creditors liquidate delinquent consumer receivables and assist consumers in resolving their financial challenges. In this way, we return value to our credit driven economy.

Since 1962, Asset Acceptance has provided credit originators such as credit card issuers, consumer finance companies, retail merchants, utilities and others an efficient alternative in recovering defaulted consumer debt.

We take a long-term view toward collections, backed by experienced and well-trained account representatives, strategic office locations around the country and a proven legal strategy.

Asset Acceptance has 1,400 associates across 10 offices in nine states.

Proud Members



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Consumer Bill of Rights

Midland Funding LLC

Midland Funding LLC is one of the nation's biggest buyers of unpaid debt in the form of charged-off accounts. An account is considered "charged-off" when 180 days or more have passed without payments, or the payments are less than the minimum monthly payment.

Midland Funding LLC's affiliate, Midland Credit Management (MCM) is a licensed debt collector and services accounts on our behalf. MCM is dedicated to helping consumers find their way back to financial stability and relieving the emotional stress that can accompany unpaid debt.

MCM helps consumers arrange payment options that fit each person's unique financial situation. By working with MCM directly, consumers can regain control over their personal debt.

Contact MCM representatives at 800-265-8825 now to get started on a personal payment program.

Midland Credit Management | Encore Capital Group | Propel Financial Services | Consumer Credit Research Institute

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