



October 4, 2021

DOJ SETTLES ALLEGED SCRA VIOLATIONS BY NJ STUDENT LENDER

The Department of Justice has entered into a consent order with the New Jersey Higher Education Student Assistance Authority (“HESAA”), the state’s student financial aid agency, to settle alleged violations the Servicemembers Civil Relief Act (“SCRA”).

DOJ alleges HESAA unlawfully acquired default judgments against two SCRA protected military service members who cosigned student loans. Despite having SCRA compliance policies in place, HESAA is alleged to have obtained one judgement in contravention of those policies and the other from human error. Under the consent order HESAA must pay \$15,000 restitution to each service member against whom judgements were obtained, pay a \$20,000 civil penalty and implement new training and compliance procedures.

This consent order reminds creditors to have proper compliance policies in place and to audit these policies to ensure the policies are actually followed. We routinely advise clients on SCRA compliance as well as offer assistance with internal compliance reviews and updates. If you have any questions, please let us know. ☐

✧ Elizabeth Anstaett and Ben Hurford

CALIFORNIA DFPI SEEKS \$375,000 FROM THIRD PARTY DEBT COLLECTOR

The California Department of Financial Protection and Innovation (DFPI) issued its first enforcement order against the debt collection company F&F Financial Management. The DFPI issued a cease and desist order as well as a \$375,000 penalty.

Specifically, the DFPI found that from May 2021 through August 2021, F&F left consumers automated voicemails that failed to identify the company and made false representations about wage garnishments and initiating legal proceedings in violation of the Rosenthal Fair Debt Collection Practices Act. DFPI also found that F&F engaged in “debt parking” by furnishing negative credit information to credit bureaus without first attempting to communicate with or notify consumers about the alleged debt in violation of the Consumer Credit Reporting Agencies Act. Additionally, DFPI found that F&F’s failure to provide required disclosures in their communications regarding the alleged debt violated the federal Fair Debt Collection Practices Act.

The enforcement action is part of the DFPI move to make third party debt collectors “covered persons” under the California Consumer Financial Protection Law. That statute’s definitions of covered and exempt entities are unclear, but this enforcement action shows the DFPI is not only willing to aggressively enforce its mandate but it views third party debt collectors operating in California as subject to its authority. ☐

✧ Mike Tomkies and Ben Hurford

DEALING WITH MULTISTATE DEBT COLLECTION COMPLIANCE?

We routinely advise on collection-related activities and the regulated activities of creditors, third party debt collectors, debt buyers and loan servicers. We also publish an easy-to-use reference that compiles state and federal laws governing debt collection practices. Our DEBT COLLECTION DIGEST is organized topically, includes the federal Fair Debt Collection Practices Act and Commentary for easy cross-reference, and covers ADAD and monitoring and recording statutes. **Contact us for details.**

CFPB SUES TECH COMPANY FOR ILLEGAL CREDIT REPAIR FEES

The CFPB filed a complaint September 20, 2021 against Credit Repair Cloud, a California provider of “all-in-one solutions” for people to start and run their own credit repair businesses online. The CFPB alleges that users of Credit Repair Cloud are engaged in telemarketing and charging advance fees in violation of the federal Telemarketing Sales Rule and the federal Consumer Financial Protection Act. Thus, by selling tools, software, support services, advice, training and a platform to users, the CFPB alleges Credit Repair Cloud facilitated its users’ violations of federal consumer protection laws.

This complaint illustrates the CFPB’s expansive view of its authority to enforce federal consumer protection laws. It also demonstrates the CFPB’s willingness to go after companies without direct contact with consumers and which only provide business to business services. We regularly advise clients on both state and federal credit repair services law. Please let us know if you have questions. ☐

✧ Mike Tomkies and Ben Hurford

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