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DIVISION 3. OBLIGATIONS [1427 - 3273.69] (*Heading of Division 3 amended by Stats. 1988, Ch. 160, Sec. 14.*)

PART 4. OBLIGATIONS ARISING FROM PARTICULAR TRANSACTIONS [1738 - 3273.69] (*Part 4 enacted 1872.*)

TITLE 1.6C.5. Fair Debt Buying Practices [1788.50 - 1788.66] (*Title 1.6C.5 added by Stats. 2013, Ch. 64, Sec. 2.*)

1788.50. (a) As used in this title:

(1) "Debt buyer" means a person or entity that is regularly engaged in the business of purchasing charged-off consumer debt for collection purposes, whether it collects the debt itself, hires a third party for collection, or hires an attorney-at-law for collection litigation. "Debt buyer" does not mean a person or entity that acquires a charged-off consumer debt incidental to the purchase of a portfolio predominantly consisting of consumer debt that has not been charged off.

(2) "Charged-off consumer debt" means a consumer debt that has been removed from a creditor's books as an asset and treated as a loss or expense.

(b) The acquisition by a check services company of the right to collect on a paper or electronic check instrument, including an Automated Clearing House item, that has been returned unpaid to a merchant does not constitute a purchase of delinquent consumer debt under this title.

(c) Terms defined in Title 1.6C (commencing with Section 1788) shall apply to this title.

(d) This title shall apply to debt buyers with respect to all consumer debt sold or resold on or after January 1, 2014.

(*Added by Stats. 2013, Ch. 64, Sec. 2. (SB 233) Effective January 1, 2014.*)

1788.52. (a) A debt buyer shall not make any written statement to a debtor in an attempt to collect a consumer debt unless the debt buyer possesses the following information:

(1) That the debt buyer is the sole owner of the debt at issue or has authority to assert the rights of all owners of the debt.

(2) The debt balance at charge off and an explanation of the amount, nature, and reason for all post-charge-off interest and fees, if any, imposed by the charge-off creditor or any subsequent purchasers of the debt. This paragraph shall not be deemed to require a specific itemization, but the explanation shall identify separately the charge-off balance, the total of any post-charge-off interest, and the total of any post-charge-off fees.

(3) The date of default or the date of the last payment.

(4) The name and an address of the charge-off creditor at the time of charge off, and the charge-off creditor's account number associated with the debt. The charge-off creditor's name and address shall be in sufficient form so as to reasonably identify the charge-off creditor.

(5) The name and last known address of the debtor as they appeared in the charge-off creditor's records prior to the sale of the debt. If the debt was sold prior to January 1, 2014, the name and last known address of the debtor as they appeared in the debt owner's records on December 31, 2013, shall be sufficient.

(6) The names and addresses of all persons or entities that purchased the debt after charge off, including the debt buyer making the written statement. The names and addresses shall be in sufficient form so as to reasonably identify each such purchaser.

(7) The California license number of the debt buyer.

(b) A debt buyer shall not make any written statement to a debtor in an attempt to collect a consumer debt unless the debt buyer has access to a copy of a contract or other document evidencing the debtor's agreement to the debt. If the claim is based on debt for which no signed contract or agreement exists, the debt buyer shall have access to a copy of a document provided to the debtor while the account was active, demonstrating that the debt was incurred by the debtor. For a revolving credit account, the most recent monthly statement recording a purchase transaction, last payment, or balance transfer shall be deemed sufficient to satisfy this requirement.

(c) A debt buyer shall provide the information or documents identified in subdivisions (a) and (b) to the debtor without charge within 15 calendar days of receipt of a debtor's written request for information regarding the debt or proof of the debt. If the debt buyer cannot provide the information or documents within 15 calendar days, the debt buyer shall cease all collection of the debt until the debt buyer provides the debtor the information or documents described in subdivisions (a) and (b). Except as provided otherwise in this title, the request by the debtor shall be consistent with the validation requirements contained in Section 1692g of Title 15 of the United States Code. A debt buyer shall provide all debtors with whom it has contact an active postal address to which these requests can be sent. A debt buyer may also provide an active email address to which these requests can be sent and through which information and documents can be delivered, if the parties agree.

(d) (1) A debt buyer shall include with its first written communication with the debtor in no smaller than 12-point type, a separate prominent notice that provides:

"You may request records showing the following: (1) that [insert name of debt buyer] has the right to seek collection of the debt; (2) the debt balance, including an explanation of any interest charges and additional fees; (3) the date of default or the date of the last payment; (4) the name of the charge-off creditor and the account number associated with the debt; (5) the name and last known address of the debtor as it appeared in the charge-off creditor's or debt buyer's records prior to the sale of the debt, as appropriate; and (6) the names of all persons or entities that have purchased the debt. You may also request from us a copy of the contract or other document evidencing your agreement to the debt.

"A request for these records may be addressed to: [insert debt buyer's active mailing address and email address, if applicable]."

(2) When collecting on a time-barred debt where the debt is not past the date for obsolescence provided for in Section 605(a) of the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681c):

"The law limits how long you can be sued on a debt. Because of the age of your debt, we will not sue you for it. If you do not pay the debt, [insert name of debt buyer] may [continue to] report it to the credit reporting agencies as unpaid for as long as the law permits this reporting."

(3) When collecting on a time-barred debt where the debt is past the date for obsolescence provided for in Section 605(a) of the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681c):

"The law limits how long you can be sued on a debt. Because of the age of your debt, we will not sue you for it, and we will not report it to any credit reporting agency."

(e) If a language other than English is principally used by the debt buyer in the initial oral contact with the debtor, the notice required by subdivision (d) shall be provided to the debtor in that language within five working days.

(f) A debt buyer shall not collect, or make any attempt to collect consumer debt that originated with a hospital licensed pursuant to subdivision (a) of Section 1250 of the Health and Safety Code without including in the first written communication to the debtor a copy of the notice required pursuant to subdivision (e) of Section 127425 of the Health and Safety Code.

(g) In the event of a conflict between the requirements of subdivision (d) and federal law, so that it is impracticable to comply with both, the requirements of federal law shall prevail.

(Amended by Stats. 2021, Ch. 473, Sec. 3. (AB 1020) Effective January 1, 2022.)

1788.54. (a) All settlement agreements between a debt buyer and a debtor shall be documented in open court or otherwise reduced to writing. The debt buyer shall ensure that a copy of the written agreement is provided to the debtor.

(b) A debt buyer that receives payment on a debt shall provide, within 30 calendar days, a receipt or monthly statement, to the debtor. The receipt or statement shall clearly and conspicuously show the amount and date paid, the name of the entity paid, the current account number, the name of the charge-off creditor, the account number issued by the charge-off creditor, and the remaining balance owing, if any. The receipt or statement may be provided electronically if the parties agree.

(c) A debt buyer that accepts a payment as payment in full, or as a full and final compromise of the debt, shall provide, within 30 calendar days, a final statement that complies with subdivision (b). A debt buyer shall not sell an interest in a resolved debt, or any personal or financial information related to the resolved debt.

(Added by Stats. 2013, Ch. 64, Sec. 2. (SB 233) Effective January 1, 2014.)

1788.56. A debt buyer shall not bring suit or initiate an arbitration or other legal proceeding to collect a consumer debt if the applicable statute of limitations on the debt buyer's claim has expired.

(Added by Stats. 2013, Ch. 64, Sec. 2. (SB 233) Effective January 1, 2014.)

1788.58. In an action brought by a debt buyer on a consumer debt:

(a) The complaint shall allege all of the following:

(1) That the plaintiff is a debt buyer.

(2) The nature of the underlying debt and the consumer transaction or transactions from which it is derived, in a short and plain statement.

(3) That the debt buyer is the sole owner of the debt at issue, or has authority to assert the rights of all owners of the debt.

(4) The debt balance at charge off and an explanation of the amount, nature, and reason for all post-charge-off interest and fees, if any, imposed by the charge-off creditor or any subsequent purchasers of the debt. This paragraph shall not be deemed to require a specific itemization, but the explanation shall identify separately the charge-off balance, the total of any post-charge-off interest, and the total of any post-charge-off fees.

(5) The date of default or the date of the last payment.

(6) The name and an address of the charge-off creditor at the time of charge off and the charge-off creditor's account number associated with the debt. The charge-off creditor's name and address shall be in sufficient form so as to reasonably identify the charge-off creditor.

(7) The name and last known address of the debtor as they appeared in the charge-off creditor's records prior to the sale of the debt. If the debt was sold prior to January 1, 2014, the debtor's name and last known address as they appeared in the debt owner's records on December 31, 2013, shall be sufficient.

(8) The names and addresses of all persons or entities that purchased the debt after charge off, including the plaintiff debt buyer. The names and addresses shall be in sufficient form so as to reasonably identify each such purchaser.

(9) That the debt buyer has complied with Section 1788.52.

(b) A copy of the contract or other document described in subdivision (b) of Section 1788.52 shall be attached to the complaint.

(c) The complaint in an action brought by a debt buyer for debt that originated with a general acute care hospital licensed pursuant to subdivision (a) of Section 1250 of the Health and Safety Code shall also contain both of the following:

(1) The information contained in paragraph (6) of subdivision (e) of Section 127425 of the Health and Safety Code and a statement identifying the language in which that information was sent to the debtor.

(2) Copies of the application for financial assistance that was provided to the debtor by the hospital and the notice that was provided to the debtor by the hospital about applying for financial assistance, attached to the complaint. If the notice was provided as part of the hospital bill that cannot be separated, the bill shall be redacted to remove confidential information, or a sample hospital bill with the substance of the notice regarding financial assistance in the format in use at the time the patient was billed may be provided.

(d) The requirements of this title shall not be deemed to require the disclosure in public records of personal, financial, or medical information, the confidentiality of which is protected by any state or federal law.

(Amended by Stats. 2021, Ch. 473, Sec. 4. (AB 1020) Effective January 1, 2022.)

1788.60. (a) In an action initiated by a debt buyer, no default or other judgment may be entered against a debtor unless business records, authenticated through a sworn declaration, are submitted by the debt buyer to the court to establish the facts required to be alleged by paragraphs (3) to (8), inclusive, of subdivision (a) of Section 1788.58.

(b) No default or other judgment may be entered against a debtor unless a copy of the contract or other document described in subdivision (b) of Section 1788.52, authenticated through a sworn declaration, has been submitted by the debt buyer to the court.

(c) In any action on a consumer debt, if a debt buyer plaintiff seeks a default judgment and has not complied with the requirements of this title, the court shall not enter a default judgment for the plaintiff and may, in its discretion, dismiss the action.

(d) Except as provided in this title, this section is not intended to modify or otherwise amend the procedures established in Section 585 of the Code of Civil Procedure.

(Added by Stats. 2013, Ch. 64, Sec. 2. (SB 233) Effective January 1, 2014.)

1788.61. (a) (1) Notwithstanding Section 473.5 of the Code of Civil Procedure, if service of a summons has not resulted in actual notice to a person in time to defend an action brought by a debt buyer and a default or default judgment has been entered against the person in the action, the person may serve and file a notice of motion and motion to set aside the default or default judgment and for leave to defend the action.

(2) Except as provided in paragraph (3), the notice of motion shall be served and filed within a reasonable time, but in no event exceeding the earlier of:

(A) Six years after entry of the default or default judgment against the person.

(B) One hundred eighty days of the first actual notice of the action.

(3) (A) Notwithstanding paragraph (2), in the case of identity theft or mistaken identity, the notice of motion shall be served and filed within a reasonable time, but in no event exceeding 180 days of the first actual notice of the action.

(B) (i) In the case of identity theft, the person alleging that they are a victim of identity theft shall provide the court with either a copy of a Federal Trade Commission identity theft report or a copy of a police report filed by the person alleging that they are the victim of an identity theft crime, including, but not limited to, a violation of Section 530.5 of the Penal Code, for the specific debt associated with the judgment.

(ii) In the case of mistaken identity, the moving party shall provide relevant information or documentation to support the claim that they are not the party named in the judgment or is not the person who incurred or owes the debt.

(b) A notice of motion to set aside a default or default judgment and for leave to defend the action shall designate as the time for making the motion a date prescribed by Section 1005 of the Code of Civil Procedure, and it shall be accompanied by an affidavit stating under oath that the person's lack of actual notice in time to defend the action was not caused by their avoidance of service or inexcusable neglect. The person shall serve and file with the notice a copy of the answer, motion, or other pleading proposed to be filed in the action. Either party may introduce, and the court may consider, evidence in support of its motion or opposition, including evidence relating to the process server who appears on the proof of service of the summons and complaint.

(c) Upon a finding by the court that the motion was made within the period permitted by subdivision (a) and that the person's lack of actual notice in time to defend the action was not caused by their avoidance of service or inexcusable neglect, the court may set aside the default or default judgment on whatever terms as may be just and allow the party to defend the action. If the validity of the judgment is not challenged, the court may select an appropriate remedy other than setting aside the default or default judgment.

(d) This section shall apply to a default or default judgment entered on or after January 1, 2010, except in the case of identity theft or mistaken identity, in which case this section shall apply regardless of the date of the default or default judgment.

(e) This section shall not limit the equitable authority of the court or other available remedies under law.

(Amended by Stats. 2021, Ch. 265, Sec. 2. (AB 430) Effective January 1, 2022.)

1788.62. (a) In the case of an action brought by an individual or individuals, a debt buyer that violates any provision of this title with respect to any person shall be liable to that person in an amount equal to the sum of the following:

(1) Any actual damages sustained by that person as a result of the violation, including, but not limited to, the amount of any judgment obtained by the debt buyer as a result of a time-barred suit to collect a debt from that person.

(2) Statutory damages in an amount as the court may allow, which shall not be less than one hundred dollars (\$100) nor greater than one thousand dollars (\$1,000).

(b) In the case of a class action, a debt buyer that violates any provision of this title shall be liable for any statutory damages for each named plaintiff as provided in paragraph (2) of subdivision (a). If the court finds that the debt buyer engaged in a pattern and practice

of violating any provision of this title, the court may award additional damages to the class in an amount not to exceed the lesser of five hundred thousand dollars (\$500,000) or 1 percent of the net worth of the debt buyer.

(c) (1) In the case of any successful action to enforce liability under this section, the court shall award costs of the action, together with reasonable attorney's fees as determined by the court.

(2) Reasonable attorney's fees may be awarded to a prevailing debt buyer upon a finding by the court that the plaintiff's prosecution of the action was not in good faith.

(d) In determining the amount of liability under subdivision (b), the court shall consider, among other relevant factors, the frequency and persistence of noncompliance by the debt buyer, the nature of the noncompliance, the resources of the debt buyer, and the number of persons adversely affected.

(e) A debt buyer shall have no civil liability under this section if the debt buyer shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error, and occurred notwithstanding the maintenance of procedures reasonably adopted to avoid any error.

(f) An action to enforce any liability created by this title shall be brought within one year from the date of the last violation.

(g) Recovery in an action brought under the Rosenthal Fair Debt Collection Practices Act (Title 1.6C (commencing with Section 1788)) or the federal Fair Debt Collection Practices Act (15 U.S.C. Sec. 1692 et seq.) shall preclude recovery for the same acts in an action brought under this title.

(Added by Stats. 2013, Ch. 64, Sec. 2. (SB 233) Effective January 1, 2014.)

1788.64. Any waiver of the provisions of this title is contrary to public policy, and is void and unenforceable.

(Added by Stats. 2013, Ch. 64, Sec. 2. (SB 233) Effective January 1, 2014.)

1788.66. Notwithstanding any other law, a person shall not sell or assign any unpaid COVID-19 rental debt, as defined in Section 1179.02 of the Code of Civil Procedure, for the time period between March 1, 2020, and September 30, 2021, of any person who would have qualified for rental assistance funding provided by the Secretary of the Treasury pursuant to Section 501 of Subtitle A of Title V of Division N of the federal Consolidated Appropriations Act, 2021 (Public Law 116-260) or Section 3201 of Subtitle B of Title III of the federal American Rescue Plan Act of 2021 (Public Law 117-2), if the person's household income is at or below 80 percent of the area median income for the 2020 or 2021 calendar year.

(Amended by Stats. 2021, Ch. 27, Sec. 3. (AB 832) Effective June 28, 2021.)