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Why SB 890 is good for consumers, creditors and the courts

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One day last May, a man we'll call Lou received notice that his wages were being garnished because he owed about $4,000 on an old Sears account. A couple of years earlier, when Sears was unable to collect from Lou, it sold the account to a debt buyer that pursues delinquent borrowers. When the debt buyer was unsuccessful in getting Lou to pay up, it hired the Brachfeld Law Group, one of the nation's biggest collection law firms. Brachfeld sued Lou, and when he failed to respond to the lawsuit, the court entered a default judgment against him. A year later, Lou's employer received the order to garnish his wages. With money deducted directly from Lou's paycheck, it appeared that justice would finally be served.

The only hitch? The debt buyer and Brachfeld had the wrong Lou. Though the original Sears' debtor was named Luis Correa, the debt buyer and law firm had instead pursued California State Sen. Jose Luis Correa. The Democrat from Santa Ana repeatedly tried to explain to Sears and Brachfeld that his address and Social Security number were different from those of the actual debtor, but to no avail. He never received notice of the lawsuit, since he didn't reside at the address where the summons was served. As Sen. Correa noted, "it showed me that the system had broken down, [and] if it's broken down for me, it's breaking down for other individuals."

Indeed, Sen. Correa's case is not unusual. Third-party debt collection is a multi-billion dollar business in California that has only grown during the economic downturn. When conducted properly by reputable agencies, collection activity contributes to the integrity of the credit system and saves the average consumer money. Unfortunately, instances of mistaken identity - and other forms of more egregious predatory debt collection activity by entities like Brachfeld - plague the debt buyer business. These practices harm innocent people, tarnish the collection industry and swamp overburdened courts.

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Here's how it works: With little paperwork and often for pennies on the dollar, debt buyers purchase unsecured debt from banks, finance companies and even other debt buyers. The

original creditor has deemed this charged-off debt uncollectible through conventional means. To save money on the front end, many debt buyers do not purchase sufficiently detailed information to identify the correct debtor, the actual amount owed or whether collection is time-barred by statute. Nevertheless, debt buyers attempt to collect what they can, sometimes through harassing, deceptive and illegal tactics.

Not surprisingly, voluntary response rates by debtors to such abusive practices are low. Using automated systems and robo-signing to reduce costs, debt buyers and their lawyers then file a high volume of lawsuits against consumers in state courts. Under current pleading standards, these lawsuits rarely include information to verify the actual debt and debtor. Very few consumers can defend themselves against such lawsuits - legal services are scarce, and the default rate is typically in the 80-95 percent range - so debt buyers easily secure court judgments. Armed with such judgments, debt buyers then garnish consumers' wages and assets, even when they've got the wrong person, the wrong amount or the assets are legally exempt from attachment.

In California, hundreds of thousands of debt collection lawsuits were filed last year, and many cases were rife with error and unsupported allegations. Estimates are that such lawsuits increased 20 percent statewide from 2006 to 2010. In the Bay Area alone, they've almost doubled from 2007 to 2009, when 96,000 such cases were filed. According to one report, debt collection cases comprise 40 percent of the civil docket in Santa Cruz County.

So what to do?

In recent reports, the Federal Trade Commission and California's Department of Consumer Affairs have recommended that legislatures heighten pleading requirements in collection lawsuits to substantiate debts and debtors, stop collection of time-barred debts and prevent garnishment of exempt assets. Several states have recently taken such steps, including New York and North Carolina, and more are expected to follow.

Last year, Sen. Mark Leno introduced California's version of this much-needed legislation, the Fair Debt Buyers Practices Act, as Senate Bill 890. Sponsored by Attorney General Kamala Harris, SB 890 includes a number of commonsense measures to protect consumers from being sued on debts they don't owe, rein in unethical debt buyer activities and reduce frivolous lawsuits. The Senate will vote on the bill next week and should send it to the Assembly for passage.

SB 890 will benefit Californians in three important ways: First, consumers will be spared unjust treatment and needless harassment. The bill will protect us all from being victimized for the debts of others, debts we've already repaid or debts we don't owe. Consumers Union, the California Reinvestment Coalition and other consumer groups support the bill. Notably, these groups work to increase access to credit for low and middle-income Californians and are committed to a healthy collection system.

Second, the bill will level the playing field for responsible collection agencies. To be sure, those who make a living in debt mills will have to change their business model. But verifying

debts in legal actions will reduce unscrupulous practices that harm the industry. The California Association of Collectors, the state's leading industry trade group, should align its position on this bill with its stated code of ethics and support SB 890.

Finally, when courts focus their limited resources on legitimate disputes, everyone in the legal system benefits. All lawyers and legislators committed to basic fairness, due process and the efficient use of tax dollars should embrace this bill. By supporting SB 890, the California Creditors Bar Association can affirm its public commitment "to strengthen and improve California's judicial system."

We urge the state Senate to bring us one step closer to a win-win-win for responsible consumers, reputable collectors and the state courts.

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