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Supplemental Testimony of Frank D'Alessandro, Maine Equal Justice
In *support* of the LD 1466, Part E, Part F and Part G
"An Act To Increase the Efficiency
of Certain Consumer Credit Protection Laws"
April 20, 2021

Good afternoon Senator Sanborn, Representative Tepler and members of the Joint Standing Committee on Insurance and Financial Services. My name is Frank D'Alessandro and I am the Legal and Policy Director for Maine Equal Justice. We are a nonprofit legal aid provider working to increase economic security, opportunity, and equity for people in Maine. I am testifying in support of the Part E, Part F and Part G of LD 1466.

What Part E, Part F and Part G of LD 1466 Would Do

The proposed amendment provides a process to ensure that the requirements of 32 MRS 11019 passed by the legislature in 2017 are uniformly enforced. The proposed amendment:

1. Requires plaintiffs in consumer debt collection cases to prove they own the debt they are trying to collect.
2. Provides to the Court and consumers the information necessary to demonstrate the existence of the debt.
3. Provides a form answer to defendants to assist consumers in responding to complaints filed in consumer debt collection cases.[1]

[1] "There is a strong preference in our law for deciding cases on the merits." *Thomas v. Thompson*, 653 A.2d 417, 420 (Me.,1995) (*citing Wescott v. Allstate Ins.,* 397 A.2d 156 (Me.1979); 2 Field, McKusick & Wroth, *Maine Civil Practice* § 55.7 at 24–25 (2d ed. 1970)). In the context of the foreclosure cases the one-page answer form used as part of the foreclosure diversion program appears to have reduced defaults from approximately 70% to less than 50%.

4. Provides for Court review of filings in consumer cases to determine the adequacy of the Court filing.
5. Provides a specific process for Court review before the entry of a default judgment in consumer debt collection cases.
6. Prohibit debt buyers from bringing cases in Small Claims Court
7. Prohibit Collections brought on medical debt if the consumer is eligible for free care.

WHY LD 1466 IS NECESSARY

Part F and G of LD 1466

In 2017 the State of Maine legislature amended Maine's Fair Debt Collection Practices Act to strengthen consumer protections regarding cases brought by debt buyers. (32 MRS 11019). However, despite the protections provided by the law, our experience is that judgments continue to be entered against defendants who fail to appear or file an answer despite the requirements of 32 MRS 11019 that prohibit the entry of a judgment in favor of a debt buyer unless the debt buyer presents evidence that is admissible pursuant to the provisions of the Maine Rules of Evidence and the debt buyers' failure to produce such evidence.

The proposed amendments are designed to provide a process to ensure that the provisions of 32 MRS 11019 are complied with.

In my practice as an attorney, both at Pine Tree Legal Assistance and now at Maine Equal Justice, I have represented dozens, if not hundreds of consumers against third-party debt collectors in District Court and Small Claims Court.

In collections cases brought by debt buyers, the original creditors have typically written off the debt resulting in a substantial tax benefit for them. These debts are then sold to third party debt collectors, often for pennies on the dollar. The third-party debt collectors then attempt to collect the debts.

Small Claims Court

In Small Claims Court I would appear in Court on the day that Small Claims cases are heard, announce my presence, and represent those consumers who seek our assistance. I typically do not meet these clients until the day of court and was often

successful in defending these cases due to the lack of reliability of the evidence presented by debt buyers, such as Midland Funding, Portfolio Recovery, LVNV and others.

Small Claims Court was originally designed to provide a venue whereby litigants with claims under $800 could appear *without attorneys* and present their claims to the court. Since the Small Claims Court has been established, the law has been changed so that Small Claims Court now has the jurisdiction to hear claims of up to $6,000. In addition, since the establishment of a Small Claims Court in 1979, the Small Claims docket is typically dominated, not by litigants who appear without an attorney, but by out of state corporations (third party debt collectors) who appear *solely by counsel*, and who bring cases against consumers who are largely unrepresented.

District Court

I have also represented consumers against debt buyers in regular District Court cases.

In District Court, I typically serve discovery on the third-party debt collector requesting a copy of the documents that resulted in the third-party debt collector acquiring the debt. These documents usually involve the transfer of hundreds of accounts and contain language whereby the seller expressly states that they do not warrant the validity of any of the debts being sold, and expressly warrant that some of the debt being purchased may have been discharged in bankruptcy. In some responses to my requests for discovery, I have seen sales documents that specifically state the seller will not be providing any additional documentation to the debt buyer that is not contained in the original sale documents. In other cases, the contracts contain provisions that expressly state there is no warranty as to the validity of the debt.

I am also aware of similar cases that involve the collection of private student loans, both in Small Claims Court and in District Court. In these cases, the plaintiffs suing on the balance of the student loan are not the original lenders and are often unable to provide evidence as to the transfers. The transfer documents in these cases also contain language whereby the seller states that there is no warranty of title or enforceability.

However, even if we are successful in an affirmative case, and no matter how many Small Claims Court cases we win, in most cases, the plaintiff obtains

judgment by default. This occurs even if the plaintiff does not possess the evidence necessary to prove its cases in a contested hearing. In our view, the problem with the current process is not that it is too burdensome on the debt collector. The problem is that it has become too easy for debt collectors to obtain judgments to collect debts in which the debt collector is not able to prove either the amount due or ownership of the debt.

The information that debt collectors must provide consumers to document the debt is at the heart of the issue. The third-party debt collector's business practice appears to be largely based upon obtaining default judgments against consumers or convincing consumers to agree to pay debts that the debt collector knows it may not be able to prove at trial.

The documents that a plaintiff would be required to produce pursuant to the proposed amendment are necessary so that the defendant can determine the validity of the debt. Many defendants who request our assistance are unsophisticated. Many fear going to jail if they are unable to pay their alleged debts, even though their income is exempt from attachment (such as disability benefits) and they have no assets. The plaintiff needs to provide to the defendant evidence of the debt that would be admissible under the typical Rules of Evidence demonstrating the amount of the debt and the debt collector's ownership of the debt. Anything short of this unfairly influences the defendant into thinking that they are legally liable to pay a debt that the plaintiff has no ability to prove.

The importance of these requirements is critical, given the lack of reliability of the information provided by many third-party debt collectors. The Consumer Financial Protection Bureau (CFPB) entered consent orders with Encore (Midland Funding) and Portfolio Recovery Associates because Encore and Portfolio Recovery Associates threatened and deceived consumers to collect on debts, they should have known were inaccurate or had other problems. The CFPB found that Encore Capital Group and Portfolio Recovery Associates bought debs that were potentially inaccurate, lacking documentation, or unenforceable. Without verifying the debt, the companies collected payments by pressuring consumers with false statements and churning out lawsuits using robo-signed court documents. As a result of these consent orders, both Encore and Portfolio were ordered to overhaul their debt collection and litigation practices and to stop reselling debts to third parties. Encore was required to pay up to $42 million in consumer refunds and a $10 million penalty and stop collection on over $125 million worth of debts. Portfolio was ordered to pay $19 million in consumer refunds and an $8 million penalty and stop collecting on over $3 million worth of debts.

http://files.consumerfinance.gov/f/201509_cfpb_consent-order-encore-capital-group.pdf; http://files.consumerfinance.gov/f/201509_cfpb_consent-order-portfolio-recovery-associates-llc.pdf.

In 2020, the CFPB, then under the direction of the administration of Donald Trump, brought a court action against Encore (Midland Funding) alleging Encore's failure to comply with the provision of the consent judgment previously entered into by Encore. This case was settled by a stipulated final judgment and order that will require Encore and its subsidiaries to pay $79,308.81 in redress to consumers and a $15 million civil money penalty. The settlement will also require Encore and its subsidiaries to make various material disclosures to consumers, refrain from the collection of time-barred debt absent certain disclosures to consumers and abide by certain conduct provisions in the 2015 consent order for five more years. https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-settles-lawsuit-debt-collectors-and-debt-buyers-encore-capital-group-midland-funding-midland-credit-management-and-asset-acceptance-capital-corp/

In 2017, the CFPB also took action against National Collegiate Student Loan Trusts and Transworld Systems for Illegal Student Loan Debt Collection Activities that required that 800,000 loans be independently audited, and required companies to pay at least $21.6 million and stop suing for invalid or unverified debts. https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-national-collegiate-student-loan-trusts-transworld-systems-illegal-student-loan-debt-collection-lawsuits/

In January 2016, Human Rights Watch published a study of the debt buying industry in the United States that found that the debt buying process "places a huge, unfair burden on alleged debtors and is often the reason poor families struggle to pay these debts over time. This can come at the expense of alleged debtors' ability to secure basic economic and social needs such as food, clothing, and medicine." *Rubber Stamp Justice,* p. 7. https://www.hrw.org/report/2016/01/20/rubber-stamp-justice/us-courts-debt-buying-corporations-and-poor

The requirements set forth in the proposed amendment are also important to protect pro-se litigants.

The Maine Supreme Judicial Court has repeatedly held that the Maine Rules of Evidence apply in all judicial actions, including to pro se litigants. The proposed amendment, together with the provisions of 32 MRS 11019 help ensure that the

same standard will be applied to debt buyers, and, at the very least, third party debt collectors should be held to the same standard as pro se litigants.

In a significant majority of the debt collection cases in which I have been involved, the matters are dismissed because of (1) the debt buyer's refusal to comply with discovery orders that they produce purchase and sale documents regarding transfers of the debt, (2) the debt buyer's failure to produce a witness at trial able to authenticate business records, or (3) the debt buyer's decision to dismiss the case on the eve of trial because the debt buyer decides not to produce a witness to appear at trial.

We believe that the proposed Amendment protects the integrity and the legitimacy of the Court process and prevents abuses by debt buyers. The proposed Rule helps to further this goal by (1) requiring that Plaintiff debt-buyers file cases only after they demonstrate the ability to produce relevant documents; (2) streamlining the process by which defendants can respond by providing a court-sanctioned answer form; and (3) by requiring Court review before a default judgement may be entered to ensure that the Plaintiff debt buyer has met its burden of proof in compliance with the Maine Rules of Evidence.

Part E of LD 1466

This provision is necessary so that collections actions for medical debt will not be brought against consumers who are eligible for free care.

Under the Affordable Care Act, nonprofit hospitals are required to provide free or discounted care to patients of meager incomes — or risk losing their tax-exempt status. These price breaks can help people avoid financial catastrophe.

And yet nearly half — 45% — of nonprofit hospital organizations are routinely sending medical bills to patients whose incomes are low enough to qualify for charity care, according to a Kaiser Health News analysis of reports the nonprofits submit annually to the Internal Revenue Service. Those 1,134 organizations operate 1,651 hospitals.

About 56% of American community hospitals have nonprofit status, which frees them of paying most taxes and allows them to float tax-exempt bonds. In return, they are supposed to provide community benefits including free or discounted care for patients who cannot afford to pay.

Information about hospital charity care, often included in the reams of admissions documents or posted on hospital walls, can easily get overlooked by patients and families focused on medical emergencies.

“The signage might be a little hard to find, applications are complicated, documentation is complicated,” said Keith Hearle, a consultant who advised the IRS on collecting hospitals’ charity care data. “You could probably come up with 15 reasons people didn’t apply.”

The collection of Medical debt for consumers who are eligible for free care, can damage credit ratings — one study calculated Americans had $81 billion in collections in 2016 — and forces some people into bankruptcy. https://khn.org/news/patients-eligible-for-charity-care-instead-get-big-bills/

CONCLUSION

For the above stated reasons we strongly urge this committee to vote ought to pass on Part E, Part F and Part G of LD 1466.