



Commissioner Manuel P. Alvarez
Department of Financial Protection and Innovation
2101 Arena Blvd., Sacramento, CA 95834

Via electronic mail - ATTN: Charles Carriere, Senior Counsel

Dear Commissioner Alvarez:

Thank you for the opportunity to provide comment. We write to urge the Department of Financial Protection and Innovation (“The Department” or “DFPI”) to utilize the California Consumer Financial Protection Law (CCFPL), the Debt Collection Licensing Act (DCLA), and the relevant provisions of Dodd-Frank to rein in unfair, deceptive and abusive practices in the bail bonds industry.

The private bail bonds industry is woefully underregulated. Unlawful consumer credit arrangements and debt-collection practices abound, yet no government body is charged with addressing these aspects of bail bonds contracts. DFPI has the authority and the expertise to provide much-needed regulation in this industry and doing so would align with its mission. For the good of bail bonds consumers too often fleeced by unlawful financial products during a particularly stressful moment in their lives, we urge DFPI to recognize and use its authority under the CCFPL, the DCLA, and Cal. Fin. Code section 326 to address abuses in the bail bonds industry.

Our organizations have wide-ranging experience with consumer protection violations in the bail bonds industry. Some of us serve consumers directly, whereas others research and promote policies to address abuses. Through the stories of our clients and our research into industry practices, our experience has shown that bail bonds companies frequently flout consumer protection laws and rarely face consequences for doing so.¹ Ultimately, we believe that the for-profit bail industry fundamentally fails to serve consumers or the public. We believe that California can and should do without it. But as long as consumers must rely on these companies – and as long as many consumers remain indebted to them – we need proactive and expert enforcement of consumer protection laws governing the industry.

There are hundreds of thousands of bail bonds contracts created each year.² Because of the high cost of bail bonds premiums, many of these contracts involve consumer

¹ See e.g., *BBBB Bonding Corporation v. Jamilah Elite* (Super. Ct. Contra Costa County, 2019, Case L18-00386) [lawsuit addressing Bad Boys Bail Bonds’ failure to provide legally required disclosure notices to cosigners].

² *Bail Transactions in California* (2014) California Department of Insurance [on file with authors].

financial transactions. No government body currently regulates this aspect of the bail industry and private enforcement cannot sufficiently address the harm caused to consumers, often the families of those accused of a crime.³ DFPI is well-suited to address abusive financial practices in this industry and has the legal authority to do so. For the benefit of California consumers, we urge the Department to recognize its authority to utilize the CCFPL, the DCLA, and Dodd-Frank to address unfair, deceptive and abusive practices by bail bonds companies.

Background: What is Credit Bail

Money bail is the most common form of bail in California.⁴ In many cases, whether someone pays bail determines whether they are incarcerated pre-trial, even though they have yet to be charged with a crime and are still presumed innocent. To post money bail, an individual must either: a) post the full amount directly with the court, or b) sign a contract with a commercial bail bonds company, agreeing to pay a non-refundable fee in exchange for the service of the posting of a bail bond.

The median bail amount in California is \$50,000. This is more than five times the median amount in the rest of the country.⁵ This is the result of substantial increases to California bail rates in recent decades.⁶ Because of this, most Californians are unable to pay bail to the court and instead must work with a commercial bail bonds company. The major increases in bail amounts have pushed many more people into bail bonds contracts, which has created an especially acute need for enhanced regulation of the industry.

Typically, commercial bail bonds companies charge consumers a non-refundable premium set at 10% of the bail amount. Because the median bail amount in California is

³ deVuono-powell et al., *Who Pays? The True Cost of Incarceration on Families* (Sept. 2015) Ella Baker Center, Forward Together, Research Action Design <<http://whopaysreport.org/wp-content/uploads/2015/09/Who-Pays-FINAL.pdf>> [addressing the costs of incarceration on the loved ones of those incarcerated and including a quote from a formerly incarcerated person who said “Everything that was put into bailing me out was everything my mother had in savings and she borrowed some money from my grandparents. She was back to working paycheck to paycheck. Eventually, about a year and a half after being locked up, my mother had to give up the house she loved and move back to an apartment.”].

⁴ The past month has seen two encouraging developments related to bail reform. First, leaders of the State Assembly and Senate proposed bills that would set \$0 bail for a wide range of criminal offenses. *Lawmakers Introduce Bail Reform Measure* (Jan. 27, 2021) Website of Sen. Robert Hertzberg <<https://sd18.senate.ca.gov/news/1272021-lawmakers-introduce-bail-reform-measure>> [as of March 28, 2021]. Second, the California Supreme Court determined that defendants cannot be jailed pre-trial solely because of inability to pay the imposed cash bail. *In re Humphrey* (2021) 2021 WL 1134487. We celebrate each of these developments as important steps toward reducing the number of people incarcerated before trial. Yet, neither eliminates cash bail entirely or does anything to address the needs of people who already owe debt to a bail bonds company. Thus, the new bill, if it is enacted, and the new decision, however it is implemented, do not negate the need for DFPI’s active enforcement of consumer protection laws throughout the bail bonds industry.

⁵ *Pretrial Detention and Jail Capacity in California* (July 2015) Public Policy Institute of California <<https://www.ppic.org/publication/pretrial-detention-and-jail-capacity-in-california/#fn-15>> [as of March 29, 2021].

⁶ Tafoya, *Pretrial Detention and Jail Capacity in California* (July 2015) Public Policy Institute of California <<https://www.ppic.org/publication/pretrial-detention-and-jail-capacity-in-california/>> [as of March 30, 2021].

\$50,000, premiums are commonly set around \$5,000. Most Californians cannot afford such a large one-time payment. Thus, as a result of sky-high bail amounts, a large proportion of the bail bonds industry operates on credit bail.

Credit bail describes an arrangement wherein a bail bonds company finances the consumer's premium amount. The consumer pays a down payment to the bail bonds company followed by subsequent installment payments that may last for months or years. When a consumer enters into an agreement to defer payment on the premium owed, this is a separate and distinct agreement from the indemnity agreement and other documents contained in the bail contract. The deferred payment agreement is a consumer credit contract, as defined under the California Civil Code and the Truth in Lending Act.⁷ Yet, despite the fact that bail bonds companies commonly engage in consumer financial practices, no government body currently monitors these practices to make sure they accord with consumer protection laws. Given DFPI's expertise in consumer finance and its broad enforcement power, it is the body best-suited to regulate these credit bail contracts.

I. Bail Bonds Companies are Debt Collectors and Should Be Regulated Under the DCLA

Bail bonds companies are debt collectors. The Department therefore has the authority to require them to seek licenses and follow state law. To do so would advance the legislative purpose behind the DCLA and would provide protection to consumers facing widespread abuse from a largely unregulated industry.

The DCLA requires that businesses seek licenses from the Department if they "engage in the business of debt collection in this state[.]"⁸ Debt collection is defined as acts or practices in connection with collecting consumer debt, i.e., debt resulting from a consumer credit transaction.⁹ A debt collector is defined as "any person who, in the ordinary course of business, regularly, on the person's own behalf or on behalf of others, engages in debt collection."¹⁰

Bail bonds companies meet the definition of debt collectors. As described above, credit bail is a consumer credit transaction resulting in consumer debt. Accordingly, bail bonds companies indisputably engage in debt collection when they attempt to collect this debt. It is thus no surprise that a Texas state court deemed a bail bonds company a debt collector under an analogous statute.¹¹ The Department similarly should regulate bail bonds companies as debt collectors under the DCLA.

Regulating bail bonds companies would advance the legislative purpose behind the DCLA. In enacting the DCLA, the Legislature recognized that debt collectors are "notoriously unscrupulous in their practices," and collection practices "consistently

⁷ *BBBB Bonding Corporation v. Jamilah Elite* (Super. Ct. Contra Costa County, 2019, Case L18-00386) [Order on Cross-Defendant's Demurrer to Second Amended Complaint].

⁸ Fin. Code § 100001(a).

⁹ Fin. Code § 100002(e), (f), (i).

¹⁰ Fin. Code § 100002(j).

¹¹ *Monroe v. Frank*, (Tex. Ct. App. 1996) 936 S.W.2d 654, 659-60.

remain a top consumer complaint.”¹² This applies with equal force to bail debt collections.¹³ Collecting bail debt is a regular practice of bail bonds companies, and accounts for a large share of their time and resources. As legal services providers and advocates, we have encountered direct debt collection efforts by all of the largest bail bonds companies in California. Too often, this debt collection involves harassment and mistreatment. For instance, one client of the Lawyers’ Committee for Civil Rights of the San Francisco Bay Area (LCCRSF), Lynette Sams,¹⁴ was told by a bail bonds company employee, “We’re not going to stop. We’ll take your property and come after your family.” Another client, Nichelle Rose, was humiliated when a bail bonds company called her employer and disclosed private information about her debt.

As debt collectors with close proximity to the criminal courts system, bail bonds companies have the unique ability to unlawfully, but credibly, threaten consumers with jail. For example, Mistie Schmidt, a client of LCCRSF, was told she would be incarcerated if she did not pay off her son’s bail bonds debt; she did not answer the door for weeks afterwards because she was gripped with fear.

Yet, as the Legislature recognized when enacting the DCLA, private enforcement through the Rosenthal Act is insufficient to curb abusive debt collection practices.¹⁵ Bail bonds consumers, including co-signers, often are unaware that they could have claims for Rosenthal Act violations against bail bonds companies, or may not know to seek legal counsel within the one-year statute of limitations. Consumers also may be deterred by threats of incarceration, or may be reluctant to bring a lawsuit that requires drawing attention to their criminal history or the criminal history of a loved one. In certain instances, filing a Rosenthal Act claim can expose a consumer to a potential anti-SLAPP motion and the obligation to pay the opposing party’s attorneys’ fees. Additionally, individual lawsuits are insufficient to address the scope of the problem, and many legal services organizations lack the resources to undertake costly and time-intensive class action litigation.

Thus, the Department must use its DCLA authority to license bail bonds companies and to enforce the Rosenthal Act against companies that violate the law. As the California agency regulating debt collection practices, the Department has the authority and knowledge to address abusive practices in the bail bonds industry. Although other governmental agencies may have the authority to address Rosenthal Act violations by bail bonds companies, none of them have ever done so. Neither the California Department of Insurance (CDI) nor the Attorney General’s Office has pursued Rosenthal Act claims against bail bonds companies, nor has any City Attorney’s office in the state. Whether as a result of underfunding or under-prioritization, there has been a long-standing failure to enforce the Rosenthal Act against bail bonds companies.

¹² Senate Bill No. 908 (2019-2020 Reg. Sess.) Senate Floor Analysis.

¹³ Kornya et al., *Crimsumerism: Combating Consumer Abuses in the Criminal Legal System* (2019) 54 Harv. C.R.-C.L. L. Rev. 107, 130; Gonzalez, *Consumer Protection for Criminal Defendants: Regulating Commercial Bail in California* (2018) 106 Cal. L. Rev. 1379, 1418.

¹⁴ Client names have been changed to protect their privacy.

¹⁵ See Senate Bill No. 908 (2019-2020 Reg. Sess.) Senate Floor Analysis. (“It is also unreasonable to expect individual consumers to bring their own actions for violations of the Rosenthal Act . . . because very few attorneys will take small-dollar cases, and most consumers do not know what protections the laws afford them.”).

Thus, to date, bail bonds consumers have been left largely unprotected, even though a state law exists to defend them from abuses in debt collection.

Until an enforcement body with proper authority and expertise takes action, the harassment experienced by Ms. Sams, Ms. Rose, and Ms. Schmidt, and countless others will continue. For the good of California bail bonds consumers, we urge the Department to exercise its authority to require bail bonds companies to obtain licenses under the DCLA, to include bail bonds debt collection in any debt collection regulations the Department may issue, and to take enforcement action against bail bonds companies that violate the Rosenthal Act.

II. DFPI Can Enforce the CCFPL Against Bail Bonds Companies Because, When Forming Credit Bail Contracts, Bail Companies Are Not Acting Under CDI's Authority

The California Consumer Financial Protection Law (CCFPL) charges the Department with executing “the laws of this state relating to . . . persons offering or providing consumer financial products or services in this state[.]”¹⁶ Because bail bonds companies are engaging in consumer financial services in nearly every transaction they make, they are subject to the Department’s CCFPL authority.

The CCFPL’s definition of a “consumer financial product or service” includes a “financial product or service that is delivered, offered, or provided for use by consumers primarily for personal, family, or household purposes.”¹⁷ Credit bail contracts satisfy this definition because they offer credit to consumers for personal use.

In considering whether a credit bail contract is a “consumer credit contract,” a state court has already determined that credit bail contracts are “plainly an extension of credit” and that “an obligation to pay money related to a bail bond” is a “personal, family, or household purpose.”¹⁸ Because credit bail contracts are “plainly” extensions of credit and are offered for “personal, family, or household purpose[s]” they are a “consumer financial product or service” under the CCFPL.

One of the laws that the CCFPL authorizes DFPI to enforce is the Consumer Legal Remedies Act (CLRA), which protects consumers from unfair and deceptive business practices.¹⁹ The CLRA defines consumers as “individual[s] who seek[] or acquire[], by purchase or lease, any goods or services for personal, family, or household purposes.”²⁰ As described above, bail bonds are for personal, family, or household purposes. Additionally, bail bonds companies are providing a good *and* a service to consumers.²¹

¹⁶ Cal. Fin. Code §300(b).

¹⁷ Cal. Fin. Code §90005.

¹⁸ *BBBB v. Elite*, *supra*, Case L18-00386. *See also Barlow v. Safety Nat. Cas. Corp.* (M.D. La. 2012) 856 F.Supp.2d 828, 835 (finding that a bail bonds contract is a contract primarily for a personal, family, or household purpose).

¹⁹ Cal. Civ. Code § 1750 *et seq.*

²⁰ Cal Civ. Code § 1761(d).

²¹ Bail bonds companies have claimed that the CLRA is not applicable to bail services, arguing that the provision of bail is an insurance product rather than a good or service. While it is true that the agreement between the bail bonds company and the court is a form of surety which would fall outside the purview

Because people seeking bail bonds are seeking to purchase goods and services for personal, family, or household purposes, these contracts may properly be regulated under the CLRA. The CLRA thus provides a powerful tool for DFPI to use to rein in abusive practices in the bail bonds industry.

It is not enough that credit bail contracts are consumer financial products or that they may be regulated under the CLRA. In order for credit bail contracts to be subject to the Department's CCFPL authority, they also must not fall within any of the exemptions outlined in section 90002. The most pertinent of these creates an exemption for "a licensee . . . of any state agency other than [DFPI] to the extent that licensee . . . is acting under the authority of the other state agency's license."²² Credit bail transactions do not fall within this exemption.

Bail bonds companies are required to seek licenses from the California Department of Insurance (CDI).²³ Those licenses, however, only concern the "execution or delivery of an undertaking of bail or bail bond by an insurer."²⁴ A "bail bond" is defined as "any contract . . . for or method of release of person arrested or confined" based on a violation of the law.²⁵ Under this definition, the Unpaid Premium Agreements formed between bail bonds companies and consumers are not bail bonds contracts. They are separate agreements. Although the bail bonds contract guarantees the arrestee's release from jail, the Unpaid Premium Agreement provides that the bail bond company will finance the consumer's premium and accept payments over time.

Bail bonds companies are not acting under the authority of CDI when they create credit bail contracts. The statutes outlining CDI's authority make no mention of "credit," "installments," "down payments," or "unpaid premium agreements." Further, CDI has never litigated a case addressing these consumer credit agreements. A review of more than 300 enforcement actions brought by CDI against bail licensees since 2000 revealed no enforcement actions related to consumer credit agreements. The high number of bail-related enforcement actions illustrate that CDI is not hesitant to exercise its authority to regulate the bail industry where it can. If CDI had the intention and expertise to regulate consumer credit agreements, it surely would have done so in the face of the blatant and ubiquitous violations of consumer protection laws, which have been well documented by consumer advocates across California.²⁶ The agency's inaction

of the CLRA, the agreement between the consumer and the bail bond company is not a form of insurance, but a hybrid between a good and a service. See Gonzalez, *supra* note 13 at 1408. The "good" that the bail bond company provides to the consumer is the agreement with the court that results in the defendant's release from custody. The "service" the bail bond company is providing to the consumer is the procurement of the agreement with the court. This includes the establishment of relationships with courts and the facilitation of the defendant's release from custody. As payment for this good/service hybrid, bail bonds companies charge consumers a nonrefundable premium. Thus, based on the interactions between the consumer and the bail bonds company, the bail bond contract is for goods and services, not insurance, and may properly be regulated under the CLRA.

²² Cal. Fin. Code §90002(a).

²³ Cal. Ins. Code §1800(a).

²⁴ *Id.*

²⁵ Cal. Ins. Code §1800.4.

²⁶ See *The Devil In The Details: Bail Bond Contracts In California* (May 2017) UCLA School Of Law Criminal Justice Reform Clinic <https://static.prisonpolicy.org/scans/UCLA_Devil%20in_the_Details.pdf> [as of March 28, 2021].

results from the fact that consumer credit contracts do not fall within CDI's ambit and expertise.

That CDI does not intend to regulate these consumer credit contracts can also be deduced from the February 2018 CDI report "Recommendations for California's Bail System." The report was published following a public hearing relating to the bail industry in California. One of the report's major findings was that "California needs to improve the oversight and regulation of the bail industry."²⁷ The CDI report details inequities and abuses present in the bail system and recommends a strategy for addressing them. Though the report is extensive, it does not contain a single mention of credit bail. This is not because consumer finance issues are not present in the credit bail bonds industry, but rather because CDI's oversight does not extend to them.

Even if CDI possessed the legal authority to properly regulate the bail industry, it does not have the funds to do so. According to CDI itself, "the Department lacks the resources to fund a comprehensive bail enforcement program."²⁸ CDI is already stretched thin when it comes to bail regulation, with bail taking up 10% of CDI's enforcement activities while accounting for less than 2% of California's insurance market.²⁹ DFPI thus has a unique opportunity to supplement CDI's regulation of bail bond contracts and ensure that individuals entering consumer credit agreements with bail bonds companies are protected.³⁰

Whether in tandem with CDI or not, it is imperative that DFPI develop a plan to enforce the CCFPL in the bail bonds industry. Otherwise, bad actors will continue perpetrating consumer finance abuses with few repercussions. Those of us serving clients see the impact of the industry's underregulation every day. Our clients, who are predominately low-income people of color, find themselves trapped in unfair contracts, and suffer harassment and bad credit as a consequence. It is these "economically vulnerable consumers ... who lack a safety net" the DFPI is tasked with protecting.³¹

This protection was needed for Alice Meggans, a recent client of LCCRSF's. Ms. Meggans was jailed after an altercation with her abuser. He subsequently bailed her out without her consent. The bail bonds company told Ms. Meggans she had to come to the office. At the office, she was told she would be re-incarcerated if she did not sign a credit bail contract. But she had never consented to the original bail bond, she had already been released from jail for three days, and the District Attorney had decided not to file charges against her. If not for the company's deception, she could have left the

²⁷ *Recommendations for California's Bail System* (Feb. 2018) California Department of Insurance 5, <<https://www.insurance.ca.gov/01-consumers/170-bail-bonds/upload/CDI-Bail-Report-Draft-2-8-18.pdf>> [as of March 28, 2021].

²⁸ *Id.* at 6.

²⁹ *Id.*

³⁰ If DFPI begins to regulate the financing practices of bail bonds companies, it is likely to encounter cases where its jurisdiction overlaps with CDI's. This kind of overlapping jurisdiction is commonplace. It can readily be addressed by, for example, developing an MOU with CDI outlining the bounds of each agency's authority and detailing how it will operate when bail bonds companies act in ways that concern both agencies.

³¹ Cal. Fin. Code § 90000(a)(1).

office with no debt and no threat of re-arrest. Instead, she left the office with \$5,000 of debt and a contract tethering her to her abuser for the foreseeable future.

Clients like Ms. Meggans, as well as the thousands of bail consumers that never reach our doors, need DFPI's leadership. Too many of them have been tricked into unfair contracts with long-lasting debt. DFPI has both the authority and the know-how to help right these wrongs. We urge the Department to recognize and use its CCFPL authority in the bail industry to help protect these consumers.

III. Under Cal. Fin. Code Section 326, DFPI Has federal UDAAP Authority Over Bail Bonds Companies

The Consumer Financial Protection Act of 2010 (CFPA), part of the Dodd-Frank Act, makes it unlawful for providers of consumer financial products or services to engage in any unfair, deceptive, or abusive act or practice (UDAAP). It also grants rulemaking and enforcement authority to the Consumer Financial Protection Bureau (CFPB or Bureau) to prevent such practices in connection with a consumer financial product or service.

Section 326 of the California Financial Code expressly allows the Commissioner of the Department to bring a civil action or other appropriate proceeding to enforce the provisions of the CFPA or regulations issued under it, pursuant to 12 U.S.C. section 5552. The Commissioner may bring such actions against entities "licensed, registered, or subject to oversight by the Commissioner" to secure remedies available under the CFPA.³² Bail bonds companies are among these entities. As discussed in Section II, bail bonds companies are subject to oversight by the Commissioner under the CCFPL. And, as addressed in Section I, bail bonds companies should be licensed by and registered with the Department pursuant to the DCLA. Because bail bonds companies are subject to oversight by the Commissioner and, as we strongly urge, should also be licensed and registered by the Commissioner, DFPI has the power to enforce the provisions of the CFPA against bail bonds companies.

Under the CFPA, it is unlawful for "any covered person or service provider . . . to engage in any unfair, deceptive, or abusive act or practice."³³ This prohibition applies to bail bonds companies. A "covered person" is one who "engages in offering or providing a consumer financial product or service."³⁴ As is true under the CCFPL, the extension of credit for personal, family, or household purposes is a consumer financial product or service under the CFPA.³⁵ As explained above, when bail bonds companies offer consumers the option of paying a bail premium in installments, they are extending credit for personal, family, or household purposes. The CFPB recently demonstrated its understanding that bail bonds companies that utilize such payment arrangements are "covered persons" under the CFPA by bringing a lawsuit against an immigration bail bond company, Libre.³⁶ The Bureau, along with three State attorneys general, alleged

³² Cal. Fin. Code, § 326(b).

³³ 12 U.S.C. § 5536(a)(1)(B).

³⁴ 12 U.S.C. § 5481(6).

³⁵ 12 U.S.C. § 5481(5)(A), (15)(A)(i).

³⁶ Consumer Financial Protection Bureau, *Consumer Financial Protection Bureau and Virginia, Massachusetts, and New York Attorneys General Sue Libre for Predatory Immigrant-Services Scam* (Feb. 22, 2021)

Libre is a covered person because it “creates the reasonable impression in consumers’ minds that it is offering or providing extensions of credit to pay for consumers’ immigrant bonds.”³⁷ Like many bail bonds companies operating in California, Libre allegedly charges clients an upfront fee and subsequent monthly payments, purportedly in exchange for securing the clients’ release.³⁸

The fact that bail bonds companies are licensed and regulated by the CDI does not divest the Department of its enforcement authority; 12 U.S.C. section 5552, which gives State regulators power to bring actions under the CFPB, does not preclude the filing of such actions against entities subject to the authority of state insurance regulators.³⁹

Those of us serving clients have witnessed too many low-income Californians subjected to unfairness, deception, and abuse by bail bonds companies. Fortunately, the Department has the legal authority, the know-how, and the tools to address these practices. By recognizing its authority and prioritizing enforcement actions in the bail bonds industry, the Department can address the kinds of harms faced by our clients every day – harms like those experienced by Aaron Zapata and Dante Purnell. After learning of a warrant for his arrest, Mr. Zapata called a bail bonds company to arrange a bail bond before turning himself in to police. Once Mr. Zapata was booked in jail, his wife went to the bail bonds company’s office to pay the down payment as planned. However, when she arrived, the company changed the terms of the bail bond, forcing Mr. Zapata’s wife to pay a much higher down payment than she had expected. Additionally, although she is a monolingual Spanish speaker, the company failed to provide a Spanish-language translation of the contract with the newly changed terms.

Dante Purnell cosigned a bail bond contract to secure the release of his brother based on the company’s representations that Mr. Purnell would be responsible only for the down payment, while his brother would be liable for all subsequent payments. When Mr. Purnell’s brother failed to make the monthly payments, the company came after Mr. Purnell, trying to hold him personally liable for the remaining debt. For years since, Mr. Purnell has received threatening calls about the debt.

The Department can and should use its federal UDAAP authority to curb practices such as these. Misrepresentations and sudden alterations of the terms of bail bonds contracts constitute deceptive acts under the CFPB.⁴⁰ The use of English-language documents to

<https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-and-virginia-massachusetts-and-new-york-attorneys-general-sue-libre-for-predatory-immigrant-services-scam/> [as of Mar. 31, 2021].

³⁷ Complaint ¶ 19, *Consumer Fin. Prot. Bureau v. Nexus Servs.* (W.D. Va., No. 5:21-cv-00016),

https://files.consumerfinance.gov/f/documents/cfpb_nexus-services-inc-et-al_complaint_2021-02.pdf [as of Mar. 31, 2021].

³⁸ *Id.* ¶ 4.

³⁹ “A State regulator may bring a civil action or other appropriate proceeding to enforce the provisions of this title or regulations issued under this title with respect to *any entity that is State-chartered, incorporated, licensed, or otherwise authorized to do business under State law,*” subject to exceptions not relevant here. 12 U.S.C. § 5552(a)(1) (emphasis added).

⁴⁰ An act or practice is deceptive if it involves a material misrepresentation or omission that is likely to mislead a consumer acting reasonably under the circumstances. *Consumer Fin. Prot. Bureau v. Gordon* (9th Cir. 2016) 819 F.3d 1179, 1192.

bind a non-English-speaking consumer is abusive.⁴¹ Practices such as these may well also be unfair within the meaning of the CFPA, depending on the specific circumstances in question.⁴² If the Department pursues actions against bail bonds companies that violate federal consumer protection law, it will have access to a wide range of remedies, such as rescission of contracts, refunds, and limitations on the companies' activities.⁴³

Unlike the DCLA and CCFPL, the CFPA provides no private right of action.⁴⁴ It is thus up to state and federal agencies to enforce federal consumer financial protection laws against bail bonds companies that engage in unfair, deceptive, or abusive practices. However, neither the CFPB nor other California agencies have shown an appetite for pursuing claims against bail bonds companies operating in California. Of the California agencies that could potentially bring claims pursuant to 12 U.S.C. section 5552, the Department is uniquely suited to do so because of its expertise in consumer financial protection law and its legislative mandate to prevent "unethical businesses from harming the most vulnerable populations."⁴⁵ Currently, the types of harmful practices described here are all too common in California as a result of underregulation of the bail bonds industry. We urge the Department to fill this enforcement gap by using its federal UDAAP authority against bail bonds companies that take advantage of California consumers.

Conclusion

California consumers are hurting because of consumer finance abuses in the bail bonds industry. Often through deceit and coercion, they are led into financial arrangements that lead to years of debt and harassment. Until now, there has been no government watchdog well suited to address these practices. That changed with the creation of DFPI. The emergence of a dedicated consumer financial protection agency can be a game-changer for bail consumers. But that can only happen if the Department recognizes its authority over these practices and prioritizes enforcement in this

⁴¹ An act or practice is abusive if it "materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service." 12 U.S.C. § 5531(d)(1); see also Complaint ¶¶ 187–191, *Consumer Fin. Prot. Bureau v. Nexus Seros.*, *supra* note 37 (alleging Libre engaged in abusive acts or practices by using English-language documents to bind monolingual non-English-speaking consumers). Also abusive are acts or practices that take unreasonable advantage of the consumer's lack of understanding of the risks, costs, or conditions of the product or service; the consumer's inability to protect his or her interests in selecting or using a consumer financial product or service; or the consumer's reliance on a covered person to act in his or her interests. 12 U.S.C. § 5531(d)(2). The CFPB recently rescinded a 2020 policy that limited its enforcement of the "abusive" prong, signaling its intent to enforce the full scope of the statutory definition of an abusive practice. Consumer Financial Protection Bureau, *Consumer Financial Protection Bureau Rescinds Abusiveness Policy Statement to Better Protect Consumers* (Mar. 11, 2021) <<https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-rescinds-abusiveness-policy-statement-to-better-protect-consumers/>> [as of Mar. 31, 2021].

⁴² An act or practice is unfair if it "causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers" and "such substantial injury is not outweighed by countervailing benefits to consumers or to competition." 12 U.S.C. § 5531(c).

⁴³ See Fin. Code, § 326(b) ("[T]he commissioner may bring a civil action . . . to secure remedies under provisions of the Consumer Financial Protection Act of 2010."); 12 U.S.C. § 5565(a)(2) (enumerating forms of relief available under the CFPA).

⁴⁴ *Alexander v. Ocwen Fin. Corp.* (E.D. Cal. Apr. 26, 2017, No. 2:15-CV-2681 TLN AC) 2017 WL 1495101, at *4 fn. 4.

⁴⁵ Cal. Fin. Code § 90000(a)(4).

industry. If it does, tens of thousands of people may be spared the mistreatment that bail bonds consumers have previously encountered.

The bail industry is unique because it exists at the intersection of criminal law, consumer law, and insurance law. For too long, this has worked to the advantage of bad actors who have hidden in the regulatory shadows. Because the industry looks different than others, regulators and advocates have failed for decades to adequately address its consumer abuses, leaving its largely low-income, Black and Brown clients high and dry. Now is the time to give these consumers the protection they deserve. We urge the Department to recognize its rightful authority over consumer financial transactions in the bail bonds industry and to take swift action to rein in unfair, deceptive and abusive collection practices.

Sincerely,



Rio Scharf
Lawyers' Committee for Civil Rights of the San Francisco Bay Area



Stephanie Carroll
Public Counsel



Mackenzie Halter
Debt Collective