The Honorable Sean P. O'Donnell
Hearing Date: February 2, 2024, 10:00 a.m.
With Oral Argument

STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

STATE OF WASHINGTON,

Plaintiff,

v.

PROVIDENCE HEALTH & SERVICES-WASHINGTON; SWEDISH HEALTH SERVICES; SWEDISH EDMONDS; KADLEC REGIONAL MEDICAL CENTER; OPTIMUM OUTCOMES, INC.; and HARRIS & HARRIS, LTD.,

Defendants.

NO. 22-2-01754-6 SEA

STATE'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON LIABILITY AS TO DEFENDANT OPTIMUM OUTCOMES, INC.

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

TABLE OF CONTENTS

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

TABLE OF AUTHORITIES

Cases

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

Statutes

Other Authorities

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

I. INTRODUCTION

Defendant Optimum Outcomes, Inc. (Optimum) admits that it sent 82,729 debt collection notices to Washington consumers for the collection of medical and hospital debt, and cannot contest that each and every one of these collection notices omitted important disclosures mandated by the Collection Agency Act (CAA), RCW ch. 19.16. The CAA is a consumer protection statute that closely regulates debt collection activity in Washington, prohibiting debt collectors from engaging in an enumerated list of unfair and deceptive collection practices. RCW 19.16.250. The CAA was enacted in 1971 "[t]o eliminate the considerable abuse" in debt collection. Wash. Laws, 1971 1st Ex. Session, Ch. 252.

At issue in this motion are two CAA provisions that require debt collectors to provide specific, detailed disclosures in debt collection notices for the collection of medical debt and hospital debt, a sub-category of medical debt. *See* RCW 19.16.250(28) and (29). These are crucial consumer protection provisions because the collection of medical and hospital debt disproportionately affects low income Washingtonians.

To be clear, Optimum's defective collection notices were not a mere procedural defect under the CAA. To the contrary, RCW 19.16.250(28) and (29) require debt collectors to make specific, substantive charity care disclosures and to inform consumers of their right to seek detailed information about their accounts that are subject to collection. However, all of this information was absent from Optimum's collection notices to Washington consumers. Optimum's failure to follow Washington law underscores exactly why the Washington Legislature and Washington courts have closely regulated debt collectors and required strict compliance with the CAA for over 50 years.

The Court should grant the State's motion for partial summary judgment on liability as to Optimum.

II. RELIEF REQUESTED

The Court should enter partial summary judgment on liability as to Optimum and find

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

that Optimum violated the Collection Agency Act 82,729 times, and thus, violated the Consumer Protection Act an equal number of times. The Court should also declare that the State is the prevailing party here, and award the State its reasonable costs and attorney's fees, in an amount to be determined by later motion.[1]

III. EVIDENCE RELIED UPON

The State relies upon the declaration of Lucy Wolf, together with the exhibits attached thereto, and the pleadings and materials on file in this matter.

IV. FACTUAL BACKGROUND

A. Optimum Collected Medical and Hospital Debt in Washington

Optimum is a debt collection agency based in Raleigh, North Carolina that collects for clients throughout the country. Declaration of Lucy Wolf ("Wolf Decl."), Ex. A at 20:4-19 [Optimum CR 30(b)(6) Deposition]; Defendant Optimum Outcomes Inc.'s Answer to Second Amended Complaint, Dkt. #52 at ¶ 4.89. On its website, Optimum states it is "a medical debt collection agency, and only a medical debt collection agency." *See* Wolf Decl., Ex. B [Optimum's website, https://www.oorcm.com]; *see also* Dkt. #52 at ¶ 4.89 (Optimum is "a nationwide receivables management outsourcing company based in Raleigh North Carolina, specializing in working with hospitals address outstanding accounts receivable."); Wolf Decl., Ex. A at 20:20-24. Optimum considers itself an "industry leader" who is "experienced in collecting medical debt." Wolf Decl., Ex. A at 21:16-18, 23:21-23. As such, Optimum reassures its clients, "We understand that medical debt can be confusing[.]" *Id.* at 24:14. Since 2019, Optimum has employed between 25-45 employees, with approximately 25-30 customer service representatives who worked directly on collecting from Providence patients.[2] *Id.* at 33:19-21,

[1] As detailed herein, the State seeks summary judgment only as to liability and the number of CPA violations. This will leave the proper amount of civil penalties and restitution for resolution at trial, as well as any permanent injunctive relief.

[2] Providence Health & Services-Washington and its affiliated hospitals (collectively, Providence) operates 14 not-for-profit, tax-exempt hospitals in Washington.

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

73:8-74:22.

Optimum's 30(b)(6) deponent testified that adhering to medical debt collection regulations is important to Optimum. *Id.* at 26:23-27:3. Optimum currently employs a team of regulatory compliance specialists and consults with a compliance legal expert. *Id.* at 27:4-28:25. During the course of Optimum's engagement with Providence, Optimum's compliance regulation was mainly handled by a consultant along with a three-person in-house compliance team. *Id.* at 29:1-21. Despite this robust compliance team, Optimum wholly failed to provide the disclosures required by the CAA in its collection notices to Providence patients.

Optimum entered into a collection services agreement with Providence on September 16, 2019, making Optimum the exclusive secondary collection agent for Providence. Wolf Decl., Ex. C at 1 [Optimum Collection Services Agreement ("CSA"), Bates No. OPT_0000415]; Wolf Decl., Ex. A at 41:7-22. In accordance with the CSA, Optimum collected account balances for medical and hospital debt associated with Providence's patients. Wolf Decl., Ex. A at 41:7-22. Optimum operated as an out-of-state collection agency in Washington at the time of the CSA, and only became licensed as a Washington State collection agency on July 26, 2021, a year and ten months after Optimum signed the CSA with Providence. *See* Wolf Decl., Ex. A at 47:7-25.

Optimum collected on unpaid Providence accounts after Providence's primary debt collector, Harris & Harris, Ltd., attempted to collect on the account for a year. Optimum began its collection efforts as to Providence patients by sending a first written collection notice. Wolf Decl., Ex. A at 48:16-50:7. As discussed herein, RCW 19.16.250(28) and (29) mandate certain disclosures in those first written notices.

In corresponding with debtors, Optimum uses letter templates, which are forms of letters containing standard terms that Optimum populates with information specific to a particular client and a specific debtor. Wolf Decl., Ex. A at 50:5-22, 51:7-18, 52:18-24. Optimum identifies its templates through template codes; Optimum generates its first written notice through the "Optimum 1" template code and its second written notice through the "Optimum 2" template

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

code. Wolf Decl., Ex. A at 56:17-21. As discussed below, the CAA requires certain disclosures in the first written notice sent by a debt collector, i.e., the "Optimum 1" template.

Providence paid Optimum a contingency fee of 11.25%, or a percentage of the total amount collected. Wolf Decl., Ex. C at 11; Wolf Decl., Ex. A at 61:16-62:5.

B. The Collection Agency Act Requires Debt Collectors to Provide Patients with Notices Regarding their Rights

There is no dispute that, as a licensed collection agency, Optimum is subject to the CAA, which enumerates a list of prohibited collection practices. RCW 19.16.250; *see also Gray v. Suttell & Assoc.*, 181 Wn.2d 329, 334-35, 334 P.3d 14 (2014) (the CAA imposes a substantive "code of conduct" with which debt collectors must comply). Two subsections of 19.16.250 are relevant here. First, under subsection (28)(a), a debt collector must not:

> If the claim involves medical debt:
>
> (a) Fail to include, with the first written notice to the debtor, a statement that informs the debtor of the debtor's right to request the … account number assigned to the debt, the date of the last payment, and an itemized statement as provided in (b) of this subsection (28)[.]

RCW 19.16.250(28)(a).[3]

Second, under subsection 29(a), when a collection agency contacts a patient about hospital debt specifically, it "shall" not:

> Fail to include, with the first written notice to the debtor, a notice that the debtor may be eligible for charity care from the hospital, together with the contact information for the hospital[.]

RCW 19.16.250(29)(a). A violation of RCW 19.16.250 is a *per se* violation of the Consumer Protection Act. RCW 19.16.440.

[3] Subsection (28)(b), in turn, sets forth a detailed list of items that must be included in the itemized statement.

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

Under Washington's Charity Care Act, Washington hospitals are required to make free and reduced cost care available to low-income patients. RCW 70.170.060. Washington hospitals must provide free care to patients with household incomes at or below 300% of the federal poverty level (FPL), currently $90,000 for a family of four, and they must provide reduced-cost care for patients with household incomes at or below 400% FPL. RCW 70.170.060(5)(a).[4] This charity care obligation extends to all "medically necessary hospital health care." RCW 70.170.020(4).

Optimum does not screen patients for charity care or determine eligibility for charity care. Wolf Decl., Ex. A at 83:1-4; 122:5-19. Optimum's customer service representatives do not receive training on how to discuss charity care with Washington patients, nor do they receive training on charity care eligibility under Washington law. *Id.* at 119:1-23. Optimum does not know if it has a copy of Providence's charity care policy. Wolf Decl., Ex. A at 121:11-23. Optimum is likewise unware of whether it has a copy of Providence's charity care application or whether any Optimum employees have ever provided a copy of Providence's charity care application to a consumer. Wolf Decl., Ex. A at 122:20-123:4. Nor is Optimum aware of any Optimum employees providing assistance to a patient in filling out a Providence charity care application or providing contact information to a patient on where to get Providence's charity care application. Wolf Decl., Ex. A at 123:5-19.

C. Optimum Sent Letter Template "Optimum 1" to Washington Consumers to Collect Medical and Hospital Debts

From February 2020 to July 2021, Optimum mailed 82,729 first written notices to Providence patients based on a letter template called "Optimum 1". Wolf Decl., Ex. A at 94:10-19; Dkt. #52 at ¶ 4.94 (Optimum "admits that, pursuant to the CSA, it engaged in collection activity based on information provided by Providence from February 27, 2020 through July 1,

[4] Prior to June 9, 2022, hospitals were required to provide charity care to patients with household income at or below 200% FPL, which was $55,500 per year for a family of four in 2022.

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

2021."). Below is an example of a first written notice based on letter template "Optimum 1." Wolf Decl., Ex. D at 13 [Plaintiff's First Set of Requests for Admission to Defendant Optimum Outcomes, Inc.].

Important Message
Pay Securely Online:
Go to https://payments.oorcm.com
In order to pay your bill you will need both your Account # and Online Pin
Account #: [redacted]
Online Pin: [redacted]

OptumOutcomes
Caring for your revenue cycle
Hours of Operation:
Monday - Thursday: 8:30am - 9:00pm ET
Friday: 8:30am - 6:00pm ET
Saturday: 8:00am - 1:00pm ET

05/10/21
Dear [redacted]
Swedish Hospital Cherry Hill, the creditor, has placed your account with our company, Optimum Outcomes, Inc ("OOI"), for collection. Our records indicated that you received services on the following date(s) and incurred the charges noted.

OOI Account Number	Creditor Account Number	Date of Service	Balance Due
[redacted]	220000063231	[redacted]	$601.69

To pay your balance, you may use any of the following payment methods:
- Mail in your personal check, money order or cashier's check by using the detachable payment coupon at the bottom of this letter;
- Pay online at https://payments.oorcm.com using your OOI Account Number and OOI Online PIN; or
- Call our office to speak with a Customer Service Representative at (866) 268-4255.

Please note the following important information:
Optimum Outcomes, Inc. is a debt collector. This communication is an attempt to collect a debt and any information obtained will be used for that purpose.

Unless you notify OOI within thirty (30) days after receiving this notice that you dispute the validity of this debt, or any portion thereof, this office will assume this debt is valid. If you notify OOI in writing within thirty (30) days from receiving this notice that you dispute the validity of this debt, or any portion thereof, this office will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. OOI shall provide you with the name and address of the original creditor, if different from the current creditor, upon your request in writing to this office within thirty (30) days after receiving this notice.

Please direct all written correspondence to:
Optimum Outcomes, Inc.
PO Box 660943
Dallas, TX 75266-0943

Sincerely,
Optimum Outcomes, Inc.

N.C. Department of Insurance Permit 1103995

Detach Lower Portion And Return With Payment

8-7820

Statement Date	OOI Account Number	Amount Due	Amount Paid
05/10/2021	[redacted]	$601.69	$

P.O. BOX 87820
CAROL STREAM, IL 6018

[redacted]

Phone number: (866) 268-4255

Optimum Outcomes, Inc.
PO Box 660943
Dallas TX 75266-0943

Each of Optimum's 82,729 letters violated at least RCW 19.16.250 (28) because they all concerned medical debt. Some number of Optimum's 82,729 letters also violated RCW 19.16.250(29) because they concerned hospital debt, but Optimum is unable to distinguish

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

which it sent for the purpose of collecting non-hospital medical debt and which it sent for the purpose of collecting hospital debt specifically. Wolf Decl., Ex. A at 101:9-21; 137:10-139:13.

During the months in which Optimum used "Optimum 1," it collected $3,311,264.14 from patients of Providence's Washington hospitals and obtained $376,634.74 in commissions from Providence. Wolf Decl., Ex. A at 62:15-19, 100:24-101:8. All of this was despite the fact that Optimum was only licensed to collect non-Washington debt during this time period.

D. The State's Lawsuit

The State filed its original complaint against Providence, alleging that its charity care and collection practices were unfair and deceptive and, therefore, violated the CPA. *See* Complaint, Dkt. #13. The State filed a First Amended Complaint, adding allegations against Optimum, for sending debt collection notices that failed to include the disclosures required by RCW 19.16.250 (28) & (29). *See* First Am. Compl., Dkt. #40 at ¶¶ 4.89-4.97. Then, on August 9, 2022, the State filed a Second Amended Complaint, adding allegations against Harris & Harris, another one of Providence's debt collectors. *See* Second Am. Compl., Dkt. #49 at ¶¶ 1.8, 4.89-4.101; 6.1-6.7.

On May 31, 2023, the State filed a Third Amended Complaint (TAC) that includes additional allegations against Optimum regarding its failure to provide statutorily required disclosures in debt collection notices it sent to Washingtonians regarding non-hospital medical debt. *See* Third Am. Compl., Dkt. #121 at ¶¶ 4.91-4.97; 4.101.

V. ISSUES PRESENTED

(1) Did Optimum violate the CAA and the CPA by sending first written notices to Providence patients on medical debt accounts that failed to inform patients of their right to request the original account number assigned to the debt, the date of the last payment, and an itemized statement of the patient's account, as required by the plain language of the CAA?

(2) Did Optimum violate the CAA and the CPA by sending first written notices to Providence patients involving hospital debt that failed to notify patients about their potential

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

eligibility for charity care or to provide Providence's contact information, as required by the plain language of the CAA?

(3) Did Optimum violate the Collection Agency Act 82,729 times, and is Optimum liable for 82,729 violations of the Consumer Protection Act?

(4) Is the State the prevailing party and entitled to an award of its costs and attorney's fees, in an amount to be determined by subsequent motion?

VI. ARGUMENT

The CAA requires debt collectors like Optimum to provide specific and vital information to Washington consumers when attempting to collect medical and hospital debt, including the right to request details about their alleged debt and a disclosure of potential charity care eligibility, which must include contact information for the hospital that may provide such charity care. These are important consumer protection provisions designed to protect Washingtonians.

As discussed in detail below, Optimum's notices wholly failed to include this required information. Partial summary judgment on liability is proper.

A. Legal Standards

1. Summary Judgment and Statutory Interpretation

Summary judgment is proper where no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *Western Telepage, Inc. v. City of Tacoma Dep't of Fin.*, 140 Wn.2d 599, 607, 998 P.2d 884 (2000).

Statutory interpretation is an issue of law for the Court. *Spokane County v. Dep't of Fish & Wildlife*, 192 Wn.2d 453, 457, 430 P.3d 655 (2018). The goal of statutory interpretation is to ascertain the legislature's intent, which a court does by first looking to the plain language of the statute. *HomeStreet, Inc. v. State, Dep't of Revenue*, 166 Wn.2d 444, 451, 210 P.3d 297 (2009). "A court is required to assume the Legislature meant exactly what it said and apply the statute as written." *Id.* at 452 (quotation omitted). "A statute that is clear on its face is not subject to judicial construction." *State v. J.M.,* 144 Wn.2d 472, 480, 28 P.3d 720 (2001). As discussed in

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

greater detail below, the requirements of RCW 19.16.250(28) and (29) are clear and unambiguously apply to the notices Optimum sent to Washington consumers.

2. The Collection Agency Act

The CAA is a consumer protection statute that closely regulates debt collection activity in Washington, prohibiting debt collectors from engaging in an enumerated list of prohibited collection practices. RCW 19.16.250. The CAA was enacted in 1971 "[t]o eliminate the considerable abuse" in debt collection, including deceptive practices undertaken by debt collectors. Wash. Laws, 1971 1st Ex. Session, Ch. 252; *see also* Wolf Decl., Ex. E at 1 [excerpt from House report on SB 796 (CAA)]. The abuses of debt collectors are well-documented. Indeed, when adopting the federal debt collection statute (the FDCPA), the U.S. Congress found that "debt collection abuse by third party debt collectors is a widespread and serious national problem." S. Rep. No. 95–382, 95th Cong., 1st Sess., at 2 (1977).

Because "[t]he business of debt collection affects the public interest, [] collection agencies are subject to **strict regulation** to ensure they deal fairly and honestly with alleged debtors." *Panag v. Farmers Ins. Co. of Washington*, 166 Wn.2d 27, 54, 204 P.3d 885 (2009) (emphasis added); *see also* Wolf Decl., Ex. F at 3 [excerpt from Senate committee report regarding SB 796, noting CAA is a "consumer protection request" from Attorney General's Office]. "[T]he debt collection industry [is a] highly regulated field[]," and a "primary purpose of the intensive regulation of" debt collection "is to create public confidence in the honesty and reliability of those who engage in the . . . business of debt collection." *Panag,* 166 Wn.2d at 43.

In fact, the risk of consumers being treated dishonestly or unfairly by debt collectors is so great that CPA claims involving the industry actually apply to conduct that is not expressly covered by other debt collection regulations: "The strong public policy underlying state and federal law regulating the practice of debt collection also applies where collection practices do not fall within the laws' prohibitions." *Panag*, 166 Wn.2d at 54. Stated more plainly, "debt collection activities that are not regulated under the CAA may constitute unfair and deceptive

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

practices under the broader scope of the CPA." *Eng v. Specialized Loan Servicing*, 20 Wash. App. 2d 435, 445, 500 P.3d 171 (2021) (quoting *Panag*, 166 Wn.2d at 54-55).[5]

While Washington law strictly regulates *all* of a debt collector's acts and practices, our Legislature has made a point to provide enhanced protections specifically for those consumers burdened with medical debt. In April 2019, the Washington Legislature passed Substitute House Bill 1531 (SHB 1531), which amended the CAA to restrict collection activities and require debt collectors to provide additional disclosures to consumers when attempting to collect medical and hospital debt. The Legislature explained that these heightened protections were necessary for several reasons, including the prevalence of medical debt in low-income households and the unexpected nature and complexity of medical debt. House Comm. On Civil Rights & Judiciary, Senate Comm. On Law & Justice, Final Bill Report, SHB 1531, 66th Legislature (2019). These new regulations took effect on July 28, 2019.

As is relevant here, RCW 19.16.250 was amended to include subsections (28) and (29). Section 28 (which applies to all medical debt) requires debt collectors to inform patients of their right to request their original account number, the date of last payment, and a detailed itemized statement of their debt. Section 29 (which applies to hospital debt) requires debt collectors to inform consumers that they may be eligible for charity care, and to provide the contact information for the hospital that referred the account to collections so that the consumer can contact the hospital directly for assistance in applying for charity care.

3. The Consumer Protection Act

To succeed on a CPA claim, the State must prove "(1) an unfair or deceptive act or practice, (2) occurring in trade or commerce, and (3) public interest impact." *State v. Mandatory*

[5] For the sake of clarity, this motion asks the Court to rule solely on whether or not the collection notices at issue violated the plain language of the CAA, and thus, represented a per se violation of the CPA. However, the extent to which courts have *expanded* upon the regulation of debt collectors and *expanded* consumer protections in this arena, as in *Panag*, is relevant to the overall protections afforded by the CAA and the need to interpret RCW 19.16.250(28) and (29) in favor of consumers.

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

Poster Agency, Inc., 199 Wn. App. 506, 518, 398 P.3d 1271 (2017). "A per se unfair trade practice exists when a statute which has been declared by the Legislature to constitute an unfair or deceptive act in trade or commerce has been violated." *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 786, 719 P.2d 531 (1986).

The Legislature has declared that a violation of RCW 19.16.250 of the CAA is an unfair act or practice in trade or commerce for purposes of applying the CPA. RCW 19.16.440. Therefore, the State satisfies the first two elements of a CPA claim by showing a violation of the CAA. *See Rush v. Blackburn*, 190 Wn. App. 945, 961–62, 361 P.3d 217 (2015) (citing *Hangman Ridge*, 105 Wn.2d at 786). As to the third element, our Supreme Court has held that collection practices prohibited by the CAA satisfy the "public interest impact" element of a CPA claim. *Panag*, 166 Wn.2d at 54. Optimum does not and cannot dispute this third element. Thus, each of Optimum's violations of the CAA are per se violations of the CPA.

B. Optimum's First Written Notice Violated the Plain Language of the CAA

Optimum' debt collection notices failed to make required disclosures under RCW 19.16.250(28) and (29) in violation of the CAA. Dkt. #121 at ¶¶ 4.97, 4.100. Under the CAA, a collection agency's first debt collection notice for medical debt must inform patients of their right to request:

> (1) the original account number assigned to the debt,
>
> (2) the date of the last payment; and
>
> (3) an itemized statement that conforms to the requirements of RCW 19.16.250(28)(b)(i)[.]

RCW 19.16.250(28)(a). In addition, when a collection agency attempts to collect medical debt based on services a patient received from a hospital, the agency's first notice must also inform patients that they "may be eligible for charity care from the hospital, together with the contact information for the hospital." RCW 19.16.250(29)(a).

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

Optimum sent first debt collection notices based on the "Optimum 1" letter template between February 2020 and July 2021. Optimum has admitted that it sent 82,729 first written notices to patients of Providence in Washington based on "Optimum 1." Wolf Decl., Ex. G at 7 [Optimum Outcomes Inc.'s First Supplemental Responses to Plaintiff's First Set of Interrogatories and Requests for Production]; Wolf Decl., Ex. A at 94:1-19; 109:5-23. Optimum admits that, based on its internal data, all of the first written notices it sent to Providence patients were for medical debt, and that some portion it cannot identify were specifically hospital debt. As such, all of those letters had to comply with the disclosure requirements of RCW 19.16.250(28)(a) and at least some (an amount Optimum is unable to identify) also had to comply with the disclosure requirements of RCW 19.16.250(29)(a). However, none of those letters did comply with either RCW 19.16.250(28)(a) or RCW 19.16.250(29)(a).

1. Optimum' Collection Letters Failed to Include the Date of Last Payment or a Notice of Right to an Itemized Statement in Violation of Section 28(a)

As is evident from the plain face of the "Optimum 1" template, there is no mention of the date of the patient's last payment, in violation of Section 28(a). By enacting the specific requirements of RCW 19.16.250(28)(a), the legislature made the policy decision as to what information patients need to receive, and as a debt collector licensed under the laws of our state, Optimum's responsibility was to comply with the legislature's directives.

The "Optimum 1" template also failed to inform patients of their right to request an itemized statement in conformity with RCW 19.16.250(28)(b), which Optimum admits in response to the State's Request for Admissions. Wolf Decl., Ex. H at 5 [Optimum Outcomes Inc.'s Responses to Plaintiff's First Set of Requests for Admission] ("Optimum admits that it sent letters based on the ["Optimum 1" template] to patients of Providence hospitals in Washington after July 28, 2019 without a notice regarding the debtor's rights to request information about their hospital account.").

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

Optimum denies, however, that it was required by RCW 19.16.250(28) to include such a notice because the company claims it is not a "first written notice." *Id.* This argument is based upon the incorrect premise that Optimum, as the second debt collector after Harris & Harris, was not responsible for the first collection notice ever sent to a consumer.

However, as discussed herein, the CAA applies to all debt collectors, regardless of whether they are a primary or secondary debt collector. As a secondary debt collector, Optimum is not exempt from compliance and it must include the required disclosures in ***its*** first written notice to Washington consumers. Optimum failed to include the required disclosures in the "Optimum 1" template, and therefore it violated the express language of the CAA.

2. Optimum's Collection Letters Failed to Inform Patients that they May be Eligible for Charity Care from Providence, Together with Providence's Contact Information, in Violation of Section 29(a)

Nor did Optimum's first written notices comply with RCW 19.16.250(29)(a). Nowhere on the face of the "Optimum 1" template does Optimum inform patients they "may be eligible for charity care from the hospital" or provide "the contact information for the hospital." RCW 19.16.250(29)(a). Optimum admits this in response to the State's Request for Admissions. Wolf Decl., Ex. H at 5 ("Optimum admits that it sent collection notices based upon the ["Optimum 1" template] to patients of Providence hospitals after July 28, 2019 without a notice regarding the debtor's charity care rights or contact information for the Providence hospital where the patient received care.").

The text of RCW 19.250(29)(a) represents a legislative decision that patients must be informed of their right to request charity care *from the hospital*—not from a collection agency actively attempting to collect a debt from them. This is the reasoning behind section 29(a)'s requirements that debt collection notices inform patients of their potential eligibility for charity care *from the hospital* and provide *the hospital's* contact information. The hospital, not the debt collector, is the administrator of charity care. Optimum's CR 30(b)(6) testimony confirms this. As Optimum's CR 30(b)(6) deponent testified, Optimum does not screen patients for charity

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

care or determine eligibility for charity care. Wolf Decl., Ex. A at 83:1-4; 122:5-19. As set forth in the Facts above, Optimum's customer service representatives receive no charity care training, nor does Optimum provide any assistance or information to debtors concerning charity care. *See* Section IV.B., *supra*.

Section 29(a)'s requirement that debt collection notices provide *the hospital's* contact information further confirms the legislature's intent to separate debt collectors from the hospital's administration of charity care. Here, Optimum did not provide *any* contact information for Providence, whether by phone, email, fax, or any other means. The only contact information present on the "Optimum 1" template is a phone number to reach Optimum itself. Instead of directing patients to Providence and the source of the charity care application process, Optimum instructs patients to call its own phone number, where customer service representatives are trained to attempt to collect payments from patients over the phone – completely defeating the purpose of Section 29(a)'s consumer protection measures.

RCW 19.16.250(29) requires debt collectors to inform patients they "may be eligible for charity care from the hospital" and provide contact information for the hospital from which a patient could receive charity care. Optimum failed to include that information in its first written notices, and so "Optimum 1" violates the CAA.

C. RCW 19.16.250(28) and (29) Apply to Optimum

Throughout this case, Optimum has argued that RCW 19.86.250(28) and (29) do not apply to its debt collection attempts because Optimum, as the second debt collector, could not have sent the "first written notice" to a consumer. This argument fails.

First, in its most recent discovery supplementation, Optimum admits that it sent 82,729 first written notices to Washington consumers:

> Optimum is producing the document Bates numbered OPT0003721, which identifies the guarantors and account numbers associated with Providence's Washington facilities and the dates upon which **Optimum sent first and second written notices**. Optimum sent a total of 82,729 initial collection (Optimum 1)

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

> letters and 910 second (Optimum 2) letters to guarantors of accounts associated with Providence's Washington facilities.

Wolf Decl., Ex. G at 7 (emphasis added); Wolf Decl., Ex. A at 94:10-19.

Second, the plain language of the statute applies evenly to each debt collector, regardless of its position in the collection cycle. RCW 19.16.100(10) defines a "licensee" as anyone licensed under RCW ch. 19.16. Even though Optimum was incorrectly licensed only to collect non-Washington debt during its collection activities at issue in this case, the company was in fact licensed under RCW ch. 19.16, and thus, is a "licensee." The entirety of RCW 19.16.250 applies to licensees and their employees generally, and subsections (28) and (29) therefore apply to each debt collector separately:

> No licensee or employee of a licensee shall. . . Fail to include, with the first written notice to the debtor, a statement that informs the debtor of the debtor's right to request the original account number or redacted original account number assigned to the debt, the date of the last payment, and an itemized statement as provided in (b) of this subsection[.]
>
> No licensee or employee of a licensee shall. . . Fail to include, with the first written notice to the debtor, a notice that the debtor may be eligible for charity care from the hospital, together with the contact information for the hospital[.]

RCW 19.16.250(28) and (29).

In order to give any effect to the consumer protection purposes of both the CAA and the CPA, the requirements of RCW 19.16.250(28) and (29) should be read to apply to each and every debt collector in the process and not just the first one. Like other remedial consumer protection statutes, the CAA should be construed—consistent with the CPA itself—"liberally in favor of the consumers [it] aim[s] to protect." *Jametsky v. Olsen*, 179 Wn.2d 756, 765, 317 P.3d 1003 (2014) (citing *Carlsen v. Glob. Client Sols., LLC*, 171 Wn.2d 486, 498, 256 P.3d 321 (2011)). *Accord* 19.86.920 (the CPA "shall be liberally construed that its beneficial purposes may be served"). To read subsections (28) and (29) as limited solely to the first debt collector would give any subsequent debt collectors carte blanche for the entirety of RCW 19.16.250(28) and (29). This cannot be correct.

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

D. The CAA Is a Strict Liability Statute

In its affirmative defenses, Optimum claims that its "actions were performed in good faith under an arguable interpretation of law." Dkt. #52 at 20, ¶ 6. This is not a proper defense to liability under the CAA or the CPA.

The CAA is a strict liability statute and the provisions now at issue, RCW 19.16.250(28)(a) and (29)(a), are strict liability provisions. Strict liability under the CAA is established by the plain language of the statute. When the Legislature wanted to include knowledge or intent as an element of a CAA violation, it has done so explicitly. *See* RCW 19.16.250(23) (prohibiting suit or initiation of arbitration when collection agency "knows, or reasonably should know" that suit or arbitration is barred by statute of limitations). The inclusion of an intent element in subsection (23), and absence of an intent element in subsections (28)(a), (29)(a), and every other subsection, shows that apart from that one subsection, the CAA is a strict liability law. *See Matter of C.A.S.*, 25 Wn. App. 2d 21, 28, 522 P.3d 75 (2022) ("When the Legislature used certain language in one provision of a statute, and omits the same language in another, we presume it intended a difference in the two provisions."); *see also, e.g., Opico v. Convergent Outsourcing, Inc.*, No. 18-CV-1579-RSL, 2019 WL 1755312, *3 & n.4 (W.D. Wash. April 19, 2019) (rejecting debt collector's lack of intent defense, holding that the CAA, RCW 19.16.250(21) "does not have an element of intent"); *Zortman v. J.C. Christensen & Assoc., Inc*., 819 F. Supp. 2d 874, 879 (D. Minn. 2011) (holding that FDCPA's inclusion of intent element in § 1692d(5) but not in § 1692c(5) showed that intent is irrelevant under the latter provision of the FDCPA).

Thus, any intent or good faith is immaterial to Optimum's liability here.

E. The Court Should Find 82,729 Consumer Protection Act Violations

The CPA mandates that "[e]very person who violates RCW 19.86.020 shall forfeit and pay a civil penalty of not more than $7,500 for each violation." RCW 19.86.140. The imposition of "a statutory penalty for violating the [Consumer Protection Act] is mandatory, [even though]

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

the amount of the penalty ... [is] within the trial court's discretion." *State v. Living Essentials, LLC*, 8 Wn. App. 2d 1, 36, 436 P.3d 857, *review denied*, 193 Wn.2d 1040, 449 P.3d 658 (2019), *cert. denied*, 141 S.Ct. 234 (2020). Here, the State is not requesting the Court set the proper civil penalty amount on summary judgment; that issue is reserved for trial. Instead, the State is requesting partial summary judgment on Optimum's liability for 82,729 violations.

As discussed above, each of Optimum's 82,729 first written notices violated at least RCW 19.16.250(28), and some number of them also violated RCW 19.16.250(29). A violation of RCW 19.16.250 is a *per se* violation of the Consumer Protection Act. RCW 19.16.440. Although each of Optimum's first written notices could technically amount to two violations of the CAA, the State here seeks only a single violation per notice.

Civil penalties under the CPA are imposed for "each violation," rather than for each consumer involved. *See Ralph Williams' North West Chrysler Plymouth, Inc.*, 87 Wn.2d 298, 316-17, 553 P.2d 423 (1976) (*Ralph Williams II*) (holding that the CPA "vests the trial court with the power to assess a penalty for each violation"); *State v. LA Investors, LLC*, 2 Wn. App. 2d 524, 545-46, 410 P.3d 1183 (2018) (holding that "[e]ach deceptive act is a separate violation"); *State v. Mandatory Poster Agency, Inc.*, 199 Wn. App. 506, 525, 398 P.3d 1271, *review denied*, 189 Wn.2d 1021 (2017) (same). In this case, there are 82,729 undisputed CPA violations, representing the number of first written notices Optimum sent to Washington consumers.

F. The Court Should Award the State Its Reasonable Costs and Attorneys' Fees

Under RCW 19.86.080, the prevailing party may "recover the costs of said action including a reasonable attorney's fee." As detailed above, the State is entitled to partial summary judgment on its claims against Optimum, Optimum's arguments fail, and the State is the prevailing party.

Even if the Court determines that the State is entitled to partial summary judgment as to only medical debt or hospital debt, the State remains the prevailing party when it proves at least

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

one violation of the CPA. *Living Essentials, supra*, 8 Wn.App.2d at 39 ("That the State originally alleged more violations of the CPA than were ultimately found at trial does not change the fact that the State was successful in proving that [defendant] had violated the CPA.").

Awarding the State its attorneys' fees and costs is consistent with the underlying purpose of the CPA because it "encourages the Attorney General's active role in CPA enforcement actions, which in turn will help to protect the public from untrue and deceptive advertisements." *Id*. *See also Ralph Williams II*, 87 Wn.2d at 314-15; *Mandatory Poster Agency*, 199 Wn.App. at 531*; LA Investors*, 2 Wn.App.2d at 536. "Such [attorney fee] awards will encourage an active role in the enforcement of the consumer protection act. This construction places the substantial costs of these proceedings on the violators of the act, and it does not drain respondent's public funds." *Ralph Williams II* at *id.*

Accordingly, because the State is entitled to partial summary judgment on Defendants' liability here, the State asks this Court for a declaration that it is entitled to costs and fees. Once that order is in place, the State will submit its fee petition as directed by the Court.

//

//

//

//

//

//

//

//

//

//

//

//

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

VII. CONCLUSION

The Court should grant the State's motion for partial summary judgment on liability as to Defendant Optimum Outcomes, Inc., and find a total of 82,729 violations of the Consumer Protection Act. The Court should also declare the State the prevailing party and award attorney's fees in an amount to be determined later.

DATED this 5th day of January, 2024.

ROBERT W. FERGUSON
Attorney General

/s/ Lucy Wolf
WILL O'CONNOR, WSBA #52441
AUDREY UDASHEN, WSBA #42868
MATTHEW GEYMAN, WSBA #17544
MICHAEL BRADLEY, WSBA #48481
LUCY WOLF, WSBA # 59028
TAD O'NEILL, WSBA #37153
BOB HYDE, WSBA #33593
Assistant Attorneys General
Attorneys for Plaintiff State of Washington

I certify that this memorandum contains 5,768 words, in compliance with the Local Civil Rules.

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

CERTIFICATE OF SERVICE

I certify that I caused a copy of the forgoing to be served on the following parties via the following methods:

Brad Fisher Miriam Swedlow Stephanie Childs Davis Wright Tremaine LLP 1201 Third Avenue, Suite 2200 Seattle, WA 98101 BradFisher@dwt.com MiriamSwedlow@dwt.com StephanieChilds@dwt.com	☐Legal Messenger ☐U.S. Mail, Postage Prepaid ☐Certified Mail, Receipt Requested ☐Facsimile ☒Email
Maureen L. Mitchell Paul Richard Brown Jon S. Bogdanov Fox Rothschild LLP 1001 Fourth Avenue, Suite 4400 Seattle, WA 98154-1192 mmitchell@foxrothschild.com paulbrown@foxrothschild.com JBogdanov@foxrothschild.com	☐Legal Messenger ☐U.S. Mail, Postage Prepaid ☐Certified Mail, Receipt Requested ☐Facsimile ☒Email
Dave Schultz Ruddy Abam Hinshaw & Culbertson LLP 151 North Franklin Street, Suite 2500 Chicago, IL 60606 dschultz@hinshawlaw.com rabam@hinshawlaw.com	☐Legal Messenger ☐U.S. Mail, Postage Prepaid ☐Certified Mail, Receipt Requested ☐Facsimile ☒Email
Andrew D. Shafer Amber Harris Ketter, Sheppard & Jackson, LLP 50 - 116th Ave SE; Suite 201 Bellevue, WA 98004 AShafer@sksp.com	☐Legal Messenger ☐U.S. Mail, Postage Prepaid ☐Certified Mail, Receipt Requested ☐Facsimile ☒Email

I certify, under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct.

DATED this 5th day of January, 2024, at Seattle, Washington.

/s/ Lucy Wolf
LUCY WOLF, WSBA #59028
Assistant Attorney General

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744