NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES
ONE STATE STREET
NEW YORK, NEW YORK 10004

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In the Matter of :

FORSTER & GARBUS LLP : No. 2020-0036-C

Respondent. :

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STATEMENT OF CHARGES AND NOTICE OF HEARING

TO THE ABOVE-NAMED RESPONDENT:

PLEASE TAKE NOTICE that a hearing will be held at the office of the New York State Department of Financial Services, One State Street, New York, New York 10004, 6th Floor, on the 21st day of April, 2021, at 10:00 a.m., and continuing thereafter day to day, as determined by the Department, before a Hearing Officer to be appointed by the Superintendent of Financial Services, to determine whether RESPONDENT has committed violations of § 1.4 of Part 1 of Title 23 of the New York Codes, Rules, and Regulations, also referred to as the Department's "Debt Collection by Third-Party Debt Collectors and Debt Buyers Regulation" (hereinafter, 23 NYCRR Part 1 or the "Debt Collection Regulation"), whether violations should be found for Respondent's persistent failures to provide required information to consumers on a timely basis,

and whether civil monetary penalties shall be imposed and other appropriate relief be granted as a result of such findings.

OVERVIEW

1. Debt collection is a multibillion-dollar industry affecting millions of consumers. A recent report found that more than one in four consumers had at least one debt collection reference in their credit reports. In predominantly minority communities, however, the number of consumers with a debt in collection increases to 42%, according to the National Consumer Law Center.

2. Debt collection can have disastrous effects on households, ranging from abusive and harassing interactions with debt collectors to financial destabilization more generally. For these reasons, among others, it is critical that debt collection conduct be closely supervised and that debt collectors only pursue debts in accordance with state and federal law.

3. Student loan debt reached $1.56 trillion in 2020, distributed among 45 million borrowers across the United States. Eleven percent (11%) of this debt is in collection, with millions of borrowers unable to make payments on their student loans. In New York, approximately 2.4 million borrowers owe a total of over $98 billion, with an estimated 280,000 borrowers in delinquency. Researchers report that in New York State approximately 14% of student loan borrowers in minority communities have a student loan debt in default, as compared to 8% of student loan borrowers in non-minority communities.

4. Approximately $7.3 billion of the outstanding student loan debt in New York is attributable to private student loans. Unlike federal student loans, for which the federal government does not engage in traditional debt collection, private student loans are collected by

debt collectors in the same manner as other consumer debts, such as credit card or automobile loan debts.

5. In general, debt collectors seek to locate consumers who have delinquent accounts, and attempt to collect on those accounts by convincing consumers to pay the debts. In the alternative, debt collectors may pursue litigation against consumers.

6. Following initial communications with a particular consumer, a debt collector often persists in calling the telephone numbers associated with that consumer, sometimes hundreds of times every month to collect payment. This process may persist for weeks or months, until the debt is reassigned to another collection agency or the initiation of litigation.

7. Under New York State law, consumers have the right to demand detailed information on debts pursued by debt collectors. This demand for information is referred to under New York State law as "substantiation of debt."

8. When a debt collector receives a substantiation of debt request, the debt collector must cease collection efforts until the debt collector provides this information to the consumer. Moreover, the debt collector must provide substantiation within 60 days after receiving the request.

9. Although all debt collectors should possess this information before engaging in collection activities, the right to request substantiation of debt is important because debt collectors have a history of harassing consumers over debts that are either no longer owed, were never owed, or are owed to a different creditor or debt collector.

10. The right to request substantiation of debt therefore gives consumers an opportunity to request of debt collectors information that debt collectors are already required to

possess but too often do not: evidence that the consumers being contacted actually owe the money sought by the debt collectors.

11. Forster & Garbus LLP ("Respondent" or "Forster & Garbus") has for several decades collected on debts, including debts incurred for student loans, as well as debts incurred for personal and/or household purposes. Respondent collects on student loan debt for several of the large student loan lenders, servicers, and owners, including Sallie Mae, Navient, and the National Collegiate Student Loan Trusts, three of the largest such entities in the United States.

12. As noted above, Forster & Garbus, as a debt collector, is required to provide consumers with sufficient substantiation of debt within 60 days of receiving a request from a consumer.

13. Despite this clear requirement, Respondent has failed repeatedly to provide substantiation of debt to consumers, in violation of New York law.

14. This enforcement action seeks a monetary penalty for Respondent's failure to comply with New York law. This action also seeks to enforce Respondent's compliance with the New York law.

THE ROLE AND JURISDICTION OF THE DEPARTMENT OF FINANCIAL SERVICES

15. Section 408 of the Financial Services Law ("FSL") empowers the Superintendent of the New York State Department of Financial Services (the "Department") to levy a civil penalty for any violation of New York State or federal fair debt collection practices. Section 302 of the Financial Services Law empowers the Superintendent to prescribe rules and regulations involving financial products and services.

16. Pursuant to this authority, in 2015 the Department promulgated the Debt Collection Regulation in to combat unfair debt collection practices. The regulation requires debt

collectors, among other requirements, to provide particular disclosures to consumers upon request.

17. Under FSL § 404, the Superintendent has the authority to conduct investigations to enforce relevant regulations, and under FSL § 408(a)(2), the Superintendent has the authority to levy civil penalties for violations of the regulations promulgated under the Financial Services Law.

RESPONDENT

18. Respondent is headquartered and maintains its principal place of business at 60 Motor Parkway, Commack, New York 11725.

19. Respondent is engaged in a business the principal purpose of which is the collection of any debts owed or due or asserted to be owed or due to another. Respondent employs approximately 160 individuals. As of the date of this filing, Respondent has approximately 40 individuals employed as collectors, 12 as supervisors, and nine as attorneys, with the remaining staff assigned to legal support, clerical, and/or administrative roles.

FACTUAL ALLEGATIONS

20. Respondent collects, among other types of debt, student loan debt for some of the largest student loan lenders in the United States, including Sallie Mae, Navient, National Collegiate Student Loan Trusts. These clients have assigned several thousand student loan debt accounts to Respondent for collection over the course of years.

21. Respondent maintains a policy for complying with the Department's substantiation of debt requirement. This policy, titled "DFS Rule – Substantiation of Debt," revised as of December 27, 2016 ("Substantiation Policy"), states as follows:

> We must provide the consumer with written substantiation of a charged off debt within 60 days of receiving a request for substantiation and must cease collection

> of the debt until written substantiation has been provided to the consumer . . . Documentation, as listed above, will be requested from our client. Once all of the required documents are received, they will be reviewed in order to determine if they comply with the requirements as stated in the [Department's] regulations.

22. Even though the Respondent's Substantiation Policy clearly states that Respondent will provide substantiation of the debt within 60 days, the Department found numerous instances in which Respondent failed to provide consumers with any substantiation of debt.

23. Additionally, while the Respondent's Substantiation Policy states that Respondent will review to ensure compliance with substantiation of debt requirements, Respondent failed to provide hundreds of consumers with documents sufficient to comply with those requirements. Frequently-occurring examples of Respondent's noncompliance include the following:

a. In response to many requests for substantiation, Respondent merely provided consumers with the application and a document entitled "Statement of Purchased Account," which failed to clearly identify the creditors who purchased and sold the consumer's student loan debt.

b. In other instances, Respondent failed to provide the underlying transaction documents, such as a loan application, which created the student loan debts to be collected.

c. Respondent often failed to provide complete chain of title, omitting assignments, sales and transfers of title of the incurred student loan debt.

24. Specific examples of Respondent's responses to individual requests for substantiation include the following:

a. CONSUMER-1 requested that Respondent provide her with information to substantiate whether she actually owed the student loan debt in question. In response to this valid request, Respondent immediately filed a lawsuit against CONSUMER-1. With regard to

the outstanding substantiation request, Respondent blithely informed CONSUMER-1 in writing that she should "refer to the Summons and Complaint" in the newly-filed lawsuit.

b. CONSUMER-2 disputed that CONSUMER-2 owed any student loan debt whatsoever, and requested proof of debts owed. Rather than providing CONSUMER-2 with substantiation of debt, Respondent delayed sending any response to CONSUMER-2, sending a response more than 120 days later. In the response, sent well beyond the 60-day time limit established by law, Respondent conceded it would no longer pursue the alleged debts owed.

c. CONSUMER-3 requested substantiation of debt, and alerted Respondent that she was unfamiliar with the creditor for whom Respondent claimed to be pursuing from CONSUMER-3 the student loan debt. While Respondent, in response, provided CONSUMER-3 with a copy of the relevant loan application, promissory note, and payment history, Respondent failed to provide a chain of title or other documents identifying the actual creditor.

d. CONSUMER-4, an individual in financial distress, questioned whether a debt actually belonged to her. CONSUMER-4 also relayed to Respondent that her financial distress was such that she was on the brink of homelessness. In response, Respondent provided a single document: a judgment obtained four years prior. The judgment reflected a debt of substantially lesser value than the amount sought by Respondent from CONSUMER-4.

SPECIFICATION OF CHARGES

CHARGE I
RESPONDENT VIOLATED 23 NYCRR § 1.4

25. The allegations set forth in paragraphs 1 to 25 above are repeated and realleged as if set forth fully herein.

26. Pursuant to FSL § 408(2), the Superintendent has the authority to levy civil penalties for violations of the regulations promulgated under the Financial Services Law.

27. The Debt Regulation, specifically 23 NYCRR § 1.4, requires debt collectors to provide substantiation of debt if a consumer disputes, orally or in writing, the validity of a charged-off debt or the right of the debt collector to collect on the charged-off debt. The debt collector must provide substantiation of a charged-off debt within 60 days of receiving a request and must cease collection of the debt until written substantiation has been provided to the consumer. Substantiation of debt shall include: (1) the signed contract or signed application that created the debt or, if no signed contract or application exists, a copy of a document provided to the alleged debtor while the account was active, demonstrating that the debt was incurred by the debtor; (2) the charge-off account statement, or equivalent document, issued by the original creditor to the consumer; (3) a statement describing the complete chain of title from the original creditor to the present creditor, including the date of each assignment, sale, and transfer; and (4) records reflecting the amount and date of any prior settlement agreement reached in connection with the debt. If a debt collector cannot satisfy the obligation to provide substantiation of debt or forgive a debt, the debt collector will not avoid potential violations by returning the debt to the creditor. Debt collectors must have the proper documents before collecting on debt.

28. Respondent failed to provide any substantiation of debt to dozens of consumers who requested substantiation.

29. Respondent failed to provide sufficient substantiation of debt to hundreds of consumers.

30. Respondent failed to provide timely substantiation of debt to dozens of consumers, allowing more than 60 days to lapse from the dates that the consumer requests were received by Respondent and the dates of Respondent's corresponding responses.

31. Respondent's failures, for the period beginning on the effective date of the first amendment of this Section, September 9, 2015, through the present, constitute violations of Department's Debt Collection Regulation and Respondent is thus liable to pay a civil penalty of up to one thousand dollars ($1,000) per offense. In this case, each failure to provide any substantiation, timely substantiation, or sufficient substantiation of debt constitutes an independent offense.

PLEASE TAKE NOTICE THAT, as a result of these charged violations, the Department is seeking the following relief:

a) The imposition of civil monetary penalties against Respondent;

b) An order directing Respondent to cease and desist all activity that constitutes the violations of law enumerated herein; and

c) Such other relief as is deemed just and appropriate.

PLEASE TAKE FURTHER NOTICE THAT:

(A) This Notice of Hearing and Statement of Charges is issued to Respondent pursuant to §§ 305 and 306 of the Financial Services Law, and notice of the hearing is given to Respondents in accordance with § 304 of the Financial Services Law.

(B) Your attention is directed to a statement in plain language, attached hereto as Appendix A, summarizing the provisions of 23 NYCRR Part 2. **This statement contains important information concerning your rights and the Department's hearing procedures and should be read carefully.** A copy of 23 NYCRR Part 2 will be furnished upon request.

(C) Interpreter services shall be made available to deaf persons, at no charge.

(D) Should you fail to appear at the time and place set forth above, or at any subsequent date fixed for the hearing, the hearing will proceed as scheduled and may result in the following:

i. The issuance of a report by the Superintendent finding violations of Section 408 of the Financial Services Law and the issuance of an order upon the Respondent requiring it to cease and desist from engaging in such violations; and

ii. The assessment of monetary fines against the Respondent pursuant to Financial Services Law § 408.

Dated: New York, New York
January 8, 2021

NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES

By: Christopher B. Mulvihill
CHRISTOPHER B. MULVIHILL
Deputy Superintendent
Consumer Protection and Financial Enforcement

/s/ Katherine A. Lemire
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