

**UNITED STATES OF AMERICA
BUREAU OF CONSUMER FINANCIAL PROTECTION**

ADMINISTRATIVE PROCEEDING File No.

2020-BCFP- 0023

In the Matter of:

RAB Performance Recoveries, LLC

CONSENT ORDER

The Bureau of Consumer Financial Protection (Bureau) has reviewed RAB Performance Recoveries, LLC's (RAB) (Respondent, as defined below) debt-collection activities and has identified the following law violations: in the Subject States where Respondent operated, it falsely implied that it had a legally enforceable claim for payment and threatened to take action that could not legally be taken by sending consumers demand letters threatening litigation and filing debt-collection lawsuits without the licensure required to recover through the judicial process under applicable state law, in violation of § 1692e(5) and (10) of the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692 *et seq.*, and §§ 1031 and 1036 of the Consumer Financial Protection Act of 2010 (CFPA), 12

U.S.C. §§ 5531, 5536. Under §§ 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563, 5565, the Bureau issues this Consent Order (Consent Order).

I.

Jurisdiction

1. The Bureau has jurisdiction over this matter under §§ 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563 and 5565. The Bureau has independent authority to enforce the CFPA and the FDCPA, 12 U.S.C. § 5481(12)(H), (14).

II.

Stipulation

2. Respondent has executed a “Stipulation and Consent to the Issuance of a Consent Order,” dated November 25, 2020 (Stipulation), which is incorporated by reference and is accepted by the Bureau. By this Stipulation, Respondent has consented to the issuance of this Consent Order by the Bureau under §§ 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563 and 5565, without admitting or denying any of the findings of fact, conclusions of law, or wrongdoing, except that Respondent admits the facts necessary to establish the Bureau’s jurisdiction over Respondent and the subject matter of this action.

III.

Definitions

3. The following definitions apply to this Consent Order:
 - a. “Affected Consumers” means consumers whose Subject Accounts Respondent purchased and then threatened to sue or sued on without the licensure required to recover through the judicial process in one of the Subject States during the Relevant Period.
 - b. “Assisting Others” means helping, aiding, or providing support to others, including but not limited to:
 - i. consulting in any form whatsoever;
 - ii. formulating or providing, or arranging for the formulation or provision of, any advertising or marketing material, including, but not limited to, any telephone sales script, direct mail solicitation, or the text of any Internet website, email, or other electronic communication;
 - iii. providing names of, or assisting in the generation of, potential customers; and
 - iv. participating in or providing services related to the offering, sale, or servicing of a product, or the collection of payments for a product.

- c. “Effective Date” means the date on which the Consent Order is entered on the administrative docket.
- d. “Enforcement Director” means the Assistant Director of the Office of Enforcement for the Bureau of Consumer Financial Protection, or his or her delegate.
- e. “Related Consumer Action” means a private action by or on behalf of one or more consumers or an enforcement action by another governmental agency brought against Respondent based on substantially the same facts as described in Section IV of this Consent Order.
- f. “Relevant Period” means the period from July 21, 2011 to August 30, 2014 as to Rhode Island and New Jersey, and the period from October 1, 2013 to October 24, 2013 as to Connecticut.
- g. “Respondent” means RAB Performance Recoveries, LLC, its successors and assigns.
- h. “Service Providers” is defined by 12 U.S.C. § 5481(26), and includes and person that provides a material service to a covered person, in connection with the offering or provision by such covered person of a consumer financial product or service, including a person that—(i) participates in designing, operating, or maintaining the consumer

financial product or service; or (ii) processes transactions relating to the consumer financial product or service (other than unknowingly or incidentally transmitting or processing financial data in a manner that such data is undifferentiated from other types of data of the same form as the person transmits or processes). “Service Provider” does not include a person solely by virtue of such person offering or providing to a covered person (i) a support service of a type provided to businesses generally or a similarly ministerial service; or (ii) time or space for an advertisement for a consumer financial product or service through print, newspaper, or electronic media.

- i. “Subject Accounts” means:
 - i. in Connecticut, consumer-debt accounts on which Respondent sent demand letters or filed lawsuits in between October 1 and 24, 2013;
 - ii. in Rhode Island, consumer-debt accounts on which Respondent sent demand letters or filed lawsuits in between July 21, 2011 and August 30, 2014; and
 - iii. in New Jersey, all consumer installment loans, installments notes, and retail installment contracts as well as retail charge accounts issued by the seller of the goods charged to the

account and not issued by a third party or a financial institution as defined in N.J. Stat. § 17:11C-2 and N.J. Stat. § 17:16C-1(b), where Respondent filed consumer lawsuits between July 21, 2011 and August 30, 2014.

- j. “Subject States” means Connecticut, New Jersey, and Rhode Island.

IV.

Bureau Findings and Conclusions

The Bureau finds the following:

4. RAB is a “covered person” as defined in the CFPA, 12 U.S.C. § 5481(6).
See also 12 U.S.C. § 5481(5) and (15)(A)(x). RAB is also a “debt collector,” as defined in § 1692a(6) of the FDCPA. 15 U.S.C. § 1692a(6).
5. From at least 1999 through the end of 2012, Respondent purchased consumer-debt accounts from debt brokers and placed the accounts for collections with collections law firms in the states where the consumers were located.
6. After Respondent placed the consumer-debt accounts with collections law firms, the collections law firms sent the consumer debtors letters demanding payment of the full past-due amounts, as well as interest and fees.
7. These demand letters were sent on law-firm letterhead, referenced the fact that the firm has been “retained” for the “collection of this debt.” And,

before litigation, the law firms offered opportunities to settle the consumers' accounts.

8. If consumers did not settle their accounts with Respondent in response to these demand letters, Respondent sued on a majority of the accounts.
9. The vast majority of Respondent's collections lawsuits resulted in default judgments against non-appearing consumers. After securing these default judgments, Respondent used judgment-enforcement mechanisms, including writs of attachment, execution, and garnishment, to collect on the judgments.
10. Respondent stopped purchasing consumer debts in 2012 and filed its last collections lawsuit without the licensure required by applicable state law in August 2014. Since then, Respondent has administered a portfolio of judgments that it obtained against consumers, as well as a handful of stipulated payment agreements that it had entered into with debtors whose accounts it had purchased.
11. For some or all of the Relevant Period, Respondent was required to be licensed under the laws of the Subject States to recover payment of consumer debts through the judicial process. But for some or all of the Relevant Period, Respondent both threatened litigation and sued consumers without the licensure required by law in the Subject States.

Findings and Conclusions as to the FDCPA Violations

12. The FDCPA, 15 U.S.C. § 1692 et seq., is a Federal consumer financial law designed to eliminate abusive debt-collection practices, promote fair debt collection, and provide consumers with an avenue to dispute and obtain validation of debt information in order to ensure the information's accuracy.
13. The Bureau is empowered to enforce the FDCPA under its organic statute, the CFPB. 12 U.S.C. §§ 5563, 5564(a)-(b), 5481(12)(H), (14).
14. The FDCPA applies to “debt collectors,” which the Act defines alternatively as those engaged “in any business the principal purpose of which is the collection of any debts” and those “who regularly collect[]” debts “owed or due another.” 15 U.S.C. § 1692a(6).
15. Respondent is subject to the FDCPA because the principal purpose of its business is the collection of debts.
16. FDCPA § 1692e(5) prohibits threats “to take any action that cannot legally be taken or that is not intended to be taken.” 15 U.S.C. § 1692e(5).
17. In dozens of instances during the Relevant Period, Respondent threatened to sue or sued consumers whose debts it owned without the legal authority to do so under Subject-State licensure laws.
18. Every demand Respondent made to Subject-State consumers without the required licensure, whether through a demand letter referencing a

conditional offer to settle the account or a lawsuit, threatened a legal action that Respondent had no authority to take. Each demand thus violated FDCPA § 1692e(5).

19. FDCPA § 1692e(10) prohibits “[t]he use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.” 15 U.S.C. § 1692e(10).
20. Every demand Respondent made of Subject-State consumers without the required licensure, whether through a demand letter referencing a conditional offer to settle the account or a lawsuit, falsely implied that Respondent had a legally enforceable claim for payment from consumers when it lacked any such legally enforceable claim. Each demand thus violated FDCPA § 1692e(10).

Findings and Conclusions as to CFPB Violations

21. CFPB § 1036(a)(1)(A), 12 U.S.C. § 5536(a)(1)(A), provides that it is “unlawful for any covered person to offer or provide to a consumer any financial product or service not in conformity with Federal consumer law, or otherwise commit any act or omission in violation of a Federal consumer financial law.”
22. Respondent is subject to this prohibition because it is a covered person under the CFPB.

23. Respondent violated this prohibition when it violated the FDCPA provisions set forth above.
24. CFPB §§ 1031 and 1036(a)(1)(B), 12 U.S.C. §§ 5531, 5536(a)(1)(B), prohibit covered person from engaging “in any unfair, deceptive, or abusive act or practice.”
25. Respondent is subject to this prohibition because it is a covered person under the CFPB.
26. An act or practice is deceptive under the CFPB if it misleads or is likely to mislead a reasonable consumer, and the misrepresentation is material.
27. Respondent’s threats to sue and actual lawsuits on the Subject Accounts during the Relevant Period implicitly represented that it had a legally enforceable right to recover payment from consumers through the judicial process when, in fact, its failure to adhere to applicable state-licensure laws meant it had no such right.
28. These misrepresentations were material because a reasonable consumer’s decision whether and how to respond to a demand letter or lawsuit would likely be affected by their knowledge that the collector had no legal right to payment on their account that could be enforced through the judicial process.

29. These misrepresentations were thus false, misleading, and material, and violated the CFPA's prohibition against deceptive acts or practices.

ORDER

V.

Conduct Provisions

IT IS ORDERED, under §§ 1053 and 1055 of the CFPA, that:

30. Respondent, and its officers, agents, servants, employees, and attorneys who have actual notice of this Consent Order, whether acting directly or indirectly, in connection with the collection of debts, may not misrepresent, or assist others in misrepresenting, expressly or impliedly, that Respondent has a legally enforceable right to recover the debt through the judicial process. Respondent represents that its present members have actual notice of this Consent Order and that it will deliver this Consent Order to any future member(s) at or before the time of the transfer or acquisition of any membership interest in the Respondent.
31. Respondent, acting directly or indirectly, is permanently restrained from collecting on the Subject Accounts. Respondent is also permanently restrained from Assisting Others in engaging in such conduct.
32. Respondent must take the following affirmative actions:

- a. take all necessary steps to vacate all judgments not discharged in bankruptcy or previously satisfied on the Subject Accounts;
- b. suspend and seek judicial dissolution of all writs of attachment, execution, or garnishment, and any other post-judgment enforcement devices, used to collect on judgments Respondent obtained on the Subject Accounts; and
- c. cease collecting on any stipulated agreements Respondent entered into with consumers on the Subject Accounts, and send consumers notices of accord and satisfaction of such stipulated agreements.

VI.

Order to Pay Civil Money Penalties

IT IS FURTHER ORDERED that:

33. Under § 1055(c) of the CFPB, 12 U.S.C. § 5565(c), by reason of the violations of law described in Section IV of this Consent Order and considering the factors in 12 U.S.C. § 5565(c)(3), Respondent must pay a civil money penalty of \$204,000 to the Bureau.
34. Within 10 days of the Effective Date, Respondent must pay the civil money penalty by wire transfer to the Bureau or to the Bureau's agent in compliance with the Bureau's wiring instructions.

35. The civil money penalty paid under this Consent Order will be deposited in the Civil Penalty Fund of the Bureau as required by § 1017(d) of the CFPA, 12 U.S.C. § 5497(d).
36. Respondent must treat the civil money penalty paid under this Consent Order as a penalty paid to the government for all purposes. Regardless of how the Bureau ultimately uses those funds, Respondent may not:
 - a. Claim, assert, or apply for a tax deduction, tax credit, or any other tax benefit for any civil money penalty paid under this Consent Order; or
 - b. Seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made under any insurance policy, with regard to any civil money penalty paid under this Consent Order.
37. To preserve the deterrent effect of the civil money penalty in any Related Consumer Action, Respondent may not argue that Respondent is entitled to, nor may Respondent benefit by, any offset or reduction of any compensatory monetary remedies imposed in any Related Consumer Action because of the civil money penalty paid in this action. If the court in any Related Consumer Action offsets or otherwise reduces the amount of compensatory monetary remedies imposed against Respondent based on the civil money penalty paid in this action or based on any payment that the Bureau makes from the Civil

Penalty Fund, Respondent must, within 30 days after entry of a final order granting such offset or reduction, notify the Bureau, and pay the amount of the offset or reduction to the U.S. Treasury. Such a payment will not be considered an additional civil money penalty and will not change the amount of the civil money penalty imposed in this action.

38. In the event of any default on Respondent's obligations to make payment under this Consent Order, interest, computed under 28 U.S.C. § 1961, as amended, will accrue on any outstanding amounts not paid from the date of default to the date of payment, and will immediately become due and payable.
39. Respondent relinquishes all dominion, control, and title to the funds paid to the fullest extent permitted by law and no part of the funds may be returned to Respondent.
40. Under 31 U.S.C. § 7701, Respondent, unless it has already have done so, must furnish to the Bureau its taxpayer identification numbers, which may be used for purposes of collecting and reporting on any delinquent amount arising out of this Consent Order.
41. Within 60 days of the entry of a final judgment, consent order, or settlement in a Related Consumer Action, Respondent must notify the Enforcement Director of the final judgment, consent order, or settlement in writing. That

notification must indicate the amount of redress, if any, that Respondent paid or are required to pay to consumers and describe the consumers or classes of consumers to whom that redress has been or will be paid.

VII.

Reporting Requirements

IT IS FURTHER ORDERED that:

42. Respondent must notify the Bureau of any development that may affect compliance obligations arising under this Consent Order, including but not limited to the filing of any bankruptcy or insolvency proceeding by or against Respondent, a change in Respondent's name or address, or a change in the membership interest of Respondent. Respondent must provide this notice, if practicable, at least 30 days before the development, but no later than 14 days after the development.
43. Within 10 days of the Effective Date, Respondent must:
 - a. Designate at least one telephone number and email, physical, and postal address as points of contact, which the Bureau may use to communicate with Respondent;
 - b. Identify all businesses for which any member of the Respondent is the majority owner, or directly or indirectly controls, by all of their

- names, telephone numbers, and physical, postal, email, and Internet addresses;
- c. Describe the activities of each such business, including the products and services offered, and the means of advertising, marketing, and sales.
 - d. Describe in detail any member's involvement in any business for which he performs services in any capacity or which he wholly or partially owns, including the member's title, role, responsibilities, participation, authority, control, and ownership.
44. Respondent must report any change in the information required to be submitted under Paragraph 42 at least 30 days before the change or as soon as practicable after the learning about the change, whichever is sooner.
45. Within 90 days of the Effective Date, and again one year after the Effective Date, Respondent must submit to the Enforcement Director an accurate written compliance progress report (Compliance Report), which, at a minimum:
- a. Lists each applicable paragraph and subparagraph of the Order and describes in detail the manner and form in which Respondent have complied with each such paragraph and subparagraph of the Consent Order; and

- b. Attaches a copy of each Order Acknowledgment obtained under Section VIII unless previously submitted to the Bureau.

VIII.

Order Distribution and Acknowledgment

IT IS FURTHER ORDERED that:

46. Within 7 days of the Effective Date, Respondent must submit to the Enforcement Director an acknowledgment of receipt of this Consent Order, sworn under penalty of perjury.
47. Within 30 days of the Effective Date, Respondent , for any business for which it is the majority owner or which he directly or indirectly controls, must deliver a copy of this Consent Order to its managers, members, employees, Service Providers, or other agents and representatives who have responsibilities related to the subject matter of the Consent Order.
48. For 5 years from the Effective Date, Respondent and its members must – for any business subject to the Bureau’s jurisdiction of which it or its members is the majority owner, or that it or its members directly or indirectly control – deliver a copy of this Consent Order to any business entity resulting from any change in structure referred to in Section VII, including any future managers, members, employees, Service Providers, or other agents and

representatives who will have responsibilities related to the subject matter of the Consent Order before they assume their responsibilities.

49. Respondent must secure a signed and dated statement acknowledging receipt of a copy of this Consent Order, ensuring that any electronic signatures comply with the requirements of the E-Sign Act, 15 U.S.C. § 7001 *et seq.*, within 30 days of delivery, from all persons receiving a copy of this Consent Order under this Section.
50. Within 90 days of the Effective Date, Respondent must provide the Bureau with a list of all persons and their titles to whom this Consent Order was delivered through that date under Paragraphs 47-48 and a copy of all signed and dated statements acknowledging receipt of this Consent Order under Paragraph 49.

IX.

Recordkeeping

IT IS FURTHER ORDERED that:

51. Respondent must create and retain the following business records, for any business subject to the Bureau's jurisdiction for which Respondent or its members, individually or collectively, is a majority owner or which it directly or indirectly controls:
 - a. all documents and records necessary to demonstrate full compliance

- with each provision of this Consent Order, including all submissions to the Bureau; and
- b. all consumer complaints and refund requests (whether received directly or indirectly, such as through a third party), and any responses to those complaints or requests.
52. Respondent must make the documents identified in Paragraph 50 available to the Bureau upon the Bureau's request.

X.

Notices

IT IS FURTHER ORDERED that:

53. Unless otherwise directed in writing by the Bureau, Respondent must provide all submissions, requests, communications, or other documents relating to this Consent Order in writing, with the subject line, "In re RAB Performance Recoveries, LLC, File No. 2020 - BCFP - 0023," and send them by overnight courier or first-class mail to the below address and contemporaneously by email to Enforcement_Compliance@cfpb.gov:

Assistant Director for Enforcement
Bureau of Consumer Financial Protection
ATTENTION: Office of Enforcement
1700 G Street, N.W.
Washington D.C. 20552.

XI.

Cooperation with the Bureau

IT IS FURTHER ORDERED that:

54. Respondent must cooperate fully with the Bureau in this matter and in any investigation related to or associated with the conduct described in Section IV. Respondent must provide truthful and complete information, evidence, and testimony. Respondent must appear for interviews, discovery, hearings, trials, and any other proceedings that the Bureau may reasonably request upon 15 days written notice, or other reasonable notice, at such places and times as the Bureau may designate, without the service of compulsory process.

XII.

Compliance Monitoring

IT IS FURTHER ORDERED that:

55. Within 14 days of receipt of a written request from the Bureau, Respondent must provide requested information related to its compliance with this Order, which must be made under penalty of perjury; provide sworn testimony; or produce documents.

56. For purposes of this Section, the Bureau may communicate directly with Respondent, unless Respondent retains counsel related to these communications.
57. Respondent must permit Bureau representatives to interview any employee or other person affiliated with Respondent who has agreed to such an interview. The person interviewed may have counsel present.
58. Nothing in this Consent Order will limit the Bureau's lawful use of civil investigative demands under 12 C.F.R. § 1080.6 or other compulsory process.

XIII.

Modifications to Non-Material Requirements

IT IS FURTHER ORDERED that:

59. Respondent may seek a modification to non-material requirements of this Consent Order (*e.g.*, reasonable extensions of time and changes to reporting requirements) by submitting a written request to the Enforcement Director.
60. The Enforcement Director may, in his or her discretion, modify any non-material requirements of this Consent Order (*e.g.*, reasonable extensions of time and changes to reporting requirements) if he or she determines good cause justifies the modification. Any such modification by the Enforcement Director must be in writing.

XIV.

Administrative Provisions

IT IS FURTHER ORDERED that:

61. The provisions of this Consent Order do not bar, estop, or otherwise prevent the Bureau, or any other governmental agency, from taking any other action against Respondent, except as described in Paragraph 62.
62. The Bureau releases and discharges Respondent from all potential liability for law violations that the Bureau has or might have asserted based on the practices described in Section IV of this Consent Order, to the extent such practices occurred before the Effective Date and the Bureau knows about them as of the Effective Date. The Bureau may use the practices described in this Consent Order in future enforcement actions against Respondent and its affiliates, including, without limitation, to establish a pattern or practice of violations or the continuation of a pattern or practice of violations or to calculate the amount of any penalty. This release does not preclude or affect any right of the Bureau to determine and ensure compliance with the Consent Order, or to seek penalties for any violations of the Consent Order.
63. This Consent Order is intended to be, and will be construed as, a final Consent Order issued under § 1053 of the CFPA, 12 U.S.C. § 5563, and

expressly does not form, and may not be construed to form, a contract binding the Bureau or the United States.

64. This Consent Order will remain effective and enforceable, except to the extent that, and until such time as, any provisions of this Consent Order have been amended, suspended, waived, or terminated in writing by the Bureau.
65. Calculation of time limitations will run from the Effective Date and be based on calendar days, unless otherwise noted.
66. Should Respondent seek to transfer or assign all or part of its operations that are subject to this Consent Order, Respondent must, as a condition of sale, obtain the written agreement of the transferee or assignee to comply with all applicable provisions of this Consent Order.
67. The provisions of this Consent Order will be enforceable by the Bureau. For any violation of this Consent Order, the Bureau may impose the maximum amount of civil money penalties allowed under § 1055(c) of the CFPA, 12 U.S.C. § 5565(c). In connection with any attempt by the Bureau to enforce this Consent Order in federal district court, the Bureau may serve Respondent wherever Respondent may be found, and Respondent may not contest that court's personal jurisdiction over Respondent.
68. This Consent Order and the accompanying Stipulation contain the complete agreement between the parties. The parties have made no promises,

representations, or warranties other than what is contained in this Consent Order and the accompanying Stipulation. This Consent Order and the accompanying Stipulation supersede any prior oral or written communications, discussions, or understandings.

69. Nothing in this Consent Order or the accompanying Stipulation may be construed as allowing the Respondents, to violate any law, rule, or regulation.

IT IS SO ORDERED, this 4th day of December, 2020.



Kathleen L. Kraninger
Director
Bureau of Consumer Financial Protection