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To: House Committee on Business and Labor
Representative Paul Holvey, Chair
Representative Lucetta Elmer, Vice Chair
Representative Nathan Sosa, Vice Chair

From: Anne Thomas, Chief Compliance Officer, Cavalry Portfolio Services, LLC

Re: Oregon House Bill 2008 - Opposition

Respected Representatives Paul Holvey, Lucetta Elmer, Nathan Sosa and respected members of the House Committee on Business and Labor, my name is Anne Thomas and I am the Chief Compliance Officer of Cavalry Portfolio Services, LLC. On behalf of Cavalry Portfolio Services, LLC and its affiliates ("Cavalry"), thank you for allowing us this opportunity to offer comments in opposition to Oregon House Bill 2008 (H.B. 2008).

Cavalry is an RMAi[1] Certified Professional Receivables Company located in Greenwich, Connecticut. Cavalry collects accounts on behalf of our debt buyer affiliate companies and we use collection agencies and law firms, some of which are located in Oregon, to collect on our behalf. We have a longstanding relationship working with state and federal legislators to create and amend consumer protection statutes that protect consumers from harm, while being fair to legitimate debt collection businesses. We support efforts to identify and take action against bad actors who generally are not members of RMAI, and certainly are not certified members of RMAI. Cavalry does not support bad actors in the collection of consumer debt. In the development and implementation of its own policies and procedures, Cavalry encourages open and honest dealing with consumers.

While Cavalry understands the legislature's efforts to ensure fair dealing between consumers, businesses and creditors, and while Cavalry applauds the efforts being made on this bill but, we have some concerns.

One of our primary concerns with H.B. 2008 is that it centers on a provision that adds to state law, both a new class action provision, and it also includes the possibility of an award of punitive damages without caps on liability. We feel that either the class action provision should be struck entirely, or class action damages should be limited under the class action provision as they are under the Fair Debt Collection Practices Act (" FDCPA"), the federal law that was designed to eliminate abusive, deceptive and unfair debt collection practices.

The purpose of punitive damages is to punish misconduct and deter future misconduct, but both punitive damages and class action remedies are already available to

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[1] The Receivables Management Association International ("RMAi") is the nonprofit trade associate that represents companies that purchase performing and nonperforming receivables on the secondary market.

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injured consumers in Oregon. Punitive damages are already available to Oregonians under current state law and there is already a class provision under the FDCPA.

We submit that punitive damages are not appropriate in the class context because, where punitive damages are warranted in an individual claim, they are likely based on widespread violations that are better addressed in a class action where individual consumers will be compensated, for example under the existing provisions of the FDCPA.

Caps on Damages in the Class Context

If the legislature proceeds with the addition of a state class action provision, the award of damages must be capped and punitive damages should not be allowed. The FDCPA already allows for class actions, with damages capped at the lesser of 1% of the debt collector's net worth or $500,000. The legislative history of the FDCPA reflects an interest by Congress "to protect consumers from a host of unfair, harassing and deceptive debt collection practices without imposing unnecessary restrictions on ethical debt collectors," including "nuisance suits." These additions will significantly increase litigation costs for financial services companies, thus increasing the cost of doing business in Oregon. Those cost increases will be passed on to all Oregon consumers in the form of increased cost of financial products and services.

The FDCPA does not include a punitive damages provision but rather states that "in the case of any action by an individual, [the plaintiff may recover] such additional damages as the court may allow, but not exceeding $1,000." 15 U.S.C. §1692k(a)(2)(A). Courts have essentially looked at this and said that punitive-type damages are limited by the $1,000 cap). This is not true under the Oregon law.

Punitive damages without caps are subject to constitutional due process challenges. The due process clauses of the 5th and 14th amendments to the U.S. Constitution prohibit Congress and the state from imposing civil penalties that are disproportionate to the underlying offense. Large punitive damages awards may implicate federal constitutional standards. Defendants frequently challenge these damage awards in appellate courts.

The Statute of Limitations Period is Excessive

Another concern with the bill is, the excessively long statute of limitations provision in the bill, as well as the provision defining the date that starts the statute of limitations period.

Statute of limitations promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost and to protect parties from defending stale claims. The bill proposes increasing the one-year statute of limitations period to a six-year statute of limitations period. Respectfully, six years is excessive for this type of statue. For example, the FDCPA only provides for a one-year statute of limitations.

Appropriate and finite statute of limitations periods allow businesses to reduce the out-of-pocket costs associated with the uncertainty of protracted litigation and legal exposure. They allow those resources to be allocated to more beneficial uses, such as offering more affordable credit products and services.

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An increase in the statute of limitations will force companies to keep more and more documentation for a longer period to defend against lawsuits. Those increases in costs will be passed along to Oregon consumers, translating to higher interest rates, and unavailability of credit to underbanked consumers.

The Statute of Limitations Period Should Begin at the Date of Injury Not Discovery

The provisions of the bill will essentially require that businesses keep records indefinitely because the statute of limitations runs "from the date of discovery" of the injury instead of from a date certain.

The "from the date of discovery" concept of the discovery rule is not appropriate given that this is a garnishment statute, because injury is apparent to the debtor immediately. Thus, the statute of limitations period should be based on the date of the injury, not the "discovery of the unlawful method, act or practice." The date of discovery of the injury, conceptually, could be 10, 15, 20 or more years into the future. Thus, the costs associated with litigation will drastically increase due to the need to retain business records and other evidence to defend against these types of claims in perpetuity.

Applying the "from the date of discovery" rule to these types of lawsuits opens up protracted litigation and subjects law abiding companies to endless discovery requests, driving up attorney's fees for plaintiff's counsel.

Longer Statute of Limitations Periods Create Data Privacy and Security Concerns

Statute of limitations certainty equates to increased data privacy and security for consumers because it allows companies to delete business records once the statute of limitations expires. Unfortunately, the provisions of the bill that apply the statute of limitations "from the date of discovery" will require companies to keep business records in perpetuity to allow for defense of potentially baseless lawsuits.

Companies will be forced to retain consumers' sensitive financial documentation forever. Increased retention periods for financial records presents increased opportunity for data security breaches and data privacy violations. Data security breaches drive up business costs for companies, subject consumers to privacy risks and increase the likelihood consumers will become the victims of criminal financial fraud. As a matter of public policy, legislation should not increase the threat of data privacy and security concerns.

As drafted, we believe this legislation will bring unintended harm to consumers and unnecessary burdens placed on the business community. For all the reasons mentioned above, we strongly urge you to oppose H.B. 2008 as written.

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Cavalry appreciates your time in reviewing our concerns and recommendations. Please feel free to contact me at (914) 742-4382 to discuss further.

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Thank you for your consideration,

Anne Thomas
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