

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Collection Agency License
3 of:

No. 16F-BD077-SBD

CONSENT ORDER

4 **U.S. COLLECTIONS WEST, INC. AND
5 DONALD W. DARNELL, PRESIDENT**

6 2320 West Peoria Avenue, STE C-116
7 Phoenix, AZ 85029

Respondents.

8 On May 5, 2016 Arizona Department of Financial Institutions ("Department") issued an
9 Order to Cease and Desist; Notice of Opportunity For Hearing; Consent to Entry of Order, alleging
10 that U.S. Collections West, Inc. ("Respondent Company") and Donald W. Darnell, President
11 (collectively, "Respondents") violated Arizona law. Wishing to resolve this matter in lieu of an
12 administrative hearing, Respondents, without admitting or denying the following Findings of Facts
13 and Conclusions of Law, consent to the entry of the following Order.

14 FINDINGS OF FACT

15 1. Respondent Company is an Arizona corporation and has been registered with the
16 Arizona Corporation Commission since July 29, 1986. At all times pertinent for this Order, Mr.
17 Darnell has been the President of Respondent Company.

18 2. Respondents are authorized to transact business in Arizona as a collection agency,
19 license number CA 0007027, within the meaning of A.R.S. § 32-1001, *et seq.*

20 3. Respondent Company's business is that of soliciting claims for collection and the
21 collection of claims owed, due, or asserted to be owed or due, within the meaning of A.R.S. § 32-
22 1001(2)(a).

23 4. Respondents are not exempt from licensure as a collection agency within the meaning
24 of A.R.S. § 32-1004.

25 5. An examination of Respondent Company, which was commenced on May 22, 2014,
26 and concluded on October 31, 2015, with the onsite inspection conducted on June 3, 2014, revealed

1 the following number of complaints since the Department's regulatory action against Respondent
2 Company on February 23, 2010:

3 a. The Department has received twenty-nine (29) complaints against Respondent
4 Company for its collection practices ("DFI Complaints"); and

5 b. The Arizona Attorney General's Office has received ten (10) complaints against
6 Respondent Company for its collection practices ("AG Complaints").

7 6. The volume of these instances indicates that Respondent Company does not have a
8 quality control system in place to ensure compliance with Arizona law. The pattern of errors within
9 Respondent Company's verification or investigation process, consisting of instances of harassment,
10 failure to timely respond to claims of dispute and/or take remedial actions, demonstrate that
11 Respondent Company's practices are not compliant with Arizona law. Specifically, the Department
12 found the following deficiencies in the DFI Complaints and AG Complaints:

13 a. At least thirty-seven (37) instances where Respondent Company failed to deal openly
14 and fairly with a debtor in violation of A.R.S. § 32-1051(3).

15 b. At least twenty-one (21) instances where Respondent Company engaged in unfair or
16 misleading practices or resorted to oppressive, vindictive or illegal means or methods
17 of collection in violation of A.R.S. § 32-1051(4).

18 c. At least five (5) instances where Respondent Company failed to keep and maintain
19 books, accounts and records adequate to provide a clear and readily understandable
20 record of all business conducted in violation of A.A.C. R20-4-1504(B)(2).

21 d. At least one (1) instance where Respondent Company represented or implied that the
22 debtor was, or may be, subject to criminal prosecution or arrest because of a failure to
23 pay the debt in violation of A.A.C. R20-4-1508(C).

24 e. At least two (2) instances where Respondent Company was attempting to collect fees
25 that the debtor was not obliged to pay in violation of A.A.C. R20-4-1509(A).

26 f. At least two (2) instances where Respondent Company threatened to start legal

1 proceedings against a debtor when no such action was intended at the time the threat
2 was made in violation of A.A.C. R20-4-1509(C).

3 g. At least one (1) instance where Respondent Company threatened the involvement of
4 an attorney in an effort to collect a debt owed when no such action was intended at
5 the time the threat was made in violation of A.A.C. R20-4-1509(D).

6 h. At least fifteen (15) instances where Respondent Company used unauthorized or
7 oppressive tactics designed to harass a debtor to pay a debt in violation of A.A.C.
8 R20-4-1511(A).

9 i. At least four (4) instances where Respondent Company used language that ridiculed,
10 disgraced, or humiliated debtors in violation of A.A.C. R20-4-1511(B).

11 j. At least one (1) instance where Respondent Company stated, implied, or tended to
12 imply, in written or oral communications, that the debtor is guilty of fraud or any
13 other crime in violation of A.A.C. R20-4-1511(C).

14 k. At least six (6) instances where Respondent Company allowed its representatives or
15 officers to use abusive language when dealing with debtors in violation of A.A.C.
16 R20-4-1511(D).

17 l. At least one (1) instance where Respondent Company contacted a third party and
18 informed the third party of the debt in violation of A.A.C. R20-4-1512(B).

19 m. At least three (3) instances where Respondent Company failed to cease contact with a
20 debtor after having been given written notice to cease communication in violation of
21 A.A.C. R20-4-1513(B).

22 n. At least fifty-seven (57) instances where Respondent Company failed to provide the
23 debtor with information, access to records, and/or documentation of the debt as
24 required by A.A.C. R20-4-1514(A)(B)(C).

25 o. At least three (3) instances where Respondent Company's representatives
26 misrepresented their position with Respondent Company and identified themselves as

1 an attorney, or implied such, in violation of A.A.C. R20-4-1520(A)(1)(2).

2 p. At least twenty-nine (29) instances where Respondent Company did not provide
3 evidence of the debt or did not investigate after having been informed that the debt
4 was not owed in violation of A.A.C. R20-4-1521. .

5 7. The Department is also aware of twenty-three (23) complaints to the Better Business
6 Bureau and six (6) complaints to the Consumer Finance Protection Bureau against Respondent
7 Company concerning its collection agency practices, which indicate similar violative patterns to
8 those found in the DFI Complaints and AG Complaints.

9 **CONCLUSIONS OF LAW**

10 1. Under A.R.S. Title 6 and Title 32, Chapter 9, the Superintendent has the authority and
11 duty to regulate all persons engaged in the collection agency business and with the enforcement of
12 statutes, rules, and regulations relating to collection agencies.

13 2. Respondent Company's conduct, as alleged above, constitutes a violation of the
14 statutes and rules governing collection agents as follows:

- 15 a. A.R.S. § 32-1051(3) by not dealing openly, fairly and honestly while conducting
16 business.
- 17 b. A.R.S. § 32-1051(4) by engaging in unfair or misleading practices or resorting to any
18 oppressive, vindictive or illegal means or methods of collection.
- 19 c. A.A.C. R20-4-1504(B)(2) by failing to keep and maintain books, accounts and
20 records adequate to provide a clear and readily understandable record of all business
21 conducted.
- 22 d. A.A.C. R20-4-1508(C) by representing or implying that the debtor was, or may be
23 subject to criminal prosecution or arrest because of a failure to pay the debt.
- 24 e. A.A.C. R20-4-1509(A) by threatening to collect or attempt to collect an attorney's
25 fee, collection cost or other fee that debtor is not obliged to pay under the debtor's
26 contract with the collection agency's creditor client.

- 1 f. A.A.C. R20-4-1509(C) by threatening to start legal proceedings against a debtor
2 without the intention, at the time of the threat, to sue.
- 3 g. A.A.C. R20-4-1509(D) by threatening to turn an account over to a lawyer unless the
4 collection agency actually intends to do so at the time of the threat.
- 5 h. A.A.C. R20-4-1511(A) by using unauthorized or oppressive tactics designed to harass
6 any person to pay a debt.
- 7 i. A.A.C. R20-4-1511(B) by using written or oral communications that ridicule,
8 disgrace, or humiliate any person or tend to ridicule, disgrace or humiliate any person.
- 9 j. A.A.C. R20-4-1511(C) by stating, implying or tending to imply, in written or oral
10 communications, that the debtor is guilty of fraud or any other crime.
- 11 k. A.A.C. R20-4-1511(D) by permitting its agents, employees, representatives, debt
12 collectors or officers to use obscene or abusive language in efforts to collect a debt.
- 13 l. A.A.C. R20-4-1512(B) by contacting a third party and informing the third party of the
14 debt.
- 15 m. A.A.C. R20-4-1513(B) by failing to stop contacting debtors after debtor refuses to
16 pay the debt or after receiving a written notice requesting all further communication
17 with debtor be stopped.
- 18 n. A.A.C. R20-4-1514(A)(B)(C) by failing to provide the debtor with information,
19 access to records, and/or documentation of the debt.
- 20 o. A.A.C. R20-4-1520(A)(1)(2) by allowing its debt collector, agent, representative,
21 employee or officer to misrepresent the person's true position with the collection
22 agency or claim to be, or imply that the person is, an attorney unless the person is
23 licensed to practice law.
- 24 p. A.A.C. R20-4-1521 by failing to give copies of its evidence of the debt to the debtor
25 or their attorney on request; and after providing the evidence, but before continuing
26 collection efforts, failing to investigate any claim by the debtor or the debtor's

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attorney, that the debtor has been misidentified, the debt has been paid, the debt has been discharged in bankruptcy, or based on any other reasonable claim, the debt is not owed.

3. By the conduct set forth above, Respondents have failed to conduct their collection agency business in accordance with the law, by violating the A.R.S. and A.A.C.

4. The violations, set forth above, constitute grounds for: (1) the issuance of an order under A.R.S. § 6-137 directing Respondents to cease and desist from the violative conduct and to take the appropriate affirmative actions, within a reasonable period of time prescribed by the Superintendent, to correct the conditions resulting from the unlawful acts, practices, and transactions; (2) the imposition of a civil monetary penalty under A.R.S. § 6-132; (3) the suspension or revocation of Respondents' license under A.R.S. § 32-1053; and (4) an order or any other remedy necessary or proper for the enforcement of statutes and rules regulating collection agencies under A.R.S. §§ 6-123 and 6-131.

ORDER

1. Respondents shall immediately cease and desist from committing the violations set forth in the Findings of Fact and Conclusions of Law. Respondents shall immediately:

- a. Deal openly, fairly and honestly in the conduct of the collection agency business.
- b. Cease from using unauthorized or oppressive tactics designed to harass any person to pay a debt.
- c. Keep and maintain books, accounts, and records adequate to provide a clear and readily understandable record of all business conducted.
- d. Cease threatening that the debtor was, or may be, subject to criminal prosecution or arrest because of a failure to pay the debt.
- e. Cease attempting to collect fees that the debtor was not obliged to pay.
- f. Cease threatening to start legal proceedings against a debtor when no such action is intended at the time the threat is made.

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- g. Cease threatening the involvement of an attorney in an effort to collect a debt owed if no such action is intended at the time the threat is made.
- h. Cease using unauthorized or oppressive tactics designed to harass a debtor to pay a debt.
- i. Cease using language that ridicules, disgraces or humiliates debtors.
- j. Cease stating or implying, in written or oral communications, that the debtor is guilty of fraud or any other crime.
- k. Cease allowing its representatives or officers to use abusive language when dealing with debtors.
- l. Cease contacting a third party and informing them of the debt violation.
- m. Cease contact with a debtor after having been given written notice to cease communication.
- n. Provide the debtor with information, access to records and documentation of the debt.
- o. Cease allowing its representatives from misrepresenting their position with Respondent Company.
- p. Investigate disputed debt claims and provide debtors with evidence of the debt upon request.

2. Respondents shall pay to the Department a civil money penalty in the amount of twenty-five thousand dollars (\$25,000.00) by July 15, 2016. U.S. Collections West, Inc. and Mr. Donald W. Darnell are jointly and severally liable for payment of the civil money penalty.

3. Respondents shall comply with all Arizona statutes and rules regulating Arizona collection agencies (A.R.S. §32-1001, *et seq.* and A.A.C. Title 20, Chapter 4, Article 15).

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1 COPY emailed and/or mailed same date to:

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4 2320 West Peoria Ave., STE C-116

5 Phoenix, AZ 85029

6 ldarnell@uscwest.com

7 Respondents and Statutory Agent for Respondent Company

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9 # 5128656

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