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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK ss.

SUPERIOR COURT DIVISION  
 CIVIL ACTION NO. 2484CV00340

COMMONWEALTH OF MASSACHUSETTS

Plaintiff,

v.

CHAMPION FUNDING, INC.,  
 CHAMPION FUNDING, LLC,  
 JUDGMENT ACQUISITIONS UNLIMITED, INC.)  
 ANDREW METCALF, d/b/a  
 JUDGMENT ACQUISITIONS UNLIMITED,  
 and  
 ANDREW METCALF, Individually

Defendants.

**COMMONWEALTH'S MEMORANDUM IN SUPPORT OF  
 MOTION FOR PRELIMINARY INJUNCTION**

**I. INTRODUCTION**

The Commonwealth of Massachusetts ("the Commonwealth"), by and through the Attorney General, Andrea Joy Campbell, has brought this action in the public interest pursuant to G.L. c. 12, § 10 and G.L. c. 93A, § 4, to enjoin the Defendants' use of unfair and deceptive debt collection practices that violate state law. The Commonwealth's request for a Preliminary Injunction is supported by the Complaint filed in this matter, five affidavits<sup>1</sup>, exhibits produced

<sup>1</sup>These affidavits are cited for support throughout this memorandum, the affidavits are listed here for the Court's ease of reference:

1. Affidavit of Anthony Crespi: Senior Investigator, Civil Investigative Division in the Public Protection and Advocacy Bureau of the Massachusetts Attorney General's Office, (**Ex. 1**; App. 1) ("Investigator Aff.")
2. Affidavit of Paulette Parham: consumer whose car was seized by Defendants, (**Ex. 2**; App. 47) ("Parham Aff.")
3. Affidavit of April Washington: consumer whose car was seized by Defendants, (**Ex. 3**; App. 50) ("Washington Aff.")

by the Defendants in response to a Civil Investigative Demand, and Defendant Andrew Metcalf's testimony under oath.

All Defendants are engaged in the business of consumer debt collection or debt purchasing in some form. Defendant Andrew Metcalf ("Metcalf") is the owner of Champion Funding, Inc. ("Champion, Inc."), Champion Funding, LLC ("Champion, LLC"), and Judgment Acquisitions Unlimited, Inc. ("JAU"), (collectively, the "Corporate Defendants").

At Defendant Metcalf's direction, the Corporate Defendants use an assortment of aggressive methods to extract payments from consumers, including seizing consumers' cars to coerce payments from consumers. They do so even when that car is worth so little, that it is exempt from seizure by law. The Defendants also file collection lawsuits containing dubious claims for interest, in the name of a creditor that does not own the debt, and without the representation of an attorney. In many instances, the Defendants do not have written procedures or training materials and to the extent they do, the Defendants fail to adhere to them. As a result, as alleged in the Commonwealth's Complaint and supported by the attached affidavits, the Defendants have violated the Consumer Protection Act and should be prohibited from engaging in similar practices during the pendency of this action to protect the public.

## **II. FACTUAL BACKGROUND**

### **A. The Parties**

Defendant Champion, Inc., formed in 2017, is a debt buyer with the principal business purpose to "purchase and sell charged off debt portfolios." *Investigator Aff.* ¶ 16 (App. 7);

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4. Affidavit of Cristi Legare: consumer whose car was seized by Defendants, (Ex. 4; App. 67) ("Legare Aff.")
  5. Affidavit of Troy Scott: consumer whose car was seized by Defendants, (Ex. 5; App. 70) ("Scott Aff.")

*Champion Funding, Inc. 2022 SOC Annual Report* (**Ex. 6**; App. 73).<sup>2</sup> In 2020, Defendant Andrew Metcalf also formed Defendant Champion, LLC for the stated purpose of “purchasing and selling of debt portfolios.” *Investigator Aff.* ¶ 16 (App. 7); *Champion Funding, LLC Certificate of Organization* (**Ex. 7**; App. 76). Defendant JAU, formed by Metcalf in 2021, is a debt collector engaged in the business of “retail & commercial debt acquisition and collection.” *Investigator Aff.* ¶ 16 (App. 7); *Judgment Acquisitions Unlimited, Inc. 2022 SOC Report* (**Ex. 8**; App. 81). Defendant Metcalf is the President, Treasurer, Secretary, Director, and sole proprietor of Champion, Inc. and JAU and the Manager of Champion, LLC. *Investigator Aff.* ¶ 16 (App. 7). Champion, Inc., Champion, LLC, JAU, and Metcalf are referred to herein collectively as “the Defendants.”

## **B. Champion and JAU’s Business Model**

### **1. Debt Purchasing and Collection**

The Defendants are engaged in the business of defaulted debt purchasing, ownership, and collection. Defendants Champion, Inc. and JAU, under the direction of Defendant Metcalf, purchase old judgments and defaulted consumer debt. *Deposition of Andrew Metcalf* 160:1-168:17; , March 20, 2023 (**Ex. 9**) (hereinafter “*Metcalf Dep.*”).<sup>3</sup> After purchasing accounts, the Defendants use several methods to collect debts from consumers, including placing telephone calls, sending letters, text messages, and emails, filing litigation, garnishing wages, recording

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<sup>2</sup> The Defendants have produced certain documents in response to Civil Investigative Demands (“CIDs”) issued by the Office of the Attorney General. *Civil Investigative Demands* (**Ex. 13**; App. 190). The Defendants’ verification of these documents is attached as **Exhibit 14**. **Exhibits 6 – 8** and **10 – 12** are true and accurate copies of documents included in the Defendants’ response to the CIDs. These exhibits are identified more precisely in the Table of Contents to the Exhibits.

<sup>3</sup> Excerpts from Defendant Metcalf’s Deposition are cited throughout by the page and line numbers appearing on the original deposition transcript instead of the Appendix page number. For reference, the deposition excerpts are located at Pages 84 – 171 of the Appendix.

liens on real property, and seizing personal property. *Metcalf Dep. (Ex. 9)* 46:5-7; 48:7-10; 207:21-208:18; 244:5-245:1; 250:17-254:18.

## **2. Employees and Training**

The Defendants currently operate their business both remotely and out of a rented office, located at 185 Main Street, Suite 34, in Avon, Massachusetts. The Defendants currently employ fourteen people, including Metcalf, who holds titles of “Owner,” “Supervisor,” “Collection Manager,” and “Chief Compliance Officer.” *Metcalf Dep. (Ex. 9)* 68:12-20. In addition to Metcalf, the defendants employ one “Collector” and several Admins and Interns. *Id.* at 82:10-14. Defendant Metcalf is the sole supervisor of all employees, collection activity, and office function. *Id.* at 101:6-11.

While Defendant Metcalf maintains some policies and standards for employee training, these are not uniformly followed or enforced. *Id.* at 113:8-114:2. For example, a document titled “Policies and Procedures Manual of Judgment Acquisitions Unlimited” is intended to be provided to employees on their first day. *Id.* at 102:1-103:16. However, Defendant Metcalf acknowledges that he does not remember giving this manual to every employee and does not know whether every employee has read it. *Id.* at 103:22-104:3. Defendant Metcalf requires that Collector employees complete testing from the American Collectors Association, or ACA International, and obtain a passing score of 80 or higher. *Id.* at 91:23-93:23. The Defendants do not maintain any written training materials on Massachusetts-specific debt collection laws, which, Defendant Metcalf claims, is provided to employees verbally. *Id.* at 96:6-10.

Much of the Defendants’ debt collection activity involves litigation against Massachusetts consumers, but the Defendants do not use attorneys to train employees. *Id.* at 96:2-5. Defendant Metcalf, who is not an attorney, provides training to employees on drafting

and filing motions. In a document titled “Create Motions,” Defendant Metcalf describes the Defendants’ process for creating motions to be filed in court. *Create Motions* (**Ex. 10**; App 172). Defendant Metcalf regularly writes, signs, and files these motions in the civil and small claims sessions of the District Court and Superior Court. *Metcalf Dep.* 119:15-124:17; *Legare Aff.* ¶ 3.

### **3. Lapses in Debt Collection License**

Andrew Metcalf first obtained a debt collection license from the Division of Banks in 2015. *Debt Collection License* (**Ex. 11**; App. 178). However, Metcalf allowed this license to lapse three times, most recently from January 1, 2022 until February 23, 2022. *Investigator Aff.* ¶ 15 (App. 6). Nonetheless, during this latest period when their debt collection license had lapsed, the Defendants did not suspend collection activity. The Defendants have provided documents to the Commonwealth showing that during the period of January 1, 2022 until February 23, 2022, the Defendants seized or attempted to seize 19 cars from consumers. *Car Seizures* (**Ex. 12**; App. 180); *Investigator Aff.* ¶ 21 (App. 8); *Parham Aff.* ¶¶ 2-11 (App. 48).

### **C. Harms Caused by Defendants’ Conduct**

The egregiousness of the Defendants’ conduct is demonstrated by consumer affidavits from April Washington, Paulette Parham, Cristi Legare, and Troy Scott. In each instance, the Defendants unlawfully seized the affiant’s car. Each seizure caused varied harm to the consumer, such as missing work, losing wages, filing for bankruptcy, and spending money on rideshares. These affiants demonstrate the harm the Defendants have caused consumers and establish the Defendants’ utter refusal and inability to comply with debt collection laws.

#### **1. April Washington**

April Washington is a Massachusetts consumer residing in Dorchester, Massachusetts. *Washington Aff.* ¶ 1 (App. 51). On January 9, 2006, the Boston Municipal Court Central

Division entered a judgment against Ms. Washington in Case No. 0601SC002028 in favor of the Plaintiff CACH. *Id.* at ¶ 2. On April 30, 2021, Defendant Metcalf filed a Motion for Issuance of Alias Execution on Money Judgment, which the court allowed on May 28, 2021. *Id.* at ¶¶ 8-9.

On August 25, 2021, a constable, acting on behalf of the Defendants, seized Ms. Washington's car: a 2010 Ford F-150. *Id.* at ¶ 10. That same day, Ms. Washington called the Defendants' office and spoke to Defendant Metcalf, who told Ms. Washington that she must pay the full amount of the execution, plus towing and storage costs, to retrieve her car. *Id.* at ¶ 11. Ms. Washington told Defendant Metcalf that her car was encumbered by an auto loan with Westlake Financial, and that she could not afford to pay the full amount of the execution because she had no income at the time. *Id.* at ¶¶ 12-13.

Ms. Washington filed a Motion to Remove Default Judgment, which the court allowed on September 8, 2021. *Id.* at 14-15. The court ordered: "all property belonging to the defendant which the plaintiff may have seized on the alias execution be returned to the defendant immediately, at the plaintiff's own expense." *Id.* at ¶ 15. On September 16, 2021, Ms. Washington called Defendant Metcalf and discussed the return of her car. *Id.* at ¶ 17. Defendant Metcalf stated he did not know where the car had been towed but would call Ms. Washington back with more information. *Id.* at ¶ 18. On September 17, 2021, Defendant Metcalf texted Ms. Washington:

"they have the F-150 (as you know). I got a call from the tow lot that they were going to bring it now, but the 'front wheels are turned at a 90 degree angle' I don't know . . . . They want to either swing by your house to get the key or you can have someone bring it up to them and they can tow it back."

*Id.* at ¶ 19.

Concerned that the Defendants had damaged her vehicle, Ms. Washington called her auto insurance company and asked them to view the car before it was towed back to her. *Id.* at ¶ 20.

On September 24, 2021, Westlake Financial towed the car to North East Adjustment Bureau in Salem, New Hampshire. *Id.* at ¶ 24. On September 25, 2021, Westlake Financial informed Ms. Washington that they had towed the vehicle to New Hampshire because they were told the vehicle had been abandoned and intended to sell the vehicle at auction on October 12, 2021. *Id.* at ¶¶ 26-27. At that time, Ms. Washington was current on her loan to Westlake Financial. *Washington Aff.* ¶ 25. On October 8, 2021 – one month after the court ordered the Defendants to return her vehicle “immediately, at the plaintiff’s own expense” – Ms. Washington hired an Uber for \$69 to drive her to Salem, New Hampshire, paid Westlake Financial \$728.91, and retrieved her car. *Id.* at ¶ 28.

## 2. Cristi Legare

Cristi Legare is a Massachusetts consumer, residing in Lowell, Massachusetts. *Legare Aff.* ¶ 1 (App. 68). On October 11, 2006, the Lowell District Court entered a judgment against Ms. Legare and in favor of Erin Capital Management, LLC, Case No. 0611CV001871. *Id.* at ¶ 2. On June 17, 2019, Defendant Champion, Inc. filed a Motion to Appoint Special Process Server. *Id.* at ¶ 3. On July 24, 2019, Defendant Champion, Inc. also filed a Motion to Issue Alias Execution and a Motion to Substitute Party. *Id.* at ¶ 3. All three motions were signed by Defendant Metcalf, who is not an attorney. *Id.* at ¶ 3; *Investigator Aff.* ¶¶ 10; 17-18 (App. 4-6). The court granted all three motions, substituting Champion Funding, Inc. as the new judgment creditor and issuing a successive execution in the amount of \$15,062.92. *Legare Aff.* ¶ 3.

In March 2020, the Defendants contacted Ms. Legare to collect on the debt. *Legare Aff.* ¶ 4. Ms. Legare told the Defendants that she had recently lost her job due to the Covid-19 pandemic, had serious health issues, and was pursuing Social Security Disability benefits. *Id.* at ¶ 5. On October 20, 2020, a constable, acting on behalf of the Defendants, seized Ms. Legare’s

vehicle: a 2014 Dodge Ram 1500 worth approximately \$18,045 and encumbered by an auto loan of \$17,750.74 to Chrysler Capital. *Id.* at ¶¶ 6-7. Ms. Legare owned the truck jointly with her husband, who was the primary user of the truck. *Id.* at ¶ 6. Ms. Legare subsequently spoke to Defendant Metcalf who acknowledged knowing that the truck was encumbered with an auto loan. *Id.* at ¶ 9. Defendant Metcalf told Ms. Legare that despite the auto loan, he intended to sell the truck at auction and proceeds would be paid to him before Chrysler Capital. *Id.* at ¶ 9. Defendant Metcalf demanded \$4,000, plus towing and storage costs, in exchange for the return of Ms. Legare's truck. *Id.* at ¶ 10. Ms. Legare attempted to negotiate with Defendant Metcalf for the return of the truck but was unsuccessful. *Id.* at ¶ 11. As a result, Ms. Legare filed for Chapter 13 bankruptcy on November 10, 2020, and got the truck back on November 11, 2020. *Id.* at ¶¶ 11-12.

### **3. Paulette Parham**

On January 14, 2022, Constable Brian Abelli, acting on behalf of the Defendants, seized Paulette Parham's car from her private property with her purse, wallet, and identification inside. *Parham Aff.* ¶¶ 2-6 (App. 48). At her door, the Defendants left two documents: (1) a letter on JAU letterhead, dated January 7, 2022, demanding payment of a judgment, and (2) an alias execution, dated August 7, 2007, in the name of Champion Funding, Inc. *Id.* at ¶¶ 4-5.

Ms. Parham called JAU on January 18, 2022 and spoke with Mark Strong. *Parham Aff.* ¶ 6. Mr. Strong demanded payment in exchange for returning Ms. Parham's car and, needing her car to get to work and appointments, Ms. Parham agreed to pay the Defendants \$1,500 plus \$980 in towing and storage costs. *Id.* The Defendants also demanded that Ms. Parham agree to a payment plan and not knowing how else to get her car back, Ms. Parham agreed to pay \$100 per month. *Id.* On February 7, 2022, the Defendants allowed Ms. Parham to retrieve her car and



personal belongings. *Id.* at ¶ 7. During the time without her car, Ms. Parham missed work twice and lost approximately \$150 in wages. *Id.* at ¶¶ 9-10.

#### **4. Troy Scott**

Troy Scott is a Massachusetts consumer living in West Roxbury. *Scott Aff.* ¶ 2 (App. 71). He is a person with disabilities and his only income is from Supplemental Security Income ('SSI'). *Id.* at ¶ 3. In December 2021, Mr. Scott owned a 2010 Subaru Forester with a mileage of approximately 140,000 miles and a trade-in value of about \$5,000. *Id.* at ¶ 4. Mr. Scott used his car for personal transportation and in assisting his father to get to cancer treatment appointments. *Id.* at ¶ 10. Early in the morning of December 19, 2021, a constable, acting at the direction of Defendants JAU and Metcalf, seized Mr. Scott's car. *Id.* at ¶ 7.

Mr. Scott called JAU and told Defendant Metcalf that he had no significant assets and that his only income was from SSI. *Id.* at ¶ 11. Instead of arranging for the return of Mr. Scott's car, Metcalf continued to demand payment with the knowledge of Mr. Scott's disability and fixed income from public assistance. *Id.* at ¶¶ 10-11. Ultimately, Metcalf agreed to release the car if Mr. Scott paid JAU \$1,500 upfront and an additional \$50 per month thereafter. *Id.* at ¶ 13. Mr. Scott paid the \$1,500 and an additional \$285 to the tow yard to retrieve his car. *Id.* at ¶ 15. When he was driving the car home from the tow yard, Mr. Scott discovered that his tires had been damaged in the seizure, which ultimately cost him an additional \$500 in repairs. *Id.* at ¶ 16.

### **III. ARGUMENT**

#### **A. Standard of Review for Granting a Preliminary Injunction**

When the Attorney General seeks the issuance of a preliminary injunction, she must first demonstrate a "likelihood of success on the merits." *Commonwealth v. Fremont Inv. & Loan*, 452 Mass. 733, 741 (2008). Second, the Attorney General must demonstrate that the requested

relief “promotes the public interest, or, alternatively, that the equitable relief will not adversely affect the public.” *Commonwealth v. Mass. CRINC*, 392 Mass. 79, 89 (1984). Unlike in litigation between two private parties, “[t]he Attorney General is not required to demonstrate irreparable harm concerning those activities of the defendants which probably resulted in violations of our General Laws and which may adversely affect the public interest.” *Id.* See also *Commonwealth v. Wellesley Toyota Co.*, 18 Mass. App. Ct. 733, 737 (1984) (“when the Attorney General acts in the public interest to enjoin violations of statutory provisions, demonstration of immediate irreparable harm is not a prerequisite.”)

**B. The Commonwealth Will Show the Defendants Have Willfully Violated and Continue to Violate G.L. c. 93A, § 2.**

The Defendants appear to have little interest in complying with Massachusetts debt collection laws. This is apparent from their lack of written procedures on car seizures and unwillingness to follow existing procedures on other topics to ensure that employees have proper training. Through their continued misconduct, the Defendants have deprived consumers of the use of their cars, even when those cars are exempt from seizure upon execution pursuant to G.L. c. 235, § 34. They have unlawfully used car seizures as a means to leverage payments from consumers, rather than as a means to satisfy a debt through the lawful sale of the car at auction pursuant to G.L. c. 235, § 36. The Defendants have made deceptive statements in the course of collecting debts, overstated interest in court filings, collected debts without a debt collector license, and in the case of Defendants Metcalf and Champion, Inc., engaged in the unauthorized practice of law.

Debt collection is specifically regulated by the Attorney General through her regulations, contained in 940 CMR § 7.00 *et seq.*, a violation of which is a per se violation of G.L. c. 93A. In

addition to the Attorney General's debt collection regulations, conduct is a per se violation of G.L. c. 93A if:

“(1) It is oppressive or otherwise unconscionable in any respect; or

...

(3) It fails to comply with existing statutes, rules, regulations or laws, meant for the protection of the public's health, safety, or welfare promulgated by the Commonwealth or any political subdivision thereof intended to provide the consumers of this Commonwealth protection;

...”

940 CMR 3:16.

The conduct of one engaged in trade or commerce may be unfair or deceptive, even if it does not constitute a per se violation under the Attorney General's regulations. The Supreme Judicial Court has established three bases for finding unfairness: “[1] whether the practice ... is within at least the penumbra of some common-law, statutory, or other established concept of unfairness; [2] whether it is immoral, unethical, oppressive, or unscrupulous; [3] whether it causes substantial injury to consumers”).” *Klairmont v. Gainsboro Restaurant, Inc.*, 465 Mass. 165, 175 (2013) (citing *PMP Assocs., Inc. v. Globe Newspaper Co.*, 366 Mass. 593, 596 (1975)). Furthermore, conduct is deceptive “if it could reasonably be found to have caused a person to act differently from the way he otherwise would have acted.” *Lowell Gas Co. v. Att’y Gen.*, 377 Mass. 37, 51 (1979).

**1. Seizing vehicles exempt from seizure upon execution.**

Massachusetts law prohibits the taking of certain property by creditors, even if a creditor has a valid and enforceable judgment against a debtor. G.L. c. 235, § 34. Section 34, one of multiple exemption statutes, lists property that is exempt from seizure by creditors upon execution. *Id.* The Attorney General's debt collection regulations specifically prohibit “[t]aking possession of or selling upon execution property that is exempt from seizure on execution

because its value does not exceed the value for exemption set forth in G.L. c. 235, § 34.” 940 CMR 7.07(19). Among this property are a debtor’s homestead estate (Fourteenth), certain wages and money paid to a debtor as public assistance (Fifteenth), and automobiles or vehicles up to a certain value (Sixteenth). One purpose of exemption laws is “to prevent debtors from becoming public charges while protecting the right of creditors to obtain satisfaction of their rightful debts.” *Liberty Mut. Ins. Co. v. Rosenthal*, 204 F. Supp. 2d 140, 143 (D. Mass. 2002). *See also Shamban v. Masidlover*, 429 Mass. 50, 53 (1999). The automobile exemption contained in G.L. c. 235, § 34 exempts:

An automobile necessary for the debtor's personal transportation or to secure or maintain employment, not exceeding \$7,500 of wholesale resale value; provided, however, that the equitable value of a vehicle owned or substantially used by debtor who is either a handicapped person or a person 60 years of age or older shall be exempt up to \$15,000 in wholesale resale value

*Id.*

The Legislature's choice to use the phrase "wholesale resale value" instead of another form of value was clearly intentional when considered in light of other statutes such as G.L. c. 159C, § 5A (a), and G.L. 255B § 20B where terms such as “fair market value” and “retail market value” are used. *See Williams v. Am. Honda Fin. Corp.*, 479 Mass. 656, 662 (2018) (“the Legislature is capable of specifying retail or wholesale markets and values in statutes when it intends to do so.”) The term “wholesale resale value” as used in the vehicle sales industry refers to the price that a dealer would pay for the vehicle at a dealer auction, the price a dealer would pay for a vehicle from a car manufacturer when buying in bulk, or the price a dealer would offer to a consumer for a trade-in vehicle. *See Kelley Blue Book, “What Is Wholesale Value?”* (Sept. 30, 2021), <https://www.kbb.com/what-is/wholesale-value/>. In every instance, wholesale value will be less than retail or fair market value. *See Consumer Reports, “How much is the used car*

*really worth?”* (last updated May, 2014), <https://www.consumerreports.org/cro/2012/12/how-much-is-the-used-car-really-worth/index.htm> (“Wholesale price/trade-in value . . . is essentially a car's trade-in value to a dealer, who will likely sell it to someone else for profit.”)

Defendants Metcalf and JAU have violated G.L. c. 93A and 940 CMR 7.07(19) by seizing exempt vehicles from Massachusetts consumers. In response to a Civil Investigative Demand, the Defendants have provided the AGO with a list purportedly itemizing cars they have seized or attempted to seize. *Car Seizures* (**Ex. 12**; App. 180). This list included 228 vehicles for which there was sufficient information to assess valuation. The Defendants’ list indicates that they knowingly seized or attempted to seize at least 18 exempt vehicles since 2019, or roughly 8% of all vehicle seizures reported by the Defendants to the Commonwealth in response to the CID for which there was sufficient information to assess valuation. *Investigator Aff.* ¶¶ 23-26 (App. 8); *Vehicle Valuations* (**Ex. 1A**; App. 11). This evidence on its own establishes that the Commonwealth is likely to prove that the Defendants violated G.L. c. 93A, 940 CMR 7.07(19), and G.L. c. 93 §49 by seizing exempt vehicles.

Furthermore, the Commonwealth has reason to believe that the list provided by the Defendants is incomplete and underinclusive. Defendant Metcalf’s deposition testimony, along with a cross reference of this list against other records, shows that the list is inaccurate. For example, the Defendants failed to identify both Cristi Legare’s and Troy Scott’s vehicle seizure on their response to the CID. *Investigator Aff.* ¶ 22 (App. 8). Defendant Metcalf, who is the Manager or President of the Corporate Defendants, was also unable to definitively say whether he could identify which cars were seized and which were not by looking at his own list. *Metcalf Dep.* 209:4-210:3. Defendant Metcalf further acknowledged having no written policies and procedures regarding car seizures. *Id.* at 187:16-24. These facts raise troubling concerns about

Metcalf's ability to keep accurate records of critical information related to his businesses and support the inference that the Defendants seized additional vehicles exempt from attachment that are not included on the Defendants' response to CID Demand No. 15. Given the likelihood that the Commonwealth will succeed on the merits of its G.L. c. 93A claim, and the fact that the Defendants do not have appropriate processes in place to ensure accurate vehicle valuations, employee training, and the means to identify seized vehicles, this Court should enjoin the Defendants from further vehicle seizures.

**2. The Defendants use misrepresentations and deception to extract payments from consumers.**

The Defendants' debt collection activity is replete with misrepresentations made to consumers and third parties, all of which are per se violations of G.L. c. 93A. *See* 940 CMR. 7.07(8) (prohibiting "[a]ny false, deceptive, or misleading representation, communication, or means in connection with the collection of any debt"). Examples of these misrepresentations are described by three of the Commonwealth's affiants and, in all instances, the Defendants' misrepresentations and deception caused harm to these consumers in different ways.

In the case of Cristi Legare, Ms. Legare attested that Defendant Metcalf told her that the Defendants would be paid before any lienholder if the vehicle was auctioned, *Legare Aff.* ¶ 9 (App. 68), which is untrue as a matter of law. *See* G.L. c. 106, § 9-324 ("a perfected purchase-money security interest in goods other than inventory or livestock has priority over a conflicting security interest in the same goods"); *Ford Motor Credit Co. v. Doe*, 2006 WL 1075586, at \*1 (Mass. Super. Mar. 27, 2006) (finding lienholder with security interest has priority over judgment creditor and holder of garageman's lien). This misrepresentation was an attempt by Defendants Metcalf and JAU to extract payments from Ms. Legare when they should have known, considering constable and storage fees, that there was no reasonable prospect of realizing

a profit from the sale of Ms. Legare's financed vehicle which at the time had less than \$300 in equity. *Legare Aff.* ¶ 7. Nonetheless, despite knowing that an auction of the vehicle would be fruitless, Defendant Metcalf refused to return the vehicle to Ms. Legare unless she paid \$4,000. *Id.* at ¶ 10. Ms. Legare attempted to come up with the money but was ultimately unsuccessful and filed for bankruptcy. *Id.* ¶¶ 10-11. In effect, Defendants Metcalf and JAU used the seizure of Ms. Legare's vehicle "as an instrument of persuasion rather than a means of satisfaction." *Koonce v. Aldo Realty Tr.*, 8 Mass. App. Ct. 199, 201 (1979) (threatening use of execution to extract payment of rental debt "a harassing and coercive kind of debt collecting . . . actionable under G.L. c. 93A"). *See also Slive & Hanna, Inc. v. Massachusetts Comm'n Against Discrimination*, 100 Mass. App. Ct. 432, 440-41 (2021) (characterizing seizure of vehicle pursuant to G.L. c. 235 as "extortion" where creditor did so to compel debtor to release legal claim rather than to satisfy a judgment through public auction of vehicle).

In another instance, April Washington believes that the Defendants falsely told her lienholder that Ms. Washington's vehicle had been abandoned. *Washington Aff.* ¶¶ 23-27 (App. 53). This false statement was made after a court ordered the Defendants to return Ms. Washington's vehicle to her and while Defendant Metcalf knew Ms. Washington was trying to get her car returned. *Washington Aff.* ¶¶ 15-19. Due to the Defendants' misrepresentations and contrary to the court's order that the Defendants return Ms. Washington's vehicle to her at the Defendants' expense, Ms. Washington paid almost \$800 to secure the release of her vehicle. *Id.* ¶ 28. Another consumer, Troy Scott, has attested that Defendant Metcalf falsely told him that Defendant Metcalf could "take payments on the debt directly out of my SSI payments." *Scott Aff.* ¶ 8 (App. 71). This statement is also untrue as a matter of law. *See* 42 U.S.C. § 407(a); G.L.

c. 235, § 34 (Fifteenth). The Commonwealth is therefore likely to prove that the Defendants made misrepresentations to consumers, in violation of G.L. c. 93A and 940 CMR. 7.07(8).

### **3. Operating without a license.**

Debt collectors must obtain a license from the Division of Banks to legally collect debts in Massachusetts. *See* G.L. c. 93, § 24A. The provisions of the Massachusetts Fair Debt Collection Practices Act, G. L. c. 93, §§ 24–28, are “modeled after the Federal Fair Debt Collection Practices Act . . . to combat abusive debt collection practices.” *Dorrian v. LVNV Funding, LLC*, 479 Mass. 265, 267 (2018). It follows, therefore, that G.L. c. 93, § 24A exists to ensure adequate oversight of the debt collection industry by the Division of Banks. Unlicensed debt collection is a per se violation of G.L. c. 93A, § 2. G.L. c. 93, §28. The Division of Banks has also promulgated regulations “to establish standards, by defining unfair or deceptive acts or practices, for the . . . collection of debts from persons within the Commonwealth of Massachusetts by debt collectors.” 209 CMR 18.01(1). *See also* 209 CMR 18.27. (“A violation of the provisions of 209 CMR 18.00 shall be considered an unfair or deceptive act or practice under M.G.L. c. 93A, § 2 and subject to the penalties contained in M.G.L. c. 93A.”)

While Defendant Metcalf does hold a debt collection license, Defendant Champion, Inc. does not and never has held a such a license. *Investigator Aff.* ¶ 14 (App. 5). Nevertheless, each of these entities has engaged in debt collection without a license. Defendants Metcalf and JAU did so most recently between January 1, 2022 through February 23, 2022 when their license had lapsed, *Metcalf Dep.* 29:2-31:2; *Investigator Aff.* ¶ 15, and Defendant Champion, Inc. has done so each time it filed a court action when not represented by an attorney or engaged in other debt collection activity. *Investigator Aff.* ¶¶ 5-9; *Statements of Small Claim for 2206SC000051, 2254SC000071, and 2225SC000077* (**Ex’s 1B**; (App. 13); **1C**; (App. 15); & **1D**; App. 17)).



Champion, Inc. cannot avail itself of the Division of Bank's safe harbor from the licensing statute for "passive" debt buyers because it regularly engages in debt collection without "hir[ing] another duly authorized entity (either a Massachusetts-licensed debt collector or a Massachusetts attorney) to conduct the actual debt collection." *Dorrian v. LVNV Funding, LLC*, 479 Mass. 265, 274 (2018). By engaging in collection activity without possessing a license, Defendant Champion, Inc. has violated G.L. c. 93A.

Defendant Metcalf currently holds a debt collection license from the Massachusetts Division of Banks. *Debt Collection License* (Ex. 11; App 179); *Investigator Aff.* ¶¶ 13-15 (App. 5). This license lapsed most recently between January 1, 2022 through February 23, 2022. Defendant Metcalf acknowledges that he was not authorized to conduct business during the time his license had lapsed. *Metcalf Dep.* 29:2-24. Nevertheless, Defendants Metcalf and JAU continued to engage in debt collection during this period, by seizing or attempting to seize an estimated 19 cars from Massachusetts consumers. *Car Seizures* (Ex. 12; App. 181); *Investigator Aff.* ¶ 21.

Paulette Parham was one of those consumers. On January 14, 2022, Defendants Metcalf and JAU caused Ms. Parham's car to be seized from her private property. *Parham Aff.* ¶¶ 2-11 (App. 48). When Ms. Parham called the Defendants on January 18 to demand return of her car, the Defendants engaged in further collection activity by demanding an immediate payment and requesting a payment plan. *Id.* at ¶ 6. The Defendants did not return Ms. Parham's car until February 7, 2022, after she paid them \$1,500 plus \$980 in towing and storage costs. *Id.* at ¶ 6.

Champion, Inc. also continued to file debt collection litigation, through pleadings signed by Defendant Metcalf, during the same period when the license had lapsed. On January 20, 2022, Champion, Inc. filed a small claims action in the Boston Municipal Court West Roxbury

Division, Case No. 2206SC000051. *Investigator Aff.* ¶ 6 (App. 3). The Complaint in that action appears to be signed by Defendant Metcalf. *Id.* On February 7, 2022, Defendant Champion, Inc. filed a small claims action in Barnstable District Court, Case No. 2225SC000077. *Id.* at ¶ 7. The Complaint in that action appears to be signed by Defendant Metcalf and is dated January 14, 2022. *Id.* On January 27, 2022, Defendant Champion, Inc. filed a small claims action in Dedham District Court, Case No. 2254SC000071. *Id.* at ¶ 8. The Complaint in that action appears to be signed by Defendant Metcalf and is dated January 24, 2022. *Id.* The Commonwealth is therefore likely to succeed on the merits of its G.L. c. 93A claim that Defendants Metcalf, Champion, Inc., and JAU engaged in unlicensed debt collection, in violation of G.L. c. 93, § 24A.

#### **4. Unauthorized practice of law.**

Defendants Metcalf and Champion, Inc. have engaged in the unauthorized practice of law, *see* G.L. c. 221, §§ 46 & 46A, and in doing so, have violated G.L. c. 93A. Corporate officers, who are not attorneys, cannot represent their corporations in legal proceedings outside of small claims court. *See Varney Enterprises, Inc. v. WMF, Inc.*, 402 Mass. 79 (1988) (“except for small claim matters, corporation may not be represented in judicial proceedings by a corporate officer who is not an attorney licensed to practice law in the Commonwealth”). *See also LAS Collection Mgmt. v. Pagan*, 447 Mass. 847, 850 (2006) (property management agent engaged in unauthorized practice of law by filing, signing, and prosecuting complaint and cross-examining witnesses); *Rental Prop. Mgmt. Servs. v. Hatcher*, 479 Mass. 542, 550 (2018) (“summary process complaint . . . signed and filed by an individual who is neither the plaintiff nor the attorney . . . is the unauthorized practice of law”). The unauthorized practice of law is also not confined to non-attorneys appearing in court proceedings, but also includes other

activities occurring outside of court. *See e.g., In re Shoe Mfrs. Protective Ass'n*, 295 Mass. 369, 372 (1936) (president of collection agency engaged in the unauthorized practice of law by “directing and managing the enforcement of legal claims” and drafting legal documents).

While the Defendants often do retain licensed attorneys to represent them in debt collection litigation, Defendant Metcalf acknowledges that is not always the case. *Metcalf Dep.* 122:9-123:7. Pleadings have been written, signed, and filed by Defendant Metcalf on behalf of Champion, Inc. and JAU, even in cases outside of small claims court. *Metcalf Dep.* 122:9-124:18; *Legare Aff.* ¶ 3. For example, Defendant Metcalf recently filed the following Supplementary Process cases on behalf of Champion, Inc., and signed the pleadings commencing each action: *Champion Funding Inc v. Paul Mccauley* (2357SP000032) (Ex. 1I; App. 32), *Champion Funding Inc. v. Rebecca Sanon* (2315SP000127) (Ex. 1J; App. 34), *Champion Funding Inc. v. Ego Akpone* (2315SP000096) (Ex. 1K; App. 37), *Champion Funding Inc v. Eric Jeremicz* (2364SP000021) (Ex. 1L; App. 40), *Champion Funding Inc. v. Rosemary Ashcroft* (2331SP000034) (Ex. 1M; App. 45). *Investigator Aff.* ¶¶ 12 (App. 5).

Defendant Metcalf also does not retain attorneys to conduct training for his employees on filing motions, but does so himself. *Metcalf Dep.* 96:2-5; 119:15-121:15; *Create Motions* (Ex. 10; App. 173). Metcalf acknowledges having no written training materials on Massachusetts debt collection law specifically, but verbally trains employees. *Metcalf Dep.* 96:6-10; 124:19-126:17. For these reasons, the Commonwealth is likely to prove that Defendant Metcalf has engaged in the unauthorized practice of law.

**C. The Commonwealth’s Proposed Preliminary Injunction Will Promote the Public Interest.**

The Commonwealth has proposed injunctive terms that will serve to promote the public interest. *See Commonwealth v. Mass. CRINC*, 392 Mass. 79, 89 (1984). The Commonwealth’s

proposed relief is narrowly tailored to enjoin the Defendants' unlawful debt collection activity and prevent harm to consumers that would otherwise likely occur during the pendency of this litigation.

The Defendants have shown a stunning disregard for Massachusetts debt collection laws by, among other things, collecting debts while unlicensed, *Metcalf Dep.* 29:2-24; *Parham Aff.* ¶¶ 2-11, seizing exempt cars, *Scott Aff.* ¶ 2; *Investigator Aff.* ¶¶ 6-9; 15, and demanding what are, effectively, ransom payments from consumers to release the cars. *Scott Aff.* ¶¶ 9-10; *Washington Aff.* ¶¶ 11-13; *Legare Aff.* ¶¶ 9-12. It is in the public interest to prevent the kind of harm that this conduct has caused consumers. *See Legare Aff.* ¶ 11 (consumer filed for Chapter 13 bankruptcy); *Parham Aff.* ¶ 10 (consumer missed work and lost wages), *Scott Aff.* ¶ 13 (car was damaged in seizure); *Washington Aff.* ¶ 28; (consumers spent money on alternative transportation). It is therefore squarely in the public interest to order the Defendants to cease seizing motor vehicles, refrain from selling at auction any cars currently in their possession, and return the cars currently in their possession to consumers.

#### IV. CONCLUSION


For the foregoing reasons, the Commonwealth respectfully requests that the Court allow the Commonwealth's Motion for Preliminary Injunction.

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS

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Served via email

February 9, 2024

**CERTIFICATE OF SERVICE**

I, Colin Harnsgate, hereby certify that on February 9, 2024, I caused a true and correct copy of the foregoing Memorandum in Support of Motion for Preliminary Injunction and accompanying exhibits to be served upon counsel for the Defendants via email:

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