Same Debt, New Rules:
Mitigating Risk Under Rosenthal's Commercial Curveball

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California has long been one of the toughest regulatory ballparks for debt collectors and creditors—and it may be setting the stage for what comes next. Recent amendments to the Rosenthal Act don't just add another twist in compliance—they represent the first statutory move to extend consumer-style protections to individuals liable for certain types of commercial debt.[1] It's a clear sign of what's been quietly building: so-called "consumer creep." And this one's not a fluke—it's a well-placed curveball. Lawmakers are increasingly sympathetic to the idea that individuals who personally guarantee debt for their small businesses shouldn't be treated all that differently from traditional consumers. It's a message that resonates: 99.9% of U.S. businesses are considered small businesses, and nearly half the American workforce is employed by them[2]. California got there first, but others are warming up.

To remain compliant and avoid exposure, organizations must adopt a holistic, ongoing approach to risk assessment and control. This means systematically reviewing policies, documents, and processes; leveraging technology and vendor oversight; investing in annual staff training; and conducting regular audits. **Keep in mind:** This is just an overview, not legal advice. For guidance tailored to your documents, processes, contracts, or training, call your favorite California lawyer (bonus points if they've got strong opinions and great shoes).

Review Policies, Documents, and Processes

Start with your internal policies. They should reflect the specific requirements California brings to the table—things like the Rosenthal Act, the California Consumer Privacy Act (CCPA), and updated rules around data retention and consumer communications. If your policies haven't been touched in a while, they may be doing more harm than good. On the other hand, when policies are current and tied directly to your processes, they don't just guide your team—they can actually help defend you if something goes sideways. In a state like California, that can make a real difference. As a rule of thumb, following the federal framework for consumer communications is still a solid move. Even if it's not a safe harbor per se under California law, it's widely accepted as a reasonable, well-structured approach for interacting with individuals — which now includes individuals with covered commercial debt under Rosenthal.

Just as critical is the review of your actual outbound communication—letters, emails, voicemails, and scripts. These materials are the face of your organization and the first (and often only) thing a regulator, judge, or plaintiff's attorney will see. Does your communication include

[1] "Covered debt" refers to an obligation incurred by a natural person in connection with a commercial transaction where the person is personally liable. For a complete definition, see Cal. Civ. Code § 1788.2.
[2] U.S. Small Business Administration, Office of Advocacy, "Frequently Asked Questions about Small Business, 2024," *Advocacy.sba.gov*, last modified July 23, 2024, https://advocacy.sba.gov/2024/07/23/frequently-asked-questions-about-small-business-2024/.

the required provisions? Are your disclosures accurate, and is your tone professional, clear, and compliant? Do you avoid next steps? That can be seen as threatening if you do not follow through 100% of the time.

From intake to resolution, the processes guiding your workflows also need scrutiny. Consider whether you have established practices for:

- **Identifying affected accounts** during intake, especially for portfolios with mixed jurisdictions.
- **Documenting the information you receive** and how you use it.
- **Tracking the statute of limitations**, which may vary or be tolled under certain conditions.
- **Handling identity theft claims**, which are becoming more common and more closely scrutinized, and have their own distinct required process.
- **Managing complaints and disputes**, particularly with California's expansive interpretation of what constitutes a complaint.
- **Knowing where to file suit,** as Rosenthal has specific venue requirements.

In short: every stage of your process needs to reflect California's legal nuances.

Review Your Case Management System

Your case management system (CMS) is more than a glorified file cabinet. It's the digital backbone of your compliance infrastructure. A good CMS supports your policy and process framework: it allows you to flag accounts with California-specific handling requirements, ensures documentation is retained and retrievable, and automates deadline tracking.

If your CMS is not aligned with your risk mitigation strategy, it's time to either customize it or replace it. Look for gaps in how exceptions are logged, disputes are categorized, and outcomes are tracked. Ensure that your system can quickly produce reports responsive to regulatory or legal inquiries—because in California, those inquiries are frequent and often urgent.

Review Your Vendors

Many compliance failures trace back to vendor relationships. Whether you're outsourcing letter printing, dialer technology, skip tracing, or legal collections, your vendors must be held to the same compliance standards you impose internally.

This begins with selecting vendors carefully, but it doesn't end there. Conduct initial and ongoing due diligence. Ask:

- Do they understand California's unique laws?
- Have they updated their systems to reflect new requirements?
- Can they show audit results or attestations of compliance?
- Do they offer indemnity if their failures lead to your liability?

Risk mitigation is collaborative. Your vendors are your partners—and potential co-defendants.

Train Staff Annually

Even the best policies are useless if they live only on paper. Your front-line staff must be trained annually—and not just on federal rules but on California-specific issues. This includes updates to privacy laws, changes in consent requirements for call recording, and evolving interpretations of unfair or deceptive practices.

Training should be interactive, and scenario based. It's not enough to say, "Don't violate Rosenthal." You must walk through real examples of what a mistake might look like in a California context and how to correct it before it escalates. Empower employees to escalate uncertainty and reward them for escalating compliance concerns.

Audit Regularly

Audits are the final safeguard. They turn assumptions into data. Your internal audit function should review high-risk areas, like call recordings, dispute handling, identity theft responses, and the accuracy of your CMS data.

Don't wait for a regulator—or a plaintiff's lawyer—to find the problem for you. Regular internal audits—combined with third-party reviews— give you the chance to fix issues before they escalate. Under Rosenthal, proactive self-correction can do more than help—it can eliminate exposure to damages and attorney fees entirely.

Why All This?

Because it's still California. The state remains at the forefront of regulatory innovation and aggressive enforcement. The bar is high, and the scrutiny is constant.

This isn't cause for panic—but it is cause for discipline. California is the first, but it's unlikely to be the last state to consider consumer-like protections for individual business debt. As legislators look for ways to support small businesses and the individuals behind them, this type of expansion is easy to justify—and easy to replicate.

For creditors and collectors, the path forward isn't about overhauling everything overnight. It's about taking a hard look at what you already have—your policies, your documents, your processes, your vendors—and making sure they're built to hold up under today's rules, not yesterday's assumptions. Staying ahead of the curve in California isn't just smart risk management. It's preparation for where the industry is headed next.