

**PREPARED STATEMENT OF
THE FEDERAL TRADE COMMISSION**

on

Shining a Light on the Consumer Debt Industry

Before the

**SENATE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER
PROTECTION
UNITED STATES SENATE**

**Washington, D.C.
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Chairman Brown, Ranking Member Toomey, and distinguished members of the Subcommittee, I am James Reilly Dolan, the Acting Associate Director for the Division of Financial Practices at the Federal Trade Commission (“Commission” or “FTC”).¹ I appreciate the opportunity to appear before you today to discuss the Commission’s efforts to protect consumers from unfair, deceptive, and abusive debt collection practices.

Consumer credit is a critical component of today’s economy, allowing consumers to purchase goods and services for which they are unable or unwilling to pay the entire cost at the time of purchase. If consumers do not pay their debts, creditors may be less willing to extend credit or may increase the cost of borrowing money. Lawful debt collection thus helps keep credit more readily available and affordable.

Unlawful debt collection practices, however, cause serious harm to consumers—both those in financial distress as well as others who do not owe the debt they are being contacted about—and place law-abiding debt collectors at a competitive disadvantage. Accordingly, challenging unlawful debt collection practices continues to be one of the Commission’s highest priorities. The Commission receives more complaints about debt collection than any other specific industry, and these complaints have constituted around 25 percent of the total number of complaints received by the FTC over the past three years.² In 2012, consumers filed 125,136 complaints about third-party debt collectors and in-house

¹ While the views expressed in this statement represent the views of the Commission, my oral presentation and responses to questions are my own and do not necessarily reflect the views of the Commission or any individual Commissioner.

² See Consumer Financial Protection Bureau, *Fair Debt Collection Practices Act: CFPB Annual Report 2013*, at 14 (24.1% of all complaints the FTC received); Consumer Financial Protection Bureau, *Fair Debt Collection Practices Act: CFPB Annual Report 2012*, at 14 (27.16% of all complaints the FTC received); FTC, *Annual Report 2011: Fair Debt Collection Practices Act*, at 5 (27% of all complaints the FTC received).

collectors.³ The consumer complaints most frequently reported are that collectors falsely represented the character, amount, or status of a debt (38.9%); made repeated or continuous calls (36.5%); falsely threatened to sue consumers or take other unintended actions (29.6%); failed to send a written notice of the debt to the debtor (25.4%); and falsely threatened to arrest a consumer or seize a consumer's property (23.4%).⁴

To stop these illegal practices, the Commission maintains an active program of vigorous law enforcement, education and public outreach, and research and policy initiatives. This testimony will describe the Commission's actions in each of these areas, as well as the Commission's coordination and cooperation with the Consumer Financial Protection Bureau ("CFPB") in addressing unlawful debt collection practices.

I. Enforcement

The Commission is primarily a law enforcement agency, and law enforcement investigations and litigation are at the heart of our recent debt collection work. The Commission has the authority to investigate and take law enforcement action against debt collectors who engage in unfair, deceptive, abusive, or other practices that violate the Fair Debt Collection Practices Act ("FDCPA").⁵ The Commission also has the power to investigate and take enforcement action against entities that, in connection with collecting on debts, engage in unfair or deceptive acts or practices in violation of Section 5 of the FTC Act.⁶ These law enforcement

³ *Id.* These numbers only include complaints filed directly with the FTC, which are coded and categorized in a consistent manner. These numbers also do not include identify theft or Do Not Call Registry complaints that may involve debt collection.

⁴ Because consumer complaints frequently address more than one debt collection practice, a single complaint may count towards multiple violation categories. Hence, the sum of these percentages will be more than 100%.

⁵ 15 U.S.C. § 1692-1692p.

⁶ 15 U.S.C. § 45.

actions supplement what Congress intended to be a significant part of FDCPA enforcement—private individual and class action lawsuits.⁷

The Commission generally carries out these powers in two ways.⁸ First, the Commission

disgorgement of ill-gotten gains, and restitution—against a variety of debt collectors.¹¹ These cases include three civil penalty actions—*United States v. Expert Global Solutions, Inc.*, *United States v. West Asset Management, Inc.*, and *United States v. Asset Acceptance, LLC*—that resulted in settlements in which the debt collectors paid \$3.2 million, \$2.8 million, and \$2.5 million, respectively, the three largest civil penalties obtained by the agency in cases alleging violations of the FDCPA.

In each of these cases, the FTC charged debt collectors with engaging in a host of unlawful practices. For example, in the most recent case, announced last week, the Commission filed a complaint against, and obtained a settlement with, the largest third-party debt collector in the world, Expert Global Solutions Inc. The FTC alleged that the defendants—commonly known as NCO—annoyed and harassed consumers for years with repeated phone calls, despite being told that the consumer does not owe the debt, does not know the whereabouts of the alleged debtor, or does not wish to receive any more communications.¹² The FTC also alleged that the debt collector disclosed consumers’ debts to third parties through voicemail messages, even when the outgoing answering machine greeting

or announced that the answering machine was for a person other than the consumer that the collector was trying to reach.

In *West Asset Management, Inc.*, the Commission alleged that a leading debt collector misrepresented that the collector was a law firm or that its collectors were attorneys; falsely claimed that debtors would be arrested or have property seized if they did not pay, among other

exceptionally egregious debt collection conduct. Accordingly, in many of these cases the Commission has sought and obtained preliminary relief, including *ex parte* temporary restraining orders with asset freezes, immediate access to business premises, and appointment of receivers to run the debt collection business. The Commission also has sought and obtained strong permanent relief to ensure that defendants do not engage in unlawful debt collection practices in the future. In certain cases, this relief includes banning individuals or entities from engaging in debt collection. Since January 1, 2010, the FTC has obtained such bans against 12 entities and individuals.

For example, in *FTC v. Forensic Case Management Services, Inc.*, the Commission obtained a wide array of relief against a debt collector charged with engaging in a host of egregious conduct, such as threatening to physically harm consumers and desecrate the bodies of their dead relatives; threatening to kill consumers' pets; using obscene and profane language; revealing consumers' debts to third parties; and falsely threatening consumers with lawsuits, arrest, and wage garnishment.¹⁶ In addition to obtaining the strong preliminary relief discussed above, the Commission ultimately secured substantial monetary judgments against the defendant debt collection enterprise and a complete ban on future debt collection activity, along with other permanent injunctive relief.¹⁷

The Commission has also used its Section 13(b) authority to halt debt collectors from employing unfair and deceptive tactics to recover on payday loans. In a typical payday loan, consumers receive cash in exchange for their personal checks or authorization to debit their bank accounts, and the lenders agree that consumers' checks will not be cashed or consumers'

¹⁶ *FTC v. Forensic Case Mgmt. Servs., Inc.*, No. LACV11-7484 RGK (C.D. Cal. Jan. 4, 2013).

¹⁷ See FTC, *FTC Settlement Obtains Permanent Ban Against Abusive Debt Collection Operation*, Jan. 17, 2013, available at <http://www.ftc.gov/opa/2013/01/rumson.shtm>.

accounts will not be debited until a designated fu

wage garnishment tactics.²⁰ The FTC specifically alleged that the defendants were sending documents to consumers' employers that falsely represented that, under tribal laws, they were entitled to garnish wages without obtaining a state court order. The case is currently in litigation.

Recently, the FTC also has used its Section 13(b) authority to shut down so-called "phantom" debt collectors. Phantom debt collectors engage in wholesale fraud by attempting to collect on debts (often related to payday loans) that either do not exist or are not owed to the phantom debt collectors. In 2012, the Commission filed three cases against alleged phantom debt collectors, and obtained strong preliminary injunctive relief in each case.²¹ In these three cases, the Commission alleged that the callers carrying out the phantom debt collection schemes pretended to be law enforcement or other government authorities, and falsely threatened to arrest and jail consumers immediately if they did not agree to make payments. One of the cases ended with the Commission obtaining a permanent injunction—including bans prohibiting the defendants from working in debt collection—and a substantial monetary judgment.²² The FTC continues to litigate the other two cases.

As a supplement to its Section 13(b) and civil penalty cases, the FTC also files *amicus* briefs to offer the Commission's views on important questions of law. For ex02 Tc-iews on impo

Supreme Court to deny *certiorari* in *Fein, Such, Kahn and Shepard, PC v. Allen*,²³ a consumer class action against several entities involved in a mortgage foreclosure action. The putative consumer class alleged that the law firm that brought the foreclosure action violated the FDCPA by sending a letter to the consumer's attorney that demanded payment for fees that were much higher than the amounts allowed under state law. The district court and court of appeals rejected the law firm's motion to dismiss the FDCPA claims, which argued that communications to a consumer's attorney are categorically excluded from the FDCPA.

Among other things, the joint brief advocated that the Supreme Court deny *certiorari* in *Fein* because the decision of the Third Circuit is consistent with the plain language of the FDCPA, the structure of the FDCPA, and the underlying purposes of the FDCPA. In January 2012, the Supreme Court denied the petition for *certiorari*.²⁴

II. Education and Public Outreach

relative. Consumer.gov is the product of extensive work in coordination with the Center for Applied Linguistics to write and design the site for audiences with low literacy levels. Features include short videos, infographics, and read-along audio. The site includes basic material on a variety of consumer protection topics, including a section about dealing with debt collectors.

Business education is also a priority for the FTC. Over the past three years, the Commission's business outreach activities have included developing and distributing business education materials, delivering speeches, participating in panel discussions at industry conferences, and providing interviews to general media and trade publications. These efforts help to ensure that debt collectors understand their responsibilities under the FDCPA.

Finally, as part of the FTC's Legal Services Collaboration project, FTC staff regularly meets with legal services providers to discuss various consumer protection issues, including the FTC's work in the debt collection arena. These discussions allow staff to better identify debt collection practices that are causing serious consumer harm and to improve the development and direction of our educational resources. Recent legal services outreach efforts have included providing information in a webinar hosted by the National Association for Consumer Advocates and convening legal services providers and government agencies for a Washington DC conference that had a strong focus on debt collection issues. The FTC also organizes "Common Ground" conferences that bring together legal services providers and law enforcement agencies to discuss a wide variety of consumer protection issues, including debt collection.

III. Research and Policy Development Activities

The third prong of the FTC's debt collection program is research and policy initiatives. Since 2010, the FTC has continued to monitor and examine the debt collection industry and its practices through workshops, reports, and policy statements.

As part of these initiatives, the FTC hosts roundtables and conferences on topics ranging from the use of new debt collection technologies to the flow of information in the debt collection process. For example, the FTC held a series of nationwide roundtable discussions and public comments examining debt collection litigation and arbitration proceedings, which culminated in the publication of a 72-page report in July 2010.²⁵ Drawing from the roundtables and comments, the report concluded that the system for resolving consumer debt collection disputes is broken and recommended that states consider significant reforms to improve efficiency and fairness to consumers. These reforms included measures to increase consumer participation in debt collection lawsuits, requiring collectors to include more debt-related information in legal complaints against consumers, and assigning the burden of proving that debts are not time-barred to collectors.

In April 2011, the FTC hosted a workshop on the use of new technologies in the debt collection process.²⁶ The workshop brought together industry representatives, consumer advocates, regulators, researchers, and other stakeholders to discuss issues related to a variety of debt collection technologies. For example, participants discussed the use of mobile telephones, e-mail, social media, text message services, information gathering tools, dialers, databases, and

²⁵ FTC, *Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration*, July 2010, available at <http://www.ftc.gov/os/2010/07/debtcollectionreport.pdf>.

²⁶ Debt Collection 2.0: Protecting Consumers as Technologies Change (April 2011). A transcript and related materials are available at <http://www.ftc.gov/bcp/workshops/debtcollectiontech/index.shtml>.

payment portals. Topics included: how technologies have evolved in recent years; how technologies may affect the accuracy of underlying

mislead relatives to believe that they are personally liable for a deceased consumer's debts, or use other deceptive or abusive tactics.

IV. Coordination with the Consumer Financial Protection Bureau

The Dodd-Frank Wall Street Reform and Consumer Protection Act, which created the CFPB, directs the FTC and the CFPB to coordinate their law enforcement activities and promote consistent regulatory treatment of consumer financial products and services, including debt collection.³² The Commission has done so by working closely with our partners at the CFPB to coordinate efforts to protect consumers from unfair, deceptive, and abusive debt collection practices. In addition, in January 2012, the FTC and CFPB entered into a memorandum of understanding that supplements the requirements of the Dodd-Frank Act and creates a strong and comprehensive framework for coordination and cooperation.³³

As reflected in the memorandum of understanding, FTC and CFPB staff have worked with one another to coordinate their debt collection programs. These efforts include regular staff meetings to discuss ongoing and upcoming law enforcement, rulemaking, and other activities; sharing debt collection complaints; cooperation on consumer education efforts in the debt collection arena; and consulting on debt collection rulemaking and guidance initiatives. For example, as discussed above, the two agencies recently hosted a joint workshop on issues related to the life cycle of consumer information as it flows through the debt collection process.

³² See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 § 1024(c)(3) (July 21, 2010).

³³ Memorandum of Understanding Between the Consumer Financial Protection Bureau and the Federal Trade Commission, January 2012, available at <http://ftc.gov/os/2012/01/120123ftc-cfpb-mou.pdf>.

