like to share with you my own perspective, and explain why I think the Commission's recommendations should only be considered a starting point.

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The debt collection business is booming.[2] And while that is not good news for consumers, the future certainly looks bright for your industry. With the ongoing financial crisis, consumers are falling further and further behind on their debt obligations each day, which means more work for you. Federal Reserve numbers show that consumer delinquencies are at an all time high — reaching over $300 billion dollars in the first quarter of 2010, an increase of over 500% since 2004.[3] And many observers think things will get worse for consumers before they get better. According to the Bureau of Labor Statistics, employment of bill and account collectors is projected to grow over the next eight years at a substantially higher rate than other occupations.[4]

But it goes without saying that a rosy picture for the debt collection industry means something entirely different for consumers hit hard by the economic downturn. Consider some of the things that these financially distressed consumers face: unemployment or under-employment, lack of health insurance and proper health care, difficulties in paying for basic needs like food, shelter, and child care. Now add to these stressors the efforts by legitimate debt collectors to lawfully collect delinquent debts that the consumers owe — the telephone calls, the late notices, repossessions, foreclosures, garnishment orders — and you have consumers in a desperate, vulnerable state of mind.

Now, take these most vulnerable consumers, and add to the mix the bad actors, the debt collectors who engage in unscrupulous if not illegal practices. The ones who call at all hours of the night, the ones who lie and make threats they cannot follow through on, the ones who sue without having any basis for doing so, the ones who use subterfuge to obtain money judgments and garnishment orders. These are below the belt punches aimed at consumers who have already been pummeled. And these types of questionable activities appear to be on the rise. In calendar year 2009, the FTC received just shy of 10,000 complaints a month about third party and creditor

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[2] *See, e.g.*, Christian Davenport, *Debt Collectors Want You to Know They're Here to Help (No, Really)*, Washington Post (Feb. 14, 2010), *available at* www.washingtonpost.com/wp-dyn/content/article/2010/02/12/AR2010021205934.html; Isaac Wolf,

debt collection, an increase of over 14% from 2008.[5] In terms of volume, debt collection complaints outrank every other category except complaints about identity theft.

Unscrupulous and illegal debt collection practices, particularly relating to debt collection and arbitration, have long been a concern of the Federal Trade Commission. These concerns were part of the discussion at workshops in 2007 and in a report issued in February 2009.

During the latter part of 2009, the FTC undertook a more in-depth study of these issues. As many of you know, we convened public roundtables in Chicago, San Francisco, and Washington, DC. These events brought together representatives of the debt collection industry, consumer advocates, private attorneys, academics, government officials, arbitration providers, judges, and others. To supplement the information gleaned from the discussions at these roundtables, the Commission also solicited and received public comments. I think it is fair to say that we took a long, hard look at the debt collection system.

What did the Commission learn? We learned that the debt collection system in this country is broken.

We learned that the vast majority of suits for alleged unpaid debts resulted in default judgments. In many cases the default judgment is the result of improper service — either service on the wrong person or, in the most egregious cases, "sewer service," that is to say, the process server simply throws the court papers "down the sewer" and then perjures himself in an affidavit attesting to service. In other cases the consumers never show up in court because they cannot afford a lawyer, or they cannot afford to leave work to attend a court proceeding. Perhaps there are other reasons why so many consumers do not appear in court. Whatever the cause, sky high default rates — upwards of 90% in some jurisdictions — strike me as simply unacceptable.

We learned that for those consumers who attempt to participate in a court proceeding, the process is often unnecessarily expensive. Collectors frequently seek continuances or dismissals without prejudice because they are unprepared or because they cannot produce documentation when requested. When courts grant such requests and set a new hearing or trial date, the consumer is required once again to bear the costs of taking off work and coming to court.

We learned about the continuing problems with debt documentation. Many consumers who are sued have no idea what the underlying debt was, and as a result, have no way to contest it. Moreover, in recent years, as the secondary market of debt buyers has burgeoned, many collection suits brought by debt buyers have little if any documentation to support them. According to a May 2010 report by the Neighborhood Economic Development Advocacy Project and the Urban Justice Center, debt buyers typically do not purchase documentation of debts, such as credit applications bearing signatures, the contracts that applied to each account, account statements, or customer service records that would confirm or clarify fraud claims or customer

[5] *See* Federal Trade Commission, *Tc-.2ß*

disputes.[6] While a few debt buyers are able to dig up that information when pressed, most cannot, and in the vast majority of cases filed, debt buyers cannot provide any documentation of the underlying debt. Despite the overwhelming lack of documentation in suits brought by debt buyers, according to this study, debt buyers prevail in over 90% of their suits.[7] And as some of you may know, the Commission is doing its own debt buyer study that will, among other things, assess the information that

engaged in consumer fraud, deceptive trade practices, and false advertising. The lawsuit alleged that the NAF had held itself out as an impartial

of contract? Consumer credit agreements usually are offered on a take-it-or-leave-it basis, giving the consumer no opportunity to negotiate the pre-dispute arbitration clause. And even if consumers had the ability to "shop around" for a provider who does not require arbitration, they would have found that, until very recently, the vast bulk of consumer contracts for credit contained mandatory arbitration provisions, leaving consumers with no realistic alternatives.

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Now, after having given these and other issues careful consideration, the Federal Trade Commission is today issuing a report entitled "Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration." This report, in my opinion, does an outstanding job of identifying some of the most critical debt collection issues confronting consumers, and the report also makes several recommendations with which I wholeheartedly agree.

With regard to issues surrounding litigation by creditors and debt collectors, and the lack of notice to consumers about the litigation and the resulting high default rates, the report makes several significant and concrete recommendations. I do not have time to discuss all of them, so I will highlight a few of the more salient ones.

- The Commission recommends that states amend service of process rules to require greater verification that the correct consumers are served. Supplemental notice provisions — such as rules requiring service by U.S. Mail, in addition to regular service — can also help ensure that consumers are made aware of the proceedings against them.
- The Commission urges criminal and civil law enforcement authorities to take action against bad actors, such as "sewer servers," to discourage those who would lie and cheat their way into a default judgment against a consumer.
- To lower the cost of consumer participation in debt collection cases filed in court, the Commission urges courts to consider allowing consumers to appear by phone or Internet.
- To discourage collectors from seeking continuances or dismissals without prejudice when consumers do show up in court and even demand documentation of the underlying debt, the Commission urges courts to consider awarding consumers the costs of preparing for and attending a canceled hearing or postponed trial, including their lost wages and transportation costs.
- And if certain collectors or their attorneys repeatedly engage in such practices, or if they fail altogether to attend a scheduled hearing, the Commission urges courts to consider entering dismissals with prejudice.

Turning now to debt documentation, the Commission recommends that collectors be required to take a number of steps in order to provide sufficient documentation of the purported debt to enable consumers to understand why they are being sued and to prevent judgments that are premised on empty assertions. The Commission believes that collectors should be required to include, with their complaints filed in court, some basic information about the debt, such as

(1) the name of the original creditor and the last four digits of the original account number;
(2) the date of default or charge-off and the amount due at the time;
(3) the name of current owner of the debt;
(4) the total amount currently due on the debt; and
(5) a breakdown of the total amount currently due by principal, interest, and fees.

More generally, the Commission concludes that rigorous standards of ethical conduct for arbitration forums, arbitration administrators, and arbitrators are sorely needed. The Commission believes that the private sector should try to develop debt collection arbitration standards, promote compliance with these standards, and vigorously enforce them. If the private sector cannot or will not take the action needed, then the Commission believes either the government should step in and develop and enforce such standards, or Congress should prohibit debt collection arbitration altogether and have these matters resolved in the public court system.

In order to increase the transparency of the arbitration process, the Commission recommends several things. First, the procedures that arbitration forums use to select arbitrators should be made as transparent as possible to restore public confidence in the integrity of debt collection arbitration proceedings. Arbitrators should issue reasoned opinions to accompany any awards. The opinions should state the law applied, explain the application of the law to the facts, and set forth a calculation of the amount awarded, including breaking the amount into principal, interest, and fees. And the opinions should be made public. A handful of states have already passed laws requiring arbitration decisions to be made public.[14] The Commission thinks that Congress should consider the creation of a nationwide reporting and disclosure system for debt collection arbitration awards to make such arbitrations more transparent.

Turning to the issue of consumer choice, the Commission concludes that consumers should, but generally do not, have a meaningful choice regarding mandatory pre-dispute arbitration provisions. The Commission believes that, in order for consumers to have a meaningful choice, they must have: (1) a basic understanding of arbitration and its consequences; (2) the option whether to agree to arbitration, and under what conditions; and (3) a reasonable method of exercising that option. The FTC thinks that substantial changes in mandatory pre-dispute arbitration provisions are needed to meet these criteria. Creditors should draft their consumer credit contracts in a way that ensures consumers are aware of their choice whether to arbitrate, and provide consumers with a reasonable method of exercising that choice. We need more research into alternative models of choice — like the work that has been done in the privacy sphere. If arbitration is going to remain an option, then both the public and private sectors need to educate consumers so that they can make better-informed choices related to arbitration.

The Commission will closely monitor and evaluate debt collection arbitration models, to ensure that they provide consumers with meaningful choice and a fair process. But, to be honest, I do not think that is enough. The process is broken, and simply studying it in the future will not protect consumers now. I very much appreciate industry's self-imposed moratorium on arbitration of consumer debt collection matters, and industry's sensitivity to the serious problems we have identified. However, as you know, the debt collection industry is free to lift its voluntary moratorium at any time. So, in addition to the recommendations all of the Commissioners have made, I separately call

[14] *See* Cal. Civ. Code §1281.96; An Act to Provide Protections for Consumers Subject to Mandatory Arbitration Clauses, 2010 Maine Pub. Law Chap. 572, LD 1256.

on Congress to formalize the voluntary moratorium currently in place, by enacting a ban on mandatory pre-dispute arbitration in consumer debt collection matters. I think that such a ban should remain in place until the arbitration process can be shown to be fair, transparent, and as affordable as traditional litigation, and until consumers have a meaningful opportunity to opt out of pre-dispute arbitration without losing access to the credit services they seek. If Congress enacts such a ban, then once these conditions have been met, Congress could lift the ban itself, or it could delegate the authority to determine whether appropriate changes have been instituted to the Federal Trade Commission or, assuming that the financial reform bill is enacted into law, to our new fellow consumer protection agency, the Consumer Financial Protection Bureau.

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So, to conclude: The current system for collecting consumer debts is broken.