



I. The Commission's Debt Collection Program

The FTC's debt collection program is a three-pronged effort: (1) vigorous law enforcement; (2) education and public outreach; and (3) research and policy initiatives. Over the past year, the FTC has employed all three prongs in its effort to curb unlawful debt collection practices and protect consumers.

II. Law Enforcement Activities

The Commission is primarily a law enforcement agency, and law enforcement investigations and litigation are at the heart of the FTC's recent debt collection work. Both the FDCPA and the FTC Act authorize the Commission to investigate and take law enforcement action against debt collectors that violate those statutes.³ If an FTC investigation reveals that a debt collector violated the law, the Commission may file a federal court action seeking injunctive and equitable monetary relief under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), or refer the matter to the Department of Justice for civil penalties and injunctive relief. Where a collector's violations are so egregious that a court order is necessary to halt the conduct immediately, or where consumer redress and disgorgement are more appropriate forms of monetary relief than civil penalties, the FTC generally files the action itself under Section 13(b) of the FTC Act. Where, on the other hand, preliminary injunctive relief to halt unlawful conduct is unnecessary and civil penalties are appropriate monetary relief, the FTC may refer the case to the Department of Justice.

In addition to filing and referring law enforcement actions, the FTC files amicus briefs and undertakes other law enforcement-related activities.

A. Legal Actions

In recent years, to improve deterrence, the Commission has focused on bringing a greater number of cases and obtaining stronger monetary and injunctive remedies against debt collectors that violate the law. From January 1 through December 31, 2013, the FTC has brought or resolved nine debt collection cases—the highest number in any single year. The FTC obtained preliminary or permanent injunctive relief in seven Section 13(b) cases involving debt collection, and referred two additional cases to the Department of Justice for civil penalties. In several of its Section 13(b) cases, the Commission obtained preliminary relief that included *ex parte* temporary restraining orders with asset freezes, immediate access to business premises, and appointment of receivers to run the debt collection businesses.

³ The FDCPA authorizes the Commission to investigate and take law enforcement action against debt collectors that engage in unfair, deceptive, abusive, or other practices that violate the statute. FDCPA § 814, 15 U.S.C. § 1692*l*. Under the FTC Act, the FTC may investigate and take law enforcement action against entities that, in connection with collecting on debts, engage in unfair or deceptive acts and practices

The cases discussed below represent a concerted effort by the FTC to target unlawful debt collection practices including false threats, harassment or abuse, and attempts to collect on “phantom” payday loan debts.

1. Deceptive, Unfair, and Abusive Collector Conduct

Targeting debt collectors that engage in deceptive, unfair, or abusive conduct continues to be one of the Commission’s highest priorities. In particular, the Commission continues to actively pursue debt collectors that secure payments from consumers by falsely threatening litigation or otherwise falsely implying that they are involved in law enforcement. In 2013, the Commission filed or resolved seven actions alleging deceptive, unfair, or abusive debt collection conduct.

In *FTC v. Forensic Case Management Services, Inc.*, the FTC secured substantial monetary judgments against a debt collection enterprise and a complete ban on future debt collection activity, along with other injunctive relief.⁴ The FTC’s complaint alleged that the defendants violated the FTC Act and the FDCPA through such egregious conduct as threats of physical harm, obscene and profane language, revealing consumers’ debts to third parties, and falsely threatening consumers with lawsuits, arrest, and wage garnishment. The judgments in the case exceed \$35.5 million, and despite partial suspension based on the defendants’ inability to pay, the Commission collected more than \$1.1 million for consumer redress.

In *United States v. Expert Global Solutions, Inc.*, the Commission secured a \$3.2 million civil penalty for unlawful collection practices —the highest penalty the FTC has ever obtained against a third-party debt collector.⁵ The FTC’s complaint charged that the company, operating under several business names including “NCO,” violated the FDCPA and the FTC Act by employing harassing collection calls, disclosing consumers’ debts to third parties, and continuing collection efforts without verifying debts even after consumers said they did not owe those debts. The settlement prohibits the company from engaging in this unlawful conduct and further requires that whenever a consumer disputes the validity or the amount of a debt, the company must either terminate collection efforts or suspend collection until it conducts a reasonable investigation and verifies that its information about the debt is accurate and complete.

⁴ *FTC v. Forensic Case Mgmt. Servs., Inc.*, No. 2:11-cv-07484 (C.D. Cal. Jan. 4, 2013) (Final Judgment and Order for Permanent Injunction and Monetary Relief), *see also* Press Release, FTC Settlement Obtains Permanent Ban Against Abusive Debt Collection Operation (Jan. 17, 2013), *available at* <http://www.ftc.gov/news-events/press-releases/2013/01/ftc-settlement-obtains-permanent-ban-against-abusive-debt>.

⁵ *United States v. Expert Global Solutions, Inc.*, No. 3:13-cv-2611 (N.D. Tex. July 16, 2013) (Stipulated Order for Permanent Injunction and Monetary Judgment); *see also* Press Release, World’s Largest Debt Collection Operation Settles FTC Charges, Will Pay \$3.2 Million Penalty (July 9, 2013), *available at* <http://www.ftc.gov/news-events/press-releases/2013/07/worlds-largest-debt-collection-operation-settles-ftc-charges-will>.

Finally, the FTC recently settled allegations in *FTC v. AMG Services, Inc.* that a payday lender, collecting on its own behalf, violated the FTC Act by falsely threatening to take legal action against consumers.⁹ The Commission also obtained a temporary restraining order with an asset freeze in *FTC v. Goldman Schwartz*—a case alleging that the defendant falsely threatened consumers with arrest, disclosed consumers’ debts to third parties, collected unauthorized fees, engaged in harassing and abusive conduct, failed to provide required notices, and made collection calls before 8:00 a.m. and after 9:00 p.m.¹⁰

2. Phantom Debt Collection

In *FTC v. Pinnacle Payment Services, LLC*, the Commission charged that defendants, working out of offices in Atlanta and Cleveland, collected and processed millions of dollars in payment for phantom debts using robocalls and voice messages that threatened legal action and arrest unless consumers responded within a few days.¹² Callers also often claimed an affiliation with a law firm or a law enforcement agency. The Commission obtained an *ex parte* temporary restraining order with an asset freeze, receivership, and immediate access against the defendants, and the court hearing the matter recently entered a preliminary injunction. *Pinnacle* is the FTC's second phantom debt collection action this year, and its fifth recent case involving allegedly fraudulent, online payday-loan-related operations.¹³ Litigation in this matter is ongoing.

B. Other Law Enforcement Activities

1. Time-Barred Debt: *Delgado* Amicus Brief

An ongoing issue in debt collection concerns the collection of debt that is beyond the applicable statute of limitations (also known as “time-barred debt”). Although a past-statute debt remains a valid obligation owed by the consumer in every state except Mississippi and Wisconsin, consumers have a dispositive affirmative defense to any legal action initiated to collect a past-statute debt.¹⁴ For this reason, as many jurisdictions have recognized, threatening to file a lawsuit to collect on a past-statute debt is a violation of the law.¹⁵

¹² *FTC v. Pinnacle Payment Sys., LLC*, No. 1:13-CV-3455 (N.D. Ga. Oct. 21, 2013) (*ex parte* TRO); see also Press Release, At the FTC's Request, Court Halts Collection of Allegedly Fake Payday Debts (Oct. 24, 2013), available at <http://www.ftc.gov/news-events/press-releases/2013/10/ftcs-request-court-halts-collection-allegedly-fake-payday-debts>.

¹³ Other recent FTC matters involving allegedly fraudulent online payday-loan-related operations include *Pro Credit, Inc.* (M.D. Fla. 2013), *Caprice Mktg. LLC* (N.D. Ill. 2013), *American Credit Crunchers, LLC* (N.D. Ill. 2012), and *Broadway Global Master Inc.* (E.D. Cal. 2012).

¹⁴ California has recently gone further with regard to debt buyers, prohibiting them from filing suit or initiating arbitration if the applicable statute of limitations on their claim has expired. Fair Debt Buying Practices Act, CAL. CIV. CODE §§ 1788.56 (West 2014).

¹⁵ See *United States v. Asset Acceptance LLC*, 8:12-cv-182 (M.D. Fla. Jan. 30, 2012) (stipulated order in case alleging that debt buyer failed to disclose that debts were too old to be legally enforceable); *Baptist v. Global Holding & Inv. Co., LLC*, CIV No. 04-CV-2365 (DGT), 2007 WL 1989450, at *5-6 (E.D.N.Y. July 9, 2007) (finding threat to sue on time-barred debt was a deceptive practice that violated Section 807 of the FDCPA); *Kimber v. Fed. Fin. Corp.*, 668 F. Supp. 1480, 1489 (M.D. Ala. 1987) (holding that a threat to sue on a time-bared debt violated Section 807 of the FDCPA because the collector “implicitly represented that it could recover in a lawsuit, when it fact it cannot properly do so”). Several states also require debt buyers and/or debt collectors to provide a disclosure when collecting on time-barred debts. See, e.g., Fair Debt Buying Practices Act, CAL. CIV. CODE §§ 1788.52-.64 (West 2014); 940 MASS. CODE REGS. 7.07(24) (2014); N.M. CODE R. § 12.2.12.9 (LexisNexis 2014); see also FTC, REPAIRING A BROKEN SYSTEM: PROTECTING CONSUMERS IN DEBT COLLECTION LITIGATION AND ARBITRATION 25-28 (2010) [hereinafter REPAIRING A BROKEN SYSTEM], available at <http://www.ftc.gov/os/2010/07/debtcollectionreport.pdf>.

In the 2011 case *United States v. Asset Acceptance, LLC*, the Commission alleged that, in attempting to collect on debts that it knew or should have known were time-barred, Asset Acceptance created the misleading impression that it could sue consumers if they did not pay.¹⁶ The Commission alleged that Asset Acceptance's failure to disclose to consumers that it could not legally sue them if they did not pay was a deceptive practice violating Section 5 of the FTC Act. In a stipulated settlement to remedy this alleged violation, Asset Acceptance agreed to disclose that it will not sue to collect on any debt that it knows or should know is time-barred.

In August 2013, the Commission and the CFPB filed a joint amicus brief in response to an invitation from the Seventh Circuit to present the Commission's views on the application of the FDCPA to the collection of debts barred by the statute of limitations.¹⁷ In the underlying case, a debt collector sent the plaintiff a dunning letter with a limited-time offer to settle a time-barred debt. The plaintiff's ensuing class-action suit against the debt collector contends that this letter violates the FDCPA's prohibition on the use of "any false, deceptive, or misleading representation or means in connection with the collection of any debt."¹⁸ The collector moved to dismiss the suit, arguing that, as a matter of law, the letter could not have violated the FDCPA because it was not an explicit or implied threat to sue.

The joint brief notes that several courts have previously held that a collector who sues or threatens suit on a time-barred debt violates the FDCPA, and argues that, depending on the circumstances, a time-limited settlement offer could plausibly mislead a consumer to believe a debt is enforceable in court even if the offer is unaccompanied by any clearly implied threat of litigation. The brief makes clear that a debt collector may seek voluntary payment of a time-barred debt without violating the FDCPA, even if its collection communications are silent as to the statute of limitations. The brief argues, however, that actual or threatened litigation is not a necessary predicate for an FDCPA violation in the context of time-barred debt; rather, a debt collector violates the statute whenever its communications tend to deceive or mislead "unsophisticated consumers" into believing that a time-barred debt could be the subject of a collection suit.

The Seventh Circuit heard oral argument on the matter in September 2013, but has not yet issued a decision.

¹⁶ *United States v. Asset Acceptance, LLC*, No. 8:12-cv-182 (M.D. Fla. Jan. 31, 2012) (order entering consent decree); *see also*

3. Required Remote Tribal Arbitration: *Jackson* Amicus Brief

The Commission has taken a particular interest in stemming the consumer harm that can flow from unlawful arbitration tactics. In its recent report on protecting consumers in debt collection litigation and arbitration, the Commission noted that mandatory pre-dispute arbitration clauses have become increasingly common in consumer contracts for goods and services. The Commission emphasized that such arbitration should be permitted only if creditors provide consumers with meaningful choice as to whether their disputes will be arbitrated, and that any arbitration should be conducted with an emphasis on making it more likely that consumers can appear and participate.²¹

In *FTC v. Payday Financial, LLC*, the Commission continues to litigate against online payday lenders that regularly file collection actions against borrowers in remote tribal courts, alleging that this practice is deceptive and unfair in violation of Section 5 of the FTC Act.²² Though the FTC's case against Payday Financial challenges the defendants' litigation practices as opposed to arbitration practices, the Commission learned a great deal about the defendants' arbitration practices during discovery. In July 2012, during the pendency of the Commission's

substantial injury to those consumers. In addition, false, inconsistent, and confusing representations in the arbitration clauses undermine borrowers' ability to understand these provisions, making such injury not reasonably avoidable by the consumer. The Commission concluded that these issues, taken together, could contribute to a finding that the arbitration clauses are both procedurally and substantively unconscionable.

The Seventh Circuit has not yet conducted oral arguments on the issues addressed by the Commission's brief.

4. Medical Debt Collection: Accretive Health, Inc. Closing Letter

The Commission also continues to be concerned about collection tactics that pressure consumers into abandoning their rights under the FDCPA. A practice that recently exemplified this concern is on-site medical debt collection, whereby debt collectors seek payments from consumers while they are receiving treatment at a medical facility.

The Commission recently reviewed evidence that Accretive Health, Inc. ("Accretive") employed debt collectors to collect defaulted debts in hospital emergency rooms and other sensitive hospital areas. While staff ultimately closed its investigation of Accretive, the Division of Financial Practices issued a letter highlighting some of the concerns raised by on-site medical debt collection.²⁵ For example, collection attempts in such circumstances may deter consumers from seeking necessary medical care because consumers fear that they will be confronted with debts that they do not have the means to pay. Some consumers may even fear that the hospital may withhold necessary treatment unless payments are made. Such collection attempts also could interfere with the provision of medical treatment, either by delaying treatment while the collection attempt is made, or by adding additional emotional stress for the patient. Moreover, consumers are not normally well-positioned in such circumstances to evaluate the validity of the alleged debt and their financial ability to make any payments. For example, consumers will not normally have access to their paperwork and records, or the status of their financial resources, while awaiting medical treatment in an emergency room. Thus, debt collectors or other entities that engage in this activity may violate the FDCPA and the FTC Act.

III. Education and Public Outreach

The second prong of the Commission's debt collection program is education and public outreach. Consumer education informs consumers of their rights under the FDCPA and what the statute requires of debt collectors. Business education informs debt collectors what they must do to comply with the law. The FTC also engages in public outreach to enhance legal services providers' understanding of debt collection issues.

The Commission educates consumers through English and Spanish print and online materials, one-on-one guidance, blog posts, and speeches and presentations. To maximize its outreach efforts, FTC staff works with an informal network of about 10,000 community-based organizations and other interest groups that order FTC products and distribute FTC information to their members, clients, and constituents. Most of the 10 million or so print publications the

including debt collection. The agency has held 21 Common Ground conferences over the past several years in cities around the country.

Finally, the FTC worked with ChildFocus, Inc. and the Annie E. Casey Foundation to help produce the free guide, *Youth and Credit: Protecting the Credit of Youth in Foster Care*.²⁷ This guide discusses credit issues facing the more than 26,000 children in the United States who age out of foster care every year. In 2011, Congress passed legislation to help people in foster care better protect their credit. Now, when foster children turn 16, child welfare agencies are required to get their annual credit reports. The legislation also requires agencies to help children clear up their credit, including debt collection issues resulting from identity theft, so they can better launch their lives as independent young adults. One of the over-arching goals of the guide is youth empowerment: using this opportunity to help young people understand what credit is, why it is important to their future financial stability, and how bad credit can derail their goals. It also gives adults some tools to help children if their identity has been stolen, including resources to help them identify charged-off debts and fix credit fraud and errors.

IV. Research and Policy Development Activities

The third prong of the Commission's debt collection program is research and policy initiatives. In the past year, the FTC has continued to monitor and evaluate the debt collection industry and its practices. Specifically, as described below, the FTC has collaborated with the CFPB to examine the role of data integrity in debt collection, and has provided the Bureau with input on debt collection rulemaking and guidance initiatives.

A. Life of a Debt Roundtable Event

Building on the findings of the Commissi

The insights gained through the workshop have been and will continue to be valuable in the FTC's law enforcement investigations and litigation in the debt collection area. In addition,

Appendix B

Debt Collection Complaints Received Directly by the FTC³³

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Year	2013	2012
Total Debt Collection ("DC") Complaints	73,211	125,136
DC Complaints as Percentage of All FTC Complaints	17.0%	24.1%
Total Third-Party DC Complaints	60,485	102,783
Third-Party DC Complaints as Percentage of All FTC Complaints	14.0%	19.8%

Appendix C

Debt Collection Complaints by FDCPA Complaint Category

FDCPA Complaint Category	Total 2013 Complaints	Percentage of 2013 FDCPA Complaints	2013 Category Rank	Total 2012 Complaints	Percentage of 2012 FDCPA Complaints	2012 Category Rank
Repeated Calls	23,582	39.0%	1	37,543	36.5%	2
Misrepresent Debt Character, Amount, or Status	23,068	38.1%	2	39,993	38.9%	1
Falsely Threatens Illegal or Unintended Act	20,627	34.1%	3	30,470	29.6%	3
No Written Notice	17,502	28.9%	4	26,139	25.4%	4
Falsely Threatens Arrest, Property						