UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

Office of the Secretary

February 5, 2015

The Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1801 L Street, NW
Washington, DC 20036

Dear Director Cordray:

Thank you for your letter of January 12, 2015. As your letter mentions, the Consumer Financial Protection Bureau (CFPB) is responsible for providing annual reports to Congress concerning the federal government's efforts to implement the Fair Debt Collection Practices Act (FDCPA).[1] This letter and its appendix describe the efforts the Federal Trade Commission (Commission or FTC) has taken during the past year in the debt collection arena. In the FTC's debt collection work, the CFPB has been a valuable partner, and the Commission anticipates that our partnership will become even stronger in the future. We hope that the information in this letter will assist the CFPB in preparing this year's report.

In 2014, the Commission continued with aggressive law enforcement activities and public outreach to address new and troubling issues in debt collection, doing more than ever to protect consumers. Among other things, the FTC:

[1] The Dodd-Frank Act directed the CFPB to report to Congress on the federal government's implementation and administration of the FDCPA. Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Pub. L. 11-203, § 1089, 124 Stat. 1376, 2092-93 (2010) (amending the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692-1692p). Before the enactment of the Dodd-Frank Act, Section 815(a) of the FDCPA, 15 U.S.C. § 1692m, required the FTC to report directly to Congress on these topics. The Commission submitted such annual reports from 1977 to 2011.

[2] These figures includes cases filed and resolved in 2014, as well as cases filed in previous years but resolved in 2014.

The Honorable Richard Cordray –

and jailed, and that their children would be taken into custody; falsely claiming to be attorneys or to be working with local sheriffs' offices; disclosing debts to consumers' employers and military superiors; and collecting unauthorized late fees and attorneys' fees. The order required the defendants to surrender cash on hand, real estate, and other significant assets. The court-appointed receiver is in the process of liquidating surrendered assets and dissolving several defendant corporations. The FTC expects to receive in excess of $700,000 that will be used to provide redress to consumers who were charged unauthorized fees. The remainder of the judgment is suspended based on an inability to pay.

In *FTC v. National Check Registry, LLC*, an action undertaken jointly with the Attorney General of New York, the FTC and the New York Attorney General secured a preliminary injunction that halted a recidivist abusive debt collection operation, froze the operation's assets, and appointed a receiver to take over the defendants' business.[11] In the complaint, the FTC and the New York Attorney General charged the defendants with violating the FTC Act, the FDCPA, and New York State law by falsely representing to consumers that they had committed check fraud, and then threatening the consumers with arrest, wage garnishment, or litigation if the consumers did not pay the amounts demanded. The complaint also alleged that the defendants mande did negr.(

2. Collection Practices Affecting LEP Latinos

In 2014, the Commission initiated or resolved three cases against abusive debt collection operations that targeted Spanish-speaking consumers. Along with the *Debt Collection and the Latino Community* roundtable, discussed below, these cases reflect the Commission's continued emphasis on ensuring that every community, regardless of age, race, gender, or language skills is protected from unlawful practices.

In *FTC v. Rincon Management Services, LLC*, the FTC obtained a judgment of $23,084,885 against an abusive debt collection operation, along with a complete ban on debt collection activity and other injunctive relief.[15] The *Rincon* operation targeted Spanish-speaking consumers and others in difficult financial circumstances, and used abusive practices to coerce repayment of alleged debts that the consumers often did not owe. The FTC's complaint alleged that the defendants violated the FTC Act and the FDCPA by calling consumers and their employers, family, friends, and neighbors, and posing as process servers seeking to deliver legal papers that purportedly related to a lawsuit. The defendants' collectors then allegedly falsely told the consumers that unless they immediately paid the amounts demanded, the defendants would sue them, garnish their wages, or in some cases, arrest them. Despite partial suspension of the judgment based on the defendants' inability to pay, the Commission collected

In *FTC v. Centro Natural Corp.*, the FTC secured a preliminary injunction against a group of telemarketers that allegedly pressured and harassed consumers to settle "phantom" debts that consumers did not owe.[17] The Court froze the operation's assets and appointed a temporary receiver to take over the defendants' bu

Reflecting the increased interest by federal and state authorities in bringing criminal actions against abusive debt collectors, federal authorities have since filed criminal charges against the *Williams, Scott* principals. In November 2014, the United States Attorney for the Southern District of New York, along with the New York Office of the Federal Bureau of

that the consumers allegedly owed, on a public website.[23] The defen

The Seventh Circuit recognized that its holding conflicted with those of the Third and

legal status of the debt. Without discussion, the district court held that as a matter of law, "even the least sophisticated consumer would not infer a threat of litigation" from the letter.

As in *Delgado*, the FTC and the CFPB explained in the joint brief that a debt collector who seeks payment after the statute of limitations has run on a debt may violate the FDCPA if its communication would lead the least sophisticated consumer to believe that the debt may be enforced in court. While it is well established that implicit or explicit threats to sue on time-barred debt, and actual lawsuits, violate the FDCPA, other communications that mislead consumers may also qualify. The brief explained that both overt representations as well as omissions may mislead or deceive. To avoid misleading consumers, a debt collector may be required to correct consumers' misinterpretations– even if the collector did not directly create the misimpression. In assessing whether a communication is misleading or deceptive, a court applies an "objective test" as to whether the "least sophisticated consumer" would be misled or deceived. Moreover, a court must consider the practice's effect on unsophisticated consumers from their perspective, and it may be relevant that consumers do not know their legal rights with respect to time-barred debt. Ultimately, whether a debt collector's letter is false, deceptive, or misleading requires "a fact-bound determination of how an unsophisticated consumer would perceive the letter." Because the least sophisticated consumer could plausibly infer that the defendant here would or could sue if the plaintiff did not pay, the brief argued that dismissal was improper.

The Sixth Circuit heard oral argument on the matter on October 7, 2014. On January 13, 2015, the Sixth Circuit issued its ruling agreeing with the arguments proffered by the FTC and the CFPB, and reversing the decision of the district court.

3. "Initial Communication": *Hernandez* amicus brief

In August 2014, the FTC joined the CFPB in filing an amicus brief in the Ninth Circuit, urging it to reject an interpretation of the phrase "initial communication" that was both overly narrow and contravened the text of, and legislative intent behind, the FDCPA.[28]

The FDCPA requires a collector, "[w]ithin five days after the initial communication with a consumer in connection with the collection of any debt," to send the consumer a "validation notice" containing certain information about the consumer's alleged debts and the consumer's rights.[29]

The parties filed cross-motions for summary judgment. In its motion, the defendant argued that it had no obligation to comply with § 1692g because its letter was not the "initial communication" that the plaintiff had received about the debt. Instead, it argued that the "initial communication" had come from another collector that had previously sought to collect on the same debt. The defendant contended that because that prior collector had sent the plaintiff a letter that complied with the FDCPA, and because it was a "subsequent collector" (and not the initial collector), it was under no obligation to send any further notice. Finding that the statute's plain text only contemplated one initial communication with a debtor on a given debt, the district court agreed and granted the defendant's motion.

In our joint brief, the FTC and the CFPB urged the Ninth Circuit to reject the district court's interpretation, which has no basis in the statute's text or purpose. As we noted, the phrase "initial communication" is most naturally read – and has been read by the Ninth Circuit and Congress – to refer to each debt collector's initial communication with a consumer. Among other things, a consumer's initial communication about a debt typically comes from the original creditor – an entity that is generally not subject to the FDCPA's requirements. In those cases, the district court's interpretation would render the FDCPA's notice requirement superfluous – something Congress could not have intended. Likewise, the text of the statute requires "a debt collector" to send the notice – that is, each debt collector that attempts to collect on the debt, and is not limited to just the "initial debt collector" that attempts to collect.

We also noted in our brief that the district court's interpretation contravened Congress's legislative intent. Congress enacted § 1692g to eliminate the problem of debt collectors attempting to collect the wrong amounts from the wrong consumers. To that end, Congress requires debt collectors, upon initially contacting a consumer, to provide the consumer with a validation notice containing key information about the debt and the consumer's rights, including the amount of the debt, the identity of the original creditor, and the consumer's rights to obtain verification of the debt or dispute it. Because debts frequently change hands, these protections are just as important when a new debt collector acquires a debt as they are when the first collector began collecting. The district court's interpretation would create a loophole that would eviscerate the FDCPA. Specifically, under the district court's reading, nothing would prevent a collector who received a request for verification from passing the debt to another collector who would then have no obligation to provide a validation notice. This practice would prevent the consumer from ever ascertaining the validity of the debt – something Congress clearly did not intend.

Because the district court's interpretation of the FDCPA's "initial communication" requirement contravenes both the text of the statute and the legislative intent, the FTC and the CFPB urged the Ninth Circuit to reverse and remand the case. Briefing in the case is ongoing and the Ninth Circuit has not yet scheduled oral argument.

III. Education and Public Outreach

Education and public outreach also are important parts of the Commission's debt collection program. The FTC uses multiple formats and channels to inform consumers about

Ground" conferences that bring together legal services providers and law enforcement to discuss a wide variety of consumer protection issues, including debt collection.

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 describe

V. Conclusion

The Commission hopes that the information contained in this letter will assist the CFPB in its annual report to Congress about its administration of the FDCPA. The FTC looks forward to continuing to cooperate and coordinate with the CFPB on consumer protection issues relating to debt collection. If any other information would be useful or if you wish to request additional assistance, please contact James Reilly Dolan, Associate Director, Division of Financial Practices, at (202) 326-3292.

By direction of the Commission.

Donald S. Clark
Secretary

Business Information				
The Fair Debt Collection Practices Act	7,220		114,941	
Video				
Debt Collection			893	221

One-stop resource pages:

- Consumer Advocates
- Financial Educators

Blog Posts for Consumers

- Debt brokers expose sensitive financial info
- Spanish speaking consumers conned out of $2 million
- FTC to abusive debt collectors: You're outta business!
- When is debt collection illegal?
- Stop a debt collector's empty threats
- Is that debt collector for real?
- When is debt collection illegal?
- A call to collect, loaded with lies
- FTC puts the brakes on national subprime auto lender

Blog Posts for Business

- Buying or selling debts? 7 steps for keeping data secure
- Debt collection double feature
- Hat trick? FTC charges violations in auto loan servicing, debt collection, credit reporting
- What's a 4-letter word for "FTC advice for derelict debt collectors"?
- Not another lawyer joke
- Corporate officers: Don't assume you're Inc.-ognito
- Needle and threats