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As a consultant to the Accounts Receivable Management Industry (ARM Industry), and someone who has written on account integrity/data integrity/data security issues, I am writing today to provide commentary regarding issues impacted by the use of litigation to collect consumer debt. I want to start with the following assumptions:

- 1) Debtors need to pay their debts. The failure of debtors to pay their debt harms those who pay their debts on time through higher cost of goods and increased interest rates.
- 2) Debt owners and debt collector should be able to use any and all legal means to collect the debt including the use of the courts to enforce contractual obligations between debtor and debt owner.
- 3) Debt buyers and debt collectors provide a vital role in the extension of consumer credit.
- 4) Debt collectors have a responsibility to base collection activity on accurate data.
- 5) Consumers have the right to expect communication with a debt collector/debt buyer to be professional and accurate.
- 6) I am not an attorney and am not writing as an attorney. The issues I am discussing are not presented from a legal perspective. Rather, they are from the perspective of a person who works with data security and integrity issues in the ARM Industry.

The problem which exists in the use of the courts to collect debt is not the volume of cases. Debtors have the right to go to court to enforce contractual commitments. Rather, the problem is with the underlying information which is used as basis for litigation.

In the recent case *Miller v. Upton, Cohen & Slamowitz*, one of the key issues was the failure to due basic due diligence on an account before initiating collection efforts. This includes verifying the information (balances, co-debtors, allowable interest rates, contract terms, etc.) by collection attorneys before initiating litigation. This is echoed in the action taken by the FTC last year against Bear Stearns/EMC Mortgage. (A white paper I wrote providing analysis of the complaint and settlement of this case is still available on the InsideARM website.)

And while *Miller* appears to be a rather technical decision, it points to a larger issue. If debt collection litigation is going to be initiated against a debtor, shouldn't there have been some due diligence performed by the parties filing suit to establish basic facts of the case including:

- What can be collected? At what interest rate? What costs of collection can be recovered from the consumer?
- Determine whether or not the person being sued actually owes the money? Can the account even be litigated?
- And, can the debt owner establish they have clear title to the debt?



The failure of industry participants to perform sufficient due diligence – and the problems which have resulted - is at the heart of why New York City, Massachusetts, and North Carolina have implemented significant changes in evidentiary requirements for litigating against debtors. And, while some in the ARM Industry have cried foul, most of the changes are common sense changes which are focused on trying to ensure the right person is being sued, for the right amount, and both parties are on a level playing field.

The problem is there are systemic issues in the current debt collection process. And, these systemic issues have resulted in problems with the quality and availability of data. Until these problems have been resolved, the issues/abuses found in the courts in the attempt to collect consumer debt will continue. And, it can all be boiled down to three fundamental concepts: who owns the debt, what is the total amount owed, and who owes the debt.

The data which should be presented to the court should include the following: 1) Proof of ownership of the debt, 2) Proof of debt, and 3) Proof of debtor. If the debt owner cannot provide this type of information, why are they seeking to collect from the debtor at all?

The ability to provide authoritative proof of ownership, authoritative proof of debt, and information to accurately provide proof of owner currently exists in the marketplace. Without these solutions, too many times litigation is initiated against a debtor where the debt owner cannot authoritatively affirm ownership, balance due and/or debtor. I mention there are companies which offer these services only to demonstrate that there are reasonably priced technology based solutions to resolve these industries currently available in the marketplace.

Proof of Ownership: Debt owners should be able to provide to the court at the time of filing a chain of title documenting the transfer of ownership of the debt. Preferably, a third party should be able to provide an authoritative chain of title document – similar to a car title – from the Issuer to the current debt owner. There are vendors which currently offer this service in the marketplace. Further, Titled Debt – also referred to as Registered Debt – has recently become available in the marketplace.

Proof of Debt: The debt owner should be able to provide to the court at the time of filing key data about the debt including account number, debtor, balance due (broken out by principal, interest, interest rate, and any allowable contractual/legal additional fees/fines) charge off dates, charge off amounts, date of first delinquency, deaths, bankruptcies and disputes. (Note: It appears at first glance the new FCRA “Furnishers Rule” will require debt owners to track this information for reporting to credit bureaus).

In, addition many of these key data points should never change as the account is bought, sold, and serviced. These key data points need to be benchmarked against the data provided by the issuer who charged off the debt with each sale or assignment. This benchmarking will help in ensuring the



data is as accurate as when it was sold by the Issuer to a third party. There is at least one company which provides data benchmarking services in the marketplace.

Further, the debt owner should have readily available to provide to the court and/or the debtor a document and/or documents further documenting the case including terms and conditions and transaction history (contracts/terms and conditions, payments, purchases, and statements).

Proof of Debtor: The litigation brought by the debt owner should only be brought against the actual owner of the debt. Basic efforts should be taken by the debt buyer/collector to verify the debtor. This includes obtaining copies of the debtors completed application for credit (Note: some types of debt will not have a credit application. An example would be medical debt) or determining whether or not the debtor can be sued. Too often, obvious errors in identification of the debtor are ignored and, as a result, the wrong consumer is pursued. The information which is used to identify the debtor – account numbers, social security numbers, names, addresses, phone numbers – needs to be accurately maintained. Benchmarking of data and increased availability of completed credit applications will help with this process.

Who benefits from these improving the data used in consumer debt litigation:

Consumers: Consumers benefit because debtors will be held accountable for their debts. And, there will be fewer complaints – read more confidence – in the debt collection process.

Debt Owners: Owners of debt should benefit because improved account integrity lowers the overall cost of collection as well as supports debt portfolio valuations.

Debtors: Debtors benefit because communication between debt collector and debtor is based on more accurate information. And, the conversation between debt owner and debtor, as a result, becomes focused for both debtor and debt collector on resolving any disputes and the debt.

In summary, there are problems which are impacting consumers and debt owners when trying to enforce contracts in federal and state courts. Further, at the heart of these issues are problems with data involving proof of ownership, proof of debt, and proof of debtor. And, there are solutions, which if more fully adopted by the marketplace, will go a long way to reduce the number of complaints arising from data integrity/account integrity issues.

Regards,

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