



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Division of Financial Practices
Bureau of Consumer Protection

Joel Winston
Associate Director

Telephone
(202) 326-3224

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BY EMAIL AND FIRST-CLASS MAIL

Charity A. Olson, Esq.
Olson Law Group
106 E. Liberty, Suite 206
Ann Arbor, MI 48104

Re: Gary D. Nitzkin, P.C. and Gary D. Nitzkin

Dear Ms. Olson:

As you know, the staff of the Federal Trade Commission's Division of Financial Practices has been conducting a non-public investigation of Gary D. Nitzkin and Gary D. Nitzkin, P.C. ("Nitzkin, P.C.," and collectively "Nitzkin") for possible violations of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §§ 1692-1692p, and Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 41 *et seq.*, in connection with the possible use of social media for debt collection activities. Specifically, our inquiry has focused on whether Nitzkin has communicated via social media with debtors and/or third parties to collect debts, including by sending Facebook "friend requests" to join debtors' social media networks.

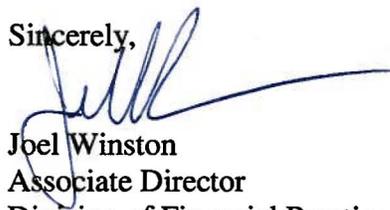
The FDCPA, among other things, prohibits collectors from: (1) communicating, in connection with the collection of any debt, with third parties, except for specific permitted purposes; (2) engaging in any conduct the natural consequence of which is to harass, oppress or abuse any person in connection with the collection of a debt; and (3) using any false, deceptive or misleading representation, or failing to disclose certain material information, in connection with the collection of any debt. 15 U.S.C. §§ 1692c-e. Although the passage of the FDCPA predates a number of advancements in the ways in which individuals communicate, its protections for consumers apply regardless of the particular method of communication chosen by

the debt collector.¹ Because information on a social media site may be public once the user of the site has granted access to it, communications by debt collectors on such sites raise possible concerns under the FDCPA and FTC Act, including improper disclosure of information to third parties.

Thus, in communicating through social media, debt collectors may violate the FDCPA and/or the FTC Act by engaging in the following practices: (1) requesting to join debtors' social media networks (for example, by sending a "friend request" on Facebook), or making any subsequent communications, for the purpose of collecting a debt, without making the disclosures required by Section 807(11) of the FDCPA;² (2) communicating with third parties other than in the limited circumstances permitted by Section 805(b) of the FDCPA; (3) communicating with third parties to obtain location information about debtors in a manner that violates Section 804 of the FDCPA; (4) utilizing social media in a manner that constitutes a publication of a list of debtors who allegedly refuse to pay debts, in violation of Section 806(3) of the FDCPA; and (5) communicating with debtors or third parties in a false, deceptive, or misleading way, in violation of Section 807 of the FDCPA.

Upon careful review of the matter, including information submitted to FTC staff, we have determined not to recommend enforcement action at this time. It appears that Mr. Nitzkin used social media to contact a debtor for debt collection purposes on only one occasion, and then only to collect on a commercial debt, which falls outside the FDCPA.³ The decision not to recommend enforcement action is based on findings specific to this particular investigation. The closing of this investigation is not to be construed as a determination that a violation of law did not occur, just as the pendency of an investigation should not be construed as a determination that a violation has occurred. The Commission reserves the right to take such further action as the public interest may require.

Sincerely,



Joel Winston
Associate Director
Division of Financial Practices

¹ The FDCPA states that, "[t]he term 'communication' means the conveying of information regarding a debt directly or indirectly to any person *through any medium*." FDCPA § 803(2), 15 U.S.C. § 1692a(2) (emphasis added).

² That section requires collectors to disclose in the *initial* communication with the consumer that the collector is attempting to collect on a debt and that any information they obtain will be used for that purpose. In *subsequent* communications, the collector must disclose that the communication is from a debt collector.

³ The FDCPA only covers obligations for "personal, family or household purposes." FDCPA § 803(5), 15 U.S.C. § 1692a(5).