TO: The Federal Trade Commission
FROM: Adam J. Olshan, Esq., Law Offices Howard Lee Schiff, PC
RE: Comments following my participation on the 12/4/09 *Protecting Consumers in Debt Collection Litigation* Roundtable
DATE: 1/8/10

The stated purpose for the recent roundtable discussions was for the FTC to better understand the collection litigation process so that recommendations to Congress - and FTC follow-up activity - could be knowledge-based. While there was not much actual data discussed at the three Roundtables, it was made clear throughout each Roundtable that collaborative discussions between the bench, the consumer bar and the creditor bar have been incredibly successful at the local levels and that these discussions have already led to much positive 21st century reform that benefits the public. Such reform has included, for example, a local recognition that the original creditor's chargeoff balance is inherently reliable and that in order for pleadings to be more transparent, the plaintiff must, where appropriate, plead the chargeoff balance and then itemize all post-chargeoff alleged damages. The federal government should encourage local stakeholders to participate in such discussions in each state so that many such issues may be collaboratively examined and new court rules codified.

The record is full of actual examples of collaborative successes in Michigan, Illinois, Indiana, California, Massachusetts, Florida, Virginia, Pennsylvania and Connecticut. Other states that have begun such collaborative discussions include New York, New Jersey and Iowa. The local judicial branch central office is the location at which state court litigation issues should be so discussed - and the many successes that were shared on the record by judges, consumer advocates and creditor attorneys should illustrate to the Commission that these precise discussions should be encouraged to begin in every state this year.

Since state court rules and practices vary greatly to accommodate local needs - and because local rules each delicately affect other such rules, the federal government should not unilaterally tinker with state court practice rules. Modifications to account for technology and changing local needs must be left to local collaborative discussion.

As I mentioned on the 12/4/09 record, I personally served on both the Massachusetts Small Claims Working Group (August 2006 - August 2007) as well as on the Connecticut Bench/Bar Small Claims Committee (June 2008 - April 2009). These two discussions explored the following areas in great detail that led to informed recommendations to local decision makers:

1 - requirement that the plaintiff state in the complaint the basis for knowledge of the defendant's current residence address
2 - inclusion in the complaint of certain information that would assist the defendant to understand the nature of the indebtedness
3 - inclusion in the complaint of certain relevant dates that would establish that the local statute of limitations was current and to illustrate that a prima facia case existed
4 - where the above information is properly pled in the initial complaint, the plaintiff need not attach any documentation evidencing the indebtedness (other than existing affidavit requirements and Connecticut's recommendation that the chain of title be evidenced in debt buyer pleadings)
5 - the chargeoff balance was discussed extensively. The Connecticut judicial rules committee has agreed with the CT bench-bar recommendation that in cases involving a chargeoff balance, the plaintiff would need to plead the chargeoff balance and date and then "itemize such damages that accrued after chargeoff."
6 - service of process

To protect consumers while also properly ensuring that ethical collection attorneys are treated fairly, the FTC should encourage state judiciaries to launch such knowledge-based bench-bar conversations in 2010. In doing so the Commission should point to such collaboration in CT, MA and the other states that have so benefitted consumers while preserving the spirit of our Constitution and state rights. Also, any recommendation to Congress regarding the FDCPA must account for the inherent reliability in the chargeoff balance. Federal bank regulations and audits pervasively govern the chargeoff principal balance and our nation's banking industry has heavily relied upon chargeoff for many years. Any new debt collection itemization requirement needs to be post-chargeoff - otherwise the FDIC, the OCC and all the banks should stop wasting their time and resource with all of this pervasive management and scrutiny. Instead, just as the CT small claims bench-bar committee and judicial rules committee agreed to establish the chargeoff balance as its starting point for any such itemization, so should any fair and appropriate recommendation by the Commission.

In closing, state court collection litigation has risen in volume recently due to our nation's greater reliance on credit. Such increased lawsuits coupled with decreasing state judicial budgets has prompted some states to launch local bench-bar discussions to examine methods of modifying rules so that consumer defendants receive fair treatment while courthouse staffs are best able to manage greater suit volumes. The GAO report recently asserted that while the debt collection system must better protect consumers, modifications must be knowledge-based to ensure that they do not "unduly burden the legitimate process of

collection." State level collaborative discussions have realized this call. I urge the Commission to adopt this same goal when making recommendations to Congress and when also urging state judiciaries to begin such necessary local discussions.