

FEDERAL TRADE COMMISSION

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DEBT COLLECTION DIALOGUE

A conversation between government and business

Monday, June 15, 2015

1:30 p.m.

Burchfield Penney Art Center

1300 Elmwood Avenue

Buffalo, New York

Reported by: Richard B. Whalen, CM

FEDERAL TRADE COMMISSION

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By Thomas Kane, Senior Attorney
Division of Financial Practices
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P R O C E E D I N G S

1
2 DR. BANNON: Good afternoon, ladies and
3 gentlemen. I'm Tony Bannon. I'm director here at the
4 Burchfield Penney Art Center and I'm very, very pleased
5 that you have come to the center of arts in Western New
6 York.

7 We have exhibitions. You're free to visit with
8 us. We're dedicated to the American watercolorist
9 Charles Burchfield and also to other artists at
10 Burchfield's behest who have served the culture of the
11 western part of New York State.

12 You have our clearly marked emergency exits.
13 The restrooms are directly across the corridor. I think
14 you're in good shape.

15 It comes to me as a great pleasure to introduce
16 Eric Schneiderman, our 65th Attorney General of New York
17 State and the highest-ranking law enforcement officer
18 thereby.

19 He's taken on the tough fights to protect New
20 Yorkers. We all know that. The hallmark of his
21 practice is that he believes that there has to be just
22 one set of rules for everybody, no matter how rich or
23 powerful, and that includes corporations and politicians
24 and big banks.

25 Let's just pick out one field of activity about

1 the banks. He's played a leading role in the national
2 effort to hold banks accountable for the misconduct that
3 has caused the housing crisis. He's secured roughly
4 60 million in penalties.

5 He's used some of those funds to create the
6 homeowner protection program which has helped 40,000 New
7 Yorkers at risk of foreclosures to stay in their homes.

8 In his four years as our Attorney General, he
9 has recovered more than 20 billion for more than 17,000
10 workers who were cheated out of that pay by their
11 employers.

12 Mr. Schneiderman has also taken on the big
13 financial institutions that use illegal tactics referred
14 to as insider trading 2.0 to gain unfair advantage over
15 average investors.

16 Now, before becoming our Attorney General,
17 Mr. Schneiderman was a leading reformer in the New York
18 State Senate, notably winning each of his six elections
19 by landslide numbers.

20 And before he was elected to the Senate, he
21 served as a public interest lawyer representing tenants
22 trying to evict drug dealers from their buildings, women
23 seeking access to health clinics, and taxpayers in
24 historic lawsuits against the MTA.

25 He spent 15 years in private practice at the

1 firm of Kirkpatrick & Lockhart. And I must point out
2 also that he has served good time with his feet on the
3 ground. He served as a deputy sheriff in Berkshire
4 County.

5 He is a graduate, I'm obliged to say this, at
6 Buffalo State College, he's a graduate from Amherst
7 College in 1977, and the Harvard Law School in 1982.

8 Ladies and gentlemen, may I present our Attorney
9 General.

10 (Applause.)

11 WELCOME

12 MR. SCHNEIDERMAN: Good afternoon. Thank you,
13 Dr. Bannon, for hosting us here. This is a spectacular
14 space. I've held programs here before.

15 This one is I think very important and I'm glad
16 that we have a good turnout today because the Federal
17 Trade Commission has been speaking with my office and
18 been working together for some time but they've made a
19 determination to launch a symposium on consumer debt
20 collection and to keep this conversation going.

21 So this is the kickoff, but they're going to be
22 in other cities also with other combinations with their
23 colleagues in government.

24 And I'm very pleased we're starting here in
25 Western New York as we do have -- we have a lot of

1 business here of debt collection and related services.
2 We have a lot of good folks trying to do business
3 legitimately and we have some folks who are trying to
4 take advantage of debtors when they're feeling weak.

5 But the work that's been done in this area by my
6 office, the FTC, we're also joined by our colleagues
7 from the Consumer Financial Protection Bureau and the
8 New York State Department of Financial Services, the
9 enforcement has been robust.

10 And I think that it is important to recognize
11 that forums like this are critically important ways to
12 open lines of communication that are essential.

13 I'm going to mention a few of my colleagues who
14 are going to come up here and speak on a panel as soon
15 as I'm done, but we're joined by Jessica Rich, the
16 Director of Consumer Protection at the Federal Trade
17 Commission; from my office, Assistant Attorney General
18 Jim Morrissey; Christopher Koegel, the Assistant
19 Director of the Division of Financial Practices at the
20 FTC; Greg Nodler, Senior Counsel For Enforcement Policy
21 and Strategy at the Consumer Financial Protection
22 Bureau; and a distinguished alumnus of the New York
23 State Attorney General's Office, Joy Feigenbaum, the
24 Executive Deputy Superintendent for Financial Frauds and
25 Consumer Protection for the New York State Department of

1 Financial Services.

2 Each of these women and men has important and
3 valuable insights to share with you. We want to make
4 sure that people can comply with all applicable laws and
5 regulations and make that as easy to do as possible.

6 It's very important to me, and I think you
7 should recognize that you have a lot of cops on the beat
8 here.

9 And that sends a message that this is an area we
10 take very seriously, but it also sends a message that
11 we're trying to coordinate our efforts because one of
12 the things I get complaints about from people from
13 various sectors in business is the one thing they don't
14 like is when state and federal regulators and
15 prosecutors don't coordinate.

16 And you hear one thing from one person and you
17 think you're settled, someone else shows up. This area
18 of work, and I have to give credit to the FTC for really
19 helping make this possible, is an area where we are
20 coordinating very well. We want to have one solid
21 message for everyone in the community.

22 Our job is to go after the bad actors, but in my
23 view, it's also to help the good actors. And as is true
24 in every sector of the economy, one of the best sources
25 of information about the bad actors are the good actors

1 in the business, because really there are two victims
2 whenever someone is committing a fraud in collecting a
3 debt, the debtor who is being abused, but also the
4 legitimate debt collection companies who aren't
5 committing fraud and have served what amounts to a
6 competitive disadvantage to the bottom feeders who will
7 do and say anything. And believe me, there are folks
8 out there who will do and say anything.

9 As people in law enforcement and as regulators,
10 again, we really want to make sure that people are not
11 victimized.

12 This is our first mandate, but the -- and I do
13 not want to -- I want to stress that my office and our
14 colleagues in government, we have very strong laws on
15 the books to protect consumers and to protect --
16 specifically to protect debtors and we will enforce
17 those laws.

18 We have seen companies that threaten consumers
19 with arrest and civil lawsuits they don't intend to
20 file. Folks who have contacted friends, relatives, or
21 the employers of a debtor. We've seen cases in which
22 consumers were sued for debts they didn't actually owe.

23 And the New York State Debt Collection
24 Procedures Law and our federal counterparts are very
25 clear and strong statutes.

1 So our commitment to protect consumers is
2 ironclad, but for my part, I always favor a balanced
3 approach. At the end of the day, the goal is not just
4 to catch more and more bad guys. At the end of the day,
5 the goal is to have reforms in place so there are fewer
6 bad guys to catch.

7 And we want to listen to you as well as speak to
8 you and make our position clear, but I really have to
9 again thank my colleagues in government. This is a
10 tremendously valuable project for anyone in the
11 industry: Having all of the various cops on the beat
12 together in one place so you can get a unified message
13 and having the ability to communicate with them.

14 This is the right way to get things done. So we
15 will continue to coordinate closely with all of our
16 colleagues in government and to continue to have
17 conversations with folks in the industry who provide us
18 with information.

19 This is the right way to do regulation and law
20 enforcement. I don't believe in law enforcement by
21 surprise. No one should be surprised about what the
22 rules are or how we're enforcing them or who is
23 enforcing them.

24 So I hope that you can leave today with a
25 clearer sense of what we're doing and we can leave today

1 with better information and a better understanding of
2 what's going out there in the wild world.

3 And so now it's my honor to introduce the
4 Director of the FTC's Consumer Bureau of Protection
5 Jessica Rich, who oversees hundreds of attorneys and
6 investigators and support personnel working to protect
7 consumers from deceptive and unfair practices.

8 She has been at the FTC for 25 years in several
9 senior positions; has received the Chairman's Award, the
10 agency's highest award for meritorious service; and is
11 often imitated but never duplicated.

12 Ladies and gentlemen, it's my pleasure to
13 introduce Jessica Rich.

14 (Applause.)

15 OPENING REMARKS

16 MS. RICH: Well, thanks so much to the Attorney
17 General for joining us here today. We have a great
18 partnership with his office, so it's wonderful that we
19 could work that out today.

20 I want to welcome everyone to the Debt
21 Collection Dialogue here in Buffalo. I've never been
22 here before. I wish I could stay longer so I could see
23 Niagara Falls, which I've always wanted to see, but I
24 have to return tonight.

25 I just had a wonderful lunch, but I should have

1 ordered the Buffalo wings and not the mahi-mahi. What
2 was I thinking?

3 For those of you who are tweeting, the hashtag
4 for this event is #debtdialogue. Is that up? There it
5 is. Good.

6 So as many of you know, for more than 30 years,
7 the FTC was the sole federal enforcer of the Fair Debt
8 Collection Practices Act, a law you're probably quite
9 familiar with.

10 The states were on the job during that time, but
11 it was just the FTC at the federal level. Starting a
12 few years ago, we welcomed another federal cop on the
13 beat, the Consumer Financial Protection Bureau.

14 And they've been an excellent partner. Greg
15 Nodler from the CFPB is here and he'll talk shortly
16 about that agency's enforcement and educational
17 activities.

18 We are very lucky to have partners like the
19 Attorney General's Office and CFPB as we combat illegal
20 debt collection activities to protect both consumers and
21 law-abiding debt collectors.

22 Our debt collection work is important for a lot
23 of reasons. When Congress passed the Fair Debt
24 Collection Practices Act, it noted the pervasive and
25 harmful effects that abusive practices have on both

1 consumers individually as well as on the economy as a
2 whole.

3 Among other things, Congress noted that abusive
4 debt collection practices contribute to personal
5 bankruptcies, marital instability, loss of jobs, and
6 invasions of privacy.

7 These practices are debilitating to consumers
8 and in some cases, cause them to pay debts they don't
9 owe at all.

10 This affects enormous numbers of consumers.
11 Studies have found that about 15 percent of adult
12 Americans, that's nearly 30 million people, have an
13 account in collections.

14 Viewed another way, over 35 percent of Americans
15 with credit records have past-due debt on their credit
16 reports. And those debts are significant, averaging
17 over \$5,000.

18 I would add that the cumulative amount of this
19 debt is significant to the economy as a whole. In 2010,
20 the total amount of consumer debt in the U.S. reached
21 nearly 2.5 trillion.

22 We at the FTC also know that debt collection is
23 a significant industry. Congress recognized this when
24 it passed the FDCPA. Indeed, one of the purposes of the
25 act was to ensure that law-abiding collectors are not

1 competitively disadvantaged.

2 Somewhere between 4- to 5,000 firms are engaged
3 in the third-party collection of debts. If you include
4 employees collecting debts on behalf of the original
5 creditor, the Bureau of Labor Statistics estimates that
6 as many as 456,000 people work as bill collectors.
7 These collectors make perhaps as many as 1 billion
8 contacts with consumers every year.

9 So unless you're a recluse living off the grid,
10 debt collection issues are directly affecting you or
11 someone you care for.

12 The consumer complaints we receive at the FTC
13 confirm this. In fact, we continue to receive more
14 complaints about debt collection than about any other
15 industry. We received 283,000 in 2014 alone. And our
16 experience has shown that these complaints are the tip
17 of the iceberg. Most consumers don't complain.

18 There doesn't need to be this much abuse. As
19 many of you know, and as Congress noted when it enacted
20 the FDCPA, debts can be effectively collected without
21 resort to deception or abuse.

22 For all of these reasons, the FTC has made debt
23 collection one of its strategic priorities for many
24 years now. This is reflected in the many law
25 enforcement actions that we have brought.

1 For example, last year, the FTC filed 10 new
2 debt collection cases against 56 different defendants.
3 We obtained nearly 140 million in judgments and those
4 judgments banned 47 companies and individuals from ever
5 participating in debt collection again.

6 And we are continuing this vigorous enforcement
7 work this year. So far in 2015, we've already filed
8 eight new debt collection cases and we are only halfway
9 through the year.

10 The FTC's debt collection work isn't confined,
11 though, to just law enforcement. Our focus on debt
12 collection is also reflected in the workshops and
13 roundtables we've held, the reports we've issued, and
14 the amicus briefs that we have written, and of course,
15 the many speeches we've made. This will continue to be
16 the case going forward.

17 In each of the last several years, the FTC has
18 expanded its work in the debt collection area, and I see
19 that trend continuing until the abuses in this area
20 abate.

21 This event is yet another strategy for fighting
22 abusive debt collection and this is our first event of
23 its type, so thank you for being here at our first
24 event.

25 We're scheduling several more around the

1 country. The second and third will be in Dallas and
2 Atlanta this fall, so if you have a really good time
3 here, you can come to -- travel around the country and
4 come to more.

5 At each of these dialogues, FTC staff will join
6 with our state and federal enforcement colleagues in
7 those regions to share information with industry members
8 and answer questions from the audience.

9 We see these as opportunities for you to meet
10 the agencies who police the industry and for us to get
11 to know you. We hope to highlight areas of concern,
12 share our strategic priorities, and generate ideas for
13 compliance.

14 We also hope that we can find ways to partner
15 with industry to reduce the abuses in this area and to
16 stop the bad actors who give the legitimate actors a bad
17 name.

18 These events are structured to provide ample
19 opportunity for give and take. There will be at least
20 an hour at the end of the day for participants to ask
21 questions of all the panelists.

22 You will hear today from the FTC, the CFPB, the
23 New York Attorney General's Office, and the New York
24 Department of Financial Services.

25 All of us have jurisdiction over these difficult

1 debt collection issues. That's why it's so important
2 that we collaborate. These collaborations have always
3 led to great results.

4 This spring, we brought our first joint case
5 with the CFPB, the Green Tree Financial case, to address
6 alleged debt collection and debt servicing violations.

7 We obtained a strong order and substantial
8 consumer redress and penalties. And over the last year,
9 we have filed three cases jointly with the Buffalo
10 office of the New York Attorney General against National
11 Check Registry, Vantage Point Services, and Four Star.
12 These collaborations have been clear successes, and we
13 will continue to look for opportunities in New York and
14 elsewhere.

15 We chose Buffalo for our first venue for a
16 reason and it's not just because the organizers of this
17 event, Chris Koegel and Tom Kane, love Buffalo wings and
18 wanted to go over the Falls in a barrel.

19 The Buffalo area is important because there are
20 so many debt collectors here. The Bureau of Labor
21 Statistics shows that the Buffalo-Niagara Falls area has
22 approximately 4,700 collectors.

23 As of May 2014, only three metropolitan areas
24 had a higher percentage of their employed residents
25 working in the collection industry.

1 The Buffalo area is also home to many companies
2 that are the subjects of debt collection complaints at
3 the FTC that we receive on a regular basis.

4 It has gotten so bad that people are writing
5 books about the situation. Because so many consumers
6 complain about the practices of Buffalo collectors, the
7 FTC has filed six cases against Buffalo collection
8 enterprises just in the last year-and-a-half.

9 But we see these egregious practices continuing
10 and they do need to stop. Chris Koegel, who, as I
11 mentioned, is the FTC's assistant director in charge of
12 our debt collection program. He will talk about these
13 cases in more detail and there are also the
14 descriptions of them out on the table.

15 For those of you in the room who work in debt
16 collection, we need your help. Please help all of the
17 law enforcement agencies that you meet here today stop
18 abusive debt collection practices.

19 Many of you in this room are in the perfect
20 position to learn which collection agencies, collection
21 law firms, debt sellers, and debt buyers are breaking
22 the law. Please tell us about these companies. Give us
23 a call, send us an E-mail. We regularly hear about
24 abusive practices this way.

25 It will help us and help consumers throughout

1 this country. It will also help you. We know how tired
2 you are of seeing and hearing criticisms of the debt
3 collection industry in the press and elsewhere. Help us
4 get rid of the bad actors who are damaging your
5 industry's reputation.

6 Thank you again for coming today. I look
7 forward to hearing the presentations, and just as
8 important, the questions and comments that you in the
9 audience all make.

10 Thank you.

11 (Applause.)

12 INTRODUCTION

13 MR. KANE: Thank you, Jessica.

14 My name is Tom Kane. I am in the Federal Trade
15 Commission's Division of Financial Practices and I'm
16 going to serve as sort of an MC at various moments here.

17 I'm going to now introduce and bring up the four
18 panelists, the four representatives of the state and
19 federal agencies. And they'll each talk for about 20
20 minutes.

21 Then we'll have a break and then we'll have a
22 question-and-answer session for an hour. All or most of
23 you, at least, have a couple of question-and-answer
24 cards.

25 While they're giving their presentations, we

1 will be accepting questions. We'll wait till the Q&A
2 session, but please hold up your hand with a card and
3 we'll have people running up and down with baskets
4 collecting them. And then during the Q&A session, I
5 will read from them and ask the panelists questions.

6 So let me just start with the first panelist is
7 Jim Morrissey from the Office of the New York State
8 Attorney General.

9 PRESENTATIONS

10 MR. MORRISSEY: Thank you, Tom.

11 It's wonderful to be here today and to see this
12 full room. And this symposium speaks to the cooperation
13 among law enforcement to combat abusive, and I stress
14 the word "abusive" debt collection practices not only
15 here in Buffalo, New York, but nationwide, but it also
16 speaks to our desire to reach out to you, to debt
17 collectors, proactively and start a dialogue on how we
18 may all reach I think the goal that we want and that is
19 to rid the debt collection industry of abusive debt
20 collectors.

21 We're here in the Burchfield Penney Art Center,
22 which is one of many wonderful cultural institutions of
23 Buffalo and, in fact, as any Buffalo sports fan will tell
24 you, our cultural institutions are much stronger than our
25 sports teams.

1 So let's just talk about New York State law
2 enforcement. The Attorney General gets his power to
3 investigate debt collectors primarily from three
4 sources.

5 The three sources are Executive Law Section
6 63(12), which I think is a wonderfully elegant statute.
7 It says basically that whenever any person engages in
8 repeated fraudulent or illegal acts, the Attorney
9 General can go to court to try to stop them. It's a
10 little longer than that, but that's essentially what it
11 says.

12 And there are probably three words there you
13 need to understand in order to give meaning to that
14 statute. The first word is "repeated." What does
15 "repeated" mean? It means more than once. It could be
16 twice, it could be three times, it could be a thousand
17 times.

18 What does "fraudulent" mean? And for the
19 attorneys in the audience, the word "fraudulent" bears
20 very little in common with the concept of common law
21 fraud.

22 Fraudulent means that a business practice has
23 the tendency to deceive a consumer, the tendency or
24 capacity. And understand that we're not talking about
25 Einstein in terms of deception. We are talking about

1 the credulous and the unthinking consumer as well as the
2 sophisticated consumer.

3 The Attorney General, to make a case out under
4 63(12), is not required to show intent, is not required
5 to show that anyone intended to deceive a consumer, and
6 the Attorney General is not required to show reliance on
7 the misrepresentation. He simply must show the
8 tendency or capacity to deceive.

9 Now, even before the Attorney General files an
10 action, he can issue subpoenas to require the production
11 of documents and sworn testimony.

12 In terms of relief, the relief is really quite
13 broad. We can seek injunctive relief, which means
14 simply we can proscribe or prescribe certain behavior.
15 We can seek restitution on behalf of consumers, damages
16 on behalf of consumers, and disgorgement of ill-gotten
17 gains.

18 As elegant as 63(12) is, I think Section 349 of
19 the General Business Law is even more elegant:
20 Deceptive acts or practices in the conduct of any
21 business in this state are hereby declared unlawful.

22 What does a "deceptive act" mean? It has the same
23 definition as fraudulent acts for the purposes of
24 63(12), the capacity or tendency to confuse the consumer.

25 Now, the relief that the Attorney General can

1 seek under Section 349 is very similar to the relief
2 he can seek under 63(12) and that is restitution,
3 damages, disgorgement, and injunctive relief with one
4 pretty important addition.

5 Under Section 350-d of the General Business Law,
6 the Attorney General can seek and a
7 Court can award civil penalties of up to \$5,000 for each
8 and every deceptive act committed by a business.

9 As you can see, that can amount to a fairly
10 substantial amount of money pretty quickly. And
11 understand that if you are involved with elderly
12 consumers, the fines and penalties are even more.

13 The third and final source I'll discuss is the
14 New York State debt collection statute, Article 29-H of the General
15 Business Law. In very sharp
16 contrast to the FDCPA, this statute applies to principal
17 creditors as well, not solely to third-party collectors.

18 The prohibited practices under the New York law
19 are really quite similar to the FDCPA except they're not
20 quite as detailed. There's no private right by a New
21 York State consumer under that statute, and that also is
22 in contrast to the FDCPA. But any person who violates
23 Article 29-A of the General Business Law can be
24 prosecuted and found guilty of a misdemeanor, which is a
25 crime in the State of New York.

26 The Attorney General is given a very broad and

1 powerful set of statutes and we have used them pretty
2 actively here in the Buffalo area.

3 Since the Attorney General has taken office, we
4 have collected more than a million dollars in
5 restitution and penalties. We've shut down at least a dozen businesses,
6 barred persons from the collection industry, including
7 attorneys who were involved in the consumer debt
8 collection industry. We have prosecuted cases
9 criminally, and we have required dozens of businesses to
10 fundamentally change their business practices.

11 Now, I could stand here and I could describe to
12 you the stuff that we see every day, that Karen Davis in
13 our office hears every day, but I thought rather than
14 describe that, I'm going to play two telephone calls for
15 you.

16 Now, I've got to set the first one up. The
17 collector calls the consumer, and you know, I'm Irish
18 and I tend to exaggeration, but I'm not exaggerating.

19 He calls the consumer. The consumer says, "My
20 wife just died in the home." The collector thinks about
21 it for a second and terminates the call.

22 He immediately calls back and says, "Where is
23 your dead wife being taken?" The consumer says, "She is
24 being taken to" -- or "the funeral home is going to be
25 picking her up directly."

1 And the collector immediately challenges him and
2 says, "That's not how it's done. She has to be taken a
3 medical examiner. You'd better not be fooling with me
4 about your dead wife." The call terminates.

5 The debt collector calls the consumer's parole
6 officer to see if the consumer can be violated for
7 quote, unquote, fraud, that is, having failed to pay the
8 debt. The parole officer says of course not, but the
9 parole officer confirms the death of the wife.

10 Now, we are talking about calls that are taking
11 place boom, boom, boom. Now we have a third call, and
12 that's the call I want you to hear.

13 (Recording of telephone call played.)

14 MR. MORRISSEY: There is no "attorney network."

15 Ooh, he perked up.

16 His wife died in the home.

17 He was typing that.

18 Did you hear that line? His dead wife is in the
19 home. "Tomorrow's not promised to anyone."

20 What if they scheduled in court the same day of
21 her funeral?

22 (Playing of recorded telephone call ended.)

23 MR. MORRISSEY: Let's try one more call. This
24 is a call, he calls a school and threatens to forcibly
25 remove the teacher from the classroom in front of her

1 students.

2 (Recording of telephone call played.)

3 MR. MORRISSEY: Of course, he's not an
4 investigator. He did not identify himself as a debt
5 collector.

6 (Playing of recorded telephone call ended.)

7 MR. MORRISSEY: You get the idea. The call goes
8 on. I mean, I'm not going to catalog the violations in
9 those two calls because we'd be here until approximately
10 5:00 o'clock if I did so, but these are the level of
11 calls that we're dealing with on a day-to-day basis.
12 And they're outrageous and it's one of the reasons we
13 become so impassioned about these cases.

14 But we don't just police individual collectors,
15 although we do a lot of that. We also try to engage in
16 systemwide activities and activities that will have a
17 larger impact than on the individual cases.

18 For example, I'm going to give you three quick
19 examples. We investigated four debt buyers that were obtaining
20 judgments against consumers when the
21 underlying debt was well beyond the statute of
22 limitations.

23 The investigation into the cases
24 resulted in the debt buyers vacating 7,800 default
25 judgments worth \$35.7 million, paying \$1.2 million in

1 costs and penalties and, of course, fundamentally
2 changing their business practices.

3 Payday loans. What's a "payday loan" in New York
4 State? A payday loan in New York is a loan that is for
5 \$25,000 or less made for personal or household purposes
6 by an unlicensed or unchartered lender that has an
7 interest rate of more than 16 percent.

8 Are payday loans legal in New York State? No,
9 they are not. You will not see a brick-and-mortar
10 payday loan company in New York State.

11 But what we did learn is we had New York debt
12 collectors that were collecting on payday loans given to
13 New Yorkers by out-of-state businesses.

14 We began an investigation against four or five
15 different companies, got about \$300,000 in restitution,
16 \$30,000 in penalties, and reversals of 8,500 negative credit
17 reports. One company was banned from collecting
18 \$3.4 million in payday loans and, of course, we required
19 a fundamental change in business practices.

20 Do you know what a payday loan title loan is?
21 Well, it's the same as a payday loan except the consumer
22 pledges the title to the vehicle in repayment of the
23 loan.

24 This one presented a tough wrinkle for us
25 because many of the title payday loan companies are

1 Native American tribes, and under the doctrine of
2 sovereign immunity, it wasn't possible for us to go
3 directly against the tribes.

4 So we figured out, well, what can we do? Well,
5 we said why don't we go against those businesses that
6 repossessed the vehicles on behalf of the tribes?
7 Because if the tribe calls and says, "I want a vehicle
8 at 123 Main Street, Buffalo, New York, repossessed" and
9 they get "no" as an answer, maybe they won't make payday
10 loans in New York State.

11 And that's exactly what happened. We reached
12 agreements with about a dozen businesses that repossess
13 vehicles, several of them nationwide, and they now
14 categorically refuse to repossess where the underlying
15 loan is a payday loan.

16 So I've gone over quickly that we do individual
17 actions and we do systems, but we also do policy
18 advocacy and the recent OCA regulations are an example.

19 Now, if you're a debt buyer or a creditor and
20 you go to get a default judgment, the Office of Court
21 Administration just made the regulations much, much more
22 stringent and accepted many of the recommendations that
23 had been made by Attorney General Schneiderman.

24 Creditors and debt buyers now must submit
25 specific evidentiary affidavits that, among other

1 things, establish a chain of title to that debt.
2 For the first time, they're going to be required to have
3 as an exhibit to an affidavit a credit agreement and a
4 final account statement.

5 There's a requirement of an additional notice
6 that will go to the consumer that the Court itself sends
7 out to the consumer to make sure that the notice is
8 effective because God knows we've done so many sewer
9 service cases I won't begin to recount them.

10 And there also must be an attorney affirmation
11 that that debt is not beyond the statute of limitations.
12 A very, very stringent set of new regulations.

13 Our fourth approach is cooperation with our law
14 enforcement partners. And in the last year, it's just
15 been wonderful from our perspective. We've filed three
16 actions with the Federal Trade Commission, and I'll
17 have -- and Chris will speak to that.

18 We are undertaking a couple of investigations
19 with the CFPB. Unfortunately, we can't talk about
20 those, but they are ongoing. You're going to hear from
21 Joy today about a new set of regulations enacted by the
22 Department of Financial Services that give us a whole
23 new set of tools.

24 Remember I said that the Executive Law allows us
25 to take action where there's illegality? Well, an

1 example of illegality would be violating the regulations
2 of the Department of Financial Services. And we
3 cooperate with all law enforcement investigations, both
4 civil and criminal.

5 Now, in conclusion and with abject apologies to
6 David Letterman, I'd like to go over the top 10 myths
7 that debt collectors commonly say, "This is what will
8 keep the Attorney General off our back."

9 Number one, spin off as a payment processor to
10 keep your hands in debt collection and say, "We don't
11 collect debt, we only process payments for debt
12 collectors."

13 Number two, use an out-of-state address when you're
14 located right here in New York. To give an example, we had a collector
15 that said he was located in Toronto and Chicago. An informant came into
16 our office and said the collector was four blocks away from our office.
17 They think that we're not going to find them, but we do find them. And much
18 of that credit goes to Karen Davis.

19 Number three, use an attorney's name who has no meaningful
20 involvement in the business and threaten to sue. We
21 have bounced attorneys out of the debt collection
22 business because they have permitted their names to be
23 used by debt collection agencies and they have no
24 involvement with the agency.

25 Number four, this one is really common. Debt collectors think that if
26 you don't collect from New York consumers, the Attorney General will have no

1 interest in the case. Wrong. The Attorney General has
2 a strong interest to make sure that the businesses that
3 operate out of the state of New York operate in a lawful
4 fashion. You can expect to hear from us.

5 Number five, use false business names because the AG won't
6 discover them. Yes, we will. I mean, every case we've
7 brought, people have used false business names that we
8 have managed to figure out, oftentimes with not that
9 much trouble.

10 Number six, file a couple of civil lawsuits so then you can
11 say, "Hey, we're going to threaten everybody with a
12 lawsuit. So we're going to file two lawsuits in the
13 civil court in Buffalo and then we're going to threaten
14 10,000 people with civil lawsuits based on those
15 filings."

16 Number seven, create multiple shops and then just shift the
17 debt among the multiple shops. If you've ever been in
18 New York City, you know the shell game, you know,
19 "Where's the pea?" You know, we're usually pretty good
20 at finding that pea in sharp contrast to the games that
21 I've seen in New York.

22 Number eight, constantly change your name, your phone number,
23 your address. That only piques our interest. I
24 mean, come on. If you constantly are changing that

1 stuff, that by itself is going to get our attention.

2 Number nine, and this one I want you to listen closely to. Buy
3 portfolios and place them with shops that consistently
4 violate the law.

5 If you think that's a safe harbor as a debt
6 buyer, you'd better think again because if you're
7 placing debt with people that consistently violate the
8 law, we're going to go after the debt collector, of
9 course, but we're going to go after you as well.

10 And number 10, and this is my favorite, if you
11 receive a subpoena from our office, don't send us a box
12 of chocolates.

13 Talk about piquing our interest, why would
14 someone send us a box of chocolates after we just
15 subpoenaed them? By the way, we returned them.

16 What we're really interested in is just
17 to stop egregious debt collection practices. And I know
18 you agree, and we certainly welcome this dialogue here
19 today to see how we just can work together to meet that
20 end. And with that, I'll turn it over to Chris Koegel.

21 Chris.

22 (Applause.)

23 MR. KOEGEL: Thank you, Jim.

24 Good afternoon, everyone. Thank you for joining
25 us today for this dialogue.

1 With my time, unfortunately, I'm not as clever,
2 I don't have any David Letterman top 10 lists, but I am
3 going to talk a bit about the recent cases that we've
4 brought against companies in the Buffalo area and also
5 about the FTC's enforcement priorities in the debt
6 collection area.

7 Along the way, I hope to highlight some
8 practices that we really don't want to see ever again,
9 and hopefully give everyone in this room some ideas as
10 to how we can all work together and partner up to try to
11 make some of these abuses abate a little bit.

12 First, though, let me give the standard
13 disclaimer: The views I express today are my own and
14 not those of the FTC or of any commissioner.

15 But let's talk now for a minute about some of
16 the recent activity that all of you I'm sure have been
17 noticing up in Buffalo.

18 In the past year-and-a-half, in addition to the
19 cases the FTC has brought against collectors in other
20 parts of the country, we've now brought six cases
21 against companies based in the Buffalo area.

22 The first was against an operation run by Mark
23 Briandi and William Moses that used names such as
24 Federal Check Processing, Federal Recoveries, and United
25 Check Processing.

1 The second recent case against a Buffalo area
2 company was announced in July of last year, and that was
3 our first endeavor with the New York AG's office. That
4 operation was run by Joseph and Diane Bella and Luis
5 Shaw. And it went by the name National Check Registry,
6 eCapital Services, and Buffalo Staffing.

7 In January of this year, we filed a case again
8 with our friends at the New York AG's office against an
9 enterprise that went by the names Vantage Point
10 Services, Payment Management Solutions, and Bonified
11 Payment Solutions. This enterprise was run by Greg
12 MacKinnon, Angela Burdorf, Megan Vandeviver, and Joseph
13 Ciffa.

14 Shortly thereafter, the FTC and the New York
15 Attorney General teamed up yet again to shut down an
16 operation that went by the names 4 Star Resolution,
17 Profile Management, International Recovery Service,
18 Check Solutions, Check Fraud Service, Merchant Recovery
19 Service, and Fourstar Revenue Management.

20 I guess a good question would be if you're going
21 to run a compliant, upstanding business, why you would
22 need so many business names. That operation was run by
23 Travell Thomas, Maurice Sessum, and Charles Blakely,
24 III.

25 Most recently, though, just last month in fact,

1 the FTC sued and shut down two more Buffalo area
2 collection enterprises. These two cases were part of
3 the FTC's Messaging for Money sweep which highlighted
4 compliance challenges companies face when they choose to
5 use text messaging to collect debts.

6 The first of these cases was against Unified
7 Global Group, which also did business as Accredited
8 Receivables, ARM WNY, and Audubon Financial Bureau. And
9 that operation was run by Anthony Coppola and Dominick
10 D'Angelo.

11 On the same day, we also sued and shut down
12 Premier Debt Acquisitions, which also called itself PDS,
13 PDA Group, Prizm Debt Solutions, Samuel Sole and
14 Associates, and Imperial Processing Solutions. That
15 operation was run by Jacob Kirbis and Charles Glander.

16 We printed out the press releases and the
17 complaints for each of these cases and they're available
18 out in the hallway. I encourage everyone to pick up a
19 copy and take a look. As a group, these form a
20 veritable handbook of what not to do as the operator of
21 a collection organization.

22 The abusive and deceptive collection practices
23 of these six different enterprises, while not identical,
24 were remarkably similar. Five of the six companies lied
25 that they were working for government agencies,

1 including the FBI and other federal and state
2 organizations.

3 Five of the companies also consistently made
4 false threats that consumers would be arrested if they
5 didn't pay their alleged debts within a short time.

6 Five made a habit of threatening lawsuits when
7 they had no plans to sue. Four of them frequently
8 called consumers' family members, friends, and
9 coworkers, and told them about the alleged debts,
10 another clear-cut violation of the FDCPA.

11 And four of the companies refused to provide
12 verification when consumers disputed the debts and
13 instead just continued their abusive collection
14 practices.

15 These practices are absolutely unacceptable but,
16 unfortunately, they are all too prevalent. Far too
17 often, we see collectors threatening arrest, claiming to
18 be process servers, extorting consumers with threats of
19 litigation they have no intent to file, or failing to
20 give required disclosures and notices.

21 These are not close calls. And it has become so
22 prevalent in this area that I've heard people refer to
23 it as "the Buffalo treatment."

24 By now, it should be apparent given all the
25 cases we've filed up here recently, but let me say it

1 anyway, the FTC has zero tolerance for this nonsense.
2 Consonant with the gravity of the violations committed
3 by these operations, the FTC, along with the New York
4 Attorney General's Office, has sought very serious
5 remedies.

6 In each case, that I just referred to, the FTC
7 sought and the Court granted temporary restraining
8 orders that suspended the company's operations, froze
9 all of the assets, not only of the company but of the
10 individuals running them, and appointed receivers to
11 take over the businesses, and granted the FTC and the
12 receiver immediate access to the business premises so
13 that we could secure the evidence.

14 This means, among other things, that the
15 individuals named in these complaints had their bank
16 accounts frozen for weeks and even months.

17 We've already gotten stipulated preliminary
18 injunctions in the United Check Processing case, the
19 National Check Registry case, the 4 Star case, and the
20 Premier Debt Acquisitions case. There's a PI hearing
21 coming up next month in the Unified Global Group case.

22 One group of defendants, however, the Vantage
23 Point Services case defendants, chose to fight the FTC's
24 request to turn the temporary restraining order into a
25 preliminary injunction.

1 After extensive briefing, however, the Court
2 granted the FTC all of the relief that we requested,
3 further vindicating the case that we brought along with
4 the New York AG's office, and finding that the FTC and
5 the New York AG are likely to succeed on the merits of
6 the case should it proceed to trial.

7 As in many of our debt collection actions and
8 because the violations in these cases are so egregious,
9 we will be seeking to ban the defendants in these cases
10 from the industry, including the individuals who ran the
11 operations, and we will also seek significant monetary
12 relief.

13 For example, it's common for courts to order our
14 defendants to sell their cars and their real estate, and
15 turn over all their liquid assets such as their bank
16 accounts. In short, being under an FTC order is
17 painful. It is not something you want to experience.

18 Once we have a company or an individual under an
19 order that includes a ban, we put that company or
20 individual on our public list of banned collectors.

21 The FTC publishes this Hall of Shame on its
22 website at the address you see up above. We also
23 brought hard copies of this list today, and they are
24 again available on the table outside.

25 All of the companies and individuals on this

1 list are subject to Court orders prohibiting them from
2 participating in the debt collection business. No one
3 in the debt collection industry should be doing any debt
4 collection business with anyone on this list. That
5 includes hiring them in any capacity to help collect
6 debts, buying debts from them, or selling debts to them.

7 I'm telling you now that one sure way to get the
8 FTC to investigate you is to do debt collection business
9 with anyone from this list.

10 If you work with them, you're opening yourself
11 up to a lot of unnecessary scrutiny and potentially a
12 Court order of your own. Don't do it.

13 Another way to get the FTC's attention, and I
14 heard Jim mention this a few minutes ago, is to
15 constantly change your business name.

16 It is an all-too-obvious tactic that we see with
17 companies engaged in unlawful practices. They respond
18 to complaints not by cleaning up their act, but instead
19 by changing their business name.

20 It should be obvious by now to anyone who is
21 paying attention that this doesn't work. We figure this
22 out very quickly and it only confirms for us that the
23 operation in question is not interested in complying
24 with the law.

25 Read any of the complaints or other pleadings

1 from the cases I've been talking about today and you'll
2 see that we solved that puzzle rather easily. If you
3 are serious about being in this industry, and doing this
4 work the right way, pick a company name and build a
5 positive reputation around that name.

6 On a related note, I want to talk for a minute
7 about responding to inquiries from state regulators.
8 One of the reasons that the FTC has partnered with the
9 New York AG's office recently on so many cases is that
10 we wanted to emphasize the importance of taking state
11 regulator inquiries and investigations seriously.

12 If you read some of the briefs in our joint
13 cases with New York, you'll see that in many of those
14 cases, the defendants have been investigated previously
15 by a state regulator and/or signed assurances of
16 discontinuance. But instead of taking those orders and
17 inquiries seriously, they chose to continue their
18 illegal behavior.

19 This kind of scofflaw, recidivist behavior is
20 not acceptable. It astronomically increases the
21 likelihood that the FTC and/or the State AG is going to
22 take an even closer look at you and take even more
23 serious action.

24 I now want to shift gears a bit and talk about
25 the FTC's strategic priorities in the debt collection

1 area.

2 Every year or two in our debt collection
3 program, we try to identify three to four issues or
4 emphases on which we will focus our energies.

5 Our most recent priorities included data
6 integrity and security, egregious collection practices,
7 the use of emergent technologies in the collection of
8 debts, and the collection of debts from vulnerable and
9 underserved populations.

10 So, for example, the FTC's recent Messaging for
11 Money sweep addresses unlawfully sent text messages in
12 the collection of debts. Some guidance, by the way, for
13 those of you who are interested in how to use text
14 messages in debt collection in a lawful manner is
15 available on this website. And again, we've printed out
16 that guidance and it's available with the materials out
17 in the back.

18 We also held recently a roundtable last October
19 with our friends at the CFPB addressing debt
20 collection in the Latino community.

21 Recently, however, we took a fresh look and
22 decided to adjust our priorities slightly for the
23 next 18 to 24 months. Our new priorities at the FTC
24 from a law enforcement perspective in the debt
25 collection area are now going to be continuing to look

1 at the egregious practices much like the cases we've
2 been filing up here in Buffalo recently, data integrity,
3 and security of consumer information in the debt
4 collection process, and a new one, which is the
5 collection of student loans.

6 We will also be devoting significant time and
7 energy to the CFPB debt collection rulemaking efforts,
8 analyzing their proposals, and if appropriate, working
9 on an official comment to their eventual notice of
10 proposed ruling.

11 So now let me sort of build out some of these
12 priorities with you for a minute.

13 The first priority is egregious collection
14 practices. Generally speaking, this is the bottom of
15 the barrel, the worst of the worst. I think everybody
16 in this room knows it when they see it or -- like Jim
17 just played a minute ago -- when we hear it.

18 These are the practices that generally end up
19 with us seeking our most drastic relief, things like
20 asset freezes, receiverships, and lifetime bans from the
21 industry. Unfortunately, the practices vary widely.

22 One of our first cases in this vein was one that
23 I filed as counsel back in 2011, the Rumson, Bolling
24 case in California.

25 In that case, among the roll call of

1 abominations, the defendants threatened to kill or rape
2 consumers if they didn't pay, and also threatened
3 consumers who owed money to funeral homes that they
4 would exhume the bodies of the dead children if the
5 consumers didn't pay up.

6 Some of you probably don't believe this actually
7 happens. I wish you were right. Unfortunately, I have
8 the call recordings to prove it and it's sickening.

9 Most recently, as you can tell from our cases,
10 we're seeing a lot of collectors who seem to be having
11 some kind of identity crisis. These collectors are not
12 content with just being good, law-abiding collectors.

13 Instead, they want to pretend to be process
14 servers, law enforcement officers, lawyers, or court
15 officials. And they want to threaten consumers with
16 things they either can't do, like have them arrested, or
17 have no intention of doing, like suing them.

18 We are also seeing a lot of collectors,
19 particularly up here in New York, who are trying to
20 collect fees and charges that are not permitted by law
21 or authorized by the underlying credit agreement. This
22 often comes in the form of a payment processing fee.

23 These fees, however, are not permitted by New
24 York law. Therefore, this practice is expressly
25 forbidden by Section 808(1) of the FDCPA, something

1 you've seen us allege in several of our recent cases out
2 here.

3 Some other common egregious practices include
4 telling third parties about the consumer's debt as a way
5 of shaming them into paying and failing to give the
6 validation notice required by the FDCPA.

7 Our second strategic priority is the security
8 and accuracy of data in the debt sales market as well as
9 crooked debt brokers and sellers who misuse that market
10 for their illegal purposes.

11 We've seen a lot of complaints about collection
12 efforts made on debts that consumers either already have
13 paid or they don't owe at all. Consumers who are
14 subjected to these false and often aggressive collection
15 efforts suffer significant harm.

16 Focusing on the debt sales market is actually a
17 continuation of the cases that we've brought recently
18 against phantom debt collectors such as Pinnacle Payment
19 Services, a company run by collectors who got their
20 start up in here in Buffalo.

21 The FTC recently settled with two companies,
22 Cornerstone & Company and Bayview Solutions. Cornerstone
23 and Bayview were debt sellers that in trying to sell
24 debt portfolios posted consumers' unredacted bank
25 account and credit card numbers, birth dates, contact

1 information, employer names, and information about the
2 debts on a very public website.

3 Under the settlements, the defendants now have
4 to establish and maintain security programs that will
5 protect consumers' sensitive personal information.
6 Companies will also have to have their security programs
7 evaluated both initially and every two years by a
8 certified third party.

9 Lax data security and the dubious market for old
10 debts and online payday loan debts were even the focus
11 of a recent book about the Buffalo debt collection
12 market, as well as a recent academic article.

13 The FTC is not going to tolerate companies or
14 individuals who sell the same debt portfolio to multiple
15 buyers simultaneously.

16 Collectors who steal portfolios or consumer
17 information and collect on those debts unlawfully or
18 collectors who try to shake down consumers who don't
19 even owe the alleged debts, these practices undermine
20 the debt collection and credit system as a whole and
21 only make your jobs harder.

22 If you find yourself unwittingly in the
23 possession of a portfolio of debts that looks like it's
24 been compromised or contains bogus debts, it is
25 incumbent on you to stop collection efforts immediately

1 on that portfolio and isolate it so that no further harm
2 comes to consumers.

3 I encourage you also to share information you
4 may have with the FTC if you think you know someone up
5 to no good along these lines.

6 I also want everyone in this room to reexamine
7 their data security practices. Make sure that only
8 those employees who actually need access to the consumer
9 information are given that access. Put technology
10 protections in place that make it difficult for a rogue
11 employee to steal consumer information.

12 The FTC, in consultation with DBA International,
13 the debt buyers association, published some data
14 security guidelines recently and you can find it at this
15 website. Again, also available in print-out form at the
16 back table. Please take one and do everything you can
17 to try to stop these practices.

18 Our third law enforcement priority is student
19 loan debt collection. A student loan is one of the
20 biggest financial commitments most consumers will ever
21 make. Student loan debts are a sizable portion of the
22 debts in collection and that portion is growing.

23 A 2011 ACA International study showed that
24 12 percent of debts in collection were student loan
25 debts. More than 39 million borrowers currently owe

1 over a trillion dollars in student loan debt.

2 Moreover, student loan debt collection is unique
3 in that the Department of Ed only contracts with about 20 or
4 so collectors for the collection of federally guaranteed
5 loans. And these collectors have to follow unique
6 procedures like offering rehabilitation and disability
7 discharges.

8 This is something that we're looking at closely
9 to make sure that those programs like rehabilitation and
10 disability are being offered and explained to consumers
11 without deception.

12 Given the many consumers who owe student loans
13 and the huge amounts of money they owe, we at the FTC
14 have to work hard to prevent collection practices that
15 deceive or abuse those consumers, so this is something
16 we will certainly be looking at closely going forward.

17 I'm about ready to turn it over to Greg here,
18 but again, I want to thank everyone for coming out here
19 today and I do hope that we can find ways to work
20 together and partner on these issues.

21 At the FTC, like at the New York State Attorney
22 General's Office and I'm sure the other two agencies, we
23 recognize that these are difficult challenges that we're
24 facing, but I think we all have skin in this game and I
25 think the best way to find solutions is for us to

1 partner together to figure out how we can stop this.

2 Thank you.

3 (Applause.)

4 MR. NODLER: Thanks, Chris.

5 So, I'm honored to be up here for the CFPB, and
6 you know, like everyone else has said, I really hope
7 that our appearances together can signal the seriousness
8 with which we take debt collection violations.

9 First, like Chris, I have to give this
10 disclaimer, that these views are just my own, they don't
11 necessarily reflect the Bureau or its director, the
12 views of the Bureau or its director.

13 So I came to the CFPB in early July of 2011
14 before the Bureau's official startup date. Before
15 coming to the Bureau, I was a consumer lawyer in private
16 practice and with Legal Aid in Texas.

17 I was originally brought in to be an enforcement
18 attorney. I worked on the Bureau's first enforcement
19 action, which was against Capital One Bank, and the
20 Bureau's first debt collection action, which was against
21 American Express.

22 Now I focus on enforcement policy and strategy
23 with a more narrow focus on payday lending and debt
24 collection issues. I coordinate with other offices such
25 as markets and rulemaking and supervision and can --

1 during the question-and-answer session, I can talk a
2 little bit about their actions, but you know, most of what
3 I know about is enforcement.

4 So the Bureau has filed several lawsuits either
5 administratively or in District Court that involve debt
6 collection. Many of these have been resolved by
7 settlements and some are still in active litigation.

8 I hope that you can understand that the ones
9 that are still in active litigation I'm not going to be
10 able to talk very much about, but starting with the
11 Bureau's first debt collection case, I'm going to
12 briefly describe all of our public enforcement actions
13 related to debt collection.

14 And then I'm going to talk about some of the
15 guidance that the Bureau has put out that, you know,
16 debt collectors who are wanting to follow the law can
17 refer to.

18 So the first case was the American Express
19 action. And this arose out of a multipart investigation
20 with the CFPB, the FDIC, the Federal Reserve, the OCC
21 and the Utah Department of Financial Institutions.

22 It was the Bureau's third public enforcement
23 action and the first one involving debt collection. It
24 also involved deceptive marketing of an awards program,
25 unlawful late fees, age discrimination, and a violation

1 of the FCRA, but I'm going to talk about the debt
2 collection issues.

3 There were two claims related to debt collection
4 and these were brought under the CFPA, the Consumer
5 Financial Protection Act or the Dodd-Frank Act as
6 opposed to the FDCPA because, you know, American Express
7 is generally not a debt collector.

8 But I'm going to talk about all these just
9 because a lot of the same issues would apply to the debt
10 collectors.

11 So the first was that American Express wrongly
12 told some consumers that if they paid off their old
13 debt, including debt that was past the date of
14 obsolescence for credit reporting, that AmEx would
15 report the payment to the credit bureaus and that that
16 could improve their credit score.

17 In fact, due to the age of the debt, AmEx was
18 not reporting the payments to the credit bureaus and
19 even if it had been, it wouldn't have been
20 affecting the consumers' credit score.

21 The second was that AmEx was telling some
22 consumers that if they paid off a portion of their
23 debt -- or if they paid off their debt, the settlement,
24 then a part of it would be waived or forgiven.

25 And in fact, when the consumers later applied

1 for American Express cards, they found out that the --
2 none of the debt was actually waived or forgiven, that
3 they needed to repay it in order to get a new American
4 Express card.

5 So as part of a public enforcement action
6 against the three American Express entities, AmEx was
7 ordered to pay about \$85 million in refunds and to pay a
8 civil money penalty -- or civil money penalties to the
9 CFPB and the other regulators totaling \$27.5 million.

10 Some, but not all, of the \$85 million, a
11 significant amount went to consumers who were harmed by
12 the debt collection violations. Specifically consumers
13 who made payments after being falsely told that their
14 payments would be reported to credit bureaus were
15 refunded those payments in full plus interest.

16 And consumers who were promised that their debt
17 would be forgiven and were denied new credit cards
18 because the debt was not really forgiven were each paid
19 \$100 and provided with a preapproved offer for a new
20 card with terms acceptable to the CFPB and the FDIC.

21 And for those consumers who went ahead and paid
22 the supposedly waived or forgiven amount in order to get
23 the new card, they got that money back plus interest.

24 AmEx was also ordered to disclose when
25 collecting debt that was too old for litigation or

1 credit reporting and to cease collecting debt when not
2 in possession of documentary evidence that includes at a
3 minimum, the complete terms and conditions of each
4 account and the complete transactional history of the
5 debt.

6 The Bureau's next two public enforcement actions
7 related to debt collection were both brought against
8 payday lenders. Like AmEx, these were brought under the
9 CFPA and not the FDCPA.

10 In the first one, which was also the Bureau's
11 first enforcement against a payday lender -- there's
12 a lot of firsts because, you know, the Bureau is not
13 very old -- was against Cash America International.

14 And in that case, in addition to other
15 violations, the Bureau found that -- or in addition to
16 other violations related to exam misconduct and
17 overcharging service members in violation of the
18 Military Lending Act, the Bureau found that Cash America
19 had certified certain affidavits and pleadings without
20 proper review, which is, you know, commonly known as
21 robo-signing.

22 Cash America agreed to provide full restitution
23 and to refund about \$14 million to 14,000 consumers and
24 to pay a \$5 million civil money penalty.

25 The next one, ACE Cash Express, was another case

1 that I was involved in. And it involved a variety of
2 unlawful collection practices, most of which would be
3 pretty plain-vanilla violations of the FDCPA had Ace
4 Cash been a third-party debt collector.

5 These included excessive calls, third-party
6 disclosures, misrepresenting the consequences of failing
7 to pay a debt before it gets transferred to a new
8 collector, making false threats of litigation and
9 criminal prosecution, some of which were implicit
10 references to attorneys and legal departments.

11 One of the third-party collectors that AmEx was
12 using to collect debt that -- sorry, that ACE Cash was
13 using to collect debt that would not be the subject of
14 litigation was an outfit called National Attorney
15 Collection Services, that when they called consumers,
16 they would refer to themselves as, you know, "This is
17 National Attorney calling about your debt." And we
18 found that that was a, you know, false threat of
19 litigation.

20 The FTC had taken an action against National
21 Attorney a little while before we came out with our ACE
22 Cash Express case.

23 ACE was ordered to pay a \$5 million civil money
24 penalty and to provide \$5 million in refunds to
25 consumers.

1 The Bureau's first FDCA case was filed against
2 the Frederick J. Hanna law firm. I imagine that some
3 people here are familiar with that case.

4 It was against the law firm and its three
5 principal partners for operating what the Bureau alleges
6 in the complaint is a collection mill law firm that uses
7 illegal tactics to intimidate consumers into paying
8 debts that sometimes they, you know, may not owe.

9 According to the complaint, one attorney at the
10 Hanna firm signed nearly 140,000 consumer debt lawsuits
11 over two years, which if you do the math, it breaks out
12 to being 1,300 suits per week. I am not that good of a
13 lawyer.

14 Many of the lawsuits were alleged accompanied by
15 affidavits that the Hanna firm knew or should have known
16 contained false testimony, specifically that the
17 affidavits were that the affiants had personal knowledge
18 of the validity and ownership of the debt.

19 The Bureau alleges that Hanna's acts violated
20 the FDCA and the CFA -- the Dodd-Frank Act -- by
21 falsely representing that attorneys were meaningfully
22 involved in preparing and the filing debt collection
23 lawsuits and by using affidavits that contained false
24 testimony.

25 The Bureau is seeking compensation for victims,

1 a civil penalty, and an injunction against the law firm
2 and its partners. And, you know, this is still pending
3 litigation, so there's not going to be much that I can
4 say beyond that.

5 The next three public actions involving debt
6 collection involve student lending, auto lending, and
7 lending to service members.

8 The first one was against Corinthian College.
9 Now, that case was primarily about marketing and lending
10 bad student loans, but there were also debt collection
11 components.

12 The Bureau alleged that Corinthian violated the
13 FDCPA and the CFPA -- there were some ways that they were
14 covered under the FDCPA -- by pulling students out of
15 class and disclosing the debts to instructors and other
16 staff.

17 Part of this action was resolved in February
18 when the Bureau and the Department of Education
19 announced more than \$480 million of loan forgiveness.

20 The next one was the Bureau's first case against
21 a "Buy Here/Pay Here" auto dealer. It was against
22 DriveTime Financial.

23 And in that matter, DriveTime was ordered to pay
24 an \$8 million civil money penalty for harassing
25 consumers at work, harassing third-party references,

1 making excessive and repeated calls to wrong numbers,
2 providing inaccurate information to consumer reporting
3 agencies, failing to investigate FCRA disputes, and
4 failing to implement reasonable credit reporting
5 procedures.

6 In addition to paying the CMP, DriveTime agreed
7 to reform its collection and credit reporting practices
8 and to disclose to consumers that they have a right to
9 limit DriveTime's calls.

10 In December of last year, the Bureau, along with
11 the North Carolina and Virginia Attorneys General, sued
12 Freedom Furniture Stores for engaging in unlawful
13 collection practices against service members.

14 We alleged that that creditor violated the CFPA
15 by suing thousands of consumers of service members in
16 Virginia who didn't live in Virginia and who hadn't
17 signed any underlying contracts in Virginia. Many of
18 these lawsuits resulted in default judgments.

19 Freedom was also alleged to have harassed
20 service members by disclosing the debt to their
21 commanding officers and to have made unauthorized
22 withdrawals from consumers and from other people's bank
23 accounts. Freedom was ordered to pay \$2.5 million in
24 restitution and a \$100,000 civil money penalty.

25 The next one was against an outfit called

1 National Corrective Group and several of its related
2 entities. This was for deceptively threatening
3 consumers with criminal prosecution and jail time for
4 bouncing checks.

5 The Bureau alleged that National Corrective,
6 while running a bad check diversion program with
7 District Attorneys' Offices, created a false impression
8 that they were District Attorneys and by using DA
9 letterhead and facsimile signatures.

10 Language in those letters, we also alleged, implied
11 that consumers faced criminal prosecution if they didn't
12 enroll in these bad check diversion programs, but in
13 fact, our investigation uncovered that less than
14 1 percent of the consumers who received even the final
15 warning letter from National Corrective ever had their
16 cases referred to prosecutors' offices.

17 National Corrective was ordered to stop using DA
18 letterhead and DA signatures or otherwise
19 misrepresenting that they are law enforcement while
20 they're running these bad check diversion programs.

21 They can also no longer state that failure to
22 enroll in the program will result in prosecution and
23 they must inform consumers that many of the cases are
24 never prosecuted. They also were ordered to pay a \$50,000
25 civil money penalty and to undergo increased DA

1 oversight.

2 So the next one in April, this is more similar I
3 think to the actions that Chris and Jim were talking
4 about, the Bureau filed a lawsuit against the
5 ringleaders of a robo-call phantom debt collection
6 operation, their companies, and their service providers.

7 This lawsuit alleges that company owners Marcus
8 Brown of Buffalo, New York, and Mohan Bagga of Atlanta,
9 who were each sued in their individual capacity, lead a
10 group of individuals and entities who used various
11 aliases like LRS Litigations, IRS Equity, Worldwide
12 Requisitions, and Arbitration Resolution to threaten
13 consumers with arrest, wage garnishment, and financial
14 restraining orders in attempts to collect debt from
15 consumers that was not owed to these companies and, you
16 know, in many cases, wasn't owed to anybody.

17 According to the complaint, Brown's wife,
18 sister, ex-wife, and another individual, Sumant Khan,
19 also helped carry out the scheme. And they were also
20 named as parties to the lawsuit as were the service
21 providers.

22 The complaint alleges that Global Connect, a
23 telemarketing company, sent millions of automated
24 messages that it knew contained unlawful conduct, and
25 that Brown and Bagga could not have run a successful

1 operation without the assistance of their payment
2 processors, Global Payments, Pathfinder, Frontline, and
3 Electronic Merchant Systems, who were alleged to have
4 ignored numerous red flags of illegal conduct, including
5 consumer disputes that described the scheme, and
6 communication problems with collectors.

7 The Bureau alleged that by enabling the debt
8 collectors to accept payment by credit card and debit
9 card, the payment processors helped to legitimize the
10 collectors' business and facilitated millions of dollars
11 in ill-gotten profits.

12 Like the Hanna firm, this is still in pending
13 litigation, so there's not going to be a lot I'm able to
14 talk about that one.

15 As Director Rich mentioned, also in April, the
16 CFPB and the FTC announced a joint action against a
17 large mortgage servicer, Green Tree.

18 The agencies alleged that Green Tree was using
19 unlawful debt collection tactics such as making an
20 excessive number of calls, falsely threatening
21 prosecution, and disclosing the existence of debt to
22 third parties such as employers all while collecting
23 distressed mortgage debt.

24 Some of the mortgages were acquired post
25 default, which brought a lot of the activity under the

1 FDCPA, in addition to the CFPA and the FTC Act, which,
2 you know, they enforce the FTC Act and we enforce the
3 CFPA.

4 There were also numerous violations unrelated to
5 debt collection. Green Tree was ordered to provide
6 \$48 million in consumer redress and to pay a \$15 million
7 civil money penalty to the CFPB.

8 The penalties that are paid to the CFPB then go
9 to consumers or to consumer education, which is somewhat
10 unique about our agency.

11 So in addition to reviewing the Bureau's debt
12 collection enforcement, debt collectors who are looking
13 for guidance from the Bureau should review something
14 called Supervisory Highlights, which are published by
15 our Office of Supervision, or could also review
16 bulletins that are posted on the CFPB website.

17 The CFPB's Office of Supervision examines larger
18 participant debt collectors, which are defined as those
19 that take in more than \$10 million in annual receipts.
20 They publish these Supervisory Highlights quarterly.
21 They describe the issues that they observed while, you
22 know, examining companies.

23 And each issue covers a few different market
24 areas. The spring 2014 and winter 2015 issues both
25 covered debt collection, among other topics.

1 So some of the unlawful and problematic
2 practices observed by examiners and noted in those
3 highlights are excessive telephone calls, the failure to
4 investigate FCRA disputes, deceptive representations such
5 as overstating the benefits of student loan
6 rehabilitation, and making misleading representations in
7 litigation. And I'll talk a little bit more in detail
8 about that.

9 As part of one or more examinations, examiners
10 found that in 70 percent of debt collection lawsuits
11 when the consumer filed an answer, one or more entities
12 would dismiss the suit because they were unable to
13 locate documentation to support their claims, despite
14 one or more entity's express or implied representations
15 to consumers that they intended to establish that
16 consumers owed a debt and the amount claimed in court
17 filings, in numerous instances, one or more entities
18 misled consumers because they had no intention.

19 If that sounded, you know, awkward, you know,
20 talking about that one or more entities and, you know,
21 one or more times, it's because the Bureau's
22 examinations are nonpublic and there's nothing in the
23 Supervisory Highlights that could -- or there shouldn't
24 be anything in there that would enable anybody to
25 identify the subject of the examination.

1 So, like in that one, we can't -- we're even not
2 saying if it was one examination or five examinations
3 where we saw that issue.

4 There are three bulletins that I thought would
5 be of particular interest to this crowd that have been
6 put out by the Bureau. And they are the Debt Collection
7 UDAAP Bulletin, the Credit Score Representation
8 Bulletin, and the Responsible Conduct Bulletin.

9 The Debt Collection UDAAP Bulletin was put out
10 in 2013 and it's there to make clear that first-party
11 collectors are subject to the general prohibitions
12 against unfair, deceptive, and abusive acts or
13 practices, you know, under the Dodd-Frank Act and that
14 many of those same kind of restrictions -- or many of
15 the kinds of restrictions that are found in the FDCPA
16 would apply to them as well under this other act.

17 That bulletin may not be as necessary now since
18 we've taken several actions against first-party
19 creditors, but that's why it's there, you know, and
20 should give comfort to third-party collectors just to
21 know that we're looking at, you know, everybody.

22 The Credit Score Representation Bulletin warns
23 companies that they should be careful when they make
24 statements about how paying a debt will affect a
25 consumer's credit score, credit report, or

1 creditworthiness.

2 And then the Responsible Business Conduct
3 Bulletin was also issued in 2013. This was issued to
4 inform those subject to the Bureau's enforcement
5 authority there are certain activities that they can
6 engage in both before and after the conduct in question
7 has occurred that the Bureau may favorably consider in
8 exercising its enforcement discretion.

9 Specifically, a party may proactively
10 self-police for potential violations, promptly
11 self-report to the Bureau when it identifies potential
12 violations, quickly and completely remediate the harm
13 resulting from violations, and affirmatively cooperate
14 with any Bureau investigation going above and beyond
15 what's required by law.

16 If a party meaningfully engages in these
17 activities, which the bulletin collectively refers to as
18 responsible business conduct, then it may favorably
19 affect the ultimate resolution of a Bureau enforcement
20 investigation.

21 It could lead to lower civil money penalties or
22 even no civil money penalties or it could even lead to
23 us deciding not to take a public action against your
24 company.

25 And then finally, I want to mention our

1 whistleblower hotline as everyone else up has talked
2 about how much we all rely on tips from industry. I
3 just wanted to make a call for that.

4 Tips can be sent to whistleblower@cfpb.gov.

5 And, you know, whenever those are coming in, we always
6 appreciate, you know, as many details as we can get
7 about who is making them, but we also understand that,
8 you know, there are some people who just don't want to
9 give their name or anything like that and the only way
10 to get the tip is to get it anonymously.

11 And those can be made through that E-mail
12 address or also to a toll-free number (855)695-7974,
13 which is also on our website.

14 And with that, I will pass it on to the
15 Department of Financial Services, to Joy.

16 (Applause.)

17 MS. FEIGENBAUM: Thank you. Good afternoon.

18 I'm going to make a similar disclaimer as my
19 colleagues have, that the views that I express today are
20 my own and not necessarily those of the Superintendent
21 of Financial Services or the Department.

22 And I just want to begin by saying you've heard
23 today about some of the worst abuses that have resulted
24 in numerous enforcement actions by my colleagues and
25 their offices.

1 And as I will discuss, like my colleagues, DFS
2 has enforcement authority and we are pursuing
3 investigations and enforcement in this area, but I'm
4 going to spend the majority of my time on the
5 Department's new regulation.

6 We believe that our regulation should not only
7 stop bad practices, but also enable consumers to be
8 assured that they're being collected by an entity with a
9 legitimate right to collect, and that the amount being
10 collected is accurate, and that should hopefully result
11 in payment in settlement of legitimate debts.

12 So under the Financial Services Law, the
13 Department of Financial Services has the authority to
14 both regulate and enforce rules against certain
15 providers of financial products and services unregulated
16 by other agencies, what we refer to at the Department as
17 our gap authority.

18 And that authority covers any financial product
19 or service offered or sold to consumers in New York
20 except those that are regulated under the exclusive
21 jurisdiction of a federal agency, regulated for the
22 purpose of consumer or investor protection by another
23 New York State agency, or where DFS rules would be
24 preempted by federal law.

25 And in the development of the New York Financial

1 Services Law, the drafters envisioned debt collection as
2 an area for the Department to address by regulation.

3 The Department also gave -- the FSL, I'm sorry,
4 gave the Department authority to enforce the federal and
5 New York State Fair Debt Collection Practices Act.

6 While many debt collectors operate legally and
7 responsibly, the Department has received numerous
8 complaints regarding debt collection practices, and debt
9 collection abuse is often the most frequent financial
10 complaint filed by consumers nationally and in New York.
11 The Department's debt collection regulations were
12 designed to address the most common issues impacting
13 consumers.

14 The Department's first major initiative under
15 the Financial Services Law gap regulatory authority was
16 our regulation of third-party debt collectors and debt
17 buyers, which covers pre-litigation collection activity
18 throughout New York State.

19 Following review of comments to proposed rules
20 and meetings with interested parties, final rules were
21 adopted in November of 2014 and the rules became
22 effective in March of 2015 while certain provisions go
23 into effect on August 30th, 2015.

24 The rules are enforceable under Section 408 of
25 the Financial Services Law by fines of up to \$5,000 per

1 violation. And the Department also began accepting and
2 mediating consumer debt collection complaints during
3 this period.

4 So I'm going to walk you through the regulation
5 in Section 1.2, required initial disclosures by debt
6 collectors.

7 Within five days after the initial communication
8 with a consumer in connection with the collection of any
9 debt, a debt collector is required to provide a
10 disclosure including the consumer protections under the
11 Fair Debt Collection Practices Act.

12 In addition, the disclosure should include
13 protections under the New York Exempt Income Protection
14 Act.

15 And for the collection of any charged-off debts,
16 within five days after the initial communication with a
17 consumer in connection with the collection of a debt, a
18 debt collector must provide information identifying the
19 debt including the name of the original creditor and an
20 itemized accounting of the debt.

21 In order to give debt collectors time to gather
22 information and develop internal procedures, this
23 requirement to provide information on charged-off debts
24 does not become effective until August 30th, 2015.

25 Moving to Section 1.3, covering the statute of

1 limitations. Suing to collect a debt on which the
2 statute of limitations has expired violates the Fair
3 Debt Collection Practices Act.

4 If a debt collector sues on an expired debt,
5 despite being a violation of federal law, in New York,
6 the alleged debtor must assert in court as an
7 affirmative defense his or her right to dismiss the case
8 due to the expiration of the statute of limitations on
9 the debt.

10 And while a debt collector may not be able to
11 sue on an expired debt, the debt collector can still
12 attempt collection on the expired debt outside of
13 litigation.

14 Now, some debt collectors take advantage of New
15 York consumers' lack of awareness of the statute of
16 limitations defense when collecting on debts for which
17 the statute of limitations has expired.

18 Consumers who are typically not represented by
19 counsel may fail to assert their rights in court. Some
20 debt collectors may mislead consumers into believing
21 that they can lawfully sue to collect a debt in order to
22 get the consumers to make a payment on their debt.

23 And in some cases, making such a payment could
24 restart the statute of limitations, giving the debt
25 collector a renewed ability to sue on an old debt.

1 The regulation requires in Section 1.3 that a
2 debt collector must maintain reasonable procedures for
3 determining the statute of limitations applicable to a
4 debt it is collecting and whether such statute of
5 limitations has expired.

6 If a debt collector knows or has reason to know
7 that the statute of limitations for a debt may be
8 expired, before accepting payment on the debt, the debt
9 collector must provide the consumer notice that the
10 statute of limitations has expired.

11 And the notice must be given in the same medium
12 by which the debt collector will accept payment. For
13 example, if payment is being taken over the phone, the
14 disclosure should be provided on the call.

15 Debt collectors can use this model disclosure
16 provided in the regulation or another disclosure that
17 includes the required information.

18 And now I'll turn to Section 1.4, substantiation
19 of consumer debts. The Department found that when debts
20 are charged off and sold to debt buyers, sometimes
21 multiple times over many years, debt collectors may only
22 receive minimal or inaccurate records.

23 And this can lead to collectors contacting the
24 wrong consumer or if prior payments are not recorded,
25 claiming the consumer owes more than he or she actually

1 does.

2 Bad actors may sell the same portfolio of debts
3 multiple times and a consumer may be contacted to pay a
4 debt he or she has already paid.

5 Consumers are confused when a debt collector who
6 is not the original creditor contacts the consumer about
7 debts that haven't been collected on for years.

8 Consumers often don't recognize the collector or don't
9 remember the debt.

10 The regulation in Section 1.4 creates a
11 mechanism for consumers to request information on
12 charged-off debts to help ensure that collectors are
13 collecting from the correct parties and that consumers
14 can be confident that they are repaying legitimate
15 debts.

16 If a consumer disputes the validity of a
17 charged-off debt or the right of a debt collector to
18 collect on a charged-off debt, the debt collector can
19 treat this as a request for substantiation or the debt
20 collector must inform the consumer how he or she can
21 request substantiation of the debt.

22 And a debt collector must provide substantiation
23 to the consumer within 60 days of receiving the request
24 for substantiation. And once a consumer makes a request
25 for substantiation of a debt, the debt collector must

1 cease all collection until substantiation has been
2 provided.

3 Substantiation should consist of the signed
4 contract or application that created the debt or, if
5 neither exists, a copy of a document demonstrating that
6 the debt was in fact incurred by the debtor; and the
7 account statement at charge-off or an equivalent
8 document that the original creditor issued to the
9 consumer; and a statement describing the complete chain
10 of title from the original creditor to the present
11 creditor; and records showing the amount and date of any
12 prior debt settlement agreement in connection with the
13 debt agreed to after the effective date of these
14 regulations, which was March 3rd, 2015.

15 And in order to give debt collectors time to
16 gather documentation and develop internal procedures,
17 the requirement to provide substantiation of a debt does
18 not become effective until August 30th, 2015.

19 And now I'm moving to debt payment and debt
20 settlement procedures in Section 1.5 of the regulation.

21 Many consumers complain that after agreeing to a
22 debt payment schedule, their debt is sold to a new
23 creditor who no longer honors their payment plan.

24 Many consumers also complain that after making
25 payments on a debt, debts are sold with inaccurate or

1 out-of-date records which fail to show prior payments.

2 The debt settlement procedures I'll now discuss
3 are designed to ensure that debt collectors and
4 consumers have documentation of agreements and payments
5 to avoid disputes and encourage settlements.

6 If a consumer agrees to a debt payment schedule
7 or other debt settlement agreement, the debt collector
8 must within five business days provide the consumer with
9 a written copy of the agreement.

10 And the written confirmation of a settlement
11 agreement should also include a disclosure of the
12 consumer's rights under the New York Exempt Income
13 Protection Act.

14 If a consumer agrees to a debt payment schedule
15 or other debt settlement agreement, the debt collector
16 must while the consumer is making scheduled payments
17 provide the consumer with an accounting of the debt on
18 at least a quarterly basis.

19 And if a debt collector provides monthly account
20 statements, this would suffice and start from either the
21 agreement date or on a calendar-year basis.

22 And after a consumer satisfies his or her debt,
23 the debt collector must send to the consumer written
24 confirmation of satisfaction of the debt within 20
25 business days.

1 Now I'll be referring to communication through
2 electronic mail in Section 1.6 of the regulation.

3 So in order to provide consumers and debt
4 collectors faster and easier ways to communicate, the
5 regulation permits debt collectors to communicate and
6 provide required disclosures by E-mail if the consumer
7 voluntarily provided an E-mail account which the
8 consumer has affirmed is not the E-mail account
9 furnished or owned by his or her employer and the
10 consumer consented in writing to receive correspondence
11 from the debt collector by E-mail regarding the specific
12 debt.

13 And finally, debt collectors seeking additional
14 information about the regulations can find answers to
15 frequently asked questions at the website listed. And
16 we are going to be posting additional FAQs either later
17 today or tomorrow.

18 So thank you very much.

19 (Applause.)

20 MR. KANE: Thank you very much, Joy, and the
21 other three presenters.

22 We're now going to take a brief break. We're
23 running a little behind schedule, so I'm going to ask
24 you to be back here in, I know it's a really short time,
25 six minutes.

1 We're just going to start in six minutes and you
2 guys can get back in as soon as you can, but we want to
3 leave as much time as possible for all your questions.

4 (Whereupon, a recess was taken.)

5 QUESTION-AND-ANSWER SESSION

6 MR. KANE: We're going to get started now with
7 the questions. Our four panelists or agency
8 representatives can join us on stage. Thank you.

9 We'll start off with a long one. We have a few
10 that were -- people typed up and handed to us. I think
11 they're rather representative.

12 The first one is: Many individuals and
13 companies in this industry have become increasingly
14 compliant over time.

15 While they acknowledge that they cannot
16 guarantee that every attempt to collect on a consumer
17 debt is fully compliant with the law, they believe
18 they're making significant progress toward operating in
19 a more compliant and lawful manner.

20 Those same entities are fearful that misconduct
21 in their past or the misconduct of a predecessor company
22 may be imputed upon an entity that is presently making
23 significant efforts toward lawful operation.

24 Thus, what criteria do the respective agencies
25 consider when determining whether or not to A, start a

1 formal investigation of a company or an individual; and
2 B, commence an enforcement action against a company or
3 individual?

4 Is the inquiry limited in time or scope? Are
5 there any allegations or circumstances that may make an
6 enforcement action more likely?

7 So this is to anyone at the table that wants to
8 address it.

9 MR. KOEGEL: I'm happy, Tom, to take a first
10 crack and then let other people pipe in their
11 experiences.

12 Let me just first say that, you know, just
13 because you turned over a new leaf or maybe there was a
14 change in ownership, that doesn't wipe the slate clean.
15 Those consumers were still harmed.

16 But, I will say that at the FTC, anyway, we take
17 into account a number of factors when making a decision
18 about whether to open an investigation and then what is
19 the appropriate, you know, approach in terms of
20 remedies.

21 And you know, as you might imagine, it's a bit
22 of a fluid decision. These are -- some of this is
23 subjective, some of it is objective, and we weigh all
24 these things together. It's not precise calculus, but
25 here are some of things that we look at.

1 First of all, you know, we are going to look at
2 the number of violations or the number of complaints,
3 you know, the frequency of the unlawful practices.

4 Second, we're going to look at the extent of
5 consumer injury. You know, along with that is going to
6 be the egregiousness of the violation. If somebody just
7 forgets, you know, one account falls through the cracks
8 and doesn't get a validation notice, that's very
9 different from repeated violent threats or threats of
10 arrest.

11 We also look at the apparent willfulness of the
12 violation. So, you know, again, we would factor in was
13 there a real compliance program that was in place? Were
14 there real efforts to try to monitor compliance? And I
15 think I alluded to this in some of my comments as well.

16 We're also looking very closely at the FTC at
17 the history of regulatory actions and FDCA lawsuits.
18 So are you already under a recent order for the same
19 conduct?

20 You know, did you flout it anyway? Are you
21 being responsive to consumer complaints that either come
22 in to your office, come to the BBB, come to the State
23 AG's office, or coming into the CFPB? Are you making
24 real efforts to address the complaints in that respect?
25 And how are you responding to private FDCA lawsuits?

1 We balance a lot of that stuff, of course, with
2 the size of the company in terms of the number of
3 violations versus the size of your operation, you know.

4 We are also looking, again, I think I alluded to
5 this earlier, are you frequently changing your name? Do
6 you have multiple d/b/a's? Do you have some kind of
7 elaborate corporate structure for no apparent business
8 reason other than to try to evade liability for your
9 actions?

10 And then, you know, once we get into the
11 situation with you, you know, how responsive are you
12 during the investigation? How cooperative are you?
13 Have you taken intermediate action to address and fix
14 some of the problems that we're finding?

15 So, you know, we're looking, at least at the
16 FTC, at all of these things at the same time. So, you
17 know, you don't -- like I said, you don't get a clean
18 slate just because you turn over a new leaf, but it does
19 get factored in.

20 MR. MORRISSEY: To say that we don't look for
21 perfection would be an understatement. Certainly not
22 perfection in terms of what each individual collector
23 may do on an individual call.

24 If you look at the cases that our office has
25 investigated, we are looking at, for the

1 most part hundreds of complaints.

2 And they may be complaints that have come into
3 our office. They may be complaints that have come into
4 the FTC. And we check both databases to see the
5 behavior of the collection business, but I can guarantee to you that
6 we have not brought a case based on the poor behavior of
7 one single collector.

8 When we talk about the number of violations,
9 it's important to talk about the number within the
10 context of the size of the company.

11 40 violations with a company that has five
12 collectors looks very different to me than 40 violations
13 at a company that has 200 collectors. So when we talk
14 about number of violations, I just want to add that it's
15 also relative to the size of the company.

16 But there is one thing that will automatically
17 result in an investigation and that is if you falsified
18 your address, or you falsified
19 your name, because one of the reasons we don't have
20 complaints is that you've represented that you're in
21 California and the complaints are going to the AG in
22 California and not to us.

23 So falsification of address is pretty automatic,
24 at least in our book, at least to start an
25 investigation.

1 And falsification of your website. We had a
2 case where the website had falsified the address. It
3 falsified everything that the company did. It even had
4 pictures of people that weren't real people that worked
5 for the company.

6 So that kind of deliberate falsification of a
7 website immediately causes us to undertake an
8 investigation.

9 MR. NODLER: I would add to the same things that
10 they said, you know, about number of complaints and the
11 egregiousness of the conduct.

12 Something else on the CFPB -- or for the CFPB is
13 a lot of our investigations come out of examinations.
14 And a lot of times, as I was alluding to before about
15 the responsible business conduct, that when our
16 examiners uncover some unlawful activity, if the company
17 really steps up and, you know, is: "Okay. We're going to remediate.
18 We're going
19 to pay back all this money that we collected, you know,
20 while doing this, while making this deceptive claim or
21 while doing whatever," then that's something that can,
22 you know, go a long way with the CFPB to decide, okay,
23 we're going to maybe focus our enforcement resources on
24 the company that's not volunteering to refund all of the
25 money, so. But, and everything else that everyone said.

1 MS. FEIGENBAUM: And I would echo what my
2 colleagues have said. Self-report. Certainly if there
3 are past violations, they still need to be addressed,
4 but self-reporting and more recent compliance and
5 cooperation are certainly factored in in any
6 investigation and enforcement action.

7 MR. KANE: Thanks.

8 This is for our New York law enforcers: Some
9 states require debt collectors to post a bond in order
10 to operate. When will we see New York adopt this
11 regulation?

12 MR. MORRISSEY: I probably should have started
13 at the beginning of my remarks to say that my views are
14 only my views and I neglected to do that.

15 It's something that requires a legislative fix and
16 it's not something as an Assistant Attorney General that
17 I can comment on because it's not an appropriate role of
18 me to comment on political solutions as contrasted with
19 lawsuits, but I feel your pain.

20 MR. KANE: This is for -- anybody at the table
21 can address this:

22 Is there are any appetite for a self-disclosure
23 program for companies looking to improve compliance and
24 start fresh? I envision something similar to
25 Medicare/Medicaid self-disclosure statutes.

1 Anybody?

2 MR. NODLER: I would bring up the responsible
3 business conduct again. At the CFPB, where when
4 somebody does self-report a violation, then it is
5 certainly looked upon favorably.

6 We also actually have another project in our
7 office? I think it's in markets. Catalyst, John, is
8 that in markets?

9 MR. McNAMARA: Yes, Catalyst.

10 MR. NODLER: Yes. So we also have a project
11 called Project Catalyst --

12 MR. McNAMARA: I'm sorry, Greg. That's front
13 office.

14 MR. NODLER: Oh, front office. Okay.

15 So we have a project at the CFPB where companies
16 who are looking to try something out, try something new
17 in financial services that may be a disclosure that
18 wouldn't align exactly with current -- a current
19 disclosure in a regime but they think it might be better
20 for consumers than the existing law, then they can come
21 and they can present that idea to the Bureau and
22 sometimes get some kind of safe harbor to try something
23 out, which, you know, I don't know how appropriate that
24 would be with debt collection, but I mean, anybody who
25 is a covered person can submit applications.

1 MR. KANE: This one is for Joy:
2 If a debt collector sends a settlement agreement
3 offer to the consumer in writing and the consumer
4 accepts it by paying per terms, must any further
5 documents be required? would a further document be
6 required?

7 MS. FEIGENBAUM: No, that agreement initially
8 sent will suffice.

9 MR. KANE: If a company is shut down for fraud,
10 why is the no action brought -- why is there no action
11 brought against the data provider or software vendor?

12 MR. KOEGEL: I'll take a crack at this since I
13 think we've been in the business of filing cases that
14 seem to end up with really bad debt collectors being put
15 out of business.

16 You know, I guess generally what we've been
17 seeing in the cases that have resulted in asset freezes
18 and receiverships has been behavior that, you know, we
19 attribute entirely to the debt collector itself and the
20 debt collection practices.

21 They are not violations that generally stem
22 from, you know, some issue with the software or
23 something like that.

24 So, for instance, in cases that we've brought
25 recently in Buffalo as I described before, the common

1 threads have been, you know, false threats of arrest,
2 false threats of litigation, wanton and willful
3 disclosure of debts to third parties, failure to give
4 required notices.

5 None of those things stem from, you know, a bad
6 phone vendor or software vendor or anything like that.
7 Now, if we found a debt buyer -- or a debt seller out
8 there, I should say, who is wilfully selling bogus
9 portfolios of debts or who is double-selling the same
10 portfolio to multiple debt collectors, that's a
11 different story.

12 Then when the debt collector who buys that
13 portfolio goes and collects on that debt, if he does so
14 in good faith thinking that he's got a good portfolio,
15 he really has very little culpability there and we will
16 be looking at the person who wilfully is violating the
17 law and committing the deception there, the debt seller
18 who is selling bogus portfolios.

19 So the short answer to that question is, if the
20 facts present themselves in such a way that the service
21 provider is culpable, that's absolutely something that
22 we would look at within the bounds of our statutory
23 authority, but generally the cases we've pursued
24 recently haven't presented those fact patterns.

25 MR. NODLER: And I'll say for the CFPB,

1 something that's in the Dodd-Frank Act and the CFPB,
2 it's unlawful for the covered person to commit an
3 unfair, deceptive, or abusive act or practice, but it's
4 also unlawful for someone who provides substantial
5 assistance to the commission of a UDAAP.

6 And in one of the cases that I mentioned where,
7 you know, there are a million names and we refer to it
8 as the Universal Debt case because that was one of the
9 companies, but we also brought actions against the --
10 you know, the telephone company and payment processors.

11 And for that, it's that they have to -- it's
12 "know or should have known" and we allege that they
13 should have known they were providing assistance to
14 unlawful practices.

15 MR. MORRISSEY: And we have issued subpoenas to
16 software developers. And the simple fact is we've never
17 seen any evidence to suggest that there was any
18 collusion, frankly, between software developer and the
19 particular company.

20 But believe me, we've looked at it because when
21 we saw the same program coming up over and over again,
22 it did pique our interest.

23 When you refer to the data provider, I'm not
24 sure what that means, but if you're referring to the
25 debt buyer who places debt with a shop that is shut

1 down, why aren't we going back to the debt buyer? Please
2 don't make the assumption that we're not.

3 MR. KANE: Thanks. Another one of our typed
4 questions:

5 The dividing line between the FTC and CFPB is
6 murky as both agencies are either enforcing claims on
7 behalf of the Federal Government.

8 We understand that the agencies share some
9 information. We also understand that the statutes
10 giving each agency its jurisdiction vary in scope and
11 conduct covered.

12 What distinguishes cases that are taken by the
13 FTC versus those taken by the CFPB? To what extent are
14 the agencies sharing information?

15 MR. KOEGEL: Greg, you want me to go first?

16 MR. NODLER: Go for it.

17 MR. KOEGEL: So the short answer is we are
18 coordinating and sharing extensively. And I think
19 frankly that's been reflected in the work that we've put
20 out there both on our own and jointly.

21 So just going back to the beginning, the
22 Dodd-Frank Act anticipated coordination. The two
23 agencies have signed the memorandum of understanding
24 that created and implements a safe framework for
25 coordination and cooperation, but it does not divvy up

1 areas.

2 So among other things, coordination means that
3 we ensure that each agency knows what the other agency is
4 doing, that we have consistency in approaches where
5 practical and appropriate, that we avoid duplication of
6 efforts, and that we avoid unintended double-teaming.

7 The coordination does not preclude a joint or
8 coordinated investigation. In fact, we just did that in
9 Green Tree this spring.

10 It doesn't mean that either agency is going to
11 abdicate its authority or its role, particularly here in
12 debt collection. I think you see that. We're both up
13 here at the table.

14 And it doesn't mean that either agency is going
15 to become the primary regulator or enforcer. There's
16 enough bad behavior going around right now, so we don't
17 need to do that.

18 So how do we coordinate? If you're interested,
19 there are senior-management-level meetings twice a year.
20 There are midlevel management meetings on a quarterly
21 basis.

22 There are staff-level working groups that Greg
23 and I helped start, frankly, when we were in prior
24 positions that meet even more frequently than that. And
25 there's frequent informal communications amongst staff.

1 We have a database that's set up that
2 automatically notifies the other agency whenever one of
3 our agencies opens an investigation or is getting ready
4 to file a complaint or is getting ready to settle a
5 case. And some of those same systems are in place when
6 the CFPB is undertaking a supervisory examination.

7 So the lines of communication are varied and
8 wide open and we factor all of this stuff in. You know,
9 if the CFPB is getting ready to do an examination of a
10 collector, you know, do I really want to use my limited
11 resources at the FTC to open up a separate
12 investigation? In all likelihood, no.

13 So I think that's primarily how we've been
14 addressing it at the FTC, is trying to have those varied
15 and open communication channels.

16 MR. NODLER: I agree with everything that Chris
17 said. I mean, I would also say that some of that is
18 true for the way that the CFPB works with the states and
19 I imagine the way that the FTC works with the states.

20 And we share enforcement authority over the
21 FDCPA with the FTC, you know, as well as the private
22 consumers. We share enforcement authority of the
23 Dodd-Frank Act with State Attorneys General.

24 So, you know, we all work together. And I mean,

1 we're all sitting at the table and we're all trying to
2 cover the same issues, but not to duplicate efforts in
3 an inefficient way or in a way that wouldn't be fair to
4 industry either.

5 MS. FEIGENBAUM: And I would just add that we've
6 certainly -- that, you know, as Greg is saying, the
7 states and the FTC and CFPB are coordinating a lot in
8 this space.

9 We coordinated with the New York AG's office on
10 meetings with OCA on their new rules on default judgment
11 applications, coordinated with the CFPB on New York's
12 proposed rule before issuing it.

13 And we have enforcement -- we are coordinating
14 on enforcement and investigations with all of our
15 colleagues here today.

16 MR. KANE: Joy, this is a question for you:

17 The DFS has proposed an amendment to
18 substantiate -- to substantiation that eliminates
19 producing a judgment. Does the DFS expect debt
20 collectors to validate old judgments?

21 MS. FEIGENBAUM: Okay. So the answer to the
22 second question is no. The rule applies to
23 pre-litigation collection activity and for that reason,
24 we are amending the rule that allows for provision of a
25 judgment as a basis for substantiation, but that really

1 shouldn't impact collectors at all.

2 MR. KANE: Are there any plans for any regulator
3 to commence investigations or take action against
4 attorneys that operate under the guise of being a
5 consumer advocate and launch frivolous lawsuits against
6 legitimate agencies for the purpose of self-gain and
7 enrichment?

8 This one is for half the audience.

9 MR. NODLER: We brought actions against
10 foreclosure rescue scams. That was actually the very
11 first, you know, lawsuit that CFPB filed, was against
12 the Gordon Law Firm because it was operating, you
13 know, a foreclosure rescue scam.

14 I know that's not what people are talking about
15 here, but it's a law firm, you know, saying that he's
16 protecting consumers when we didn't think that was the
17 case.

18 MR. MORRISSEY: I also think importantly
19 there is a bit of a self-regulating device there and
20 it's called Rule 11 of the Federal Rules of Civil
21 Procedure.

22 And Rule 11 requires when a lawsuit is filed in
23 the Federal District Court that it be signed by the
24 attorney.

25 And if it is a completely frivolous suit, then

1 there may be Rule 11 sanctions against that attorney.
2 And so there is a bit of a self-regulatory mechanism in
3 there as well.

4 MR. KOEGEL: By the way, if anybody has more
5 questions, please feel free to scribble something out or
6 raise your hand and get them over to Tom.

7 MR. KANE: Many companies -- and this is a long
8 one. Many companies in the Western New York region and
9 elsewhere have come together in the hope of developing
10 an open, honest, and transparent dialogue regarding
11 regulation of consumer debt collection on the federal
12 and state level.

13 Part of that discussion includes
14 contemplating -- contemplation of forming or
15 strengthening industry lobbying groups at the state and
16 federal level.

17 In the event that such groups were to request an
18 opportunity to work with the FTC, CFPB, or New York AG,
19 would those entities be willing to sit down to discuss
20 guidelines, protocols, and commonsense legislation that
21 will lead to a more professional and better regulated
22 industry.

23 MR. KOEGEL: Well, I speak for myself at the FTC
24 on this one, but if anybody is here from DBA or ACA or
25 some of the other industry organizations and some of the

1 debt collection vendors and service providers that are
2 in the audience, they will tell you that my door is open
3 and I am willing to meet and discuss, you know, any
4 issues that are in the industry.

5 You know, please feel free to come up to me
6 after this event is over. I've got a whole bunch of
7 business cards and I would be happy to meet with you,
8 learn from you, hear what issues you've got.

9 Unfortunately, Congress and the Constitution
10 have yet to grant me authority to pass legislation.
11 Perhaps that's a comfort to some of you. But I'm always
12 eager to learn more and hear what's going on from your
13 perspective.

14 MR. NODLER: I'd say the same thing. I'd also
15 say, you know, feel free to contact me, but John
16 McNamara here in the front row is also with the CFPB
17 and, you know, some of you may be more comfortable
18 talking to John.

19 MS. FEIGENBAUM: And I just might add, since the
20 questioner did not mention DFS, but we have issued our
21 new regulation and we've been meeting on a regular basis
22 with numerous industry groups to clarify, to make sure
23 there's understanding of the regulation, that -- and
24 we've issued clarifications as we have seen, you know,
25 practical considerations that need to be factored in.

1 So our door is open as well.

2 MR. KANE: This question is: Why do you believe
3 that vendors, autodialers, payment processors should be
4 aware of bad accounts -- or bad acts, I guess?

5 MR. NODLER: I mean, I imagine that that's
6 directed at me. So in our case where we -- you know,
7 where we sued vendors, it was because we said that they
8 knew or should have known. There were various red
9 flags, they were described in the lawsuit, such as
10 consumer complaints and, you know, things like that.

11 AUDIENCE MEMBER: What kind of red flags?

12 MR. NODLER: They're going to be described more
13 in there. Let me see. I think I have some of them just
14 noted on here. Just give me a second.

15 They were -- sorry, just one second.

16 I think they're going to be described with more
17 detail in the complaint, which I don't have with me, but
18 what I have on here is to remind myself about consumer
19 disputes that described the scheme and communication
20 problems that they were having with the debt collectors
21 themselves.

22 MR. MORRISSEY: It's important to
23 understand that what we think and a dollar will buy you
24 the Buffalo News.

25 I mean, it's an evidentiary question ultimately

1 and so the answer to the question is we have to present
2 evidence of it. I mean, if we file an action, we
3 appropriately bear the burden of proof of proving
4 whatever allegations are contained in that complaint.
5 And that's as it should be.

6 So the answer to the question is, is it an
7 evidentiary one that we undertake before we file a
8 complaint in the first place.

9 MR. KOEGEL: I guess just to build off of Jim's
10 point there, if you were just to look at, for instance,
11 say the three cases that we filed jointly with New York
12 in the last year-and-a-half, I think I described for you
13 earlier a lot of the really drastic preliminary relief
14 that we got: asset freezes, receivership, immediate
15 access to business premises.

16 We didn't just get that because we wanted it.
17 We asked the Court for those powers and the Court has a
18 high burden of proof before it will grant those kinds of
19 relief.

20 And in every one of those cases, we presented
21 overwhelming evidence and the Court was very comfortable
22 granting those kinds of relief.

23 So, you know, nobody is just acting on their own
24 here. We are presenting, as Jim noted, extraordinary
25 evidence of these kinds of things.

1 And, you know, we are very careful. We're not
2 looking to hold people accountable for behavior that
3 they're not really culpable for.

4 MR. MORRISSEY: And what does Chris mean by
5 that? Well, the Four Star case involved 42 consumer
6 affirmations. It involved affirmations from
7 ex-employees.

8 I mean, this is the type of evidence that we
9 present when we present cases to courts and the type of
10 evidence that the Court will consider before it issues
11 the drastic relief that we request.

12 This is not an easy haul, believe me. It's a
13 very tough one.

14 MR. KOEGEL: Call recordings, you know. We're
15 getting, you know, scripts from the former employees
16 that we talk to. You know, this is overwhelming
17 evidence when we go on these things.

18 MR. KANE: Will a registry be developed for
19 notifying compliant debt collectors about noncompliant
20 individual collectors who are not owners?

21 MR. KOEGEL: I guess let me just start by saying
22 that I'm not sure that that's within the bounds of our
23 statutory authority at the FTC, you know, absent Court
24 orders, you know, holding those people accountable or
25 banning them from the industry.

1 I know I talked earlier about the Hall of Shame,
2 so to speak, the list of banned debt collectors. Again,
3 I want to make sure everybody in this room understands
4 that's not just people Chris Koegel doesn't like. Those
5 are people who are under Federal Court orders that
6 specifically ban them from your industry.

7 And so, you know, at this point, we are looking
8 at banning the people and the companies that are most
9 culpable, most responsible, who are profiting the most
10 from the unlawful behavior.

11 You know, with great power comes great
12 responsibility. It's not just all profits and
13 happiness. You have to make sure that your people are
14 doing business the way you want them to do it.

15 MR. MORRISSEY: Was it Joan Rivers who used to
16 say, "Can we talk?" I mean, can we talk for a second
17 here?

18 We were given statistics on the number of
19 collectors that are in -- that are employed in New York
20 state. And I understand that question and I think the
21 question is a great question.

22 And what we see is collectors go from agency to
23 agency to agency to agency and oftentimes they bring in
24 with them the scripts that they've gathered, you know,
25 at other agencies.

1 And boy, I don't mean to say for a second that
2 this is an easy haul. It's not an easy haul, but I have
3 to reinforce what Chris said.

4 When we went in in our immediate access, which
5 meant we were permitted to go into the business premises
6 looking for evidence of violations of the FDCPA, what
7 did we see?

8 We went from cubicle to cubicle to cubicle to
9 cubicle. And at every cubicle, oftentimes sheets
10 thumb-tacked right on the cubicle, were scripts that
11 were violative of the FDCPA.

12 I want to stress, because I think it's important
13 to stress this, that the evidence that we have had when
14 we've brought these cases has been overwhelming.

15 And if I were running one of these agencies, how
16 would I know? I would simply look at the scripts that
17 were posted in the cubicles.

18 So I wish we could come up with a list of debt
19 collectors that in our experience -- and frankly, we're
20 the ones that see it -- in our experience were not good
21 collectors so that we could warn you about it. As a
22 practical matter, it's just not going to happen and the
23 ultimate responsibility lies on your shoulders.

24 MR. KOEGEL: Yes. You know, I cannot stress
25 enough: compliance management, call recordings, call

1 monitoring, just walking around your facility looking
2 for what scripts people are having. You know, take a
3 look at the account notes.

4 That is your responsibility as the owner and
5 operator of these collection agencies. It's just not
6 going to get all pushed down to the guy making \$10 an
7 hour.

8 MR. KANE: A question for Joy:

9 Regarding substantiation under Section 1.4(c),
10 does the requirement to produce prior settlement
11 agreements refer to prior agreements with that
12 particular agency or include the entire history of the
13 account?

14 MS. FEIGENBAUM: I'm sorry, can you repeat the
15 last portion?

16 MR. KANE: That particular agency or does it
17 include the entire history of the account?

18 Does the requirement to produce prior settlement
19 agreements refer to prior agreements with that
20 particular agency or include the entire history of the
21 account?

22 MS. FEIGENBAUM: It's prior agreements entered
23 after the effective date of the regulation, which is
24 March 3rd. So, you know, it would cover, with time now,
25 it could cover with another collector for a prior -- you

1 know, with a prior collector.

2 MR. KANE: This one is to Greg:

3 Could you talk about the CFPB's priorities in
4 the current rulemaking process? What are things that
5 are common practice today but may be frowned on or
6 outlawed in the future?

7 MR. NODLER: Could I talk about that? Probably
8 not.

9 MR. MORRISSEY: It's actually for the Amazing
10 Kreskin.

11 MR. NODLER: Right. I mean, the rule makers are
12 looking at a lot of issues. I've heard from debt
13 collectors who are being, you know, investigated or
14 examined, "Oh, well, I saw this topic mentioned in the
15 advance notice of proposed rulemaking. That must mean
16 that the CFPB is undecided on if something is unlawful
17 or not."

18 I mean, everything is in the advance notice of
19 public rulemaking, just a soup-to-nuts on, you know,
20 things that the CFPB would consider.

21 But you know, there's never been a rulemaking
22 under the FDCPA, but there's -- there have been a lot --
23 there's been a lot of activity that is clearly unlawful.

24 So I don't -- I don't see the -- you know, the
25 rules are going to be covering existing law is my

1 personal view of it. I'm not -- again, I'm not speaking
2 for the Bureau, I'm not speaking for the Director, I'm
3 not speaking for the rulemaking team.

4 But just because there's a pending rulemaking,
5 it's not like we're changing existing rules. If there
6 was already a rulemaking and we were going to be
7 amending it, that would be a different story, but there
8 are no rules.

9 There's a statute that says don't engage in
10 deceptive acts and practices, et cetera.

11 MR. KANE: How can an attorney ethically
12 represent a client in arguing an unresolved issue of law
13 if the attorney is subject to FDICPA liability due to
14 unresolved issue of bona fide error defense for mistakes
15 of law?

16 MR. KOEGEL: From what? What was the last
17 clause there, Tom?

18 MR. KANE: Subject to FDICPA liability due to
19 unresolved issue -- an unresolved issue of a bona fide
20 error defense for mistakes of law.

21 MR. NODLER: I don't know that we understood the
22 question.

23 MR. KOEGEL: Can you try it one more time, Tom?

24 MR. MORRISSEY: Maybe the person who asked it
25 could.

1 MR. NODLER: Yes, or if the person who asked
2 wants to try and rephrase it.

3 AUDIENCE MEMBER: The German case left open the
4 issue of a bona fide error defense or mistakes of law.
5 We agree on that. No, wait. Mistakes of law, of state
6 law.

7 So if there's an unresolved issue of state law,
8 how do you presume an attorney can make the argument on
9 an unresolved issue of state law if there's a chance
10 they're going to be sued for a fair debt violation?

11 So if the state law is unclear and you want to
12 argue on behalf of your client on an issue of an unfair
13 or unresolved state law, how can you do that ethically
14 if you could be sued for unfair debt?

15 I don't think there's an answer actually. The
16 problem is this. The problem -- this is the dilemma we
17 face and it may be more for the Attorney General.

18 The German case is clear, the Supreme Court said
19 we don't know if there could be a bona fide error
20 defense if an attorney is wrong on state law.

21 How would the Attorney General view that?

22 MR. MORRISSEY: Can you give an example? It
23 might help.

24 AUDIENCE MEMBER: An example: Imagine if
25 there's a summary judgment motion made and you argue

1 that state law permits a claim to proceed and the debtor
2 argues that you can't -- that there's a defense that
3 applies.

4 The Court of Appeals has never ruled on it. The
5 departments are split on the issue. How about a statute
6 of limitations defense, which is -- where it's not
7 clear.

8 And I'll give you a great example: indirect
9 lending. What is the statute of limitations for
10 indirect loans? Is it four or six years? It's unclear.

11 MR. MORRISSEY: You're right. I don't have an
12 answer for you.

13 AUDIENCE MEMBER: No, any -- it's kind of --
14 it's the frustration. And I have to tell you, and
15 respectfully, and I think what you guys are doing is
16 great, but I'm sitting here saying this seems so easy to
17 you, maybe.

18 AUDIENCE MEMBER: Right.

19 AUDIENCE MEMBER: It's not so easy to us. And
20 how -- I mean, I don't know if any of you have ever
21 practiced on the creditor act, but we work really hard
22 and we put up with a lot more abuse from the other side
23 than you may think.

24 I don't know what the statistics are for abuse
25 from the creditor perspective, but if all of us are

1 trying to comply with the law and we don't know what the
2 law is, that's tough.

3 And I know you're not -- it's a rhetorical
4 question, it really was, because you mentioned earlier
5 you're not in a position of legislating.

6 MR. KOEGEL: I think, you know, at least from a
7 government enforcement perspective, you don't see us,
8 you know, playing a game of "gotcha" on things that are
9 close calls, you know.

10 It may be -- it sounds like more of an issue for
11 you with private plaintiff attorneys. But the stuff
12 that we've been talking about up here today I think is a
13 whole different class of thing.

14 AUDIENCE MEMBER: But respectfully, though, I
15 mean -- and again, I do think the Attorney General
16 Attorney General would be a good part -- if there's a
17 violation and you lose for a very technical,
18 nonintentional violation, what attorney could practice?

19 It's unethical, is it not, if I could be sued,
20 if I could have financial liability?

21 MR. MORRISSEY: Yes, I'm really bad at abstract
22 questions and I understand why courts don't give
23 advisory opinions. What I need is a set of facts so
24 that I can understand.

25 What I'm hearing is a very abstract question,

1 and it sounds like --

2 AUDIENCE MEMBER: I can give --

3 MR. KANE: We're going to move on to the next
4 question. Thank you very much, though.

5 So if it's the firm's typical practice to file
6 lawsuits, is it okay for that to be in the initial
7 collection letter, even if that particular case turns
8 out to be an exception?

9 And a follow-up question or related question:
10 Can a debtor be served at work?

11 MR. KOEGEL: I think, Tom, based on my
12 experience looking at some of this case law myself, you
13 know, throughout the country, generally I would
14 characterize it as it has to be a present and specific
15 intent for that particular consumer.

16 So I think Jim alluded to this a little bit in
17 his top 10 list. You can't think that if you sue a
18 couple of consumers that therefore you get to blanket
19 threaten every consumer whose debt you're trying to
20 collect with a lawsuit. That's not how it is under the
21 law.

22 You know, there are certainly courts and
23 differences between circuits and different District
24 Courts, but based on my research, I think you could
25 distill it down to: Do you have a present and specific

1 intent as to that particular consumer to whom you're
2 making that representation to?

3 And so that's -- and also, of course, have the
4 authority and the ability to carry out that threat as
5 well.

6 MR. MORRISSEY: And that made our top 10 list
7 because that was the result of one of the investigations
8 we did. And there were literally two or three cases
9 that had been filed in Buffalo City Court and then
10 thousands of threats of civil actions were made
11 thereafter.

12 With respect to service of process, it's just
13 not something, you know, we're permitted to give legal
14 advice on, whether you can serve at work or not at work.

15 That is the reason you get private attorneys and
16 that's a question that's better directed to a private
17 attorney than to a government attorney. It's just not
18 something we're permitted to answer. I don't know if
19 you are, but I'm not.

20 MR. KANE: Joy, this is a question to you:

21 Can you speak to the narrower definitions of
22 debt collector under the new regs?

23 MS. FEIGENBAUM: So while our enforcement
24 authority covers state and federal fair debt
25 collection -- enforcement of state and federal fair debt

1 collection practices, our debt collection regs are
2 focused on transactions where credit has been offered.

3 So let me just say first, a lot of the
4 definitions of debt collector are similar to those under
5 the FDCPA. And for those who are practicing in New York
6 City, those are the regulations that people -- that
7 companies operate under in New York City, but in
8 addition, we also have the provision that the
9 transactions have to involve the extension of credit and
10 that is somewhat narrowed.

11 MR. KANE: This question is:

12 Why the reluctance to proceed against debt
13 buyers thus far, especially as to usurious loans?

14 MR. KOEGEL: Reluctance to proceed against debt
15 buyers?

16 MR. KANE: That's what it says.

17 MR. KOEGEL: Is that it, Tom?

18 MR. KANE: Yes, yes. It surprised me. That's
19 what it says.

20 MS. FEIGENBAUM: I don't think anyone should
21 presume there is a reluctance.

22 MR. KOEGEL: That stands in stark contrast to
23 the facts.

24 MR. MORRISSEY: We gave you an example of the
25 companies that were collecting on payday loans. And

1 certainly if you were to look at the constellation of
2 defendants in the actions that we've brought, you will
3 see in that constellation debt buyers.

4 MR. KOEGEL: Let me see if I can try to gather
5 what they may be getting at here. You know, there is a
6 business model out there, I think, that, you know,
7 somebody buys a debt and then farms it out to different
8 collectors to collect rather than collecting on it
9 themselves.

10 And again, Jim, that top 10 list is just
11 fantastic. You know, this is something that Jim alluded
12 to. That doesn't get you out of liability.

13 MR. MORRISSEY: No.

14 MR. KOEGEL: And now we're going to get into
15 some technical legal standards and authorities that we
16 use at the FTC and that Jim has been using as well, but
17 the liability goes to participation and control, who is
18 actually controlling the enterprise, who is the one
19 that's setting the collection practices, who is the one
20 that's profiting.

21 And we use at the FTC a legal concept called the
22 common enterprise. So if there are a multitude of
23 companies that share employees, share office space, have
24 common ownership, common control, you know, they're
25 commingling funds, these are factors that have been

1 enumerated by the Second Circuit.

2 If we can establish those factors, we can
3 broaden out the liability and make what looks like on
4 paper to be a multitude of corporations, they get
5 characterized in the Court's eyes as one enterprise.

6 And so, you know, this may be lost in some of
7 the details of some of the complaints, but absolutely,
8 we are going after the entire enterprise on these things
9 and we are using these authorities to get at the people
10 that we believe are actually controlling these unlawful
11 practices.

12 MR. MORRISSEY: And Chris mentioned the case,
13 the Vantage Point case, and there's a decision by Judge
14 Skretny, a preliminary injunction decision that goes
15 into the concept of common enterprise and what
16 constitutes a common enterprise, but we've been moving
17 pretty forcefully with respect to naming the common
18 enterprise and not just the debt collector.

19 MR. KOEGEL: We want the people actually
20 responsible for this, the people who are setting the
21 policies, and we will use our authorities to get at
22 that.

23 MR. MORRISSEY: Yes.

24 MR. KANE: Can anything be done to enable laws
25 and regulations to be less ambiguous and open to

1 interpretation of various judges?

2 Can anything be done to better define laws, such
3 as Foti, protects against class action lawsuit but still
4 vulnerable to third-party disclosure on a
5 single-plaintiff basis?

6 MR. NODLER: Yes, something can be done. And
7 there's a rulemaking that's -- the Bureau is looking
8 into a rulemaking that would clarify a lot of
9 ambiguities under the FDCPA.

10 As to where it's going to go, you're asking the
11 wrong person, but the purpose of the rulemaking is, you
12 know, among other things, to clarify ambiguities.

13 MR. KANE: What advice would you give an agency
14 buyer that contracts for a portfolio that turns out to
15 be bogus or illegal or both, especially if the seller
16 threatens or brings suit for breach of contract and
17 refuses to take the portfolio back?

18 MR. KOEGEL: If I was you, I'd stop collecting
19 on that immediately.

20 MR. NODLER: Yes.

21 MR. KOEGEL: Once you know or have reason to
22 know that that portfolio is bogus or compromised and
23 then you continue to collect on that debt, you've now
24 exposed yourself to liability and very serious
25 liability, I might add, the kinds of remedies that we've

1 been talking about here today.

2 You know, the next step I think would be gather
3 up all your evidence and give me a call because I'm
4 going to be real interested in that case and that debt
5 seller, the guy that sold you the bogus portfolio.

6 You know, as to how you proceed on your own with
7 that person, I'll leave that to you, but that is just
8 the kind of case and just the kind of unlawful practice
9 that I'm real interested in at the FTC.

10 I see a lot of the problems in debt collection
11 as symptomatic of that underlying disease is this bad,
12 you know, information about debts and these bogus
13 portfolios.

14 MR. NODLER: Yes. I think everybody at this
15 table would be interested in, you know, knowing about
16 that.

17 And to add to what Chris was saying about that
18 being a knowing violation, under the Dodd-Frank Act, if
19 it's a knowing violation, the civil penalty for that is
20 \$1 million a day per violation, so it can get pretty
21 high pretty quick.

22 MR. MORRISSEY: Remember when I was giving the
23 list of what could be an automatic investigation? And I
24 said the falsified website, falsify your address. If
25 you know you're collecting on bogus debt, that's

1 automatic.

2 The other point I would add is that there seems
3 to be an actual rule, and certainly, Joy, the
4 regulations reflect that in getting away from this just
5 exchanging spreadsheets with electronic information on
6 it to, you know, firmly establishing chain of title with
7 respect to these debts that you purchase, that, you
8 know, this is a "buyer beware."

9 I think ultimately you're the ones that have to
10 protect your own interests by insisting upon a proper
11 chain of title for those portfolios that you purchased
12 and not simply accepting an electronic file that you
13 download into -- you know, onto your network.

14 You are the ones that are best able to protect
15 your own interests in that regard, certainly much more
16 than what we can do here.

17 MR. NODLER: Yes. I mean, whether you know that
18 it's a bad portfolio or not, it's unlawful to collect an
19 inaccurate amount. So obviously if you know, then, as
20 Chris said, immediately stop collecting and take other
21 steps.

22 But you also should know more about, you know,
23 your buyer and your sellers and things like that so you
24 ideally wouldn't get in that situation where you end up
25 with a portfolio of bad debt.

1 MS. FEIGENBAUM: And in New York under our
2 regulation, you cannot -- if you can't substantiate the
3 debt, you can't collect on the debt.

4 And if you are not -- as a third-party collector
5 not in a position to extinguish the debt, then you need
6 to in your, you know, contracts where you're purchasing
7 the debt make clear that if you're not going to be able
8 to substantiate the debt, then the debt is going to be
9 extinguished because you will not satisfy your
10 obligations under our regulations by simply giving the
11 debt back to the seller.

12 MR. KOEGEL: I think I would also implore
13 everyone in this room to pay attention to the patterns.
14 Don't just look at it as, you know, each individual debt
15 or account and there may be a problem with that one
16 particular debt.

17 You need to be aware of patterns in that
18 portfolio so that you know when you've been sold, you
19 know, a bill of goods.

20 You know, is it exhibiting a high percentage of
21 disputes? You know, are there other, you know,
22 systematic or identifiable patterns of issues with that
23 portfolio? You need to be paying attention to that.

24 MR. NODLER: And you need be leery of buying
25 other portfolios from that seller because even if they

1 would take back the one bad portfolio, if you're
2 continuing to purchase from them, then you're getting
3 into a whole different category, or at least how the
4 CFPB views it as, you know, a "know or should know"
5 violation.

6 MS. FEIGENBAUM: But again, I would just add
7 that in New York, you can't give back a bad portfolio.

8 MR. NODLER: Right.

9 MS. FEIGENBAUM: And avoid a violation of law.

10 MR. NODLER: Right, yes.

11 MR. MORRISSEY: I will give you a piece of
12 practical advice and that is, read the regulations of
13 the Department of Financial Services and develop today
14 or tomorrow your procedures for making sure they're
15 followed, because if you get a subpoena from our office,
16 I guarantee to you, I guarantee to you one of the
17 demands for documents will be your policies and
18 procedures that show compliance with the regulations of
19 the Department of Financial Services.

20 And you'd better be able to show that you know
21 and understand those regulations and that you are fully
22 compliant with them because, as I said, under Executive
23 Law Section 63(12), illegality includes a violation of a
24 state statute or regulation and if you're not in
25 compliance with the Department of Financial Services

1 regulations, you're going to have a problem.

2 MR. KANE: Does the FTC take the position that
3 those individuals on the banned debt collector list -- the
4 Koegel list -- are barred from all collection activity or
5 simply consumer or FDCPA debt?

6 MR. KOEGEL: You know, you need to consult
7 generally each order. The language is pretty standard
8 but it has evolved slightly over time, but generally
9 speaking, I believe the language is broad enough to
10 include the collection of commercial debt as well.

11 You know, there are at times exceptions like if
12 you are working for a small retail business and the
13 collection of, you know, a debt is very incidental and
14 infrequent, that kind of thing, sometimes gets excluded,
15 but for the most part I believe -- and I'm going off
16 memory here, so don't hold me to it -- that our standard
17 ban does include, you know, general commercial debt
18 collection as well as consumer debt collection.

19 MR. MORRISSEY: And Chris, we've just finished
20 up an agreement with the FTC and in fact that is the
21 case, it includes commercial debt as well. But you do
22 have to consult the agreement itself.

23 MR. KOEGEL: So the list should be a red flag
24 and a starting place. And then the list itself on the
25 website has hyperlinks for you to see the actual

1 language of the order.

2 But generally speaking, everybody in this room I
3 think is probably mostly involved in consumer debt
4 collection, you'd better have a real good reason to be
5 doing business with the folks on that list.

6 MR. KANE: I'm going to ask three more questions
7 and then we'll wrap it up.

8 What is the incentive for a company to be a
9 whistleblower on the -- about wrongful collection
10 activity of another company?

11 MR. NODLER: Well, I mean, for one, they can --
12 we're always hearing debt collectors talk about how
13 "We're not the bad ones," you know, "you guys should be
14 going after the ones that are saying 'we're going to dig
15 up your deceased child'" or whatever, that kind of
16 thing.

17 I mean, cleaning up the industry helps
18 everybody. But then for another -- you know, I may
19 sound like a broken record, but responsible business
20 conduct is very important to us and that would be -- a
21 that would be part of it.

22 MR. KOEGEL: You know, nobody in here I'm sure
23 likes hearing the things that we're saying about this
24 industry and it draws a lot of scrutiny from Congress
25 and state legislatures and everybody else, and so the

1 more of this bad behavior is out there, there's more of
2 that scrutiny.

3 I think just more generally, and this is
4 something that Congress recognized when it passed the
5 FDCPA back in the '70s, these harmful debt collection
6 practices, these abusive and deceptive debt collection
7 practices do real harm to legitimate debt collectors as
8 well.

9 They are taking business away from you. They
10 may be driving down or driving up the cost of certain
11 debt portfolios.

12 And so there is a lot of collateral damage to
13 the law-abiding debt collectors from these egregious
14 practices and I think it's clear to me.

15 Are you going to get, you know, a \$1,000 reward
16 or something for it? No, but I think it does inure to
17 your benefit quite a bit.

18 MR. MORRISSEY: I would ask what is the
19 disincentive to reporting someone who is violating the
20 Fair Debt Collection Practices Act if you're a
21 legitimate debt collector?

22 MR. KOEGEL: I think there's also a lot of -- it
23 reads as a lot of lack of confidence and skepticism from
24 the consumers that you're trying to collect from.

25 The more of this behavior that's out there, the

1 more difficult it becomes for the law-abiding collectors
2 to collect on the debts they already have because of all
3 the skepticism and lack of confidence in the system as a
4 whole that consumers are starting to have.

5 MR. NODLER: For sure.

6 MR. KANE: How is a debt collector -- debt
7 collection agency supposed to know if a debt has been
8 charged off of the lender's books? Will an affidavit
9 protect them?

10 MR. NODLER: You mean charged off? Generally
11 when it's charged off, it doesn't mean it's not owed
12 anymore.

13 MR. KANE: Does anybody --

14 MR. MORRISSEY: Charge off, my understanding of
15 charge off is after 180 days, for example, a credit card
16 company can no longer carry that debt -- 180 days of not
17 paying -- can no longer carry that debt as inactive on the
18 books and that frequently those are the ones that go out
19 for collection.

20 My understanding is that virtually any debt you
21 can collect on, if that's a definition you're using, is
22 charged-off debt.

23 MR. NODLER: But I mean, that's an accounting
24 principle.

25 MR. MORRISSEY: Yes. Is that what you mean or

1 do you mean something different?

2 AUDIENCE MEMBER: Yes. I mean, depending on the
3 debt, it is the general accounting principles, right?
4 Some debts don't even have, you know, a strict timeline
5 of when debt can be charged off.

6 MR. MORRISSEY: Do you mean charged off by the
7 creditor?

8 AUDIENCE MEMBER: Charged off for the account as
9 inactive, it's charged off the books as a bad debt,
10 right?

11 MR. MORRISSEY: Okay.

12 AUDIENCE MEMBER: So how is a third-party
13 collection agency supposed to know for sure if a debt
14 has been charged off the books of the original lender?

15 MR. NODLER: You mean no longer owed --

16 AUDIENCE MEMBER: Does an affidavit protect
17 them?

18 MR. NODLER: Do you mean no longer owed at all?

19 AUDIENCE MEMBER: No, charged off doesn't mean
20 no longer owed.

21 MR. NODLER: Yes, I know, but I don't understand
22 why the repeat question, what the significance would be.

23 MS. FEIGENBAUM: I think I can speak to the
24 significance because some of the disclosures need to be
25 provided only as to charge -- as to charged-off debt.

1 And that's something that the debt -- the
2 third-party debt collector when they're obtaining the
3 information from their collectors then -- I'm sorry,
4 from the creditors, they need to get.

5 And that's one of the reasons why we've given
6 additional time for the provision of the regulation on
7 identification of the debt for which, you know, as to
8 charged-off debt, that you go back and get the
9 information.

10 AUDIENCE MEMBER: So just simply, all you can
11 do -- unless you audited their books, all you can do is
12 ask the question or get an affidavit.

13 MS. FEIGENBAUM: Well, going forward, it's when
14 you purchase the debt, that should be at the top, but
15 going backwards, that's why we're giving you more time.

16 AUDIENCE MEMBER: (Inaudible.) How would you
17 know?

18 MS. FEIGENBAUM: That's something that you need
19 when you take -- when you take that work on, you need to
20 get that information from the -- you know, from the
21 creditor.

22 AUDIENCE MEMBER: That's what I'm asking.
23 Is it -- my question was, would an affidavit protect the
24 third-party collection agency, an affidavit from the
25 lender saying this debt is not charged off?

1 MS. FEIGENBAUM: If the debt is -- it's the
2 responsibility of the third-party collector of the
3 charged-off debt to give the disclosures under the
4 regulations, so it's the collector's obligation to
5 determine, to get that information from the creditor.

6 And I'm not going to, you know, pass on what --
7 you know, that's for you to figure out or your
8 attorneys, what level of evidence that you're going to
9 get from the parties you enter into service arrangements
10 with.

11 CLOSING REMARKS

12 MR. KANE: Great. Thank you all very much. And
13 thank you to all of our four panelists.

14 (Applause.)

15 (Whereupon, the proceeding was concluded.)

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1 CERTIFICATE OF REPORTER

2

3 MATTER NUMBER: P154803

4 CASE TITLE: DEBT COLLECTION DIALOGUE,

5 A conversation between government and business

6 HEARING DATE: JUNE 15, 2015

7

8 I HEREBY CERTIFY that the transcript contained
9 herein is a full and accurate transcript of the steno
10 notes transcribed by me on the above cause before the
11 FEDERAL TRADE COMMISSION to the best of my knowledge and
12 belief.

13

14 DATED: JUNE 18, 2015

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17 RICHARD B. WHALEN, CM

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