



Office of the Secretary

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

February 5, 2015

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

Dear Director Cordray:

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

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

- filed 10 new cases against 56 new defendants;
- resolved 9 cases and obtained nearly \$140 million in judgments,² \$16.5 million of which the Commission has been able to collect to date;
- banned 47 companies and individuals that engaged in serious and repeated violations of law from ever working in debt collection again;

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

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

- filed two joint amicus briefs with the CFPB on key debt collection issues; and
- co-hosted with the CFPB a day-long roundtable exploring issues related to the collection of debts from Latino consumers.³

The FTC’s work this year focused particularly on: (1) egregious collection practices, including “phantom debt collection”; (2) the security of consumer data in the buying and selling of debts; and (3) protecting limited-English-proficiency (“LEP”) consumers from unlawful collection practices. In addition, the Commission educated consumers about their rights and businesses about their responsibilities under the FDCPA and the FTC Act,⁴ and engaged in research and policy development activities to identify and advocate for debt collection policies and practices that advance the agency’s consumer protection mission.

I. The Commission’s Debt Collection Program

The FTC’s debt collection program is a three-pronged effort: (1) vigorous law enforcement; (2) education and public outreach; and (3) research and policy initiatives. Over the past year, the FTC has employed all three prongs in its effort to curb unlawful debt collection practices and protect consumers.

II. Law Enforcement Activities

The Commission is primarily a law enforcement agency, and law enforcement investigations and litigation are at the heart of the FTC’s recent debt collection work. Both the FDCPA and the FTC Act authorize the Commission to investigate and take law enforcement action against debt collectors that violate those statutes.⁵ If an FTC investigation reveals that a debt collector violated the law, the Commission may file a federal court action seeking injunctive and equitable monetary relief under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), or refer the matter to the Department of Justice for civil penalties and injunctive relief under Section 5(m) of the FTC Act. Where a collector’s violations are so egregious that a court order is necessary to halt the conduct immediately, or where consumer redress and disgorgement are more appropriate forms of monetary relief than civil penalties, the FTC generally files the action itself under Section 13(b) of the FTC Act. Where, on the other hand, preliminary injunctive relief to halt unlawful conduct is unnecessary and civil penalties are appropriate monetary relief, the FTC may refer the case to the Department of Justice.

³ This past year’s work built upon and expanded the FTC’s ongoing crackdown on unlawful debt collection practices. Since January 1, 2010, the FTC has sued over 180 companies and individuals who engaged in unlawful collection practices, banning 63 from the industry, and securing over \$220 million in judgments.

⁴ FDCPA, 15 U.S.C. § 1692–1692p; FTC Act, 15 U.S.C. §§ 41-58.

⁵ The FDCPA authorizes the Commission to investigate and take law enforcement action against debt collectors that engage in unfair, deceptive, abusive, or other practices that violate the statute. FDCPA § 814, 15 U.S.C. § 1692i. Under the FTC Act, the FTC may investigate and take law enforcement action against entities that, in connection with collecting on debts, engage in unfair or deceptive acts and practices. FTC Act § 5, 15 U.S.C. § 45.

In addition to filing and referring law enforcement actions, the FTC files amicus briefs and undertakes other law enforcement-related activities.

A. Legal Actions

In recent years, to improve deterrence, the Commission has focused on bringing a greater number of cases and obtaining stronger monetary and injunctive remedies against debt collectors that violate the law. From January 1 through December 31, 2014, the FTC brought or resolved 15 debt collection cases—the highest number in any single year, including one case in which the FTC obtained a record \$90.5 million in judgments and effectively shut down more than 20 collection companies with nearly 500 collectors. In several of its Section 13(b) cases, the Commission obtained preliminary relief that included *ex parte* temporary restraining orders with asset freezes, immediate access to business premises, and appointment of receivers to run the debt collection businesses.

The cases discussed below represent a concerted effort by the FTC to target unlawful debt collection practices including false threats; harassment or abuse; attempts to collect on “phantom” debts; and the unlawful disclosure of consumers’ sensitive personal information by debt brokers.

1. Deceptive, Unfair, and Abusive Collector Conduct

Targeting debt collectors that engage in deceptive, unfair, or abusive conduct continues to be one of the Commission’s highest priorities. Notably, the Commission initiated or resolved actions against three abusive debt collection operations that targeted Spanish-speaking consumers.⁶ The Commission also initiated or resolved actions against three “phantom debt” collectors.⁷ In particular, the Commission continues to pursue debt collectors that secure payments from consumers by falsely threatening litigation or arrest, or otherwise falsely implying that they are involved in law enforcement.

In an action against a sprawling southern California debt collection enterprise that operated through dozens of shell companies and an “alphabet soup” of business names, the Commission obtained a record \$90.5 million in judgments along with lifetime bans on debt collection for the perpetrators of the scheme. In *FTC v. Asset & Capital Management Group*, the FTC alleged that the defendants purchased consumer credit card and other bank debt, then collected payment on their own behalf by, among other things, posing as process servers and falsely threatening consumers with lawsuits, wage garnishment, property seizure, and arrest. The case shuttered more than 20 collection boiler rooms that together employed, or had the capacity to employ, 490 collectors. The orders required the defendants to surrender assets that included real property, two luxury automobiles, and corporate funds. A Court-approved redress plan is

⁶ See *FTC v. Rincon Management Services, LLC*; *FTC v. RTB Enterprises, Inc.*; and *FTC v. Centro Natural Corp.*, discussed below.

⁷ See *FTC v. Williams, Scott & Associates, LLC*; *FTC v. Pinnacle Payment Systems, LLC*; and *FTC v. Centro Natural Corp.*, discussed below.

expected to return more than \$3.7 million to 100,750 consumers subjected to the debt collectors' abuses.

In *FTC v. Federal Check Processing, Inc.*, the FTC secured a preliminary injunction that halted an abusive debt collection operation, froze the operation's assets, and appointed a receiver to take over the defendants' business.⁸ The FTC's complaint alleged that the defendants violated the FTC Act and the FDCPA by falsely claiming to be government officials, falsely threatening consumers with litigation or arrest, and systematically disclosing consumers' debts to their friends, family, and co-workers to coerce payment. The Commission continues to litigate the *Federal Check Processing* matter.

In *FTC v. Payday Financial, LLC*, the FTC obtained a judgment of \$967,740 against a South Dakota-based payday lending operation and its owner that the FTC charged had used unfair and deceptive tactics to collect on payday loans.⁹ The judgment included a \$550,000 civil penalty for violating the FTC's Trade Regulation Concerning Credit Practices ("Credit Practices Rule"), 16 C.F.R. Part 444, which prohibits lenders from requiring borrowers to consent to wage garnishment in the event of a default. The defendants also were required to disgorge \$417,740 that they previously had obtained by garnishing consumers' wages without court orders. In addition to illegally garnishing consumers' wages, the FTC had alleged that the defendants violated the FTC Act and the Electronic Funds Transfer Act, 15 U.S.C. §§ 1693-1693r, and its implementing Regulation E, 12 C.F.R. § 205.10. The defendants allegedly forced consumers to resolve disputes before the Cheyenne River Sioux Tribal Court in South Dakota, which lacked jurisdiction; attempted to obtain tribal court orders to garnish consumers' wages; and, conditioned extensions of credit to consumers on the consumers' repayment by preauthorized electronic funds transfers. Along with the monetary judgment, the order prohibits the defendants from suing any consumer in the course of collecting a debt, except to bring a countersuit to defend against a suit brought by a consumer.

In *FTC v. Goldman Schwartz, Inc.*, the FTC obtained a judgment of \$1,412,888 against a Houston, Texas-based debt collection operation, and a complete ban on future debt collection activity, along with other injunctive relief.¹⁰ The FTC's complaint alleged that the defendants violated the FTC Act and the FDCPA by making false threats that consumers would be arrested

⁸ *FTC v. Federal Check Processing, Inc.*, No. 1:14-cv-00122 (W.D.N.Y. Mar. 25, 2014) (Stipulated Preliminary Injunction), *see also* Press Release, At FTC's Request, Court Halts Debt Collector's Allegedly Deceptive and Abusive Practices, Freezes Assets (Sept. 23, 2014), *available at* <http://www.ftc.gov/news-events/press-releases/2014/03/ftcs-request-court-halts-debt-collectors-allegedly-deceptive>.

⁹ *FTC v. Payday Financial, LLC*, No. 3:11-cv-03017-RAL (D.S.D. April 4, 2014) (Stipulated Order for Permanent Injunction and Civil Penalties), *see also* Press Release, Payday Lenders That Used Tribal Affiliation to Illegally Garnish Wages Settle with FTC (April 11, 2014), *available at* <http://www.ftc.gov/news-events/press-releases/2014/04/payday-lenders-used-tribal-affiliation-illegally-garnish-wages>.

¹⁰ *FTC v. Goldman Schwartz, Inc.*, No. 4:13-cv-00106 (S.D. Tex. May 28, 2014) (Stipulated Order for Permanent Injunction and Monetary Judgment), *see also* Press Release, FTC Puts Texas-based Operation Permanently Out of the Debt Collection Business After It Allegedly Used Deception, Insults, and False Threats against Consumers (May 19, 2014), *available at* <http://www.ftc.gov/news-events/press-releases/2014/05/ftc-puts-texas-based-operation-permanently-out-debt-collection>.

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

In *FTC v. National Check Registry, LLC*, an action undertaken jointly with the Attorney General of New York, the FTC and the New York Attorney General secured a preliminary injunction that halted a recidivist abusive debt collection operation, froze the operation's assets, and appointed a receiver to take over the defendants' business.¹¹ In the complaint, the FTC and the New York Attorney General charged the defendants with violating the FTC Act, the FDCPA, and New York State law by falsely representing to consumers that they had committed check fraud, and then threatening the consumers with arrest, wage garnishment, or litigation if the consumers did not pay the amounts demanded. The complaint also alleged that the defendants assessed unlawful convenience fees on consumers that were not expressly authorized by the agreement creating the debt or permitted by law. Notably, the Defendants had ignored prior repeated public and private enforcement efforts, including an investigation by the New York Attorney General that the defendants had resolved by entering into an Assurance of Discontinuance. The FTC and the New York Attorney General continue to litigate the *National Check Registry* matter and are also actively exploring ways to continue this fruitful partnership.

In *United States v. Credit Smart, LLC*, the FTC obtained a judgment against a Suffolk County, New York-based debt collection operation that imposed a \$1,200,000 civil penalty and provided strong injunctive relief.¹² In its complaint, the FTC charged the company with violating the FTC Act and the FDCPA by leaving pre-recorded messages for consumers that pretended to offer financial relief. The messages provided consumers with a number to call, and promised to provide information about a "Tax Season Relief Program," a "stimulus relief package," or a "balance transfer program." In reality, there were no relief programs, and consumers instead were connected with defendants' debt collectors. Once the consumer was on the phone, the FTC alleged, the defendants unlawfully attempted to collect interest that already had been waived by prior owners of the debts. The complaint also alleged that the collectors attempted to coerce payment by falsely threatening to sue the consumers, garnish their wages, or have them arrested. The order prohibits the defendants from using any false or deceptive means

¹¹ *FTC and People of the State of New York v. National Check Registry, LLC*, No. 1:14-cv-00490-RJA (W.D.N.Y. July 10, 2014) (Stipulation to Enter Preliminary Injunction), *see also* Press Release, Court Halts Debt Collector's Operations, Freezes Assets (July 21, 2014), *available at* <http://www.ftc.gov/news-events/press-releases/2014/07/court-halts-debt-collectors-operations-freezes-assets>.

¹² *United States v. Credit Smart, LLC*, No. 2:14-cv-04650-LDW-GRB (E.D.N.Y. Sept. 22, 2014) (Stipulated Order for Permanent Injunction and Civil Penalty Judgment), *see also* Press Release, Debt Collectors in Memphis and New York State Settle with FTC Concerning Multiple Federal Law Violations (Aug. 7, 2014), *available at* <http://www.ftc.gov/news-events/press-releases/2014/08/debt-collectors-memphis-new-york-state-settle-ftc-concerning>.

to collect a debt, and from otherwise violating the FDCPA. Upon payment by the defendants of \$490,000, the remainder of the civil penalty will be suspended due to their inability to pay.

In *United States v. Regional Adjustment Bureau, Inc.*, the FTC secured a \$1.5 million civil penalty for unlawful collection practices, along with strong injunctive relief.¹³ The FTC's complaint charged that the company, which collects on nearly one million accounts each year, violated the FTC Act and the FDCPA by repeatedly calling consumers and accusing them of owing debts that they did not owe, contacting consumers at work while knowing that their employers did not allow the calls, making unauthorized withdrawals from consumers' bank accounts, and disclosing confidential information about debtors to third parties. The settlement prohibits the company from engaging in this unlawful conduct and further requires that whenever a consumer disputes the validity or the amount of a debt, the company must either terminate collection efforts or suspend collection until it conducts a reasonable investigation and verifies that its information about the debt is accurate and complete.

In *United States v. Consumer Portfolio Services, Inc.*, a national subprime automobile lender agreed to pay more than \$5.5 million to settle allegations that it violated the FTC Act, the FDCPA, and the Fair Credit Reporting Act's rule regarding the Duties of Furnishers of Information to Consumer Reporting Agencies ("Furnisher Rule"), 16 C.F.R. Part 660.¹⁴ The order settling the charges requires the defendant to change its business practices to comply with applicable laws and to implement a data integrity program. The order further requires the defendant to pay a third-party professional to assess the implementation and effectiveness of the program biennially for ten years. In its complaint, the FTC alleged that the defendant violated the FTC Act and FDCPA by disclosing the existence of debts to third parties; calling consumers at work when not permitted or inconvenient; calling third parties repeatedly with the intent to harass; making unauthorized debits from consumers' bank accounts; falsely threatening car repossession; and deceptively manipulating Caller ID. The complaint also alleged that the defendant committed loan-servicing violations, including misrepresenting fees consumers owed in collection calls; improperly assessing collection fees; and, unilaterally modifying contracts to increase principal balances. Further, the complaint alleged that the defendant failed to reasonably investigate disputes about credit reports and failed to establish required policies and procedures for handling direct credit reporting disputes. The order requires the defendant to refund or adjust consumers' accounts, resulting in payment of more than \$3.5 million in redress to consumers. The order also requires the defendant to pay a \$2 million civil penalty (\$1 million for violations of the FDCPA and \$1 million for violations of the Furnisher Rule).

¹³ *United States v. Regional Adjustment Bureau, Inc.*, No. 2:14-cv-02522-JPM-tmp (W.D. Tenn. July 14, 2014) (Stipulated Order for Permanent Injunction and Civil Penalty Judgment), *see also* Press Release, Debt Collectors in Memphis and New York State Settle with FTC Concerning Multiple Federal Law Violations (Aug. 7, 2014), *available at* <http://www.ftc.gov/news-events/press-releases/2014/08/debt-collectors-memphis-new-york-state-settle-ftc-concerning>.

¹⁴ *United States v. Consumer Portfolio Services, Inc.*, No. 8:14-cv-00819-ABC-RNB (C.D. Cal. June 11, 2014), *see also* Press Release, Auto Lender Will Pay \$5.5 Million to Settle FTC Charges It Harassed Consumers, Collected Amounts They Did Not Owe (May 29, 2014), *available at* <http://www.ftc.gov/news-events/press-releases/2014/05/auto-lender-will-pay-55-million-settle-ftc-charges-it-harassed>.

2. Collection Practices Affecting LEP Latinos

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

In *FTC v. Rincon Management Services, LLC*, the FTC obtained a judgment of \$23,084,885 against an abusive debt collection operation, along with a complete ban on debt collection activity and other injunctive relief.¹⁵ The *Rincon* operation targeted Spanish-speaking consumers and others in difficult financial circumstances, and used abusive practices to coerce repayment of alleged debts that the consumers often did not owe. The FTC's complaint alleged that the defendants violated the FTC Act and the FDCPA by calling consumers and their employers, family, friends, and neighbors, and posing as process servers seeking to deliver legal papers that purportedly related to a lawsuit. The defendants' collectors then allegedly falsely told the consumers that unless they immediately paid the amounts demanded, the defendants would sue them, garnish their wages, or in some cases, arrest them. Despite partial suspension of the judgment based on the defendants' inability to pay, the Commission collected more than \$3.3 million that will be used for consumer redress.

In *FTC v. RTB Enterprises, Inc.*, the FTC obtained a judgment of \$4 million against a Houston, Texas-based debt collection operation that allegedly used abusive and deceptive tactics to coerce consumers into paying debts and unnecessary fees.¹⁶ In its complaint, the FTC charged the defendants with violating the FTC Act and the FDCPA by using false and deceptive methods to collect more than \$1.3 million in so-called "convenience fees" and "transaction fees" from both English and Spanish-speaking consumers who authorized payments by telephone. The defendants deceived consumers into believing that they were required to pay by telephone, and that the fees were unavoidable. The defendants also allegedly falsely claimed to speak for attorneys, made false threats of litigation, and used deceptive representations to elicit personal information from consumers, to be used in future collection attempts. The order prohibits the defendants from using false, deceptive, or misleading means to collect a debt, and from otherwise violating the FDCPA. The order also requires the defendants to surrender \$100,000 and a luxury motor home, with the remainder of the judgment to be suspended due to their inability to pay.

¹⁵ *FTC v. Rincon Management Services, LLC*, No. 5:11-cv-01623-VAP-SP (C.D. Cal. Mar. 26, 2014) (Final Order for Permanent Injunction and Monetary Judgment Against Defendants Jason R. Begley and Wayne W. Lunsford), *see also* Press Release, FTC Obtains more than \$3.3 Million for Consumers; Defendants Agree to Be Permanently Banned from the Debt Collection Business (April 3, 2014), *available at* <http://www.ftc.gov/news-events/press-releases/2014/04/ftc-obtains-more-33-million-consumers-defendants-agree-be>.

¹⁶ *FTC v. RTB Enterprises, Inc.*, No. 4:14-cv-01691 (S.D. Tex. June 19, 2014) (Stipulated Order for Permanent Injunction and Monetary Relief), *see also* Press Release, FTC Continues Crack Down on Deceptive Debt Collection; Houston-based Defendants Agree to Stop Deceptive Fees and Practices (June 25, 2014), *available at* <http://www.ftc.gov/news-events/press-releases/2014/06/ftc-continues-crack-down-deceptive-debt-collection-houston-based>.

In *FTC v. Centro Natural Corp.*, the FTC secured a preliminary injunction against a group of telemarketers that allegedly pressured and harassed consumers to settle “phantom” debts that consumers did not owe.¹⁷ The Court froze the operation’s assets and appointed a temporary receiver to take over the defendants’ business. In its complaint, the FTC alleged that the defendants targeted thousands of Spanish-speaking consumers and used deceptive and abusive tactics to collect on debts that these consumers did not owe and to coerce them into purchasing goods that they did not want. The defendants allegedly held themselves out to consumers as court officials, government officials, or lawyers, and threatened dire consequences, such as arrest, if consumers failed to pay amounts demanded. The FTC charged the defendants with violations of the FTC Act, the FDCPA, and the Telemarketing Sales Rule.¹⁸ The FTC continues to litigate the *Centro Natural* matter.

3. Phantom Debt Collection

The Commission also continued its efforts to fight so-called “phantom debt collectors.” Phantom debt collectors engage in unfair, deceptive, or abusive conduct by attempting to collect on debts that either do not exist or are not owed to the phantom debt collector. The Commission initiated or resolved three actions against phantom debt collectors in 2014: *Centro Natural Corp.* (discussed above); *Williams, Scott*; and *Pinnacle*.

In *FTC v. Williams, Scott & Associates, LLC*, the FTC secured a preliminary injunction against a debt collection operation that allegedly collected on “phantom” payday loan debts that consumers did not owe, froze the operation’s assets, and appointed a temporary receiver to take over the defendants’ business.¹⁹ The FTC alleged in its complaint that the defendants violated the FTC Act and the FDCPA by using a variety of false threats and abusive practices to coerce payments from consumers on debts that either the consumers did not owe or that the consumers’ lenders had not authorized the defendants to collect. The FTC further alleged that the defendants made a concerted effort to harass consumers into paying the alleged debts by falsely claiming to be law enforcement officials or attorneys, falsely threatening consumers with arrest or loss of their drivers’ licenses, using profane language, and disclosing the alleged debts to consumers’ family members and employers. The FTC continues to litigate the *Williams, Scott* matter.

¹⁷ *FTC v. Centro Natural Corp.*, No. 14-23879-CIV (S.D. Fl. Oct. 20, 2014) (temporary restraining order), *see also* Press Release, FTC Takes Action to Stop Phantom Debt Scam That Targeted Spanish-Speaking Consumers Nationwide (Oct. 23, 2014), *available at* <http://www.ftc.gov/news-events/press-releases/2014/10/ftc-takes-action-stop-phantom-debt-scam-targeted-spanish-speaking>.

¹⁸ 15 U.S.C. §§ 6101-6108 (Telemarketing Act) and 16 CFR part 310 (Telemarketing Sales Rule).

¹⁹ *FTC v. Williams, Scott & Associates, LLC*, No. 1:14-cv-01599-HLM (N.D. Ga. June 19, 2014) (Stipulated Preliminary Injunction Order with an Asset Freeze and Other Equitable Relief), *see also* Press Release, At the FTC’s Request, Court Halts Collection of Allegedly Fake Payday Debts (July 1, 2014), *available at* <http://www.ftc.gov/news-events/press-releases/2014/07/ftcs-request-court-halts-collection-allegedly-fake-payday-debts>.

Reflecting the increased interest by federal and state authorities in bringing criminal actions against abusive debt collectors, federal authorities have since filed criminal charges against the *Williams, Scott* principals. In November 2014, the United States Attorney for the Southern District of New York, along with the New York Office of the Federal Bureau of Investigation, announced the unsealing of a criminal complaint charging Williams, Scott & Associates, its owner, John Todd Williams, and six employees with conspiracy to commit wire fraud. After the FBI conducted a search of Williams, Scott & Associates' office in Norcross, Georgia in May 2014, Williams shut down that company and opened a new debt collection business. Based on victim complaints, employees of that debt collection business began making the same threats and false statements to victims.²⁰ The seven individuals have been arrested and face up to 20 years in prison.

In September 2014, in *FTC v. Pinnacle Payment Services, LLC*, a U.S. district court entered a set of stipulated permanent injunctions and judgments totaling \$9,384,628 against the defendants for violations of the FTC Act and the FDCPA.²¹ The Commission had charged that the defendants, working out of offices in Cleveland and Columbus, Ohio and Atlanta, Georgia, collected and processed millions of dollars in payment for phantom debts using robocalls and voice messages that threatened legal action and arrest unless consumers responded within a few days. During phone conversations with consumers, collectors often misrepresented that the consumers would face felony fraud charges, that their bank accounts would be closed or their wages garnished, and that the collectors worked for a law enforcement agency or a law firm. In addition to the monetary judgments, the orders also contained strong injunctive relief including bans on debt collection activity.

Williams, Scott; Pinnacle; and Centro Natural were the FTC's fifth, sixth, and seventh recent cases involving allegedly fraudulent online payday-loan-related operations.²²

4. Debt Brokering and Consumer Data Integrity

In two separate cases (*FTC v. Bayview Solutions, LLC* and *FTC v. Cornerstone and Company*), the FTC obtained preliminary injunctions against debt sellers that it alleges posted the sensitive personal information of over 70,000 consumers, including bank account and credit card numbers, birth dates, contact information, employers' names, and information about debts

²⁰ The FTC also successfully moved the court in the underlying civil action to hold the defendants in contempt for violating the preliminary injunction.

²¹ *FTC v. Pinnacle Payment Sys., LLC*, No. 1:13-CV-3455 (N.D. Ga. Aug. 8, 2014) (Stipulated Final Orders for Permanent Injunction and Settlement of Claims); see also Press Release, FTC Stops Abusive Debt Collection Operation That Threatened Consumers with Legal Action and Arrest for Not Paying 'Phantom' Debts (Sept. 23, 2014), available at <http://www.ftc.gov/news-events/press-releases/2014/09/ftc-stops-abusive-debt-collection-operation-threatened-consumers>.

²² Other recent FTC matters involving allegedly fraudulent online payday-loan-related operations include *Pro Credit, Inc.* (M.D. Fla. 2013), *Caprice Mktg. LLC* (N.D. Ill. 2013), *American Credit Crunchers, LLC* (N.D. Ill. 2012), and *Broadway Global Master Inc.* (E.D. Cal. 2012).

that the consumers allegedly owed, on a public website.²³ The defendants in these cases allegedly exposed this sensitive information while trying to sell portfolios of past-due payday loan, credit card, and other purported debt. According to the complaints, the defendants posted their portfolios, in the form of Excel spreadsheets, on the website without encryption, appropriate redaction, or any other protection, ostensibly so that prospective purchasers could evaluate them. The FTC alleged that the spreadsheets were accessed more than 500 times by unknown visitors to the website. The preliminary injunctions in each case require the defendants to remove the consumers' information from the website, adopt appropriate data security safeguards, and notify the affected consumers of the disclosures. The FTC continues to litigate both matters.

B. Other Law Enforcement Activities

1. Time Barred Debt: The Seventh Circuit's Decision in *Delgado*

Endorsing what it characterized as the “well-reasoned position” put forth by the FTC and the CFPB, in March 2014 the Seventh Circuit held that a time-limited settlement demand in a consumer dunning letter could violate the FDCPA, even absent an explicit threat of litigation.²⁴

Responding to an invitation by the court, in August 2013 the Commission and the CFPB filed a joint amicus brief to present their views on the application of the FDCPA to the collection of debts barred by the statute of limitations.²⁵ In it, the agencies noted that several courts had previously held that a collector who sues or threatens suit on a time-barred debt violates the FDCPA. The agencies argued that, depending on the circumstances, a time-limited settlement offer could plausibly mislead a consumer to believe a debt is enforceable in court, even if the offer is unaccompanied by any clearly implied threat of litigation. Specifically, a collector violates the statute whenever its communications tend to deceive or mislead “unsophisticated consumers” into believing that a time-barred debt could be the subject of a collection suit.

²³ *FTC v. Bayview Solutions, LLC*, No. 1:14-cv-01830-RC (D.D.C. Nov. 3, 2014) (Stipulation to Entry of Preliminary Injunction); *FTC v. Cornerstone and Company, LLC*, No. 1:14-cv-01479-RC (D.D.C. Sept. 10, 2014) (Order for Entry of Preliminary Injunction), *see also* Press Release, FTC Alleges Debt Brokers Illegally Exposed Personal Information of Tens of Thousands of Consumers on the Internet (Nov. 12, 2014), *available at* <http://www.ftc.gov/news-events/press-releases/2014/11/ftc-alleges-debt-brokers-illegally-exposed-personal-information>.

²⁴ *Delgado* was part of a consolidated opinion issued by the Seventh Circuit in two appeals that both involved the FDCPA. In the companion case, *McMahon v. LVNV Funding, LLC*, the court held that the defendant's settlement offer to the plaintiff, which the plaintiff had rejected, did not moot the plaintiff's class action. The Seventh Circuit held that the plaintiff, who had received a dunning letter similar to that in *Delgado* that also sought to collect on time-barred debt, could proceed with his claims.

²⁵ Brief of Amici Curiae, *Delgado v. Capital Mgmt. Servs., LP*, No. 13-2030 (7th Cir. Aug. 14, 2013), *available at* <http://www.ftc.gov/policy/advocacy/amicus-briefs/2013/08/juanita-delgado-v-capital-management-services-lp>. The court invited the Commission to file a brief because the district court, in reaching its decision, had relied on the FTC's 2013 report entitled “The Structure and Practices of the Debt Buying Industry.”

The Seventh Circuit recognized that its holding conflicted with those of the Third and Eighth Circuits, both of which had required an explicit threat of litigation to establish a violation of the FDCPA. The court also explained that it did not hold that it was automatically improper for a collector to seek repayment of time-barred debts. However, it did find that the FDCPA could not bear the reading that the Third and Eighth circuits had given it. Explaining its decision, the court noted that the plain language of the FDCPA prohibits not only threatening to take actions that the collector could not take, but also the use of any false, deceptive, or misleading representation. The court postulated that a collector who stated in a dunning letter that it “could sue” on a time-barred debt, but promised to forebear, would be contravening the FDCPA by making a false representation about the legal status of that debt. The court reasoned that were it to follow the holdings of its two sister circuits, the false representation would be not be actionable under the FDCPA – an anomalous result.

The Seventh Circuit thus held that, because an unsophisticated consumer who read the dunning letter that the plaintiff had received could have been led to believe that the debt was enforceable, in contravention of the FDCPA, the district court correctly denied the defendant’s motion to dismiss. Explaining its decision, the Seventh Circuit stated that it was “inclined to defer to the agencies’ empirical research and expertise.” Additionally, in a footnote, it also noted that because its opinion created a conflict in the circuits by adopting the agencies’ position, it had circulated the opinion to the full court pursuant to Circuit Rule 40(e). But no judge sought to hear the case *en banc*.

2. Time-Barred Debt: *Buchanan* amicus brief

In a case with facts very similar to those in *Delgado*, in March 2014 the Commission joined the CFPB in filing an amicus brief in the Sixth Circuit that urged that court to find that a consumer dunning letter that contained a time-limited settlement offer could violate the FDCPA.²⁶ As was the case in *Delgado*, in the underlying case the defendant collector had sent the plaintiff a dunning letter that contained an offer to settle a debt upon which the statute of limitations had run. The letter transmitting the settlement offer represented that the consumer’s balance would continue to accrue “interest” and included a warning that the company was “not obligated to renew” the offer. The consumer sued, claiming that the letter violated the FDCPA’s prohibition on the use of “any false, deceptive, or misleading representation or means in connection with the collection of any debt.”²⁷

The district court granted the defendant’s motion to dismiss the plaintiff’s class action complaint for failure to state a claim. The district court stated that because the statute of limitations was a “procedural device” that did not “alter the creditor’s substantive rights” or affect the “validity of the debt,” the defendant’s failure to notify the plaintiff that her debt was time-barred was not a false representation or unfair practice, and did not falsely represent the

²⁶ Brief of Amici Curiae, *Buchanan v. Northland Group, Inc.* No. 13-2523 (6th Cir. Mar. 5, 2014), available at http://www.ftc.gov/system/files/documents/amicus_briefs/esther-buchanan-v.northland-group-inc.no.13-2523-6th-cir./1403105buchanan6cir-amicus.pdf.

²⁷ 15 U.S.C. § 1692e.

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

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

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

3. “Initial Communication”: *Hernandez* amicus brief

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

The FDCPA requires a collector, “[w]ithin five days after the initial communication with a consumer in connection with the collection of any debt,” to send the consumer a “validation notice” containing certain information about the consumer’s alleged debts and the consumer’s rights.²⁹ In December 2011, the defendant sent the plaintiff in the underlying case a letter seeking to collect a debt that the plaintiff had allegedly incurred. That letter failed to include all of the information required by 15 U.S.C. § 1692g.

²⁸ Brief of Amici Curiae, *Hernandez v. Williams, Zinman & Parham, P.C.*, No. 14-15672 (9th Cir. Aug. 20, 2014), available at http://www.ftc.gov/system/files/documents/amicus_briefs/hernandez-v.williams-zinman-parham-p.c./140821briefhernandez1.pdf.

²⁹ See 15 U.S.C. § 1692g(a) (duty to send the notice); 15 U.S.C. § 1692g(b) (required contents of notice).

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

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

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

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

III. Education and Public Outreach

Education and public outreach also are important parts of the Commission's debt collection program. The FTC uses multiple formats and channels to inform consumers about their rights under the FDCPA, as well as what the statute requires of debt collectors; and to inform debt collectors about what they must do to comply with the law. The FTC also uses education and public outreach to enhance legal services providers' understanding of debt collection issues.

The Commission reaches tens of millions of consumers through English and Spanish print and online materials, blog posts, and speeches and presentations. To maximize its outreach efforts, FTC staff works with an informal network of about 10,000 community-based organizations and national groups that order and distribute FTC information to their members, clients, and constituents. In 2014, the FTC distributed 14.8 million print publications to libraries, police departments, schools, non-profit organizations, banks, credit unions, other businesses and government agencies. In 2014, the FTC logged about 81.7 million views of its website pages. The FTC's channel at [YouTube.com/FTCVideos](https://www.youtube.com/FTCVideos) houses 128 videos, which were viewed more than 459,818 times in 2014. The Consumer blogs in [English](#)³⁰ and [Spanish](#),³¹ reached 56,000 (English) and 26,000 (Spanish) email subscribers.

The Commission educates industry by developing and distributing business education materials, delivering speeches, blogging, participating in panel discussions at industry conferences, and providing interviews to general media and trade publications. In 2014, FTC staff spoke to numerous debt collection industry groups, including ACA International (The Association of Credit and Collection Professionals) and DBA International. The FTC's business education resources can be found in the FTC's [Business Center](#).³² The Business Center logged 5 million page views in the first 11 months of 2014, and there are 40,000 email subscribers to the [Business Blog](#).³³ A complete list of the FTC's consumer and business education materials relating to debt collection and information on the extent of their distribution is set forth in Appendix A to this letter.

FTC staff also regularly meets with legal services providers to discuss consumer protection issues, including the FTC's work in the debt collection arena. In 2014, FTC staff provided in-person trainings or presentations that involved debt collection issues throughout the country, including in southern California, at Joint Base Lewis McChord in Washington, and in Washington, DC. FTC staff also provided updates about the agency's debt collection work during nationwide webinars hosted by the National Association for Consumer Advocates, and by the Legal Services Corporation for its grantees. Additionally, the FTC organizes "Common

³⁰ <http://www.consumer.ftc.gov/blog>

³¹ <http://www.consumidor.ftc.gov/blog>

³² <http://business.ftc.gov/>

³³ <http://business.ftc.gov/blog>

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

IV. Research and Policy Development Activities

The third prong of the Commission’s debt collection program is research and policy initiatives. In the past year, the FTC has continued to monitor and evaluate the debt collection industry and its practices. Specifically, as described below, the FTC has collaborated with the CFPB to expand the agencies’ combined outreach to the Latino community, and has provided the Bureau with input on debt collection rulemaking and guidance initiatives.

A. Debt Collection & the Latino Community Roundtable Event

In October 2014, the FTC and the CFPB co-hosted a roundtable in Long Beach, California, to examine how debt collection and credit reporting issues affect Latino consumers, especially those who have limited English proficiency. The event, titled “Debt Collection & the Latino Community,” brought together consumer advocates, industry representatives, state and federal regulators, and academics to exchange information on a range of issues. Topics included an overview of the Latino community and their finances; pre-litigation collection from Latino consumers; the experience of LEP Latinos in debt collection litigation; credit reporting issues among LEP Latinos; and developing improved strategies for educating and reaching out to LEP Latinos about debt collection.³⁴

B. Debt Collection Rulemaking

The FTC also works closely with the CFPB to coordinate efforts to protect consumers from unfair, deceptive, and abusive debt collection practices.³⁵ As part of this coordination, FTC and CFPB staff regularly meet to discuss ongoing and upcoming law enforcement, rulemaking, and other activities; share debt collection complaints; cooperate on consumer education efforts in the debt collection arena; and consult on debt collection rulemaking and guidance initiatives. Building on efforts initiated in 2013, when the CFPB published the Advance Notice of Proposed Rulemaking (“ANPR”), FTC staff continued to consult with CFPB staff on their rulemaking efforts. FTC staff provided suggestions and insights based upon our decades of experience in the debt collection arena. We look forward to continuing to work with the CFPB on this rulemaking and other efforts to further our common goal of protecting consumers from unlawful debt collection tactics.

³⁴ Additional information about the Roundtable is available at <http://www.ftc.gov/news-events/events-calendar/2014/10/debt-collection-latino-community-roundtable>.

³⁵ The Dodd-Frank Act directs the FTC and the CFPB to coordinate their law enforcement activities and promote consistent regulatory treatment of consumer financial products and services, including debt collection. *See* Dodd-Frank Act, Pub. L. 111-203, 124 Stat. 1376 § 1024(c)(3) (July 21, 2010). In January 2012, the FTC and CFPB entered into a memorandum of understanding that supplements the requirements of the Dodd-Frank Act and creates a strong and comprehensive framework for coordination and cooperation. Memorandum of Understanding Between the Consumer Financial Protection Bureau and the Federal Trade Commission, January 2012, *available at* <http://www.ftc.gov/sites/default/files/attachments/press-releases/federal-trade-commission-consumer-financial-protection-bureau-pledge-work-together-protect-consumers/120123ftc-cfpb-mou.pdf>.

V. Conclusion

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

By direction of the Commission.

Donald S. Clark
Secretary

Appendix A
Debt Collection Information 2014

Title	Page Views ^{36]}		Print distribution	
	English	Spanish	English	Spanish
<i>Consumer Information</i>				
Coping with Debt	189,229	24,157	89,650	13,575
Debt Collection	581,290	18,059	76,800	
Debt Collection Arbitration	125,681	331	24,675	
Debts and Deceased Relatives	66,941	8,472		
Fake Debt Collectors	84,491	497		
Garnishing Federal Benefits	38,900	914		
Identity Theft and Debt Collection	22,345	446		
Settling Credit Card Debt	94,415	43		
Statement of Rights for Identity Theft Victims	13,832	418		
Stop Calls and Letters from a Debt Collector	29,854	665		
Time-Barred Debts	139,772	4,487		
<i>Video</i>				
Dealing with Debt Collectors	17,546	2,118		
Helping Victims of Identity Theft	2,145			

³⁶ Page view numbers include pages viewed on FTC websites, but not pages viewed when non-FTC sites download and re-post FTC content.

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

One-stop resource pages:

- [Consumer Advocates](#)
- [Financial Educators](#)

Blog Posts for Consumers:

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

Blog Posts for Business:

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