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July 2, 2018

Comment Intake
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, D.C. 20552

Re: Comments of the Consumer Relations Consortium Regarding the Bureau's Guidance Materials and Request for Informal and Advisory Guidance

To Whom It May Concern:

The Consumer Relations Consortium ("CRC") submits this response to the request from the Bureau of Consumer Financial Protection ("Bureau") for comments regarding "the overall effectiveness and accessibility of its guidance materials and activities (including implementation support) to members of the general public, including regulated entities." The Bureau is also considering whether it would be appropriate to make changes, consistent with law, to the formats, processes, and delivery methods for providing such guidance.

As discussed below, in response to this request, CRC proposes that the Bureau consider offering such guidance by establishing a mechanism to issue informal and advisory direction in the form of letters and opinions. This would assist consumers and businesses in understanding the laws, rules and regulations governing the collections industry. It would protect consumers' rights, ensure lawful business operations, and address ambiguities leading to frivolous litigation, thereby reducing burdens on our courts.

The CRC was founded in 2013 in response to the release of the Larger Market Participant Rule for Debt Collectors. The CRC is comprised of about 60 organizations covering the ecosystem of collections, including creditors, large collection agencies and data/technology providers. We focus on two areas: advocacy and innovation.

From an advocacy perspective, the CRC engages with regulators, consumer groups and other thought leaders to produce common sense, consumer-centric solutions to issues facing debt collection stakeholders. Our approach is to discuss practical solutions in a non-public, candid, off-the-record environment where all parties can get well beyond talking

points. We established ourselves in both the consumer community and with the BCFP rulemaking body as a respected and productive group.

The Bureau Must Consider Issuing Informal and Advisory Guidance

Previous informal guidance or policy statements from federal regulators have provided guidance and certainty for consumers, debt collectors, regulators and the courts. Examples include:

a. **FTC letters**
   i. letter of 6/23/09 advising that a debt collector does not violate §805(c) of the Fair Debt Collection Practices Act ("FDCPA") by communicating with the consumer in compliance with the Fair and Accurate Credit Transactions Act ("FACTA") after the consumer requested the debt collector to cease communication. Ex. A.
   ii. letter of 10/5/07 concluding that notice from a debt collector that it will no longer seek to collect a debt because of the inability to verify is not a prohibited communication construed as an attempt to collect the debt under the FDCPA. Ex. B.
   iii. letter of 5/1/2000 concluding that the FDCPA applies to collection agency efforts to collect debt which is in default but not charged off, and that collection agency employees must collect in the agency's name and not represent themselves as employees of the original creditor. Ex. C.
   iv. letter of 4/30/99 addressing (1) specific questions about an account creditor's or collection agency's permissible purpose to access a consumer's credit file under the Fair Credit Reporting Act ("FCRA"), as well as advising that (2) under the FCRA, an entity may not obtain consumer credit information from a credit reporting agency on behalf of another entity without disclosing the ultimate end-user of the credit information. Ex. D.
   v. letter of 3/22/99 addressing the applicability of the FCRA to the credit reporting of information by educational institutions in connection with defaulted student loans. Ex. E.

b. **IRS letters**
   i. letter of 10/7/05 addressing questions from an association whose debt purchasing members sought answers to nine categories of questions relating to reporting requirements under §6050P of the Internal Revenue Code for debts that are settled for an amount less than the full amount owed. (Please note A7: "A7. Section 6050P of the Code and the regulations do not require collection attorneys, collection agencies, or applicable entities to notify a debtor of the tax

consequences of a discharge of indebtedness resulting from a settlement at less than the full amount owed.") Ex. F.

c. The **FTC's Statement of Policy Regarding Communications in Connection with the Collection of Decedents' Debts of 07/27/11** advising that a debt collector does not violate §805 of the FDCPA when communicating with individuals who have the authority to pay the outstanding bills of the decedents' estates using estate assets.
Ex. G

These are a few of the recent examples of where informal and advisory guidance from a federal regulator successfully provided consumer protection and certainty for businesses. In the debt collection space, the Bureau could substantially increase its positive impact by issuing informal guidance and staff opinions rather than waiting for formal rulemaking to be completed.

Rulemaking Cannot Effectively Address Rapidly Evolving Markets, Law and Technology

The Bureau has engaged in rule making regarding debt collection for several years without issuing any rules. During the time the Bureau engaged in rule making, markets, law and technology evolved, giving rise to uncertainty for those who operate in the debt collection space. Given the two to three-year minimum time frame for rule making, it is simply too slow a process to serve the Bureau's constituency and provide consumer protection and certainty for industry.

Enforcement Actions Provide Guidance, But Do Not Provide Enough Specific Direction

Enforcement actions from the Bureau and the FTC provide a patchwork of inconsistent guidance. For instance, the 2012 consent decree that Asset Acceptance entered into with the FTC provided for a disclosure to be given to consumers when a debt collector is seeking payment on a debt that is beyond the statute of limitations ("the Consent Decree"). Unfortunately, the Consent Decree did not contemplate what type of disclosure should be given to advise the consumer that a partial payment would renew the statute of limitations (often called "retolling" language). Such a disclosure is required by numerous state laws, including California and New York. As a result, the effectiveness of the Consent Decree as guidance for debt collectors is limited. However, an advisory opinion or informal guidance from the Bureau on retolling language could provide protection for consumers and certainty for debt collectors.

Bulletins are Helpful, But Still Not Enough

The Bureau has provided effective guidance for the debt collection industry through bulletins, indicating its desire to provide guidance through informal means on important topics including Regulation E and credit bureau reporting. These bulletins provide clear direction for industry on practices that comply with the law. But, even they are not enough, as evidenced by the abundance of litigation filed to resolve "gray" areas of law.

Federal Courts Are Clogged with FDCPA Cases - Courts Issuing Inconsistent Opinions

The federal court system is swamped by FDCPA cases. Many of these cases are filed because of lack of clarity within a statute enacted almost 50 years ago. In 2017, there were almost 10,000 FDCPA cases filed (Source: www.webrecon.com). Many, if not most, of these cases involve issues of interpretation of the FDCPA. Most are brought by a handful of "consumer attorneys" who seek to exploit ambiguous and often immaterial areas of law to their own benefit, often without benefit to the consumers for whom the FDCPA was enacted to protect. This is burdensome for our court system, costly for all parties, and an ineffective way to receive guidance on the interstices of the legal framework of laws, rules and regulations which govern the debt collection space. By issuing informal and advisory letters and opinions, the Bureau could more effectively and efficiently provide guidance on key issues identified as ambiguous and unclear by the very industry it governs.

Consumers and the collection industry both need clarity from the CFPB regarding simple, clear disclosures. Federal courts are often tasked with interpreting debt collection disclosures in connection with FDCPA cases. Despite seemingly clear guidance from the plain language of the FDCPA and the courts, FDCPA lawsuits are filed every day against debt collectors using seemingly crystal clear disclosures.

For example, in March 2016, the Second Circuit Court of Appeals issued its ruling in the *Avila* case, adopting a "safe harbor" disclosure regarding the accrual of interest, writing:

> We hold that a debt collector will not be subject to liability under Section 1692e for failing to disclose that the consumer's balance may increase due to interest and fees if the collection notice either accurately informs the consumer that the amount of the debt stated in the letter will increase over time, or clearly states that the holder of the debt will accept payment of the amount set forth in full satisfaction of the debt if payment is made by a specified date. Like the Miller court, we do not hold that a debt collector must use any particular disclaimer. Using the language set forth in Miller will qualify for safe-harbor treatment, as would the language suggested in

> Jones, 755 F.Supp.2d at 397 n. 7, which may be preferable to the extent it advises the consumer of the specific rate of increase in the debt over time.[2] Moreover, a debt collector who is willing to accept a specified amount in full satisfaction of the debt if payment is made by a specific date could considerably simplify the consumer's understanding by so stating, while advising that the amount due would increase by the accrual of additional interest or fees if payment is not received by that date.

It would seem likely that lawsuits regarding this issue would drop dramatically after the ruling in *Avila* because debt collectors changed their debt collection communications to incorporate the holding in this case. Quite to the contrary, lawsuits against debt collectors immediately skyrocketed after the Second Circuit Court of Appeals ruling in *Avila*, clogging the dockets with hundreds of cases claiming that the *Avila* case somehow requires a debt collector to disclose when interest is not accruing. The attached study of the dockets in New York Federal Court from April 2016 through April 2017 (Ex. I) demonstrates that there were 310 FDCPA cases filed citing to the interest disclosure issue, with 308 of those cases – most of them filed by just eight attorneys -- somehow asserting that a debt collector was required to disclose when interest was not accruing. In the 2018 *Taylor* decision, the Second Circuit Court of Appeals addressed and dismissed the "reverse-Avila" theory behind these hundreds of cases (siding with the Seventh Circuit Court of Appeals which addressed the issue in 2004):

> Contrary to Taylor and Klein's objection, our decision today reads Sections 1692e and 1692g in harmony. That is, if a collection notice correctly states a consumer's balance without mentioning interest or fees, and no such interest or fees are accruing, then the notice will neither be misleading within the meaning of Section 1692e, nor fail to state accurately the amount of the debt under Section 1692g. If instead the notice contains no mention of interest or fees, and they are accruing, then the notice will run afoul of the requirements of both Section 1692e and Section 1692g.

Unfortunately, it would be naïve to think that the *Taylor* decision will stem the tide of questionable FDCPA lawsuits. Undoubtedly, new theories on the interest disclosure will arise and consumers will be harmed by thinking that they somehow do not have to pay their just obligations because some there was some theoretical error in a communication they received. Only clear and concise disclosures promulgated by the CFPB can save consumers from this harm.

The issue, unfortunately, is not isolated to interest disclosures. The following are additional types of cases which also present gray areas:

1. Cases asserting that the validation language in a collection communication, drawn verbatim from the statute, is unclear;
2. Claims that the creditor is not clearly disclosed, when the name of the creditor is, for instance, American Express;
3. Claims that a disclosure is misleading where it was stated that a creditor will not sue on a time barred debt because the disclosure does not say that the creditor "cannot" sue;
4. Claims that a disclosure is misleading for stating that the creditor will not report a debt to the credit reporting agencies is false because the creditor could report it; and,
5. Claims that there were too many required disclosures in a letter.

These are exactly the types of issues that could be resolved through Bureau guidance; thereby eliminating hundreds, if not thousands, of lawsuits filed on the issues.

Consumers and Financial Institutions Will Best be Served by the Bureau Exercising Its Authority to Issue Informal and Advisory Guidance

We reemphasize our April 17, 2018 memo to Acting Director Mulvaney (Ex. H) that consumers, debt collectors, regulators and the courts would benefit from the issuance of informal and advisory guidance from the CFPB. An overhaul of debt collection rules is no easy feat. Even with comprehensive rulemaking, gaps and questions will arise and not solve challenges the industry and consumers experience. Informal guidance will reduce ambiguities in the law, provide certainty in the marketplace and maintain protection for consumers.

Thank you for your consideration.

Respectfully submitted,

Stephanie Eidelman
Executive Director
Consumer Relations Consortium

PLEASE NOTE:

As of July 21, 2011, only the Consumer Financial Protection Bureau (“CFPB”) can issue advisory opinions relating to the FDCPA.

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

Office of the Secretary

June 23, 2009

Rozanne M. Anderson, Esq.
ACA International
4040 W. 70th Street
Minneapolis, MN 55345

Andrew M. Beato, Esq.
Stein, Mitchell & Mezines, LLP
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Washington, DC 20036

Dear Ms. Anderson and Mr. Beato:

This responds to an issue raised in your comment filed on February 11, 2008, on behalf of American Collectors Association International, with the Federal Trade Commission ("Commission") and other agencies charged by Congress in Section 312 of the FACT Act with writing regulations relating to certain duties of furnishers of information to consumer reporting agencies ("CRAs"). On pages 7-8 of your comment, you urged the following action:

> To avoid a statutory conflict between the FDCPA and FACT Act, the regulation should clarify that the act of responding to a consumer dispute is not an attempt to collect a debt under the FDCPA. Further the regulation should clarify that a consumer that sends a written dispute to a furnisher *after* having invoked his or her cease communication rights under the FDCPA has revoked his or [her] cease communication instruction for purposes of communicating with the furnisher to process the dispute. (Emphasis yours)

The Commission is treating this portion of your comment as a request for an advisory opinion interpreting the Fair Debt Collection Practices Act (FDCPA) pursuant to Sections 1.1-1.4 of its Rules of Practice. 16 C.F.R. §§ 1.1-1.4. The subject matter of the request and consequent publication of this Commission advice is in the public interest. 16 C.F.R. § 1.1(a)(2). Specifically, it is in the public interest for the Commission to clarify the intersection of the FDCPA and this new rule implementing the FACT Act, thus encouraging debt collector compliance with both laws.

The applicable provisions of the FDCPA and the furnisher disputes rule (Rule) are:

- Section 805(c) of the FDCPA provides that if a consumer has notified a debt collector in writing that "the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate with the consumer with respect to such debt" (with some exceptions not applicable here).

- The Rule requires furnishers of information to CRAs to report the results of a direct dispute to the consumer, 16 CFR § 660.4(e)(3), or notify the consumer if the furnisher determines the dispute is frivolous or irrelevant. 16 CFR § 660.4(f)(2).

The potential conflict arises when a consumer orders a debt collector in writing to cease communication, but at some future time submits a direct dispute about information the debt collector has provided to a CRA. The Rule requires the collector to notify the consumer either of the results of the investigation or of its determination that the dispute is frivolous or irrelevant. Section 805(c) of the FDCPA, however, prohibits the collector from communicating with that consumer with respect to the debt, which could be interpreted to include providing the notice that the Rule requires.

The Commission does not believe that providing the notice the Rule requires undermines the purpose of Section 805(c) of the FDCPA. Section 805(c) empowers consumers to direct collectors to cease contacting them to collect a debt so that consumers can be free of the burden of being subject to unwanted communications. In contrast, communications from debt collectors which do nothing more than respond to disputes consumers themselves have raised do not impose such a burden. Rather, such communications benefit consumers through providing them with information demonstrating that collectors have been responsive to their disputes.

After reviewing the language of the FDCPA and the Rule, and considering the goals of the statute and the regulation, the Commission concludes that a debt collector does not violate Section 805(c) of the FDCPA if the consumer directly disputes information after sending a written "cease communication" to the collector, and the collector complies with the Rule by means of a communication that has no purpose other than complying with the Rule by stating (1) the results of the investigation or (2) the collector's belief that the communication is frivolous or irrelevant.

By direction of the Commission.

Donald S. Clark
Secretary

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

Office of the Secretary

October 5, 2007

Andrew M. Beato, Esq.
Stein, Mitchell & Mezines, L.L.P.
1100 Connecticut Avenue, N.W.
Washington, D.C. 20036

Dear Mr. Beato:

This is in response to ACA International's ("ACA's") request for a Commission advisory opinion ("Request") regarding whether the Fair Debt Collection Practices Act ("FDCPA") prohibits a debt collector from notifying a consumer who disputed a debt that the collector has ceased its collection efforts. ACA submitted the Request pursuant to Sections 1.1-1.4 of the Commission's Rules of Practice, 16 C.F.R. §§ 1.1-1.4. As explained more fully below, the Commission concludes that a debt collector providing such a notice to a consumer would not violate the FDCPA.

The Request focuses primarily on Section 809 of the FDCPA, 15 U.S.C. § 1692g. Section 809(a) provides that, within five days after its initial communication with a consumer about a debt, a debt collector must send the consumer a written notice. Among other things, this notice must state that "if the consumer notifies the debt collector in writing within [thirty days after receipt of the notice] that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector." Section 809(b) provides that if a consumer provides such a notice, the debt collector must cease collection until it has obtained verification of the debt or a copy of the judgment and mailed it to the consumer.

In July 2007, ACA amended its Code of Ethics and Code of Operations ("Ethics Code"). If a debt collector receives a written request for verification and is unable to verify the debt, the Ethics Code now requires "the cessation of all collection efforts, removal of the account from the consumer's credit report or reporting the account as disputed, and prompt notification of the **creditor or legal owner** of the debt that collection activities have been terminated due to the inability to provide verification information." Request at 3 (emphasis added). ACA "also has considered amending the Ethics Code to promote the notification of a **consumer** that collection activity has been terminated if the debt collector is unable to verify the debt following the receipt of a written request for verification." *Id.* (emphasis added). However, ACA has not yet amended its Ethics Code to include such a provision because of "concern that communication with the consumer following a request for verification might be construed as an attempt to collect, even though the intention merely is to inform the consumer that there will no further collections." *Id.* at 2.

We note first that courts have construed Section 809(b) as giving debt collectors two options when they receive a written dispute or a request for verification[1]: (1) provide the requested verification and continue collection activities, or (2) cease all collection activities. If the debt collector ceases collection, it is not required to provide verification. *See, e.g., Guerrero v. RJM Acquisitions LLC*, 2007 U.S. App. LEXIS 20072, at *35-36 (9th Cir. Aug. 23, 2007); *Jang v. A.M. Miller & Assocs.*, 122 F.3d 480,483 (7th Cir. 1997); *Wilhelm v. Credico Inc.*, 426 F. Supp. 2d 1030, 1036 (D.N.D. 2006); *Zaborac v. Phillips and Cohen Assocs*, 330 F. Supp. 2d 962, 966 (N.D. Ill. 2004); *Sambor v. Omnia Credit Servs., Inc.*, 183 F. Supp. 2d 1234, 1243 (D. Haw. 2002).

The Request poses the question of whether a debt collector that discontinues debt collection activities after receiving a written request for verification can inform the consumer that it has done so without violating the FDCPA. As noted above, Section 809(b) requires a debt collector to cease collection of a debt until the collector has provided verification of the debt to the consumer if the consumer, in writing within the thirty-day window, has either disputed the debt or requested verification. If a debt collector cannot provide such verification to the consumer, merely informing the consumer that debt collection efforts have been terminated is not an attempt to collect a debt and therefore does not violate the FDCPA.[2]

We note that Congress enacted Section 809 to "eliminate the recurring problem of debt collectors dunning the wrong person or attempting to collect debts which the consumer has already paid."[3] The provision allows a consumer who does not believe that he or she owes a debt to require that the debt collector obtain and provide verification prior to contacting the consumer

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[1] Courts interpreting Section 809(b) have used the phrases "disputing the debt," "requesting verification," and "requesting validation" interchangeably. *See, e.g., Jang v. A.M. Miller and Assocs.*, 122 F.3d 480, 482 (7th Cir. 1997) (collection agencies "ceased collection activities immediately upon receiving the requests for validation, in compliance with [Section 809(b)]"); *Wilhelm v. Credico Inc.*, 426 F. Supp. 2d 1030, 1036 (D.N.D. 2006) (debt collector's Section 809(b) obligations triggered "once a debt collector receives a request for verification"); *Sambor v. Omnia Credit Servs., Inc.*, 183 F. Supp. 2d 1234, 1243 (D. Haw. 2002) (debt collector's Section 809(b) obligations triggered "[w]hen timely asked in writing to validate a debt"); *see also Clark's Jewelers v. Humble*, 823 P.2d 818, 821 (Kan. Ct. App. 1991) (a consumer need not use the word "dispute" to trigger the debt collector's obligation to cease collection and provide verification of the debt, as long as the consumer's notice makes clear that the debt is contested).

[2] The Request also raises the question whether a notice informing a consumer that collection efforts have ceased "might be construed as a 'communication' in furtherance of collecting the debt." Request at 5. Regardless of whether such a notice is a "communication" under 15 U.S.C. § 1692a(2), a debt collector telling a consumer that debt collection has ceased is not "in furtherance of collecting the debt."

[3] S. Rep. No. 95-382, at 4 (1977), *reprinted in* 1977 U.S.C.C.A.N. 1695, 1698.

again. The purpose of Section 809 therefore is to stop further calls and letters from collectors unless the consumer incurred and continues to owe the debt. Interpreting Section 809 as allowing debt collectors to notify consumers that they have ceased collection efforts, without conveying any other message, is consistent with this purpose. A consumer receiving such a notice would benefit both from having the calls and letters from that collector stop and from knowing that the collector will not renew its collection efforts.[4]

The only other FDCPA provision that could be implicated by the notification that ACA proposes to require of its members is Section 805(c). That provision provides that, if a consumer notifies a debt collector in writing that he or she "refuses to pay a debt or . . . wishes the debt collector to cease further communication," the debt collector is not permitted to communicate further with the consumer about the debt. However, Section 805(c) includes an express exception to its prohibition on communication that permits a debt collector to "advise the consumer that the debt collector's further efforts are being terminated." Thus, even if a consumer demands in writing that a debt collector cease communicating about a debt, the debt collector would not violate Section 805(c) if it notified the consumer that the collector's collection efforts have ceased.[5]

After reviewing the language of the FDCPA and its legislative history as well as information contained in the Request, the Commission concludes that a debt collector does not violate the FDCPA if, after receiving written notice of a dispute, it informs the consumer that it has ceased collection efforts.

By direction of the Commission.

Donald S. Clark
Secretary

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[4] Even if, as the amended Ethics Code now requires, a debt collector that is unable to provide verification of a debt ceases collection efforts, closes the account, and notifies the credit grantor, client, or owner of legal title to the debt that collection activities have been terminated because the collector could not provide verification of the debt, the credit grantor, client, or debt owner might choose to refer the account to a different debt collector. Thus, although the consumer will no longer be contacted by the first debt collector, he or she might receive collection calls and letters from a different debt collector.

[5] We note, however, that any such communication must not violate any other FDCPA provision.

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

May 1, 2000

Richard T. de Mayo, Esq.
President and Chief Executive Officer
TSYS Total Debt Management, Inc.
P.O. Box 6700
Norcross, Georgia 30091-6700

Re: Section 803(6) of the Fair Debt Collection Practices Act

Dear Mr. de Mayo:

This responds to your request for a staff opinion regarding the Fair Debt Collection Practices Act ("FDCPA"). You ask whether employees of a collection agency are covered by the FDCPA when they attempt to collect debts by contacting consumers under the following circumstances. The collection agency begins to collect the accounts when they are two, three, or four payments past due, but when the creditor has not yet charged the accounts off. The collection agency's employees ("agency employees") use the name of the creditor, rather than the name of the agency, when calling or writing to consumers about the accounts. The agency employees are located at the office of the agency, and the agency controls the practices and procedures that the agency's employees follow in collecting the accounts. You ask whether the FDCPA covers such agency employees (a) when the accounts being collected are "delinquent and not considered in default" by the creditor and (b) when the accounts "are considered in default by the creditor."

Generally, the FDCPA applies only to "debt collectors." The core portion of the FDCPA's Section 803(6), 15 U.S.C. § 1692a(6), defines "debt collector" as "any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, *or* who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another." (Emphasis added.) A person is a "debt collector" if he meets either of these two prongs. The agency employees described in your letter meet both. They have as their principal purpose the collection of debts *and* they "regularly collect[] or attempt[] to collect . . . debts owed . . . or asserted to be owed . . . another." Thus, unless they are exempt from the definition of "debt collector" under a different portion of Section 803(6), they are "debt collectors" and must comply with the entire FDCPA.

The other exemptions from the definition of "debt collector" are assembled in Sections 803(6)(A)-(F). In determining whether the agency employees are exempt, we first look to Section 803(6)(F)(iii), which excludes any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity . . . (iii) concerns a debt which was not in default at the time it was obtained by such person.

Thus, if the agency employees are collecting debts that were not "in default" when the agency for which they work obtained them, they are not "debt collectors." The FDCPA does not define the term "default." While an account may not go into default on the date the consumer misses the first payment, it is probably in default by the time the consumer falls two months behind in his monthly payments, based on the legislative history of Section 803(6)(F)(iii). The Senate Report on the bill that became the FDCPA makes clear that Congress intended the section to exempt "mortgage service companies and others who service outstanding debts for others, so long as the debts were not in default when taken for servicing." S. Rep. No. 382, 95th Cong., 1st Sess. 7, *reprinted in* 1977 U.S. Code Cong. & Ad. News 1695, 1698. Thus, the exemption was aimed at entities such as mortgage servicers that obtain debts as soon as the debts are incurred and are primarily in the business of accepting timely payments from consumers. While some consumers whose accounts are obtained by these servicers eventually fail to make their regular payments, requiring the servicers to initiate collection procedures, collecting debts in default is not the servicers' primary function.

Whether a creditor "consider[s] a debt in default" has no bearing on whether the debt is truly in default. Similarly, the date that the creditor charges off the debt does not affect the date the debt actually goes into default. Nothing in the FDCPA indicates that Congress intended a creditor's business decisions to determine whether a consumer benefits from the statute's protections. Thus, a collector cannot avoid the FDCPA's coverage by having its creditor/client wait until after accounts have been transferred to the collector before labeling the accounts "in default" or charging the accounts off.

Because the accounts that the collection agency you describe obtains are "in default," the agency employees are not exempt under Section 803(6)(F)(iii). The employees will be "debt collectors" unless they fall within another exemption: Section 803(6)(A). That provision excludes from the definition of "debt collector" "any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor." We stated in the Staff Commentary on the FDCPA, 53 Fed. Reg. 50,097 (1988) (available at *www.ftc.gov/os/statutes/fdcpajump.htm*), that this exemption "includes a collection agency employee who works for a creditor to collect in the creditor's name at the creditor's office under the creditor's supervision because he has become the de facto employee of the creditor." *Id.* at 50,102, comment 803(6)-4(a). Accordingly, agency employees fall within this de facto employee exemption only if they both collect in the creditor's name and are supervised to a large extent by the creditor. Whether the creditor employees supervise agency employees sufficiently for the agency employees to be considered de facto employees will depend on the relevant facts.

The agency employees you describe in your letter do collect in the name of their creditor clients, but they are not covered by the exemption because their collection practices and procedures are controlled entirely by the agency. The fact that the agency employees work on the agency's premises, however, would not have prevented them from meeting the Section 803(6)(A) exemption if they had been supervised sufficiently by creditor employees. Agency employees may work on the agency's premises and still be de facto employees, as long as creditor employees also work on the agency's premises and closely supervise the agency employees'

collection efforts. Again, whether that supervision is sufficient to comply with Section 803(6)(A) will depend on the facts.

Finally, we note that, if the agency employees you describe are "debt collectors" under the above analysis, it appears that they and their collection agency would violate Section 807(14) of the FDCPA, 15 U.S.C. § 1692e(14), if they represent to consumers that they are employees of the consumers' creditors. Section 807(14) prohibits "debt collectors" from using "any business, company, or organization name other than the true name of the debt collector's business, company, or organization." If the agency is a "debt collector," it may not use the creditor's name when communicating with consumers from whom it is attempting to collect debts; it must use its own.

I hope you find this information helpful. The views expressed in this letter represent an informal staff opinion and are not binding on the Commission.

Sincerely,

Thomas E. Kane

FEDERAL TRADE COMMISSION
PROTECTING AMERICA'S CONSUMERS

Advisory Opinion to Benner (04-30-99)

April 30, 1999

Mr. Kenneth J. Benner
American Council on Consumer Awareness
Post Office Box 17291
St. Paul, Minnesota 55117

Re: Sections 604(a)(3), 607(e), and 609(a)(3) of the Fair Credit Reporting Act

Dear Mr. Benner:

This responds to your letters concerning whether the Fair Credit Reporting Act ("FCRA") permits a party to obtain a credit report on a consumer under certain circumstances. We list the three questions you posed verbatim, with our opinion following each.

1. How long after a consumer terminates an account does a previous credit card issuer or lender have access to the consumer's credit file?

Section 604(a)(3)(A) of the FCRA provides a consumer reporting agency ("CRA," usually a credit bureau) with a permissible purpose to provide a report on a consumer to a person who "intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer."(1) Once an account is closed because the consumer has paid the debt in full (and also, in the case of an open-end account such as a credit card account, notified the creditor to close the account), it is our view that no permissible purpose exists for a CRA to provide file information on a consumer to the creditor. Because there no longer exists any account to "review" and the consumer is not applying for credit, the FCRA provides no permissible purpose for the creditor to receive a consumer report from a CRA. I enclose a recent staff opinion letter (Gowen, 04/29/99) that discusses this issue in more detail.

2. Is a permissible purpose for obtaining consumer credit reports for the sole purpose of determining possible debt by a collection agency for the purpose of soliciting collection business from creditors?

No. You report that a debt collector and a major credit bureau assert that the collector has a "legitimate business need" to obtain a random selection of credit histories for the purpose of determining overdue accounts and then contacting the creditors on the account to solicit collection business. Section 604(a)(3)(F)(ii) does provide a permissible purpose to a party that "has a legitimate business need for the information to review an account to determine whether the consumer continues to meet the terms of the account." In our view, this section authorizes a provider of an existing account (e.g., a bank that has established a checking account with the consumer) to obtain a report on the individual. In the scenario you described, the debt collector has no "account" to "review" when it orders a credit report (in fact, no "account" may exist for some consumers), but instead seeks to randomly examine credit files in order to solicit collection business from creditors. The collector is not authorized to obtain (nor a CRA to furnish) a consumer report for that purpose. The entire focus of Section 604 is to protect the confidentiality of consumers' personal data in the files of CRAs, by restricting access to parties who have a specific need for it.(2) If a third party such as a debt collector can review the consumer's file to see if there exists any account that the creditor has reported as delinquent, the section has totally failed its goal.

3. Is it permissible for a business doing credit with a consumer to obtain credit information under false pretenses, i.e. hiring another firm to solicit credit file information without disclosing the name of the party actually seeking the credit file information? In these cases the consumer attempting to determine who has accessed his credit file, as required, is provided with names of parties unknown to him.

No. Section 607(e)(1)(A) provides that the second firm may "procure a consumer report for purposes of reselling the report (or any information in the report)" only if it discloses "the identity of the end-user of the report (or information)" to the credit bureau. In our view, the firm hired to procure credit file information would be required to comply with this provision. Section 609(a)(3) requires the credit bureau, when responding to a consumer attempting to determine who has accessed his file, to identify the end-user -- not the intermediary -- as the recipient of the report. Thus, the amended FCRA results in the consumer being provided with the parties who actually used his or her credit file information.

The opinions set forth in this informal staff letter are not binding on the Commission.

Sincerely yours,

Clarke W. Brinckerhoff

1. Section 604(a)(3)(F)(ii) provides a similar "review" purpose in connection with accounts (such as checking accounts) that do not involve credit.

2. "The bill also seeks to prevent an undue invasion of the individual's right of privacy in the collection and dissemination of credit information. ... (Section 604) requires that the information in a person's file be kept confidential and used only for legitimate business transactions." S. Rept. 91-517, 91st Cong., 1st Sess. 1 (1969).

FEDERAL TRADE COMMISSION
PROTECTING AMERICA'S CONSUMERS

Advisory Opinion to Harris (03-22-99)

March 22, 1999

Ms. Lee S. Harris
Office of the General Counsel
U. S. Department of Education
600 Independence Avenue, SW
Washington, DC 20202

Dear Ms. Harris:

This responds to your letter dated March 10, 1999, concerning the applicability of the Fair Credit Reporting Act ("FCRA") to the reporting by educational institutions of additional information to credit bureaus about defaulted student loans. You report that in some cases the new information corrects a report that was erroneous (e.g., the loan was wrongly reported as delinquent, because a deferment authorized delayed repayment), and in others the subsequent information updates a report that was accurate when it was made (e.g., the loan was correctly reported as delinquent, but has subsequently been paid). Further, you report that in some cases "the school no longer has a contractual relationship" with the credit bureau to which it reported the account originally. You ask if the school must report the updated information to the original credit bureau, and if that agency is required to accept the data. Based on the facts presented in your letter, we answer both questions affirmatively.

Section 623(a)(2) of the FCRA addresses the duty to correct and update information by "furnishers," or persons who furnish information to consumer reporting agencies ("CRA") such as credit bureaus. In particular, this section requires a person that "has furnished to a consumer reporting agency information that the person determines is not complete or accurate" to "promptly notify the consumer reporting agency of that determination" and provide any information needed to make it complete and accurate.(1) Thus, on its face, this provision requires a furnisher to provide corrected or updated information to the consumer reporting agency that it had reported to originally. A furnisher that reports current information to a different CRA has done nothing to "correct and update information" with CRA that possess the information that the furnisher has now determined is incomplete or erroneous. This duty extends to all student loan accounts reported to CRAs, regardless of whether they were accurate at one point, because the section requires the furnisher both to "update" accounts as well as to "correct" those that were erroneous when submitted to the CRA.

Section 607(b) of the FCRA requires CRAs to "follow reasonable procedures to assure maximum possible accuracy of information" in their consumer reports. It is our view that a CRA that refuses to accept updated and corrected information from a furnisher on student loan accounts, if it still maintains that information in its database, does not have in place "reasonable procedures" to comply with this section with respect to such accounts.

The opinions set forth in this informal staff letter are not binding on the Commission.

Yours truly,

David Medine

1. This duty applies only to a person that "regularly and in the ordinary course of business furnishes information to one or more consumer reporting agencies."

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

October 07, 2005

Number: **INFO 2005-0208**
Release Date: 12/30/05
UIL: 6050P.00-00

CC:PA:APJP:B01
GENIN-130393-05

Dear :

This letter responds to your request for information dated May 18, 2005, regarding the requirements under section 6050P of the Internal Revenue Code (Code) for reporting cancellation of indebtedness. Specifically, you request information concerning the reporting requirements under section 6050P(c)(2)(D) for organizations that purchase debt.

You state that your association's members are organizations that purchase debt for less than the face value of the debt. You also state that these organizations generally pursue collection activity on purchased debts until the collection activity is either prohibited by law or the period for reporting the debt to a credit reporting agency expires.

You state that an organization may purchase debt for a lump sum amount and may not know the breakdown of that amount into principal, interest, charges, and fees. Often these debts are settled for an amount less than the full amount owed. The typical settlement arrangement provides that the debtor will pay an amount equal to or approximating the principal balance due and that all interest, fees, and charges (to the extent these amounts can best be determined or estimated) will be discharged.

You requested clarification on the section 6050P reporting rules in the form of published guidance or a private letter ruling. The Internal Revenue Service (Service) has decided to address your inquiries in the form of an information letter rather than published guidance or a private letter ruling. Before issuing the final regulations under section 6050P(c)(2)(D) of the Code, the Service published a notice of proposed rulemaking in the Federal Register on June 13, 2002. See 67 F.R. 40629. The notice of proposed rulemaking contained a rule that, for purposes of section 6050P(c)(2)(D), "lending money" includes acquiring an indebtedness. See section 1.6050P-2(e) of the proposed regulations. The notice of proposed rulemaking provided the opportunity for public comment; the Service did not receive any comments from organizations that purchase debt on the rule in section 1.6050P-2(e) before issuing the final regulations. The

Service is not in a position to address your concerns in published guidance at this time. In addition, your request does not meet the requirements of a private letter ruling request set forth in Rev. Proc. 2005-1, 2005-1 I.R.B. 1.

Your inquiry poses several specific questions. We have grouped the questions and answers into the following categories.

Q1. Who is required to report a discharge of indebtedness under section 6050P of the Code and when does the requirement to report arise?

A1. Section 6050P(a) of the Code provides that any applicable entity that discharges indebtedness of any person during a calendar year must file an information return reporting the discharge. Section 6050P(b) provides that no information reporting is required under section 6050P(a) if the amount of the discharge is less than $600. Section 6050P(c)(2)(D) defines an "applicable entity" to include an organization with a significant trade or business of lending money.

Section 1.6050P-2(a) of the Income Tax Regulations (regulations) provides that lending money is a significant trade or business if the organization lends money on a regular and continuous basis during the calendar year. Section 1.6050P-2(e) provides that lending money includes acquiring an indebtedness. An organization that purchases debt may be an organization with a significant trade or business of lending money for purposes of section 6050P(c)(2)(D) of the Code and the regulations. The section 6050P(c)(2)(D) reporting requirements apply to discharges of indebtedness that occur on or after January 1, 2005. See section 1.6050P-2(i).

The reporting requirements of section 6050P of the Code and the regulations apply on a calendar year basis. Section 1.6050P-1 of the regulations provides that, upon the occurrence of an identifiable event during a calendar year, an applicable entity must report cancellation of indebtedness of $600 or more during the calendar year unless an exception to reporting applies. Section 1.6050P-1(b)(2)(i) provides eight identifiable events that trigger reporting of cancellation of indebtedness.

Q2. How does the 36-month non-payment testing period identifiable event apply to an organization that purchases debt, and how may the organization rebut the presumption that this identifiable event has occurred?

A2. Section 1.6050P-1(b)(2)(i)(H) of the regulations provides a rebuttable presumption that an identifiable event has occurred during a calendar year if a creditor has not received a payment during a 36 month testing period ending at the close of the year. In applying the non-payment testing period to an organization that purchases debt, on December 31 of each year, the organization must determine how long it has not received payment. See section 1.6050P-1(b)(2)(iv).

The section 6050P(c)(2)(D) reporting requirements apply to discharges of indebtedness that occur on or after January 1, 2005. See section 1.6050P-2(i). If the non-payment

testing period identifiable event, or any other identifiable event, occurred prior to the effective date of section 1.6050P-2, no reporting is required upon the occurrence of a subsequent identifiable event. If, however, an identifiable event has not occurred before the effective date of section 1.6050P-2, an organization must determine if an identifiable event, including the non-payment testing period identifiable event, has occurred during 2005 or during any subsequent year for purposes of section 6050P reporting.

An organization can rebut the presumption that the non-payment testing period identifiable event occurred by engaging in significant, bona fide collection activity during the last 12 months that is more than nominal or ministerial. See section 1.6050P-1(b)(2)(iv) of the regulations. This would require the organization to pursue collection activity beyond merely generating an automated mailing. See section 1.6050P-1(b)(2)(iv)(A). The organization can also rebut the presumption if the facts and circumstances on January 31 of the following year indicate the debt has not been discharged. See section 1.6050P-1(b)(2)(iv). The facts and circumstances may include the existence of a lien relating to the debt. See section 1.6050P-1(b)(2)(iv)(B).

Q3. How should an organization that purchases debt report discharges of indebtedness if it does not know the breakdown of an amount owed into principal, interest, charges, and fees?

A3. Section 1.6050P-1(c) of the regulations provides that an "indebtedness" means any amount owed and may include stated principal, fees, stated interest, penalties, administrative costs and fines. However, a discharge of interest is not required to be reported (see section 1.6050P-1(d)(2)), and only discharges of stated principal are required to be reported in the case of a lending transaction (see section 1.6050P-1(d)(3)).

Section 1.6050P-1(a)(1) of the regulations provides, in part, that an applicable entity must report the amount of the indebtedness discharged and any other information required by Form 1099-C, "Cancellation of Debt." The amount of the discharged debt is reported in Box 2. Any amount of interest that is included in Box 2 is separately reported in Box 3. Accordingly, to report properly, an applicable entity must separately report the amount of discharged interest in Box 3 if it included the discharged interest in the total amount reported in Box 2.

If an applicable entity does not know the breakdown of a purchased debt into principal, interest, charges, and fees, it should try to obtain this information so that it can determine the amount of interest and principal discharged. If, however, the entity cannot obtain this information, the entity should report using the best available information. See Q&A8 for discussion of waiver of penalties for failure to file correct information returns and furnish correct information statements.

Q4. If an organization that purchases debt discharges an amount owed that includes interest and principal, is the organization required to report only discharges of stated principal of $600 or more?

A4. Section 6050P(b) of the Code provides that no information reporting is required under section 6050P(a) if the amount of the discharge is less than $600. Section 1.6050P-1(a)(1) of the regulations provides that, except as provided in section 1.6050P-1(d), an applicable entity must report cancellation of indebtedness of $600 or more during a calendar year. Section 1.6050P-1(c) defines indebtedness to mean any amount owed to an applicable entity, including stated principal, fees, stated interest, penalties, administrative costs, and fines. Section 1.6050P-1(d)(3) provides that an applicable entity is not required to report amounts other than stated principal in lending transactions. Section 1.6050P-2(e) provides that lending money includes acquiring an indebtedness.

Although section 1.6050P-1(c) of the regulations provides a broad definition of what may constitute indebtedness for purposes of section 6050P of the Code, section 1.6050P-1(d)(3) provides that an applicable entity is required to report only stated principal in lending transactions. If an organization that purchases debt, which has a significant trade or business of lending money, discharges an amount owed that includes interest and principal, the organization is required to report only discharges of stated principal of $600 or more.

Q5. Does filing a Form 1099-C upon the occurrence of an identifiable event prohibit future collection activity on the amount reported?

A5. Section 1.6050P-1(a)(1) of the regulations provides that solely for purposes of the reporting requirements of section 6050P of the Code, a discharge of indebtedness is deemed to have occurred upon the occurrence of an identifiable event whether or not there is an actual discharge of indebtedness. Section 6050P and the regulations do not prohibit collection activity after a creditor reports by filing a Form 1099-C.

Q6. Is an organization that is required to report under section 6050P of the Code also required to notify a debtor that it will report a discharge of indebtedness prior to filing or that the discharge may be gross income?

A6. Section 6050P of the Code and the regulations do not require an applicable entity to notify a debtor that it will report a discharge of indebtedness prior to filing the Form 1099-C with the Service or that the discharge of indebtedness may be gross income. Section 6050P(d) provides, however, that an applicable entity required to file a return with the Service must also furnish a copy of the information return to the debtor.

Q7. Does section 6050P of the Code require collection attorneys, collection agencies, or organizations that purchase debt to notify a debtor of the tax consequences of a

discharge of indebtedness resulting from a settlement at less than the full amount owed?

A7. Section 6050P of the Code and the regulations do not require collection attorneys, collection agencies, or applicable entities to notify a debtor of the tax consequences of a discharge of indebtedness resulting from a settlement at less than the full amount owed.

Q8. Does section 6050P of the Code or the regulations provide a safe harbor to protect a creditor who informs a debtor that it will report cancellation of indebtedness from inadvertent violations of the Fair Debt Collections Practices Act, state consumer protection laws, the Federal Trade Commission Act, and state deceptive trade practices acts?

A8. Section 6050P of the Code and the regulations do not provide a safe harbor to protect a creditor who informs a debtor that it will report cancellation of indebtedness from inadvertent violations of the Fair Debt Collections Practices Act, state consumer protection laws, the Federal Trade Commission Act, and state deceptive trade practices acts. How the information reporting requirements of section 6050P impact other Federal or state consumer laws is beyond the scope of regulations under section 6050P.

Q9. What penalties may the Service impose for failure to report under section 6050P of the Code, and are there circumstances in which the Service may waive the penalties?

A9. Section 6721 of the Code provides a penalty for failure to file correct information returns with the Service. The Service may impose the penalty for: (1) a failure to file an information return before the due date, or (2) a failure to include all of the information required to be shown on the return or the inclusion of incorrect information. The penalty amount under section 6721 is generally $50 for each return with respect to which a failure occurs, not to exceed $250,000 per filer/per year. There are exceptions to the penalty and limitations to the maximum penalty amount that may be imposed if the filer corrects the failure within a specified time period, if the filer's failures to include information are de minimis, or if the filer's gross receipts do not exceed certain amounts. See section 6721(b)-(d). Section 6721(e) allows the Service to impose a higher penalty in the case of failures due to intentional disregard of filing requirements.

Section 6722 of the Code provides a penalty for a failure to furnish correct information statements. The Service may impose the penalty for: (1) failure to furnish an information statement on or before the due date, or (2) failure to include all of the information required to be shown on an information statement or the inclusion of incorrect information. The penalty amount under section 6722 is $50 per failure, not to exceed $100,000 per filer/per year. Section 6722(c) allows the Service to impose a higher penalty in the case of failures due to intentional disregard.

Pursuant to section 6724 of the Code and the regulations, the Service may waive penalties under section 6721 and section 6722 if the filer can demonstrate that the failure is due to reasonable cause and not to willful neglect. A filer may obtain a waiver of the penalty if it can establish that either: (1) there are significant mitigating factors with respect to the failure, as described in section 301.6724-1(b) of the Regulations on Procedure and Administration, or (2) the failure arose from events beyond the filer's control, as described in section 301.6724-1(c). In addition, the filer must demonstrate that it acted in a responsible manner, as described in section 301.6724-1(d), both before and after the failure occurred.

This letter calls your attention to certain general principles of the law. It is intended for informational purposes only and does not constitute a ruling. See Section 2.04 of Rev. Proc. 2005-1, 2005-1 I.R.B. 1. If you have any additional questions, please contact our office at .

Sincerely yours,

Donna Welch
Senior Counsel, Administrative Provisions &
Judicial Practice
(Procedure & Administration)

E. Kirschner Declaration of Trust and David E. Kirschner as trustee, the Margaret Kirschner Declaration of Trust and Margaret Kirschner as trustee, The Noble Foundation, Philip and Cheryl Kirschner, Khajha Kirschner, Pamela Kirschner Bolduc, the Mary C. Kirschner 2007 Trust, and David E. Kirschner as trustee of the Mary C. Kirschner 2007 Trust; to retain, as a group acting in concert, voting shares of Town and Country Financial Corporation, Springfield, Illinois, and thereby indirectly retain control of Town and Country Bank, Springfield, Illinois, and Logan County Bank, Lincoln, Illinois.

In connection with the above application, Margaret Kirschner, individually and as trustee and co-trustee of various trusts, has applied to retain voting shares of Town and Country Financial Corporation, Springfield, Illinois, and thereby indirectly retain control of Town and Country Bank, Springfield, Illinois, and Logan County Bank, Lincoln, Illinois.

In addition, David E. Kirschner, individually and as trustee and co-trustee of various trusts, has applied to retain voting shares of Town and Country Financial Corporation, Springfield, Illinois, and thereby indirectly retain control of Town and Country Bank, Springfield, Illinois, and Logan County Bank, Lincoln, Illinois.

C. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Stephen L. Grobel, Tabb, Virginia; to individually acquire voting shares of First Community Bancorp, Inc., Glasgow, Montana, and thereby indirectly acquire voting shares of First Community Bank, Glasgow, Montana.

In addition, Stephen L. Grobel and Peter J. Grobel, Helena, Montana, as members of the Grobel Family Group, to acquire voting shares of First Community Bancorp, Inc., and thereby indirectly acquire voting shares of First Community Bank, Glasgow, Montana.

D. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. Castle Creek Capital Partners IV, L.P., and persons that are acting with, or control Castle Creek Capital Partners IV, L.P. (Castle Creek Advisors IV, LLC; Castle Creek Capital IV, LLC; John T. Pietrzak; Pietrzak Advisory Corp.; John M. Eggemeyer, III; JME Advisory Corp.; William J. Ruh; Ruh Advisory Corp.; Mark G. Merlo; Legions IV Corp.; Joseph Mikesell Thomas and Thomas Advisory Corp., all of Rancho Santa Fe, California; to acquire voting shares of First NBC Bank Holding Company, and thereby indirectly acquire voting shares of First NBC Bank, both of New Orleans, Louisiana.

Board of Governors of the Federal Reserve System, July 22, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–18956 Filed 7–26–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Statement of Policy Regarding Communications in Connection With the Collection of Decedents' Debts

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Policy statement.

SUMMARY: Pursuant to the FTC's authority to enforce the Fair Debt Collection Practices Act (''FDCPA''), 15 U.S.C. 1692l(a), and Section 5 of the Federal Trade Commission Act (''FTC Act''), 15 U.S.C. 45, the Commission issues this final Statement of Policy Regarding Communications in Connection with the Collection of Decedents' Debts (''Statement'').[1] When a person dies, creditors and the debt collectors they hire usually have the right to collect on the person's debts from the assets of his or her estate. Sections 805(b) and (d) of the FDCPA prohibit debt collectors from contacting individuals other than the debtor to collect a debt, unless the individual is the debtor's spouse, parent (if the debtor is a minor), guardian, executor, or administrator. The Commission has learned that, to recover on a decedent's debts, some debt collectors contact the decedent's relatives, although these relatives may have no authority to pay the debts from the decedent's estate and no legal obligation to pay the debts from their own assets. By contacting persons who are not specified in Section 805 of the FDCPA, and by engaging in practices that may deceive those persons about their obligations, these debt collectors may be violating the FDCPA. The Commission recognizes, however, that imposing unnecessary restrictions on a debt collector's ability to collect a decedent's debt from the person authorized to pay those debts may instead cause some debt collectors to seek to recover by invoking the probate process, imposing substantial costs on the estate and delaying the distribution of assets to heirs and beneficiaries. To balance these interests and protect consumers from unfair, deceptive, and abusive practices, this Statement announces that the FTC will forebear from enforcing Section 805(b) of the FDCPA, 15 U.S.C. 1692c(b), against a debt collector for communicating about a decedent's debts with persons specifically identified as appropriate to contact under Section 805 of the FDCPA (*e.g.,* spouse, parent, guardian, executor, or administrator) or any other person who has the authority to pay the decedent's debts from the assets of the decedent's estate. The Statement also clarifies how a debt collector can comply with the law in locating the person who has the requisite authority with whom to discuss the decedent's debts. Finally, the Statement explains how a debt collector can avoid engaging in deceptive practices in communicating with a third party about a decedent's debts.

DATES: This final statement of policy is effective on August 29, 2011.

ADDRESSES: Requests for copies of this Statement should be sent to: Public Reference Branch, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Room 130, Washington, DC 20580. The complete record of this proceeding is also available at that address. Relevant portions of the proceeding, including the final Statement, are available at (*http://www.ftc.gov*).

FOR FURTHER INFORMATION CONTACT: Christopher Koegel or Quisaira Whitney, Attorneys, Division of Financial Practices, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3224.

SUPPLEMENTARY INFORMATION:

I. The Proposed Policy Statement and Public Comments Received

On October 8, 2010, the Commission published in the **Federal Register** a notice of proposed statement of enforcement policy regarding communications in connection with the collection of decedents' debts (''proposed Statement'').[2] The proposed Statement addressed three issues under the FDCPA pertaining to debt collectors who attempt to collect on the debts of deceased persons: (1) With whom a debt collector may lawfully discuss a decedent's debt consistent with the

[1] An enforcement policy statement describes the Commission's future enforcement plans, goals, and objectives with respect to a particular industry or practice. Enforcement policy statements do not have the force or effect of law, but they may reflect the Commission's interpretation of a legal requirement.

[2] 75 FR 62,389 (Oct. 8, 2010).

limitations in Sections 805(b) and (d) of the FDCPA; (2) how a debt collector may locate the appropriate person with whom to discuss the debt and seek payment; and (3) how a debt collector can avoid misleading consumers about their personal obligation to pay the debt.

The proposed Statement noted that Sections 805(b) and (d) of the FDCPA limit the persons whom a collector can contact about a debt (including a decedent's debt) to the debtor's spouse, parent (if the debtor is a minor), guardian, executor, or administrator. The proposed Statement then described the evolution of state probate laws and estate resolution procedures that, in recent years, have expanded the class of persons who have the authority to pay a decedent's debts from the assets of the decedent's estate beyond those listed in Sections 805(b) and (d). In light of these developments, the Commission proposed that it would forebear from taking enforcement action against collectors who contacted persons other than those listed in Sections 805(b) and (d), if those persons had the authority to pay the decedent's debts from the estate's assets. The proposed Statement further described permissible means by which a collector could identify and locate a person with such authority, and admonished collectors not to deceive such persons into believing they were obligated personally to pay the debt, recommending that collectors disclose affirmatively that the person was not so obligated.

The notice requested public comment on the overall costs, benefits, necessity, and regulatory and economic impact of the proposed Statement and designated November 8, 2010, as the deadline for filing public comments. On November 8, 2010, the Commission extended the deadline for submission of public comments until December 1, 2010.[3]

In response to the proposed Statement, the Commission received 145 total comments[4] from stakeholders, including consumer and community groups, state law enforcers, attorneys who represent debt collectors, debt collectors who specialize in the collection of deceased accounts, and individual consumers. As discussed further below, the comments provided a diverse array of opinions and suggestions on the proposed Statement. Based on the comments and other information obtained by the Commission, the Commission has made several revisions to the proposed Statement in this final Statement.

II. Background

A. Probate Law and Estate Resolution

Most debts incurred in life do not simply vanish upon death.[5] Instead, the decedent's estate (comprised of the assets held by the decedent at the time of death) is responsible for paying them. Some debts arise from accounts on which the decedent was current at the time of death (*e.g.,* the amount owing for the decedent's last electric bill, even if he or she was current on the account at the time of death). Other debts may be on bills for which the decedent was delinquent in making payments at the time of death (*e.g.,* the amount owing for the last six months on the decedent's electric bill). Regardless of whether the decedent was current or delinquent on a bill at the time of death, creditors and collectors, for a period of time, generally are permitted under state law to seek to recover from the decedent's estate.

To understand consumer protection concerns related to collecting on decedents' debts requires knowledge not only of the FDCPA but of state probate and estate law as well. As detailed in the proposed Statement,[6] there is no single set of laws and procedures that governs the resolution of a decedent's estate in all or even most states. Indeed, even individual counties in some states have their own requirements. Generally, however, there are two main questions that probate and estate laws answer: (1) What assets are part of the estate, and thus at least potentially subject to creditors' claims; and (2) what procedures will the estate use to distribute its assets.

1. Assets in the Decedent's Estate

Not all of a decedent's assets become part of his or her estate. Assets that pass outside of the estate generally include: (1) Those that are jointly owned by the decedent and another person;[7] and (2) those that pass directly to individuals named as beneficiaries.[8] Assets that never become part of the decedent's estate generally are beyond the reach of creditors and third-party debt collectors. All other assets, including cash and real and personal property owned solely by the decedent, become part of the decedent's ''gross estate.'' Funeral and administrative expenses, homestead and exempt property allowances, and family allowances[9] are paid out of the estate first, leaving the ''net estate.'' Creditors and third-party debt collectors can seek to collect amounts the decedent owes them from the net estate,[10] after which the remaining assets in the estate are transferred to the decedent's heirs (if the decedent died without a will) or beneficiaries (if the decedent had a will).

2. Distribution of Estate Assets

How a decedent's assets are distributed also depends on the probate practices that are administered under state laws and procedures, which vary significantly. All of the various procedures, however, are designed to ensure that creditors are provided with notice of the decedent's passing, and that some finality is achieved with regard to the decedent's financial affairs.

At the time Congress enacted the FDCPA, most estates were resolved through a process known as formal probate and administration. In that process, the probate court appoints a person with the title of ''executor'' or ''administrator'' to handle the estate's affairs. Section 805 of the FDCPA allows collectors to contact persons with those titles about the decedent's debts.

Formal probate, however, has proven to be time-consuming and expensive for consumers.[11] For example, many estates

[3] 75 FR 70,262 (Nov. 17, 2010).

[4] One comment was submitted twice (nos. 89 and 90, by the National Consumer Law Center); thus, the Commission received 144 distinct comments, which are available at *http://www.ftc.gov/os/comments/decedentdebtcollection/index.shtm.*

[5] *See, e.g.,* Portillo (''as debt doesn't disappear when a person dies * * *''). Comments are identified by the name of the organization or the last name of the individual who submitted the comment.

[6] 75 FR 62,389 at 62,390–62,392 (Oct. 8, 2010).

[7] Common examples of joint assets that do not become part of the estate are the proceeds of joint bank accounts, and real property held by joint tenancy. In addition, in the ten states with community property laws, assets accumulated during a marriage generally are considered joint property, but the state laws vary as to which assets of the community can be reached by creditors of one of the spouses. The community property states are Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin.

[8] Such assets include the proceeds from life insurance policies (where the beneficiary is not the estate), union or pension benefits, Social Security benefits, veterans' benefits, and various types of retirement accounts.

[9] A ''family allowance'' is an amount of money payable out of the estate to support, typically, the spouse and minor children during the pendency of the estate administration.

[10] In some circumstances, another person, including a surviving relative, may be personally liable for the decedent's debts. Examples include a person who shared a joint credit card account with the decedent or who co-signed or guaranteed repayment of credit extended to the decedent. In such cases, both the other person and the decedent's estate are liable for the account balance at the time of the decedent's death. This Statement does not apply if a creditor or a collector is collecting from a person who is personally liable for the decedent's debt, because in those circumstances the person is a ''consumer'' rather than a third party for purposes of Section 805(b) of the FDCPA.

[11] *See, e.g.,* Nat'l Consumer Law Ctr. at 4 (''Survivors often feel the costs of probate are prohibitive.''); Steven Seidenberg, *Plotting Against Probate: Efforts by estate planners, courts and legislatures to minimize probate haven't killed it*

that go through formal probate remain open for 18 months, and, in some cases, even longer. This delay is due, in part, to mandatory periods during which the estate must publish notice of the probate proceeding to potential creditors, as well as months-long periods in which creditors have a right to file claims against the estate.[12] In instances where the estate includes significant assets, states generally have determined that the benefits of such rigorous notice requirements outweigh the costs to estates, heirs, and beneficiaries.

Most states, however, permit less formal procedures for resolving smaller estates. These procedures are quicker, easier, and less expensive for consumers. For example, nineteen states have adopted the Uniform Probate Code (''UPC''),[13] which makes probating a will and administering an estate simpler and less expensive and gives more flexibility to executors than formal probate.[14] The UPC and similar state laws have created a ''flexible system of administration'' designed to provide persons interested in decedents' estates with the level of procedural and adjudicative safeguards appropriate for the circumstances.[15]

In addition, the UPC and state laws generally exempt entirely certain ''small estates'' [16] with no real property from probate and administration. These laws provide two additional ways of distributing the small estate's assets: (1) Collection of personal property using an out-of-court affidavit process; and (2) ''summary administration.'' [17] Under these various alternatives to formal probate, the person who is authorized to deal with the estate's creditors often does not receive the title of ''executor'' or ''administrator,'' but is called a ''personal representative,'' ''universal successor,'' or some other title. Finally, extrajudicial disposition of decedents' estates also occurs, whereby heirs distribute the assets without state probate codes providing any procedural or adjudicative safeguards.

In sum, there are multiple ways of distributing an estate's assets other than through the traditional formal probate process. Because of this evolution of probate law, most estates today do not go through formal probate, and thus no executor or administrator is appointed.[18] Instead, far more estates are administered through one of the less formal options. But even when the estate is administered outside of the probate process, a creditor or collector always has the option of initiating a formal probate of the estate in order to collect on a debt, thereby preventing the estate's survivors from taking advantage of the benefits of the less formal probate alternatives.[19] In most cases, filing these actions ''impose[s] legal, accounting and other professional expenses and fees on those families, unnecessarily draining off assets that could otherwise go to the family.'' [20]

B. Current Industry Practice in Collecting Decedents' Debt

A number of debt collectors now specialize in the collection of debts owed by deceased debtors. The FTC has conducted investigations of several of these collectors and, in doing so, has reviewed recordings of thousands of collection calls. From this law enforcement experience and the comments received in response to the proposed Statement, the Commission has gained insight into the current practices of collectors who seek to recover on decedents' debts.

In collecting on deceased accounts, collectors must first identify the appropriate person(s) with whom they can discuss the decedent's debt. As noted earlier, Section 805 of the FDCPA permits collectors to contact certain individuals other than the debtor, such as the executor or administrator of the decedent's estate. Thus, if the probate court has named an executor or administrator, collectors can contact that person to seek payment from the estate's assets. At present, however, few estates have a person with the official title of ''executor'' or ''administrator.'' As a result, some collectors attempt to recover by cold-calling relatives, asking whether they are the ''person handling the final affairs'' of the decedent or are the decedent's ''personal representative.'' In some cases, collectors ask whether the family member with whom they are speaking has been opening the decedent's mail or paid for the funeral. Some collectors treat an affirmative response to such questions as sufficient proof that these relatives are responsible for resolving the decedent's estate.

Alternatively, some collectors send letters and other written communications addressed to either ''The Estate of'' or ''The Executor or Administrator of the Estate of'' the decedent. These letters often disclose the details of the decedent's debt, including the original creditor and the amount due. The letters cause many of those who read them—who may or may not be the executor or administrator—to call collectors to discuss decedent's debts.[21]

Once collectors have determined that they are speaking with someone whom they have decided to treat as responsible for resolving the decedent's estate, they often proceed to discuss the decedent's debt and inquire about assets and liabilities. This frequently includes a series of questions about assets the decedent may have left behind, such as whether the decedent owned a car, a house, a bank account, a life insurance policy, or a retirement account. These assets may or may not be legally collectible to pay the decedent's debts, depending on how the assets were titled,[22] whether the decedent was married at the time of death and lived in a community property state, who was the designated beneficiary of the asset, and other considerations.[23]

Finally, in some cases, collectors ask relatives to make a ''voluntary'' or ''family'' payment. For example, some collectors state or imply that the family has a moral obligation to pay the

yet, 94 A.B.A.J. 56 (May, 2008) (''Probate can be expensive * * *. Probate can tie up an estate * * * even a short delay in distributing assets can hurt beneficiaries.'').

[12] *See, e.g.,* P. Mark Accettura, *The Michigan Estate Planning Guide,* at Ch. 7 (2d ed. 2002), available at *http:www.elderlawmi.com/the-michigan-estate-planning-guide/chapter-7/chapter-7-probate.*

[13] Alaska, Arizona, Colorado, Hawaii, Idaho, Maine, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Jersey, New Mexico, North Dakota, Pennsylvania, South Carolina, South Dakota, Utah, and Wisconsin. Each state that has adopted the UPC, however, has modified it, in some cases extensively.

[14] UPC, Article III, Part 12, General Comment (2006).

[15] *See, e.g.,* UPC, Article III, General Comment (2006).

[16] The amount considered to be a ''small estate'' varies by jurisdiction. For example, in California, probate and administration is required if the amount of the estate is greater than $100,000. Cal. Prob. Code 13100 (2009). In Alabama, however, probate and administration is required if the value of the estate exceeds $25,000. Ala. Code 43–2–692 (2010).

[17] As detailed further in the proposed Statement, 75 FR 62,392, many states allow certain qualified individuals to acquire title to certain kinds of property (like a financial account) by signing an affidavit attesting, among other things, that they are entitled to the property and that all of the decedent's debts have been satisfied. ''Summary administration'' is a streamlined probate process available for smaller, uncontested estates. Summary administration typically requires far less involvement from attorneys and probate courts, allowing beneficiaries to save time and money.

[18] *See* Nat'l Consumer Law Ctr. at 4 (''Probably the majority of estates are not probated.'').

[19] *See id.* (''Decedent's creditors are permitted by state law to initiate administration of the estate if they believe it will be worthwhile and the survivors do not.'').

[20] Barron, Newburger & Sinsley, PLLC (Dec. 1, 2010) at 3.

[21] *See* Phillips & Cohen Assocs., Ltd. at 5; West Asset Mgmt., Inc. at 4.

[22] For example, as described above, assets held jointly often are outside the estate and cannot be reached by collectors to pay the decedent's debts.

[23] *See* Section II.A.1, *supra.*

decedent's debt, or that the decedent would have wanted the debt to be paid.

C. The Applicability of the FDCPA

The FDCPA covers the conduct of third-party debt collectors who seek to recover on deceased accounts. Several commenters interpreted the proposed Statement as conveying that the FTC would not enforce the FDCPA in the context of decedents' debts,[24] or that, once a collector was speaking to an authorized representative of the estate, the collector would be free to use deceptive, unfair, or abusive practices to induce the representative to pay the decedent's debt.[25] These interpretations are incorrect.

The FDCPA applies to all efforts by third-party collectors to collect on the obligations of a debtor—including a deceased debtor—to repay a debt that arose out of a transaction in which the money, property, insurance, or services that were the subject of the transaction were primarily for personal, family, or household purposes.[26] Accordingly, the protections and requirements of the FDCPA apply in the context of collecting on the debts of a deceased debtor.[27] Most significantly, Sections 806, 807, and 808 protect all persons against unfair, deceptive, and abusive practices in debt collection. Indeed, as a representative of debt collectors engaged in the collection of decedents' debts acknowledged:

> The proposed statement of the FTC enforcement policy does nothing to provide cover for collectors who engage in deceptive or misleading representations. Current law already prohibits such activities and the proposed Policy Statement specifically prohibits misleading relatives into thinking that they have an obligation to pay the decedent's debts.[28]

Moreover, Sections 804 and 805 limit how collectors may communicate in connection with collecting on deceased accounts.[29]

III. Discussion of the Final Policy Statement

This final Statement of Policy Regarding Communications in Connection with the Collection of Decedents' Debts provides guidance to consumers, debt collectors, and creditors concerning how the FTC will enforce the law in connection with the collection of the debts of deceased debtors. In particular, this Statement sets forth the types of individuals whom debt collectors may contact to collect on deceased accounts and what collectors may do to locate them, without being subject to FTC enforcement efforts. The Statement also advises collectors that certain practices in communicating with these individuals may be unfair, deceptive, or abusive in violation of the FDCPA or Section 5 of the FTC Act, and engaging in such conduct may subject them to law enforcement action.[30]

A. Permissible Individuals for Collection Communications

The proposed Statement enunciated that the Commission would not bring an enforcement action under Section 805(b) of the FDCPA against a debt collector for communicating, for the purpose of collecting a decedent's debt, with any of the individuals specified in Section 805(d)—the decedent's spouse, parent (if the decedent was a minor at the time of death), guardian, executor, or administrator—or another person who has authority to pay the decedent's debts from the assets of the decedent's estate. The Commission has determined to retain this policy in the final Statement.

A broad spectrum of comments addressed this proposal. On one end of the spectrum, several commenters asserted that collectors should be restricted to contacting only limited types of individuals. Several commenters noted that the express language of Section 805 of the FDCPA limits the acceptable contacts to specific classes of individuals; many of these commenters recommended that the Commission limit the permissible contacts to those specific classes. Several commenters, however, appeared to suggest restrictions beyond those in the statute, *e.g.,* that creditors' and collectors' ''sole remedy should be to file a claim against the estate for the estate to pay''[31] or that the types of persons who could be contacted be narrower than under the express language of Section 805.[32] Another commenter recommended that the Statement permit collectors to contact ''*only* individuals specified by the FDCPA or otherwise identified in public probate court records as having authority to pay the decedent's debts''.[33]

At the other end of the spectrum, other commenters contended that collectors should be allowed to contact a broad range of types of individuals.

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[24] *See, e.g.,* Privacy Rights Clearinghouse at 5.

[25] *See, e.g.,* MacQuarrie; Marino; and Merrick.

[26] *See* Section 803(3), (5), and (6) of the FDCPA. 15 U.S.C. 1692a(3), (5), and (6). One law firm representing debt collectors argued in its comment that the FDCPA does not apply to any debt placed for collection after the debtor's death because it then becomes the debt of an estate and not of a ''natural person'' as the term is used in the definition of ''consumer'' in Section 803(3). *See* Barron, Newburger & Sinsley, PLLC (Nov. 4, 2010) at 2, n.1. This argument is incorrect. For purposes of the FDCPA, the critical time for determining the status of a debt is when the obligation arises, and not when the debt is placed for collection. *See, e.g., Newman* v. *Boehm, Pearlstein, & Bright, Ltd.,* 119 F.3d 477, 481 (7th Cir. 1997) (''the obligation to pay is derived from the purchase transaction itself.''); *Zimmerman* v. *HBO Affiliate Group,* 834 F.2d 1163, 1168–69 (3d Cir. 1987) (the transaction that creates a debt under the FDCPA occurs when ''a consumer is offered or extended the right to acquire 'money, property, insurance, or services' which are 'primarily for household purposes' and to defer payment.''). In the case of a deceased account, the obligation is a debt as defined in the FDCPA when the decedent undertook the obligation. At that point, the debtor was alive, and thus the debt was that of a ''natural person.'' The debtor's subsequent death does not change that fact.

[27] *See* ACA Int'l at 4 (''the personal representative is afforded all the protections and rights available to the consumer under the Act.'').

[28] *See* Barron, Newburger & Sinsley, PLLC (Dec. 1, 2010) at 2.

[29] One commenter argued that the term ''spouse'' in Section 805(d), 15 U.S.C. 1692c(d), does not cover widows or widowers because marriage terminates at the death of a spouse. *See* Nat'l Consumer Law Ctr. at 1–2. Therefore, the commenter maintained that collectors should not be permitted to discuss the decedent's debts with surviving spouses. This is incorrect. In 1996, Congress created an omnibus definition for ''spouse'' to apply ''[i]n determining the meaning of any Act of Congress, or any ruling or interpretation of the various administrative bureaus and agencies of the United States.'' 1 U.S.C. 7. The only court to address whether a surviving spouse is a ''spouse'' within the omnibus definition held that a surviving spouse remains a ''spouse'' in determining the meaning of any Act of Congress. *Taing* v. *Napolitano,* 567 F.3d 19 (1st Cir. 2009). The court expressly rejected the government's arguments that the use of the present tense in the omnibus definition and what the government contended was the common, ordinary meaning of the term compelled the conclusion that the plaintiff ceased being a ''spouse'' upon her husband's death. Rather, the court stated that the traditional meaning of ''spouse'' includes surviving spouse and cited *Black's Law Dictionary* to note that ''surviving spouse'' is subsumed within the dictionary definition of ''spouse.'' *Id.* at 24–26.

[30] The Commission's views in this Statement are specifically limited to the situation of the collection of a decedent's debts. As detailed throughout the Statement, these types of collections pose unique challenges in the enforcement and application of the FDCPA.

[31] Andrew; *see also* Jerome S. Lamet, Ltd. d/b/a Debt Counsel for Seniors and the Disabled (''Current probate laws give creditors sufficient protection in that they require notification to creditors that an estate was opened and that the creditors are free to submit claims. Even in small estate resolutions, creditors are either notified that there is an estate, or an affidavit is signed stating that the creditor's claims are satisfied.''). These commenters appear to be arguing that creditors and collectors not be permitted to contact anyone directly, but rather must follow probate procedures by filing a claim. As explained below, the Commission believes that forcing collectors to use the probate process would, in many instances, increase costs and inconvenience for the estate's beneficiaries or heirs.

[32] *See, e.g.,* Uhlmansiek (''there must first be proof that the person being contacted has authority over a minimum portion of the assets of the decedent's estate, provided by either that person or any of the previously authoritative parties listed in section 805.''); AARP at 1 (''AARP strongly opposes the proposed suggestion that an unobligated survivor may be contacted by a debt collector regarding collection of a decedent's debt.'').

[33] Privacy Rights Clearinghouse at 3.

One debt collector argued that the FTC should permit collectors to discuss a decedent's debts with anyone who self-identifies as a ''person handling the final affairs'' or a ''personal representative'' of the estate. This commenter asserted that those forms of self-identification are synonymous with the terms ''executor'' or ''administrator'' in Section 805 and are not too vague for a consumer to understand.[34] The commenter suggested that the Statement focus instead on requiring ''full disclosure and avoidance of any misrepresentation.''[35]

Between these two ends of the spectrum, many comments from government regulators as well as the debt collection industry supported the approach proposed by the Commission. An association of state regulators and a local regulator of debt collectors commented that the proposed Statement reached a reasonable accommodation between protecting consumers and allowing legitimate debt collection activities to occur.[36] Debt collection industry representatives articulated similar views.[37] One industry representative emphasized that the FTC's proposed approach would be consistent with other provisions of Federal law.[38]

Based on the information received in the comments and on the Commission's law enforcement experience, the FTC has decided to retain the proposed Statement's approach in the final Statement: The Commission will forebear from taking law enforcement action against a debt collector for communicating about a decedent's debts with either the classes of individuals specified in Sections 805 (b) and (d) of the FDCPA or an individual who has the authority to pay the debts out of the assets of the decedent's estate. Individuals with the requisite authority may include personal representatives under the informal probate and summary administration procedures of many states, persons appointed as universal successors, persons who sign declarations or affidavits to effectuate the transfer of estate assets, and persons who dispose of the decedent's assets extrajudicially.

The Commission believes that this enforcement policy best ensures the protection of consumers while allowing collectors to engage in legitimate collection practices. If collectors are unable to communicate about a decedent's debts with individuals responsible for paying the estate's bills, because those individuals were not court-appointed ''executors'' or ''administrators,'' collectors would have an incentive to force many estates into the probate process to collect on the debts. Typically, it is easy and inexpensive under state law for creditors and others to petition for the probate of an estate.[39] The actual probate process, on the other hand, can impose substantial costs and delays for heirs and beneficiaries.[40] Policies that result in the imposition of these costs are contrary to the goal of state probate law reforms to promote simpler and faster alternatives to probate, especially for smaller estates.

B. Locating Proper Individuals for Deceased Account Collection

In instances in which collectors do not know the identity of those with the authority to pay the decedent's debts from the estate's assets, they may communicate with others to try to identify these individuals. The proposed Statement emphasized that these efforts are location communications to which Section 804 of the FDCPA applies. Section 803(7) of the FDCPA defines ''location information'' as ''a consumer's place of abode and his telephone number at such place, or his place of employment.'' In addition, Section 804 requires that in communications seeking location information, a debt collector must: ''(1) Identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer; [and] (2) not state that such consumer owes any debt''.[41] The comments received in response to the proposed Statement offered views on what collectors must do in seeking to locate those with the authority to pay decedents' debts, including whether strict adherence to the literal terms of Section 804 is practical and beneficial to consumers in the context of the collection of deceased accounts.

1. Identifying the Person With the Authority To Pay the Decedent's Debts

Some comments advocated that collectors should check available public records for the names and contact information of court-appointed executors and administrators before contacting other individuals.[42] Other comments, however, pointed out that there are significant logistical and cost barriers to conducting a thorough search of state and local probate records.[43] Although such challenges may exist in some jurisdictions, the FTC encourages collectors to make a good faith effort[44] to do record searches before contacting individuals other than executors and

[34] West Asset Mgmt., Inc. at 3.

[35] *Id.*

[36] *See* N. Am. Collection Agency Regulatory Ass'n (''We believe the three basic guidelines are tailored to effectively collect these types of debts and at same time protect the grieving parties from feeling obligated to personally settle the financial affairs of their deceased loved ones.''); New York City Dept. of Consumer Affairs at 1 (''the New York City Department of Consumer Affairs (DCA) supports and strongly encourages the adoption of the Federal Trade Commission's (FTC) proposed policy statement * * *'').

[37] *See, e.g.,* ACA Int'l at 4 (''ACA agrees with the Commission's conclusion that collectors are permitted to communicate with the person who has authority to pay a decedent's estate, even if that person does not fall within the enumerated categories listed in Section 805(d) of the FDCPA.''); Barron, Newburger & Sinsley, PLLC (Dec. 1, 2010) at 3 (''instituting probate proceedings would impose legal, accounting and other professional expenses and fees on those families, unnecessarily draining off assets that could otherwise go to the family * * * The FTC's approach, unlike that suggested by the NCLC, avoids imposing an unwanted and costly probate proceeding that could delay resolution of the estate.''); Reich; Vargo (''I agree with the FTC's opinion. The Personal Representative of the decedent is, in essence, the designated agent of the decedent in concluding the decedent's financial affairs. The FDCPA specifically authorizes communication with a person designated by the debtor to process the matter at issue.'').

[38] Barron, Newburger & Sinsley, PLLC (Nov. 4, 2010) at 7. To implement the Credit Card Accountability Responsibility and Disclosures Act of 2009 ''CARD Act''), the staff of the Federal Reserve Board recently modified its commentary on Regulation Z under the Truth in Lending Act to provide that ''the term 'administrator' of an estate means an administrator, executor, *or any personal representative of an estate who is authorized to act on behalf of the estate.*'' Regulation Z Commentary, 22.6.11(c)(1) (emphasis added). The Commentary allows debt collectors to contact such individuals to effectuate the timely resolution of credit card debts of decedents, a goal the comment asserted was consistent with the objectives the FTC espoused in its proposed Statement.

[39] The filing fee that a collector must pay to force an estate into probate varies by jurisdiction, ranging from nothing to as much as several hundred dollars. *See, e.g.,* Ala. Code 12–19–90 ($45 + $3 per page over five pages); Ark. Code 16–10–305 ($140); Nev. Rev. Stat. 19.013 (up to $20,000, no fee; $20,000–200,000, $99 fee; over $200,000, $352); Wyo. Stat. Ann. 5–3–206 (under $5,000, $50 fee; $5,000–10,000, $55; for each $10,000 over $10,000, another $5).

[40] 75 FR 62,389 at 62,390–62,393 (Oct. 8, 2010). *See also* Barron, Newburger & Sinsley, PLLC (Dec. 1, 2010) at 3; Phillips & Cohen Assocs., Ltd. at 3.

[41] A collector thus cannot mention a specific debt during a location communication and cannot ask for payment from the third party with whom they are speaking, including asking for payment out of any ''moral'' obligation. To do so would violate Section 804.

[42] *See* Barron, Newburger & Sinsley, PLLC (Nov. 4, 2010) at 3–4.

[43] *See* Bass & Assocs., P.C. at 1–2; West Asset Mgmt., Inc. at 4 (''local court records are not easily accessible and even where a formal estate will be opened nothing may be filed for several months after the date of death. Furthermore, collectors may not know the county or even the state where an estate would be properly opened.'').

[44] A good faith effort, for example, would include checking the records of the probate court in the jurisdiction where the decedent resided, which is typically the jurisdiction where probate will occur.

administrators. In addition, once a collector has identified an executor or administrator, the collector thereafter must communicate only with that individual (or any type of individual specifically identified in Sections 805(b) and (d)) about the decedent's debts.[45] Limiting communications to the executor or administrator minimizes unnecessary contacts with family members and provides additional protection against unfair, deceptive, and abusive collection practices.

2. Information That May Be Revealed in Location Communications

In a location communication seeking the person with the authority to pay the decedent's debts from the estate, the FDCPA imposes limitations on what can be conveyed to the recipient of the communication in order to protect the privacy of the debtor. Section 804 specifically prohibits collectors from revealing that the debtor owes a debt.[46] In addition, Section 804(2) prohibits collectors from making statements that the debtor owes a debt, while Sections 804(4) and (5) prohibit disclosing that the debtor owes a debt when communicating by post card or through information on the outside of an envelope, respectively.

The proposed Statement suggested that a location communication in the context of a deceased debtor can state that the collector is seeking to identify and locate the person who has the authority to pay any outstanding bills of the decedent out of the decedent's estate, but cannot make any other references to the decedent's debts or provide any information about the specific debts at issue. The Commission has determined to retain this policy in this final Statement.

The Commission received numerous comments addressing whether strict adherence to these requirements is in the public interest in the context of the collection of decedents' debts.[47] On one end of the continuum, several commenters asserted that because letters addressed to either ''the Estate of'' or ''the Executor or Administrator of the Estate of'' the decedent are consistent with an effort to have individuals with the requisite authority open the letters, collectors should be permitted to inform the persons opening such letters that the decedent owed a debt and the details of such debt.[48] In effect, these commenters posit that a letter addressed to the estate or an unnamed ''executor'' or ''administrator'' is sufficiently targeted at a person considered to be a ''consumer'' under Section 805 of the FDCPA (*e.g.,* a surviving spouse, administrator, or executor) to constitute a collection communication rather than a location communication. Because these letters are collection communications, the collectors should be permitted to mention, and seek payment on, the decedent's debts.

The Commission disagrees with this analysis. The Commission's law enforcement experience suggests that letters addressed to the estate or an unnamed administrator or executor (legal terms with which many consumers are unfamiliar) often are opened by individuals who do so in an effort to help out, but who lack the authority to pay the decedent's debts from the estate's assets.[49] Accordingly, the Commission concludes that a communication addressed to the decedent's estate, or an unnamed executor or administrator, is a location communication and must not refer to the decedent's debts or otherwise violate Section 804 of the FDCPA.[50]

On the other end of the continuum, comments from two consumer advocacy groups noted that just using the word ''debt'' (and not even providing any more specific information such as the creditor or the amount) in location communications was inconsistent with the express language of Section 804(2).[51] One of these groups also argued that it is not necessary for collectors to mention decedents' debts in attempting to locate the appropriate person, because ''collectors can simply state that they are calling or writing to obtain the contact information of the person representing the estate of the deceased.'' [52]

In between the two ends of the continuum, ten comments, including one from an association of state regulators, had no objection to collectors mentioning outstanding obligations generally in a location communication, such as referring to ''any outstanding bills of the decedent.'' [53] A debt collection trade association, noting that the purpose of the prohibition in Section 804(2) is to protect the privacy of the debtor, asserted that ''the deceased generally have a reduced privacy interest as compared to the privacy rights during life. Any modest infringement on the privacy interest after death is not an infringement on an individual's privacy right, but of the estate.'' [54] It also pointed out that there is a substantial benefit to permitting collectors to communicate generally with third parties to locate the person who has the authority to pay the debts of the estate, because ''doing so avoids litigation that otherwise draws down on the estate's assets.'' [55]

[45] *See, e.g.,* AARP at 4 (''this protection should be extended to prohibit any contact after the collector becomes aware that the estate is represented by anyone recognized by state law.''); West Asset Mgmt., Inc. at 5. Note that a collector is legally permitted to contact other individuals who are in the categories specifically listed in Sections 805(b) and (d) of the FDCPA.

[46] Section 805(b) generally prohibits communications with third parties unless they are location communications that satisfy the requirements of Section 804. Thus, a communication with a third party that does not meet the standards of Section 804 violates Section 805(b).

[47] The Commission also received a letter, dated January 18, 2011, from Congressman Walter B. Jones, representing North Carolina's third Congressional district, addressing this issue. Congressman Jones advocated that collectors should be allowed to include the creditor's name and the amount of the debt in the initial communication, because such information would facilitate the timely resolution of debts.

[48] *See, e.g.,* Barron, Newburger & Sinsley, PLLC (Nov. 4, 2010) at 4; Weltman, Weinberg & Reis Co., LPA at 1. These commenters argued that the risk that unauthorized third parties would open such a letter is small because it is, or might be, a federal crime to open another's mail without authorization. There is no evidence, however, that persons without the requisite authority are even aware of this prohibition or, if they are, would refrain from opening the mail out of a fear of criminal prosecution. In fact, many laws protect persons who in good faith assist a person who has the authority to resolve a decedent's debts. *See* Uniform Probate Code 3–714. In addition, a person acting in an effort to help likely would not have the requisite scienter to have engaged in a crime. Accordingly, the Commission finds this argument unpersuasive.

[49] The Commission has not assessed whether some form of communication sent with the initial letter (such as a validation letter in an enclosed envelope accompanied by a cover letter warning that only the appropriately authorized party should open the envelope) would effectively prevent unauthorized third parties from viewing details about the decedent's debt. The Commission is concerned, however, that merely admonishing the recipient of, for example, a mailed letter not to open it unless he or she is authorized to pay the estate's debts might not be effective. Well-meaning family members or others, who perhaps may not be familiar with legal terminology, might open the enclosed envelope despite such an admonishment in an effort to be helpful. Ultimately, the question of whether any particular admonishment or other mechanism to avoid third-party disclosure would be effective is an empirical one and would depend on the specific circumstances.

[50] Similar considerations arise when a letter with information about a debt is addressed to a debtor who is dead. In some circumstances, debt collectors will neither know nor have reason to know that the debtor has died; for example, a debtor could be alive when the letter is sent, but dead by the time the letter arrives. In other circumstances, debt collectors will know or should know that the debtor has died. Collectors with such knowledge should refrain from mentioning the debt in any letter addressed to the deceased debtor, because of the risk that an inappropriate third party will open the letter.

[51] AARP at 5; Nat'l Consumer Law Ctr. at 2.

[52] Nat'l Consumer Law Ctr. at 2.

[53] *See, e.g.,* N. Am. Collection Agency Regulatory Ass'n at 1; Weltman, Weinberg & Reis Co., LPA at 2.

[54] ACA Int'l at 4.

[55] *Id.* Although the comment does not provide a basis for this conclusion, the commenter appears to

Based on the comments received and on its law enforcement experience, the Commission will forebear from taking enforcement action for violating Section 804(2) of the FDCPA against a debt collector who includes in location communications a general reference to paying the ''outstanding bills'' of the decedent out of the estate's assets. Such a reference balances the legitimate needs of the collector with the privacy interests of the decedent. Such language should provide sufficient information for the recipient of the communication to identify the person with authority to pay the decedent's debts out of the estate's assets, while minimizing the harm to the decedent's reputation that might ensue from a reference to the decedent's debts.[56] The Commission, however, cautions collectors using the term ''outstanding bills'' that stating or implying in other ways that the decedent was delinquent on those bills would violate Section 804 of the FDCPA.

C. Compliance in Communicating With Permitted Individuals

The FDCPA and Section 5 of the FTC Act govern a collector's communications with a person who has the authority to pay the decedent's debts from the estate's assets. During such interactions, collectors must not engage in unfair, deceptive, abusive, or other unlawful conduct in violation of the FDCPA. Collectors also must not engage in unfair or deceptive acts or practices in violation of Section 5 of the FTC Act. To underscore the nature and scope of the restrictions on collectors in this context, the Commission believes that it is useful to discuss how the FDCPA and Section 5 apply to three specific issues that arise in such interactions.

1. Time of Communication

A significant issue raised in comments from individual consumers and consumer groups was whether there should be a ''cooling-off period'' after the debtor's death during which collectors are prohibited from commencing communications to collect from the person who has the authority to pay the decedent's debts from the estate's assets, and from contacting others seeking location information concerning that person. Some comments specifically suggested that the FTC impose a 30-day or longer cooling off period.[57] According to the commenters, the deceased's relatives and others are likely to be bereaved for a period of time after the death, and thus may be vulnerable to collectors' blandishments.[58]

The FTC recognizes that many family members may be vulnerable emotionally and psychologically in the aftermath of a relative's death. But the record does not indicate a significant incidence of calls by collectors immediately following the debtor's death. Thus, the final Statement does not include a cooling-off period. Nevertheless, the Commission stresses that Section 805(a)(1) of the FDCPA prohibits collectors from contacting consumers at ''any unusual time or place or at a time or place known or which should be known to be inconvenient to the consumer.''; [59] Depending on the circumstances, contacting survivors about a debt shortly after the debtor dies may be unusual, inconvenient, or both.[60] The Commission's investigations indicate that debt collectors typically do not initiate communications regarding decedents' debts for weeks or even longer after death.[61] The Commission emphasizes that such restraint is a key business practice in allaying concerns arising from collection of deceased accounts.

2. Questions About Authority To Pay

The proposed Statement cautioned debt collectors about using leading questions when seeking to elicit information as to who is the person with the authority to pay the decedent's debts from the estate's assets. The proposed Statement identified several examples of problematic questions, such as asking whether the person contacted is ''handling the decedent's final affairs,'' paid for the decedent's funeral, or is opening the decedent's mail. The proposed Statement explained that such questions are not likely to elicit sufficient evidence of authority, because relatives often undertake these types of activities to assist without assuming the general authority to pay the decedent's debts from the estate's assets.

One commenter, a local debt collection regulator, asserted that complaints it receives from consumers show that, in addition to dealing with the loss of a loved one, grief-stricken family members ''must contend with deceptive and aggressive tactics by collectors to induce consumers to pay debts consumers may very well not be obligated to pay.'' [62] To prevent collectors from asking ''roaming questions'' that may mislead consumers, this commenter therefore recommended that the final Statement give specific examples of questions that may be appropriate for a collector to ask. Another commenter, emphasizing that this is an extraordinarily complicated area of law and that unsophisticated surviving family members cannot be expected to understand the nuances of probate law, argued that limiting collectors to asking a narrowly circumscribed set of open-ended questions that may not apply to all situations may lead to confusion.[63] According to this commenter, collectors should have the flexibility to pose

suggest that if collectors cannot initiate a meaningful discussion with the person who has the requisite authority, many will seek relief in probate court, or, if probate is closed, through litigation.

[56] Nearly all individuals leave some outstanding bills at the time they die, even if they are not delinquent on those bills. Thus, a reference in the location communication to the decedent's ''outstanding bills'' is not likely to imply that the decedent was delinquent at time of death. The word ''debts,'' on the other hand, is more likely to imply that the decedent was delinquent at time of death.

[57] *See, e.g.,* Barboza; Forgie (''I feel in NO INSTANCE should a debt collector be allowed to contact either the family or friends of deceased until at least 30 days after the date of death.''); and Steinbach at 1 (''we urge the FTC to adopt an enforcement rule that communication with the family of a deceased individual within 30 days of the individual's death is a *per se* 'unfair' communication under 15 U.S.C. sec. 1692f. This rule would not preclude the finding that, depending on the circumstances, such communication within 60 days or even longer could be a violation.'').

[58] *See, e.g.,* AARP at 1 (''Debt collectors are keenly aware that survivors are particularly vulnerable after the death of their loved one.''), 2 (''Older people are extremely vulnerable to abuses by debt collectors.''), 2 (''Older people living alone * * * may be socially isolated, particularly after the death of a spouse or loved one. They are also more easily upset by an abusive telephone call; indeed the stress from harassing tactics can actually threaten their health.''); Corcoran (''grieving families are in no frame of mind to talk about debt that belongs to the deceased.''); Atticus; Carter (''At a time when family and friends are grieving and at their most vulnerable it is particularly important to keep debt * * * [collectors] at bay.''); Corley (''We are at our most vulnerable when losing a family member * * *''); Hoffman; Lamet (''family and friends of recently deceased loved ones are in a very fragile emotional state and are thus more susceptible to abuse by predatory tactics of creditors.''); McGill; Nat'l Consumer Law Ctr. at 1 (''* * * particular sensitivity and vulnerability of bereaved relatives and friends.''), 4, and 5; Starkey; and Steinbach at 1.

[59] 15 U.S.C. 1692c(a)(1).

[60] For example, it likely would be unusual or inconvenient to call during a wake, during a funeral, at a place of worship, or during a period of religious observance at any location.

[61] It typically takes a significant period of time—sometimes weeks or even months—for a creditor to learn of the debtor's death. Often, the creditor first learns of the passing because a family member or friend contacts the creditor. It then takes time for the creditor to close the account, transfer it to either the appropriate internal department or a third-party debt collector, and then usually check the account against a database to confirm the passing. Some debt collectors who specialize in collecting on the debts of deceased debtors also search proprietary databases to check for state probate filings before first attempting to collect.

[62] New York City Dept. of Consumer Affairs at 3.

[63] Barron, Newburger & Sinsley, PLLC (Nov. 4, 2010) at 13.

specific questions that are more appropriate to the situation at hand.

Based on its law enforcement experience [64] and the comments received, the Commission believes that it is impractical to limit collectors to a prescribed list of questions that would apply to all possible situations in which a collector may need to communicate with a person to obtain location information. Thus, the Commission will not prescribe the precise language that a collector must use in such situations. Instead, a collector may ask a person clarifying questions when seeking to identify and locate the person with the authority to pay the decedent's debts from the estate's assets, but a collector should not use inappropriate leading questions [65] or engage in any other conduct that may cause the person contacted to assert mistakenly that he or she has the requisite authority. In most cases, questions about whether the person contacted is ''handling the decedent's final affairs'' or paid for the decedent's funeral are not likely to elicit sufficient evidence of authority on their own and may lead the person contacted to assert authority mistakenly. Questions about whether the person contacted is opening the decedent's mail also are unlikely to be probative of whether that person has authority to pay the decedent's debts out of the estate's assets. Debt collectors using these questions must assess whether, in the context of a specific communication, they effectively solicit useful information without misleading consumers.

3. Misleading Consumers About Their Personal Obligation To Pay the Decedent's Debt

The proposed Statement advised that, in communicating with persons who have the authority to pay the decedent's debts out of the estate's assets, it would violate Section 5 of the FTC Act and Section 807 of the FDCPA [66] for a debt collector to mislead those persons about whether they are personally liable for those debts, or about which assets a collector could legally seek to satisfy those debts. The proposed Statement specifically emphasized that:

[e]ven in the absence of any specific representations, depending on the circumstances, a collector's communication with an individual might convey the misimpression that the individual is personally liable for the decedent's debts, or that the collector could seek certain assets to satisfy the debt. To avoid creating such a misimpression, it may be necessary for the collector to disclose clearly and prominently that: (1) It is seeking payment from the assets in the decedent's estate; and (2) the individual could not be required to use the individual's assets or assets the individual owned jointly with the decedent to pay the decedent's debt.[67]

Commenters, including debt collectors, strongly agreed with the FTC that debt collectors have an affirmative responsibility under the law not to mislead individuals they contact about their responsibility to pay for the decedent's debts.[68] An association of state debt collection regulators, in particular, supported the proposed disclosure unequivocally, as a means of preventing deception.[69]

Other comments supported the idea of a disclosure, but suggested that collectors use different language than that suggested in the proposed Statement. Some comments argued that the proposed disclosure is too narrow, asserting that consumers need more or better information.[70] On the other hand, some comments argued that the proposed disclosure is too broad, emphasizing that there are circumstances in which the individual contacted in fact could be personally liable out of his or her own assets or out of assets owned jointly with the decedent.[71]

Based on the comments received and its law enforcement experience, the Commission concludes that the information that must be disclosed to avoid deception when collectors contact individuals with the authority to pay the decedent's debts depends on the circumstances. The proposed Statement suggested two possible disclosures: (1) That the collector is seeking payment from the assets in the decedent's estate; and (2) the individual could not be required to use the individual's assets or assets the individual owned jointly with the decedent to pay the decedent's debt. These disclosures generally will be sufficient to prevent deception. Nevertheless, there may be circumstances in which these disclosures are not applicable or sufficient to prevent deception.[72] The collector has the responsibility of tailoring the information it discloses to avoid misleading consumers.[73]

A collector also should not use questions about the decedent's assets to mislead the person who has the authority to pay the decedent's debts from the estate into believing incorrectly that those assets are subject to the collector's claim.[74] Although such questions are not necessarily deceptive, the collector may need to take precautions to prevent the person from

[64] During its law enforcement investigations of collectors of deceased accounts, FTC staff listened to thousands of calls between collectors and relatives, including calls in which collectors sought to ascertain the scope of the relatives' authority to pay the decedent's debts.

[65] An inappropriate leading question is one that instructs the person on how to answer or puts words in his or her mouth to be echoed back.

[66] 15 U.S.C. 1692e.

[67] 75 FR at 62,394.

[68] *See, e.g.,* Phillips & Cohen Assocs., Ltd. at 4 (''collectors have an affirmative responsibility to help avoid creating the misimpression that Informal Administrators are responsible for paying the debts of the decedent in instances in which they are not.''); Weltman, Weinberg & Reis Co., LPA at 3; AARP at 1; New York City Dept. of Consumer Affairs at 4.

[69] N. Am. Collection Agency Regulatory Ass'n at 1.

[70] Nat'l Consumer Law Ctr. at 3; AARP at 5; New York City Dept. of Consumer Affairs at 4–5.

[71] ACA Int'l at 4–5; Phillips & Cohen Assocs., Ltd. at 4–5; West Asset Mgmt., Inc. at 4–5; Bass & Assocs., P.C. at 3; Barron, Newburger & Sinsley, PLLC (Nov. 4, 2010) at 13.

[72] Some comments claimed that the disclosures in the proposed Statement would be inaccurate because they would be used in circumstances in which individuals, in fact, are personally liable. Barron, Newburger & Sinsley, for example, suggested that the second clause of the disclosure could be improved by modifying it to read, ''the individual *may* not be required to use the individual's assets * * *'' Barron, Newburger & Sinsley, PLLC (Nov. 4, 2010) at 13 (emphasis added). The Commission believes that the word ''may'' would not convey accurately the unlikelihood that the authorized person would have to use his or her own assets to pay the debt. In any event, collectors should be able to determine in most cases whether the person contacted is liable to pay the debts at issue from his or own assets. For example, by reviewing underlying credit contracts, collectors often can determine if the individual is jointly liable as a co-signor. By knowing the identity of original creditors, such as a hospice or hospital, and applicable state laws concerning medical debts, collectors likewise can often ascertain if the decedent incurred medical debts for which a spouse is liable. And, by reviewing applicable state laws, collectors generally can determine whether a spouse is liable under state community property laws. Collectors have an obligation to resolve these issues and disclose sufficient information to the individuals contacted so that consumers are not deceived in violation of the FDCPA and Section 5 of the FTC Act.

[73] It is not a *per se* violation of the law for collectors to attempt to persuade the person with the requisite authority to pay the debt out of her own assets. It is a violation, however, for a collector to: (1) Misrepresent that the person has a legal obligation to use his or her own assets to pay the debt; or (2) engage in harassing, oppressive, or abusive conduct to collect the debt.

[74] Many of the calls to which FTC staff listened during its investigations of collectors of deceased accounts included questions about assets. For example, collectors have, in the past, asked whether the decedent owned any cars, real property, bank accounts, life insurance policies, etc. Often, depending on the applicable laws and/or how the asset was titled, some of these assets may not be subject to creditors' claims. Consequently, consumers can easily be misled into believing that a particular asset is subject to the debt collector's claim when it is not, and that the consumer may have to use the proceeds of unreachable assets to satisfy the decedent's debts. Collectors may still ask about these assets to ascertain whether the assets are reachable or not, but should make clear to the consumer that those assets that are unreachable are, in fact, not part of the estate or otherwise subject to the collector's claim.

being misled—for example, by disclosing that jointly-held assets are not subject to the collector's claim and that the collector is trying to determine what assets are in the estate. Once the collector has reason to believe that a particular asset is not part of the decedent's estate, the collector should stop asking questions about that particular asset or otherwise create the misimpression that the particular asset is subject to the debt.

Finally, in determining whether individuals are taking away the misimpression that they are personally liable for the decedent's debts, the Commission will consider whether the collector has obtained an acknowledgment at the time of the first payment that, if appropriate, the person understands that he or she is obligated to pay debts only out of the decedent's assets and is not legally obligated to use his or her own assets—including those jointly owned with the decedent—to pay the debts.

By direction of the Commission.

Donald S. Clark,

Secretary.

FDCPA Enforcement Policy Statement

Matter No. P104806

Concurrence of Commissioner Julie Brill

July 20, 2011

The Fair Debt Collection Practices Act (''FDCPA'') describes, in no uncertain terms, the individuals with whom a debt collector may communicate regarding a consumer's debts: the consumer, her attorney, her spouse, her parent (if the consumer is a minor), her guardian, and a small group of other individuals.[75] If the consumer is deceased, the FDCPA expands this group to allow a debt collector to contact the consumer's executor or administrator.[76] As the FDCPA Enforcement Policy Statement (''Policy Statement'') issued by the Commission today points out, state probate laws have changed significantly since the passage of the FDCPA over three decades ago. As a result of these changes, when a consumer dies, her estate will not necessarily have an ''executor'' or an ''administrator'' with whom a debt collector can communicate regarding the decedent's debt.

The Policy Statement expands the communications in which debt collectors may engage with a decedent's friends and family members, so that debt collectors may identify the person who has ''the authority to pay the decedent's outstanding bills from the decedent's estate.'' The Policy Statement also permits debt collectors to follow up with ''clarifying questions'' until the person with whom the debt collector is speaking has, to the collector's satisfaction, identified the executor, administrator, or individual with authority to pay the decedent's outstanding bills from the decedent's estate. The rationale for the Commission's action today is that Congress intended to give creditors a right to engage in limited communications in order to collect the legitimate debts of deceased debtor through the estate. Through its action, the Commission wishes to avoid a hyper-technical reading of the statute that allows contact only with statutorily required, but in reality likely non-existent administrators or executors. The Commission's action is thus designed to prevent us from elevating form over substance in a manner that defeats the intent of the statute. Without a reasonable and narrowly defined safe harbor, a debt collector's alternative may be to force the appointment of an executor or administrator, which could be costly and time consuming for decedent's relatives and the estate.

Balanced against these concerns for rational administration of estates are equally legitimate concerns that the Policy Statement will operate as a license for some debt collectors to take unfair advantage of the survivors and loved ones of recently deceased debtors. Most consumers, even in the best of times, will likely be unable to understand and respond accurately to arcane questions of law regarding the identity of ''the person who has legal authority to pay outstanding bills from a decedent's estate.'' Allowing debt collectors to contact the survivors and loved ones of recently deceased consumers will require them to respond to these arcane questions of law at a time when they find themselves in unfamiliar and unsettling territory, trying to sort through the finances and personal affairs of the deceased, while simultaneously trying to cope with their loss. A consumer in this vulnerable condition may mistakenly identify himself as the person with whom the debt collector should be speaking. Worse still, he may end up feeling as if he has an obligation—legal, moral, or otherwise—to pay the debt from personal funds, even though debt collectors cannot legally ask him to do so.

In view of the pitfalls of allowing debt collectors to contact family members to identify the person who has authority to pay outstanding bills from the decedent's estate, the Policy Statement is crafted to limit potential abuses. First, when contacting the family members, the debt collector must include in the statement that he is looking for the person who is responsible for paying the outstanding bills of the decedent ''from the decedent's estate.'' Second, until such time as it is established that the debt collector is talking to the person with such authority, the collector cannot reveal that the decedent owes a debt. This should eliminate any opportunity by debt collectors to make appeals to those without authority to pay bills from the estate's assets to pay a debt out of a sense of moral obligation. Third, the Policy Statement makes clear the debt collector's general responsibility to disclose that the person with authority to pay the debts from the estate is not required to use his individual's assets to pay the decedent's debt.[77] Finally, if the debt collector does reach the person with authority to pay the bills from the estate of the decedent, that person stands in the shoes of the ''consumer'' and must be given notice that he is entitled to proof of the decedent's debt and has the right to contest it.

On balance, I concur in the issuance of the Policy Statement at this time, despite concerns that the Policy Statement may operate as a license for some debt collectors to take unfair advantage. I take this view, in large part, because staff's review of thousands of interactions between debt collectors and the family members and survivors of decedents indicates that, while some collectors were engaged in egregious conduct, the vast majority were trying to comply with a reasonable, although at times incorrect, interpretation of the requirements of the FDCPA.

Yet, in light of these strong policy reasons for protecting the survivors and loved ones of recently deceased debtors, the Commission should ensure that any forbearance of enforcement will occur only when debt collectors strictly comply with the criteria set forth in the Policy Statement, especially the four safeguards listed above. The debt collection industry should know that we will not refrain from aggressive

[75] Fair Debt Collection Practices Act, 15 U.S.C. 1692c (b) and (d). Subsection (b) provides that a debt collector may also communicate with ''a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.''

[76] FDCPA 15 U.S.C. 1692c (d).

[77] There may be circumstances where the individual, in fact, is legally obligated to pay the debt himself. In those cases, the disclosure requirement would not apply. [End Lit]

enforcement when debt collectors go beyond the very limited inquiries allowed by today's action. I urge my fellow Commissioners and staff to couple today's action with strict monitoring of the industry going forward, to ensure its close adherence to the criteria set forth in the Policy Statement. If abuse becomes widespread, I would recommend withdrawal of the Policy Statement by the Commission.

The new Bureau of Consumer Financial Protection, created under the Dodd-Frank Wall Street Reform and Consumer Protection Act, will have an important role in this area as well. Dodd-Frank grants the new Bureau of Consumer Financial Protection the authority to promulgate regulations under the FDCPA, an authority that the Federal Trade Commission has not possessed. In the event that the Commission finds that the debt collection industry is not adequately adhering to the limited inquiries allowed under this Policy Statement, I hope my fellow Commissioners and staff will work closely with the new Bureau to further develop appropriate rules to be applied to the collection of the debts of decedents.

[FR Doc. 2011–18904 Filed 7–26–11; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 091 0136]

Cardinal Health, Inc.; Analysis of Agreement Containing Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before August 22, 2011.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Cardinal Health, File No. 091 0136'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/cardinalhealthconsent,* by following the instructions on the Web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: William H. Efron (212–607–2827), FTC Northeast Region, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for July 21, 2011), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before June 10, 2011. Write ''Cardinal Health, File No. 091 0136'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/cardinalhealthconsent* by following the instructions on the Web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Cardinal Health, File No. 091 0136'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue, NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

Consumer Relations Consortium

April 17, 2018

Acting Director Mick Mulvaney
Consumer Financial Protection Bureau
1700 G St. NW
Washington, D.C. 20552

Acting Director Mulvaney,

The Consumer Relations Consortium (CRC) was founded in 2013, in response to the release of the Larger Market Participant Rule for Debt Collectors. The CRC is comprised of more than 50 companies covering the ecosystem of collections, including creditors, large collection agencies and data/technology providers. We focus on two areas: advocacy and innovation.

From an advocacy perspective, the CRC engages with regulators, consumer groups and other thought leaders to produce common sense, consumer-centric solutions to issues facing debt collection stakeholders. Our approach is to discuss practical solutions in a non-public, candid, off-the-record environment where all parties can get well beyond talking points. We established ourselves in both the consumer community and with the CFPB rulemaking body as a respected and productive group.

As mentioned in our briefing sent to you January 24, 2018, CRC members would like you to know that they **do** want to see debt collection rules. The Fair Debt Collection Practices Act (FDCPA) has not been modernized since it was enacted by Congress in 1977. Instead, state regulators and courts have created a patchwork of conflicting precedents, resulting in an inefficient and confusing landscape for both consumers and businesses.

Also, numerous innovations in communication technology that are embraced and expected throughout our society are passing this industry by because of the strict requirements of the FDCPA, which was written with the limited context of letters and telephone calls.

This industry and consumers both need simple rules that allow communication in accordance with expressed preferences, and that help to eliminate outdated and conflicting areas in the law that have enabled a cottage industry of frivolous litigation. This submission is a follow up to our letter of January 24, 2018, in which we offered these suggestions for clarifying the current law:

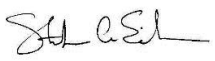
1. Provide guidance for the use of modern communication channels to engage with consumers, and clarify the overly broad definition of “communication” with third parties
2. Create a set of fair and balanced standard disclosures that are recognized and understood by all parties
3. Establish a standard, limited-content message that can be left for a consumer without running afoul of conflicting rules
4. Provide for a right to cure errors, consistent with other areas of the law
5. Provide clarification related to the definition of “pre-default” and when the FDCPA applies

Consumer Relations Consortium

In January we offered a brief background explanation for each of the ideas above. In this memo we offer specific suggestions.

We look forward to the opportunity to discuss these suggestions with you and your team.

Respectfully,



Stephanie Eidelman
Executive Director, Consumer Relations Consortium

1. Provide guidance for the use of modern communication channels, and clarify the definition of "third party disclosure

Congress enacted the FDCPA at a time when nearly all communication was by telephone and U.S. postal mail. Over the past four decades, alternative communication channels have developed, including email, text messaging, web chats and more. These alternative communication channels are the preferred mechanisms of the vast majority of today's consumers, who do not want to be called on the phone and will not open traditional mail.

Unfortunately, the current statutory framework for third party debt collection lacks any clear guidance on the use of email, text messaging and other alternative communication channels. Additionally, a cottage industry of "consumer attorneys" has made a huge business of suing collection agencies for the most trifling and fanciful of claims, relying on inconsistent interpretations of an out-of-date statute. These attorneys are not helping clients that have truly been harmed; they are looking for quick and easy settlements from agencies that don't want to (or can't afford to) pay to defend frivolous cases.

Given the lack of guidance and the risk of using consumer-preferred alternatives, consumers' choices are largely ignored for fear of the legal repercussions that may result. Consider this example:

> A consumer has been interacting with her creditor via text and web chat, the means most convenient for her. The account is then sent to a collection agency and the consumer is told that she can only communicate via phone calls and letters. The consumer is frustrated. It is difficult to find a private place to have such a conversation, and waiting for letters in the mail only prolongs the situation.

Since many consumers will not answer their phone (due to concerns about fraud, regulators and the media advise them not to answer a call from someone they don't know) or respond to traditional mail, additional call attempts are made (which some view as harassment) and accounts which would otherwise be resolved are instead escalated, resulting in unnecessary credit reporting, garnishments, repossessions, and litigation. Courts throughout the country are swamped with collection litigation filed by companies because it is so difficult to communicate with consumers.

Intertwined with the matter of honoring consumer preference regarding communication channels is the issue of "communication with third parties." 15 USC 1692c (b) addresses this topic:

> Except as provided in section 1692b of this title, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, a debt collector **may not communicate**, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector. (emphasis added)

The FDCPA says that collectors may not communicate about a debt with a third party, except in the limited circumstances outlined above. The CRC remains in agreement with the spirit of this requirement. What has become unworkable is the expansive definition of what is effectively *inadvertent*

"communication" with third parties. Essentially, courts have defined the clause to mean *potential* communication, rather than *actual* communication.

In years past this clause gave rise to volumes of litigation related to leaving voicemail messages, because standard voicemail technology required a consumer to listen to a recording in the open, where others might hear. And access to the voicemail was available simply at the click of a button on the machine.

Today, these devices are in far fewer homes, and the vast majority of consumers have the ability to hear voicemail messages in private, with a password typically being required for access. Yet collection agencies are still reluctant to leave messages. In its Outline of Proposals released in conjunction with the Debt Collection SBREFA hearing, the CFPB suggested a fix to this situation by offering a limited content message that can safely be left and not be deemed a "communication" under the FDCPA. That's helpful (indeed, section 3 of this document supports the proposal), but really the root of the problem is deeper.

There are now parallels for this scenario in multiple other communication channels. For example:

eMail

Collectors must undergo contortions to use a decades-old ubiquitous communications "technology" called email. Because a neighbor might see the contents of an email? How… over my shoulder? Or my child might use a shared family email? Email accounts are free. Consumers can have as many as they wish. So why use a family email to open an account, or communicate with a healthcare provider?

The accompanying presentation outlines the extensive process required today to make use of the eMail channel. It demonstrates that, in spite of being a well-established, ubiquitous, and generally free communication channel, collectors are effectively unable to use it to reach consumers; not so much because the regulations say they can't, but because they don't say they CAN, and therefore creditor clients in general will not allow it.

Mobile phones

The proliferation of illegal and unwanted robocalls has stirred a massive effort to put tools in between call originators and called parties. Dozens of applications have been developed with the goal of notifying a consumer who is calling, and WHY, in order to provide them with enough information to determine whether to answer a call (developers of these applications have become known as "analytics" companies). As consumers, we all love this. However, collections is the ONE INDUSTRY faced with a unique challenge in this new scenario. Should one of these applications disclose on a consumer's mobile phone screen that a debt collector is calling, the debt collector (who has no idea how their calls are being labeled) would be open to litigation due to the potential for a third party disclosure. This is not unlike the potential for a voicemail to be heard by a roommate or family member.

But the whole point of the technology – wanted by consumers and supported (in fact, encouraged) by the Federal Communications Commission -- is to give the consumer accurate information. This situation has caused the industry to come up with alternate terminology, "account servicing," to suggest to application providers that vaguely – but accurately – describes the call. It has been adopted so far by one analytics company, First Orion.

So, what happens when account servicing becomes synonymous with debt collection? Another term must be found? How long will it take for a clever consumer attorney to file a lawsuit against the application provider, the carrier, and the debt collector, saying "account servicing" misled their client into picking up a call from a debt collector?

This is an endless loop of potential liability. The broad interpretation of this rule to mean the *potential* for third party disclosure rather than *actual* third party disclosure inconveniences the vast majority of consumers, who need the ability to communicate about debts in their preferred channel. The more barriers we put in front of this goal, the more we end up with debts on credit reports, debts turning into lawsuits, and debts getting re-placed with multiple collection agencies or sold because of an inability to communicate and resolve.

The authentication dance

The beginning of a collection call is incredibly uncomfortable. As we've noted above, collectors are required by law to confirm they are talking to the right consumer before they can reveal why they are calling. But the consumer has been trained to not trust a caller they don't know, and certainly not to provide any personally identifying information. And… collectors are required by law to tell consumers why they are calling. So there is a stand-off, and a really awkward situation.

One way to solve this is to make it easier for collectors to initiate communication with consumers through digital channels. This would make it possible for collectors to employ the dozens of more advanced ways to authenticate the consumer that are now available to banks and other financial institutions. This would greatly benefit the consumer by making the beginning of a collection communication far less awkward and frightening.

For all of these reasons, the CRC suggests that it is time to revisit this overly broad definition of "communication" with a third party.

2. Create a set of fair and balanced standard disclosures

The FDCPA requires that notices and disclosures be made to consumers about a range of topics but does not prescribe the language of those notices and disclosures. As a result, hundreds – if not thousands – of interpretations/variations of these notices have been created by attorneys and compliance officers nationwide. This resulted in consumer confusion over what they mean, and frivolous litigation over – literally -- the placement of commas and other technical grammatical or word choices that could be misconstrued.

Consumers and the collection industry both need clarity from the CFPB regarding simple, clear disclosures. Federal Courts are often tasked with interpreting debt collection disclosures in connection with FDCPA cases. Despite seemingly clear guidance from the plain language of the FDCPA and the Courts, FDCPA lawsuits are filed every day against debt collectors using seemingly crystal clear disclosures.

For example, in March 2016, the Second Circuit Court of Appeals issued its ruling in the *Avila* case, adopting a "safe harbor" disclosure regarding the accrual of interest, writing:

> We hold that a debt collector will not be subject to liability under Section 1692e for failing to disclose that the consumer's balance may increase due to interest and fees if the collection notice either accurately informs the consumer that the amount of the debt stated in the letter will increase over time, or clearly states that the holder of the debt will accept payment of the amount set forth in full satisfaction of the debt if payment is made by a specified date. Like the Miller court, we do not hold that a debt collector must use any particular disclaimer. Using the language set forth in Miller will qualify for safe-harbor treatment, as would the language suggested in Jones, 755 F.Supp.2d at 397 n. 7, which may be preferable to the extent it advises the consumer of the specific rate of increase in the debt over time.[2] Moreover, a debt collector who is willing to accept a specified amount in full satisfaction of the debt if payment is made by a specific date could considerably simplify the consumer's understanding by so stating, while advising that the amount due would increase by the accrual of additional interest or fees if payment is not received by that date.

It would seem likely that lawsuits regarding this issue would drop dramatically after the ruling in *Avila* because debt collectors would change their debt collection communications to incorporate the holding in this case. Quite to the contrary, lawsuits against debt collectors immediately skyrocketed after the Second Circuit Court of Appeals ruling in *Avila*, clogging the dockets with hundreds of cases claiming that the *Avila* case somehow requires a debt collector to disclose when interest is not accruing. The attached study of the dockets in New York Federal Court from April 2016 through April 2017 demonstrates that there were 310 FDCPA cases filed citing to the interest disclosure issue, with 308 of those cases – most of them filed by just eight attorneys -- somehow asserting that a debt collector was required to disclose when interest was not accruing. In the 2018 *Taylor* decision, the Second Circuit Court of Appeals addressed and dismissed the "reverse-Avila" theory behind these hundreds of cases (siding with the Seventh Circuit Court of Appeals which addressed the issue in 2004):

> Contrary to Taylor and Klein's objection, our decision today reads Sections 1692e and 1692g in harmony. That is, if a collection notice correctly states a consumer's balance without mentioning

interest or fees, and no such interest or fees are accruing, then the notice will neither be misleading within the meaning of Section 1692e, nor fail to state accurately the amount of the debt under Section 1692g. If instead the notice contains no mention of interest or fees, and they are accruing, then the notice will run afoul of the requirements of both Section 1692e and Section 1692g.

Unfortunately, it would be naïve to think that the *Taylor* decision will stem the tide of questionable FDCPA lawsuits. Undoubtedly new theories on the interest disclosure will arise and consumers will be harmed by thinking that they somehow do not have to pay their just obligations because some there was some theoretical error in a communication they received. Only clear and concise disclosures promulgated by the CFPB can save consumers from this harm.

The issue, unfortunately, is not isolated to interest disclosures:

1. Cases asserting that the validation language in a collection communication, drawn verbatim from the statute, is unclear;
2. Claims that the creditor is not clearly disclosed, when the name of the creditor is, for instance, American Express;
3. Claims that a disclosure is misleading where it was stated that a creditor will not sue on a time barred debt because the disclosure does not say that the creditor "cannot" sue;
4. Claims that a disclosure is misleading for stating that the creditor will not report a debt to the credit reporting agencies is false because the creditor could report it; and,
5. Claims that there were too many required disclosures in a letter.

As such, the CRC suggests that a set of fair and balanced standard disclosures on the following topics would bring clarity for all involved, and could even contribute to defining the difference between a legitimate collector and a scammer: Validation notice, Credit reporting, Interest accruing, Tax consequences, Time barred debt,

The following recommendations provide consumers with clear and easy-to-understand descriptions of their rights and important information about their accounts, while providing safe harbor for legitimate companies looking to comply with the law.

Validation notice

The FDCPA requires that collectors provide to consumers an initial disclosure, colloquially referred to as the "validation notice." This is codified at 15 USC 1692(g) and requires that a collector advise the consumer of the following:

a. the amount of the debt;

b. the name of the creditor to whom the debt is owed;

c. a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;

d. a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain

verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and

e. a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

While it would seem there is nothing particularly difficult about placing such a notice on a letter, the statute does not prescribe any particular wording, so collection agencies fashion on their own a paragraph they believe covers all these points. This has resulted in substantial class action litigation. As such, the CRC proposes that the CFPB establish a standard validation notice that properly advises the consumer of their rights but is also sufficiently clear and easy to read so that the average consumer will understand it.

> ***Proposed standard disclosure:*** **If you write to us within 30 days of receiving this letter to dispute all or part of this debt or to request the name and address of the original creditor (if different from the current creditor), then we will stop collecting until we send you our response. Unless you dispute all or part of the debt in writing within 30 days of receiving this letter, we will assume the debt is valid. If you tell us in writing that you want us to stop contacting you, we are required by law to do so, but this alone will not make the debt go away.**

Credit Reporting

Debt collectors face issues when providing credit reporting disclosures to consumers. Agencies and their creditor clients want to provide consumers reasonable notice that an account will be reported if not resolved to allow the consumer adequate opportunity to pay or dispute the account as appropriate. However, consumer attorneys file lawsuits after disclosures are given when the agency or creditor later determines that the account will not be reported. Accounts are not reported for many reasons after the initial demand/credit reporting disclosure letter is sent -- for instance, because a consumer disputes or makes payments, or a client requests the account be closed.

Due to the craftiness of the consumer bar, there is a very real risk of high volume litigation regarding any disclosure that discusses credit reporting since it is difficult to include all of the different situations that may impact whether or how an account appears on a consumer's credit report.

As a result, CRC makes two recommendations:

- Debt collection agencies that cannot -- or choose not to -- credit report should not be required to provide any credit reporting disclosure.
- Debt collectors that do choose to credit report, or are required by a creditor to do so in the collection agreement, also should not be required to include a disclosure. However, for agencies that do credit report and do choose to include a disclosure, CRC recommends the following standard disclosure to be provided in the initial written communication with the consumer:

  Proposed standard disclosure: **Adverse credit information is scheduled to be reported on or after [enter date after 30 day validation period].**

Interest Accruing

Accounts in collection may or may not accrue interest. As highlighted in the discussion above, consumer attorneys file countless lawsuits against collection agencies based on their disclosures of accruing interest, or lack thereof. It is generally accepted that if interest is accruing on an account, that fact must be disclosed. However, consumer attorneys are now filing cases against agencies when there is no interest accruing, and the agency fails to disclose that fact.

In line with the Second Circuit's decisions regarding interest disclosure, debt collectors should inform consumers if their accounts are currently accruing interest[1], but should not be required to disclose that an account balance is static while it remains with the debt collector[2].

For accounts that accrue interest, CRC recommends the following model disclosure:

> ***Proposed standard disclosure:*** **The balance listed above is the total amount required to pay your obligation in full as of the date of this letter. Because interest continues to accrue, the amount required as of a later date may be different. Contact us for the correct balance.**

For accounts that do not accrue interest, CRC recommends the CFPB issue specific guidance that the collection agency need not disclose that the account balance is static.

Tax Consequences/ IRS Form 1099-C

Debt collectors and creditors face challenges with 1099-C disclosures. Many creditors believe that a disclosure must be made to a consumer in cases when the consumer's account is reduced/forgiven by $600 or more. Yet hundreds of lawsuits have been filed or threatened against collection agencies when making these disclosures. Case law is not consistent and has further clouded the situation.

In line with the judicial decisions from many jurisdictions throughout the United States[3], CRC recommends that the CFPB issue guidance that a collection agency is not required to provide a 1099c/settlement tax consequences disclosure to a consumer. However, if an agency chooses to include such a disclosure, then CRC recommends the following court-approved[4] disclosure:

> ***Proposed standard disclosure:*** **This settlement may have tax consequences. Please consult your tax advisor.**

Time Barred Debt

The calculation of when the statute of limitations runs and expires is not consistent from state to state, and among different types of debt. It is extremely confusing, even to sophisticated attorneys. While a handful of states prescribe a disclosure to notify the consumer that the statute of limitations expired on their account, the majority of states provide no clarity. Additionally, in states that do not prescribe a

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[1] *Avila v. Riexinger & Assoc., LLC*, 817 F.3d 72 (2d Cir. 2016).
[2] *Taylor v. Fin. Recovery Servs., Inc.*, 2018 WL 1526057 (2d Cir. 2018).
[3] [3] *See Ceban v. Capital Mgmt. Servs., L.P.*, 2018 WL 451637 (E.D.N.Y. Jan. 17, 2018); *Remington v. Fin. Recovery Servs, Inc.*, 2017 WL 1014994 (D. Conn. Mar. 15, 2017); *Taylor v. Fin. Recovery Servs., Inc.*, 252 F.Supp.3d 344 (S.D.N.Y. May 18, 2017); *Rhein v. Forster, Garbus & Garbus, LLP*, 2017 WL 4969335 (D.N.J. Nov. 1, 2017).
[4] *See Ceban v. Capital Mgmt. Servs., L.P.*, 2018 WL 451637 (E.D.N.Y. Jan. 17, 2018); *Remington v. Fin. Recovery Servs, Inc.*, 2017 WL 1014994 (D. Conn. Mar. 15, 2017); *Taylor v. Fin. Recovery Servs., Inc.*, 252 F.Supp.3d 344 (S.D.N.Y. May 18, 2017); *Rhein v. Forster, Garbus & Garbus, LLP*, 2017 WL 4969335 (D.N.J. Nov. 1, 2017).

disclosure, the disclosures differ depending on whether or not the state recognizes that a payment or written acknowledgment of the debt restarts the statute of limitations.

While some states have a required verbatim disclosure for collecting on time barred debts[5], many states provide no guidance. To fill the gap for the states that do not have a verbatim disclosure requirement, CRC recommends the following two disclosures depending on whether or not the account is past the FCRA date of obsolescence.

Accounts not past date of obsolescence:

> ***Proposed standard disclosure:*** **The law limits how long you can be sued on a debt. Because of the age of your debt, you cannot be sued for it. If you do not pay the debt, it may [continue to] be reported to any credit reporting agency. In some states, making a payment or a promise to pay could restart the statute of limitations. Please ask a lawyer if you have any questions.**

Accounts past the date of obsolescence:

> ***Proposed standard disclosure:*** **The law limits how long you can be sued on a debt. Because of the age of your debt, you cannot be sued for it and it cannot be reported to any credit reporting agency. In some states, making a payment or a promise to pay could restart the statute of limitations.**

Collection Costs

For certain accounts, the creditor may be entitled to collection costs per the credit agreement with the consumer or where permitted by law. Where collection costs are to be collected, the Northern District of Illinois reasoned that it is better for a debt collector to set forth the collection costs in the letter to consumers and collect that amount in whole, rather than collecting the balance and then coming back after payment to collect the collection costs[6].

CRC agrees with the Norther District of Illinois's reasoning, which is in line with the 2nd Circuit's reasoning in *Avila* (to prevent a perpetual collection process caused by not disclosing to the consumer if any immediate additional interest, fees, or charges that may prevent the account's resolution after payment is made). Based on this, CRC recommends the following model disclosure for those that collect the collection costs associated with an account:

> ***Proposed standard disclosure:*** **The Collection Costs amount stated above, which would be applied if full payment were made as of this date, is included in the Payoff Amount. It reflects the addition of collection costs as permitted by [your agreement with the creditor/law].**

[5] E.g., Cal. Civ. Code § 1788.52; 940 Mass. Code Regs. 7.07; N.Y. Comp. R. & Regs. Tit. 23, § 1.3.
[6] *Bernal v. NRA Group, LLC*, 318 F.R.D. 64 (N.D. Ill. Aug. 30, 2016).

3. Establish a standard, limited-content message

The FDCPA contains conflicting requirements in that a debt collector must disclose his or her identity to a consumer in every communication and that a collector must refrain from communicating about a consumer's debt to a third party. Congress did not anticipate the challenges created by the wording of the FDCPA in the context of today's modern communications.

For example, current interpretations of the FDCPA provide that leaving a voicemail message, no matter how terse, is considered a "communication" under the FDCPA, thus triggering both the mini-Miranda debt collector disclosure requirement (which might be heard by, e.g., a roommate) and the third-party disclosure prohibition.

The combination of these outdated rules and the inability to use current communication channels threatens to leave this one industry in the last century, while the rest of the world moves ahead. Given that an estimated 77 million Americans have a debt in collections, this is an issue that will only cause more and more consumer frustration as today's younger – digital only – consumers age.

> ***Recommendation:*** **Declare that a limited content message, delivered via any medium other than by letter (such as voicemail, email or text), is not a communication subject to the "debt collector" disclosure requirements. This message could be used in cases where the right party contact information has not yet been confirmed.**
>
> ***Proposed communication:*** **This is <name of person> seeking to communicate with <name of debtor>. This concerns an important matter. Please contact me at <contact information> and reference account <account number>. Thank you.**

Note: the proposed communication is approximately 180 characters, which would vary based on the length of the name of the caller and the debtor. The message would likely need to be tweaked in order to make it usable by text; this would also help to avoid the need to create channel-specific rules.

4. Provide for a right to cure errors

Debt collectors presently have no ability to fix a mistake without threat of class action litigation. Of course this is an issue for collectors, but it is also bad for consumers. Consider this example:

> Upon taking on a new creditor client, Collection Agency ABC sends initial notices to a new set of debtors. Three days later it is recognized that the letters all had the same mistake; because of a technical glitch, a decimal point was misplaced, suggesting that people's debts were ten-times what they really owed. What's the reasonable thing to do? Fix it; Send another letter explaining the mistake and correcting the amount. However, because collectors have no "right to cure" they are immediately subject to civil liability. That correction letter in effect invites a class action lawsuit.

The purpose of the Fair Debt Collection Practices Act is "to eliminate abusive debt collection practices by debt collectors to ensure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged…" However, debt collectors who refrain from using abusive debt collection practices are indeed being competitively disadvantaged because of an excessive amount of frivolous litigation fueled by plaintiff attorneys looking to take advantage of the fee shifting provision within 15 USC 1692k(a)(3). The statutory damage award available to an individual consumer is up to $1,000, while consumer attorneys are often awarded many times that amount. This can result in a curable mistake costing a collection agency a significant amount of money, only a very small percent of which goes to the actual consumer who has been impacted by the mistake.

Similar to your concerns regarding the power wielded by the CFPB being used to harm consumers, destroy businesses, or arbitrarily remake American financial markets, collection agencies are concerned about consumer attorneys' use of the power afforded by fee-shifting to destroy businesses, reduce consumer benefits, and in extreme cases, cause consumer harm.

As such, the CRC proposes the CFPB adopt a federal solution that mirrors one at the state level.

California – a notoriously liberal, consumer friendly state -- has a "right to cure" provision giving debt collectors a period of time to fix an error with the consumer before being susceptible to civil liability. California law provides that a debt collector shall have no liability under the Rosenthal Fair Debt Collection Practices Act ("RFDCPA"), Title 1.6C of the Civil Code, if, "within 15 days either after discovering a violation which is able to be cured, or after the receipt of a written notice of such violation, the debt collector notifies the debtor of the violation, and makes whatever adjustments or corrections are necessary to cure the violation with respect to the debtor." See California Civil Code § 1788.30(d).

Such a provision would be mutually beneficial to both the consumer and the debt collector. The consumer gets "made whole" and the business gets an opportunity to remedy a violation, instead of being served with a lawsuit subjecting it to a statute with no maximum recoveries for attorney fees. Debt collection is the only business in the United States in which a company is severely penalized for self-identifying and correcting unintentional errors. Action is needed now to protect consumers and legitimate businesses.

> ***Proposed Rule*: A debt collector shall have no civil liability under this title if, within 30 days after discovering a violation, or after receipt of notice of an alleged violation and the factual basis for the violation, by certified mail, return receipt requested, the debt collector makes whatever adjustments or corrections are necessary to cure the violation with respect to the debtor.**

This language is modeled after the Rosenthal Fair Debt Collections Practice Act, California's consumer protection statute. The RFDCPA is very similar to the FDCPA, but the right to cure provision is an important and impactful difference between the state and federal consumer protection statutes.

5. Provide clarification related to pre-default definition and when the FDCPA applies

The Fair Debt Collection Practices Act (FDCPA) was intended to apply to third-party debt collectors who are collecting defaulted debt. However, since the Act's enactment in 1977 an exponential demand arose for businesses to provide "pre-default" account servicing for lenders and creditors who wish to outsource their accounts receivable management operations and focus on their core business. This is also known as "first party" business process outsourcing (BPO).

Entities that provide first party services are better equipped to handle large volumes of accounts or calls, and their operating structure allows them to be a complete extension of their client; they operate under the creditor's name, branding, site environment and training. These entities typically work on the creditor's system, which allows for real time updates, more efficient customer support, and less confusion for all involved.

Under the FDCPA, the definition of a "debt collector" primarily includes "any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another."

Two important exemptions under the FDCPA were intended to draw a line between a traditional debt collector and one providing "first party" BPO services to lenders and creditors:

- Any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity concerns a debt which was *not in default* at the time it was obtained by such person.
- An entity is not a debt collector if it, while, in the name of the creditor, collects debts for such creditor under the creditor's supervision.

However very little clarity exists regarding these definitions. In 2000 and 2002, the Federal Trade Commission issued two **opinion letters** in response to questions about first party servicing from Richard deMayo; these have become known in the industry as "The deMayo letters." Primarily, they attempt to define:

1. When an account goes into default
2. When a collection agency's employees become the creditor's *de facto* employees

In the discussion on when an account goes into "default," the FTC states:

> *"We believe that, in the absence of a contractual definition or conclusive state or federal law, a creditor's reasonable, written guidelines may be used to determine when an account is "in default. [But,] we would not consider a set of guidelines reasonable if, under those guidelines, the same account were deemed in default for one purpose, such as determining whether the creditor may accelerate the loan, but not in default for purposes of determining whether a third-party collector is a "debt collector" under the FDCPA".*

In the discussion on *de facto* employees the letter defines when a collection agency employee would be considered a *de facto* employee of the creditor:

> *"…….collection agency employees who are treated essentially the same as creditor employees. The more that agency employees are treated like creditor employees, the more likely it is that we would deem them de facto employees. Whether agency employees — working on the creditor's premises or on the agency's premises — are treated enough like creditor employees to become de facto employees of the creditor will depend on the degree of control and supervision exercised by the creditor over the agency employees' collection activity, and how similar that control and supervision is to that exercised by the creditor over its own employees. Relevant facts will include, for example, whether the creditor directly supervises and monitors the collection activities of the agency employees and, if so, how that supervision and monitoring is carried out; whether the creditor trains the agency employees; and whether the agency employees are subject to the same rules, procedures, and disciplinary actions that govern the collection activities of creditor employees."*

These two opinion letters remain the only guidance from a regulatory body on HOW a collection agency may work in a first party capacity. As a result, this is another area that has generated significant litigation from the plaintiffs' bar. It is critical that lenders and creditors of all sizes have a clear understanding of when their outsourced partners can service accounts without being subject to the unique disclosure requirements of the FDCPA, while still providing customers with a positive experience. Consider this example:

> You are a patient who received a bill. It says it is now overdue, yet you don't even recognize it. You call the number to start investigating and you reach a collection agency that is operating as a "first party." Their job is to help callers like you sort through what you have and figure out what is owed, what isn't, where you may have insurance to cover it, etc. However, because the law is not clear, they may be required to first read you the mini-Miranda notice, which goes like this: "This is an attempt to collect a debt and any information obtained will be used for that purpose."
>
> Wait. What? You might think, "Am I being arrested? I am just calling to figure out this bill!" Sounds intimidating, doesn't it? Yet this is what the FDCPA requires collectors to say.

***Proposed Rule*: The CRC proposes that the CFPB adopt a regulation clarifying that, under the FDCPA, a person is not a debt collector if that person:**

- **Services a debt on behalf of the creditor exclusively in the name of the creditor, even if the person is not an employee or officer of the creditor, so long as the person is authorized by and acting under the supervision of the creditor; or**
- **Services a debt that is not in default as defined by state or federal law or the terms of the contract creating the indebtedness; in the absence of such definition in contract or law, a creditor's reasonable, written, and consistently applied guidelines may be used to determine if a debt is in default.**

File Date	Case No.	State	Type	Plaintiff last name	Co-plaintiff las	Co-plaintiff l	Attorney	Attorney firm	Type
6/30/2016	1:16-cv-05201-SM	NY	Individual	Pacificador			Craig Sanders	Barshay Sanders	Avila
7/14/2016	6:16-cv-06487-CJS	NY	Class	Douglass			Karen Gesund	Gesund and Pailet, LLC	Avila
4/4/2016	1:16-cv-01630-RRM-SMG	NY	Class	Picerno			Ryan Gentile	Law Offices of Gus Farinella PC	Reverse Avila
4/20/2016	1:16-cv-01951-ENV-PK	NY	Class	Mahfood			Maxim Maximov	Maxim Maximov, LLP	Reverse Avila
5/10/2016	1:16-cv-02359-WFK-JO	NY	Class	Etienne			Ari Marcus	Marcus Zelman LLC	Reverse Avila
5/23/2016	1:16-cv-02604-AMD-VMS	NY	Class	Bandman			David Palace	Law Offices of David Palace	Reverse Avila
5/26/2016	1:16-cv-02686-AMD-SMG	NY	Class	Orzel			Alan Sasson	Law Office of Alan Sasson, PC	Reverse Avila
6/1/2016	1:16-cv-02787-RRM-CLP	NY	Class	Santora			Daniel Kohn	RC Law Group, PLLC	Reverse Avila
6/15/2016	1:16-cv-03133	NY	Class	Kalmenson			Maxim Maximov	Maxim Maximov, LLP	Reverse Avila
6/20/2016	2:16-cv-03305-ADS-AYS	NY	Individual	Bellafatto	Lennon		Craig Sanders	Barshay Sanders	Reverse Avila
6/20/2016	2:16-cv-03303-DRH-AYS	NY	Individual	Nova			Craig Sanders	Barshay Sanders	Reverse Avila
6/21/2016	2:16-cv-03344-JMA-AKT	NY	Individual	Alexander			Craig Sanders	Barshay Sanders	Reverse Avila
6/21/2016	2:16-cv-03334-JMA-AKT	NY	Individual	Callan	Montalvo		Craig Sanders	Barshay Sanders	Reverse Avila
6/21/2016	2:16-cv-03338-ADS-AYS	NY	Individual	Duryee	Marino		Craig Sanders	Barshay Sanders	Reverse Avila
6/21/2016	2:16-cv-03336-JMA-ARL	NY	Individual	Vouvounas			Craig Sanders	Barshay Sanders	Reverse Avila
6/22/2016	1:16-cv-03400	NY	Class	Orzel			Alan Sasson	Law Office of Alan Sasson, PC	Reverse Avila
6/24/2016	1:16-cv-03475-ERK-RLM	NY	Class	Correa			Dan Shaked	Shaked Law Group PC	Reverse Avila
6/27/2016	2:16-cv-03535-ADS-SIL	NY	Individual	Ferguson	Smith		Craig Sanders	Barshay Sanders	Reverse Avila
6/27/2016	2:16-cv-03534-ADS-ARL	NY	Individual	Iadevaio			Craig Sanders	Barshay Sanders	Reverse Avila
6/29/2016	2:16-cv-03611	NY	Class	Passiglia			Craig Sanders	Barshay Sanders	Reverse Avila
6/30/2016	2:16-cv-03651-SJF-SIL	NY	Individual	Alston	Nelson		Craig Sanders	Barshay Sanders	Reverse Avila
6/30/2016	2:16-cv-03649-DRH-AKT	NY	Individual	Ochoa	Erazo		Craig Sanders	Barshay Sanders	Reverse Avila
7/6/2016	2:16-cv-03740-JFB-AKT	NY	Class	Divella, Jr.			Craig Sanders	Barshay Sanders	Reverse Avila
7/8/2016	2:16-cv-03824-JMA-SIL	NY	Individual	Barbero	Gonzalez		Craig Sanders	Barshay Sanders	Reverse Avila
7/8/2016	2:16-cv-03822-ADS-AYS	NY	Individual	Shields			Craig Sanders	Barshay Sanders	Reverse Avila
7/13/2016	2:16-cv-03876-ADS-AYS	NY	Class	Flynn			Joseph Mauro	The Law Office of Joseph Mauro LLC	Reverse Avila
7/13/2016	2:16-cv-03878-ADS-ARL	NY	Class	Walton			Joseph Mauro	The Law Office of Joseph Mauro LLC	Reverse Avila
7/20/2016	2:16-cv-04026-ADS-AYS	NY	Class	Beyer			Craig Sanders	Barshay Sanders	Reverse Avila
7/20/2016	2:16-cv-04032-LDW-SIL	NY	Individual	Burgos	Dipierro		Craig Sanders	Barshay Sanders	Reverse Avila
7/29/2016	2:16-cv-04227	NY	Class	Covino			Craig Sanders	Barshay Sanders	Reverse Avila
7/29/2016	2:16-cv-04228-SJF-AKT	NY	Individual	Moreno			Craig Sanders	Barshay Sanders	Reverse Avila
8/1/2016	2:16-cv-04275-LDW-AYS	NY	Individual	Baker			Craig Sanders	Barshay Sanders	Reverse Avila
8/1/2016	2:16-cv-04273-SJF-ARL	NY	Individual	Holder			Craig Sanders	Barshay Sanders	Reverse Avila
8/2/2016	2:16-cv-04296-ADS-AYS	NY	Individual	Bellafonte	Pagliuca		Craig Sanders	Barshay Sanders	Reverse Avila
8/3/2016	2:16-cv-04337-JMA-SIL	NY	Individual	Bellafonte			Craig Sanders	Barshay Sanders	Reverse Avila
8/3/2016	1:16-cv-043242-SJ-CLP	NY	Class	Stein			Adam Fishbein	Adam Fishbein, PC	Reverse Avila
8/9/2016	2:16-cv-04431-ADS-AKT	NY	Individual	Beyer			Craig Sanders	Barshay Sanders	Reverse Avila
8/9/2016	2:16-cv-04425-LDW-AKT	NY	Individual	Iadevaio	Indimine		Craig Sanders	Barshay Sanders	Reverse Avila
8/9/2016	2:16-cv-04430-SJF-GRB	NY	Individual	McHenry	Miltano-Squicciarini		Craig Sanders	Barshay Sanders	Reverse Avila
8/11/2016	2:16-cv-04496-SJF-AYS	NY	Individual	Fowles			Craig Sanders	Barshay Sanders	Reverse Avila
8/12/2016	2:16-cv-04534-SJF-AYS	NY	Individual	Fucco	Fucco		Craig Sanders	Barshay Sanders	Reverse Avila
8/16/2016	2:16-cv-04576-LDW-AKT	NY	Individual	Montoya			Craig Sanders	Barshay Sanders	Reverse Avila
8/16/2016	1:16-cv-04565-AMD-JO	NY	Class	Muller			Alan Sasson	Law Office of Alan Sasson, PC	Reverse Avila
8/24/2016	2:16-cv-04722-LDW-AYS	NY	Individual	Zevon			Craig Sanders	Barshay Sanders	Reverse Avila
8/30/2016	1:16-cv-04859-MKB-RLM	NY	Class	Wieder			Maxim Maximov	Maxim Maximov, LLP	Reverse Avila
8/31/2016	1:16-cv-04877-ERK-ST	NY	Class	Schechter			Adam Fishbein	Adam Fishbein, PC	Reverse Avila

File Date	Case No.	State	Type	Plaintiff last name	Co-plaintiff last	Co-plaintiff l	Attorney	Attorney firm	Type
9/1/2016	2:16-cv-04901-JFB-GRB	NY	Individual	Harley	Fraina		Craig Sanders	Barshay Sanders	Reverse Avila
9/1/2016	2:16-cv-04900-JFB-AKT	NY	Individual	Roth	Goodwin		Craig Sanders	Barshay Sanders	Reverse Avila
9/8/2016	2:16-cv-04998-DRH-GRB	NY	Individual	Rivera			Craig Sanders	Barshay Sanders	Reverse Avila
9/8/2016	1:16-cv-04997-WFK-JO	NY	Class	Hartman			David Palace	Law Offices of David Palace	Reverse Avila
9/12/2016	2:16-cv-05043-JFB-AYS	NY	Individual	Lennon			Craig Sanders	Barshay Sanders	Reverse Avila
9/12/2016	2:16-cv-05044-DRH-AYS	NY	Individual	McHenry	Wolin		Craig Sanders	Barshay Sanders	Reverse Avila
9/13/2016	1:16-cv-05079-CBA-RML	NY	Class	Brach			David Palace	Law Offices of David Palace	Reverse Avila
9/14/2016	1:16-cv-05106	NY	Class	Weber			Adam Fishbein	Adam Fishbein, PC	Reverse Avila
9/15/2016	1:16-cv-05146-LDH-SMG	NY	Class	Chein			Maxim Maximov	Maxim Maximov, LLP	Reverse Avila
9/15/2016	1:16-cv-05148-LDH-JO	NY	Class	Gendelberg			Maxim Maximov	Maxim Maximov, LLP	Reverse Avila
9/15/2016	1:16-cv-05142-SJ-VMS	NY	Class	Freilich			Maxim Maximov	Maxim Maximov, LLP	Reverse Avila
9/15/2016	1:16-cv-05147-RRM-PK	NY	Class	Freilich			Maxim Maximov	Maxim Maximov, LLP	Reverse Avila
9/15/2016	1:16-cv-05143-ENV-SMG	NY	Class	Moskowitz			Maxim Maximov	Maxim Maximov, LLP	Reverse Avila
9/15/2016	1:16-cv-05145-CBA-VMS	NY	Class	Ross			Maxim Maximov	Maxim Maximov, LLP	Reverse Avila
9/16/2016	1:16-cv-05192-MKB-SMG	NY	Class	Oved			Adam Fishbein	Adam Fishbein, PC	Reverse Avila
9/19/2016	1:16-cv-05223	NY	Class	Frankel			Maxim Maximov	Maxim Maximov, LLP	Reverse Avila
9/20/2016	2:16-cv-05238-ADS-AKT	NY	Individual	Dykes			Craig Sanders	Barshay Sanders	Reverse Avila
9/20/2016	2:16-CV-05240-ADS-SIL	NY	Individual	Malhotra	Baker		Craig Sanders	Barshay Sanders	Reverse Avila
9/21/2016	2:16-cv-05256-JFB-AYS	NY	Individual	Zevon	Fedorka		Craig Sanders	Barshay Sanders	Reverse Avila
9/21/2016	1:16-cv-05248-KAM-PK	NY	Class	Gonzales			Dan Shaked	Shaked Law Group PC	Reverse Avila
9/21/2016	2:16-cv-05257-JMA-SIL	NY	Individual	Zevon			Craig Sanders	Barshay Sanders	Reverse Avila
9/22/2016	2:16-cv-05287-LDW-AYS	NY	Individual	Lobosco	Callan		Craig Sanders	Barshay Sanders	Reverse Avila
9/26/2016	1:16-cv-05345-PKC-ST	NY	Class	Ilovits			David Palace	Law Offices of David Palace	Reverse Avila
9/26/2016	1:16-cv-05350-LDH-RLM	NY	Class	Haltovsky			David Palace	Law Offices of David Palace	Reverse Avila
9/26/2016	1:16-cv-05344-CBA-VMS	NY	Class	Lebovits			David Palace	Law Offices of David Palace	Reverse Avila
9/27/2016	1:16-cv-05372-WFK-LB	NY	Class	Weingarten			Adam Fishbein	Adam Fishbein, PC	Reverse Avila
9/29/2016	1:16-cv-05440-RRM-ST	NY	Class	Hess			Adam Fishbein	Adam Fishbein, PC	Reverse Avila
9/29/2016	1:16-cv-05427-LDH-ST	NY	Class	Wegh			Adam Fishbein	Adam Fishbein, PC	Reverse Avila
10/4/2016	2:16-cv-05531-ADS-SIL	NY	Individual	Iadevaio	Lazar		Craig Sanders	Barshay Sanders	Reverse Avila
10/4/2016	2:16-cv-05517-JMA-GRB	NY	Individual	McAdams	Rousso		Craig Sanders	Barshay Sanders	Reverse Avila
10/4/2016	2:16-cv-05532-JMA-AYS	NY	Individual	Nardino	Vouvounas		Craig Sanders	Barshay Sanders	Reverse Avila
10/4/2016	2:16-cv-05533-SJF-GRB	NY	Individual	Piazza			Craig Sanders	Barshay Sanders	Reverse Avila
10/4/2016	2:16-cv-05525-JFB-AKT	NY	Individual	Vouvounas	Sass		Craig Sanders	Barshay Sanders	Reverse Avila
10/5/2016	2:16-cv-05541-SJF-ARL	NY	Individual	Callan			Craig Sanders	Barshay Sanders	Reverse Avila
10/5/2016	2:16-cv-05540-ADS-AKT	NY	Individual	Malhotra	Ascencio		Craig Sanders	Barshay Sanders	Reverse Avila
10/5/2016	2:16-cv-05545-JMA-ARL	NY	Individual	O'Donohue	Jackson		Craig Sanders	Barshay Sanders	Reverse Avila
10/5/2016	2:16-cv-05548-ADS-SIL	NY	Individual	Vosefski	Conety		Craig Sanders	Barshay Sanders	Reverse Avila
10/6/2016	2:16-cv-05560-LDW-SIL	NY	Individual	Alesi	Flore		Craig Sanders	Barshay Sanders	Reverse Avila
10/6/2016	2:16-cv-05559-JFB-ARL	NY	Individual	Cancemi			Craig Sanders	Barshay Sanders	Reverse Avila
10/6/2016	2:16-cv-05563-LDW-ARL	NY	Individual	Dykes	Callace		Craig Sanders	Barshay Sanders	Reverse Avila
10/6/2016	2:16-cv-05558-ADS-SIL	NY	Individual	Harley	Saitta		Craig Sanders	Barshay Sanders	Reverse Avila
10/6/2016	2:16-cv-05565-SJF-AYS	NY	Individual	Isaac			Craig Sanders	Barshay Sanders	Reverse Avila
10/6/2016	2:16-cv-05562-LDW-AYS	NY	Individual	Marino	Deiters		Craig Sanders	Barshay Sanders	Reverse Avila
10/6/2016	2:16-cv-05573-LDW-SIL	NY	Individual	Mazzara			Craig Sanders	Barshay Sanders	Reverse Avila
10/6/2016	2:16-cv-05566-LDW-AKT	NY	Individual	Taylor	Callace	Digirolamo	Craig Sanders	Barshay Sanders	Reverse Avila

File Date	Case No.	State	Type	Plaintiff last name	Co-plaintiff last	Co-plaintiff l	Attorney	Attorney firm	Type
10/6/2016	2:16-cv-05561-SJF-AYS	NY	Individual	Taylor	Erickson		Craig Sanders	Barshay Sanders	Reverse Avila
10/6/2016	2:16-cv-05571-SJF-AKT	NY	Individual	Wanerka			Craig Sanders	Barshay Sanders	Reverse Avila
10/6/2016	1:16-cv-05572	NY	Class	Bakon			Maxim Maximov	Maxim Maximov, LLP	Reverse Avila
10/6/2016	1:16-cv-05582-ARR-SMG	NY	Class	Stiel			Adam Fishbein	Adam Fishbein, PC	Reverse Avila
10/7/2016	2:16-cv-05624	NY	Individual	Malhotra	Balke		Craig Sanders	Barshay Sanders	Reverse Avila
10/7/2016	2:16-cv-05626	NY	Individual	Nardino			Craig Sanders	Barshay Sanders	Reverse Avila
10/7/2016	2:16-cv-05622	NY	Individual	Nelson	Eifert		Craig Sanders	Barshay Sanders	Reverse Avila
10/7/2016	2:16-cv-05623	NY	Individual	Nelson	Martinez		Craig Sanders	Barshay Sanders	Reverse Avila
10/7/2016	1:16-cv-05607-ARR-RER	NY	Class	Kleinman			David Palace	Law Offices of David Palace	Reverse Avila
10/10/2016	1:16-cv-05646-FB-SMG	NY	Class	Hartman			David Palace	Law Offices of David Palace	Reverse Avila
10/13/2016	1:16-cv-05726-RRM-SMG	NY	Class	Posen			Adam Fishbein	Adam Fishbein, PC	Reverse Avila
10/13/2016	1:16-cv-05725	NY	Class	Kleinman			David Palace	Law Offices of David Palace	Reverse Avila
10/13/2016	1:16-cv-05714	NY	Class	Muller			Alan Sasson	Law Office of Alan Sasson, PC	Reverse Avila
10/18/2016	2:16-cv-05808-LDW-AYS	NY	Individual	Harley	Charleston		Craig Sanders	Barshay Sanders	Reverse Avila
10/18/2016	2:16-cv-05803-SJF-AKT	NY	Individual	Iadevaio	Tesoreiro		Craig Sanders	Barshay Sanders	Reverse Avila
10/18/2016	2:16-cv-05806-DRH-ARL	NY	Individual	Malhotra	Yuksel		Craig Sanders	Barshay Sanders	Reverse Avila
10/18/2016	2:16-cv-05802-LDW-AKT	NY	Individual	Maloney			Craig Sanders	Barshay Sanders	Reverse Avila
10/18/2016	2:16-cv-05809-SJF-AYS	NY	Class	Pisk	Balke		Craig Sanders	Barshay Sanders	Reverse Avila
10/20/2016	1:16-cv-05860	NY	Class	Roth			Alan Sasson	Law Office of Alan Sasson, PC	Reverse Avila
10/21/2016	1:16-cv-05873-MKB-PK	NY	Class	Maleh			Alan Sasson	Law Office of Alan Sasson, PC	Reverse Avila
10/30/2016	1:16-cv-06022-DLI-JO	NY	Class	Harel			Adam Fishbein	Adam Fishbein, PC	Reverse Avila
11/1/2016	2:16-cv-06050-LDW-AKT	NY	Individual	O'Donohue	Sass		Craig Sanders	Barshay Sanders	Reverse Avila
11/1/2016	2:16-cv-06051-SJF-GRB	NY	Individual	Tesoriero			Craig Sanders	Barshay Sanders	Reverse Avila
11/2/2016	2:16-cv-06067-LDW-AKT	NY	Individual	Castellanos	Rosati		Craig Sanders	Barshay Sanders	Reverse Avila
11/2/2016	2:16-cv-06078-ADS-ARL	NY	Individual	Flores	Vouvounas		Craig Sanders	Barshay Sanders	Reverse Avila
11/2/2016	2:16-cv-06069-DRH-ARL	NY	Individual	Fraina	Habel		Craig Sanders	Barshay Sanders	Reverse Avila
11/4/2016	1:16-cv-06137-ILG-SMG	NY	Class	Bakon			Maxim Maximov	Maxim Maximov, LLP	Reverse Avila
11/4/2016	1:16-cv-06143-DLI-VMS	NY	Class	Kuznetsov			Maxim Maximov	Maxim Maximov, LLP	Reverse Avila
11/4/2016	1:16-cv-06136	NY	Class	Schwartz			Maxim Maximov	Maxim Maximov, LLP	Reverse Avila
11/4/2016	1:16-cv-06140	NY	Class	Bukhbinoler			Maxim Maximov	Maxim Maximov, LLP	Reverse Avila
11/4/2016	1:16-cv-06138	NY	Class	Chein			Maxim Maximov	Maxim Maximov, LLP	Reverse Avila
11/4/2016	1:16-cv-06141-FB-RLM	NY	Class	Ehrnfeld			Maxim Maximov	Maxim Maximov, LLP	Reverse Avila
11/4/2016	1:16-cv-06144	NY	Class	Henig			Maxim Maximov	Maxim Maximov, LLP	Reverse Avila
11/17/2016	2:16-cv-06388-ADS-AYS	NY	Individual	Callace	Florez	Norman	Craig Sanders	Barshay Sanders	Reverse Avila
11/22/2016	2:16-cv-06515-LDW-ARL	NY	Individual	Malhotra	Fischer		Craig Sanders	Barshay Sanders	Reverse Avila
11/22/2016	1:16-cv-06514	NY	Class	Fekete			Alan Sasson	Law Office of Alan Sasson, PC	Reverse Avila
12/1/2016	2:16-cv-06670-ADS-ARL	NY	Individual	Levinson	Balke		Craig Sanders	Barshay Sanders	Reverse Avila
12/2/2016	2:16-cv-06695-ADS-AYS	NY	Individual	Gibbons	Ramaglia		Craig Sanders	Barshay Sanders	Reverse Avila
12/2/2016	2:16-cv-06697-LDW-ARL	NY	Individual	Sidea	Callace		Craig Sanders	Barshay Sanders	Reverse Avila
12/10/2016	2:16-cv-06819-ADS-Arl	NY	Individual	McHenry	Frohnhoefer		Craig Sanders	Barshay Sanders	Reverse Avila
12/12/2016	2:16-cv-06841-JMA-AYS	NY	Individual	Castain	Rosati		Craig Sanders	Barshay Sanders	Reverse Avila
12/13/2016	2:16-cv-06895-SJF-GRB	NY	Individual	Dykes	Hicks		Craig Sanders	Barshay Sanders	Reverse Avila
12/13/2016	1:16-cv-06897-WFK-RML	NY	Class	Kuznetsov			Maxim Maximov	Maxim Maximov, LLP	Reverse Avila
12/14/2016	1:16-cv-06914	NY	Class	Sompolinsky			Adam Fishbein	Adam Fishbein, PC	Reverse Avila
12/15/2016	2:16-cv-06917-LDW-AKT	NY	Individual	Polizois			Craig Sanders	Barshay Sanders	Reverse Avila
12/15/2016	2:16-cv-06918-LDW-AKT	NY	Individual	Taylor	Iadevaio		Craig Sanders	Barshay Sanders	Reverse Avila

File Date	Case No.	State	Type	Plaintiff last name	Co-plaintiff last	Co-plaintiff l	Attorney	Attorney firm	Type
12/16/2016	2:16-cv-06952-DRH-GRB	NY	Individual	Lee			Craig Sanders	Barshay Sanders	Reverse Avila
12/21/2016	2:16-cv-07033-SJF-ARL	NY	Individual	Gil	Fischer		Craig Sanders	Barshay Sanders	Reverse Avila
12/21/2016	2:16-cv-07035	NY	Individual	Messina	Fischer		Craig Sanders	Barshay Sanders	Reverse Avila
12/21/2016	2:16-cv-07032	NY	Individual	Vega	Suzette		Craig Sanders	Barshay Sanders	Reverse Avila
12/22/2016	1:16-cv-07056	NY	Class	Iliovits			David Palace	Law Offices of David Palace	Reverse Avila
12/22/2016	1:16-cv-07055-FB-JO	NY	Class	Klein			David Palace	Law Offices of David Palace	Reverse Avila
12/29/2016	2:16-cv-07167-JS-SIL	NY	Individual	Iadevaio			Craig Sanders	Barshay Sanders	Reverse Avila
1/5/2017	1:17-cv-00065	NY	Class	Schlesinger			David Palace	Law Offices of David Palace	Reverse Avila
1/9/2017	1:17-cv-00111-WFK-CLP	NY	Class	Diaz			Alan Sasson	Law Office of Alan Sasson, PC	Reverse Avila
1/10/2017	1:17-cv-00136	NY	Class	Kleinman			David Palace	Law Offices of David Palace	Reverse Avila
1/14/2017	1:17-cv-00222	NY	Class	Gavrialov			Igor Litvak	The Litvak Law Firm, PLLC	Reverse Avila
1/14/2017	1:17-cv-00224	NY	Class	Gavrielova			Igor Litvak	The Litvak Law Firm, PLLC	Reverse Avila
1/18/2017	2:17-cv-00287-LDW-AKT	NY	Class	Callan			Craig Sanders	Barshay Sanders	Reverse Avila
1/18/2017	2:17-cv-00288-SJF-AYS	NY	Class	Cancemi			Craig Sanders	Barshay Sanders	Reverse Avila
1/18/2017	2:17-cv-00282-JS-AKT	NY	Individual	Castro	Broski		Craig Sanders	Barshay Sanders	Reverse Avila
1/18/2017	2:17-cv-00285-LDW-SIL	NY	Individual	Flores			Craig Sanders	Barshay Sanders	Reverse Avila
1/18/2017	2:17-cv-00284-JFB-ARL	NY	Individual	Hertzovitz	Vaughn		Craig Sanders	Barshay Sanders	Reverse Avila
1/18/2017	2:17-cv-00286-JFB-SIL	NY	Class	Huntley	Biggs		Craig Sanders	Barshay Sanders	Reverse Avila
1/20/2017	2:17-cv-00340-JFB-ARL	NY	Class	Biggs			Craig Sanders	Barshay Sanders	Reverse Avila
1/20/2017	2:17-cv-00342-DRH-SIL	NY	Individual	Tammaro			Craig Sanders	Barshay Sanders	Reverse Avila
1/20/2017	1:17-cv-00349-FB-ST	NY	Class	Yakubov			Igor Litvak	The Litvak Law Firm, PLLC	Reverse Avila
1/22/2017	1:17-cv-00352	NY	Class	Khaimov			Igor Litvak	The Litvak Law Firm, PLLC	Reverse Avila
1/23/2017	1:17-cv-00361-PKC-SMG	NY	Class	Mohiuddin			Dan Shaked	Shaked Law Group PC	Reverse Avila
1/25/2017	2:17-cv-00412-LDW-SIL	NY	Individual	Tesoriero	Mangogna		Craig Sanders	Barshay Sanders	Reverse Avila
1/25/2017	2:17-cv-00413-LDW-AKT	NY	Individual	Fowles			Craig Sanders	Barshay Sanders	Reverse Avila
1/26/2017	2:17-cv-00446-ADS-AKT	NY	Individual	Ortiz			Craig Sanders	Barshay Sanders	Reverse Avila
1/30/2017	1:17-cv-00535-ENV-PK	NY	Class	Khaimov			Igor Litvak	The Litvak Law Firm, PLLC	Reverse Avila
1/30/2017	1:17-cv-00533-BMC	NY	Class	Miller			Igor Litvak	The Litvak Law Firm, PLLC	Reverse Avila
1/30/2017	1:17-cv-00511-ARR-RER	NY	Class	Lynch			Dan Shaked	Shaked Law Group PC	Reverse Avila
1/31/2017	2:17-cv-00542-DRH-AKT	NY	Individual	Colon			Craig Sanders	Barshay Sanders	Reverse Avila
1/31/2017	2:17-cv-00541-LDW-AKT	NY	Class	Taylor			Craig Sanders	Barshay Sanders	Reverse Avila
1/31/2017	2:17-cv-00562-SJF-AYS	NY	Individual	Colon	Yuksel		Craig Sanders	Barshay Sanders	Reverse Avila
2/1/2017	2:17-cv-00587-LDW-AYS	NY	Individual	Riesel-Montalbano			Craig Sanders	Barshay Sanders	Reverse Avila
2/1/2017	2:17-cv-00588-LDW-ARL	NY	Individual	Tammaro	Fischer		Craig Sanders	Barshay Sanders	Reverse Avila
2/1/2017	1:17-cv-00589-KAM-RML	NY	Class	Twersky			David Palace	Law Offices of David Palace	Reverse Avila
2/1/2017	1:17-cv-00584-ARR-RER	NY	Class	Gross			David Palace	Law Offices of David Palace	Reverse Avila
2/1/2017	1:17-cv-00581-ARR-CLP	NY	Class	Gross			David Palace	Law Offices of David Palace	Reverse Avila
2/1/2017	1:17-cv-00572-AMD-RML	NY	Class	Ezra			Alan Sasson	Law Office of Alan Sasson, PC	Reverse Avila
2/2/2017	1:17-cv-00612-DLI-VMS	NY	Class	Yakubov			Igor Litvak	The Litvak Law Firm, PLLC	Reverse Avila
2/3/2017	2:17-cv-00649-SJF-SIL	NY	Individual	Martinez			Craig Sanders	Barshay Sanders	Reverse Avila
2/3/2017	2:17-cv-00647-LDW-SIL	NY	Individual	McAdams			Craig Sanders	Barshay Sanders	Reverse Avila
2/3/2017	2:17-cv-00650-JMA-ARL	NY	Individual	Taylor	Divirgilio		Craig Sanders	Barshay Sanders	Reverse Avila
2/3/2017	1:17-cv-00654-PKC-RLM	NY	Class	Mustafaev			Igor Litvak	The Litvak Law Firm, PLLC	Reverse Avila
2/6/2017	1:17-cv-00679-PKC-SMG	NY	Class	Miller			Igor Litvak	The Litvak Law Firm, PLLC	Reverse Avila
2/7/2017	1:17-cv-00712-BMV	NY	Class	Gavrialov			Igor Litvak	The Litvak Law Firm, PLLC	Reverse Avila
2/8/2017	2:17-cv-00732-LDW-SIL	NY	Individual	Desmond	Sass		Craig Sanders	Barshay Sanders	Reverse Avila

File Date	Case No.	State	Type	Plaintiff last name	Co-plaintiff las	Co-plaintiff l	Attorney	Attorney firm	Type
2/8/2017	2:17-cv-00736-DRH-AYS	NY	Individual	Huntley	Dykes		Craig Sanders	Barshay Sanders	Reverse Avila
2/8/2017	1:17-cv-00743-MKB-SMG	NY	Class	Frankel			Maxim Maximov	Maxim Maximov, LLP	Reverse Avila
2/10/2017	2:17-cv-00756-ADS-AKT	NY	Individual	Dykes			Craig Sanders	Barshay Sanders	Reverse Avila
2/10/2017	1:17-cv-00783-ILG-CLP	NY	Class	Khaimov	Miller	Nayberg	Igor Litvak	The Litvak Law Firm, PLLC	Reverse Avila
2/14/2017	2:17-cv-00819-SJF-AYS	NY	Individual	Eger	Vanpelt		Craig Sanders	Barshay Sanders	Reverse Avila
2/14/2017	2:17-cv-00821-ADS-AKT	NY	Individual	O'Donohue			Craig Sanders	Barshay Sanders	Reverse Avila
2/14/2017	1:17-cv-00815-FB-VMS	NY	Class	Lebovits			David Palace	Law Offices of David Palace	Reverse Avila
2/16/2017	2:16-cv-00870-LDW-GRB	NY	Individual	Hoffman	Bartalini		Craig Sanders	Barshay Sanders	Reverse Avila
2/16/2017	2:17-cv-00868-JS-AKT	NY	Individual	Roth			Craig Sanders	Barshay Sanders	Reverse Avila
2/17/2017	2:17-cv-00927-SJF-SIL	NY	Individual	Castain			Craig Sanders	Barshay Sanders	Reverse Avila
2/17/2017	1:17-cv-00909-LDH-VMS	NY	Class	Nayberg			Igor Litvak	The Litvak Law Firm, PLLC	Reverse Avila
2/19/2017	2:17-cv-00945-ADS-ARL	NY	Individual	Dorante			Daniel Kohn	RC Law Group PLLC	Reverse Avila
2/20/2017	1:17-cv-00953-DLI-RLM	NY	Class	Jsilberberg			Alan Sasson	Law Office of Alan Sasson, PC	Reverse Avila
2/21/2017	2:17-cv-00977-ADS-SIL	NY	Individual	Libby			Craig Sanders	Barshay Sanders	Reverse Avila
2/21/2017	1:17-cv-00981-ARR-RML	NY	Class	Leifer			Maxim Maximov	Maxim Maximov, LLP	Reverse Avila
2/22/2017	2:17-cv-00990-LDW-ARL	NY	Individual	Plattner			Craig Sanders	Barshay Sanders	Reverse Avila
2/22/2017	2:17-cv-00993-ADS-ARL	NY	Class	Thompkins			Craig Sanders	Barshay Sanders	Reverse Avila
2/22/2017	1:17-cv-01010-ILG-CLP	NY	Class	Fuzaylov			Igor Litvak	The Litvak Law Firm, PLLC	Reverse Avila
2/22/2017	1:17-cv-01007-SJ-JO	NY	Class	Ashkenazi			David Palace	Law Offices of David Palace	Reverse Avila
2/22/2017	1:17-cv-01006-ARR-CLP	NY	Class	Twersky			David Palace	Law Offices of David Palace	Reverse Avila
2/23/2017	1:17-cv-01017-MKB-JO	NY	Class	Meola			Dan Shaked	Shaked Law Group PC	Reverse Avila
2/23/2017	1:17-cv-01014-ARR-CLP	NY	Class	Romano			Dan Shaked	Shaked Law Group PC	Reverse Avila
2/24/2017	2:17-cv-01041-LDW-AYS	NY	Individual	Carlo			Craig Sanders	Barshay Sanders	Reverse Avila
2/24/2017	1:17-cv-01065-BMC	NY	Class	Richardson			Alan Sasson	Law Office of Alan Sasson, PC	Reverse Avila
2/24/2017	1:17-cv-01051-BMC	NY	Class	Richardson			Alan Sasson	Law Office of Alan Sasson, PC	Reverse Avila
2/25/2017	1:17-cv-01085-WFK-JO	NY	Class	Fuzaylov			Igor Litvak	The Litvak Law Firm, PLLC	Reverse Avila
2/26/2017	1:17-cv-01087-BMC	NY	Class	Fuzaylov	Khaimov	Moscowitz	Igor Litvak	The Litvak Law Firm, PLLC	Reverse Avila
2/28/2017	1:17-cv-01116-PKC-PK	NY	Class	Bakon			Maxim Maximov	Maxim Maximov, LLP	Reverse Avila
2/28/2017	1:17-cv-01115-AMD-ST	NY	Class	Ehrnfeld			Maxim Maximov	Maxim Maximov, LLP	Reverse Avila
2/28/2017	1:17-cv-01131-ERK-SMG	NY	Class	Kohn			David Palace	Law Offices of David Palace	Reverse Avila
3/1/2017	2:17-cv-01175-JFB-GRB	NY	Individual	Balke			Craig Sanders	Barshay Sanders	Reverse Avila
3/1/2017	2:17-cv-01178-SJF-ARL	NY	Individual	Callan			Craig Sanders	Barshay Sanders	Reverse Avila
3/1/2017	2:17-cv-01174-DRH-AYS	NY	Individual	Dykes			Craig Sanders	Barshay Sanders	Reverse Avila
3/1/2017	2:17-cv-01177-JFB-GRB	NY	Individual	Mosca			Craig Sanders	Barshay Sanders	Reverse Avila
3/1/2017	1:17-cv-01154-FB-VMS	NY	Class	Franco			Alan Sasson	Law Office of Alan Sasson, PC	Reverse Avila
3/2/2017	2:17-cv-01210-SJF-GRB	NY	Individual	Frohnhoefer			Craig Sanders	Barshay Sanders	Reverse Avila
3/2/2017	2:17-cv-01206-SJF-AKT	NY	Individual	Howe			Craig Sanders	Barshay Sanders	Reverse Avila
3/2/2017	2:17-cv-01208-JFB-AKT	NY	Individual	Kidd	Lemoine		Craig Sanders	Barshay Sanders	Reverse Avila
3/2/2017	1:17-cv-01204-KAM-RML	NY	Class	Bandman			David Palace	Law Offices of David Palace	Reverse Avila
3/6/2017	2:17-cv-01249-JMA-GRB	NY	Individual	Howe	Pampena		Craig Sanders	Barshay Sanders	Reverse Avila
3/7/2017	2:17-cv-01301-SJF-GRB	NY	Individual	Huntley			Craig Sanders	Barshay Sanders	Reverse Avila
3/7/2017	1:17-cv-01289-MKB-PK	NY	Class	Lynch			Igor Litvak	The Litvak Law Firm, PLLC	Reverse Avila
3/9/2017	2:17-cv-01346-JS-ARL	NY	Individual	Dykes	Roth		Craig Sanders	Barshay Sanders	Reverse Avila
3/9/2017	2:17-cv-01345-ADS-ARL	NY	Individual	Vouvounas			Craig Sanders	Barshay Sanders	Reverse Avila
3/10/2017	1:17-cv-01365-BMV	NY	Class	Dekhkanov			Igor Litvak	The Litvak Law Firm, PLLC	Reverse Avila
3/10/2017	1:17-cv-01354-DLI-RML	NY	Class	Brown			Alan Sasson	Law Office of Alan Sasson, PC	Reverse Avila

File Date	Case No.	State	Type	Plaintiff last name	Co-plaintiff last	Co-plaintiff l	Attorney	Attorney firm	Type
3/10/2017	1:17-cv-01356-ILG-ST	NY	Class	Richardson			Alan Sasson	Law Office of Alan Sasson, PC	Reverse Avila
3/11/2017	1:17-cv-01370-ARR-PK	NY	Class	Lewis			Igor Litvak	The Litvak Law Firm, PLLC	Reverse Avila
3/13/2017	2:17-cv-01399-SJF-AYS	NY	Individual	Howe			Craig Sanders	Barshay Sanders	Reverse Avila
3/13/2017	2:17-cv-01404-LDW-AKT	NY	Individual	Messina	Dykes		Craig Sanders	Barshay Sanders	Reverse Avila
3/13/2017	2:17-cv-01385-ADS-SIL	NY	Class	Taylor			Craig Sanders	Barshay Sanders	Reverse Avila
3/14/2017	1:17-cv-01429-RRM-JO	NY	Class	Joseph			Igor Litvak	The Litvak Law Firm, PLLC	Reverse Avila
3/14/2017	1:17-cv-01427-ENV-RLM	NY	Class	Lewis			Igor Litvak	The Litvak Law Firm, PLLC	Reverse Avila
3/15/2017	1:17-cv-01444-ERK-RML	NY	Class	Allahab			Ibrahim Abohamra	Sirotkin Varacalli & Hamra LLP	Reverse Avila
3/15/2017	1:17-cv-01458-ILG-SMG	NY	Class	Blanga			Alan Sasson	Law Office of Alan Sasson, PC	Reverse Avila
3/15/2017	1:17-cv-01459-RRM-RLM	NY	Class	Blanga			Alan Sasson	Law Office of Alan Sasson, PC	Reverse Avila
3/16/2017	1:17-cv-01494-ARR-VMS	NY	Class	Baptiste			Ryan Gentile	Law Offices of Gus Farinella PC	Reverse Avila
3/17/2017	1:17-cv-01498-PKC-CLP	NY	Class	Ehrnfeld			Maxim Maximov	Maxim Maximov, LLP	Reverse Avila
3/19/2017	1:17-cv-01534-RJD-VMS	NY	Class	Estevez	Gavrielova		Igor Litvak	The Litvak Law Firm, PLLC	Reverse Avila
3/19/2017	1:17-cv-01535-PKC-PK	NY	Class	Joseph	Haimoff		Igor Litvak	The Litvak Law Firm, PLLC	Reverse Avila
3/20/2017	2:17-cv-01564-JS-SIL	NY	Class	Lobosco	Hoffman		Craig Sanders	Barshay Sanders	Reverse Avila
3/21/2017	1:17-cv-01595-ENV-RLM	NY	Class	Estevez	Benchocron		Igor Litvak	The Litvak Law Firm, PLLC	Reverse Avila
3/21/2017	1:17-cv-01594-KAM-RLM	NY	Class	Estevez	Nayberg		Igor Litvak	The Litvak Law Firm, PLLC	Reverse Avila
3/27/2017	1:17-cv-01703-ARR-LB	NY	Class	Fekete			Adam Fishbein	Adam Fishbein, PC	Reverse Avila
3/28/2017	1:17-cv-01736-ARR-CLP	NY	Class	Gashilova			Daniel Cohen	Daniel Cohen, PLLC	Reverse Avila
3/28/2017	1:17-cv-01737-FM-JO	NY	Class	Gyokchyan			Daniel Cohen	Daniel Cohen, PLLC	Reverse Avila
3/28/2017	1:17-cv-01721-PKC-ST	NY	Class	Urena			Daniel Cohen	Daniel Cohen, PLLC	Reverse Avila
3/29/2017	1:17-cv-01759-AMD-VMS	NY	Class	Avezbadalov			Daniel Cohen	Daniel Cohen, PLLC	Reverse Avila
3/30/2017	1:17-cv-01795-MKB-PK	NY	Individual	Polak			Daniel Kohn	RC Law Group PLLC	Reverse Avila
3/30/2017	1:17-cv-01799-FB-JO	NY	Class	Fekete			Adam Fishbein	Adam Fishbein, PC	Reverse Avila
3/30/2017	1:17-cv-01800-AMD-CLP	NY	Class	Reich			Adam Fishbein	Adam Fishbein, PC	Reverse Avila
3/31/2017	2:17-cv-01842-LDW-GRB	NY	Individual	Castain	Ortiz		Craig Sanders	Barshay Sanders	Reverse Avila
3/31/2017	2:17-cv-01838-LDW-AKT	NY	Individual	Fleming	Mazzara		Craig Sanders	Barshay Sanders	Reverse Avila
3/31/2017	2:17-cv-01840-JFB-AKT	NY	Individual	Mazzara	Erickson		Craig Sanders	Barshay Sanders	Reverse Avila
3/31/2017	2:17-cv-01841-SJF-ARL	NY	Individual	Mazzara	Ortiz		Craig Sanders	Barshay Sanders	Reverse Avila
3/31/2017	1:17-cv-01822-BMC	NY	Class	Knowles			Alan Sasson	Law Office of Alan Sasson, PC	Reverse Avila
4/1/2017	1:17-cv-01849-RRM-RER	NY	Class	Ceban			Daniel Cohen	Daniel Cohen, PLLC	Reverse Avila
4/3/2017	2:17-cv-01887-LDW-ARL	NY	Class	Huntley	Charleston		Craig Sanders	Barshay Sanders	Reverse Avila
4/3/2017	2:17-cv-01889-ADS-SIL	NY	Individual	Malhotra	Dwyer		Craig Sanders	Barshay Sanders	Reverse Avila
4/3/2017	2:17-cv-01888-ADS-AKT	NY	Class	Taylor			Craig Sanders	Barshay Sanders	Reverse Avila
4/4/2017	2:17-cv-01913-JFB-AYS	NY	Class	Calafiore			Craig Sanders	Barshay Sanders	Reverse Avila
4/4/2017	2:17-cv-01916-LDW-SIL	NY	Class	Martinez			Craig Sanders	Barshay Sanders	Reverse Avila
4/4/2017	1:17-cv-01933-RRM-RLM	NY	Class	Bandman			David Palace	Law Offices of David Palace	Reverse Avila
4/4/2017	1:17-cv-01935-PKC-ST	NY	Class	Askal			Adam Fishbein	Adam Fishbein, PC	Reverse Avila
4/4/2017	1:17-cv-01930-ARR-PK	NY	Class	Benedek			David Palace	Law Offices of David Palace	Reverse Avila
4/4/2017	1:17-cv-01928-KAM-RML	NY	Class	Karimov			Daniel Cohen	Daniel Cohen, PLLC	Reverse Avila
4/4/2017	1:17-cv-01931-RRM-CLP	NY	Class	Karimov			Daniel Cohen	Daniel Cohen, PLLC	Reverse Avila
4/5/2017	2:17-cv-01977-LDW-GRB	NY	Class	Braunskill			Craig Sanders	Barshay Sanders	Reverse Avila
4/5/2017	2:17-cv-01976-SJF-ARL	NY	Individual	Callan			Craig Sanders	Barshay Sanders	Reverse Avila
4/5/2017	1:17-cv-01965-DLI-RML	NY	Class	Daskal			Maxim Maximov	Maxim Maximov, LLP	Reverse Avila
4/5/2017	1:17-cv-01984-LDH-CLP	NY	Class	Gavrielova			Daniel Cohen	Daniel Cohen, PLLC	Reverse Avila
4/5/2017	1:17-cv-01954-RRM-JO	NY	Class	Kalmenson			Maxim Maximov	Maxim Maximov, LLP	Reverse Avila

File Date	Case No.	State	Type	Plaintiff last name	Co-plaintiff las	Co-plaintiff l	Attorney	Attorney firm	Type
4/5/2017	1:17-cv-01959-RJD-VMS	NY	Class	Stern			Maxim Maximov	Maxim Maximov, LLP	Reverse Avila
4/5/2017	1:17-cv-01964-WFK-VMS	NY	Class	Stern			Maxim Maximov	Maxim Maximov, LLP	Reverse Avila
4/6/2017	2:17-cv-02021-LDW-AKT	NY	Class	Andres			Craig Sanders	Barshay Sanders	Reverse Avila
4/6/2017	2:17-cv-02019-LDW-AKT	NY	Class	Calandra			Craig Sanders	Barshay Sanders	Reverse Avila
4/6/2017	2:17-cv-02025-JFB-SIL	NY	Class	Colon			Craig Sanders	Barshay Sanders	Reverse Avila
4/6/2017	2:17-cv-02029-JMA-AYS	NY	Individual	Martinez	Divirgilio		Craig Sanders	Barshay Sanders	Reverse Avila
4/6/2017	2:17-cv-02028-SJF-SIL	NY	Class	Witt			Craig Sanders	Barshay Sanders	Reverse Avila
4/7/2017	2:17-cv-02136-DRH-SIL	NY	Individual	Andres			Craig Sanders	Barshay Sanders	Reverse Avila
4/7/2017	2:17-cv-02138-JFB-AYS	NY	Class	Bruno			Craig Sanders	Barshay Sanders	Reverse Avila
4/7/2017	2:17-cv-02139-SJF-AKT	NY	Individual	Colon	Cruz		Craig Sanders	Barshay Sanders	Reverse Avila
10/6/2016	1:16-cv-01213-TJM-TWD	NY	Individual	Azzara			Craig Sanders	Barshay Sanders	Reverse Avila
6/20/2016	1:16-cv-04685-LGS	NY	Individual	Taylor	Klein		Craig Sanders	Barshay Sanders	Reverse Avila
9/30/2016	1:16-cv-07676-RWS	NY	Class	Barnett			Dan Shaked	Shaked Law Group PC	Reverse Avila
10/6/2016	7:16-cv-07813-KMK	NY	Individual	Collins			Craig Sanders	Barshay Sanders	Reverse Avila
10/18/2016	1:16-cv-08126-RA	NY	Individual	Donnelly			Craig Sanders	Barshay Sanders	Reverse Avila
10/27/2016	1:16-cv-08363-AHK	NY	Class	Alvarez			Abraham Hamra	Sirotkin Varacalli & Hamra LLP	Reverse Avila
12/2/2016	7:16-09332	NY	Individual	Miglionico			Craig Sanders	Barshay Sanders	Reverse Avila
1/3/2017	1:17-cv-00024	NY	Class	Sosa			Abraham Hamra	Sirotkin Varacalli & Hamra LLP	Reverse Avila
1/17/2017	7:17-cv-00330-NSR	NY	Class	Thomas			Craig Sanders	Barshay Sanders	Reverse Avila
2/8/2017	1:17-cv-00927-GHW	NY	Class	Davis			Dan Shaked	Shaked Law Group PC	Reverse Avila
3/7/2017	1:17-cv-01698-RJS	NY	Class	Baker			Igor Litvak	The Litvak Law Firm, PLLC	Reverse Avila
3/8/2017	1:17-cv-01723-GBD	NY	Class	Baker			Igor Litvak	The Litvak Law Firm, PLLC	Reverse Avila
3/8/2017	1:17-cv-01731-PGG	NY	Class	Baker			Igor Litvak	The Litvak Law Firm, PLLC	Reverse Avila
3/8/2017	1:17-cv-01749-RA	NY	Class	Baker			Igor Litvak	The Litvak Law Firm, PLLC	Reverse Avila
3/13/2017	1:17-cv-01833-LGS	NY	Class	Rodriguez			Abraham Hamra	Sirotkin Varacalli & Hamra LLP	Reverse Avila
3/13/2017	1:17-cv-01834-VEC	NY	Class	Rodriguez			Abraham Hamra	Sirotkin Varacalli & Hamra LLP	Reverse Avila
3/23/2017	1:17-cv-02132-JMF	NY	Class	Hines			Igor Litvak	The Litvak Law Firm, PLLC	Reverse Avila
3/28/2017	7:17-cv-02253-CS	NY	Individual	Maltsev			Daniel Kohn	RC Law Group PLLC	Reverse Avila
3/28/2017	7:17-cv-02235-KMK	NY	Class	Jones			Dan Shaked	Shaked Law Group PC	Reverse Avila
3/29/2017	1:17-cv-02296-JPO	NY	Class	Sparrow			Daniel Cohen	Daniel Cohen, PLLC	Reverse Avila
4/9/2016	6:16-cv-06240	NY	Class	Lundgren			Alexander Douglas	Gesund and Pailet, LLC	Reverse Avila
10/5/2016	1:16-cv-00798-LJV	NY	Individual	Malhotra	Sasloff		Craig Sanders	Barshay Sanders	Reverse Avila
10/7/2016	6:16-cv-06664	NY	Class	Ziefel			Alexander Douglas	Gesund and Pailet, LLC	Reverse Avila
2/10/2017	1:17-cv-00127-WMS	NY	Individual	Hartman			Russell Thompson	Thompson Consumer Law Group PLLC	Reverse Avila
4/4/2017	1:17-cv-00291-LJV	NY	Individual	Brooks			Daniel Kohn	RC Law Group PLLC	Reverse Avila