

March 27, 2017

Good afternoon Chairman Holvey and members of the Committee,

Thank you for the opportunity to provide testimony on HB 2356 regarding requirements under which debt buyers may bring legal action to collect debt.

My name is Ezekiel Gorrocino. I am a Policy Associate at the Center for Responsible Lending (CRL), a non-profit, non-partisan policy and research organization dedicated to building family wealth through the elimination of predatory lending practices. CRL is an affiliate of the Self-Help Credit Union, a national community development financial institution that helps underserved communities and individuals to build wealth and financial security using fair and affordable financial services.

I am here to share our research and analysis of debt buyer abuses at the national level and here in Oregon. Our Oregon research includes an analysis of 300 randomly-selected cases recently filed by six large debt buyers in ten Oregon Circuit Courts.<sup>1</sup> In this research, we find that debt buyer practices in Oregon have dire consequences for consumers. As a result of these consequences, it is critical to ensure that people are not sued for debt they do not owe. This can only be achieved by requiring debt buyers to provide actual documentation of the debts they are collecting.

Debt buyers purchase billions of dollars of stale debt and attempt to collect based on spreadsheets of summary information that is frequently inaccurate, incomplete or outdated. They do not attempt to verify or correct the information before pursuing people for collection. Not surprisingly, the top consumer complaint about debt collection to the Consumer Financial Protection Bureau both nationally and from Oregon residents is: "repeated efforts to collect a debt not owed."

Debt buyers flood the courts with lawsuits. Here in Oregon, cases filed by six companies alone accounted for almost **one-quarter (23%) of all civil cases** filed in Oregon Circuit Courts in 2012 and 2013.<sup>2</sup> To underscore this point, six companies alone filed **over 75,000 collection cases** in Oregon from 2012-2016.

Lacking current addresses for the people they sue debt buyers often serve notice of the suit to the wrong address, in which cases the person sued may not even learn of the case until it is too late. For this reason and others<sup>3</sup> people sued generally are not able to defend themselves in court, and

---

<sup>1</sup> CRL conducted a statewide Circuit Court search for all the cases filed between 2012-2016 by Midland Funding (Encore Capital Group subsidiary), Asset Acceptance (Encore Capital Group subsidiary), Portfolio Recovery Associates, LVNV Funding (Sherman Financial Group subsidiary), CACH, LLC (SquareTwo Financial subsidiary), and Jefferson Capital Systems LLC. Our sample of 300 cases was selected from the ten most populous counties in the state, collectively accounting for 79% of the state's population.

<sup>2</sup> 2012 and 2013 are the last years for which statewide circuit court case volume is publicly available.

<sup>3</sup> In many cases, the person does not recognize the name of the debt buyer or the allegations seem plainly false (e.g., \$5,000 allegedly owned on a credit card when the consumer knows her credit cards never had more than a \$2,500 credit limit), so she assumes the purported complaint is a scam. In other cases, the person cannot afford a lawyer and does not know how to handle the case pro se, cannot take off work to do so, or cannot afford to pay the court fee for filing an answer.

debt buyers typically “win” without having to correct the inaccuracies in the allegations they make.

CRL’s analysis of 300 Oregon cases revealed the stunning fact that the debt buyers “won” only when the person they sued did not mount a defense.

In fact, 48% of cases resulted in judgment for the debt buyer without any defense. Almost all of these were default judgments.<sup>4</sup> The consequences of these judgments can be dire, including obtaining liens on people’s current and future property, and garnishing their wages.

### Liens on real property

- In just about 100% of cases where the debt buyer got a judgment, they also obtained a lien on the person’s home or other real property.
- The lien attaches not only to any real property currently owned, but also to *any property the consumer may acquire* in the future.
- Because judgments in Oregon can last up to 20 years, these liens can attach to any property acquired by the consumer at *any time in the next 20 years*.
- Liens can impair the person's ability to sell their home, build equity, or refinance a loan.
- It is astonishingly easy for the debt buyer to obtain the lien; it can occur simultaneously with the judgment.

### Wage garnishment

- Debt buyers also garnish the wages of the person sued. As described in complaints from Oregon residents to the Consumer Financial Protection Bureau, for some families, an unexpectedly depleted paycheck is their first notice that they were sued.
- A debt buyer’s attorney can seek to garnish wages immediately after a judgment is entered; no court additional order or procedure is required.
- Because no court order is needed, our review of court records did not reveal the number of instances in which this occurred.

These abuses can affect anyone, but have a disproportionate impact on communities of color. Data show that majority-minority neighborhoods are hit twice as hard by debt collection court judgments as majority white neighborhoods. This is even after adjusting for differences in income.<sup>5</sup>

**These dire outcomes are often based on inaccurate complaints and affidavits filed with the court. Without actual account documents, the judge signing these orders has no way to determine the accuracy of debt buyer claims.**

---

<sup>4</sup> Default judgments accounted for 131 cases or 44% of the 300 cases sampled. In a small handful of cases the debt buyer obtained a “stipulated” or “confessed” judgment where, instead of mounting a defense, the person sued agreed to a payment plan and signed documents entitling the debt buyer to obtain an immediate judgment if they miss a payment. Eleven cases resulted in a “stipulated judgment” and one case resulted in a “confessed” judgment.

<sup>5</sup> See generally, Paul Kiel, ProPublica, “The Color of Debt: How Collections Suits Squeeze Black Neighborhoods,” Oct. 8, 2015.

## Robo-signed and falsified affidavits

It is well-established that debt buyers file pleadings and affidavits replete with false or inaccurate information. This is not merely an occasional or rare occurrence. To the contrary, in recent cases against Encore Capital Group and Portfolio Recovery Associates, the Consumer Financial Protection Bureau (CFPB) used words such as “**frequently**” and “**many times**” to describe the pattern and practice of these debt buyers using false or inaccurate statements in affidavits in collection cases.

This is why it is crucial that debt buyers should not be allowed to obtain default judgments based on pleadings and affidavits that do not attach actual documents evidencing the debt. For example:

- “In many jurisdictions Encore has been able to obtain a settlement or a default judgment against a Consumer using an affidavit as its only evidence. **Many of these affidavits contain false or misleading testimony.**”<sup>6</sup>
- “**Encore has routinely submitted affidavits** without attaching supporting documentation **in which the affiant swears that he or she has reviewed account-level business records** concerning the Consumer's account **when that is not the case.**”<sup>7</sup>
- “[Portfolio Recovery Associates (PRA)] is aware that significant inaccuracies may exist in the Sale Files it purchases, including that some Debts' balances were not reduced by a consumer's subsequent payments. For instance, when **a PRA senior manager raised a concern about the poor quality of sellers' balance information** and asked how PRA can know actual balances owed if it does not receive information on post charge-off payments, PRA's Vice President for Collections responded, ‘**We don't. 90% of our cases are default judgments...**’”<sup>8</sup>
- “In Affidavits used to support PRA Debt Collection Lawsuits, **PRA's affiants on many occasions represented** that they have personal knowledge of original creditors' account-level documentation corroborating consumers' debts **when in fact they did not.**”<sup>9</sup>

The solution is simple: Require debt buyers to produce documents evidencing the debt before they obtain a judgment.

Debt buyers are more than able to submit such evidence. In fact, since entry of a number of consent orders between the CFPB and national debt buyers, including Encore, or law firms collecting on their behalf, Encore and other debt buyers have been submitting original account documents in some of the cases filed in Oregon, as elsewhere. Encore and others have been able to do it, and Oregon courts have been able to handle it.

---

<sup>6</sup> Consent order between CFPB and Encore Capital, available at [http://files.consumerfinance.gov/f/201509\\_cfpb\\_consent-order-encore-capital-group.pdf](http://files.consumerfinance.gov/f/201509_cfpb_consent-order-encore-capital-group.pdf), at para. 54 (emphasis supplied).

<sup>7</sup> Id. at para.58 (emphasis supplied).

<sup>8</sup> Consent order between CFPB and Portfolio Recovery Associates (PRA), available at [http://files.consumerfinance.gov/f/201509\\_cfpb\\_consent-order-portfolio-recovery-associates-llc.pdf](http://files.consumerfinance.gov/f/201509_cfpb_consent-order-portfolio-recovery-associates-llc.pdf) at para 28 (emphasis supplied).

<sup>9</sup> Id. at para. 50 (emphasis supplied).

The state is right to be concerned and seek reforms. We would urge you to strengthen the bill to require account documents be submitted to the court in order to truly protect Oregonians and the integrity of the state court system.

States that have taken this approach, such as North Carolina, Maryland, New York, California, have freed their courts and their citizens from the deluge of groundless debt buyer lawsuits. People who owe their debts are still expected to pay; and debt buyers who sue provide the courts with real evidence.

The trend in the states that are addressing this problem is to ban debt buyers' use of affidavits alone, and require supporting documents from the original creditor in order to obtain a court judgment. We urge you to do the same for Oregon's families.

Thank you again for your consideration of these concerns.

Ezekiel Gorrocino