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DEDMAN SCHOOL OF LAW

June 21, 2012

The Honorable Nathan L. Hecht
Supreme Court of Texas
P.O. Box 12248
Austin, TX 78711-2248

Mr. Charles L. Babcock
Chairman, Supreme Court Advisory Committee
Jackson Walker L.L.P.
1401 McKinney, Suite 1900
Houston, TX 77010

Re: Proposed Rules of Practice in Justice Court

Dear Justice Hecht and Mr. Babcock,

I write to express general support for the work of the Justice Court Rules Task Force and its proposed Rules of Practice in Justice Court – in particular those rules in Section 8 that apply to Debt Claim Cases.[1]

There are a number of reports regarding problems in the litigation of consumer debt cases.[2] Supported by a grant from the American Bar Association Section of Litigation, Litigation Research Fund, I conducted a study of collection litigation initiated by debt-buyers in Dallas County. The results of the project were published late last year.[3] Attached is an abridged version of my report, which appears in the June 2012 *Banking and Financial Policy Reporter*.

The project examined the litigation of consumer collection cases in the county courts-at-law. Although the practice in those courts differs from the historical practice in the justice courts, I believe the project's primary findings are relevant to the work of the

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[1] The opinions expressed in this letter are my own and do not necessarily reflect the opinions of Southern Methodist University, the Dedman School of Law or any of its faculty or administrators.

[2] *See, e.g.*, Jeff Horwitz, *Bank of America Sold Card Debts to Collectors Despite Faulty Records*, AMERICAN BANKER (Mar. 29, 2012) Jeff Horwitz, *OCC Probing JPMorgan Chase Credit Card Collections*, AMERICAN BANKER (Mar. 12 , 2012), Jeff Horwitz, *'Robo' Credit Card Suits Menace Banks*, AMERICAN BANKER (Jan. 31 , 2012). *See also* Joe Nocera, *Why People Hate the Banks*, N.Y. TIMES, (Apr. 2, 2012).

[3] *See* Mary Spector, *Debts, Defaults and Details: Exploring the Impact of Debt Collection Litigation on Consumers and Courts*, 6 Va. L. & Bus. Rev. 257 (2011).

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Justice Court Task Force. For example, the data collected in a random sample of debt-buyer collection cases filed in Dallas County Courts-at-Law established the following:

- More than 95% of the petitions failed to provide any information regarding date of default or calculation of the amount allegedly owed.
- More than 78% of cases contained affidavits having characteristics of "robo-signing."[4]
- Nearly 40% of all cases resulted in default judgment.
- More than 25% of the collectors failed to file state-mandated bonds and, therefore, were operating outside the law at the time they filed their suits.

The data also showed that while attorneys represented 100% of the plaintiffs, less than 10% of defendants appeared through counsel. Indeed, only 20% of defendants entered any form of appearance. Nearly 80% failed to appear at all.

These findings are consistent with findings of the Federal Trade Commission in a July 2010 report on consumer collection litigation and arbitration.[5] The Commission urged states to adopt measures to make it more likely for consumers to defend collection cases. Such measures would include heightened pleading requirements providing sufficient information about the debt to permit the consumer to identify the original creditor; the date of default or charge-off and amount due at that time; the name of the current owner of the debt; the amount currently due on the debt; and a breakdown of the amount due, showing principal, interest, and fees.

The Proposed Rules do just that. The pleading requirements contained in Proposed Rule 577 provide consumers with fair notice of the claims on which they are being sued. They also provide minimum notice to assist the consumer in determining whether affirmative defenses such as discharge in bankruptcy, fraud, limitations or payment, may exist. This is particularly important in cases where the vast majority of defendants are not represented by counsel. Additionally, by requiring an affirmative statement in appropriate cases that the debt collector has complied with the state's bonding requirements, Proposed

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[4] "Robo-signing" or "robo-signed" is a term used to describe so-called sworn statements made without personal knowledge of the facts or records they are attempting to prove. *See* David Segal, *Debt Collectors Face a Hazard: Writer's Cramp*, N.Y. TIMES (Oct. 31, 2010).

[5] Federal Trade Comm'n, *Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration* (July 2010).

Rule 577 encourages compliance with existing Texas law.[6]

The requirements contained in Proposed Rule 578 in connection with default judgments provide consumers with important safeguards against the use of robo-signing. They also help to insure the legitimacy of any judgments entered in the defendant's absence.

The Proposed Rules are consistent with rule changes implemented in other states.[7] Some jurisdictions have also implemented rules requiring a disclosure on the citation, similar to the one proposed in Proposed Rule 511, that the failure to respond could result in the loss of property and damage to credit history.[8]

I believe the Proposed Rules provide an important step in insuring the protection of all Texans. Thank you for the opportunity to submit these comments. If you or members of the Advisory Committee or Task Force have any questions, please do not hesitate to contact me at 214-768-2578 or by email at mspector@smu.edu.

Sincerely,

Mary Spector
Associate Professor of Law
Co-Director SMU Civil Clinic

Enclosure

cc: Ms. Marisa Secco, Rules Attorney

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[6] *See* TEX. FIN. CODE § 392.101 (2006).

[7] *See, e.g.,* Maryland Judiciary, Press Release, *Court of Appeals Changes Rules: Debt Collectors Need to Show More Proof in Cases Against Consumers* (Sept. 28, 2011) *available at* http://www.courts.state.md.us/press/2011/pr20110928a.html; MASS. UNIF. SMALL CLAIMS (2009). *See also* N.C. GEN. STAT. §§ 58-70-145, 58-70-155 (2011) (statutory requirements for filing debt collection cases). Similar provisions are currently under consideration in Oklahoma, Illinois, Oregon, California and New Jersey.

[8] *See, e.g.,* N.Y. CITY CT. RULES § 208.6(d)(1) (McKinney 2009).

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Feature

LITIGATING CONSUMER DEBT COLLECTION: A STUDY

Mary Spector [a1]

Recent press reports have focused attention on some of the weaknesses in the collection of credit card debt. [1] However, relatively little empirical data exists regarding these deficiencies. The project described in this Article was designed to increase our understanding of how debt buyers and their attorneys conduct litigation to collect consumer debts and the effect of such litigation on consumers and the courts.

Much of modern collection litigation begins with portfolios of consumer debt that are packaged and sold as assets for entities whose primary business is collecting those debts. [2] The debt buyer purchases--for pennies on the dollar--debts that have been deemed uncollectable by the original creditor, and then attempts to collect the full face value of those debts through lawsuits against consumers that often result in default judgments. [3]

At the time of the sale, the debt buyer rarely receives more than a computer record summarizing the original creditor's records. Although the summaries generally contain the consumers' names, addresses and account numbers, as well as the total amount each owes at the time of sale, [4] some sellers do not vouch for the accuracy of the information they provide leaving the debt buyer without the means to verify it. [5] Nevertheless, in some cases, information may be sufficient to support an agreement between the debt buyer and an individual consumer to settle or repay the debt. Consumer advocates claim that attorneys representing debt buyers in court rarely produce more than summary information and yet still obtain judgments that are enforceable by garnishing wages, bank accounts, and other nonexempt property. [6] In some cases, debt buyers initiate suits to collect debts previously discharged in bankruptcy or debts that were repaid years before. In other cases, the person sued is not the real debtor but is the victim of mistaken identity or identity theft. [7]

Reportedly, debt buyers regularly obtain judgments on the basis of form pleadings that, on their face, fail to comply with applicable procedural, substantive, or evidentiary rules. [8] For example, suits may fail to sufficiently identify the parties to the suit, [9] fail to allege facts giving fair notice of the claims asserted, [10] or fail to allege facts giving fair notice of whether the claims might be subject to limitations or other defenses. [11] Conclusory allegations regarding the amount of debt with little, if any, information about its calculation and "robo-signed" affidavits also make it difficult for the consumer to effectively prepare a defense, especially without representation by an attorney. [12]

In most states, laws and rules of procedure that govern all litigation also govern consumer debt litigation. Such rules place the burden of raising deficiencies in pleading and the burden of proof on the opposing party, who waives such an objection if not raised in timely manner. [13] Many defendants, if they appear at all, often appear without counsel. Unfortunately, this frequently

results in the entry of default judgments solely on the basis of unchallenged defective pleadings without any evidence of debt presented to the court. [14]

In early 2008, virtually no empirical data existed to substantiate the growing concerns of consumer advocates. [15] This project was a first step to collect and analyze data regarding collection litigation. Litigation files containing petitions, answers, evidence of service, motions, and dispositive orders were reviewed. Information was collected and analyzed and, in the end, the data confirmed some of the more troubling reports regarding the failure of collectors to provide information regarding the debt to consumers in litigation. [16] ***2** However, before discussing the methodology and findings of the project, the Article will discuss the context in which consumer debt litigation arises.

Consumer Debt and Its Collection: A Broken System [17]

Scope of Debt

The Fair Debt Collection Practices Act (FDCPA) [18] was enacted in 1977 to "eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses." [19] Since then, total revolving consumer debt has grown exponentially. The modern debt industry is a by-product of the massive expansion of consumer lending by banks and other major financial institutions. In 2003, Americans had 1.46 billion credit cards, an average of five credit cards per person. [20] In 2009, outstanding consumer loans exceeded $2.5 trillion--double the amount one decade earlier--of which debt from credit cards and other revolving credit debt was nearly $1 trillion. [21] Although the amount of outstanding debt has decreased since 2008, as of March 2012, American consumers still held nearly $801 billion of revolving, unsecured debt. [22] Additionally, the delinquency rates for all consumer loans and consumer credit cards remained steady through 2011. [23] Similarly the charge-off rates for all consumer loans and credit cards remained steady through 2011. [24]

The debt collection industry has grown and changed to keep up with the increasing amount of delinquent consumer debt. By 2007 the debt-collection industry employed 217,000 people and reported annual revenue of $58 billion from consumer collections. [25] This growth also parallels increases in the number of new collection cases filed each year. For example, in one jurisdiction, a judge was forced to limit one law firm's filings to no more than 500 new debt-collection cases every two weeks. [26] It also created an environment in which the debt buying could emerge and subsequently thrive.

The Debt Buying Industry

The debt buying industry, a subset of the larger collection industry, experienced tremendous growth over the last 15 years, with analysts estimating that approximately 450 entities acquired more than $100 billion in distressed debt in 2009. [27] Debt buyers do not originate delinquent accounts, they purchase portfolios of delinquent debt after the original lender or intermediate debt buyer ceases collection efforts or otherwise charges-off an account. [28] Debts may be bundled into portfolios with other debts having similar characteristics, such as age, type of debt, and location of the debtor, and then put out for competitive bids, often amounting to only a fraction of the face value of the debt. [29]

Industry trade associations encourage debt buyers to employ due diligence to avoid the purchasing of debts that were previously discharged in bankruptcy or barred by limitations, and debt buyers may take steps to avoid debt that was incurred fraudulently through identity theft or otherwise. [30] Admittedly, however, these efforts do not prevent attempted collection of stale or discharged accounts, known as "zombie debt," which, instead of disappearing, rises from the dead and is resold at bargain

prices.[31] Likewise, industry efforts have not prevented purchase of debts the seller cannot verify which may be the subject of future litigation and the source of concern for consumers and their advocates.[32]

Collecting Debt: The Legal Framework

The FDCPA, designed to prevent consumer deception and abuse during the collection process, is the primary federal statute governing the behavior of collectors. It regulates the time and place at which collectors may communicate with consumers and the appropriate method and content of such communications.[33] Enforced by the Federal Trade Commission (FTC), the Act also provides consumers with a private right of action for violations. In addition to the FDCPA, other federal laws regulate creditor's conduct. They include the Equal Credit Opportunity Act, which prohibits discrimination in connection with a credit transaction, and the Fair Credit Reporting Act, which limits collectors' ability to report accounts in collections that pre-date the report by more than seven years.[34]

In addition, forty-two states supplement the FDCPA with legislation governing debt collection.[35] Of those, a majority permit a private right of action for consumers harmed by debt collectors' unlawful conduct and some provide private remedies for unfair or deceptive acts and practices. A majority of states also require debt collection entities to obtain a license, post a bond, or *3 register with the state. For example, in Texas, although a license is not required, an entity that fails to post the required bond may be enjoined from collecting debts, liable for civil penalties to consumers harmed by its conduct, and subject to criminal penalties.[36]

Within this framework, collection agencies usually begin with informal collection efforts such as contacting the consumer by phone or mail to encourage payment.[37] Under the FDCPA, the limited information acquired by the debt buyer when it purchases a consumer's debt portfolio may be sufficient to satisfy the collector's obligations to validate the consumer's debt.[38] It may also be the starting point for the debtor and debt buyer to negotiate a payment schedule or a reduced lump sum payment.

When informal collection methods do not result in settlement of the account, debt buyers increasingly turn to litigation or arbitration, which generally results in a judgment against the consumer.[39] Once collectors obtain a judgment, they have additional, powerful tools at their disposal, such as wage garnishment and property garnishment, to collect on the judgment.

Because most of the litigation occurs in state courts, FDCPA imposes no obligations on collectors' conduct in litigation other than requiring that suits be filed in the venue in which the consumer signed the contract or in which the consumer resides at the commencement of litigation.[40] Instead, state procedures and law almost exclusively govern the litigation of debts.

Due process requires that the defendant be given an opportunity to be heard before the plaintiff can establish his or her right to judgment in any type of litigation.[41] While modern pleading rules do not require that plaintiffs provide detailed allegations of fact, the defendant generally must receive notice sufficient to prepare a defense, generally who is bringing the claim and the subject matter of the suit are sufficient.[42] In all jurisdictions, rules of procedure, evidence, and professional responsibility govern the commencement and conduct of litigation. Such rules place the burden or raising deficiencies in pleading and proof on the opposing party, and that party's objections may be waived if not raised within a timely manner. While the rules vary by state, and even within the states, one thing is clear: the rate of default judgments in consumer debt collection cases is reported to have reached 95 percent in some jurisdictions and may be double the default judgment rate in debt cases generally.[43]

The high default judgment rate is especially troubling because debt buyers usually take the debt subject to all the consumer's potential defenses to payment, such as deceptive practices surrounding the extension of credit, limitations, unconscionability, or claims about insufficient quality of the goods or services.[44] Some, if not all, of those defenses may be available to at least

some defaulting consumers. However, by failing to appear, the consumer waives valid counterclaims or offsets arising from the underlying transaction as well as affirmative claims arising out of attempts to collect the debt. Indeed, one study dating back more than 20 years found that more than half of the consumers against whom default judgments were entered had good faith defenses to collection and more than 70 percent "may have had defenses" to the litigation. [45]

Federal Trade Commission Recommendations

In July 2010, based on the information collected at a series of roundtables and from the FTC's extensive experience in debt collection matters, it issued a report of findings and conclusions regarding debt collection litigation and arbitration and their effect on consumers. [46] In general, the FTC reported a broad consensus among roundtable participants regarding low rates of consumer participation in collection litigation, while it noted a wide divergence regarding the reasons for default. Representatives of the collection industry generally asserted that consumers choose not to defend collection litigation because they know they owe the debts and do not have any viable defenses. Some also conceded that consumers' trepidation about the legal process and inability to retain counsel may also be factors. Consumer advocates, on the other hand, generally attributed the low participation rate to inadequate notice of the action or procedural and economic hurdles that make it difficult for debtors to defend themselves. [47] Judges who participated in the roundtables expressed concern that consumer defendants were often puzzled by allegations that they owe debt to an entity that they do not recognize as well as the timing and amount of the alleged debt.

Acknowledging that no empirical data were presented, the FTC nevertheless urged the states to take *4 steps to increase protections available to consumers in debt collection litigation by adopting measures insuring that collectors' complaints contain, at a minimum, the following information: 1) the identity of the original creditor; 2) the date of default or charge-off and amount due at that time; 3) the name of the current owner of the debt; 4) the amount currently due on the debt; and 5) a breakdown of the amount due, showing principal, interest, and fees. [48] The study described in this Article is a first step in collecting such data.

Methodology: Collecting the Data

This project examined litigation files of the Dallas County Courts at Law. The Texas Office of Court Administration reported that in 2007 suits on debt accounted for more than 78 percent of the civil cases filed in county-level courts in Dallas County, but only 43.8 percent of civil cases filed in county courts statewide. [49] Suits on debt are one of the seven categories of civil cases and are defined as "[s]uits based on enforcing the terms of a certain and express agreement, usually for the purpose of recovering a specific sum of money." [50] In addition to consumer debt cases, this category also includes suits to recover wages or sums of money allegedly due under a variety of contracts. These figures for Dallas courts were also consistent with reports from other jurisdictions finding that civil litigation is concentrated in cities and counties with significant minority populations, lower median income, and lower home ownership rates. [51]

Although debt buyers seeking between $500 and $10,000 may file their cases in justice courts, county courts-at-law, or district courts in Dallas County, [52] only the case files from the county courts-at-law were examined. Statutory county courts were selected for three primary reasons. First, the five county courts-at-law are contained in a single building and use a centralized filing system that enabled researchers to work in a single location, thus providing efficiencies for the research. In contrast, the justice courts serve five geographically diverse precincts and are contained in ten different buildings spread throughout the county. Moreover, each justice court maintains its own files--meaning records for one precinct may be located almost twenty-five miles from the records for another. Secondly, because the justice courts serve a smaller geographic area within the county, it could be expected that data from courts with countywide jurisdiction would reflect a broader picture than data collected from a single geographic precinct within a county because each individual justice court precinct is significantly less diverse than the county as a whole. For example, within Justice Court Precinct 1, individual voting tracts may be as much as 95 percent

non-Hispanic Whites, while non-Hispanic Whites may comprise less than two percent of the population in an individual voting precinct for Justice Court Precinct 3. [53] The third--and in some ways most important--reason for selecting the county courts-at-law is that corporate parties must retain counsel to enter an appearance in the county courts; only individuals can appear *pro se*. [54] Because one goal of the project was to examine the conduct of debt buyers and their attorneys in litigation, it was necessary to select a court in which debt buyers who were not individuals could appear in court only through an attorney. [55]

After the court was selected, it was necessary to create a random sample of cases to analyze. In 2007, a total of 16,819 civil cases were filed in the jurisdiction. Each file generally contains a petition, summons, record of service, and dispositive order. While docket information may be reviewed remotely over the Internet, the cases are not electronically searchable by type of case. Because individually reviewing all 16,819 cases was not feasible, a random sample was generated using cluster sampling. Researchers using cluster sampling divide an entire population into clusters or blocks. After the blocks are randomly selected, researchers gather data from all of the elements within the selected block. [56]

After reviewing an experimental sample of approximately 150 cases, a final sample of 21 clusters containing 2,019 cases was generated providing a margin of error of approximately four percent. [57] Researchers then examined the files contained in each cluster and eliminated all cases not involving debt-buyer plaintiffs seeking to collect individual consumer credit card debt. This process produced a set of 507 cases. For each case, researchers recorded and coded information in thirty different categories. Inconsistent data triggered reexamination of the relevant original case file.

Coded information was divided into four general categories. The first category included identifying information, such as the case number, date of filing, date of closing, name of plaintiff/assignee and its attorney, name of original creditor, and name and, if possible, ***5** gender of defendant. The second category contained defensive information--for example, whether there was service on the defendant, whether there was an answer or evidence of appearance, and whether an attorney appeared on behalf of the defendant and, if so, his or her identity. Where there was evidence that an attorney appeared, researchers also reviewed the answer to determine the nature of any defenses and counterclaims. The third category included information about the claims alleged in the petition: the amount sought, including the amount of principal and interest if separately alleged; amounts of attorneys fees sought and the method of calculating them; and details of any other charges or fees, such as late payments or over-the-limit fees. Researchers also noted whether the file contained an affidavit or other documentary evidence supporting the petition. When files contained affidavits, researchers recorded the identity and business affiliation of the affiant and noted whether the plaintiff filed any supporting documents, such as a credit agreement or records of payment history identifying the date of last payment or other date of default; they also noted whether plaintiff served discovery on the defendant. Finally, researchers collected data about the outcome of the case; whether it resulted in a default judgment, dismissal without prejudice, agreed judgment, dismissal with prejudice, or affirmative recovery for the defendant. [58]

Findings

The data indicated that approximately 25.11 percent of the total cases filed in Dallas County Courts-at-Law during 2007 were debt-buyer suits to collect consumer debt. When measured against the total number of suits on debt, simple calculations suggest that one-third of all debt cases filed in Dallas County in 2007 were suits seeking recovery of a delinquent credit card account by someone other than the original creditor. [59]

These figures are consistent with reports from other jurisdictions. For example, 72.8 percent of all civil cases filed in Kansas in 2007 were "seller plaintiff (debt collection)" cases, a number that is very close to the 75.3 percent reported in Dallas County. [60] Nevertheless, perfect comparison with other jurisdictions is difficult. Aside from differences in substantive law that may influence the decision to file a suit to collect debt, there are a number of practical considerations that contribute to the levels of concentration of such cases in certain jurisdictions. Perhaps the most obvious is the range of courts available to a

plaintiff seeking to file a lawsuit to collect debt. Because the Dallas debt buyer can choose between three jurisdictions for filing, one might expect cases in any one of the jurisdictions to occupy a smaller portion of the docket than in a jurisdiction where a plaintiff's choice of forum is far more limited. In New York City, for example, a debt buyer seeking to recover less than $25,000 *must* file in the New York City Civil Court, where debt buyers filed more than 200,000 cases in 2009.[61]

Economic and other non-legal factors may also explain differences among jurisdictions. For example, experts reported that during 2007, economic conditions were slightly better in the geographic region of the country that includes Dallas than in other parts of the country. Thus, even if these percentages are lower than figures reported in other jurisdictions, the debt-buyer cases still make up a sizeable portion of the Dallas County docket.

The Parties: Plaintiffs, Original Creditors, and Plaintiffs' Attorneys

Plaintiff Debt-buyers

Although hundreds of debt buyers operate nationwide, just thirty-five different debt buyers appeared in the 507 cases; an even smaller number were responsible for the majority of cases filed. The two most frequently named plaintiffs initiated 182 cases, or slightly more than 35.9 percent of the total filed, and the top five plaintiffs accounted for 326 cases, or nearly 64.3 percent of the total filed. The identities and frequency of filings of the five most active plaintiffs are set out below.

Of the thirty-five different debt buyers represented in the sample, nine, or about 25 percent, failed to comply with the Texas law requiring debt collectors to file a ***6** bond, and did not have active bonds on file with the Secretary of State for the calendar year of 2007. Their failure to do so amounts to a *per se* violation of the Texas law.[62] These unbonded plaintiffs accounted for thirty-eight cases, or 7.49 percent of cases examined in the study. While those numbers may seem insignificant at first glance, when that percentage is applied to the total number of cases filed in the county, it can be estimated that unbonded debt buyers filed approximately 1,200 cases during 2007. Had any of the defendant consumers in those cases been aware of the unbonded status of the plaintiff, they might have been able to avoid the lawsuits altogether and even obtain injunctive relief and statutory damages for the debt collectors' illegal conduct. Yet, none of the thirty-five defendants sued by unbonded debt buyers raised those claims or defenses. Indeed only two defendants sued by unbonded plaintiffs even appeared and their cases were concluded with agreed judgments requiring a monthly payout. The remaining cases resulted in a default judgment.

Identity and Frequency of Plaintiff

Plaintiff	Number of Cases	Percentage
Dodeka LLC	107	21.10%
LVNV Funding LLC	75	14.79%
CACV of Colorado LLC	52	10.26%
CACH LLC	52	10.26%
Resurgence Financial LLC	40	7.89%
Total	326	64.30%

Original Creditors

Researchers could not always determine the identity of the original creditor from the plaintiff debt buyer's allegations. In many of the cases in which plaintiffs did not formally allege the original creditor's identity, the identity was indicated in the caption or style of the case. When it was not, and the petition did not contain any allegations or hints of any kind regarding the original creditor's identity, careful review of affidavits or exhibits to affidavits submitted in support of the petition provided the only clues to the original creditor's identity. In eight cases, however, researchers were not able to locate any information in the case file regarding the identity of the original creditor.

Including the identity of the original creditor in an allegation can be critical to ensure due process, to establish that the plaintiff actually owns the account, and to give notice to a defendant of the availability of defenses and counterclaims. Proper identification of the original creditor may also be necessary to comply with FDCPA's obligation to validate the debt.[63] Additionally, slight differences in corporate names of creditors can carry legal significance. For example, Texas law contains numerous regulations regarding the reservation, registration, and use of corporate names. Among them is the requirement that out-of-state financial institutions must file an application with the Secretary of State before operating a branch within the state.[64] State law also requires that an entity doing business under a name other than its legal name file an assumed name certificate with the Secretary of State and in each county in which it maintains business premises.[65] An entity that fails to do so may be liable to an opposing party for the "expenses incurred, including attorney's fees, in locating and effecting service of process on the defendant."[66] Subtle differences in entity names can also signify independent corporate entities with independent legal rights and responsibilities. Significantly, however, these differences often go unnoticed by individual consumers who, without attorney representation, may not fully appreciate the legal significance of proper identification.

Even when the plaintiff debt buyer provided some information with which to identify the original creditor, the data contained substantial variations. For example, 133 cases identified original creditors whose names contained some variation of the word "Citi."

Many variations were also found with "Chase" as part of the original creditor's name.

None of the nine "Citi" entities that plaintiffs identified as original creditors were actually registered--as required by law--with Texas' Office of the Secretary of State during the period in which the cases were filed or pending. A search of the online business service, which is provided by the Office of the Secretary of State, for the term "Citibank" revealed nine filings; however, only one of them--an entity identified as "Citibank Texas N.A."--was in existence for any length of time prior to and during the year in which the collection cases were filed. Yet, that entity was never identified as an original creditor in the cases examined. The charter for a second entity, "Citibank, N.A.," was cancelled in October of 2007, and charters for another five were either "cancelled," "dissolved," or "forfeited" prior to 2007; the remaining entities did not appear to be related.[67]

Likewise, a search for the term "Chase Manhattan Bank," identified as an original creditor in thirty-nine cases, revealed a total of twenty-four filings with the Secretary of State. Only one of those filings was an exact match, but that entity was identified as a "foreign corporate fiduciary" whose charter was cancelled in *7 2002. The same search revealed a close match with another entity identified as "*The* Chase Manhattan Bank" (emphasis added) that had a valid charter pre-dating and post-dating 2007. However, that entity was also not identified as an original creditor in any of the eighty-five "Chase" cases. Further research revealed no other matches to the remaining "Chase" entities identified.[68]

Name of Original Creditor	Number of Cases
Citibank	77
Citibank (South Dakota)	39
Citi-Sears	9
Citibank (South Dakota) N.A.	3
Citibank South Dakota	1
Citibank/Home Depot	1
Sears-Citi-Sears	1
Sears or Citibank	1
Citibank Credit Services, Inc. (USA)	1
Total	133

Number of Original Creditors with "Citi" in the Name

Number of Original Creditors with "Chase" in the name

Name of Original Creditor	Number of Cases
Chase Manhattan Bank	39
Chase	24
Chase Manhattan	5
Chase Visa/Master Card	5
Chase/Bank One	3
Bank One (subs. merged w/Chase Bank)	2
Chase Bank	1
Chase Bank NA	1
Chase Bank USA	1
Chase Bank USA NA	1
Chase Manhattan Bank USA	1
Chase Manhattan Bank USA, NA	1
JP Morgan/Chase	1
Total	85

Improper identification of an original creditor has at least two consequences. First, it can easily frustrate a consumer's third-party claim by making it difficult--if not impossible--to locate and serve the creditor, much less enforce any judgment obtained against it. Secondly, it can serve as the basis for a valid counterclaim against the debt buyer in its collection case. Had the defendants in any of the "Citi" or "Chase" cases established that the plaintiff debt buyer improperly identified the original creditor, they may have been entitled to statutory damages for a violation of the FDCPA's requirement to accurately validate the debt. [69]

Plaintiffs' Attorneys & Law Firms

Similar results to those found among plaintiffs and creditors also existed among the law firms they represented. In fact, six law firms were responsible for filing 356--or 69.5 percent--of the 509 cases in the sample. Although the economics of the debt collection practice was beyond the scope of the project, the volume of cases handled by individual lawyers and their firms must be considered as a factor in the conduct of the collection litigation and should be the subject of further research.

Service and Appearance

Somewhat surprisingly, plaintiffs did not accomplish service in more than 12 percent of the cases filed; all of those cases were dismissed without prejudice. Large numbers of filings that are not fully litigated suggest, at a minimum, an unnecessary burden on the courts. In certain circumstances they may also represent the use of false or unfair collection practices. [70]

Far more insidious than a dismissal after non-service, however, is the entry of a default judgment after the filing of a false affidavit of service, a phenomenon known colloquially as "sewer service." In California, it is unlawful for a collector to engage in judicial proceedings to collect a debt when it knows that service of process has "not been legally effected." [71] Recent efforts to curb this practice in New York City resulted in the arrest of at least one process servicer for filing fraudulent affidavits in connection with non-service of defendants and led to stricter requirements for process servers doing business in the city. [72] However, the rate of dismissals following non-service--12 percent--in Dallas County cases suggests that sewer service may not be as prevalent as it is in California, New York City, and elsewhere.

When evidence in the file indicated that the defendant had been served, researchers recorded any indication that the defendant attempted to respond to the suit as ***8** an "appearance" even if the communications did not technically comply with the procedural requirements for an "answer." [73] Under these criteria, defendants appeared in 102 cases or 20.12 percent of the time. However, because a defendant cannot "appear" if the plaintiff did not accomplish service, a more accurate measure of the

appearance rate considers only the cases in which the defendant was served. Under this measurement, the defendants appeared in 22.87 percent of the cases in which they were served. Under each measure, the appearance rate is nearly twice what the Urban Justice Center reported in New York City courts and may be partially attributable to the higher rate of sewer service there.[74] The broad definition of "appearance" used in the Dallas study may explain some of the difference between the two rates of appearance; the number may also suggest that Dallas plaintiffs did a better job of actually accomplishing service than their counterparts elsewhere.

The data does not provide sufficient information to determine why defendants did or did not appear, it neverthless suggests at least one factor that may influence defendants' decisions regarding appearance: the amount in controversy. Of the 102 defendants who appeared, fifty-three, or slightly more than half, did so in cases in which the plaintiff sought $5,000 to $10,000, twenty-nine appeared in cases seeking over $10,000, and twenty appeared in cases seeking less than $5,000. The data shows higher appearance rates in cases seeking between $5,000 and $10,000 and lower rates above and below those values.

Substance of the Pleadings

As previously discussed, the FTC advised that collectors' petitions should allege five categories of information: "(1) the identity of the original creditor; (2) the date of default or charge-off and amount due at that time; (3) the name of the current owner of the debt; (4) the amount currently due on the debt; and (5) a breakdown of the amount due, showing principal, interest, and fees."[75] Of those five categories, only two were routinely included in the cases examined. Indeed, all of the cases contained some allegation regarding the identity of the plaintiff or current owner of the debt and most contained allegations regarding the original creditor. Plaintiffs' petitions otherwise failed to allege any of the remaining kinds of information the FTC recommended.

Likewise, in all of the cases reviewed, plaintiffs also specifically alleged the dollar amount sought. Somewhat surprisingly, more than half of the cases sought less than $10,000, an amount over which the justice court has concurrent jurisdiction.[76] Additionally, more than 30 percent of the cases contained allegations regarding the calculation and amount of attorneys' fees sought. Less than five percent of the cases, however, contained any allegations breaking down the total amount sought into component parts of principal, interest, and fees. Likewise, less than five percent of cases contained allegations regarding payment history, such as date of default or date of the last payment. In other words, in more than 95 percent of the cases, plaintiffs failed to provide defendants with *any* information in at least two of the categories the FTC identified as being critical to providing due process. The following table illustrates the type and frequency of allegations found in the 507 case files.

While the absence of certain allegations is troublesome, the data also revealed significant problems with many of the allegations that *were* present, particularly with regard to supporting affidavits. Problems with supporting affidavits fall into two general categories. The first involves misuse of the sworn account procedure designed to facilitate proof of a debt in circumstances where a merchant or tradesman sells goods or services "on account" and keeps only a record of the items sold. The second involves sufficiency of the evidence submitted to prove the existence and amount of the debts.

Regarding the first category, Texas law permits proof of an account through the use of a report or summary of the account accompanied by an affidavit.[77] There must be testimony that the report or summary was "made at or near the time by, or from information transmitted ***9** by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the report, record, or data compilation."[78] Evidence of compliance can be offered through the testimony of the custodian of records "or other qualified witness," either through live testimony or in the form of an affidavit. Compliance with these pleading requirements creates a presumption, only challengeable by a sworn statement of the defendant that the account stated is correct. This procedure was designed to permit the merchant who sold goods or services on "account," keeping a record of items and services sold, to submit the account records in court as proof of the debt.

Types and Frequency of Allegations

	Number of Cases	Percent
Calculation of Attorney's Fees	191	30.20%
Date of Last payment or Date of Default	30	4.70%
Identification of Fees (e.g., late payment, over-the-limit, etc.)	29	4.60%
Calculation of Interest	3	.50%
Signed Credit Agreement Attached to Petition or Affidavit	1	.20%

Although courts have held this procedure inapplicable to suits seeking to recover a credit card debt,[79] plaintiffs' submission of affidavits in almost 400 cases suggests intent to trigger the presumption. Any misuse of the sworn account procedures by plaintiffs and their attorneys may result from harmless mistake or unfamiliarity with a rule that may not be consistently applied; however, it may also indicate their desire to gain an unfair advantage in litigation and may even amount to an unfair or deceptive collection practice to the extent that it falsely represents "the character" of a consumer debt.[80]

Regardless of how the affidavits may be used procedurally, they still must comply with evidentiary rules requiring that a summary be compiled by "a person with knowledge" regarding either the underlying data or "the method or circumstances of preparation" of the summary.[81] However, because debt buyers purchase their accounts after default, it would be highly unlikely that any of their employees would possess sufficient "personal knowledge" to testify under oath about the creation of the underlying account or any other details regarding the account. Yet, in 397 of the 400 cases in which affidavits were filed, affidavits were made by employees of the *plaintiff* who purported to have actual knowledge that the plaintiff owned the debt and that an amount contained in the summary or data compilation represented an overdue account of the defendant. Only fourteen files contained affidavits made by an agent or employee of the original creditor. Yet, in 97.22 percent of the cases in which an affidavit was filed, the affidavit constituted the *only* evidence of the validity of the account.

As described above, people signing and swearing to affidavits with little or no personal knowledge of the facts recited in them are the heart of civil and criminal investigations into banks' foreclosure practices across the country. The data in this study suggest that robosigning may not be limited to a particular jurisdiction or to an individual entity engaged in credit card collection. Indeed, a Tennessee appeals court recently held that affidavits of the type described above were insufficient to support a judgment in the plaintiff's favor.[82] Further research is necessary to understand the extent of the practice. Likewise, additional research may also shed some light on attorneys' roles in obtaining, submitting, and relying upon such "evidence" as well as the extent to which their conduct is consistent with their professional responsibilities to the courts and the public.

Outcomes

Dispositions without Prejudice to Refiling

Researchers recorded outcomes by placing the title of the order disposing of the case into one of eight categories: default judgments, dismissals without prejudice, nonsuits, agreed judgments, dismissals with prejudice, closed or bankruptcy, affirmative recovery for defendant and other. By far the most common outcome was not--as some suggest--a default judgment, but rather was a dismissal without prejudice to refiling. Dismissals without prejudice occurred in 51.25 percent of cases in which the defendant was served and 61.77 percent in which the defendant appeared. That number increased even more--to 75 percent--when an attorney entered and appeared on behalf of the defendant.

There are a number of possible reasons for this surprisingly high rate of dismissals without prejudice. One is simple error. Another is the possibility that cases settled. It is common practice in the jurisdiction for the parties to file a dismissal *with* prejudice following the settlement or resolution of the parties' dispute; the files of six of the cases in which the disposition

occurred without prejudice revealed that the parties reached an agreement. Hence despite the apparent existence of an agreement to settle the case, the plaintiff maintained the right to sue on the same underlying claims. Another five cases contained dispositive orders with titles indicating dismissals without prejudice even though the orders stated that the disposition occurred with prejudice.

***10** Just as surprising as the number of dismissals was the number of defaults. In contrast to reports from other jurisdictions, defaults occurred in just 39.46 percent of cases. The following tables illustrate the outcomes of all cases in which the defendant was served.

The data suggest that by merely appearing, the defendant will likely avoid a default judgment and liability. In some cases, the defendant's appearance resulted in the permanent avoidance of liability. In two of the three cases in which an affirmative judgment for the defendant occurred, the defendant's appearance, without more, resulted in a final judgment in his favor. In one case, the defendant appeared for trial but the plaintiff did not, and the court entered judgment for the defendant. In the second, both parties proceeded to trial after the court denied the plaintiff's request for a continuance. Despite the plaintiff's presentation of two witnesses, the court ruled that the plaintiff failed to carry its burden and entered judgment for the defendant. The defendant's level of participation in that case clearly made a difference in the outcome. What is surprising, however, is how minimal a defendant's participation need be to alter the outcome of the case dramatically. Simply showing up can be the key to success.

Outcomes in Served Cases

Outcomes	All Cases Served	Percentage
Dismissal without Prejudice by Court or Plaintiff	229	51.35%
Default Judgment	176	39.46%
Agreed Judgment	22	4.93%
Dismissed with Prejudice	9	2.02%
Closed for Bankruptcy	4	.90%
Affirmative Recovery for Defendant	3	.67%
Other	3	.67%
Total	446	100%

Outcomes and Appearance in Served Cases

Type of Appearance	None	Pro Se	Attorney	All Cases
Dismissal without Prejudice by Court or Plaintiff/ Nonsuit	170	27	32	229
Default Judgment	166	9	1	179
Agreed Judgment	7	13	2	22
Dismissal with Prejudice	1	4	4	9
Closed for Bankruptcy	0	2	2	4
Affirmative Recovery for Defendant	0	1	2	3
Other	0	2	0	3
Total	344	58	44	446

Conclusion

This study is a first step in the collection of empirical data regarding litigation initiated by debt buyers to collect consumer debts. The results are largely consistent with many anecdotal reports regarding collection litigation and provide empirical support for some of the more serious concerns expressed by the Federal Trade Commission in its July 2010 report. Specifically, the study confirmed that many consumers do not participate in the litigation and that debt buyers provide consumers with very little information concerning the debt. For example, of the 507 cases examined:

• More than 95 percent of the complaints failed to provide any information regarding date of default or calculation of the amount allegedly owed, allegations the FTC suggests are necessary to insuring due process.

• More than 78 percent of cases contained affidavits having characteristics of robo-signing.

• Nearly 40 percent of all cases resulted in default judgment.

• More than 25 percent of the collectors failed to file state-mandated bonds and, therefore, were operating outside the law at the time they filed their suits.

• Fewer than 10 percent of defendants retained counsel.

The data provided little evidence, however, that faulty service played a role in the entry of judgments. Indeed, slightly more than 12 percent of the cases were dismissed before the defendants were served. Of those that remained, more than half resulted in a dismissal without prejudice. While the high rate of dismissal may indicate that "sewer service" was not a problem in the *11 jurisdiction, it may raise other questions regarding debt collectors' use of the courts as a tool in the collection process.

Despite the many aspects of the litigation that remain to be explored, this study nevertheless provides an important starting point for understanding the impact consumer collection litigation has on consumers and the courts. It also provides rule makers, legislators, and the courts with important tools to insure that the justice system functions to protect the interests of all the parties it serves.

Footnotes

a1 **Mary Spector** is an associate professor of law at SMU Dedman School of Law where she teaches consumer law and co-directs the SMU Civil Clinic. The complete version of this article, including all tables appearing here, was first published in Volume 6 of the Virginia Law and Business Review, *Debts, Details and Defaults: Exploring the Impact of Debt Collection Litigation on Consumers and the Courts*, 6 Va. L. & Bus. Rev. 257 (2011). The author would like to thank Lauren Maluso for her assistance in adapting it for this article. Initial support for the project was provided by the American Bar Association Section of Litigation, Litigation Research Fund.

1 *E.g.*, Joe Nocera, *Why People Hate the Banks*, N.Y. TIMES, (Apr. 2, 2012), http://www nytimes.com/2012/04/03/ opinion/noc-era-why-people-hate-the-banks.html Jeff Horwitz, *OCC Probing JPMorgan Chase Credit Card Collections*, AMERICAN BANKER (Mar. 12, 2012), http://www.americanbanker.com/issues/177_ 49/chase-credit-cards-collections-occ-probe-linda-almonte-1047437-1.html? zkPrintable=1&nopagination=1; Jeff Horwitz, *'Robo' Credit Card Suits Menace Banks*, AMERICAN BANKER (Jan. 31, 2012).

2 Federal Trade Commission, Collecting Consumer Debts: The Challenges of Change, A Workshop Report 13 (Feb. 2009) [hereinafter Workshop Report].

3 Jeff Horwitz, *Bank of America Sold Card Debts to Collectors Despite Faulty Records*, AMERICAN BANKER (Mar. 29, 2012), http:// www.americanbanker.com/issues/177_62/bofa-credit-cards-collections-debts-faulty-records-1047992-1 html? zkPrintable=1&nopagination=1.

4 WORKSHOP REPORT, *supra* note 2, at 22.

5 *See* Horwitz, *supra* note 3.

6 *See* Jon Leibowitz et al., Federal Trade Comm'n, Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration 6, 15-16 (July 2010) [hereinafter Broken System].

7 The National Consumer Law Center has estimated that one out of ten lawsuits filed by debt buyers are premised on bad or incorrect information.

8 BROKEN SYSTEM, *supra* note 6, at 14, 17.

9 *See, e.g.*, WILLIAM V. DORSANEO III, TEXAS LITIGATION GUIDE §§ 11.51(d) (noting that the "defendant is entitled to know character of legal entity that brings him or her into court"), 11.51(f), 12.100 (2006).

10 *See* TEX. R. CIV. P. ANN. 45(b) (West 2003) (stating that conclusory allegations are objectionable unless fair notice is given).

11 *See* United States Government Accountability Office, Credit Cards: Fair Debt Collection Practices Could Better Reflect Evolving Debt Collection Marketplace and Use of Technology 43 (Sept. 2009) [hereinafter GAO Report].

12 Robo-signing is the practice of filing mass-produced, computer-generated legal documents--so-called "sworn" statements--without reading or verifying the accuracy of the contents in order to speed up the collection process. *See* Press Release, Office of the Minnesota Attorney General (Mar. 28, 2011), *available at* http:// www.ag.state mn.us/consumer/pressrelease/110328debtbuyers.asp.

13 Texas law, for example, states that a party challenging the sufficiency of a pleading must "point out intelligibly and with particularity the defect, omission, obscurity, duplicity, generality, or other insufficiency in the allegations." TEX. R. CIV. P. 91. Unless such deficiencies are "pointed out ... in a writing ... [they] shall be deemed to have been waived." TEX. R. CIV. P. 90.

14 National Consumer Law Center, Comments to the Federal Trade Commission Regarding the Fair Debt Collection Practices Act, Protecting Consumers in Debt Collection Litigation and Arbitration: A Roundtable Discussion 4 (Aug. 2009), *available at* http:// www.nclc.org/images/pdf/debt_ collection/comments_ftc_09.pdf; *see* Horwitz, *supra* note 2.

15 A significant exception is the Urban Justice Center's 2007 report regarding 600 cases filed in New York City during a one-month period of 2006. COMMUNITY DEVELOPMENT PROJECT, URBAN JUSTICE CTR., DEBT WEIGHT: THE CONSUMER CREDIT CRISIS IN NEW YORK CITY AND ITS IMPACT ON THE WORKING POOR, 1, 18 (Oct. 2007), http:// www.urbanjustice.org/pdf/publications/CDP_Debt_Weight.pdf.

16 See BROKEN SYSTEM, supra note 6, at ii; Peter A. Holland, *The One Hundred Billion Dollar Problem in Small Claims Court: Robo-Signing and Lack of Proof in Debt Buyer Cases*, 6 J. BUS. & TECH. L. 259, 264-73 (2011).

17 *See* BROKEN SYSTEM, *supra* note 6.

18 Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692-1692p (2009).

19 15 U.S.C. §§ 1692, 802(e).

20 Holland, *supra* note 15, at 264-73.

21 Rick Jurgens & Robert J. Hobbs, Nat'l Consumer Law Ctr., The Debt Machine, How the Collection Industry Hounds Consumers and Overwhelms Courts, (July 2010), *available at www.nclc.org/images/pdf/pr-reports/debt-machine.pdf* [hereinafter The Debt Machine].

22 Federal Reserve, Federal Reserve Statistical Release: Consumer Credit, http://www federalreserve.gov/releases/g19/Current/ (last updated Mar. 7, 2012) [hereinafter Federal Reserve Statistical Release].

23 Federal Reserve, Charge-Off and Delinquency Rates on Loans and Leases at Commercial Banks: Delinquency Rates for All Banks, http:// www.federalreserve.gov/releases/chargeoff/delallsa htm (last updated Aug. 22, 2011) [hereinafter Delinquency Rates].

24 Federal Reserve, Charge-Off and Delinquency Rates on Loans and Leases at Commercial Banks: Delinquency Rates for All Banks, http:// www.federalreserve.gov/releases/chargeoff/delallsa htm (last updated Aug. 22, 2011).

25 *See* THE DEBT MACHINE, *supra* note 21, at 1.

26 Jessica Silver-Greenberg, *Boom in Debt Buying Fuels another Boom--in Lawsuits*, WALL ST. J. (Nov. 28, 2010), *available at* http://online.wsj.com/article/SB10001424052702304510704575562212919179.

27 Workshop Report, *supra* note 2, at 13-14; Barbara Sinsley, Fed. Trade Comm'n, DBA International's Comments Related to Debt Collection for the FTC Debt Collection Workshop, 2-3 (June 2, 2007), *available at* www.ftc.gov/.../ comments/debtcollectionworkshop/529233-00010.pdf *[hereinafter DBA* COMMENTS*]*

28 DBA COMMENTS, *supra* note 27, at 1-2.

29 Silver-Greenberg, *supra* note 26 (describing one company's practice of buying "distressed debt" for a "few pennies on the dollar.").

30 Andrew M. Beato & Rozanne M. Anderson, Fed. Trade Comm'n, Comments of ACA International to FTC Regarding the Debt Collection Workshop 1, 6-11, 42, 53 (June 6, 2007), http:// www ftc.gov/os/comments/debtcollectionworkshop/529233-00016.pdf [hereinafter ACA Comments].

31 *See* Richard Dalton, *'Zombie Debt': When collectors haunt you*, NEWSDAY (Feb. 10, 2008), *available at* http://www kaulkin.com/files/2008-02-08_ Newsday.com.pdf

32 *See* Horwitz, *supra* note 3.

33 FDCPA is codified at 15 U.S.C. §§ 1692-1692p. It prevents communication at "any unusual time or place," before 8:00 AM, or after 9:00 PM. 15 U.S.C. § 1692c. Debt collectors are prevented from using postcards when communicating with persons other than the consumer to acquire location information. 15 U.S.C. § 1692b(4). In collector contact with consumers, they are required to give notice of the amount of the debt, the name of the creditor to whom it is owed, and a statement that the debtor can request verification of the debt. 15 U.S.C. § 1692g.

34 The Equal Credit Opportunity Act is codified at 15. U.S.C. § 1691 and the Fair Credit Reporting act at 15 U.S.C. § 1681c(a)(4).

35 Carolyn L. Carter et al., Nat'l Consumer Law Ctr., The Consumer Credit and Sales Legal Practice Series: Fair Debt Collection, Appendix E, 731-41 (2008).

36 TEX. FIN. CODE § 392.101 (2006) (requiring $10,000 bond to be filed with Secretary of State; *see also* Marauder v. Beall, 301 S.W.3d 817, 821 (Tex. App.--Dallas 2009, no pet.).

37 *See* Debt Buyers' Ass'n v. Snow, 481 F. Supp. 2d 1, 4 (D.D.C. 2006). At times, such efforts may be extremely creative, as in the use of mailing sent to consumer debtors offering a "pre-approved" credit card with a limit set just above the amount owed on the previous card. *See* Notice sent by Resurgent Capital Services, L.P. to Past-Due Debtor (on file with the author) ("Take Advantage of $178.58 of DEBT REDUCTION and get Immediate Available Credit of $50.00 ... Pay your $3378.58 debt in full by balance transferring $3200 of your debt to a new Visa credit card, and when your credit card is issued, the remaining $178.58 will be forgiven. You will have $50.00 available credit when you receive your credit card .... Collection activity on your old debt will stop if you accept this offer[.]").

38 Failure to completely and accurately identify the original creditor in the informal stage of collection may subject collectors to liability for consumer statutory damages. *See* Schneider v. TSYS Total Debt Mgmt., Inc., No. 06-C-345, 2006 WL 1982499, at *3 (E.D. Wis. 2006) (refusing to dismiss § 1692g claim where it was "impossible ... to decide whether the collector's identification of Target" as original creditor satisfied its obligations under the statute).

39 *See* Horwitz, *supra* note 3.

40 The FDCPA solely governs debt collectors' conduct through the various phases of the collection process. *See* 15 U.S.C. § 1691i(a).

41 *See* Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (stating that plaintiff's complaint should contain "more than an unadorned, the-defendant-unlawfully-harmed-me accusation"); Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 n.3 (2007) (stating that a plaintiff must include some factual allegation in a complaint to "provid[e] not only 'fair notice' of the nature of the claim, but also 'grounds' on which the claim rests").

42 *See e.g.*, FED. R. CIV. P. 7.1(a) (requiring corporate parties to disclose certain corporate affiliations); FED. R. CIV. P. 8(a)(2) (requiring a "short and plain statement of the claim showing that the pleader is entitled to relief"); *see also* 2 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 8.04 [2] (3d ed. 2008).

43 BROKEN SYSTEM, *supra* note 6, at 7.

44 DBA COMMENTS, *supra* note 27, at 1-2.

45 Hilliard M. Sterling & Philip G. Schrag, *Default Judgments Against Consumers: Has the System Failed?* 67 DENV. U. L. REV. 357, 357-59 (1990).

46 *See* BROKEN SYSTEM, *supra* note 5.

47 BROKEN SYSTEM, *supra* note 6, at 12.

48 BROKEN SYSTEM, *supra* note 6, at iii.

49 Texas Office of Court Administration, Trial Court Judicial Data Management System, *County-Level Courts: Reported Activity by County from January 1, 2007 to December 31, 2007, available at* http:// dm.courts.state.tx.us/oca/oca_ReportViewer.aspx?ReportName=CC_Reported_ Activity_New rpt&ddlFromMonth=1&ddlFromYear=2007&txtFromMonthField= @FromMonth&txtFromYearField= @FromYear&ddlToMonth=12&ddlToYear=2007&txtToMonthField=@ToMonth&txtToYearField= @ToYear&ddlCountyPostBack=57&txtCountyPostBackField=@CountyID&export=1706 [hereinafter *County-Level Reports: Reported Activity 2007*].

50 Office of Court Administration, Texas Judicial Counsel, *Official County Court Monthly Report Instructions* 10 (July 2009), http:// www.courts.state.tx.us/oca/pdf/Cnty_Inst.pdf (emphasis added).

51 See Richard M. Hynes, *Broke but not Bankrupt: Consumer Debt Collection in State Courts*, 60 FLA. L. REV. 1, 5-6 (2008).

52 The justice courts have jurisdiction over civil cases involving not more than $10,000. TEX. GOV'T CODE § 27.031(a)(1). County courts at law and district courts in Dallas County have concurrent jurisdiction over all matters. TEX. GOV'T. CODE § 25.0592. Debt buyers may not bring their claims in a small claims court, because it is not available to collection agencies or other assignees of claims seeking to recover on the assigned claims. TEX. GOV'T. CODE § 28.003(b).

53 *Compare* 2000 Census of Population and Housing Summary File 1 Characteristics for Dallas County Voting Precinct 1148, North Central Texas Council of Governments, http://www nctcog.org/ris/census/sf1.asp? geo=DALCO&area=1148, *with* 2000 Census of Population and Housing Summary File 1 Characteristics for Dallas County Voting Precinct 3517, North Central Texas Council of Governments, http://www nctcog.org/ris/census/sf1.asp? geo=DALCO&area=3517.

54 Although TEX. R. CIV. P. 7 provides that parties may appear "either in person or by an attorney," Texas courts interpret the provision to mean that only individuals can appear pro se. *See* Kunstoplast of Am., Inc. v. Formosa Plastics Corp., 937 S.W.2d 455, 456 (Tex. 1996) (finding only limited exception to the general Texas rule that corporate parties may be represented only by licensed attorney); *see also* Paul Stanley Leasing Corp. v. Hoffman, 651 S.W.2d 440 (Tex. App.--Dallas 1983, no writ) (holding that although plaintiff corporation was unable to proceed to trial without an attorney, trial court abused discretion in failing to give plaintiff opportunity to obtain licensed counsel).

55 TEX. GOV'T CODE § 27.031(d) ("A corporation need not be represented by an attorney in justice court.").

56 Richard D. De Veaux, Paul F. Velleman & David E. Bock, Intro Stats 311-12 (3d ed. 2009).

57 E-mail from Lynne Stokes, Professor, SMU Dept. of Statistical Science to Mary Spector, Associate Professor of Law, SMU Dedman School of Law (July 16, 2008, 1:15 PM CST) (on file with the author).

58 Default Judgment occurs when one party fails to appear or plead at the time appointed. A Dismissal *without* prejudice is a final judgment disposing of a case without a trial on the merits that does not bar the complainant from suing again on the same cause of action. An agreed judgment is a dismissal entered by agreement of the parties, amounting to an adjudication of the matters in dispute or to a renunciation by the complainant of the claims asserted in his pleadings. Dismissal *with* prejudice is a final judgment disposing of a case without a trial on the merits that bars relitigation of the underlying cause of action. An affirmative recovery for the defendant occurs when the defendant asserts counterclaims against the complainant and wins. *See* BLACK'S LAW DICTIONARY (9th ed. 2009), *available at* http:// blackslawdictionary.org (emphasis added).

59 In this calculation, the dividend is the percentage of "suits on debt" added in Dallas County as reported by the Texas Office of Court Administration--75.3%. *See County-Level Reports: Reported Activity 2007*, *supra* note 46. The divisor is the percentage of cases that the study shows were initiated by debt buyers to collect credit card debt. Stated in numerical form, the equation becomes: 25.11% ÷ 75.3% = 33.35%.

60 R. LA FOUNTAIN ET AL., THE WORK OF STATE COURTS: AN ANALYSIS OF 2007 STATE COURT CASELOADS 10 (2009) (reporting the results of a joint project of the Conference of State Court Administrators, the Bureau of Justice Statistics, and the National Center for State Courts).

61 NY City Civ. Ct. Act §§ 201-02, Task Force to Expand Access to Civil Legal Services in New York, Report to the Chief Judge of the State of New York 16 (Nov. 2010); New York City Bar, Report by the Civil Court and Consumer Affairs Committee in Support of Intro. 0660-2007, (Jan. 21, 2009), *available at* http://www nycbar.org/pdf/report/Consumer_Debt.pdf.

62 TEX. FINE. CODE ANN. § 392.101 (West 1997); *see Marauder*, 301 S.W.3d at 821.

63 *See* 15 U.S.C. § 1692g. Although the collector's initial pleading is not treated as a communication which must contain the required validation, improper identification in the pleading might nevertheless amount to deceptive or misleading conduct in violation of 15 U.S.C. § 1692e(10).

64 Tex. Fin. Code § 201.102.

65 *See* TEX. BUS. & COM. CODE § 71.101 (2009).

66 TEX. BUS. & COM. CODE § 71.201(b); *cf.* TEX. BUS. & COM. CODE § 17.46(b) (establishing that in some circumstances, a corporate entity's failure to identify itself properly can amount to a deceptive trade practice).

67 This information is available with a password at http:// direct.sos.state.tx.us/home/home-corp.asp (follow "Find Entity" hyperlink and search "Citibank." Similar results were achieved searching more broadly with the term "Citi").

68 This information is available with a password at http:// direct.sos.state.tx.us/home/home-corp.asp (follow "Find Entity" hyperlink and search "Chase Manhattan Bank."). A similar search using the term "Chase Bank" reported twelve filings. One of them, an entity identified as JPMorgan Chase Bank, National Association, appears to be a close match to "JPMorgan/Chase," which was identified as an original creditor in one case.

69 *See* 15 USC 1692g(a) (requiring collector to identify original creditor upon consumer's request).

70 *See* 15 USC 1692e, 1692f. *See also* Delawder v. Platinum Financial Services Corp. 443 F.Supp. 2d 942 (S.D. Ohio 2005) (holding that debtor stated claim for violation of section 1692e against debt buyer who voluntarily dismissed prior collection case after debtor answered and sought discovery).

71 CAL. CIV. CODE § 1788.15(a).

72 Ray Rivera, *Counsel Seeks to Crack Down on Process Servers Who Lie*, N.Y. TIMES, Feb. 26, 2010, at A18. In early 2011, a Dallas County auditor found evidence that deputy constables had lied about obtaining service of process in a range of civil matters. Reports focused on the widespread nature of such conduct--allegedly involving over half of the deputies who serve civil papers--and the role it may have played in evictions, which are filed exclusively in the justice courts. Editorial, *Time to Unplug the Entire*

Constable Operation?, DALLAS MORNING NEWS, May 19, 2011, http:// www.dallasnews.com/opinion/editorials/20110519-editorial-time-to-unplug-the-entire-constable-operation.ece. Little is known, however, about the extent to which alleged wrongdoing by the constables played a role in collection cases filed outside of the justice courts.

73 *See* TEX. R. CIV. P. 83 (Answer; Original and Supplemental; Endorsement), 84 (Answer May Include Several Matters), 85 (Original Answer, Contents), 92 (General Denial), and 93 (Certain Pleas to be Verified).

74 The Legal Aid Society, Neighborhood Economic Development Advocacy Project, MFY Legal Services, and Community Development Project, Urban Justice Ctr., Debt Deception: How Debt Buyers Abuse the Legal System to Prey on Lower-Income New Yorkers, Urban Justice Ctr. 1, 9 (May 2010), http:// www.urbanjustice.org/pdf/publications/cdp_24may10.pdf [hereinafter Debt Deception].

75 Broken System, *supra* note 6, at 17.

76 Judith Fox, *Do We Have a Debt Collection Crisis? Some Cautionary Tales of Debt Collection in Indiana*, 24 LOY. CONSUMER L. REV. 355 (2012).

77 *See* Tex. R. Civ. P. 185.

78 Tex. R. Evid. 803(6).

79 *See* Williams v. Unifund CCR Partners Assignee of Citibank, 264 S.W.3d 231 (Tex. App.--Houston [1st Dist.] 2008, no pet.); Bird v. First Dep. Nat'l Bank, 994 S.W.2d 280 (Tex. App.--El Paso 1999, pet. denied).

80 *See e.g.*, 15 U.S.C. § 1692e(2)(A).

81 TEX. R. EVID. 803(6), 902(10).

82 *See* LVNV Funding, LLC v. Mastaw, No. M 2011-00990-COAR3-CV (Tenn. Ct. App. Apr. 30, 2012).

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