

Hearing before the Senate Judiciary Committee on SB17-216
 Testimony of Ellen Harnick, Western Office Director for the Center for Responsible Lending
 April 3, 2017

Thank you for the opportunity to testify on behalf of the Center for Responsible Lending, a non-profit, non-partisan research and policy organization affiliated with the Self-Help Credit Union. The Self-Help Credit Union is a community development lender that helps individuals in underserved communities to build wealth and financial security.

I will focus my comments today on debt buyers. It should go without saying that parties that sue on a debt should sue the right person for the right amount on a debt that is still owed. Unfortunately, debt buyers often fail to meet this basic expectation.

Debt buyers purchase billions of dollars of old debt, and acquire spreadsheets of summary information that they use to collect. Three pervasive problems flow from debt buyer practices:

First, the information in these spreadsheets is often inaccurate, incomplete, or outdated. By way of example, forty-seven States Attorneys General, including Colorado, and the Consumer Financial Protection Bureau brought a case in which they found that “Chase sold ‘zombie debts’ to third-party debt buyers, which include accounts that were inaccurate, settled, discharged in bankruptcy, not owed, or otherwise not collectible.”¹ It’s no wonder that the top debt collection complaint by Coloradans is: “repeated efforts to collect a debt not owed.”

Second, debt buyers know the complaints they file may be inaccurate, but they file anyway, wrongfully shifting the burden to the people they sue to find and prove the debt buyers’ errors. A case against one of the largest debt buyers, Portfolio Recovery Associates (PRA), found that a PRA senior manager expressed concern about the poor quality information they obtained and asked how PRA could know the actual amount consumers owe. “PRA’s Vice President for Collections responded, ‘We don’t. 90% of our cases are default judgments. We show the judge the math and if no one disputes we get our judgment...’”²

Third, as the quote above shows, debt buyers rely on default judgments to fuel their business model. There are many reasons why people do not come to court to defend themselves in these cases—because of the inaccurate or outdated information, complaints are sometimes served at the wrong address and not received by the person sued. Other people see a demand for payment

¹ “CFPB, 47 States and D.C. Take Action Against JPMorgan Chase for Selling Bad Credit Card Debt and Robo-Signing Court Documents” (July 8, 2015), available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-47-states-and-d-c-take-action-against-jpmorgan-chase-for-selling-bad-credit-card-debt-and-robo-signing-court-documents/>. See also “Colorado Attorney General Cynthia H. Coffman Announces Chase Will Refund Fees, Cease Unlawful Debt Collection Practices Against Coloradans” (“Chase’s debt collection practices valued profits-from-volume at the expense of its consumers,” said Attorney General Cynthia H. Coffman. “Unfortunately for Chase, greed does not trump the rule of law.”) (July 8, 2015) available at <https://coag.gov/node/651>

² 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 at para 28 (emphasis supplied).

from a company they never did business with and assume the whole thing is a scam. Whatever the reason, cases based on false information are frivolous, and people should not be forced to defend frivolous lawsuits.

Here in Colorado, CRL research found that the four biggest debt buyers alone filed close to 40,000 cases in county courts from 2013-2015, accounting for 8% of all civil cases filed in Colorado county courts.³ From a random sample of 375 cases filed in five Colorado county courts⁴, 71% resulted in default judgments, and 38% resulted in wage garnishment. In none of these cases did the person sued have a lawyer.⁵

These judgments and wage garnishments can put struggling families over the edge.

Debt buyers obtain these judgments without providing the courts with any documents evidencing the debt. Often they submit just an affidavit reciting information from their spreadsheets. The problems with these affidavits are exemplified by a recent case against Encore Capital, which found:

In many jurisdictions, Encore has been able to obtain a settlement or default judgment against a Consumer using an affidavit as its only evidence. Many of these affidavits contain false or misleading testimony.⁶

Without actual account documents, the judge signing these judgments has no way to know whether the judgment reflects what the person actually owes—or whether this person owes anything at all. Cases filed nationally have revealed that judgments are sometimes entered against people who do not even owe the debt, or only owe a fraction of the amount claimed.

The solution is simple: Require debt buyers to attach documents evidencing the debt when they file their lawsuits and before they obtain judgments. This will reduce the number of frivolous lawsuits, and stop debt buyers from recovering money they are not entitled to.

Thank you for your consideration. I would be happy to answer any questions.

³ “Debt Buyers Hound Coloradans in Court for Debts They May Not Owe,” Center For Responsible Lending (Dec. 15, 2016), available at http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/colorado_debt_buying.pdf. (“CRL Report on Debt Buyer Practices in Colorado”). This number undercounts the number of cases filed because Denver County Court had not yet uploaded any cases for 2013 into the Colorado Courts Records Search website at the time our research was conducted, and the cases uploaded for 2014 and 2015 were incomplete. Moreover, this number does not reflect cases filed in small claims courts, and it does not include the many other debt buyers operating in Colorado.

⁴ The five counties are Arapahoe, Douglas, Jefferson, Mesa, and Pueblo.

⁵ CRL Report on Debt Buyer Practices in Colorado.

⁶ Consent order between CFPB and Encore Capital Group, available at http://files.consumerfinance.gov/f/201509_cfpb_consent-order-encore-capital-group.pdf at para. 54.