

# Consumer Finance Monitor (Season 6, Episode 11): A Deep Dive into Mass Mailings by Debt Relief Law Firms

Speakers: Alan Kaplinsky, Joel Tasca, and Jenny Perkins

Alan Kaplinsky:

Welcome to the award-winning Consumer Finance Monitor podcast, where we explore important new developments in the world of consumer finance and what they mean for your business, your customers, and the industry. This is a weekly podcast show brought to you by the Consumer Financial Services Group at the Ballard Spahr law firm. I'm your host, Alan Kaplinsky. I'm the former practice group leader for 25 years, and now senior counsel of the Consumer Financial Services Group at Ballard Spahr, and I'm pleased to be moderating today's program. For those of you who want even more information about the topic that we're going to talk about today or anything else in the world of consumer finance, don't forget about our blog, which also goes by the name of Consumer Finance Monitor. We've hosted our blog since 2011 when the CFPB became operational, so there is a lot of relevant industry content there.

We also regularly host webinars on subjects of interest to those in the industry. So to subscribe to our blog or to get on the list for our webinars, please visit us at [ballardspahr.com](http://ballardspahr.com). If you like our podcast show, let us know about it. Leave us a review on Apple Podcast, Google, Spotify, or wherever you obtain your podcasts. Also, please let us know if you have ideas for other topics that we should consider covering on our podcast show or if you have speakers that we should consider inviting as guests on our show.

So let me first tell all of you about the topic that we're going to address today, and then I will introduce our speakers. In recent months, debt relief law firms and other credit repair organizations have been mailing volumes, hundreds, thousands of cease and desist letters, debt validation requests, and vague demand letters to creditors. The sheer volume of these letters undermine the credibility of the requests and place an undue burden on businesses.

Today, we're going to discuss topics related to this recent trend, such as patterns that creditors should look for, obligations, if any, for responding to these letters, contrary instructions that your customer may give you after you get a letter from one of these law firms or other organizations, predictions on whether these letters will lead to lawsuits for the remainder of this year and potential industry response to this practice, which unfortunately has become a really serious problem. And while the problem seems to have gotten worse in the last year, it's really an old problem, I would say, it goes back at least a decade. And at one time, it required the FTC to step in and promulgate a regulation, which they did. And we can tell you more about the regulation as we talk about the issue today, but they're not doing a great job enforcing their own regulation.

Part of it, I would describe it a little bit like the carnival game, Whac-a-mole, where these companies that engage in the practice just seem to be, they come out of the woodwork. And so, if you can smack a few of them down, which we did, I mean, decade or so ago, we actually sue some of these companies and they went out of business, but no sooner had they gone out of business than there were other companies that ended up cropping up, and so it seems like nobody can ever get ahead of the game.

But anyway, I have two of my colleagues at Ballard Spahr that are very conversant in this subject because they're dealing with this scourge literally almost every day. So let me introduce them to you and then we will pretty deep dive on what's going on out there and what you should be looking for.

First of all, my pleasure to introduce Joel Tasca. He has spent his career in Ballard Spahr's Litigation Department where he represents companies of all sizes as well as individuals in complex litigation and state and federal courts around the country. He, in fact, is the head of our litigation arm of the Consumer Financial Services Group. He's represented clients in a broad range of areas including consumer finance and data breaches, and a lot of other related litigation. Let me also introduce my colleague Jenny Perkins. Jenny is partner in the litigation group and a member of the Consumer Financial Services Group. And like Joel, she regularly represents clients in consumer finance litigation, both individual and class actions, and she's represents a wide range of companies in the industry. Jenny has also been involved in investigations and litigation commenced by state

attorneys general in the area of consumer protection. So before we get going, I want to wish both Joel and Jenny a very warm welcome to our show. I'm thrilled that you're both taking the time today.

Joel Tasca:

Thank you, Alan. We're excited to be here today.

Jenny Perkins:

Thanks, Alan. Happy to be here with you and Joel to discuss these issues.

Alan Kaplinsky:

Okay. Well, let's begin. I'm going to start with you, Joel. Well, both of you should feel free to chime in at any time. What exactly are these debt relief companies? I didn't get into a lot of detail in the intro. What are they doing exactly, Joel?

Joel Tasca:

Thanks, Alan. Well, you hit on it in the intro. These law firms apparently are signing up consumers in droves to use their services, they then get a list of the consumers supposed creditors, and then they will mass mail form letters to each of the consumers creditors. And the form letters tend to be very short, less than a page, they'll typically have an account number, a Social Security number, they're very impersonal, they'll be addressed to whom it may concern. And the letters will then claim that the law firm represents the particular borrower in connection with the debt owed, and it'll make various demands. And these demands fall into a few general categories. One type of demand is a cease and desist request, cease all communications with my client and all communications should be with our office.

Another type of demand or dispute that they note in these letters are credit reporting disputes. And the letter will say something like, "On next date, my client disputed your reporting of the account with the credit bureaus, and my client believes you are still reporting false information to the credit bureaus and that you may have failed to perform a reasonable investigation of the dispute." So cease and desist requests credit reporting disputes. And then there are also, as you mentioned, Alan, these debt validation type requests where the letter will say something like, "I hereby demand that you provide copies of all documents used to confirm the accuracy of the reporting and the existence of the debt." And then the letter will go on to ask for specific documents that support the balance, the borrower's legal responsibility for the debt, the particular creditors, legal entitlement to collect on the debt.

So those are what we're seeing in these letters, cease and desist requests, credit reporting disputes, debt validation requests. And in a few occasions we've actually seen, it's been rare, but we've actually seen draft complaints to be filed in court that accompany these letters. But that seems to be the exception rather than the rule.

Alan Kaplinsky:

Let me try to unbundle a little bit of what you said, Joel. I'm curious, how do they get these law firms or other companies, and how do they get the names of all the consumers? How do they know who they owe money to? Can you explain how that works?

Joel Tasca:

Sure. Well, we think that these law firms that are doing this, they're all backed by marketing companies. And so, they have expertise on how to attract these consumers and they have robust social media presences, and we could talk a little bit about that in more detail. They're on Facebook, they're on Instagram. The leading firm in this area even has a mobile app. So they are out there on the internet and findable. And I think what they're doing is they are creating a presence and consumers are finding them. That's not to say that they may not also be getting leads from lead generators, and we're not sure to the extent to which they're doing that, but they certainly are out there on the internet and advertising very heavily.

Alan Kaplinsky:

And so I take it in their ads, they would probably say things like, "Are you up to your neck in debt? We can help you. We can eliminate your debt or reduce it in some fashion." And before you know it, they prey upon consumers who are really in bad financial shape, I'm sure. How do they get paid? They require consumers to put up money, do you know how that works?

Joel Tasca:

Jenny can speak to that in more detail, but in general, they do require the consumers to pay a fee. For that reason, many people believe this is potentially a scam that they're running where the consumers end up paying them fees over time. And in fact, some consumers have even sued the leading firm in this area.

Alan Kaplinsky:

Yeah. Jenny, it's a good segue into why are these law firms doing it, I guess they're not doing it out of the goodness of their heart, right?

Jenny Perkins:

Sure. So Alan, exactly how you alluded to before, when the FTC propagated some rules for these law firms and simultaneously the Credit Repair Organization Act also has these rules that requires these debt law firms to actually provide a service to consumers before they charge them. And what we believe is happening based on what we've seen is that the "service" that is being provided to these consumers is the mass mailing of these letters. Whether or not there's any merit to the claims in these letters, whether or not the consumer actually asked for a cease and desist or a debt validation, it is our feeling that these letters are being sent to purportedly constitute the service that's being provided in order to collect both the upfront fee and what we've been able to see from the consumer litigation that's been filed against the leading law firm, really substantial monthly payments for two to three years.

Alan Kaplinsky:

Regardless of whether they've been able to eliminate the debt or reduce the debt, the consumer has to continue to make payments to them?

Jenny Perkins:

That is what is being alleged in these consumer cases that we've seen that have been filed against the leading law firm in this area. The other reason that we think that these letters are potentially being sent is to set up perhaps future lawsuits, maybe brought by the law firm that is actually sending these letters or maybe assigned to a new litigation and actual litigation law firm that may take these letters and try to spin them into statutory violations in the next year or two.

Alan Kaplinsky:

Oh, so sometimes, I mean, they'll send the letters and they'll tell you to stop cease and desist from collecting. I tell you, they don't ask the companies to give money back. Do they just want to wipe out whatever is owed at that time?

Jenny Perkins:

That is correct, Alan.

Alan Kaplinsky:

Yeah. Okay. Yeah, sure sounds like a scam. And I can't understand for the life of me, why the Federal Trade Commission isn't all over these companies like a cheap soup. I mean, it seems to me that they've got the regulation, I should say, that's been on the books for years. It says that they're not supposed to collect any money upfront until they've accomplished something, and they seem to be ignoring that completely.

Jenny Perkins:

Well, to your point, Alan, what we've seen is that the FTC and other regulators are really hesitant to enforce these rules or to investigate law firms that are doing this. So there really has been a reluctance to go after law firms. Nonetheless, what Joel and I are seeing is there's an uptick of law firms that are actually performing these "services" as opposed to your traditional credit repair organizations.

Alan Kaplinsky:

Let me turn back to you, Joel. You mentioned there's a debt validation component to the request. Let me ask you an initial question of, is there anything in the law that requires a company to... I mean, I know for example, if you're a debt collector, there's a debt validation notice under the Fair Debt Collection Practices Act in Regulation F, but if you're dealing with the creditor and the consumer or the consumer's purported agent says, "I want you to validate the debt, send me every document you have that shows that there's a real contract and what is owed," is there a requirement that the consumer comply with that? Let's say it was just the consumer making the request, there was no third-party.

Joel Tasca:

Alan, you're getting to the heart of the issue with respect to the debt validation request component of these letters. As a first party creditor, there is no obligation under the Fair Debt Collection Practices Act for the creditor to respond to those requests. Debt validation, it's an FDCPA concept, and the FDCPA of course applies to debt collectors, not first party creditors collecting on their own debts. So a lot of our clients can take some comfort in that. However, there are in addition to the FDCPA, state laws that impose requirements on first party creditors that are similar to those imposed by the FDCPA. And so to really analyze this issue, you need to look at the state law that's being triggered and analyze whether there's some obligation to respond to the debt validation component of these letters.

Now, one thing, Alan, I wanted to back up with, this discussion that we're having about responding on debt validation presumes that the creditor is even going to respond at all to these letters. And I think that that's a important threshold question that recipients of these letters need to ask, are we actually going to respond? And one of the things that Jenny and I have noticed is there is a fair chance that the law firm that sends the letter may not actually represent the particular consumer or may no longer represent the particular consumer. And so, one possible initial response to these letters before responding substantively is ask for proof of representation, ask for a power of attorney or some other representation that this firm actually represents the borrower. And in addition to being a ready and simple and formulaic response to these letters in the first instance, it's also good practice to just make sure you're not sending personal customer financial information to a law firm that may not in fact be representing the borrower. So you want to think about that.

Another thing point to think about is, is the author of the letter, the particular lawyer who writes that letter, even admitted to practice in the particular jurisdiction at issue? We've seen letters come from some of these law firms where it appears that the attorney who signs the letter isn't even admitted to practice. So those are some threshold things to think about in considering whether you even want to respond to these letters. But if you do, in fact, go forward and decide to respond. You're exactly right, the debt validation request, if you're going to respond to that, you just have to consider what are the state laws, what are the obligations under the state laws, because of course, debt validation is an FDCPA concept applicable to debt collectors, which most of our clients are not.

Alan Kaplinsky:

Right. So Jenny, Joel mentioned debt validation, but you also mentioned there's a cease and desist component to the request. Let's assume you've asked this law firm to approve that they represent the client and they provide the proof, they provide a power of attorney or something signed by the consumer saying, "I've retained Mr. X as my counsel." How does the lender or a servicer respond to the cease and desist aspect of the letter?

Jenny Perkins:

Thanks, Alan. So in addition to thinking about the threshold issues that Joel has brought up with these letters, you need to think about the state laws that could implicate violating a cease and desist request or communicating with a debtor when you know that the debtor is represented by counsel. What comes to mind is the Rosenthal Fair Debt Collection Practices Act out of California, the Florida statute, which also has the same limitations.

Alan Kaplinsky:

There's nothing in federal law, though I take it, nothing specific. Although I suppose somebody could argue that it would be if you get a cease and desist notice from counsel of somebody, you'd be engaging in an unfair or abusive practice to ignore that.

Jenny Perkins:

That's correct. And also, although the TCPA litigation is not as prevalent as it has been, depending on the technology used to make phone calls, courts could interpret that to be a revocation of consent to make contact with the customer.

Alan Kaplinsky:

Okay. So what does a lender do? Lender believes that the debt is valid, I take it in these letters, they don't give any legal reason why the debt shouldn't be perfectly valid. So what do you, do you just ignore the letter or write back to them telling them to go fly a kite?

Jenny Perkins:

Well, I think in the situation that you described where the creditor receives a response with a power of attorney. Although based on Joel and my experience, we're not likely to receive a response. But assuming that you do receive a response, you should likely treat that as a cease and desist. But make sure that your customer is aware of that instruction and that you're not taking any actions or inactions on the account that's actually detrimental to your customer. So whether you receive a re-consent from the customer to contact them about the debt, whether it's in writing, whether it's via email or on a recorded phone call, those are things that some of our clients are thinking about.

Alan Kaplinsky:

Right. Okay. Joel, you mentioned also there's a credit reporting dispute aspect. How should a lender respond to that? And maybe just to remind everybody what you said a little bit earlier, I take it what they say is that you're reporting this debt on my client's credit bureau report, and you're reporting it as being delinquent and it's really not delinquent. Is that the kind of thing you see?

Joel Tasca:

So Alan, the form language we've been seeing is extremely vague as to what the precise complaint is that the consumer supposedly has. And so it'll see something like, "My client disputed your reporting of this account with the credit bureaus. My client believes you are reporting false information to the credit bureaus and that you may have failed to perform a reasonable investigation." So beyond saying it's false information, there's no specificity that is given in the vast majority of these letters that we've seen. So what do you do in response to getting that sort of a vague statement in one of these letters? Just to back up and set the table as many of you know a data furnisher's obligations with regards to credit reporting are in the Federal Fair Credit Reporting Act, the FCRA. And with few exceptions, the FCRA preempts all state law applicable to furnisher obligations.

And so the good news here is that you really just need to worry about the FCRA, again, with a few exceptions. And the FCRA in terms of credit reporting disputes, as many of you also know, is divided into two general categories. There are direct disputes, which are disputes that come directly from the consumer to the furnisher, and then there are indirect disputes, which are disputes that come to the furnisher through a consumer reporting agency. And that form language I just read, it's funny there, there's a direct and indirect dispute aspect to that language. There's the languages, "My client believes you are reporting

false information to the credit bureaus." Well, that's like a direct dispute. And then there's also a reference in that language to a past indirect dispute that the consumer supposedly made to a credit bureau at some undefined time in the past. And so, the form language gets at both of those types of disputes.

So if you want to look at what are the options for dealing with this, you look at the FCRA's furnisher obligation section, which is in as many of 15 USC § 1681s-2. There is a section in there on how to deal with direct disputes. And so if you decide that this is a direct dispute that you're receiving, by way of this letter, there are a few things that are worthy of highlighting 1681s-2 A8D says that, "For a consumer they validly make it direct dispute, the consumer is required to identify "the specific information that is being disputed," and the consumer has to explain "the basis for the dispute." And the form letter we just looked at just vaguely refers to false information without giving further detail.

So one position that furnisher can take here is that the consumer didn't make a valid direct dispute because it just lacked specificity and it provided no basis. And further to that section 1681s-2 A8F allows the furnisher to declare a direct dispute frivolous if the consumer fails to provide sufficient information to investigate the disputed information. So maybe you want to consider this a frivolous direct dispute. Now, one thing to keep in mind here is that if you do consider this a frivolous direct dispute, there is a requirement under this same section that notice be provided to the consumer, or in this case, if you've gotten power of attorney to the consumer's attorney, that the furnisher has determined the consumer's dispute to be frivolous. So those are some things to think about with respect to the direct dispute aspect of these letters. As I mentioned, there's also this sort of indirect dispute illusion in these letters. My client made a disputes of the CRAs at some point in the past and you didn't do a reasonable investigation.

There's a separate subsection under section 1681s-2 that deals with how to address indirect disputes. And one way to sort of handle this is section 1681s-2 A8Fi2. Well, it's a mouthful. That absolves the furnisher of having to do anything further if a direct dispute, which the letter arguably is duplicative of an indirect dispute, that the furnisher already is investigated. So one way to deal with this is to say, "Well, there's an illusion to an indirect dispute, there's now this direct dispute, arguably in this letter, but it's not giving us any new information, so we can ignore it on that."

So the indirect disputes though, to be clear, they get the attention of litigators like Jenny and me because they are the only type of dispute that can give rise to a claim by a private plaintiff in a civil lawsuit. So when you see an illusion to an indirect dispute, I mean, you want to take it seriously. And so may behoove you as the furnisher to go back and check, see if this consumer actually did receive a prior dispute through the CRAs, through the consumer reporting agencies from this consumer.

And if you did, and depending on how many resources you have to put into this, you may want to go back, look at that investigation, kick the tires, make sure that the investigation was a "reasonable investigation" because that is the touchstone of a furnisher's civil liability in connection with indirect disputes. Did the furnisher do a reasonable investigation of the dispute? So there are range of options on how to deal with the credit dispute component of these letters, and some of it's going to depend on how many resources you have, what your comfort level is, what your risk tolerance is. So again, those are the high-level what your options are as we see them.

Alan Kaplinsky:

Yeah. So I've been thinking of one thing that I want to ask a question, and I've got a couple of questions for Jenny, but I take it, I mean, I've been assuming because years ago when this problem first occurred, it was principally our credit card clients that were being subjected to these letters that would come in. Has it gone beyond that now? Does it affect all types of consumer credit? Joel, do you want to take that?

Joel Tasca:

Sure. So we have seen all shapes and sizes of financial institutions receiving these letters from the biggest banks to small dollar lenders, to fintechs. So I don't think there's any discrimination as to whom these letters are being said. Jenny, chime in, but I assume that's been your experience as well.

Alan Kaplinsky:

And what types of credit, is it only credit cards or would it apply to other kinds of credit?

Joel Tasca:

It's not just credit cards, it's short-term loans, it's installment loans. It's basically every sort of credit that you can think of, we've seen these letters come in.

Alan Kaplinsky:

Even mortgages or not mortgages?

Joel Tasca:

That's a good question, Alan. I'm trying to think if I've seen it on mortgages. I may not have seen it on mortgages, but certainly every type of unsecured debt of any type, I think we've seen it.

Alan Kaplinsky:

Yeah. Jenny, you want to add anything to what Joel just said about?

Jenny Perkins:

I would just add that we've seen it in the rent-to-own space, so really everywhere.

Alan Kaplinsky:

Yeah. Maybe not more secure credit, mortgages, auto finance, probably not. And I take it, one other general question. These letters, do they all look alike? Did any of them demonstrate that they've been tailored to the particular issues that a consumer has, or is it just a form letter that they just slap on a name of who their client is and send it off?

Jenny Perkins:

So many of the credit dispute letters that Joel described, they actually state on literally, "X blank date, my client sent a credit dispute." They don't even fill in the blank date.

Alan Kaplinsky:

Right. One of the other things that I know we used to do, we were dealing with this a long time ago, we would consider reporting these lawyers that are doing this, whoever the disciplinary authority is, in the state where they're admitted. Because I would think many of them are engrossed violation of ethical rules, what do you think of that, Jenny?

Jenny Perkins:

That that's definitely something that we wanted to talk about in the unified industry response especially we have found, at least, there have been some allegations that the individuals that are behind these law firms are not even attorneys or maybe suspended attorneys or disbarred attorneys.

Alan Kaplinsky:

Yeah, who may be purporting to practice law without a license. I mean, there's a lot, I guess you could delve into there. So with all these letters going out, the next question for you, Jenny, is are you seeing litigation from these debt relief law firms? If you don't comply with what they've asked in the letter, do they then follow it up with the lawsuit?

Jenny Perkins:

So the short answer is no. And as Joel alluded to, some of our clients have seen a few draft complaints or a few demand letters that actually have a monetary demand in them, but we have not seen any filed complaints by these debt relief law firms.

Ironically, we've seen the consumers who are represented by a lot of familiar faces that we deal with in consumer litigation by the plaintiff's bar, they are bringing lawsuits directly against these debt relief law firms.

Alan Kaplinsky:

Oh, really? Okay. That's interesting. Do they bring class actions against them or individual lawsuits?

Jenny Perkins:

Both. So we're aware of about three class actions and probably about a dozen individual actions.

Alan Kaplinsky:

And what do they claim? What's the essence of the complaint?

Jenny Perkins:

Everything from breach of contract to violation of the Credit Repair Organization Act, to fraud, to misrepresentation.

Alan Kaplinsky:

And do these lawsuits get defended? Do these debt repair law firms enter a defense or they just let it go to a default judgment?

Jenny Perkins:

One of these debt law firms has entered appearances by the same law firm appears to represent them. These cases are still in their infancy, so we really haven't seen much apart from the complaints, which actually do have a lot of interesting information about the programs and motions to dismiss, but we haven't really seen anything further than the motion to dismiss state.

Alan Kaplinsky:

One of the other things that I would mention is that, about a decade ago when I actually was involved in some of these cases, we had a client, major credit card issuer who sued some of these debt relief law firms because they were being really harassed constantly with letters coming in from hundreds and hundreds of purported clients. And they finally just threw up their hands and said, "Well, we're going to go on the offensive here. We're tired of playing defense. We're going to sue them." And they did. And these companies eventually disappeared. They went out of business, they crawled back into their hole, whatever. But I take it that you don't see much of that happening anymore.

Jenny Perkins:

We have not seen it in this latest wave, but it's definitely something for the industry to consider.

Alan Kaplinsky:

That's a good segue into the next question as we're drawing to the end of our show. What can the industry do to combat these practices? Because I assume that, it's affecting the entire industry, it's not just a few creditors here and there, right?

Jenny Perkins:

Sure. So as we said before, considering bar complaints or notifying the bars if appropriate, consider notifying the regulators and-

Alan Kaplinsky:

Federal Trade Commission, right?



Jenny Perkins:

Exactly.

Alan Kaplinsky:

FTC. Here, we're handing you on a plate. Potential defendants to an enforcement action, go to work, right?

Jenny Perkins:

Notifying the press. A lot of these consumer litigation cases have actually gotten some press in Law360. We've seen it. And just simply monitoring the consumer litigation, seeing what's happening. That is something certainly that Joel and I are doing and a team are doing to make sure that we know what exactly is going on. That's really where we're getting all the up-to-date information.

Alan Kaplinsky:

So Jenny, what do you and Joel and others in our consumer finance litigation group do to help lenders and servicers who contact you or others in our group and tell you about this problem that they're having with these letters? What can you do for them?

Jenny Perkins:

Sure. And I'll let Joel piggyback off of this, but helping our clients make a uniform response, an approach to this, whether they do it internally or reach out to us to help them externally with either devising that system or helping implement that system. But I'll defer to Joel, because I know he has some experience with this as well.

Joel Tasca:

Yeah. Thanks, Jenny. So there are two ways I think Ballard can help in this regard. One is if a client wants to handle these letters and respond to them or decide not to respond to them in-house, we can help you brainstorm upfront what the best way is to handle these types of letters. Maybe there are some situations where a response is warranted, maybe there are others where you decide that it's not worth responding. So we can help you get that process in place upfront so that you can handle it in-house. So that's number one.

Number two is because the volume of these leathers has gotten so great, some clients are forming them to outside firms to deal with. And so we can help there as well. We've developed our own systems in our firm over the last year or so to pretty efficiently handle how to deal with these leathers on behalf of our clients. So whether it's internal or you want to form them out, we can certainly help.

Alan Kaplinsky:

Yeah. Okay. Well, I think we've pretty much explored this subject in as much detail as warrants it to today. And I want to thank both of you for taking your time out to share this information with our listeners. A.

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