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AUG 23 2013
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY CLERK

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,

v.

NATIONAL ATTORNEY COLLECTION
SERVICES, INC., a California corporation;
NATIONAL ATTORNEY SERVICES LLC,
also d/b/a National Attorney Collection
Services, also d/b/a N.A.C.S., a California
limited liability company; and ARCHIE
DONOVAN, individually and as an officer
of National Attorney Collection Services,
Inc.,

Defendants.

Case No. **CV13-06212**

**STIPULATED ORDER
FOR PERMANENT
INJUNCTION AND
MONETARY JUDGMENT**

ADW
(VBK)

Plaintiff, the United States of America, acting upon notification and
authorization to the Attorney General by the Federal Trade Commission
("Commission" or "FTC"), filed its Complaint to obtain a permanent injunction,
civil penalties, and other equitable relief in this matter, pursuant to Sections 13(b)
and 16(a)(1) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§

1 53(b) and 56(a), and Section 814 of the Fair Debt Collection Practices Act
2 (“FDCPA”), 15 U.S.C. § 1692l. Defendants National Attorney Collection Services,
3 Inc. (“NACS”); National Attorney Services LLC, also d/b/a National Attorney
4 Collection Services, also d/b/a N.A.C.S.; and Archie Donovan (“Donovan”) have
5 waived service of the summons and Complaint. The parties, represented by the
6 counsel identified below, have agreed to this settlement of this action, without
7 adjudication of any issue of fact or law, to resolve all matters in dispute in this
8 action between them by stipulation to this Stipulated Order for Permanent
9 Injunction and Monetary Judgment (“Order”).

10 **THEREFORE**, it is hereby **ORDERED**, **ADJUDGED** and **DECREED** as
11 follows:

12 **FINDINGS**

- 13 1. This Court has jurisdiction over this matter.
- 14 2. The Complaint states a claim upon which relief may be granted against
15 Defendants under Sections 5(a), 5(m)(1)(A), 13(b), and 16(a) of the Federal Trade
16 Commission Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), and 56(a), and the
17 FDCPA, 15 U.S.C. §§ 1692-1692p.
- 18 3. Venue in this district is proper under 28 U.S.C. §§ 1391(b)(1)-(3), (c)(1)-(2),
19 and (d), 1395(a), and 15 U.S.C. § 53(b).
- 20 4. The activities of Defendants are in or affecting commerce, as “commerce” is
21 defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
- 22 5. Defendants have entered into this Order freely and without coercion.
23 Defendants further acknowledge that they have read the provisions of this Order
24 and are prepared to abide by them.
- 25 6. Defendants neither admit nor deny any of the allegations in the Complaint,
26 except as specifically stated in this Order and, only for purposes of this action,
27 Defendants admit the facts necessary to establish jurisdiction.

1 7. All parties waive all rights to seek appellate review or otherwise challenge
2 or contest the validity of this Order. Defendants further waive and release any
3 claim they may have against the Commission and Plaintiff, and their employees,
4 representatives, or agents.

5 8. Defendants agree that this Order does not entitle them to seek or obtain
6 attorneys' fees as a prevailing party under the Equal Access to Justice Act,
7 28 U.S.C. § 2412, as amended by Pub. L. 104-121, 100 Stat. 847, 863-64 (1996),
8 and further waive any right to attorneys' fees that may arise under said provision of
9 law.

10 9. Entry of this Order is in the public interest.

11 **DEFINITIONS**

12 For purposes of this Order, the following definitions shall apply:

13 1. "Corporate Defendants" means National Attorney Collection Services, Inc.;
14 National Attorney Services LLC, also d/b/a National Attorney Collection Services,
15 also d/b/a N.A.C.S.; and their successors and assigns.

16 2. "Individual Defendant" means Archie Donovan.

17 3. "Defendants" means the Individual Defendant and the Corporate
18 Defendants, individually, collectively, or in any combination.

19 4. "Plaintiff" means the United States of America.

20 5. "Commission" means the Federal Trade Commission.

21 6. "Debtor," for purposes of this Order, means any person obligated or
22 allegedly obligated to pay any debt, as well as that person's spouse, parent (if the
23 debtor is a minor), guardian, executor, or administrator.

24 7. "Clearly and prominently" shall mean:

25 A. In textual communications (e.g., printed publications or words
26 displayed on the screen of an electronic device), the required disclosures are of a
27 type, size, and location sufficiently noticeable for an ordinary consumer to read
28

1 and comprehend them, in print that contrasts with the background on which they
2 appear;

3 B. In communications disseminated orally or through audible
4 means (*e.g.*, telephone calls or voicemails), the required disclosures are delivered
5 in a volume and cadence sufficient for an ordinary consumer to hear and
6 comprehend them.

7 C. In all instances, the required disclosures are presented in an
8 understandable language and syntax, and with nothing contrary to, inconsistent
9 with, or in mitigation of the disclosures used in any communication of them.

10 6. "Express consent" shall mean that prior to sending a text message to a
11 consumer's mobile telephone: (i) the Defendants or their creditors shall have
12 clearly and prominently disclosed that the debtor may receive collection text
13 messages on mobile phone numbers provided to the original creditor or to
14 Defendants in connection with the transaction that is the subject of the text
15 message; and (ii) the individual has taken an additional affirmative step, including
16 a signature or electronic signature, that indicates their agreement to receive such
17 contacts.

18 **I. MONETARY JUDGMENT FOR CIVIL PENALTY**

19 **IT IS FURTHER ORDERED** that:

20 A. Judgment in the amount of One Million Dollars (\$1,000,000) is
21 entered in favor of Plaintiff and against Defendants NACS, NAS, and Archie
22 Donovan, jointly and severally, as a civil penalty.

23 B. Defendants shall make the payment required by this Section within
24 seven (7) days following entry of this Order. Such payment shall be made by
25 electronic fund transfer in accordance with procedures specified by a representative
26 of the Plaintiff.

27 C. In the event of any default in payment, which default continues for ten
28 (10) days beyond the due date of payment, the entire unpaid amount, together with

1 interest, as computed pursuant to 28 U.S.C. § 1961 from the date of default to the
2 date of payment, shall immediately become due and payable.

3 D. Defendants relinquish all dominion, control, and title to the funds paid
4 to the fullest extent permitted by law. Defendants shall make no claim to or
5 demand for return of the funds, directly or indirectly, through counsel or otherwise.

6 E. The facts as alleged in the Complaint filed in this action shall be taken
7 as true without further proof, only in any bankruptcy case or subsequent civil
8 litigation pursued by the Commission to enforce its rights to any payment or
9 money judgment pursuant to this Order.

10 F. Defendants further stipulate and agree that the judgment represents a
11 civil penalty owed to the government of the United States, is not compensation for
12 actual pecuniary loss, and, therefore, as to the Individual Defendant, it is not
13 subject to discharge under the Bankruptcy Code pursuant to Section 523(a)(7).

14 G. Defendants acknowledge that their taxpayer identifying numbers
15 and/or social security numbers, which Defendants previously submitted to the
16 Commission, may be used for collecting and reporting on any delinquent amount
17 arising out of this Order, in accordance with 31 U.S.C. § 7701.

18 **II. INJUNCTION AGAINST UNLAWFUL COLLECTION PRACTICES**

19 **IT IS FURTHER ORDERED** that Defendants and their officers, agents,
20 servants, employees, and attorneys, and all other persons in active concert or
21 participation with any of them who receive actual notice of this Order by personal
22 service or otherwise, whether acting directly or indirectly, in connection with
23 collecting or attempting to collect debts, are hereby permanently restrained and
24 enjoined from:

25 A. Using any false, deceptive, or misleading representation or means in
26 connection with the collection of any debt, including but not limited to:

- 27 1. Falsely representing or implying that Defendants are law firms, that
28 its collectors are attorneys, paralegals, legal assistants, or work closely

1 with legal professionals, or that communications from Defendants are
2 sent from or on behalf of attorneys;

- 3 2. Threatening to take any action that cannot legally be taken or that is
4 not intended to be taken;
- 5 3. Falsely representing or implying that nonpayment of a debt will result
6 in the arrest or imprisonment of a person or seizure, garnishment, or
7 attachment of a person's property or wages, when such action is not
8 lawful or when Defendants do not have the authority or intention of
9 taking such action; and
- 10 4. Failing to disclose in the initial communication with a consumer
11 (including in text messages) that Defendants are debt collectors
12 attempting to collect a debt and that any information obtained will be
13 used for that purpose, or failing to disclose in subsequent
14 communications (including in text messages) that the communication
15 is from a debt collector;

16 B. Using any unfair means to collect or attempt to collect any debt,
17 including, but not limited to:

- 18 1. Failing to provide consumers with an accurate corporate mailing
19 address upon request; and
- 20 2. On envelopes, using a business name indicating that Defendants are in
21 the debt collection business or using language or symbols, other than
22 the Defendant's address or business name;

23 C. Communicating, except when seeking to acquire location information
24 in compliance with Section 804 of the FDCPA, 15 U.S.C. § 1692b, with any
25 person other than the debtor, the debtor's attorney, a consumer reporting agency if
26 otherwise permitted by law, the creditor, the attorney of the creditor, or the
27 attorney of the debt collector, in connection with the collection of a debt, unless
28 Defendants have the prior consent of the debtor given directly to Defendants or the

1 express permission of a court of competent jurisdiction, or Defendants can show
2 that such communication is reasonably necessary to effectuate a postjudgment
3 judicial remedy;

4 D. Failing to provide consumers, either in an initial communication or a
5 written notice sent within five days after the initial communication, with
6 information about the debt and the right to dispute all or part of the debt, in
7 violation of Section 809(a) of the FDCPA, 15 U.S.C. § 1692g(a);

8 E. Violating any provision of the FDCPA, 15 U.S.C. § 1692-1692p (a
9 copy of which is attached hereto as Attachment A), including, but not limited to:
10 (1) Section 805(b), 15 U.S.C. § 1692c(b); (2) Section 807, 15 U.S.C. § 1692e; (3)
11 Section 808, 15 U.S.C. § 1692f; and (4) Section 809(a), 15 U.S.C. § 1692g(a).

12 **III. INJUNCTION REGARDING USE OF TEXT MESSAGES**

13 **IT IS FURTHER ORDERED** that Defendants and their officers, agents,
14 servants, employees, and attorneys, and all other persons in active concert or
15 participation with any of them who receive actual notice of this Order by personal
16 service or otherwise, whether acting directly or indirectly, in connection with
17 collecting or attempting to collect debts, are hereby permanently restrained and
18 enjoined from sending text messages to consumers' mobile phones unless the
19 consumer has provided prior express consent, as defined herein, to receive debt
20 collection text messages on mobile phones.

21 **IV. INJUNCTION AGAINST USE OF CERTAIN BUSINESS NAMES IN** 22 **COMMUNICATIONS WITH CONSUMERS**

23 **IT IS FURTHER ORDERED** that Defendants and their officers, agents,
24 servants, employees, and attorneys, and all other persons in active concert or
25 participation with any of them who receive actual notice of this Order by personal
26 service or otherwise, whether acting directly or indirectly, in connection with
27 collecting or attempting to collect debts, are hereby permanently restrained and
28 enjoined from:

1 A. Using, in communications with consumers, the business names
2 “National Attorney Service(s),” “National Attorney(s),” or “National Attorney
3 Collection Service(s)” and

4 B. Using, in communications with consumers, any business name
5 containing the words “Attorney(s),” “Legal,” “Law,” or any other word
6 representing or implying that Corporate Defendants are law firms or collect debts
7 on behalf of attorneys.

8 **V. NOTICE REQUIREMENTS**

9 **IT IS FURTHER ORDERED** that:

10 A. For a period of 5 years from the date of entry of this Order,
11 Defendants, whether acting directly or indirectly, shall make the following
12 disclosure clearly and conspicuously on each written collection communication,
13 excluding text messages to mobile phones, sent to a debtor for the purpose of
14 collecting a debt:

15 Federal and state law prohibits certain methods of debt collection
16 and requires that we treat you fairly. You can stop us from
17 contacting you by writing us a letter that tells us to stop the contact.
18 Sending such a letter does not make the debt go away if you owe it.
19 Once we receive your letter, we may not contact you again, except to
20 let you know that there will not be any more contact or that we
 intend to take a specific action.

21 If you have a complaint about the way we are collecting this debt,
22 please write to our CONTACT CENTER, [current physical address],
23 email us at [current email address], or call us toll-free at [current
24 phone number] between 9:00 A.M. Pacific Time and 5:00 P.M.
 Pacific Time Monday - Friday.

25 The Federal Trade Commission enforces the Fair Debt Collection
26 Practices Act (FDCPA). If you have a complaint about the way we
27 are collecting your debt, please contact the FTC online at
28 www.ftc.gov; by phone at 1-877-FTC-HELP; or by mail at 600
 Pennsylvania Ave., NW, Washington, DC 20580.

1 The above disclosure shall be given in in both English and Spanish, unless the
2 communication is written in any other language, in which case the disclosure shall
3 be given in that language and in English. The Spanish version that shall be given
4 is attached hereto as Attachment B.

5 B. Defendants, whether acting directly or indirectly, shall provide a
6 written (electronic or paper) copy of the following notice to all officers, servants,
7 agents, and employees having responsibility with respect to the collection of debts,
8 within thirty (30) days of the date of entry of this Order, and to each employee
9 hired for a period of five (5) years after that date, no later than the time the
10 employee assumes responsibility with respect to the collection of such debts, and
11 shall secure from each such person, within thirty (30) days of delivery, a signed
12 and dated statement acknowledging that he or she has read the notice:

13
14 Debt collectors must comply with the federal Fair Debt Collection
15 Practices Act, which limits our activities in trying to collect money
16 from consumers.

17 Section 804 of the Act says that, when contacting someone to
18 acquire location information about the debtor, you may not state that
19 the debtor owes a debt. You also may not contact this person more
20 than once unless the person asks you to or unless you reasonably
21 believe the person's earlier response was wrong or incomplete and
22 that the person now has correct or complete location information to
23 provide to you.

24 Section 805 of the Act says that, in connection with the collection of
25 a debt, you may not communicate with any person other than the
26 debtor for a purpose other than to obtain location information about
27 the debtor. This means that you may not reveal the existence of a
28 debt to anyone other than (1) the person who allegedly owes the debt
or (2) the debtor's spouse, parent (if the debtor is a minor), guardian,
executor, or administrator.

1 Section 807 of the Act prohibits the use of any false representation or
2 deceptive means to collect or attempt to collect any debt or to obtain
3 information about a debtor. Among other things, this includes: (1)
4 falsely representing or implying that any individual is an attorney or
5 that any communication is from an attorney; (2) representing or
6 implying that nonpayment of any debt will result in the arrest or
7 imprisonment of any person or the seizure, garnishment, attachment,
8 or sale of any property or wages of any person unless such action is
9 lawful and the debt collector or creditor intends to take such action;
10 (3) threatening to take any action that cannot legally be taken or that
11 is not intended to be taken; or (4) failing to disclose in an initial
12 written communication with the consumer and, in addition, if the
13 initial communication with the consumer is oral, in that initial oral
14 communication, that the debt collector is attempting to collect a debt
15 and that any information obtained will be used for that purpose, and
16 failing to disclose in subsequent communications that the
17 communication is from a debt collector, except with respect to a
18 formal pleading made in connection with a legal action.

14 Section 808 of the Act prohibits the use of any unfair or
15 unconscionable means to collect or attempt to collect any debt.
16 Among other things, this includes: (1) upon request, failing to
17 provide a valid mailing address for consumers to request validation
18 of the debt, dispute the debt, or to request that the collector cease
19 communications with the consumer, and (2) using any language or
20 symbol, other than the debt collector's address, on any envelope
21 when communicating with a consumer by use of the mails or by
22 telegram, except that a debt collector may use its business name if
23 such name does not indicate that it is in the debt collection business.

22 Section 809 of the Act requires that collectors must provide an initial
23 written notice containing certain information within five days after
24 the initial communication with a consumer in connection with the
25 collection of any debt, unless this information is contained in the
26 initial communication or the consumer has paid the debt. The
27 information that must be contained in the notice includes, among
28 other things, the amount of the debt, the name of the creditor to
whom the debt is owed, and information pertaining to the
consumer's right to dispute the debt.

1 Both this company and individual debt collectors are liable for
2 their violations of the Act, and they both may be required to pay
3 penalties to the government if they violate it. In addition,
4 individual debt collectors may face disciplinary action by this
5 company, including termination, for violations of the Act.

6 *Provided that*, for purposes of compliance with Part V.B of this Order, the
7 signature required for the employee's statement that he or she has read the notice
8 may be in the form of an electronic signature.

9 **VI. ORDER AND FDCPA ACKNOWLEDGMENTS**

10 **IT IS FURTHER ORDERED** that Defendants obtain acknowledgments of
11 receipt of this Order and the FDCPA (attached hereto as Attachment A) and as it
12 may hereafter be amended:

13 A. Each Defendant, within 7 days of entry of this Order, must submit to
14 the Commission an acknowledgment of receipt of this Order sworn under penalty
15 of perjury.

16 B. For 5 years after entry of this Order, each Individual Defendant for
17 any business that such Defendant, individually or collectively with any other
18 Defendant, is the majority owner or directly or indirectly controls, and each
19 Corporate Defendant, must deliver a copy of this Order and the FDCPA to: (1) all
20 principals, officers, directors, and managers; (2) all employees, agents, and
21 representatives who participate in collecting or attempting to collect debts; and (3)
22 any business entity resulting from any change in structure as set forth in the
23 Section titled Compliance Reporting. Delivery must occur within 7 days of entry
24 of this Order for current personnel. To all others, delivery must occur before they
25 assume their debt collection responsibilities.

26 C. From each individual or entity to which a Defendant delivered a copy
27 of this Order and the FDCPA, that Defendant must obtain, within 30 days, a signed
28 and dated acknowledgment of receipt of this Order and the FDCPA.

1 **VII. COMPLIANCE REPORTING**

2 **IT IS FURTHER ORDERED** that Defendants make timely submissions to
3 the Commission:

4 A. One year after entry of this Order, each Defendant must submit a
5 compliance report, sworn under penalty of perjury.

- 6 1. Each Defendant must: (a) designate at least one telephone number
7 and an email, physical, and postal address as points of contact,
8 which representatives of the Commission may use to communicate
9 with Defendant; (b) identify all of that Defendant's businesses by
10 all of their names, telephone numbers, and physical, postal, email,
11 and Internet addresses; (c) describe the activities of each business,
12 including the products and services offered, the means of
13 advertising, marketing, and sales, and the involvement of any other
14 Defendant (which Individual Defendants must describe if they
15 know or should know due to their own involvement); (d) describe
16 in detail whether and how that Defendant is in compliance with
17 each Section of this Order; and (e) provide a copy of each Order
18 Acknowledgment obtained pursuant to this Order, unless
19 previously submitted to the Commission;
- 20 2. Additionally, each Individual Defendant must: (a) identify all
21 telephone numbers and all email, Internet, physical, and postal
22 addresses, including all residences; (b) identify all titles and roles
23 in all business activities, including any business for which such
24 Defendant performs services whether as an employee or otherwise
25 and any entity in which such Defendant has any ownership
26 interest; and (c) describe in detail such Defendant's involvement in
27 each such business, including title, role, responsibilities,
28 participation, authority, control, and any ownership.

1 B. For 15 years following entry of this Order, each Defendant must
2 submit a compliance notice, sworn under penalty of perjury, within 14 days of any
3 change in the following:

- 4 1. Each Defendant must report any change in: (a) any designated
5 point of contact or (b) the structure of any Corporate Defendant or
6 any entity that Defendant has any ownership interest in or directly
7 or indirectly controls that may affect compliance obligations
8 arising under this Order, including: creation, merger, sale, or
9 dissolution of the entity or any subsidiary, parent, or affiliate that
10 engages in any acts or practices subject to this Order.
- 11 2. Additionally, each Individual Defendant must report any change
12 in: (a) name, including aliases or fictitious name, or residence
13 address; or (b) title or role in any business activity, including any
14 business for which such Defendant performs services whether as
15 an employee or otherwise and any entity in which such Defendant
16 has any ownership interest, and identify its name, physical address,
17 and Internet address, if any.

18 C. Each Defendant must submit to the Commission notice of the filing of
19 any bankruptcy petition, insolvency proceeding, or any similar proceeding by or
20 against such Defendant within 14 days of its filing.

21 D. Any submission to the Commission required by this Order to be
22 sworn under penalty of perjury must be true and accurate and comply with 28
23 U.S.C. § 1746, such as by concluding: "I declare under penalty of perjury under
24 the laws of the United States of America that the foregoing is true and correct.
25 Executed on: _____" and supplying the date, signatory's full name, title (if
26 applicable), and signature.

27 E. Unless otherwise directed by a Commission representative in writing,
28 all submissions to the Commission pursuant to this Order must be emailed to

1 DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to:
2 Associate Director for Enforcement, Bureau of Consumer Protection, Federal
3 Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The
4 subject line must begin: *FTC v. National Attorney Collection Services, Inc.*, No.
5 1223032.

6 **VIII. RECORDKEEPING**

7 **IT IS FURTHER ORDERED** that Defendants must create certain records
8 for 15 years after entry of the Order, and retain each such record for 5 years.
9 Specifically, Corporate Defendants, in connection with debt collection activities,
10 and each Individual Defendant for any business in which that Defendant,
11 individually or collectively with any other Defendants, is a majority owner or
12 directly or indirectly controls, must maintain the following records:

13 A. Accounting records showing the revenues from all goods or services
14 sold, all costs incurred in generating those revenues, and the resulting net profit or
15 loss;

16 B. Personnel records showing, for each person providing services,
17 whether as an employee or otherwise, that person's: name, addresses, and
18 telephone numbers; job title or position; dates of service; and, if applicable, the
19 reason for termination;

20 C. Consumer files containing the names, addresses, phone numbers,
21 dollar amounts of debt owed, records of collection activity, and amounts collected;

22 D. For every consumer complaint, whether received directly, indirectly,
23 or through a third party, records that include:

- 24 1. Any complaint and the date received, and the nature of the
25 complaint as reflected in any notes, logs, or memoranda,
26 including a description of the conduct alleged; and
- 27 2. The basis of the complaint, including the names of any debt
28 collectors or supervisors complained about; the nature of any

1 investigation conducted concerning the validity of any
2 complaint; all documents relating to the disposition of the
3 complaint, including records of all contacts with the consumer;
4 Defendants' response to the complaint and the response date;
5 whether the complaint was resolved; the date of resolution; and
6 any action taken to correct the conduct complained about.

7 E. Copies of all scripts and other training materials related to the
8 collection of debts;

9 F. Copies of all advertisements and other marketing materials;

10 G. Tape recordings of at least ninety (90) percent of all telephone calls
11 between Defendants and anyone they contact in collecting or attempting to collect
12 a debt, provided that Defendants must commence making such recordings no later
13 than one (1) year after the date of this Order and must maintain these recording for
14 90 days after they are made; and

15 H. All records and documents necessary to demonstrate full compliance
16 with each provision of this Order, including all submissions to the Commission.

17 **IX. COMPLIANCE MONITORING**

18 **IT IS FURTHER ORDERED** that, for the purpose of monitoring
19 Defendants' compliance with this Order:

20 A. Within 14 days of receipt of a written request from a representative of
21 the Commission, each Defendant must: submit additional compliance reports or
22 other requested information, which must be sworn under penalty of perjury; appear
23 for depositions; and produce documents, for inspection and copying. The
24 Commission is also authorized to obtain discovery, without further leave of court,
25 using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30
26 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

27 B. For matters concerning this Order, the Commission and Plaintiff are
28 authorized to communicate directly with each Defendant. Defendants must permit

1 representatives of the Commission to interview any employee or other person
2 affiliated with any Defendant who has agreed to such an interview. The person
3 interviewed may have counsel present.

4 C. The Commission may use all other lawful means, including posing,
5 through its representatives, as consumers, suppliers, or other individuals or entities,
6 to Defendants or any individual or entity affiliated with Defendants, without the
7 necessity of identification or prior notice. Nothing in this Order limits the
8 Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of
9 the FTC Act, 15 U.S.C. §§ 49, 57b-1.

10 **X. RETENTION OF JURISDICTION**

11 **IT IS FURTHER ORDERED** that this Court retains jurisdiction of this
12 matter for purposes of construction, modification, and enforcement of this Order.

13
14 **SO ORDERED** this ____ day of _____, 2013.

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16 _____
17 UNITED STATES DISTRICT JUDGE
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1 **STIPULATED AND AGREED:**

2 **FOR PLAINTIFF:**

3 **THE UNITED STATES OF AMERICA**

4 **STUART F. DELERY**

5 Assistant Attorney General, Civil Division

6 U.S. DEPARTMENT OF JUSTICE

7 **STUART F. DELERY**

8 Assistant Attorney General

9 **MAAME EWUSI-MENSAH FRIMPONG**

10 Deputy Assistant Attorney General

11 **MICHAEL S. BLUME**

12 Director, Consumer Protection Branch

13 **RICHARD GOLDBERG**

14 Assistant Director, Consumer Protection Branch

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16 **ANN F. ENTWISTLE**

17 Trial Attorney

18 Consumer Protection Branch

19 U.S. Department of Justice

20 P.O. Box 386

21 Washington, DC 20044

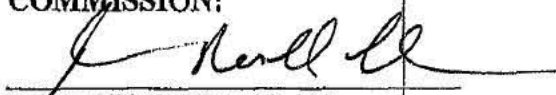
22 (202) 305-3630 (phone)

23 (202) 514-8742 (fax)

24 Ann.F.Entwistle@usdoj.gov

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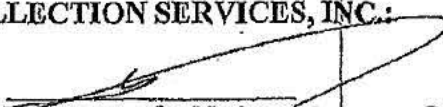
**FOR THE FEDERAL TRADE
COMMISSION:**


JAMES REILLY DOLAN
Acting Associate Director for Financial Practices

**REBECCA M. UNRUH
COLIN HECTOR
PETER LAMBERTON**
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600 Pennsylvania Avenue, NW
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runruh@ftc.gov

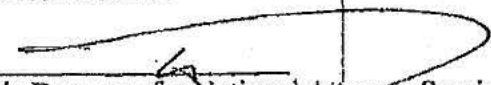
Date: _____

**FOR DEFENDANT NATIONAL ATTORNEY
COLLECTION SERVICES, INC.:**

By: 
Archie Donovan for National Attorney Collection
Services, Inc.

Date: 7/10/13

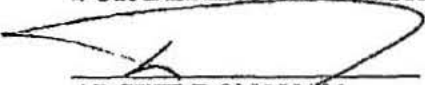
**FOR DEFENDANT NATIONAL ATTORNEY
SERVICES LLC:**

By: 
Archie Donovan for National Attorney Services
LLC

Date: 7/10/13

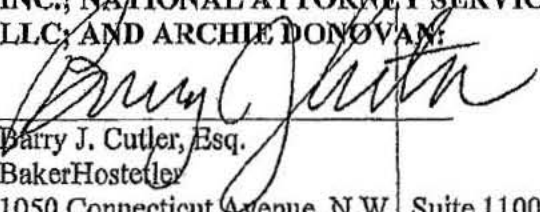
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FOR DEFENDANT ARCHIE DONOVAN:


ARCHIE DONOVAN

Date: 7/10/13

COUNSEL FOR DEFENDANTS NATIONAL
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ATTACHMENT A

15 U.S.C.

United States Code, 2011 Edition
Title 15 - COMMERCE AND TRADE
CHAPTER 41 - CONSUMER CREDIT PROTECTION
SUBCHAPTER V - DEBT COLLECTION PRACTICES
From the U.S. Government Printing Office, www.gpo.gov

SUBCHAPTER V—DEBT COLLECTION PRACTICES**§1692. Congressional findings and declaration of purpose****(a) Abusive practices**

There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.

(b) Inadequacy of laws

Existing laws and procedures for redressing these injuries are inadequate to protect consumers.

(c) Available non-abusive collection methods

Means other than misrepresentation or other abusive debt collection practices are available for the effective collection of debts.

(d) Interstate commerce

Abusive debt collection practices are carried on to a substantial extent in interstate commerce and through means and instrumentalities of such commerce. Even where abusive debt collection practices are purely intrastate in character, they nevertheless directly affect interstate commerce.

(e) Purposes

It is the purpose of this subchapter 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.

(Pub. L. 90–321, title VIII, §802, as added Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 874.)

EFFECTIVE DATE

Pub. L. 90–321, title VIII, §819, formerly §818, as added Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 883, §818; renumbered §819, Pub. L. 109–351, title VIII, §801(a)(1), Oct. 13, 2006, 120 Stat. 2004, provided that: “This title [enacting this subchapter] takes effect upon the expiration of six months after the date of its enactment [Sept. 20, 1977], but section 809 [section 1692g of this title] shall apply only with respect to debts for which the initial attempt to collect occurs after such effective date.”

SHORT TITLE

This subchapter known as the “Fair Debt Collection Practices Act”, see Short Title note set out under section 1601 of this title.

§1692a. Definitions

As used in this subchapter—

- (1) The term “Bureau” means the Bureau of Consumer Financial Protection.

(2) The term “communication” means the conveying of information regarding a debt directly or indirectly to any person through any medium.

(3) The term “consumer” means any natural person obligated or allegedly obligated to pay any debt.

(4) The term “creditor” means any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.

(5) The term “debt” means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

(6) The term “debt collector” means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Notwithstanding the exclusion provided by clause (F) of the last sentence of this paragraph, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. For the purpose of section 1692f(6) of this title, such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests. The term does not include—

(A) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;

(B) any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of such person is not the collection of debts;

(C) any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties;

(D) any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;

(E) any nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors; and

(F) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; (ii) concerns a debt which was originated by such person; (iii) concerns a debt which was not in default at the time it was obtained by such person; or (iv) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.

(7) The term “location information” means a consumer's place of abode and his telephone number at such place, or his place of employment.

(8) The term “State” means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing.

(Pub. L. 90–321, title VIII, §803, as added Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 875; amended Pub. L. 99–361, July 9, 1986, 100 Stat. 768; Pub. L. 111–203, title X, §1089(2), July 21, 2010, 124 Stat. 2092.)

AMENDMENTS

2010—Par. (1). Pub. L. 111–203 added par. (1) and struck out former par. (1) which read as follows:
 “The term ‘Commission’ means the Federal Trade Commission.”

1986—Par. (6). Pub. L. 99–361 in provision preceding cl. (A) substituted “clause (F)” for “clause (G)”, struck out cl. (F) which excluded any attorney-at-law collecting a debt as an attorney on behalf of and in the name of a client from term “debt collector”, and redesignated cl. (G) as (F).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§1692b. Acquisition of location information

Any debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall—

(1) identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;

(2) not state that such consumer owes any debt;

(3) not communicate with any such person more than once unless requested to do so by such person or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information;

(4) not communicate by post card;

(5) not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the debt collector is in the debt collection business or that the communication relates to the collection of a debt; and

(6) after the debt collector knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, such attorney's name and address, not communicate with any person other than that attorney, unless the attorney fails to respond within a reasonable period of time to communication from the debt collector.

(Pub. L. 90–321, title VIII, §804, as added Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 876.)

§1692c. Communication in connection with debt collection**(a) Communication with the consumer generally**

Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt—

(1) at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8 o'clock antemeridian and before 9 o'clock postmeridian, local time at the consumer's location;

(2) if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer; or

(3) at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.

(b) Communication with third parties

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

(c) Ceasing communication

If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt, except—

- (1) to advise the consumer that the debt collector's further efforts are being terminated;
- (2) to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or
- (3) where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy.

If such notice from the consumer is made by mail, notification shall be complete upon receipt.

(d) "Consumer" defined

For the purpose of this section, the term "consumer" includes the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator.

(Pub. L. 90-321, title VIII, §805, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 876.)

§1692d. Harassment or abuse

A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

- (1) The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person.
- (2) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.
- (3) The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of section 1681a(f) or 1681b(3)¹ of this title.
- (4) The advertisement for sale of any debt to coerce payment of the debt.
- (5) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.
- (6) Except as provided in section 1692b of this title, the placement of telephone calls without meaningful disclosure of the caller's identity.

(Pub. L. 90-321, title VIII, §806, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 877.)

REFERENCES IN TEXT

Section 1681b(3) of this title, referred to in par. (3), was redesignated section 1681b(a)(3) of this title by Pub. L. 104-208, div. A, title II, §2403(a)(1), Sept. 30, 1996, 110 Stat. 3009-430.

¹ See References in Text note below.

§1692e. False or misleading representations

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform, or facsimile thereof.

(2) The false representation of—

(A) the character, amount, or legal status of any debt; or

(B) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.

(3) The false representation or implication that any individual is an attorney or that any communication is from an attorney.

(4) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action.

(5) The threat to take any action that cannot legally be taken or that is not intended to be taken.

(6) The false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to—

(A) lose any claim or defense to payment of the debt; or

(B) become subject to any practice prohibited by this subchapter.

(7) The false representation or implication that the consumer committed any crime or other conduct in order to disgrace the consumer.

(8) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.

(9) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval.

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

(11) The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action.

(12) The false representation or implication that accounts have been turned over to innocent purchasers for value.

(13) The false representation or implication that documents are legal process.

(14) The use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization.

(15) The false representation or implication that documents are not legal process forms or do not require action by the consumer.

(16) The false representation or implication that a debt collector operates or is employed by a consumer reporting agency as defined by section 1681a(f) of this title.

(Pub. L. 90–321, title VIII, §807, as added Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 877; amended Pub. L. 104–208, div. A, title II, §2305(a), Sept. 30, 1996, 110 Stat. 3009–425.)

AMENDMENTS

1996—Par. (11). Pub. L. 104–208 amended par. (11) generally. Prior to amendment, par. (11) read as follows: “Except as otherwise provided for communications to acquire location information under section 1692b of this title, the failure to disclose clearly in all communications made to collect a debt or to obtain information about a consumer, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose.”

EFFECTIVE DATE OF 1996 AMENDMENT

Section 2305(b) of div. A of Pub. L. 104–208 provided that: “The amendment made by subsection (a) [amending this section] shall take effect 90 days after the date of enactment of this Act [Sept. 30, 1996] and shall apply to all communications made after that date of enactment.”

§1692f. Unfair practices

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

- (1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.
- (2) The acceptance by a debt collector from any person of a check or other payment instrument postdated by more than five days unless such person is notified in writing of the debt collector's intent to deposit such check or instrument not more than ten nor less than three business days prior to such deposit.
- (3) The solicitation by a debt collector of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution.
- (4) Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument.
- (5) Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.
- (6) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if—
 - (A) there is no present right to possession of the property claimed as collateral through an enforceable security interest;
 - (B) there is no present intention to take possession of the property; or
 - (C) the property is exempt by law from such dispossession or disablement.
- (7) Communicating with a consumer regarding a debt by post card.
- (8) Using any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his business name if such name does not indicate that he is in the debt collection business.

(Pub. L. 90–321, title VIII, §808, as added Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 879.)

§1692g. Validation of debts**(a) Notice of debt; contents**

Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing—

- (1) the amount of the debt;
- (2) the name of the creditor to whom the debt is owed;
- (3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;
- (4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and
- (5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

(b) Disputed debts

If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) of this section that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector. Collection activities and communications that do not otherwise violate this subchapter may continue during the 30-day period referred to in subsection (a) unless the consumer has notified the debt collector in writing that the debt, or any portion of the debt, is disputed or that the consumer requests the name and address of the original creditor. Any collection activities and communication during the 30-day period may not overshadow or be inconsistent with the disclosure of the consumer's right to dispute the debt or request the name and address of the original creditor.

(c) Admission of liability

The failure of a consumer to dispute the validity of a debt under this section may not be construed by any court as an admission of liability by the consumer.

(d) Legal pleadings

A communication in the form of a formal pleading in a civil action shall not be treated as an initial communication for purposes of subsection (a).

(e) Notice provisions

The sending or delivery of any form or notice which does not relate to the collection of a debt and is expressly required by title 26, title V of Gramm-Leach-Bliley Act [15 U.S.C. 6801 et seq.], or any provision of Federal or State law relating to notice of data security breach or privacy, or any regulation prescribed under any such provision of law, shall not be treated as an initial communication in connection with debt collection for purposes of this section.

(Pub. L. 90–321, title VIII, §809, as added Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 879; amended Pub. L. 109–351, title VIII, §802, Oct. 13, 2006, 120 Stat. 2006.)

REFERENCES IN TEXT

The Gramm-Leach-Bliley Act, referred to in subsec. (e), is Pub. L. 106–102, Nov. 12, 1999, 113 Stat. 1338. Title V of the Act is classified principally to chapter 94 (§ 6801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title of 1999 Amendment note set out under section 1811 of Title 12, Banks and Banking, and Tables.

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–351, §802(c), inserted at end “Collection activities and communications that do not otherwise violate this subchapter may continue during the 30-day period referred to in subsection (a) unless the consumer has notified the debt collector in writing that the debt, or any portion of the debt, is disputed or that the consumer requests the name and address of the original creditor. Any collection activities and communication during the 30-day period may not overshadow or be inconsistent with the disclosure of the consumer's right to dispute the debt or request the name and address of the original creditor.”

Subsec. (d). Pub. L. 109–351, §802(a), added subsec. (d).

Subsec. (e). Pub. L. 109–351, §802(b), added subsec. (e).

EFFECTIVE DATE

Section applicable only with respect to debts for which the initial attempt to collect occurs after the effective date of this subchapter, which takes effect upon the expiration of six months after Sept. 20, 1977, see section 819 of Pub. L. 90–321, set out as a note under section 1692 of this title.

§1692h. Multiple debts

If any consumer owes multiple debts and makes any single payment to any debt collector with respect to such debts, such debt collector may not apply such payment to any debt which is disputed by the consumer and, where applicable, shall apply such payment in accordance with the consumer's directions.

(Pub. L. 90–321, title VIII, §810, as added Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 880.)

§1692i. Legal actions by debt collectors**(a) Venue**

Any debt collector who brings any legal action on a debt against any consumer shall—

(1) in the case of an action to enforce an interest in real property securing the consumer's obligation, bring such action only in a judicial district or similar legal entity in which such real property is located; or

(2) in the case of an action not described in paragraph (1), bring such action only in the judicial district or similar legal entity—

(A) in which such consumer signed the contract sued upon; or

(B) in which such consumer resides at the commencement of the action.

(b) Authorization of actions

Nothing in this subchapter shall be construed to authorize the bringing of legal actions by debt collectors.

(Pub. L. 90–321, title VIII, §811, as added Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 880.)

§1692j. Furnishing certain deceptive forms

(a) It is unlawful to design, compile, and furnish any form knowing that such form would be used to create the false belief in a consumer that a person other than the creditor of such

consumer is participating in the collection of or in an attempt to collect a debt such consumer allegedly owes such creditor, when in fact such person is not so participating.

(b) Any person who violates this section shall be liable to the same extent and in the same manner as a debt collector is liable under section 1692k of this title for failure to comply with a provision of this subchapter.

(Pub. L. 90–321, title VIII, §812, as added Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 880.)

§1692k. Civil liability

(a) Amount of damages

Except as otherwise provided by this section, any debt collector who fails to comply with any provision of this subchapter with respect to any person is liable to such person in an amount equal to the sum of—

(1) any actual damage sustained by such person as a result of such failure;

(2)(A) in the case of any action by an individual, such additional damages as the court may allow, but not exceeding \$1,000; or

(B) in the case of a class action, (i) such amount for each named plaintiff as could be recovered under subparagraph (A), and (ii) such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of \$500,000 or 1 per centum of the net worth of the debt collector; and

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court. On a finding by the court that an action under this section was brought in bad faith and for the purpose of harassment, the court may award to the defendant attorney's fees reasonable in relation to the work expended and costs.

(b) Factors considered by court

In determining the amount of liability in any action under subsection (a) of this section, the court shall consider, among other relevant factors—

(1) in any individual action under subsection (a)(2)(A) of this section, the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, and the extent to which such noncompliance was intentional; or

(2) in any class action under subsection (a)(2)(B) of this section, the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, the resources of the debt collector, the number of persons adversely affected, and the extent to which the debt collector's noncompliance was intentional.

(c) Intent

A debt collector may not be held liable in any action brought under this subchapter if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(d) Jurisdiction

An action to enforce any liability created by this subchapter may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within one year from the date on which the violation occurs.

(e) Advisory opinions of Bureau

No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any advisory opinion of the Bureau, notwithstanding that after such act or omission has occurred, such opinion is amended, rescinded, or determined by judicial

or other authority to be invalid for any reason.

(Pub. L. 90–321, title VIII, §813, as added Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 881; amended Pub. L. 111–203, title X, §1089(1), July 21, 2010, 124 Stat. 2092.)

AMENDMENTS

2010—Subsec. (e). Pub. L. 111–203 substituted “Bureau” for “Commission”.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§1692l. Administrative enforcement

(a) Federal Trade Commission

The Federal Trade Commission shall be authorized to enforce compliance with this subchapter, except to the extent that enforcement of the requirements imposed under this subchapter is specifically committed to another Government agency under any of paragraphs (1) through (5) of subsection (b), subject to subtitle B of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5511 et seq.]. For purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act (15 U.S.C. 41 et seq.), a violation of this subchapter shall be deemed an unfair or deceptive act or practice in violation of that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Federal Trade Commission to enforce compliance by any person with this subchapter, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act, including the power to enforce the provisions of this subchapter, in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.

(b) Applicable provisions of law

Subject to subtitle B of the Consumer Financial Protection Act of 2010, compliance with any requirements imposed under this subchapter shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818], by the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), with respect to—

(A) national banks, Federal savings associations, and Federal branches and Federal agencies of foreign banks;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act [12 U.S.C. 601 et seq., 611 et seq.]; and

(C) banks and State savings associations insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), and insured State branches of foreign banks;

(2) the Federal Credit Union Act [12 U.S.C. 1751 et seq.], by the Administrator of the National Credit Union Administration with respect to any Federal credit union;

(3) subtitle IV of title 49, by the Secretary of Transportation, with respect to all carriers subject to the jurisdiction of the Surface Transportation Board;

(4) part A of subtitle VII of title 49, by the Secretary of Transportation with respect to any air carrier or any foreign air carrier subject to that part;

(5) the Packers and Stockyards Act, 1921 [7 U.S.C. 181 et seq.] (except as provided in

section 406 of that Act [7 U.S.C. 226, 227]), by the Secretary of Agriculture with respect to any activities subject to that Act; and

(6) subtitle E of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5561 et seq.], by the Bureau, with respect to any person subject to this subchapter.

The terms used in paragraph (1) that are not defined in this subchapter or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

(c) Agency powers

For the purpose of the exercise by any agency referred to in subsection (b) of this section of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this subchapter shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (b) of this section, each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this subchapter any other authority conferred on it by law, except as provided in subsection (d) of this section.

(d) Rules and regulations

Except as provided in section 1029(a) of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5519(a)], the Bureau may prescribe rules with respect to the collection of debts by debt collectors, as defined in this subchapter.

(Pub. L. 90–321, title VIII, §814, as added Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 881; amended Pub. L. 98–443, §9(n), Oct. 4, 1984, 98 Stat. 1708; Pub. L. 101–73, title VII, §744(n), Aug. 9, 1989, 103 Stat. 440; Pub. L. 102–242, title II, §212(e), Dec. 19, 1991, 105 Stat. 2301; Pub. L. 102–550, title XVI, §1604(a)(8), Oct. 28, 1992, 106 Stat. 4082; Pub. L. 104–88, title III, §316, Dec. 29, 1995, 109 Stat. 949; Pub. L. 111–203, title X, §1089(3), (4), July 21, 2010, 124 Stat. 2092, 2093.)

REFERENCES IN TEXT

The Consumer Financial Protection Act of 2010, referred to in subsecs. (a) and (b), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955. Subtitles B (§§1021–1029A) and E (§§1051–1058) of the Act are classified generally to parts B (§5511 et seq.) and E (§5561 et seq.), respectively, of subchapter V of chapter 53 of Title 12, Banks and Banking. For complete classification of subtitles B and E to the Code, see Tables.

The Federal Trade Commission Act, referred to in subsec. (a), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

Sections 25 and 25A of the Federal Reserve Act, referred to in subsec. (b)(1)(B), are classified to subchapters I (§601 et seq.) and II (§611 et seq.), respectively, of chapter 6 of Title 12, Banks and Banking.

The Federal Credit Union Act, referred to in subsec. (b)(2), is act June 26, 1934, ch. 750, 48 Stat. 1216, which is classified generally to chapter 14 (§1751 et seq.) of Title 12. For complete classification of this Act to the Code, see section 1751 of Title 12 and Tables.

The Packers and Stockyards Act, 1921, referred to in subsec. (b)(5), is act Aug. 15, 1921, ch. 64, 42 Stat. 159, which is classified generally to chapter 9 (§181 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 181 of Title 7 and Tables.

CODIFICATION

In subsec. (b)(3), “subtitle IV of title 49” substituted for “the Acts to regulate commerce” on authority of Pub. L. 95–473, §3(b), Oct. 17, 1978, 92 Stat. 1466, the first section of which enacted subtitle IV of Title 49, Transportation.

In subsec. (b)(4), “part A of subtitle VII of title 49” substituted for “the Federal Aviation Act of 1958 [49 App. U.S.C. 1301 et seq.]” and “that part” substituted for “that Act” on authority of Pub. L. 103–272,

§6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49.

Section 1089(4) of Pub. L. 111–203, which directed amendment “in subsection (d)” of the Fair Debt Collection Practices Act, was executed in subsec. (d) of this section, which is section 814 of the Act, to reflect the probable intent of Congress. See 2010 Amendment note below.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203, §1089(3)(A), added subsec. (a) and struck out former subsec. (a). Prior to amendment, text read as follows: “Compliance with this subchapter shall be enforced by the Commission, except to the extent that enforcement of the requirements imposed under this subchapter is specifically committed to another agency under subsection (b) of this section. For purpose of the exercise by the Commission of its functions and powers under the Federal Trade Commission Act, a violation of this subchapter shall be deemed an unfair or deceptive act or practice in violation of that Act. All of the functions and powers of the Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with this subchapter, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act, including the power to enforce the provisions of this subchapter in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.”

Subsec. (b). Pub. L. 111–203, §1089(3)(B)(i), substituted “Subject to subtitle B of the Consumer Financial Protection Act of 2010, compliance” for “Compliance” in introductory provisions.

Subsec. (b)(1). Pub. L. 111–203, §1089(3)(B)(ii), added par. (1) and struck out former par. (1) which read as follows: “section 8 of the Federal Deposit Insurance Act, in the case of—

“(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

“(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a) of the Federal Reserve Act, by the Board of Governors of the Federal Reserve System; and

“(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;”

Subsec. (b)(2) to (6). Pub. L. 111–203, §1089(3)(B)(ii)–(vi), added par. (6), redesignated former pars. (3) to (6) as (2) to (5), respectively, and struck out former par. (2) which read as follows: “section 8 of the Federal Deposit Insurance Act, by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation;”

Subsec. (d). Pub. L. 111–203, §1089(4), substituted “Except as provided in section 1029(a) of the Consumer Financial Protection Act of 2010, the Bureau may prescribe rules with respect to the collection of debts by debt collectors, as defined in this subchapter” for “Neither the Commission nor any other agency referred to in subsection (b) of this section may promulgate trade regulation rules or other regulations with respect to the collection of debts by debt collectors as defined in this subchapter”. See Codification note above.

1995—Subsec. (b)(4). Pub. L. 104–88 substituted “Secretary of Transportation, with respect to all carriers subject to the jurisdiction of the Surface Transportation Board” for “Interstate Commerce Commission with respect to any common carrier subject to those Acts”.

1992—Subsec. (b)(1)(C). Pub. L. 102–550 substituted semicolon for period at end.

1991—Subsec. (b). Pub. L. 102–242, §212(e)(2), inserted at end “The terms used in paragraph (1) that are not defined in this subchapter or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).”

Pub. L. 102–242, §212(e)(1), added par. (1) and struck out former par. (1) which read as follows: “section 8 of Federal Deposit Insurance Act, in the case of—

“(A) national banks, by the Comptroller of the Currency;

“(B) member banks of the Federal Reserve System (other than national banks), by the Federal Reserve Board; and

“(C) banks the deposits or accounts of which are insured by the Federal Deposit Insurance

Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation;”.

1989—Subsec. (b)(2). Pub. L. 101–73 amended par. (2) generally. Prior to amendment, par. (2) read as follows: “section 5(d) of the Home Owners Loan Act of 1933, section 407 of the National Housing Act, and sections 6(i) and 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions;”.

1984—Subsec. (b)(5). Pub. L. 98–443 substituted “Secretary of Transportation” for “Civil Aeronautics Board”.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–443 effective Jan. 1, 1985, see section 9(v) of Pub. L. 98–443, set out as a note under section 5314 of Title 5, Government Organization and Employees.

TRANSFER OF FUNCTIONS

Functions vested in Administrator of National Credit Union Administration transferred and vested in National Credit Union Administration Board pursuant to section 1752a of Title 12, Banks and Banking.

§1692m. Reports to Congress by the Bureau; views of other Federal agencies

(a) Not later than one year after the effective date of this subchapter and at one-year intervals thereafter, the Bureau shall make reports to the Congress concerning the administration of its functions under this subchapter, including such recommendations as the Bureau deems necessary or appropriate. In addition, each report of the Bureau shall include its assessment of the extent to which compliance with this subchapter is being achieved and a summary of the enforcement actions taken by the Bureau under section 1692l of this title.

(b) In the exercise of its functions under this subchapter, the Bureau may obtain upon request the views of any other Federal agency which exercises enforcement functions under section 1692l of this title.

(Pub. L. 90–321, title VIII, §815, as added Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 882; amended Pub. L. 111–203, title X, §1089(1), July 21, 2010, 124 Stat. 2092.)

REFERENCES IN TEXT

The effective date of this subchapter, referred to in subsec. (a), is the date occurring on expiration of six months after Sept. 20, 1977. See section 819 of Pub. L. 90–321, set out as an Effective Date note under section 1692 of this title.

AMENDMENTS

2010—Pub. L. 111–203 substituted “Bureau” for “Commission” wherever appearing.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L.

111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§1692n. Relation to State laws

This subchapter does not annul, alter, or affect, or exempt any person subject to the provisions of this subchapter from complying with the laws of any State with respect to debt collection practices, except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency. For purposes of this section, a State law is not inconsistent with this subchapter if the protection such law affords any consumer is greater than the protection provided by this subchapter.

(Pub. L. 90–321, title VIII, §816, as added Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 883.)

§1692o. Exemption for State regulation

The Bureau shall by regulation exempt from the requirements of this subchapter any class of debt collection practices within any State if the Bureau determines that under the law of that State that class of debt collection practices is subject to requirements substantially similar to those imposed by this subchapter, and that there is adequate provision for enforcement.

(Pub. L. 90–321, title VIII, §817, as added Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 883; amended Pub. L. 111–203, title X, §1089(1), July 21, 2010, 124 Stat. 2092.)

AMENDMENTS

2010—Pub. L. 111–203 substituted “Bureau” for “Commission” in two places.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§1692p. Exception for certain bad check enforcement programs operated by private entities

(a) In general

(1) Treatment of certain private entities

Subject to paragraph (2), a private entity shall be excluded from the definition of a debt collector, pursuant to the exception provided in section 1692a(6) of this title, with respect to the operation by the entity of a program described in paragraph (2)(A) under a contract described in paragraph (2)(B).

(2) Conditions of applicability

Paragraph (1) shall apply if—

(A) a State or district attorney establishes, within the jurisdiction of such State or district attorney and with respect to alleged bad check violations that do not involve a check described in subsection (b), a pretrial diversion program for alleged bad check offenders who agree to participate voluntarily in such program to avoid criminal prosecution;

(B) a private entity, that is subject to an administrative support services contract with a State or district attorney and operates under the direction, supervision, and control of such State or district attorney, operates the pretrial diversion program described in subparagraph (A); and

(C) in the course of performing duties delegated to it by a State or district attorney under the contract, the private entity referred to in subparagraph (B)—

- (i) complies with the penal laws of the State;
- (ii) conforms with the terms of the contract and directives of the State or district attorney;
- (iii) does not exercise independent prosecutorial discretion;
- (iv) contacts any alleged offender referred to in subparagraph (A) for purposes of participating in a program referred to in such paragraph—
 - (I) only as a result of any determination by the State or district attorney that probable cause of a bad check violation under State penal law exists, and that contact with the alleged offender for purposes of participation in the program is appropriate; and
 - (II) the alleged offender has failed to pay the bad check after demand for payment, pursuant to State law, is made for payment of the check amount;
- (v) includes as part of an initial written communication with an alleged offender a clear and conspicuous statement that—
 - (I) the alleged offender may dispute the validity of any alleged bad check violation;
 - (II) where the alleged offender knows, or has reasonable cause to believe, that the alleged bad check violation is the result of theft or forgery of the check, identity theft, or other fraud that is not the result of the conduct of the alleged offender, the alleged offender may file a crime report with the appropriate law enforcement agency; and
 - (III) if the alleged offender notifies the private entity or the district attorney in writing, not later than 30 days after being contacted for the first time pursuant to clause (iv), that there is a dispute pursuant to this subsection, before further restitution efforts are pursued, the district attorney or an employee of the district attorney authorized to make such a determination makes a determination that there is probable cause to believe that a crime has been committed; and
- (vi) charges only fees in connection with services under the contract that have been authorized by the contract with the State or district attorney.

(b) Certain checks excluded

A check is described in this subsection if the check involves, or is subsequently found to involve—

- (1) a postdated check presented in connection with a payday loan, or other similar transaction, where the payee of the check knew that the issuer had insufficient funds at the time the check was made, drawn, or delivered;
- (2) a stop payment order where the issuer acted in good faith and with reasonable cause in stopping payment on the check;
- (3) a check dishonored because of an adjustment to the issuer's account by the financial institution holding such account without providing notice to the person at the time the check was made, drawn, or delivered;
- (4) a check for partial payment of a debt where the payee had previously accepted partial payment for such debt;
- (5) a check issued by a person who was not competent, or was not of legal age, to enter into a legal contractual obligation at the time the check was made, drawn, or delivered; or
- (6) a check issued to pay an obligation arising from a transaction that was illegal in the jurisdiction of the State or district attorney at the time the check was made, drawn, or delivered.

(c) Definitions

For purposes of this section, the following definitions shall apply:

- (1) State or district attorney**

The term “State or district attorney” means the chief elected or appointed prosecuting attorney in a district, county (as defined in section 2 of title 1), municipality, or comparable jurisdiction, including State attorneys general who act as chief elected or appointed prosecuting attorneys in a district, county (as so defined), municipality or comparable jurisdiction, who may be referred to by a variety of titles such as district attorneys, prosecuting attorneys, commonwealth's attorneys, solicitors, county attorneys, and state's attorneys, and who are responsible for the prosecution of State crimes and violations of jurisdiction-specific local ordinances.

(2) Check

The term “check” has the same meaning as in section 5002(6) of title 12.

(3) Bad check violation

The term “bad check violation” means a violation of the applicable State criminal law relating to the writing of dishonored checks.

(Pub. L. 90–321, title VIII, §818, as added Pub. L. 109–351, title VIII, §801(a)(2), Oct. 13, 2006, 120 Stat. 2004.)

ATTACHMENT B

La legislación federal y estatal prohíbe ciertos métodos de cobranza de deudas y requiere que lo tratemos de manera equitativa. Usted puede solicitarnos que dejemos de contactarlo enviándonos una carta para que dejemos de hacerlo. El envío de dicha carta no elimina la deuda si usted la debe. A partir del momento en que recibamos su carta, no podremos volver a contactarlo, excepto para decirle que no habrá más contactos o para informarle que prevemos tomar una acción específica.

Si tiene alguna queja sobre la manera en que le estamos cobrando esta deuda, por favor dirija una carta a nuestro CENTRO DE CONTACTO, [current physical address], envíenos un email a [current email address], o llame a nuestra línea gratuita [current phone number] de lunes a viernes entre las 9:00 A.M. y las 5:00 P.M. (Hora del Pacífico).

La Comisión Federal de Comercio (FTC, por su sigla en inglés), ejecuta y vela por el cumplimiento de la Ley de Cobranza Imparcial de Deudas. Si tiene alguna queja sobre la manera en que le estamos cobrando su deuda, por favor establezca contacto con la FTC en internet, www.ftc.gov/complaint; por teléfono, 1-877-FTC-HELP; o por correo postal enviando su correspondencia a 600 Pennsylvania Ave., NW, Washington, DC 20580.