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CFPB AND CHASE ENTER CONSENT ORDER REGARDING DEBT SALES AND COLLECTION PRACTICES

The Consumer Financial Protection Bureau ("CFPB"), Chase Bank, USA N.A. and its subsidiary Chase BankCard Services, Inc. (collectively "Chase"), recently entered into a Consent Order for alleged violations by Chase of Sections 1036(a)(1) and (a)(3) of the Consumer Financial Protection Act, 12 U.S.C. §§ 5536(a)(1) and (a)(3) ("CFPA"), with respect to Chase's debt sale and collection practices. The CFPB entered into the Consent Order under Sections 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563, 5565.

Section 1036(a)(1)(B) of the CFPA prohibits "unfair, deceptive, or abusive" acts or practices. Section 1036(a)(3) prohibits "knowingly or recklessly" providing "substantial assistance" to a covered person in engaging in an unfair, deceptive or abusive act or practice. Sections 1053 and 1055 address "hearings and adjudication proceedings" and "relief available," respectively.

The facts alleged in the 49-page Consent Order include that Chase provided credit card accounts to consumers and also acquired credit card accounts from other issuers. Defaulted accounts were collected through internal collection methods and lawsuits. Also, some of Chase's debts were sold to third party debt buyers. Some of the sold accounts allegedly were "inaccurate, settled, discharged in bankruptcy, not owed by the consumer, or otherwise uncollectable." Also, Chase allegedly filed lawsuits using deceptive affidavits and other documents that were improperly prepared, including using so-called "robo-signing" practices (*i.e.*, signing without personal knowledge of the signer).

Approximately 13 pages of the Consent Order detail the specific practices alleged to violate the provisions of the CFPA discussed above. These practices resulted in allegations regarding Chase's practices that included:

- Debt sales practices that were unfair;
- Debt sales practices the provided substantial assistance to debt buyers' deceptive collection practices;
- Sworn document practices that were deceptive;
- Sworn document practices that were unfair;
- Failure to provide notice the judgments were obtained using

documents that were falsely sworn was unfair; and

- Failure to remediate the miscalculation of judgments was unfair.
- Parts VI through VIII of the Consent Order set forth orders regarding (i) conduct provisions, (ii) redress and (iii) civil money penalties. Requirements with respect to conduct include the following:
- Not knowingly or recklessly providing substantial assistance to a debt buyer's unfair, deceptive, or abusive acts or practices and implementing effective processes, systems, and controls to provide accurate documentation and information to debt buyers and consumers in connection with debt sales.
 - Prohibiting debt buyers from engaging in debt buyer initiated collection efforts on any account for which Chase has not provided (i) the last four digits of the account number that was used at the time of the consumer's last statement, or, if not available, when credit was last extended to the consumer, (ii) the consumer's name and last known address, (iii) the first date of delinquency for purposes of consumer reporting, (iv) the date and amount of last payment, (v) the date the account was charged-off, (vi) the unpaid balance due on the account, with a breakdown of the post-charge-off balance, interest and fees, (vii) the name of the last creditor to extend credit to the consumer and (viii) whether the consumer has demanded in writing that respondents cease contact with the consumer, if the consumer has done so and has not revoked the demand.
 - Making available to a debt buyer, for at least three years following the debt sale, (i) the effective credit agreement, (ii) a record of any dispute filed by consumer within 18 months prior to sale of the debt, (iii) information regarding any judgment, (iv) copies of the last 18 monthly account statements and (v) the name and address of the original creditor.
 - Sending notice, including certain specified information, to consumers when their accounts have been sold.
 - Making certain documents available to consumers upon request and at no cost, for sold accounts.
 - Restricting the sale of certain accounts (*e.g.*, prohibiting the sale of accounts with certain characteristics, etc.).
 - Requiring certain actions with respect to debt buyers (*e.g.*, conducting due diligence, confirming a debt buyer's licensing

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and/or authorization to do business, prohibiting reselling of accounts, etc.).

- Requiring certain standards with respect to affidavits, sworn statements or declarations (*e.g.*, accurate factual assertions, based on personal knowledge or a records review or other appropriate standard, reviewed for accuracy and completeness, signed by hand signature, etc.).
- Requiring certain actions with respect to collections litigation (*e.g.*, including in a complaint the name of the creditor, date of the last payment, amount of the debt owed and a breakdown of post-charge-off interest and fees, etc.).
- Ceasing collections on accounts sent to collections between Jan. 1, 2009 and June 30, 2014 (528,000 accounts).

The order to pay redress includes cash refunds to individual consumers as well as payment of an aggregate amount of not less \$50M. The order to pay civil penalties includes a civil money penalty of \$30M to the CFPB. The CFPB's press release notes that 47 states and the District of Columbia joined its action. The CFPB also coordinated with the Office of the Comptroller of the Currency ("OCC"). In addition to the \$30M civil penalty to the CFPB, a \$30M penalty was paid to the OCC on a related matter and \$106M was paid to the states. This action follows an earlier action involving the OCC and CFPB and is part of a general crackdown on collections, third party vendors and debt buying. *See, e.g.*, our ALERT dated July 11 and September 24, 2013.

In November 2013, the CFPB released its advanced notice of proposed rulemaking regarding debt collection practices. *See* our ALERT dated Nov. 13, 2013. One of the areas for discussion in that proposal, and in discussions among various interested groups since, was debt sales. The Chase Consent Order requirements may provide some insight into what the CFPB may consider appropriate in terms of regulatory standards for debt sales. □

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