



February 16, 2012

## DEBT BUYER AGREES TO SETTLE WITH FTC FOR \$2.5 MILLION

The Federal Trade Commission and debt buyer, Asset Acceptance, LLC, have entered into a Consent Decree to settle charges made by the FTC against the company for alleged violations related to its collections of consumer debts. The Consent Decree orders the company to pay a penalty of \$2.5 million and to take certain actions with respect to future consumer collections.

The Consent Decree requires the company to disclose in certain communications with consumers regarding debts that may be or are beyond the applicable statute of limitations, the following: "The law limits how long you can be sued on a debt. Because of the age of your debt, we will not sue you for it." The disclosures also are to include information regarding the status of Asset Acceptance's reporting of the debt to consumer reporting agencies as permitted under the Fair Credit Reporting Act (FCRA). Disclosures also are required to be made in subsequent communications in connection with collecting a debt, if failure to do so would be likely to mislead a consumer acting reasonably under the circumstances about the company's ability or intent to take legal action to collect the debt and the consumer's rights in connection with such legal action.

The Consent Decree, among other things, also prohibits the company from:

- Violating the Federal Trade Commission Act (FTCA) by making certain material misrepresentations.
- Failing to conduct, in certain situations, a reasonable investigation into the accuracy and completeness of information on which it is relying with respect to the debt.
- Failing to provide written notice to any consumer about whom it has reported negative information to a consumer reporting agency.
- Violating the FCRA or the Fair Debt Collection Practices Act (FDCPA).

The Consent Decree requires the company to include in each written communication sent to a consumer for the purpose of collecting a debt, a specific notice that generally apprises the debtor of his right to stop contact and where to file a complaint. The company must

also provide written notification to its employees of their obligations under the FDCPA.

In a press release, Rion Needs, the company's President and CEO, stated:

This agreement gives consumers even more visibility into how we will work with them and sets new standards for the industry. We are pleased to have this matter behind us, and to have clarity on the FTC's policies and expectations of the debt collection industry. As we have already implemented many of the requirements of the consent decree, we now welcome the opportunity to work with the FTC to make these measures the new standards in debt collection.

Needs' statement suggests that the FTC may expect other persons to use the settlement as a model for providing similar notices and potentially limit credit reporting.

The Consent Decree follows FTC public workshops and reports addressing similar concerns.

The FTC has acknowledged that in most states the running of the statute of limitations does not extinguish the underlying debt or preclude the use of non-litigation means to try to collect the debt, and has recognized that determining which statute of limitations applies can be difficult to discern. Nonetheless, the FTC has expressed concern that consumers may not know or understand their rights with regard to applicable statutes of limitations. This presents a risk to collectors who may unintentionally create a misleading impression that the collector can or will sue the consumer in court in violation of Section 5 of the FTCA (with regard to creditors) or Section 807 of the FDCPA (false or misleading representations). The FTC indicated that clear and prominent disclosures may already be required by existing law to avoid mis-impressions, potentially including, in relevant states, disclosure that a partial payment may operate to revive the collector's right to sue.

The FTC has indicated that it intends to focus more of its enforcement efforts in this area. The FTC has specifically recommended amending Section 809(a) of the FDCPA to require inclusion of the date of default in validation of debt notices and suggested that states require collectors to include the date of default

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and applicable statute of limitations in complaints when suing to collect.

The collection of so-called "time-barred" debt has received significant attention over the past several years. See, e.g., our Alerts of April 20, 2011; December 16, 2010 (NM disclosure requirement); April 16, 2010 (NYC disclosure requirement); September 23, 2009 (NC prohibition and evidentiary requirements); June 4, 2009 (NC regulation); and March 5, 2009 (FTC recommendations). Some states now require a collector to determine whether a debt is time-barred prior to attempting to collect and/or to provide certain disclosures regarding the debtor's rights with respect to time-barred debt. With the continued increase in the number of older debts being pursued, collectors likely will see even greater attention focused on these issues. Creditors, collectors and debt buyers should review their policies and procedures in light of continuing developments. We can assist. □

✧ Mike Tomkies and Margaret Stolar

### FTC ALERTS CONSUMERS REGARDING COLLECTION OF TIME-BARRED DEBTS

The Federal Trade Commission has issued a consumer alert entitled "Time-Barred Debts: Understanding Your Rights When it Comes to Old Debts." The alert briefly explains the concept of the "statute of limitations" and notifies consumers that collectors may not be able to sue after the statute of limitations has passed. The alert cautions that it gets "tricky" for consumers because the statute of limitations varies by state and by type of debt and also because the clock can be reset on the limitations period in certain instances.

The consumer alert briefly covers the following topics:

- When is an old debt too old for a collector to sue?
- What should I do if a debt collector calls about a time-barred debt?
- Must I pay a debt that's considered time-barred?
- What should I do if I'm sued for a time-barred debt?

The alert also directs the consumer to additional FTC publications and videos about dealing with debt. □

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### ST. LOUIS BBB RELEASES STUDY ON DEBT BUYING INDUSTRY

The Better Business Bureau (BBB) of St. Louis recently released a study entitled "They Deal in Billions," which addresses the debt collection industry and in particular, the debt buying industry. The study discusses the increase in debt collection related complaints and possible reasons for them, and also makes recommendations. The study notes that complaints to BBBs around the country ranked debt collectors as the sixth most complained about industry in 2009 and the fifth in 2010. The Missouri attorney general listed debt collection as the most complained about industry for 2011. As to the types of complaints, the study found harassing phone calls to be the top complaint, followed by calls on so-called "phantom debt," calls to the wrong party, threats to consumer's credit and threats of litigation, job loss and jail. In discussing the reasons for the increase in complaints, the study posits the most probable reason may be the rapid growth of the debt buying and selling industry, combined with

the increase in the nation's debt and aggressive collection tactics. The study notes that debts purchased by debt buyers have increased from \$12B in 1995 to \$215B in 2010. Concerns with these debts include (i) inaccurate or insufficient information, (ii) overloaded court dockets, (iii) default judgments and (iv) bankruptcy and time-barred debts. The study's recommendations include enacting stronger legislation in Missouri and federally to deal with these issues. □

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### NCLC LISTS 10 "WIDESPREAD" CONSUMER LAW VIOLATIONS

The National Consumer Law Center has updated its "Top 10" list. NCLC's latest issues, characterizations and commentary:

1. Robo-signing and bogus affidavits infect foreclosures and *also* credit card collection lawsuits.
2. Entities foreclosing on mortgages lack standing or do not comply with HAMP mortgage modification requirements.
3. Employers pull consumer reports but do not send required notices.
4. Voice mail not revealing that the caller is a collector can result in \$1,000 statutory damages and attorney fees.
5. Subprime loans that are unaffordable, fail to include an escrow account, or contain prepayment penalties may lead to \$4,000 statutory damages plus all finance charges and fees paid, plus attorney fees.
6. Doc fees, etch, desert protection, GAP, or other overpriced auto add-ons are slipped in without permission or through deception.
7. TIL requires mortgage services to properly credit payments and provide a requested payoff statement and the mortgage holder's identity. Mortgage brokers no longer can encourage appraisers to misrepresent home values.
8. Debt buyers bring collection lawsuits outside the applicable statute of limitations [see preceding articles].
9. Auto lenders trip up on unique state law repossession rules not found in the standard UCC version.
10. Millions of cars are sold each year with undisclosed prior wreck damage. A federal database now provides this history to the public for \$2.

✧ Mike Tomkies

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