

Zombie Debt: What the CFPB Should Do about Attempts to Collect Old Debt

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By

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I. INTRODUCTION: ALL COLLECTION OF TIME-BARRED DEBTS SHOULD BE PROHIBITED

Creditors increasingly sell charged-off debts to debt buyers rather than trying to collect on the accounts themselves. Debts may then be resold again and again between debt buyers with each owner potentially attempting to collect on the accounts. Over the course of these sales and collection attempts, the debts inevitably age. Consumers are routinely confronted with these “zombie debts” that reappear for collection years after the original transaction. This report outlines problems related to “zombie debts” and a set of solutions for the CFPB to adopt.

As debts age, the original contractual agreement and evidence of payments are often lost, memories fade, and witnesses are less likely to be available. Even the debt collector may have little more than a spreadsheet, and the evidence generally offered by collectors on old debt is typically insufficient to prove that the consumer owes the debt.

Statutes of limitations are designed to provide relief from the problem of old, stale legal claims. However, these laws are often of limited usefulness to consumers. As the Federal Trade Commission (FTC) noted, “most consumers do not know or understand their legal rights with respect to the collection of time-barred debts.” Debt collectors frequently exploit this ignorance by pursuing collection on old debts long after the relevant statute of limitations has run.

In light of the inherent unfairness, deceptiveness and abusiveness that occur when collectors pursue time-barred debt and the inability of disclosures to adequately protect consumers, the CFPB should ban all efforts to collect out-of-statute debt—whether by litigation or other means.

Even well-crafted disclosures will be insufficient to protect consumers from severe injuries due to the collection of time-barred debts. Disclosures about the potential consequence of making a payment would be complex and also would be unlikely to adequately apprise the least sophisticated consumer of the risk from making the requested payment. Consumers are expecting information in the notices from debt collectors about the consequences of not paying. A disclosure stuck in the midst of these threats and demands about the consequences of making a payment is highly unlikely to provide adequate protection to the least sophisticated consumer. It is for these reasons that collections of time-barred debt should simply be prohibited.

If the CFPB does, however, permit some collection efforts of time-barred debt, those efforts must be strictly controlled. The CFPB should:

- Codify existing case law to prohibit suits, threats of suits, and offers to “settle” the time-barred debt, including suits on “revived” debt for which a payment has been made after the statute has run;
- Prohibit the sale of debt once the statute has run; and

- Provide consumers clear, stark disclosures advising them that the debt is time-barred and that payments are not likely to impact their credit reports.

II. BACKGROUND

A. Time-Barred Debt Accounts for Significant Debt Collection Activities

The most comprehensive data available about the age of debts being collected by debt buyers comes from a [2013 FTC study](#) of the debt-buying practices of some of the nation’s largest debt buyers.¹ This study found that nearly 25 percent of debt acquired from the original creditor and more than 60 percent of debt purchased from other debt buyers was over three years old at the time of purchase.² More than 30 percent of the debt purchased from other debt buyers was over six years old.³

As striking as these numbers are, the FTC debt buyer study actually **underreports** the age of the debts because it does not accurately measure the dates the statute ran for most of the debt. Instead, it:

- represents the age of the debt since charge-off, not since the date that the consumer first defaulted, and
- reports the age of the debt at the time of purchase, not at the date of initial or subsequent collection attempts.⁴

Moreover, the FTC data only captures information from a few of the largest debt buyers and does not include data from the many small debt buyers that are often the purchasers of older debts.⁵

Table 1: Age of Debt at the Time of Purchase⁶

Age of Debt	Debt Acquired from:	
	Original Creditor (61,534,019 Accounts)	Debt Buyer (14,281,636 Accounts)
0 to 3 years	75.2%	37.9%
3+ to 6 years	16.3%	32.1%
6+ to 15 years	7.5%	27.5%
15+ years	0.4%	2.6%
Not Reported	0.6%	0.0%

Regardless of the age at the time of purchase, debts continue to age throughout the course of the collection process. Filings with the Security and Exchange Commission (SEC) demonstrate that some debt buyers are collecting on debts for a decade or more. For example, one debt buyer, Asset Acceptance Corp., reports that it collects on debts for 10 years or more after the date that it purchases the debt.⁷ Similarly, the 2013 SEC filings by Encore Capital Group Inc. report that in 2013, the company received payments on collection accounts purchased prior to 1999,⁸ and the 2013 SEC filings by Portfolio Recovery Associates, L.L.C. showed payments received in 2013 on debt purchased in 1996.⁹

B. Statutes of Limitation are Complex

States often have several different statutes of limitations relevant to consumer debts, such as limitations for written contracts, non-written contracts, sales of goods, leases, dishonored checks, and promissory notes. The lengths of these statutes of limitations vary—for example, [24 states have shorter limitations periods for non-written contracts than they do for written contracts](#).¹⁰

Determining the applicable date a statute of limitations has run is often a multi-faceted issue. There can be legal questions about which state's statute applies (where the consumer resided when the credit was extended, where the contract was signed, or where the consumer resides at the time of collection), and there are issues about which specific law within a state is applicable (the one applicable to written contracts, open end credit, or contracts under seal, for example). Moreover, state statutes and the underlying contract may select statutes of limitations of a state other than where the consumer resides.¹¹ Factual questions are common as well. The statutes are generally triggered either from the consumer's last payment or from the date of default, and the actual date of these events can be disputed.

In Wisconsin¹² and Mississippi,¹³ the expiration of the relevant statute of limitations extinguishes the debt. In the other 48 states, the consumer only has a defense if sued, but the debt still exists.

Moreover, making a payment or acknowledging a debt months or years after the statute has run can restart the statute of limitations period all over again.¹⁴ Debt collectors often employ deceptive practices such as pushing consumers to make a small payment on time-barred debts just to restart the statute of limitations without the consumer realizing that the payment will revive a time-barred debt.¹⁵

Faced with these complexities, consumers cannot be expected to know if the statute of limitation has run on their debt or to understand that by doing nothing they may actually be in a better legal position than by doing something. That calculation requires a sophisticated analysis of whether the statute has run, what will happen if nothing is done, what could happen if the consumer does make a payment, and so on. In contrast, the FTC has concluded that debt buyers generally know whether the debts on which they are collecting are beyond the statute of

limitations, and unlike consumers they have a solid grasp of the legalities of the arena in which they are operating.¹⁶

III. THE CFPB SHOULD BAN ALL COLLECTION OF TIME-BARRED DEBT

In light of the serious harm to consumers caused by time-barred collections, **we urge the CFPB to prohibit all collection of time-barred debt**—whether through litigation or non-litigation means - as unfair, deceptive or abusive acts or practices. This prohibition should apply to creditors, debt collectors, and debt buyers.

A. The CFPB Has the Regulatory Authority to Prohibit this Unfair, Deceptive, and Abusive Conduct

The CFPB has authority to make rules “necessary or appropriate” to its ability to enforce the Fair Debt Collection Practices Act (FDCPA) and “to prevent evasions thereof.”¹⁷ It also has general authority to issue “rules with respect to the collection of debts by debt collectors.”¹⁸

Moreover, the CFPB has independent authority to ban unfair, deceptive, or abusive acts or practices.¹⁹ Collecting on time-barred debts is unfair, deceptive, and abusive:

- **Unfair:** Collecting time-barred debts causes substantial injury to consumers, particularly the least sophisticated consumers, who do not understand that the statute of limitations has run or understand that this provides them with a legal defense. Such injury is not reasonably avoidable by consumers due to the complexity involved in understanding what a statute of limitations is, which limitations period applies to their debt, and when the relevant period has run. This substantial injury is not outweighed by countervailing benefits to consumers or to competition.²⁰
- **Deceptive:** Attempts to collect time-barred debt mislead consumers who will reasonably believe that the collector has a legally-enforceable right to collect the amount sought. Aggressive collection attempts, even without express threats to sue, deceive consumers into paying debts for which they have a complete defense, because of the implicit threats involved in these collection activities. This deception is material because it causes consumers to make payments on debts who would not otherwise do so.²¹
- **Abusive:** Collecting time-barred debts takes unreasonable advantage of the reasonable reliance by consumers that debt collectors will only be attempting to collect legally-enforceable debts.²²

Thus, regulations providing strong protections against the collection of time-barred debt fall squarely within the authority of the CFPB. Given the vast amount of time-barred debt that is bought and sold by debt buyers and the significant likelihood of abusive collection of this debt, the CFPB should issue comprehensive regulations restricting these collection activities.

B. The Rationale for Statutes of Limitations Applies to All Collection Activities

The Supreme Court has explained that statutes of limitations are designed to provide a reasonable period of time during which plaintiffs can pursue their claims while also protecting consumers. The statutes protect “defendants and the courts from having to deal with cases in which the search for truth may be seriously impaired by the loss of evidence, whether by death or disappearance of witnesses, fading memories, disappearance of documents, or otherwise.”²³

This rationale applies equally to non-litigation efforts to collect debt. Once a collector has had a reasonable time to collect a debt, further collection efforts put consumers on an unfair footing due to the same problems involving stale evidence and fading memories at issue in collection cases filed in court. Indeed, debts that have not been successfully collected prior to the running of the statute of limitations are more likely than younger debts to be disputed, including debts against the wrong person, in the wrong amount, or debts that were already fully or partially paid. The older a debt is, the more likely that the consumer has moved and that the collector will be pursuing anyone with a similar name even if in a completely different part of the country.

Moreover, some consumers will assume that they owe a debt that they do not remember, even if that is not the case. When consumers are dunned by collectors, especially by assertive and harassing ones, they often respond to the loudest voice demanding payment, even if it is on a debt they do not owe.²⁴ Insistent collectors demanding payment, even for time-barred debts, push consumers to make payments they can ill afford.²⁵ Using the rent money to pay an old credit card bill can lead to financial disaster for a family.

C. Collecting Time-Barred Debt is Inherently Harmful to the Least Sophisticated Consumer

As the Seventh Circuit has held that “a debt collector violates the FDCPA when it misleads an unsophisticated consumer to believe a time-barred debt is legally enforceable.”²⁶ One could argue that the remedy is to require disclosures of the pertinent facts. However, disclosures are unlikely to be effective in this context.

The FDCPA is designed to protect the least sophisticated consumer:

The law was not “made for the protection of experts, but for the public--that vast multitude which includes the ignorant, the unthinking, and the credulous,” and the “fact that a false statement may be obviously false to those who are trained

and experienced does not change its character, nor take away its power to deceive others less experienced.”²⁷

Viewed from the perspective of the least sophisticated consumer, the limitations of consumer disclosures are clear. It would be impossible for any disclosure to adequately apprise the least sophisticated consumer of the variety of complex legal issues involved in negotiating payments on debts for which the statute of limitations has run.

Disclosures will not work in this context. There is too much information to be disclosed:

- that there is a statute of limitations;
- how a statute works – that it provides a complete defense to being sued on the debt, but the collector can still demand payment;
- that if the consumer is sued on a time-barred debt, and the consumer does nothing, the collector can get a legally enforceable judgment;
- but if the consumer raises the statute of limitations defense, there will be no judgment; and
- if the consumer makes a payment on a time-barred debt, the consumer will no longer have any defense to the debt.

Even if all of these complicated issues are fully disclosed, the least sophisticated consumer is unlikely to be able to process the risks and benefits to making a payment on a time-barred debt. Moreover, these disclosures have already been determined to be completely useless in providing meaningful information to consumers. For example, the disclosure required in the Asset Acceptance case²⁸ appears to have been of no benefit to consumers. This is evident from the fact that Asset Acceptance says, in the following Consent Decree FAQs, that the disclosure will not affect its bottom line at all:²⁹

How much overall impact do you expect from the Consent Decree on future collections?

We have already implemented many of the requirements of the Consent Decree. We do not believe the Consent Decree will have a material impact on our collections or cost to collect.

Will you need to revalue your portfolio?

No. We have reviewed our portfolio and we do not expect the operational requirements of the Consent Decree to have a material adverse effect on our business. Our past statute

inventory has a small, diminishing impact on our overall cash collections. Any revaluation would be reflected in our estimated remaining collections (ERC), which has not changed.

If the new disclosures will have no effect on the income of the company implementing them, they are quite obviously not changing consumer behavior. That means these disclosures are not helpful to consumers.

IV. IF ALLOWED, ANY COLLECTION OF TIME-BARRED DEBT MUST BE STRICTLY LIMITED

If, however, the CFPB does not completely prohibit the collection of time-barred debt, it must strictly limit what activities may take place in order to prevent unfair, deceptive, or abusive practices. Pursuant to its authority to ban unfair, deceptive, or abusive acts or practices³⁰ and issue regulations under the FDCPA,³¹ the CFPB should adopt the following regulations applicable to creditors, debt collectors, and debt buyers to best approximate the protections that banning collections on time-barred debt would afford consumers.

A. Prohibit Debt Collectors from Suing, Threatening to Sue, or Offering to Settle After the Expiration of the Statute of Limitations

Many debt collectors engage in deceptive practices, such as filing or threatening to file time-barred lawsuits.³² The CFPB should adopt regulations, codifying existing case law,³³ which prohibit:

- filing a lawsuit on time-barred debts;
- threatening to file a lawsuit on time-barred debts; and
- offering to “settle” a time-barred debt.

While the statute of limitations is a complete defense to time-barred lawsuits, in all but two states³⁴ the defense is only effective if raised as an affirmative defense by the consumer. An estimated 90 percent or more of consumers sued by debt collectors do not successfully take the technical legal steps necessary to contest the debt collector’s suit.³⁵ Those who do appear in court are very likely to be disadvantaged because they lack an attorney.³⁶ Thus, filing cases on time-barred debts means that affirmative defenses like statute of limitations are typically never raised and debt collectors easily obtain default judgments.

Numerous courts have determined that it is an unfair practice in violation of § 1692f of the Fair Debt Collection Practices Act (FDCPA),³⁷ to file a lawsuit for old debts that are time-barred.³⁸ It

is also widely agreed that it is a false, deceptive, or misleading representation in violation of § 1692e of the FDCPA³⁹ to threaten to file a lawsuit on time-barred debts.⁴⁰ A suit on a time-barred debt misrepresents the legal status of the debt by implying that the collector has a right to prevail in court. Similarly, a veiled threat of litigation in a collection letter is also deceptive.⁴¹ Even absent any threat to sue, seeking payment on a time-barred debt by offering to “settle” the debt with the consumer has been found to be deceptive.⁴² As the Seventh Circuit explained, “[w]hether a debt is legally enforceable is a central fact about the character and legal status of the debt. A misrepresentation about that fact thus violates the FDCPA.”⁴³

B. Prohibit Suits on Time-Barred Debt Even if a Payment or Acknowledgment Has Restarted the Statute of Limitations

The CFPB should also adopt a regulation prohibiting suits on time-barred debts where the statute of limitations has restarted due to a partial payment or acknowledgment of the debt after the expiration of the statute of limitations. Put differently, once a debt is time-barred, collectors should be permanently banned from suing on it.

Collecting a payment from a consumer and subsequently using that payment as a basis for a lawsuit is inherently unfair, deceptive, and abusive. The least sophisticated consumer cannot be expected to understand the counter-intuitive consequence of how a small payment places the consumer in far greater legal jeopardy than refusing to pay. Even a plainly worded disclosure would be unintelligible to a consumer without legal background, and would be unlikely to counteract the messages that collectors will use to convince consumers that making a payment is in their best interest. Moreover, prohibiting detrimental collection practices simplifies compliance with and enforcement of the regulations as it will be immediately clear whether debt collectors are in violation of these regulations.

C. Prohibit Sales of Time-Barred Debt

Once a debt is time-barred, creditors, debt buyers, and debt collectors should also be banned from reselling the debt to another debt buyer or debt collector. The more a debt is sold and re-sold, the greater the chance of unfair, deceptive, and abusive practices. Collectors that buy debt that is not legally collectible are more likely to engage in risky practices, to violate the law, and harm consumers. These may also be smaller collectors with weaker legal compliance regimes.

D. Require Clear, Stark Disclosure

If the CFPB decides to permit creditors, debt buyers, and debt collectors to engage in non-judicial efforts to collect time-barred debts, then it should require the following disclosure in **every** communication, oral or written:

IMPORTANT NOTE –

- We **cannot sue you** to collect this debt because it is too old.
- But **if you pay us anything or agree that you owe the debt**, we may be able to **sue you for the entire debt**.⁴⁴

[Note: The second disclosure is only necessary if suits are permitted on a debt after the statute of limitations has restarted.]

Unfortunately, the second disclosure in the above box is likely to be extremely confusing to the least sophisticated consumer. It would be far preferable to simply ban suits in cases where the statute of limitations has restarted as discussed in the previous section. Even the simpler first disclosure will likely be eclipsed by collection efforts, hidden in a sea of other disclosures, or delivered by collectors in a fast, droning “legal fine print” voice that consumers will not understand.

As such, the CFPB should limit contact regarding time-barred debt to a simple once-a-year written notice with a model form.

E. Require Disclosures Related to Credit Reports and Scores.

A related issue is the effect on a consumer’s credit report of paying an old debt.⁴⁵ With a few limited exceptions, the Fair Credit Reporting Act⁴⁶ (FCRA) prohibits adverse information more than seven years old from being reported in a consumer’s credit report.⁴⁷ An obsolete debt must be removed from a consumer’s credit report whether or not it is barred by the statute of limitations.⁴⁸ Conversely, if the statute of limitations is shorter than this seven-year period as is often the case,⁴⁹ debts may legitimately appear on credit reports after the expiration of the statute of limitations period.⁵⁰ However, a partial payment on a debt does not alter the length of the obsolescence period or restart the seven-year clock.⁵¹

According to the CFPB, creditors, debt buyers and debt collectors tell consumers that making a payment on their debt will improve their credit report, credit score, or creditworthiness.⁵² The CFPB concluded that these statements “are likely to be important to many consumers who view credit reporting as an important determinant of their future access to credit and other opportunities.”⁵³ These promises are often deceptive, tricking consumers into paying off old debts but resulting in little or no benefit to the consumer.

First, paying off a debt in collection will result in a notation that the debt was paid in full or settled⁵⁴ but will not result in its removal from a credit report.⁵⁵ This may or may not necessarily improve the consumer's credit score.⁵⁶ Second, if the debt is over seven years delinquent, it should not even appear on the consumer's credit report. In these cases, any representations that payment of such a debt would help the consumer's credit record are inherently deceptive.

Thus, if the CFPB permits any collection of time-barred debt, it should require an easy to understand disclosure, such as one of the following, is made in **every** communication with the consumer.

1) If a debt is already reported on the consumer's credit report:

- Paying this debt **will not remove** it from your credit report, but will only show that the account has been paid.
- Paying this debt **may not improve** your credit record or score.

2) If a debt is not obsolete, does not show up on a credit report, and the creditor or collector does not have the current ability to report it because it is not currently reporting to a credit reporting agency:

- This debt does not show up on your credit report.
- Paying this debt will not help your credit record or score.

3) If the debt is obsolete, or if the creditor or collector does not have the current ability to report it because it is not currently reporting to a credit reporting agency:

- Paying this debt **will not help** your credit record or score.

V. CONCLUSION

Prohibiting the collection of time-barred debts is the most effective way for the CFPB to protect consumers, especially the least sophisticated consumers. Disclosures are unlikely to be effective.

If the CFPB does, however, permit some collection efforts of time-barred debt, those efforts must be strictly controlled. The CFPB should:

- Codify existing case law to prohibit suits, threats of suits, and offers to “settle” the time-barred debt, including suits on “revived” debt for which a payment has been made after the statute has run;
- Prohibit the sale of debt once the statute has run; and
- Provide consumers clear, stark disclosures advising them that the debt is time-barred and that payments are not likely to impact their credit reports.

ENDNOTES

¹ Fed. Trade Comm'n, *The Structure and Practices of the Debt Buying Industry*, at T-7 (Jan. 2013) available at <http://www.ftc.gov/sites/default/files/documents/reports/structure-and-practices-debt-buying-industry/debtbuyingreport.pdf>.

² *Id.*

³ *Id.*

⁴ *Id.* at 42.

⁵ *Id.* See also Jake Halpern, "Paper Boys: Inside the Dark, Layrithine, and Extremely Lucrative World of Consumer Debt Collection," *N.Y. Times Magazine*, Aug. 15, 2014 (discussing debt broker who purchased 10-15 year old credit card debt for the purpose of additional collection and discussing 2008 purchase of one portfolio of debt contain containing debts charged off as long ago as 1989), available at: <http://www.nytimes.com/interactive/2014/08/15/magazine/bad-paper-debt-collector.html>.

⁶ Data is copied from Fed. Trade Comm'n, *The Structure and Practices of the Debt Buying Industry*, at T-7 (Jan. 2013). See table notes in the original.

⁷ Asset Acceptance Capital Corp. Annual Report on Form 10-K for 2012 at 3.

⁸ Encore Capital Group, Inc. Annual Report on Form 10-K for 2013 at 66.

⁹ Portfolio Recovery Associates, Inc. Annual Report on Form 10-K for 2013 at 53.

¹⁰ NOLO, *Statutes of Limitations for the 50 States (and the District of Colombia)*, available at: <http://www.nolo.com/legal-encyclopedia/statute-of-limitations-state-laws-chart-29941.html>.

¹¹ Wis. Stat. Ann. § 893.05 (2014).

¹² Wis. Stat. Ann. § 893.05 (2014).

¹³ Miss. Code Ann. § 15-1-3 (2014).

¹⁴ National Consumer Law Center, *Collection Actions*, at 3.6.8.3 (8th ed. 2014) available at <http://shop.consumerlaw.org/collectionactions.aspx>.

¹⁵ See, e.g., *Calvary Portfolio Serv. v. Stout* (Minn. Dist Ct. Wash. Cnty. Feb. 11, 2011), available at www.nclc.org/unreported; *Asset Acceptance, L.L.C. v. Hanson*, 2009 WL 840047 (Cal. Ct. App. Apr. 1, 2009) (unpublished).

¹⁶ Fed. Trade Comm'n, *The Structure and Practices of the Debt Buying Industry*, at 49 (Jan. 2013)

¹⁷ 12 U.S.C. § 5512.

¹⁸ 15 U.S.C. § 1692l(d).

¹⁹ 12 U.S.C. § 5531.

²⁰ See 15 U.S.C. § 5531(c) (stating prongs of unfair acts or practices).

²¹ See CFPB Bulletin 2014-02 (stating prongs of deceptive acts or practices).

²² See 15 U.S.C. § 5531(d) (stating prongs of abusive acts or practices).

²³ *United States v. Kubrick*, 444 U.S. 111, 117 (1979) (citation omitted).

²⁴ See, e.g., Fed. Trade Comm'n, *FTC Takes Action to Stop Phantom Debt Scam That Targeted Spanish-Speaking Consumers Nationwide*, Oct. 23, 2014 (describing more than \$2 million in payments made by consumers on non-existent debts due to aggressive collection tactics); Rachel Nolan, "Behind the Cover Story: Jake Halpern on Debt, HBO and His Mother," *N.Y. Times*, Aug. 18, 2014 (describing how Jake Halpern's mother paid off an insistent debt collector for a debt that she did not owe to get them to stop harassing her).

²⁵ See Jake Halpern, "Paper Boys: Inside the Dark, Layrithine, and Extremely Lucrative World of Consumer Debt Collection," *N.Y. Times Magazine*, Aug. 15, 2014 (discussing collection on time-barred debts).

²⁶ *McMahon v. LVNV Funding, L.L.C.*, 744 F.3d 1010, 1020 (7th Cir. 2014). Other courts have held that it is not deceptive to collect a debt that is out of statute but has not been extinguished. See National Consumer Law Center, *Fair Debt Collection*, at 5.5.2.13.3.2 (discussing and rejecting this line of cases).

²⁷ *Jeter v. Credit Bureau, Inc.*, 760 F.2d 1168, 1173 (11th Cir. 1985) (citations omitted), quoting *Charles of the Ritz Distribs. Corp. v. Federal Trade Comm'n*, 143 F.2d 676, 679 (2d Cir. 1944). See also *Pollard v. Law Office of Mandy L. Spaulding*, 766 F.3d 98, 103 n.4 (1st Cir. 2014) (noting that a majority of circuit courts apply the “least sophisticated consumer” standard but that “there appears to be little difference between this formulation and the ‘unsophisticated consumer’ formulation”); *Clomon v. Jackson*, 988 F.2d 1314, 1319 (2d Cir. 1993) (“In recent years, as courts have incorporated the jurisprudence of the FTC Act into their interpretations of the FDCPA, the language of Exposition Press has gradually evolved into what we now know as the least-sophisticated-consumer standard.”); *Federal Trade Comm’n v. Raladan Co.*, 316 U.S. 149, 151-152, 62 S. Ct. 966, 968-969, 86 L. Ed. 1336 (1942); *Exposition Press, Inc. v. Federal Trade Comm’n*, 295 F.2d 869 (2d Cir. 1961).

²⁸ *U.S. v. Asset Acceptance, L.L.C.* (M.D. Fla. Jan. 31, 2012), consent decree available at www.ftc.gov/os/caselist/0523133/120131assetconsent.pdf

²⁹ Asset Acceptance Capital Corp., Consent Decree FAQs, <http://www.assetacceptance.com/ftc/faq.html> (accessed Feb. 26, 2014).

³⁰ 12 U.S.C. § 5531.

³¹ See 15 U.S.C. § 1692l(d); 12 U.S.C. § 5512.

³² Between July 16, 2013 and December 29, 2014, the CFPB received 967 complaints from consumers who reported that a debt collector “threatened to sue on too old debt.” Data is from the CFPB’s Consumer Complaint Database, which is available at <http://www.consumerfinance.gov/complaintdatabase/> (accessed Jan. 6, 2015). See also Jake Halpern, “Paper Boys: Inside the Dark, Layrithine, and Extremely Lucrative World of Consumer Debt Collection,” *N.Y. Times Magazine*, Aug. 15, 2014 (“According to annual reports filed by the F.T.C., the number of complaints about ‘false threats of lawsuits’ from collectors more than doubled from roughly 12,000 in 2008 to more than 30,000 in 2012.”); Fed. Trade Comm’n, *The Structure and Practices of the Debt Buying Industry*, at 46 n.192 (Jan. 2013) (“A legal service provider in New York analyzed a sample of cases in its office and found that over 50% of cases for which sufficient information was available were based on debt for which the statute of limitations has expired.”).

³³ *McMahon v. LVNV Funding, LLC*, 744 F.3d 1010, 1020 (7th Cir. 2014) (“it is plausible that an unsophisticated consumer would believe a letter that offers to “settle” a debt implies that the debt is legally enforceable”); *Kimber v. Federal Fin. Corp.*, 668 F. Supp. 1480, 1489 (M.D. Ala. 1987) (addressing suing and threatening to sue on time-barred debts). See also National Consumer Law Center, *Fair Debt Collection*, at 5.5.2.13.3.2 n.935 (8th ed. 2014) (collecting cases following *Kimber*).

³⁴ Wis. Stat. Ann. § 893.05 (2014); Miss. Code Ann. § 15-1-3 (2014).

³⁵ Fed. Trade Comm’n, *The Structure and Practices of the Debt Buying Industry*, at 45 (Jan. 2013).

³⁶ Mary Spector, *Debts, Defaults and Details: Exploring the Impact of Debt Collection Litigation on Consumers and Courts*, 6 Va. L. & Bus. Rev. 257, 289 (2011) (56.86% of defendants who appeared in debt collection cases were pro se).

³⁷ 15 U.S.C. § 1692f.

³⁸ See, e.g., *Kimber v. Federal Fin. Corp.*, 668 F. Supp. 1480, 1488 (M.D. Ala. 1987). See also National Consumer Law Center, *Fair Debt Collection*, at 5.5.2.13.3.2 n.935 (8th ed. 2014) (collecting cases following *Kimber*).

³⁹ 15 U.S.C. § 1692e.

⁴⁰ See, e.g., *Kimber v. Federal Fin. Corp.*, 668 F. Supp. 1480, 1489 (M.D. Ala. 1987). See also National Consumer Law Center, *Fair Debt Collection*, at 5.5.2.13.3.2 n.935 (8th ed. 2014) (collecting cases following *Kimber*).

⁴¹ See *Crawford v. Vision Fin. Corp.*, 2012 WL 5383280 (N.D. Ill. Nov. 1, 2012) (claim stated where collector mentioned “further financial liability” but not where the collector offered to “settle”).

⁴² *McMahaon v. LVNV Funding, L.L.C.*, 744 F.3d 1010 (7th Cir. 2014).

⁴³ *Id.* at 1020.

⁴⁴ The Flesch-Kincaid Grade Level is 4 for the first disclosure and 8 for the second disclosure.

⁴⁵ This report does not address NCLC’s recommendations regarding the CFPB’s requirements for the reporting of debts to the credit reporting agencies. A full discussion of credit reporting issues related to debt collection are beyond the scope of this report. These issues are covered in detail in the National Consumer Law Centers’ Comments to the CFPB’s Advance Notice of Proposed Rulemaking Regarding Debt Collection. Relevant recommendations are made in response to Question 151. These are available at: http://www.nclc.org/images/pdf/debt_collection/comments-cfpb-debt-collection-anprm-2-28-14.pdf.

⁴⁶ 15 U.S.C. § 1681 *et seq.*

⁴⁷ See generally, National Consumer Law Center, *Fair Credit Reporting*, at 5.2 (8th ed. 2013) available at <http://shop.consumerlaw.org/faircreditreporting.aspx>.

⁴⁸ See *id.* at 5.2.3.1 (discussing limited exceptions to this general rule).

⁴⁹ See, e.g., NOLO, *Statutes of Limitations for the 50 States (and the District of Colombia)* (listing a number of states with statutes of limitations less than seven years for either written or non-written contracts).

⁵⁰ See, e.g., *HSBC Bank Nevada v. Murungi*, 2010 WL 3170736, at *4 (E.D. La. Aug. 11, 2010) (defaulted credit card debt could remain on consumer report for seven years even after statute of limitations expired after three years).

⁵¹ FTC Staff Summary § 605(a)(4) item 2 (reporting period not extended by assignment to another entity or partial or full payment of account), available at National Consumer Law Center, *Fair Credit Reporting*, at 914 (8th ed. 2013)

⁵² CFPB Bulletin 2013-08.

⁵³ *Id.*

⁵⁴ Experian, *Paying Collection Accounts in Full Can Help, But Might Not Improve Credit Scores* (Mar. 22, 2006), available at www.experian.com/ask_max/max032206d.html.

⁵⁵ Experian, “What Happens When You Pay Off “Bad” Credit” (Jan. 7, 2009), available at <http://www.experian.com/blogs/ask-experian/2009/01/07/what-happens-when-you-pay-off-bad-credit/>.

⁵⁶ See Chi Chi Wu, National Consumer Law Center, *Strong Medicine Needed: What the CFPB Should Do to Protect Consumers from Unfair Collection and Reporting of Medical Debt* (Sept. 2014) (discussing the impact of paid medical debt on credit scores) available at <http://www.nclc.org/images/pdf/pr-reports/report-strong-medicine-needed.pdf>.

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