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FTC's Annual FDCPA Enforcement Letter to CFPB Filled with Insight into 2016 Focus

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March 14, 2016

Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Consumer Financial Protection Bureau (CFPB) is required to submit annual reports to Congress on the Fair Debt Collection Practices Act (FDCPA). Since this task was previously assigned to the Federal Trade Commission (FTC), it assists the CFPB by preparing its own report, summarizing its recent work on debt collection issues.

The FTC sent its annual letter to the CFPB's Director Richard Cordray on February 12, 2016, summarizing its 2015 efforts to end allegedly illegal debt collection practices. These letters provide insight into the FTC's and CFPB's focus in the coming year by detailing their enforcement actions from the previous year. Among other things, the FTC's FDCPA actions included "aggressive law enforcement activities and public outreach to address new and troubling issues in debt collection." In 2015, the FTC engaged in activities that included:

- Coordinating the first federal-state-local enforcement initiative targeting deceptive and abusive debt collection practices;
- Prosecuting "a sweep" of cases against collectors who used unlawful text messaging in their efforts to collect on debts;
- Filing 12 new cases against 52 new defendants (the FTC's highest number of debt collection enforcement action in a one-year time period);
- Resolving nine cases and obtaining nearly \$94 million in judgments;
- Banning 30 companies and individuals that engaged in "serious and repeated violations of law" from ever working in the debt collection business again AND publishing a list of these companies and people;
- Filing three amicus briefs, two of them with the CFPB, on major debt collection issues; and
- Hosting three Debt Collection Dialogues "to promote a more robust exchange of information" between the debt collection industry and the governmental entities tasked with regulating the industry's conduct.

The FTC brought or resolved 18 debt collection cases in 2015 – the highest ever. The resolutions, either by means of settlement or judgment, are similar in the FTC's request for asset freezes, immediate access to business premises and the appointment of receivers to take over the debt collection businesses.

Of interest is the FTC's joint action with law enforcement partners, including the CFPB, the New York Attorney General's Office and the Illinois Attorney General's Office, to combat "egregious collection practices." In light of the Commission's success in these partnerships (\$63 million settlement in joint action with CFPB; \$8,507,423 settlement in joint action with New York AG; and \$6.4 million settlement in joint action with Illinois AG – the remaining actions are still in litigation), it's likely that the FTC will continue to seek out partnerships with federal and state law enforcement agencies to combat aggressive and illegal debt collection actions.

Phantom debt collections (actions by debt collection agencies to collect on debts that either do not exist or are not owed to the phantom debt collector) and debt collection via unlawful text messages and e-mails were a focus of the FTC during 2015. As our technology continues to shift away from written letters and telephone

calls, this concentration and the resultant enforcement actions will likely carry over into 2016. The FTC detailed a loss in a case in which it filed an amicus brief. In that case, the Commission unsuccessfully argued that a person who buys debts in default and collects on them qualifies as a "debt collector" under the FDCPA. You can expect the FTC to challenge this ruling and perhaps even seek out enforcement actions to shore up its argument.

The Commission is quite proud of its so-called "Debt Collection Dialogues," which were held in three cities – Buffalo, New York; Dallas, Texas and Atlanta, Georgia – and were intended to give debt collectors the opportunity to hear from the government entities that police their industry and to allow the law enforcement community and industry members to highlight areas of concern, share strategic priorities and generate ideas for compliance. Since tickets to all three Dialogues were "sold out," it seems logical that the FTC will look to hold future sessions in additional cities in 2016.

The FTC and CFPB will undoubtedly continue to cooperate and aggressively seek opportunities to engage in litigation on issues of consumer protection relative to debt collection in 2016.