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Suing-to-Intimidate: New Evidence Confirms that Oportun Abuses and Intimidates Families in Court to Collect Small-Dollar Loan Debts in California Courts

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Introduction

"Oportun," is almost a translation of the Spanish word for "opportunity," but is a few letters shy of the full word: *oportunidad.* Unfortunately, Oportun's practices leave people questioning just how much financial opportunity consumers receive as a result of using these products.

> **While Oportun claims to be a "mission-driven financial institution providing inclusive, affordable financial services" to Latinos, immigrants, and low-to-moderate income borrowers, it has aggressively marketed unaffordable loans to these communities and then used abusive and intimidating debt collection tactics when they cannot repay them.**

"Partner with us today to build a better tomorrow." "We're committed to our community." These messages and other similar ones, placed prominently throughout the Oportun website, could lead a consumer in the community to believe that this lender had their best interests in mind. Oportun's designation as a Community Development Financial Institution (CDFI) might also signal that this lender had a vested interest in serving its community well. However, while Oportun claims to be a "mission-driven financial institution providing inclusive, affordable financial services" to Latinos, immigrants, and low-to-moderate income borrowers, it has aggressively marketed unaffordable loans to these communities and then used abusive and intimidating debt collection tactics when they cannot repay them. Furthermore, because negative credit histories and related lawsuits are a negative factor when immigrants apply to become US permanent residents or citizens, Oportun's tactics to pursue relatively small debts in court could have catastrophic impacts on families in the long term.

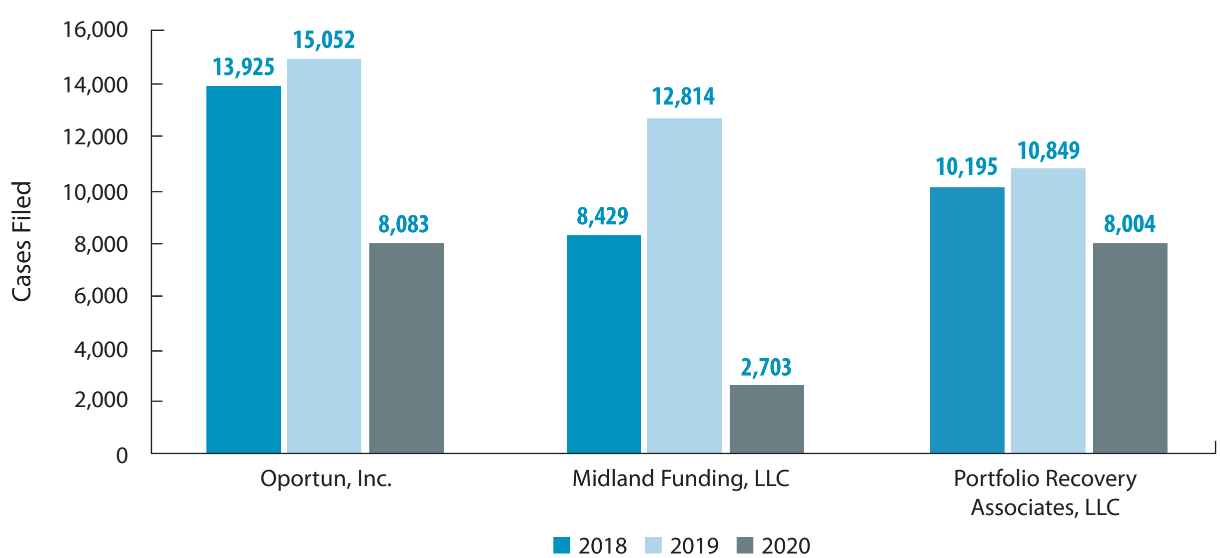
This memo outlines new research establishing that Oportun regularly engages in egregious, abusive, and intimidating debt collection practices in California. Three primary findings are presented here. This research establishes that (1) Oportun has been the top filer of debt collection cases in California since 2018; (2) Oportun sues to intimidate its mostly Latino customer base; and (3) Oportun did not make meaningful changes to their debt collection model until it was the subject of public pressure, even after the onset of the coronavirus public health and economic crisis and may continue to pursue legal cases even before the crisis is over.

Finding 1: Oportun Has Been Top-Most Debt Collection Case Filer Since at Least 2018

New data from the Center for Responsible Lending establishes that, since at least 2018, Oportun has filed the most debt collection cases in California, adding to a growing body of research analyzing Oportun's debt collection activity. CRL's analysis of the top 10 most-populous counties in California indicates that Oportun filed at least 23,500 cases in California in 2019 and has filed over 13,000 cases in 2020, for a total of at least 36,500 cases filed over two years.[1] This finding is consistent with reporting from *ProPublica* and *The Guardian,* outlets that established that the company filed 47,000 suits across Texas over the last four years, making it the state's most litigious personal loan company; and, that Oportun accounted for at least 15% of small claims filings in California from mid-2017 to mid-2018.[2,3]

CRL's analysis of cases filed in 2019 and 2020 in California's most populous county, Los Angeles, confirms that Oportun is a top filer of debt collection cases. Of Oportun's 213 total storefronts in the State of California, a total of 81 locations, or more than one in three (38%) storefronts, are located in Los Angeles County.[4] In 2018, 2019, and 2020, Oportun filed more cases than prolific collectors such as Portfolio Recovery Associates, LLC (Figure 1).[5,6] Data from CRL show that, for years, Oportun has, in fact, filed more cases than the creditors that file enough cases to be counted among the top 10 most filing plaintiffs from 2012–2017. This list of the top 10 includes Bank of America, Capital One Bank, and Wells Fargo, as well as third party debt collectors such as Portfolio Recovery Associates (PRA) and Midland Funding (Appendix A).[7] Midland Funding, a subsidiary of Encore Capital, and PRA—two of the nation's largest debt buyers—have been subject to numerous state and federal enforcement actions.[8]

Figure 1: Oportun Is the Top-Filing Debt Collection Plaintiff in Los Angeles County[9]



Finding 2: Oportun is Suing to Intimidate

Oportun is using the court system to intimidate borrowers, who are mostly Latino, into immediate repayment. Research indicates that even borrowers attempting to repay their debts cannot avoid being sued, that Oportun typically pursues consumers in California in the small claims venue where they are not permitted to have legal representation, and that one in three cases filed by Oportun results in a default judgment.

First, complaints filed by Oportun's borrowers with the Consumer Financial Protection Bureau (CFPB) indicate that even borrowers attempting to repay their debts in good faith are unable to avoid being sued in court.[10] Several people reported that they had proposed a repayment plan to Oportun, but that it had been rejected and that Oportun instead chose to pursue them in court. One California veteran alleged in February 2020 that Oportun was threatening to sue them even though they had proposed a payment plan on a loan with a high interest rate (Figure 2).[11]

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Figure 2. "They don't want to support me in scheduling affordable monthly payments."

> *"I have made various communication with Oportun representatives and they don't want to support me in scheduling affordable monthly payments of {$70.00} until personal loan with a high interest over 50% is paid off. They sent me a letter that loan account is in review for a lawsuit against me as I am XXXX Lifetime, Retired and a XXXX XXXX XXXX XXXX Veteran. I can only pay {$70.00} @ month until loan is paid off. Oportun has reported Derogatory remarks and collections on my credit report with XXXX, XXXX and XXXX and has destroyed my credibility. Oportun...is threatening me and harrass[ing] with collections calls and cell text at my cell XXXX. I cannot pay {$150.00} @ month and no fees.*

Source: Complaint filed against Oportun Financial Corporation on February 17, 2020 by a California servicemember. (Complaint ID: 3534840). "XXXX" represents complaint text redacted by the CFPB.

Second, Oportun's cases are almost always filed in small claims courts, where collectors can pursue a maximum amount of $2,500 in California. Such courts are not legally required to provide interpreters, nor do they permit legal counsel according to the state's rules.[12] This sue-to-intimidate model is predominantly affecting the Latino community, for whom Spanish is the main spoken language for many and who may experience additional barriers in confronting an English-only legal process.[13] Additionally, Spanish language speakers face substantially greater challenges in defending themselves in court even apart from the language barrier. According to the California Judicial Council, Spanish language speakers, on average, reported lower levels of education, lower incomes, and less prior experience in small claims court.[14] Even more, Oportun lends primarily to the Latino community, where its litigation tactics are prone to evoke pronounced fear, particularly with regard to potential immigration enforcement.[15] Using the sue-to-intimidate model, especially with low-income communities and Latino communities—some of whom may be undocumented—exploits the psychological impacts that legal collections may have on these communities, particularly in cases where borrowers may not understand the difference between a civil and criminal lawsuit.

Third, although many cases are resolved out of court, Oportun also racks up court wins using default judgments, a type of automatic win that occurs if the consumer never appears in court to defend themselves.[16] After a default judgment, wages are frequently garnished, forcing the consumer to forego wages they may depend upon for basic expenses such as food, housing, and medical care.[17] A CRL analysis of 1,165 cases filed by Oportun in Los Angeles County in June and December 2019 found that almost one in three (31.8%) cases ended in automatic wins, or default judgments, in favor of Oportun (Appendix B).[18]

Finding 3: Oportun Continued to File Cases After the Onset of the Coronavirus Crisis

Oportun has also filed thousands of cases throughout 2020, in the midst of the coronavirus pandemic and associated economic crisis. In Los Angeles County alone, over 8,000 cases were filed in 2020, again making Oportun the highest volume case filer in that county for the year (Appendix A). Oportun filed over 3,000 cases after March 2020 and only paused all filings after the ProPublica and Guardian articles were published, indicating that the decision was more influenced by negative publicity than by a good faith attempt to ease repayment pressure during an unprecedented economic crisis that disproportionately impacted Latino families.[19] Furthermore, Oportun has not dismissed all pending cases as it promised to do.

Oportun's pause of all case filings was influenced more by negative publicity than by a good faith attempt to ease repayment pressure during an unprecedented economic crisis that disproportionately impacted Latino families.

Following the ProPublica investigation into Oportun's debt collection practices in Texas, and the Guardian's investigation into the same in California, Oportun publicly announced it would be dismissing all pending lawsuits and would be suspending new filings for the time being.[20] The company also announced that it would lower its maximum APR to an "all-in" 36%, and reduce its filing rate going forward by 60%.[21] Even if it meets that target, Oportun would be the fifth most litigious amongst all creditors or collectors in Texas and among the most litigious in California.[22]

Many cases are still pending in California courts, even though Oportun committed to dismissing all outstanding cases. In CRL's analysis of 1,170 Oportun cases filed from May through September 2020 in Los Angeles County, 1,048 cases were dismissed prior to a hearing.[23] The remaining 89 cases were dismissed for lack of prosecution, dismissed by the courts, or discharged in bankruptcy. A CRL analysis of a random sample of 106 Oportun cases filed in 2020 found that only 52% of cases were dismissed with prejudice, meaning that they could not be refiled. An additional 36% of cases were dismissed without prejudice (meaning that the cases could be refiled), 4% ended in default judgments, and 9% were pending.[24] All of the default judgments occurred prior to the onset of the coronavirus pandemic. Many cases are still pending in California courts, even though Oportun committed to dismissing all outstanding cases. Findings from Legal Aid Services of San Diego indicate that 477 of 500 cases filed in 2020 in San Diego small claims courts remain pending as of January 26, 2021.[25]

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Conclusion

Oportun claims to be a provider of alternatives to predatory loans in order to help build credit for underserved communities, such as Latino and undocumented borrowers who have limited options for mainstream financial services. However, by subjecting customers who cannot afford to pay back their loans to abusive litigation tactics, they grossly contravene their mission and even undermine the financial stability of the impacted borrowers.

By subjecting customers who cannot afford to pay back their loans to abusive litigation tactics, Oportun grossly contravenes their mission and even undermines the financial stability of the impacted borrowers.

Research shows that collectors often use the court system to involuntarily collect payments from borrowers who are otherwise unable to pay. However, Oportun—a mission-driven CDFI—became the most prolific filer of legal debt collection cases in small claims court in recent years and through the pandemic last year. California's court system could share more debt collection case information in a centralized system accessible online to help the public understand the debt collection litigation landscape and what reforms are needed to protect consumers from abusive, unfair, or illegal practices.[26]

Although Oportun has made a public announcement that it would dismiss all outstanding cases, and reform its debt collection practices, as of the publication of this paper, they have not fulfilled this commitment. It remains unclear whether their new practices will indeed help underserved borrowers build credit or if they will further harm such consumers.

Appendix A

Case Filings in Los Angeles County 2018–2020

	2018	2019	2020
Oportun, Inc.	**13,925**	**15,052**	**8,083**
Portfolio Recovery Associates, LLC	10,195	10,849	8,004
Discover Bank	7,052	10,175	6,504
Cavalry SPV, LLC	6,839	6,769	6,000
Bank of America	5,087	8,746	4,558
Midland Funding, LLC	8,429	12,814	2,703
Asset Acceptance, LLC	0	0	2,669
CACH, LLC	902	330	2,130
Capital One Bank	10,266	8,222	2,008
American Express Centurion Bank	3,843	6,144	166
Wells Fargo Bank	1,907	2,600	3

Note: Center for Responsible Lending (CRL) analysis of cases filed in Los Angeles County Superior Courts. Companies listed here alongside Oportun represent the top 10 most-filing debt collection plaintiffs in California from 2012 to 2017, according to a 2020 CRL analysis. For more information, see Barnard, J.; Sidhu, K.; Smith, P.; & Stifler, L. October 2020. "Court System Overload: The State of Debt Collection in California after the Fair Debt Buyer Protection Act." *Center for Responsible Lending.*

Appendix B

Almost One in Three Cases Filed by Oportun in 2019 Ended in Default Judgment

Default Judgment	371	31.8%
Dismissal	790	67.8%
Contested Judgment	4	0.3%
Total	**1,165**	**100%**

Note: Center for Responsible Lending (CRL) analysis of 1,165 cases filed in June and December 2019 in Los Angeles County. Of these cases, 371 resulted in default, or uncontested, judgments, four resulted in a contested judgment, and the remaining 790 were dismissed (452 were dismissed prior to a hearing, 21 after a hearing, 20 after a mediation, 67 were dismissed for lack of prosecution, and 230 were other court-ordered dismissals).

Endnotes

[1] Center for Responsible Lending (CRL) analysis of cases filed in the top-10 most populous California counties (including Los Angeles, Orange, San Diego, Riverside, San Bernardino, Sacramento, Contra Costa, Santa Clara, Fresno, and Alameda). 2019 totals are from reporting by R. Hosseini in *The Guardian* (missing data from Riverside, San Bernardino, and Contra Costa); 2020 totals were gathered by searching online court records databases in each county (missing data from San Bernardino and incomplete data from San Diego).
[2] Hosseini, R. August 2020. "Exclusive: The Litigious Debt Collectors Targeting Latinos During a Pandemic." *The Guardian*. Available at https://www.theguardian.com/us-news/2020/aug/02/oportun-loans-lawsuits-latino-small-claims-california.
[3] Collier, K.; Larson, R.; & Trevizo, P. August 2020. "The Loan Company That Sued Thousands of Low-Income Latinos During the Pandemic." *ProPublica*. Available at https://www.propublica.org/article/the-loan-company-that-sued-thousands-of-low-income-latinos-during-the-pandemic.
[4] CRL analysis; see Oportun. *California Locations*. Accessed January 12, 2021 at https://oportun.com/locations/; County of Los Angeles. *Zip Code List*. Accessed January 12, 2021 at http://file.lacounty.gov/SDSInter/lac/1031552_MasterZipCodes.pdf.
[5] Portfolio Recovery Associates, LLC, is one of the country's largest and most litigious debt buyers and has notoriously been the subject of numerous CFPB, FTC, and state attorney general enforcement actions. See discussion of CFPB, FTC, and attorney general actions taken against Portfolio Recovery Associates, LLC in: Center for Responsible Lending. *Comments to the Consumer Financial Protection Bureau Notice of Proposed Rulemaking Debt Collection Practices (Regulation F) 12 CFR Part 1006 Docket No. CFPB-2019-0022 RIN 3170-AA41*. September 19, 2019. Available https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-civilrights-debtcollection-regf-sep2019.pdf.
[6] Center for Responsible Lending (CRL) analysis of cases filed in Los Angeles County Superior Courts. Companies listed here alongside Oportun represent the top 10 most-filing debt collection plaintiffs in California from 2012 to 2017, according to a 2020 CRL analysis. For more information, see Barnard, J.; Sidhu, K.; Smith, P.; & Stifler, L. October 2020. "Court System Overload: The State of Debt Collection in California after the Fair Debt Buyer Protection Act." *Center for Responsible Lending*.
[7] Barnard, J.; Sidhu, K.; Smith, P.; & Stifler, L. October 2020. "Court System Overload: The State of Debt Collection in California after the Fair Debt Buyer Protection Act." *Center for Responsible Lending*. Available at https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-california-debt-oct2020.pdf.
[8] Center for Responsible Lending, Leadership Conference on Civil and Human Rights, National Association for the Advancement of Colored People (NAACP), National Fair Housing Alliance, National Coalition for Asian Pacific American Community Development (National CAPACD), National Urban League, and UnidosUS. September 2019. *Comments to the Consumer Financial Protection Bureau Notice of Proposed Rulemaking Debt Collection Practices (Regulation F)*. Available at https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-civilrights-debtcollection-regf-sep2019.pdf.
[9] Center for Responsible Lending (CRL) analysis of cases filed in Los Angeles County Superior Courts. Companies listed here alongside Oportun represent the top 10 most-filing debt collection plaintiffs in California from 2012 to 2017, according to a 2020 CRL analysis. For more information, see Barnard, J.; Sidhu, K.; Smith, P.; & Stifler, L. October 2020. "Court System Overload: The State of Debt Collection in California after the Fair Debt Buyer Protection Act." *Center for Responsible Lending*.
[10] Consumer Financial Protection Bureau. *Consumer Complaint Database*. Retrieved December 15, 2020 from https://www.consumerfinance.gov/data-research/consumer-complaints/. Complaints were filed most often by borrowers in California, Texas, Illinois, and Florida. Complaints reviewed were from 2019-on.
[11] Similar complaints were filed in April and May of 2020, indicating that the company did not change their collection practices after the onset of the coronavirus pandemic and associated economic crisis.
[12] California Courts. *Cases for $10,000 or less: If You Are Suing, Small Claims or Limited Civil?* Retrieved January 11, 2021 from https://www.courts.ca.gov/1062.htm?rdeLocaleAttr=en. Explains that in small claims court, you cannot have attorney representation.
[13] Center for Responsible Lending (CRL), California Reinvestment Coalition (CRC), Americans for Financial Reform Education Fund, California League of United Latin American Citizens (California LULAC), Coalition for Humane Immigrant Rights (CHIRLA), League of United Latin American Citizens (LULAC), Legal Aid Society of San Diego, New Economics for Women (NEW), and Public Law Center. December 22, 2020. *Comments to the Office of the Comptroller of the Currency on Oportun's New Bank Charter Application; Application #2020-WE-CHARTER317993; Proposed Charter #25248*. Available at https://www.responsiblelending.org/research-publication/comment-opportuns-bank-charter-application.
[14] Smith, D. 2012, October. "Procedural Fairness and Effective Court Practices in Small Claims Cases: Study overview." *Judicial Council of California: Administrative Office of the Courts, Office of Court Research*. Available at https://pdfs.semanticscholar.org/3706/38a93040630d359147a44c4bd517e6b86508.pdf.
[15] *ProPublica* found that of 467 lawsuits reviewed in Texas, fewer than half included the defendant's Social Security number. See Collier et. al. 2020.
[16] Hosseini 2020; Barnard et. al. 2020 established that debt collection firms often rely on the person sued not mounting a defense to win default judgments, or automatic wins.
[17] *Id*.
[18] Center for Responsible Lending (CRL) analysis of 1,165 cases filed in June and December 2019 in Los Angeles County. Of these cases, 371 resulted in default, or uncontested, judgments, four resulted in a contested judgment, and the remaining 790 were dismissed (452 were dismissed prior to a hearing, 21 after a hearing, 20 after a mediation, 67 were dismissed for lack of prosecution, and 230 were other court-ordered dismissals).

[19] Krogstad, J.M.; Gonzalez-Barrera, A.; & Noe-Bustamante, L. 2020, April 3. "U.S. Latinos among hardest hit by pay cuts, job losses due to coronavirus." *Pew Research Center*. Available at https://www.pewresearch.org/fact-tank/2020/04/03/u-s-latinos-among-hardest-hit-by-pay-cuts-job-losses-due-to-coronavirus/.
[20] Oportun. 2020, July 28. *Oportun to cap new loan originations at an "all-in" 36% APR*. Available at https://oportun.com/about/press/oportun-to-cap-new-loan-originations-at-an-all-in-36-apr/.
[21] "All-in" APR calculations most typically include all fees such as loan origination fees, and ancillary products such as credit insurance. *See, e.g.,* OCC, Comptroller's Handbook: Military Lending Act Version 1.0, May 2018. Available at: https://www.occ.gov/publications-and-resources/publications/comptrollers-handbook/files/military-lending-act/pub-ch-mla.pdf. However, Oportun has defined "all-in" differently, using language not explicitly capturing all fees stating "additional fees from…ancillary products like credit insurance" in a July 28, 2020 press release. Therefore, it is not clear that Oportun will be capping rates at an all-in 36% since they typically charge an origination fee of $90 or $75. For more information, see: Oportun. 2020, July 28. *Oportun to cap new loan originations at an "all-in" 36% APR.* Available at https://oportun.com/about/press/oportun-to-cap-new-loan-originations-at-an-all-in-36-apr/.
[22] Collier et. al. 2020; CRL analysis (see supra note 1).
[23] Center for Responsible Lending (CRL) analysis of 1,170 cases filed in May, June, and July 2020 in Los Angeles County. Of these cases, 1,048 (90%) were dismissed prior to a hearing, 89 (8%) were dismissed for lack of prosecution, 31 (3%) were other court-ordered dismissals, one was pending, and one was discharged in bankruptcy.
[24] CRL analysis of a random sample of 106 cases filed in Los Angeles County courts in 2020.
[25] Authors' correspondence with Alysson Snow of Legal Aid Services of San Diego, January 26, 2021.
[26] Barnard et. al. 2020.