

COURT SYSTEM OVERLOAD

The State of Debt Collection in California after the Fair Debt Buyer Protection Act

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Executive Summary

Over the past 50 years, wage stagnation, as well as already high and rising housing, health care, and education costs have dramatically increased debt loads for the average family.¹ Moreover, recovery from the Great Recession has been uneven. Data show that families of color, Americans born after 1970, and households earning less than \$60,000 annually are the least likely to have recovered the wealth they lost in the financial crisis.² And now, the COVID-19 health and economic crisis has laid bare existing inequities and will perpetuate these families' economic struggles. Before the crisis, many lower-income families had little to no margin for an unexpected expense and were just one financial shock away from the risk of eviction or homelessness. The pandemic is that financial shock to many lower-income families. Massive unemployment and lost wages are also worsening the affordable housing crisis, with a particularly harsh impact on renter households, which are more likely to be people of color. These impacts will worsen over time, as immediate income shortfalls result in missed or late bill payments, adding late fees and related penalties to swelling debt burdens and increasing the chance of exposure to debt collectors and debt buyers.

Due to this context of rising inequality and a related rise in consumer debt, there has been substantial growth in the collection industry in recent decades. A subset of the collection industry, debt buying, emerged in the wake of this growth in consumer debt. Debt buyers purchase debts from lenders and other creditors at a deep discount and then attempt to collect the debt themselves, often without underlying documentation. Debt buyers typically make use of the courts to collect debts and are frequently able to win court judgments against people, even those who do not owe the debt. The impacts of this system can be severe—after a default judgment, wages are frequently garnished, forcing the consumer to pay a debt they may not owe.

In California, state laws regarding fair debt collection have been strengthened in recent years. California's Fair Debt Buying Practices Act (CFDBPA), passed in 2013, attempts to make the process fairer by increasing the documentation required for debt buyers to sue people in court.³ This report seeks to answer the following questions: How did the passage of the CFDBPA impact the debt buyer litigation landscape in the state of California? What impact did it have on the number of cases filed and on the number of cases ending in default judgments, which are automatic wins for the debt buyers? Did it have an impact on the amount of documentation provided by debt buyers?

The evidence of success is mixed, but the CFDBPA appears to have had a modest positive impact. This report reveals that total case filings and filings by top debt buyers declined in the years after the passage of the CFDBPA. However, default judgment rates, rates of representation, and the lack of documentation provided in collections cases still show that the decks remain stacked in favor of debt buyers and against consumers. Debt buyers in California continue to abuse the court system to pursue likely document-unsupported debts, and California borrowers are still at risk of default judgments and garnishments that will force them to pay debts they may not owe. On the one hand, the CFDBPA may have been one factor contributing to the decline in the total number of case filings and the decline in filings by top debt collectors, and the legislation likely led to a modest increase in cases that were supported by minimum required documentation. On the other hand, case filings were likely down for macroeconomic reasons, filings have been inching upwards in more recent years, and case documentation remains insufficient in the majority of all cases.

This report discusses the national impact of debt collection and summarizes applicable debt collection legislation, including the national Fair Debt Collection Practices Act (FDCPA), the California Rosenthal Fair Debt Collection Practices Act (Rosenthal Act), and the California Fair Debt Buying Protection Act (CFDBPA). Then methodological notes are provided: This report analyzes original data collected from the superior courts in the top 10 most populous counties in the state. The first dataset includes filing and case status information for the 437,644 collections cases filed by the top 20 debt buyers in California (a dataset that represents approximately half of all collections cases filed in the most populous counties in California during the study period). The second dataset includes case documentation and outcome data for a random sample of 400 court cases that were filed between January 1, 2012 and December 31, 2017.

Key Findings Include the Following:

1. Consumer complaints continue to highlight debt collection in California as a major problem. Complaints about debt collection still represent one in five complaints submitted to the Consumer Financial Protection Bureau (CFPB), and thousands of complaints are submitted each year on the topic. Analysis of the complaints reveals that one in every four complainants allege that the debt is not theirs, indicating serious and persistent documentation problems.

2. Collection cases filed by top debt buyers declined after the implementation of the CFDBPA but have inched upwards since. Case filings by top debt buyers in the most populous counties in California fell from a high of almost 120,000 in 2012 to a low of around 32,000 in 2015 but were up to almost 52,000 in 2017. Recent reporting indicates that cases have continued to rise since 2017. The decline in case filings may be associated with the passage of the CFDBPA, but research indicates that filings were down nationally, making it difficult to draw a causal link between the legislation and the decline. Additionally, fewer than one in three cases filed during the study period were subject to the CFDBPA because they were concerning debts purchased prior to January 1, 2014.

3. The number of cases filed by the top debt buyer law firms and attorneys suggests robo-signing, particularly for cases not subject to the CFDBPA. This analysis indicates that the top four debt buyer firms are filing almost two in three collections cases filed in the most populous counties, or approximately 275,000 cases during the study period, and that the high volume may indicate a lack of meaningful attorney review. The top eight individual attorneys alone filed two in five cases. The share of filings remained steady, but the number of filings fell for cases subject to the CFDBPA, mirroring the decrease in the overall number of case filings.

4. Almost two out of every three cases that were resolved resulted in default judgments in favor of the plaintiff. For resolved cases not subject to the CFDBPA, the default judgment rate was 63.7%, and for those cases subject to the CFDBPA, the default judgment rate was 66.3%. Collections after a default judgment occur both voluntarily and involuntarily, and 27% of all cases ended in wage garnishment, an involuntary payment that is taken directly from a person's wages. Almost one-third of cases were dismissed, and failure to provide notice was the most common reason for dismissal. Cases were dismissed for lack of proper documentation only 4% of the time, and consumers mounted successful defenses in only 2% of cases.

5. Defendants are almost never represented in court. Over 98% of defendants did not have representation by an attorney. In the small number of cases where defendants had attorneys, the case was dismissed 100% of the time. When consumers represented themselves, their cases were dismissed 70% of the time, a worse outcome than for those who were represented by attorneys, but a better outcome than for those who never appeared in court.

6. Top debt collectors may have seized over \$700 million between 2012 and 2017 through garnishment.

With 27.3% of all cases ending in garnishment (or approximately 117,000 cases over the study period) and an average judgment amount of \$5,925, the top debt collectors stand to seize over \$700 million in the top 10 most populous counties alone.

7. Debt buyers continue to win cases without sufficient documentation. A majority of cases (61%) were filed without the minimum documentary evidence required by statute. Furthermore, the evidence provided in some cases was insufficient to establish proof of debt. Almost one in four default judgments were granted in cases where the minimum required documentation was not provided, suggesting that evidentiary requirements were not reliably enforced even for cases subject to the CFDBPA. Required documentation was less likely to be filed when cases were processed by clerks of court.

8. Documentary evidence is insufficient to establish the validity and ownership of debt. Although many cases were filed without evidence tying the current person to the correct debt in the correct amount, dismissals due to insufficient documentation are uncommon, representing only 4% of dismissals. Many cases end in default judgment despite their lack of documentation: for cases that were subject to the CFDBPA, almost 25% of all default judgments were for cases lacking legally required documentation.

9. Court clerks play an outsized and questionable role in determining case outcomes. Many cases were adjudicated by court clerks and assistant clerks even though clerks are not trained to make legal judgments. In rare cases, judges intervened to hold plaintiffs to higher proof of debt standards, but clerks decided at least 30% of all cases. In these cases, almost 80% resulted in default judgments for the plaintiff, compared to a rate of 65% for all cases.

Lastly, this report provides policy recommendations that highlight the need for thoughtful and thorough implementation and enforcement efforts by the courts themselves.

Key Recommendations Include:

- **Enforce existing documentation requirements.** Debt buyers should be prohibited from bringing lawsuits against consumers unless, at a minimum, they meet the “proof of debt” standard that the CFDBPA sets out. Courts should stringently enforce these standards, especially with respect to documentation that the CFDBPA requires of debt buyers prior to entering default judgment against consumers. To the extent that courts are not aware of the legal requirements, clerks and judges may benefit from more outreach, education, and/or guidance from the Judicial Council, the policymaking body of California’s state court system. A checklist of applicable civil procedures, for instance, could help clerks make basic determinations about whether cases provide a minimum of required evidence without encroaching upon the role of judges.
- **Strengthen existing state law with respect to required documentation to establish proof of debt.** To the extent that some debt buyers are complying with the documentation requirements of the CFDBPA on its face, there is evidence that the legal requirements are not strong enough to protect against the wrong consumer being sued for the wrong amount. “Proof of debt” must be established through detailed information and original account-level documentation about the consumer and the debt. The documentation requirements could also be strengthened by requiring that debt buyers disclose key documents automatically at the start of litigation.
- **Share debt collection case information publicly online.** The Judicial Council could share more debt collection case information with the public in a centralized system accessible online to better understand the debt collection litigation landscape and what reforms are needed to protect consumers from abusive

or unfair practices and ensure that debt buyers adhere to state law. Increased transparency in case data would, in particular, better protect consumers of color who have been shown in national and state studies elsewhere to be disproportionately impacted by debt collection.

- Discourage debt buyers from acting as “lawsuit factories” by holding them accountable through existing enforcement mechanisms if they initiate unwarranted legal actions. Courts should not be entering default judgments against consumers in cases where debt buyers bring unsubstantiated legal actions. Moreover, because of the harms that collections lawsuits inflict, Attorney General Xavier Becerra and private bar attorneys should pursue monetary penalties against debt buyers if they pursue collection actions in court without first meeting the “proof of debt” standard as per the CFDBPA.

Background

Over the past 50 years, wage stagnation, as well as already high and rising housing, health care, and education costs have dramatically increased debt loads for the average family.⁴ Moreover, recovery from the Great Recession has been uneven. Data show that families of color, Americans born after 1970, and households earning less than \$60,000 annually are the least likely to have recovered the wealth they lost in the financial crisis.⁵ And now, the COVID-19 health and economic crisis has laid bare existing inequities and will perpetuate these families' economic struggles. Before the crisis, many lower-income families had little to no margin for an unexpected expense and were just one financial shock away from the risk of eviction or homelessness. The pandemic is that financial shock to many lower-income families. Massive unemployment and lost wages are also worsening the affordable housing crisis, with a particularly harsh impact on renter households, which are more likely to be people of color. These impacts will worsen over time, as immediate income shortfalls result in missed or late bill payments, adding late fees and related penalties to swelling debt burdens and increasing the chance of exposure to debt collectors and debt buyers.

Due to this context of rising inequality and a related rise in consumer debt, there has been substantial growth in the collection industry in recent decades. A subset of the collection industry, debt buying, emerged in the wake of this growth in consumer debt. After a debt has gone unpaid for several months (120–180 days), it is often sold as a part of a larger portfolio of delinquent debts to a third-party collector for pennies on the dollar.⁶ Despite being sold at a significant discount, it is legal to collect the full balance of the original debt plus interest, fees, and other collection costs. Debt buyers purchase these portfolios in hopes that they can collect on them through phone calls, mail, digital communications, or legal collections actions.

Debt buyers rely on litigation to collect on their portfolios, but often fail to provide sufficient evidence linking the debt to the consumer or establishing their ownership of the debt.^{7,8} Sometimes these portfolios are out of date, leading some collectors to go after time-barred debts, or very old debts for which the time to sue has expired. Other collectors go after fake debts, knowingly and unknowingly, based on out-of-date spreadsheets, data purchased from lead generators, or even duplicates of old debts that were sold to multiple purchasers. In some cases, these spreadsheets are even stolen.⁹ The 2014 book *Bad Paper: Inside the Secret World of Debt Collectors* profiles debt buyers and the sometimes-seedy transactions that move portfolios from one collector to another. One debt buyer profiled in that book summarized the debt buying world as “the Wild West. You’re buying and selling Excel files, and everybody—even the very best—gets burned.”¹⁰

This lack of sufficient documentation makes it difficult to prove that debts are actually owed in court, and prior research establishes that there are bad actors in the space—both sham collectors and legitimate businesses engaging in illegal behavior. Despite this persistent issue, litigation filed by debt buyers is successful in a vast majority of cases.¹¹ This legal landscape, where debt buyers go unchallenged by consumers in the vast majority of cases, is tilted heavily in favor of debt buyers.¹² According to recent 10-K filings by large debt buyers such as Portfolio Recovery Associates (PRA) and Encore, legal collections are a uniquely profitable way to collect on these debts due to the involuntary payment authority courts provide by way of wage garnishment, and the fact that legal fees are paid only on a contingent basis to contracting debt collection law firms.¹³ In 2013, the industry represented nearly 90 million consumer accounts and hundreds of millions of dollars in profit per year.¹⁴ In 2018, for example, PRA Group, Inc., the parent company of Portfolio Recovery Associates, posted a total net income of almost \$76 million, and Encore Capital Group, Inc. declared a net income of over \$83 million.¹⁵

Several research papers published since 2015 have shown how these national problems manifest at the state level: studies in Maryland, Texas, New York, Oregon, Washington, and Colorado have established that most cases tend to result in default judgments, almost all defendants lack representation, and many cases end in garnishments or liens that can be severe and long-lasting.¹⁶

National Impact on Communities of Color

Prior research establishes that people of color are more likely to be pursued by debt buyers due to racial income and wealth divides, as well as historical discrimination in financial services, housing, and employment.¹⁷ These factors combine to create a situation where families of color have fewer financial resources to fall back on when struggling with debt. A 2017 report from the Consumer Financial Protection Bureau established that while 29% of white people reported having been contacted about a debt in collection, 44% of people of color reported the same.¹⁸ In 2015, ProPublica analyzed five years of court judgments from three metropolitan areas—St. Louis, Chicago, and Newark—and showed that, even when controlling for income, the rate of court judgments was twice as high in predominately Black neighborhoods as it was in predominately white neighborhoods.¹⁹ According to ProPublica, the highest rates of garnishment are among workers who earn between \$25,000 and \$40,000, but the numbers are nearly as high for those who earn even less.²⁰ This study found that “In Newark, for example, the rate of judgments was about twice as high among middle-income, mostly [B]lack neighborhoods than among the middle-income, mostly white ones.”²¹ Other legal aid and community development organizations have examined debt collection practices and how they negatively impact low-wealth communities and communities of color, corroborating prior research around disproportionate filings in neighborhoods of color in other geographies.²²



The highest rates of garnishment are among workers who earn between \$25,000 and \$40,000, but the numbers are nearly as high for those who earn even less.

-ProPublica, 2015

Research in California found similar patterns, though census tracts are more likely to be heterogeneous by race and ethnicity than in many other states, making racial and ethnic targeting difficult to observe with limited data.²³ California’s Office of Court Research reported in 2012 that, of cases filed in small claims courts in three counties (San Francisco, Alameda, and Sacramento), debt collection cases represent 27% of all cases filed against Spanish speakers. By contrast, only 16% of cases filed against English speakers were debt collection cases—a difference of 11 percentage points.²⁴ Spanish language speakers face substantially greater challenges in bringing their cases to court even apart from the language barrier. On average, Spanish language speakers reported lower levels of education, lower incomes, and less prior experience in small claims court.²⁵ Other research has established that while 19% of Californians in white communities have debt in collections, 31% of people in communities of color do (defined as zip codes where at least 60% of the population is white or of color, respectively)—a difference of 12 percentage points.²⁶



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-Judicial Council of California Office of Court Research, 2012

A substantial body of evidence shows how harmful debt and abusive debt collection practices can be for entire communities, impacting individual and public health. Research has connected debt and abusive debt collection practices to negative health outcomes including anxiety, depression, high blood pressure, and even mortality, and to negative impacts on family life and job performance.²⁷

Federal Protections Against Abusive Debt Collection Practices

Nationally, debt collection is governed by the federal Fair Debt Collection Practices Act (FDCPA), passed in 1977, which prohibits deceptive, unfair, and harassing debt collection activity and applies to all communications by debt collectors and debt buyers. The FDCPA limits debt collector communications with debtors and third parties, and prohibits debt collectors from using “any false, deceptive, or misleading representations in connection with the collection of any debt.” The FDCPA requires that debt collectors send the consumer a written “validation notice”—barring certain circumstances— that contains information about the amount of the debt, the name of the creditor, how to dispute the debt, and how the consumer can obtain information about the original creditor.²⁸ Congress created this requirement in response to “the recurring problem of debt collectors dunning the wrong person or attempting to collect debts which the consumer has already paid.”²⁹

National Enforcement Actions

There have been numerous enforcement actions at the federal level highlighting problematic behaviors by debt collectors and their attorneys. These actions, along with prior research, have established patterns of illegal activity. In many cases, debt collection law firms file lawsuits without ever examining account-level data, but their signatures still appear on documents. This practice is known as “robo-signing,” or “the pattern of signing and filing affidavits in state courts against consumers in large volumes without ever verifying the information presented in them.”³⁰ In other examples, debt collection law firms do not provide adequate documentation to support their claims. Other enforcement actions have been brought against collection firms for contacting consumers and implying that an attorney has reviewed the account for accuracy, even when an attorney has not actually been “meaningfully involved” in the suit. Recent actions include:

- **2015 CFPB action against Encore Capital Group and Portfolio Recovery Associates:**³¹ Encore Capital Group, the parent company of Midland Funding, was fined \$10 million and Portfolio Recovery Associates was fined \$8 million. Under the terms of the consent orders, the companies were barred from filing lawsuits to enforce debts unless they possess specific documents and information showing the debt is accurate and enforceable.
- **2015 CFPB and state attorneys general action against JPMorgan Chase:**³² In this case, as many as 150,000 cases were based on “robo-signed” affidavits made with little or no review of pertinent documents, sometimes resulting in “judgments against consumers for incorrect amounts.” The Bureau ultimately determined that “Chase systematically failed to prepare, review, and execute truthful statements as required by law.” These cases were sometimes related to debts that had already been paid or debts that had been discharged in bankruptcy. JPMorgan Chase admitted that “a significant number of its own 538,000 collections suits filed between 2009 and 2013 were questionable or seriously flawed.”³³ In this case, JPMorgan Chase was ordered to pay “at least \$50 million in consumer refunds, \$136 million in penalties and payments to the CFPB and states, and a \$30 million penalty to the Office of the Comptroller of the Currency (OCC) in a related action.

- [2016 CFPB enforcement action against Pressler & Pressler, LLP:](#)³⁴ In this case, the CFPB consent order maintains that defendants cannot bring a suit unless a firm attorney has reviewed certain original account-level documentation. The consent order found that the firm violated FDCPA's prohibition against using unfair and unconscionable practices in debt collection when it "unfairly collected or attempted to collect a debt by in many instances relying exclusively on summary data provided by clients without having reviewed supporting documentation underlying the facts the [f]irm asserts in complaints." The firm and named partners were ordered to pay \$1 million.
- [2016 CFPB actions against Citibank:](#)³⁵ The CFPB took two separate enforcement actions against Citibank for "illegal debt sales and debt collection practices," including falsified court documents. The consent order clarified that Citibank must "accurately document the debt it sells" by providing the credit agreement and recent account statements and "stop selling debt it cannot verify" through documentation. In this case, the CFPB ordered Citibank to refund \$11 million to consumers.
- [2018 state attorneys general settlement with Encore Capital Group:](#)³⁶ In December 2018, attorneys general from 41 states (not including California) and the District of Columbia announced a \$6 million settlement with Encore Capital Group and its subsidiaries, including Midland Funding LLC, for "robo-signing" thousands of affidavits without verifying the validity of debts or checking whether the information contained in the complaints was accurate.
- [2019 CFPB complaint against Forster & Garbus, LLP:](#)³⁷ The CFPB filed a complaint against Forster & Garbus, LLP, a debt collection law firm filing cases on behalf of debt buyers, including Asset Acceptance, LLC and Midland Funding, LLC, both subsidiaries of Encore Capital Group. The CFPB complaint was filed "to address the firm's practice of filing collection lawsuits against consumers without meaningful attorney involvement." The Bureau is seeking an injunction against the firm, damages and redress to consumers, "disgorgement of ill-gotten gains, and the imposition of a civil money penalty."³⁸
- [2020 CFPB complaint against Encore Capital Group and its subsidiaries, Midland Funding, Midland Credit Management, and Asset Acceptance Capital Corp.:](#)³⁹ The CFPB filed a complaint in the Southern District of California against the companies that are headquartered in San Diego, California, alleging that they violated the terms of the 2015 consent order between the parties, which prohibited Encore, among other things, from suing customers without possessing basic documentation, such as a complete transactional history of the debt. The complaint asserts that "Encore filed at least hundreds of lawsuits without possessing [this documentation]" in violation of the 2015 order. The case is ongoing.

A 2019 investigation revealed that, under the Trump administration, "enforcement activity at the CFPB has declined to levels that are either nonexistent or significantly below that of the prior Administration," and adds specifically that "the number of public enforcement cases announced in 2018 declined by 80% from the Bureau's peak productivity in 2015." Further the investigation found that "The average amount of monetary relief per case awarded to victims of illegal consumer financial practices has declined by approximately 96%."⁴⁰

Currently, protective federal laws are at risk of being weakened. For example, in May 2019, the CFPB issued a proposed rule available for public comment amending the FDCPA.⁴¹ The proposal sought, among many other items, to provide a safe harbor to collections attorneys if they provide very minimal review of original account-level information before collections firms initiate litigation.⁴² Moreover, proposed changes to the Practice of Law Technical Clarification Act of 2018 would have walked back some of the protections that the FDCPA affords to consumers.⁴³ This amendment to the FDCPA would not have allowed individuals to sue debt collection agencies for damages. Over 20 state attorneys general, including California's Xavier Becerra, alongside Attorney General Maura Healey of Massachusetts, signed a letter opposing the change. The bill was reported out of the House Committee on Financial Services, but no further action was taken, and it ultimately died.⁴⁴

California Protections: Rosenthal Act, the Fair Debt Buying Practices Act, and the Debt Collection Licensing Act

In California, state laws regarding fair debt collection have been strengthened in recent years. Although not a recent law, it is worth noting that the Rosenthal Fair Debt Collection Practices Act (Rosenthal Act) applies to all debt buyer and debt collector communication, and prohibits similar behavior to the federal FDCPA—unfair, deceptive, and abusive practices (Figure 1).⁴⁵ The Rosenthal Act added original creditors to the list of actors subject to basic fair debt collection practices regulations, which improved upon the federal FDCPA that does not apply to original creditors.⁴⁶ A 2018 law (AB 1526) amended the California Code of Civil Procedure by establishing that debt collectors cannot file a claim in court or initiate any other legal action, including arbitration, if the statute of limitations has expired.⁴⁷ Assembly Bill 1526 additionally amended the Rosenthal Act to require that debt collectors provide certain disclosures for time-barred debt.⁴⁸ In California, the statute of limitations for debt collection actions is four years, which means that four years after the debt becomes past due (usually 30 days after the last missed payment) a consumer has a complete defense to the lawsuit.⁴⁹

Finally, in September 2020, Governor Gavin Newsom signed into law SB 908, the Debt Collection Licensing Act, which makes California the thirty-fifth state plus the District of Columbia to license and oversee debt collectors operating within the state. The Act goes into effect on January 1, 2022. Without this law, California otherwise had no mechanism for capturing how many debt collectors operate in the state, their assets, what the volume of debt is that they are collecting from consumers, what qualification standards are required of those who manage thousands of accounts, and more. Critically, under the Debt Collection Licensing Act, the Department of Business Oversight (or DBO, California's financial regulator), is authorized to issue orders and claims for relief if collectors—including original creditor financial institutions—violate either the Rosenthal Act, or the CFDBPA.

Figure 1: California State Laws Increase Consumer Protections

	Federal	California		
	Federal Fair Debt Collection Practices Act (FDCPA)	Rosenthal Act	California Fair Debt Buying Practices Act (CFDBPA)	Debt Collection Licensing Act
Applies to Creditors	No ^a	Yes	No	Yes
Applies to Collection Agencies and Collections Attorneys	Yes	Yes	No	Yes
Applies to Debt Buyers	Yes	Yes	Yes	Yes
Requires Proof of Debt Documentation	No	No	Yes	Yes ^c
Prohibits Collection of Time-Barred Debt	No	Yes ^b	Yes	Yes ^d

Source: CRL analysis of the legal consumer protection landscape in the state of California.

- ^a Does not apply to creditors save very narrow exemptions for third-party creditors.
- ^b AB 1526 (2018) amended California Civil Code 337 which codifies the 4-year statute of limitations for lawsuits alleging breach of contract and/or book account claims, and added that a debt collector may not initiate a lawsuit alleging these claims if the statute of limitations has expired.
- ^c SB 908 (2020) authorizes DBO to use its authority to issue orders and claims for relief if a collector (including a financial institution) violates the Rosenthal Act, which requires proof of debt documentation.
- ^d SB 908 (2020) authorizes DBO to use its authority to issue orders and claims for relief if a collector (including a financial institution) violates the Rosenthal Act, which includes a prohibition on the collection of time-barred debt.

As debt buyers in the United States continue to buy and collect outstanding consumer debts, and in the absence of action at the federal level to strengthen consumer protections, state lawmakers and attorneys general are looking for ways to protect consumers in debt collection litigation. Recent legislation in California requires that cases be filed within the statute of limitations, that they be filed with adequate documentation tying the consumer to the debt, and that they establish that the debt collector does, in fact, own the debt.



Passed in 2013, California's Fair Debt Buying Practices Act (CFDBPA) increases the amount of documentation required for debt buyers to pursue cases.

Passed in 2013, California's Fair Debt Buying Practices Act (CFDBPA) increases the amount of documentation required for debt buyers to pursue cases.⁵⁰ The CFDBPA applies to all debts that were sold or resold after January 1, 2014.⁵¹ Then-Attorney General Kamala Harris, alongside California State Senators Mark Leno and Luis Correa, introduced this legislation in order to "provide better documentation of alleged debts to consumers who are contacted by debt collectors, and to reduce the occurrence of debt collection activities directed toward time-barred debt, or to the wrong person, or both. [The CFDBPA] does so by establishing clear, enforceable standards governing the documentation required to support the collection of purchased delinquent or charged-off debt, particularly in collection litigation."⁵² Moreover, the CFDBPA specifies that a debt buyer shall not bring a claim or initiate any other legal proceeding to collect a debt if the statute of limitations has expired.⁵³

Before sending a demand letter or filing a court case to collect a debt subject to the CFDBPA, all debt buyers are required to provide documentation establishing a chain of ownership of the debt, as well as the amount and age of the debt, the original creditor, and the identity of the debtor. More specifically, the debt buyer must provide documentation establishing:

1. That the debt buyer is the sole owner of the debt at issue or otherwise has authority to assert the rights of all owners of the debt;
2. The debt balance at charge-off and an explanation of the amount, nature, and reason for all post-charge-off interest and fees, if any, imposed by the charge-off creditor or any subsequent purchasers of the debt;
3. The date of default or the date of last payment by the debtor;
4. The name and an address of the charge-off creditor at the time of charge off and the charge-off creditor's account number associated with the debt;
5. The name and last known address of the debtor as they appeared in the charge-off creditor's records prior to the sale of the debt; and
6. The names and addresses of all persons or entities that purchased the debt after charge-off, including the debt buyer making the written statement.⁵⁴

Furthermore, before seeking default judgment, plaintiffs must also submit business records and a copy of the contract or other document evidencing the consumer's agreement to the debt, and both of these documents must be authenticated through sworn declarations.⁵⁵

Methodology

To understand consumer experiences with debt collection in California, this report examines primary source data, including consumer complaints filed with the CFPB, summary data provided by superior courts in the top 10 most populous counties in California, and a dataset and an associated random sample of cases filed by larger debt buyers in the county superior courts of the 10 largest counties. These sources are used to identify debt buyer activity and litigation behaviors in California's courts.

Complaint Data

The first dataset used in this report is information about debt collection and other product complaints filed by California consumers with the CFPB between January 1, 2014 and December 31, 2018.⁵⁶ CRL analyzed these complaints and the associated narratives to determine common concerns with debt collection practices in California.

Superior Court Metadata

The second dataset used for this report consisted of county-level superior court metadata detailing collection cases filed by the top 20 most-filing debt buyers between 2012 and 2017. Each data point included the case name, the year, and the county in which the case was filed.

These data were collected in a three-step process. In the first step, records of all collection cases were collected from the five counties with electronic access to court records: Fresno, Orange, Alameda, San Diego, and Santa Clara (this included 287,710 cases). Next, plaintiff information from the collection cases in these five counties was used to identify cases filed by debt buyers based on company records from the Receivables Management Association International (RMAI) membership listings and online review of company websites. This step resulted in a list of the top 20 debt buyers in the five counties listed by number of cases filed (Figure 2).

Figure 2. Debt Buyers Filed Nearly Half of all Collection Cases in Five Largest California Counties, 2012–2017

Debt Buyer Plaintiff	Count	Percent
Portfolio Recovery Associates, LLC	37,695	13.1%
Midland Funding, LLC	30,351	10.5%
CACH, LLC	21,471	7.5%
Cavalry SPV I, LLC	13,018	4.5%
Asset Acceptance, LLC	6,392	2.2%
LVNV Funding LLC	4,729	1.6%
Unifund CCR, LLC	3,794	1.3%
Equable Ascent Financial, LLC	2,529	0.9%
Persolve, LLC	1,977	0.7%
MCT Group	1,473	0.5%
Main Street Acquisition	1,072	0.4%
Jefferson Capital Systems, LLC	1,042	0.4%
GCFE, Inc.	1,005	0.3%
BH Financial Services, LLC	927	0.3%
Resurgence Capital, LLC	890	0.3%
Absolute Resolutions V LLC	679	0.2%
Velocity Investments, LLC	665	0.2%
Razor Capital, LLC	585	0.2%
Sunlan LDP, LLC	546	0.2%
Crown Asset Management, LLC	522	0.2%
Debt Buyer Total	131,362	45.7%
All Collection Cases	287,710	100.0%

Note: CRL analysis of collections cases filed between 1/1/2012 and 12/31/2017 in Fresno, Orange, San Diego, Santa Clara, and Alameda Counties. Data provided by county superior courts. Due to rounding, numbers may not add up precisely to the totals provided.

In the third and final step, court records including only cases filed by the top 20 debt buyers were collected in the top 10 most populous counties. In the five counties that provided data for all collections cases, the cases filed by the top debt buyers were isolated, and the other data was set aside. In the five counties that did not provide full lists of collections cases (Los Angeles, Sacramento, Contra Costa, Riverside, and San Bernardino), online court records were retrievable only by searching for the name of the plaintiff. Thus, in the third step, the list of the top 20 debt buyers was used to search court cases involving the top 20 debt buyers in the remaining counties filed between 2012 and 2017. This process resulted in a list of the 437,644 collection cases filed during the study period by the 20 largest debt buyers by case volume in the 10 largest counties in California by population between January 1, 2012 and December 31, 2017 (see Appendix A for more information).

Collection Case Documentation

To collect more detailed case information, a random sample of 400 cases was drawn from the 437,644 collection cases filed. This third dataset consisted of a sample of 400 collection cases from county courts in the top 10 most populous California counties. Case data included documents filed by plaintiffs including for most cases: a complaint, proof of service or a declaration of non-service, supporting documentation and declarations, and requests to enter default or dismissal. For some cases, documents include court orders, writs of execution, answers from defendants, and other documents.

Once the sample set was determined, case documents were collected from October 2018 through May 2019 using online court case access systems where available and in-person copy requests in cases where documents had not been digitized.

Of the 400 cases in the sample, full case documents were available for 330 cases, with partial documents for the other 70 cases. Of the cases with partial documentation, 45 were ordered destroyed by the courts (all of these cases were dismissed, both with and without prejudice), and 25 cases were either lost by the court records system, missing documents, or were otherwise irretrievable (see Appendix A). Every case with partial documentation had at least a digital overview that included the file date, the names of the parties involved, the case type, a service filing date, and an outcome type. In some cases, these overviews also included judgment totals, court costs, attorney costs, and whether a writ was executed to collect on the judgment through garnishment. The remaining 16 cases in the sample were ongoing as of May 2019.

Analysis

Case documents were coded for filing, process, and outcome information. Key variables include the following (for a full list of variables, see Appendix A):

Representation: A defendant was determined to be represented in the case if the person secured counsel at any point during the case. A defendant was coded as unrepresented if they represented themselves *in pro per* and in cases where no attorney was listed in case documentation; however, some people listed as *in pro per* may have received legal assistance at a limited scope representation clinic through a legal aid office, courthouse, or elsewhere.

Determination of CFDBPA Applicability: The CFDBPA applies only to debts *purchased* on or after January 1, 2014, not simply on cases *filed* on or after that date. Cases filed prior to January 1, 2014 were not subject to the CFDBPA, but many cases filed after that date were not subject either because they dealt with debts purchased prior to 2014.

Case purchase dates were determined based on proof of sale documentation establishing ownership of the debt or, for cases filed prior to January 1, 2014, by file date. Using this method, 239 collection cases in the sample were related to debt purchased prior to that date and 114 cases were related to debts purchased after that date. The final 47 cases had no documentation indicating when the debt was purchased, a practice that has been identified by advocates as a common tactic to avoid scrutiny under the CFDBPA (Figure 3).⁵⁷

For cases containing no documentation establishing ownership of the debt and where the case was filed after January 1, 2014, the purchase date was estimated by assuming that all cases filed after January 1, 2016 were purchased after January 1, 2014. This determination was a conservative estimate based on the average number of days from charge-off to filing (638 days) based on cases in the sample where this information was available. With this assumption, sample data had 282 cases based on debts purchased prior to January 1, 2014 that were not subject to the CFDBPA, and 118 cases based on debts purchased after that date and likely subject to the CFDBPA (Figure 3).

Figure 3: Two in Three Cases Not Subject to the CFDBPA

	Count	Percent	Estimate
Not Subject to the CFDBPA	282	70.5%	308,539
Based on Documentation	239	-	-
Estimated Based on Filing Date	43	-	-
Subject to the CFDBPA	118	29.5%	129,105
Based on Documentation	114	-	-
Estimated Based on Filing Date	4	-	-
Total	400	100.0%	437,644

Source: CRL analysis of cases filed by top debt buyers between January 1, 2012 and December 31, 2017 in California Superior Courts. Estimation of total cases was calculated by multiplying the total number of cases in the full dataset (437,644) by the estimated percent subject to the CFDBPA.

Review by Court Clerks: Cases were considered to be decided by court clerks, rather than judges, only if a judgment document specifically listed the name of a clerk. This is a conservative estimate and likely undercounts the number of cases decided by clerks alone, without judicial review.

Outcome Types and Subtypes: Cases were coded by outcome type (e.g., default judgment, dismissal without prejudice) and the outcome subtype (e.g., settlement or non-service).

For outcomes such as “successful defense” or “rejected due to lack of documentation,” cases were only coded in these categories if the case documentation specifically referred to the reasoning for a dismissal. If there was an indication that a case had been rejected for lack of evidence, but no court document referred specifically to the reason for the dismissal, the subtype was coded as “unknown.” This may lead to an understatement of outcomes such as “successful defense,” “settlement,” and “rejected due to a lack of documentation.”

Judgment Amount: Total judgment amount was captured and, when documentation was available, broken down by principal, interest, attorney fees, and court costs.

Geography: Where case documentation allowed, a defendant’s street address and zip code were captured. For the geographic analysis, each available address was geocoded to provide the complete geographic location, including census tract. Neighborhoods of color were identified where 60% or more of the population in a given census tract was not “white, non-Hispanic” according to the U.S. Census Bureau. In California, census tracts are more likely to be heterogeneous by race and ethnicity than in many other states, making racial and ethnic targeting difficult to observe.⁵⁸

Documentation of Debt: To satisfy the documentation requirements under the CFDBPA, debt buyers routinely attach the following documents: (1) a bank statement, (2) a sworn affidavit, and (3) proof of ownership of the debt through a bill of sale. Thus, case documentation was determined based on the presence of these three documents. Determinations about the quality of documentation were not attempted: The coding process did not attempt to match principal amounts on the bank statements to the amounts referenced in the complaints, for instance. This likely overestimates the number of cases with sufficient documentation because it makes no determination of the accuracy of the documentation filed.

Fiscal Year: The total number of collection cases filed in each county by fiscal year (defined as July 1 to June 30) was determined using the annual California Court Statistics Report. To determine filing date by fiscal year, cases were recoded based on a July 1 to June 30 fiscal year. For the two counties, Los Angeles and San Bernardino, where electronically-accessed case records included a calendar year but not a filing month or day, the monthly case distribution from the sample set was used to extrapolate the number of cases filed each fiscal year.

Finding 1: Consumer Complaints Highlight Debt Collection as a Major Problem in California

Background

Complaints to CFPB help identify the top consumer protection problems nationwide over time, and debt remains one of the top reasons that people contact the Bureau with financial concerns. Each year, consumers submit thousands of complaints about debt collection and often provide reasons and even narratives to explain their complaints. These complaints have “[historically,] helped to inform and prioritize areas of focus for [CFPB] enforcement activity.”⁵⁹ This analysis reveals that debt collection remained a top subject of complaints in California between 2014 and 2017, and that these complaints highlight validation and documentation concerns, often with consumers alleging that the debt they are being sued for is not theirs or that the debt has already been paid.

The CFPB’s complaint database is a limited source as many complaints simply go unreported, and the CFPB is not the only collector of complaint data. Moreover, research has shown that “consumers with socioeconomic challenges are less likely to complain about illegal activity or poor treatment” and may not even know that the CFPB exists.⁶⁰ Nevertheless, the database is a critical piece of public information for the CFPB and for consumer protection advocates.

Analysis

While the share of debt collection complaints fell relative to the total number of complaints between January 1, 2014 and December 31, 2018, the number of complaints submitted rose in numerical terms, both in California and nationally (Figure 4). Between January 1, 2014 and December 31, 2018, California consumers filed 136,359 complaints about products ranging from mortgages to credit cards to checking accounts to debt collection.⁶¹ Complaints about debt collection totaled 27,510, or 20.2%, of these complaints (Figure 4).⁶² Only complaints about credit reporting exceeded complaints about debt collection, with debt collection complaints exceeding complaints about mortgage issues, credit cards, and bank services (Figure 5).

Figure 4. Consumers Submit Thousands of Complaints about Debt Collection Each Year

	National			California		
	Total Complaints	Debt Collection Complaints	Debt Collection Share	Total Complaints	Debt Collection Complaints	Debt Collection Share
2014	153,044	39,140	25.6%	21,443	5,223	24.4%
2015	168,475	39,724	23.6%	23,818	5,288	22.2%
2016	191,470	40,468	21.1%	26,884	5,321	19.8%
2017	242,967	47,954	19.7%	31,613	6,042	19.1%
2018	257,333	51,192	19.9%	32,601	5,636	17.3%
Total	1,013,289	218,478	21.6%	136,359	27,510	20.2%

Source: CRL analysis of complaints submitted to the CFPB about debt collection between January 1, 2014 and December 31, 2018. Accessed December 30, 2019. Share calculated by dividing the total number of complaints about debt collection in a given year by the total number of complaints in the same year.

Figure 5. Consumer Complaint Categories

	National		California	
	Count	Percent	Count	Percent
Credit Reporting	309,205	30.5%	38,346	28.1%
Debt Collection	218,478	21.6%	27,510	20.2%
Mortgage	181,925	18.0%	29,146	21.4%
Credit Card	99,125	9.8%	14,386	10.6%
Bank Account or Service	94,580	9.3%	13,682	10.0%
All Other Products	109,976	10.9%	13,289	9.7%
Total	1,013,289	100.0%	136,359	100.0%

Source: CRL analysis of complaints submitted to the CFPB between January 1, 2014 and December 31, 2018. Accessed December 30, 2019. "Credit Reporting" category is a combination of "credit reporting, credit repair services, or other personal consumer reports" with "credit reporting"; "Bank Account or Service" category is a combination of "checking or savings account" with "bank account or service"; and "Credit Card" category is a combination of "credit card or prepaid card" with "credit card."

Many of the top reasons given for consumer complaints involve inadequate or incorrect documentation from the collector (Figure 6). Consumers often report that they do not owe the debt, that the debt is not verified, that the debt was already paid, or that they are being sued for the wrong amount. The substantial number of complaints suggest that California debt collectors are not reliably adhering to documentation requirements, even after the passage of the CFDBPA.

Figure 6. Almost One in Four People Filing Complaints Allege the Debt Is Not Theirs⁶³

	Count	Percent
Debt Is Not Mine	6,668	24.2%
Not Given Enough Info to Verify Debt	4,477	16.3%
Debt Was Paid	3,031	11.0%
Attempted to Collect Wrong Amount	1,912	7.0%
Frequent or Repeated Calls	1,843	6.7%
All Other Reasons	9,579	34.8%
Total	27,510	100.0%

Source: CRL analysis of complaints submitted to the CFPB between January 1, 2014 and December 31, 2018. Accessed December 30, 2019. The CFPB does not publish every complaint that is filed, so the numbers in this figure likely undercount the total number of complaints. “All Other Reasons” category includes complaints with <5% representation.

In a recent review of a separate database of consumer complaints managed by the Federal Trade Commission (FTC) called the Consumer Sentinel Network (CSN), similar results were revealed.⁶⁴ In 2017 alone, almost 70,000 additional complaints were filed by Californians in the CSN about debt collection.⁶⁵ Additional information from the FTC’s Consumer Sentinel Network indicates that top reasons for complaints in that system include “makes false representation about debt” (27%), “calls after getting ‘stop calling’ notice” (27%), and “calls repeatedly” (25%).⁶⁶

Just over one in three (36.3%, or 49,557) consumers in California provided narratives as a part of their complaints to the CFPB between January 1, 2014 and December 31, 2018.⁶⁷ These narratives contain detailed information on the type of debt collection problem the consumer experienced. Many consumers mention that, when they requested proof of debt, they did not receive it from the debt collector (Figure 7).

Figure 7. “I still have not received any lawful, valid validation documents.”

Last XXXX XXXX, 2017, I wrote a letter to your company to request for debt validation documents to be sent to me pursuant to FDCPA. For some unknown reason, it has been more than 40 days since I sent you my request and I still have not received any lawful, valid validation documents. This is my last resort, have this issue fixed. I will not hesitate to get my legal counsel involved.

Source: Complaint filed against Portfolio Recovery Associates on November 16, 2017 by a California consumer. (Complaint ID: 2731417). “XXXX” represents complaint text redacted by the CFPB to protect consumer privacy.

Other consumers complain that they are being sued for debts that they have already paid back (Figure 8).

Figure 8. “I paid a debt back [and yet] they are filing a lawsuit against me.”

I paid a debt back to XXXX XXXX through Hunt and Henriques over a period of 5 years. I just received a letter stating they are filing a lawsuit against me. The original debt was XXXX according to my records, and I have paid that back, plus. On several occasions I asked for information on the original debt along with payment history. In 2016 I was given a very basic printout. I continued to make several payments until the balance was paid. I never received mail, or telephone calls from Hunt and Henriques until I just received a legal threat. I have phone records to prove they have not contacted me by phone, and I have lived at the same address for 16 years and this is the 1st mail I received from them since the basic printout in 2016. They never contacted me regarding any balance on the debt or otherwise. I believe this collection agency is being unethical and pursuing questionable tactics in regard to my account.

Source: Complaint filed against Hunt & Henriques on August 1, 2017 by a California consumer. (Complaint ID: 2592159). “XXXX” represents complaint text redacted by the CFPB to protect consumer privacy.

Other consumers complain that they are being sued for debts that they are not theirs. In one example, a California servicemember complains that they are being pursued for a debt they do not owe (Figure 9).

Figure 9. “We feel this is either a scam or they are seriously mistaken.”

XXXX XXXX XXXX began calling my husband demanding payment of {\$6500.00} on a supposed unpaid account. We never opened an account with this XXXX company and I told the gentlemen he was mistaken. We also immediately pulled a credit report and found no such collection on any of the reports. They have been calling my husband every week. We feel this is either a scam or they are seriously mistaken.

Source: Complaint filed against Encore Capital Group on August 8, 2017 by a California servicemember. (Complaint ID: 2647864). “XXXX” represents complaint text redacted by the CFPB to protect consumer privacy.

Discussion

The complaints submitted by consumers to the CFPB reveal that problems with documentation persist in California, even after the passage of the CFDBPA, and that further investigation and possible enforcement is necessary.

Finding 2: Collection Case Filings by Top Debt Buyers Declined after the Implementation of the CFDBPA, but Have Inched Upwards Since

Analysis

In order to understand whether and how the implementation of the California Fair Debt Buying Practices Act impacted the debt collection litigation landscape, it is important to examine the overall volume of cases filed in California by top debt buyers before and after the passage of the CFDBPA. This analysis shows that filings dropped after the passage of the CFDBPA in 2013 but have risen each year since 2015. However, this analysis does not draw a causal link between the passage of the CFDBPA and the filings volume.

Debt collection cases filed by the top 20 debt buyers declined from 2012 to 2015 (Figure 10). After the passage of the CFDBPA, case filings by top debt buyers in the most populous counties in California fell from a high of almost 120,000 in 2012 to a low of around 32,000 in 2015, but ticked up to almost 52,000 in 2017 (Figure 10). Local reporting in at least one of California's largest counties confirms that cases in that county have risen since 2015 and indicates that the trend continued in 2018 and 2019.⁶⁸ Additionally, information from public documents filed by debt buyers, such as a 10-K filed by Portfolio Recovery Associates' parent company, the PRA Group, in 2020 show year-over-year increases in revenue.⁶⁹

Figure 10. Collections Cases Filed by Top Debt Buyers Down Following CFDBPA Passage, but Trending Upwards



Source: CRL analysis of cases filed by top debt buyers between January 1, 2012 and December 31, 2017 in California Superior Courts.

Discussion

The relationship between filing volume and the CFDBPA is complicated. On the one hand, it appears that filings fell by thousands of cases in the years immediately following passage; on the other hand, filings quickly rose in the subsequent years, and filing volumes tend to be strongly influenced by macroeconomic factors. This analysis shows that, immediately following the implementation of the CFDBPA, the number of filings by the top 20 debt buyers compared to total civil caseload was more than cut in half but has steadily risen since 2015, likely due to both state and national factors.

The decline could indicate that the CFDBPA influenced debt buyers and prevented them from filing cases with scant evidence. However, the decline in filings between 2013 and 2015 likely reflects a national trend and not the passage of the CFDBPA in 2013: following the Great Recession, fewer debt portfolios were sold, as default rates declined.⁷⁰ As Jake Halpern wrote in his 2014 book, *Bad Paper, Dodd-Frank and the creation of the CFPB created an environment in which banks feared “their new regulators [and became] more cautious about who they sold their paper to.”*⁷¹ It is also possible that the CFDBPA reduced case filings by incenting debt collectors to file fewer cases. Research from Indiana, where a 2011 Supreme Court case amended court rules to require sworn affidavits in debt collection cases, found similar evidence pointing to a decline in filings after court rules changes, and concluded that “there is at least a suggestion that [debt buyers were] having difficulty complying with the law” in the early days of implementation.⁷²

In either case, case filings crept upwards in the years following 2015. This trend could reflect increased confidence on the part of debt collectors, who assumed that a lack of enforcement would protect them from strict documentation requirements. This trend also persists nationally, however, indicating that macroeconomic factors also play a role in increased filings.⁷³

Finding 3: Top Court Debt Collectors Process an Enormous Volume of Cases, Suggesting “Robo-Signing” and a Debt-Mill Model

Background

Statements by large court debt collectors, enforcement actions by the CFPB and state attorneys general, prior research, local reporting, and California court reports indicate that debt collection litigation is a highly profitable debt collection strategy that relies on a high volume of case filings. This analysis corroborates these findings and reveals that the top court debt collectors, including in-house counsel for large debt buyers and specialized debt collection law firms, are filing almost two in three collections cases filed in the most populous counties. It also reveals that the high volume may indicate a lack of meaningful attorney review. The top eight attorneys alone filed one in three cases in the sample, suggesting that this small group may have been responsible for almost 180,000 case filings during the study period.

Recent enforcement actions by the CFPB and state attorneys general highlight problematic behaviors by debt collectors and their attorneys, who seem to cut corners using automation to file as many cases as possible. These actions have involved, since 2015, Encore Capital Group (parent of Midland Funding), Portfolio Recovery Associates, Citibank, JPMorgan Chase, and others. These enforcement actions have established that many debt collection law groups regularly file lawsuits without ever examining account-level data. Attorney signatures still appear on documents as a result of “robo-signing,” or “the pattern of

signing and filing affidavits in state courts against consumers in large volumes without ever verifying the information presented in them.”⁷⁴ For example, in a 2016 CFPB enforcement action that highlighted robo-signing by attorneys at one debt collection law firm, the Bureau found that the “signing attorney generally spent less than a few minutes, sometimes less than 30 seconds, reviewing each summons and complaint before approving the filings and directing that a lawsuit be initiated.”⁷⁵ The same complaint quoted one former attorney, who stated that he did not know “whether the information supplied by the firm’s clients was accurate, and he considered the issue outside of his purview.”⁷⁶ A 2019 RealClearInvestigations piece, “Return of the Robo-Signing Debt Automatons,” argues that “Robo-signing is seen as an especially pernicious practice because it is so intimidating: an official-looking letter from a powerful company threatening to take legal action against people who may not have the means to defend themselves, even when the claim against them is wrong.”⁷⁷

Analysis of annual 10-K filings to the Securities and Exchange Commission (SEC) by large debt buyers confirms that debt buyers rely on a high volume of cases going through local courts.⁷⁸ Debt collectors self-describe as a volume industry: Encore Capital Group, parent of Midland Funding, for instance, stated in their 2018 10-K filing that they “generate a significant portion of [their] revenue by collecting on judgments that are granted by courts in lawsuits filed against consumers.”⁷⁹ Similarly, PRA’s 2019 10-K states that an “important component of our collections effort involves our legal recovery operations and the judicial collection of accounts of customers who we believe have the ability, but not the willingness, to resolve their obligations.”⁸⁰ It is clear that litigation, and the associated involuntary payment authority that courts provide, is a major source of revenue for these highly profitable businesses.⁸¹

Other analyses have revealed that a reliance on automation to achieve volume in the collections industry has been enabled by a lack of law enforcement by federal and state government. One 2019 report stated simply that: “Debt collection and buying is a highly profitable business, especially when automated,” and went on to state that “Few debtors dispute their bills, and the collection methods can be aggressive: Letters and calls haranguing debtors—in some cases, for debts they may not even owe—can continue unabated with little solid federal regulation or enforcement.”⁸² A 2017 report by the Commission on the Future of California’s Court System admits that “[t]he rising cost of litigation has outpaced the value of cases and has resulted in fewer cases being resolved on their merits,” adding that “[t]hese changes erode the public’s access to justice and confidence in the judicial process.”⁸³



The rising cost of litigation has outpaced the value of cases and has resulted in fewer cases being resolved on their merits,” adding that “[t]hese changes erode the public’s access to justice and confidence in the judicial process.

-Commission on the Future of California’s Court System, 2017

Analysis

This analysis shows that, in California, top court debt collectors filed a high volume of cases, particularly on cases that were not subject to the CFDBPA. The top four court debt collectors in the sample (Hunt & Henriques; Mandarin Law Group; Midland Funding, LLC; and Portfolio Recovery Associates, LLC) filed almost two-thirds of all cases over the study period (Figure 11). These cases were distributed evenly

among the most populous counties, and this analysis finds that these four groups likely filed approximately 275,000 cases over the study period, or over 45,000 cases per year (see Appendix B for county distribution and estimate).

Figure 11: Top Four Court Debt Buyers in California File almost Two-Thirds, Top Eight Attorneys File Two in Five Sample Cases

	Not Subject to CFDBPA			Subject to CFDBPA			Total		
	Count	Percent	Estimate	Count	Percent	Estimate	Count	Percent	Estimate
Hunt & Henriques	47	16.7%	51,423	28	23.7%	30,635	75	18.8%	82,058
Mandarich Law Group	50	17.7%	54,706	13	11.0%	14,223	63	15.8%	68,929
Midland Funding, LLC	41	14.5%	44,859	16	13.6%	17,506	57	14.3%	62,364
Portfolio Recovery Associates, LLC	40	14.2%	43,764	16	13.6%	17,506	56	14.0%	61,270
Top Four Court Debt Buyers	178	63.1%	194,752	73	61.9%	79,870	251	62.8%	274,622
Top Eight Attorneys	117	41.5%	128,011	45	38.1%	49,235	162	40.5%	177,246
Total Sample	282	100.0%	308,539	118	100.0%	129,105	400	100.0%	437,644

Source: CRL analysis of sample based on collections cases filed by top debt buyers in California from January 1, 2012 to December 31, 2017. Estimates calculated by multiplying the total number of cases filed on debts purchased prior to or after January 1, 2014 by the share of cases filed by the top court debt collectors and attorneys. Top eight attorneys were calculated as the attorneys with the highest number of case filings for each period. Thus, the two groups of attorneys do not contain all of the same individual attorneys. All figures are rounded.

Similarly, the eight individual attorneys were responsible for two in five cases in the sample (Figure 11). These findings suggest that these eight attorneys filed 40.5% of all 437,644 cases filed by the top 20 debt buyers in the 10 largest counties in California: a total of approximately 177,000 cases, or about 22,000 cases per attorney over the study period (Figure 11). Such a volume could make it difficult for collections attorneys to be meaningfully involved in each case and certainly challenges the capacity of legal aid attorneys defending low-income clients from debt collection lawsuits in California.⁸⁴

Discussion

While the total volume of cases declined for cases regarding debts subject to the CFDBPA, the share of cases filed by top collectors and individual attorneys remained relatively steady before and after the CFDBPA (Figure 11). The steady share of filings, alongside evidence of robo-signing by collection firms active in California, indicate that the problem may be ongoing.

Finding 4: In Most Cases, Plaintiffs Prevail

Research has established that debt collection firms often rely on the person sued not mounting a defense to win default judgments, or automatic wins. This analysis indicates that debt buyers can rely on this model in California—almost two in three resolved cases filed in the sample ended in default judgments against the borrower. This rate suggests that, over the study period, the top 20 debt buyers in California won almost 225,000 cases in court against consumers without the consumers ever showing up to defend themselves, likely resulting in \$1.3 billion in judgments over the study period.

Analysis

Almost two-thirds of the 317 cases that were resolved (meaning they were neither dismissed for lack of service nor are ongoing) ended in default judgment or an automatic win for the debt buyer (Figure 12). For resolved cases not subject to the CFDBPA, the default judgment rate was 63.7%, and for those cases subject to the CFDBPA, the default judgment rate was 66.3%. Debt buyers win these cases at a high rate for several reasons. Defendants are rarely represented by legal counsel, and people often do not appear in court to defend themselves. Moreover, plaintiffs often argue that proof is not necessary and regularly file cases without proof attached, and courts do not hold them to the standard of documentation that is legally required. Furthermore, there is evidence that, in many cases, process servers fail to deliver a summons to the defendant and nevertheless enter false affidavits of service with the courts in a process known as “sewer service.”⁸⁵ It is possible that this occurred in some of the cases that ended in default judgments—the defendants may not have appeared in court because they simply did not know they had been sued.

Figure 12. Almost Two-Thirds of Resolved Cases End in Default Judgment

	Count	Percent
Default Judgment	204	64.4%
Dismissed (All Other Reasons)	103	32.5%
Decided for Plaintiff	8	2.5%
Judgment Vacated	2	0.6%
Subtotal	317	100.0%
Dismissed for Non-Service	67	-
Ongoing as of May 2019	16	-
Total	400	-

Source: CRL analysis of sample based on collections cases filed by top debt buyers in California from January 1, 2012 to December 31, 2017. “Resolved Cases” category excludes cases that were dismissed for non-service (67 cases) or that were ongoing as of May 2019 (16 cases)

Over 40% of cases in the sample (170 cases) were dismissed, meaning that they were dropped without either side prevailing (Figure 13). Of these cases, 80% (136) were dismissed “without prejudice,” meaning that the judge leaves open the option of refileing the case to the debt buyer. An additional 17% (29 cases) were dismissed “with prejudice,” meaning that the case cannot be refiled. The remaining 56 cases were not categorized further due to data limitations.

Figure 13. Failure to Provide Notice Is Most Common Reason for Dismissal

Reason for Dismissal	Count	Percent
Non-Service	67	39.4%
Unknown	56	32.9%
Settlement	22	12.9%
Documentation Rejected	7	4.1%
Bankruptcy	7	4.1%
Non-Action	7	4.1%
Successful Defense	4	2.4%
Total	170	100.0%

Source: CRL analysis of sample based on collections cases filed by top debt buyers in California from January 1, 2012 to December 31, 2017.

Discussion

The most common reason cases were dismissed (67, almost 40% of all dismissals) was that the plaintiff did not serve the defendant with a summons to inform them of the case (Figure 14). Additionally, at least 22 of the cases that were ultimately dismissed were settled out of court, an outcome that often favors the plaintiff; the settlement number could be higher because the party seeking a dismissal does not need to provide a reason. Seven cases were rejected because the consumers filed for bankruptcy; seven cases ended in dismissal because the plaintiffs never followed up with the case after filing (non-action); and another seven were rejected by judges based on problems with documentary evidence. An additional 56 cases were dismissed for unknown reasons.

Four cases were dismissed because of successful defenses from defendants (Figure 14). Some complaints, however, may have been dismissed because of a successful defense without clear documentation of the reason for the dismissal. For instance, in some cases, after the consumer filed a response, the plaintiff simply dropped the case instead of continuing to pursue it. Prior research corroborates this hypothesis, and other researchers argue that “The typical outcome when a debtor does contest a suit filed in...court demonstrates that debt-collection companies are abusing the legal system. Frequently, the company will simply drop the suit to avoid the expense of engaging in a skirmish for a relatively small debt.”⁸⁶ Corroborating this research, a consumer attorney in Los Angeles mentioned in the *Los Angeles Times* that in cases involving one particular debt collection law firm represented in the sample, he had represented “about a dozen clients...and each time the suit was dismissed.”⁸⁷

This analysis reveals that, despite the passage of the CFDBPA, the fundamental imbalance between debt collectors and consumers persists in California. Two in three cases simply end in automatic wins for the debt buyers, and outcomes favorable to consumers are rare.

Finding 5: Defendants Are Almost Never Represented in Court

Background

Previous research has extensively documented that the debt buyer business model is largely reliant on consumers' inability to defend themselves in court. This analysis shows that national trends hold in California—fewer than 2% of all people were represented by an attorney in debt collection cases against them. One collections lawyer said, “[If] the customer doesn’t object, and lets it go, then that’s what happens. The side that shows up wins. Not everyone gets a trophy.”⁸⁸



“[If] the customer doesn’t object, and lets it go, then that’s what happens. The side that shows up wins. Not everyone gets a trophy.”

-Collections lawyer

Debt buyer lawsuits often go uncontested because of failure to properly notify people of the lawsuit, or because most people simply cannot afford a lawyer. Prior research has alleged that defendants may also “fail to understand the complaint or...concede defeat, unaware of possible defenses.”⁸⁹ A 2017 report by the Commission on the Future of California’s Court System also recognizes that “[t]ravel costs, work absences, and other costs associated with attending a court hearing can deter self-represented parties from filing or defending actions,” and that “[m]ost self-represented litigants do not choose to go to court without counsel, but are forced to do so by economic realities.”⁹⁰ The report further states simply that “[t]he idealized picture of an adversarial system in which both parties are represented by competent attorneys who can assert all legitimate claims and defenses is an illusion.”⁹¹ This analysis applies equally to limited civil actions where debt collections cases are typically filed, though the Commission’s recommendations were limited to small claims.

Analysis

This analysis corroborates prior research establishing that consumers often default, rather than appear in court. Overall, only 1.8% of consumers had representation by an attorney, leaving over 98% of all consumers without representation. And 5.0% of consumers were self-represented, or *in pro per* (Figure 14).

Figure 14. Fewer than 2% of Consumers Represented by an Attorney

	Not Subject to CFDBPA		Subject to CFDBPA		Total	
	Count	Percent	Count	Percent	Count	Percent
Consumer Represented by Attorney	4	1.4%	3	2.5%	7	1.8%
Consumer Not Represented by Attorney	278	98.6%	115	97.5%	393	98.3%
Consumer <i>in pro per</i> (Self-Represented)	16	5.7%	4	3.4%	20	5.0%
Total	282	100.0%	118	100.0%	400	100.0%

Source: CRL analysis of sample based on collections cases filed by top debt buyers in California from January 1, 2012 to December 31, 2017. Cases were excluded in the analysis if they did not have sufficient documentation to determine whether the defendant had representation. Consumers who represented themselves are included in both the total count of consumers who were not represented by attorneys and in a separate line.

The evidence shows that representation was critical for borrowers: each time a borrower was represented by an attorney, their case was dismissed (Figure 15). For consumers who represented themselves, outcomes also improved, with 70% of cases ending in dismissal, but with the remaining 30% ending in the plaintiff’s favor (Figure 15).

Figure 15. When Defendants Were Represented by an Attorney, They Won Every Time

	Pro Per		Attorney	
	Count	Percent	Count	Percent
Dismissed	14	70.0%	7	100.0%
Decided for Plaintiff	5	25.0%	0	0.0%
Default Judgment	1	5.0%	0	0.0%
Total	20	100.0%	7	100.0%

Source: CRL analysis of sample based on collections cases filed by top debt buyers in California from January 1, 2012 to December 31, 2017.

Discussion

Consumers representing themselves *in pro per* are more successful than those who do not appear in court to defend themselves; however, given their lack of legal training, they are still less likely to prevail than consumers who are fully represented by an attorney. Some self-represented consumers simply do not know their rights as they relate to debt collection litigation.⁹² In one case, a Spanish-speaking consumer appeared to represent herself and, with her daughter as her translator, argued that she wanted to make payments, but could not because she did not have a job. The plaintiff debt collector in this case did not submit any documents establishing ownership of the debt, nor did they submit a sworn affidavit. Nonetheless, this consumer lost her case, which was ultimately decided for the debt collector, because the judge found that an “inability to pay is not a defense” and, further, because her “answer expressly admit[ted] all material allegations of [the] plaintiff’s complaint.”⁹³ With a lawyer, the outcome would likely have been different because the attorney would have raised all possible defenses against the lawsuit.

Like prior research, this analysis shows that attorney representation is critical in ensuring that consumers’ rights are defended in court. Unfortunately, in more than nine out of 10 cases, consumers go unrepresented.

Finding 6: Top Court Debt Collectors May Have Pursued Over \$700 Million Between 2012 and 2017 Through Garnishment

After a default judgment, the debt buyer not only collects the amount claimed owed, but also any court costs, interest, or attorney’s fees that may have accrued, with the average case accruing over \$400 after judgment in court and attorney’s fees alone. The amount owed can be given voluntarily by the consumer or seized involuntarily through wage garnishment. In the most extreme cases, courts can even issue arrest warrants and jail people for failure to comply with post-judgment orders to extract payment for private debts.⁹⁴

Analysis

Research revealed that more than one in four (27.3%) cases ended in garnishment, indicating that almost 120,000 cases likely ended with wage garnishment (Figure 16).

Figure 16: One in Four Cases Ended in Involuntary Repayment

	Count	Percent	Estimate
No Garnishment	275	68.8%	300,880
Garnishment	109	27.3%	119,258
Unknown	16	4.0%	17,506
Total	400	100.0%	437,644

Source: CRL analysis of sample based on collections cases filed by top debt buyers in California from January 1, 2012 to December 31, 2017. Estimates calculated by multiplying the total number of cases (437,644) by the share in each row.

This analysis reveals that significant fees accrue after judgment (Figure 17). The average total judgment amount in the study sample was \$5,925, and judgments ranged from \$802 to \$45,522 (Figure 17). Interest rose as high as \$9,000, attorney’s fees were as high as over \$2,000, and court fees were a maximum of \$949 (Figure 17). In a context of financial insecurity, where almost 40% of U.S. adults said that “if faced with a \$400 unexpected expense, they would either not be able to pay it or would do so by selling something or borrowing money,” the added fees alone can exacerbate financial challenges and undermine financial stability.⁹⁵

Figure 17: Plaintiffs Pursue Thousands in Fees after Judgment

	Total Judgment Amount	Principal	Interest	Attorney's Fees	Court Fees
Average	\$5,925	\$4,802	\$689	\$107	\$300
Median	\$3,785	\$3,077	\$0	\$0	\$291
Range	\$802–\$45,522	\$538–\$36,603	\$0–\$9,012	\$0–\$2,048	\$0–\$949
Count	213	209	185	190	206

Source: CRL analysis of sample based on collections cases filed by top debt buyers in California from January 1, 2012 to December 31, 2017. Interest calculation includes both pre- and post-judgment interest.

Discussion

With 27.3% of all cases ending in garnishment (representing an estimated 119,258 cases over the study period) and an average judgment amount of \$5,925, the top court debt collectors may have pursued over \$700 million in the top 10 most populous counties alone during the study period. Garnishment can go on for decades until a total judgment amount is fully satisfied. The consequences of judgments can be severe, including wage garnishments, liens on property, and even sometimes arrest warrants.

In California, judgment creditors can garnish the lesser of 25% of net wages from a consumer’s paycheck and 40 times the state hourly minimum wage.⁹⁶ Related reform efforts are underway: effective September 1, 2020, with the passage of SB 616, the protection of the last \$1,724 of consumers’ bank account funds is self-executing, meaning the consumer need not take any action to protect this amount and this minimum amount is not subject to garnishment.⁹⁷

Finding 7: Majority of Cases Do Not Include Required Documentation

When people are pursued in court for debt collection cases and do not defend themselves, the debt buyer stands to collect the entire amount claimed owed without proving in court that they are suing the right person for the right debt. Previous research established that inconsistent documentation is a problem for the debt collection industry and that most debts purchased by debt buyers are unsubstantiated. Analysis reveals that most cases, even after the implementation of the CFDBPA, do not contain the minimum legally required documentation.

Background

In 2013, the Federal Trade Commission found that the information and documentation substantiating the debts purchased by debt buyers were frequently incomplete.⁹⁸ Based on a national sample of 3.9 million accounts purchased by six large debt buyers, the FTC found that documentation of the debt, such as account statements or terms and conditions, was absent for 88% of the accounts at the time of purchase.⁹⁹ This number is a conservative one—the FTC estimated that debt buyers received documentation of any kind of the accounts for only 6% of the accounts they purchased.¹⁰⁰ The likelihood of receiving specific documentation, such as account statements or the account terms and conditions, was even lower.¹⁰¹ Thus, for the accounts purchased, the debt buyer may receive data about the creditor, the outstanding debt, and the status of previous collection efforts on the debt, but it likely has no original account-level documentation substantiating the debt, nor is there a guarantee that the information obtained is accurate.¹⁰² Jake Halpern opines about unverified information in *Bad Paper* and argues that “these mistakes aren’t freak occurrences. They are the inevitable result of a haphazard system that transfers debt from one vendor to another—over and over—with minimal oversight or incentives to get it exactly right.”¹⁰³

The CFDBPA requires debt buyers to provide documentation establishing a chain of ownership of the debt, as well as the amount and age of the debt, the original creditor, and the identity of the debtor prior to sending a demand letter or filing a complaint in court. Documents they provide commonly include (1) a credit statement issued by the original creditor and (2) a bill of sale document, with a full chain of ownership provided if the debt has been sold multiple times. Under the CFDBPA, the debt buyer must also submit business records and a copy of the contract or other document evidencing the consumer’s agreement to the debt, both authenticated through a sworn declaration, to establish all of the facts needed at the time the complaint is filed in order to request a default judgment against a consumer.¹⁰⁴

Analysis

This analysis establishes that only 39% of cases subject to the CFDBPA were filed with the minimum required documentation (Figure 18). While the percentage of cases filed with some documentation has risen, 61% of cases were filed without the legally required documentation, an omission that should disqualify them from resolution by default judgment. This estimate corroborates previous findings from the CFPB: For instance, in a recent complaint against Forster & Garbus, the CFPB alleges that the firm possessed original or supporting documentation for only 43.9% of accounts on which they filed suit in 2015 (the firm possessed documentation for 19.6% of accounts in 2014 and 75.5% of accounts in 2016).¹⁰⁵

Figure 18: Legally Required Documentation Provided in Fewer than Half of Cases Subject to the CFDBPA

	Not Subject to the CFDBPA		Subject to the CFDBPA	
	Count	Percent	Count	Percent
Bank Statement	78	27.7%	102	86.4%
Bill of Sale	97	34.4%	73	61.9%
Sworn Declaration	91	32.3%	51	43.2%
All Three	53	18.8%	46	39.0%
Total	282	100.0%	118	100.0%

Source: CRL analysis of sample based on collections cases filed by top debt buyers in California from January 1, 2012 to December 31, 2017.

More specifically, cases tended to provide a bank statement and some provided a general bill of sale, but generally did not provide a sworn declaration to help establish that the documentation was trustworthy as required by law (Figure 18). Fewer than two-thirds of cases established ownership of the debt through a bill of sale, a trend that has been identified by California litigators. One Los Angeles litigator remarked, in the years immediately following CFDBPA implementation, that from “his firm’s own unscientific survey of their dockets[,] [there are indications of] one early problem: When filing complaints, debt buyers aren’t disclosing when the debt was purchased, thus possibly triggering the new statute’s more rigorous scrutiny.”¹⁰⁶

Discussion

Although the CFDBPA requires debt buyers to provide certain minimum documentation as described above, it is clear that courts are signing off on judgments without ensuring compliance with the CFDBPA. In fact, more than half of all cases are decided in favor of the debt buyer plaintiff even when the debt buyer is not satisfying the CFDBPA’s minimum requirements. It is possible that not all courts are aware of the exact documentation requirements prior to entering default judgment, indicating that the Judicial Council may need to do more outreach and education to county courts. It is also possible that courts are not being diligent in checking such requirements, precisely because the court system is overloaded with debt buyer and other debt collection cases, and judges seek to move them through the system and off their dockets as quickly as possible.

The lack of adequate judicial review also makes it challenging to measure the effectiveness of the law; if debt buyers are only adhering to the CFDBPA’s minimum documentation requirements 39% of the time, there is much less data to support an analysis that the law is working.

Finding 8: Required Documentation Is Insufficient To Establish Validity and Ownership of Debt

Background

Unfortunately, even when documentation is submitted, it is often inadequate to properly substantiate a case. In some cases, sworn declarations are insufficient because they have been “robo-signed” and cannot reasonably attest to the facts. In other cases, documents fail to establish that the correct person is being sued for the correct debt in the correct amount because they do not refer to case particulars, do not match case particulars, or refer to a different person with the same name as the defendant.

First, many sworn declarations are insufficient in establishing the validity and ownership of the debt. The problem of robo-signing undermines sworn declarations by calling into question the personal knowledge of the individual who signs the document. For instance, an enforcement action in 2015 found that JPMorgan Chase aided deceptive debt buyer practices by providing more than 150,000 robo-signed affidavits to debt buyers to use in cases the debt buyers brought against consumers.¹⁰⁷ Practices like robo-signing indicate that sworn declarations are not adequate evidence of the validity and ownership of the debt. Further, as the CFPB mentions in the enforcement action against JPMorgan Chase, debt collectors:

*prepared the sworn statements in bulk using stock templates. The statements often were not prepared and reviewed by the individual who signed the sworn statements. The signing individual at times lacked personal knowledge of the information they were attesting to and did not perform the review or follow the signing and notary procedures required by law. Their failure to properly prepare, review, or execute certain sworn documents resulted in these sworn statements containing misleading representations.*¹⁰⁸

Analysis

This analysis finds that many sworn declarations seem to be prepared in bulk as they contain little or no reference to case details such as the name of the consumer or the debt amount (Figure 19). When sworn declarations, meant to authenticate the validity of business records, do not refer to these details, it casts doubt on their ability to truly swear to the facts of the particular case.

Figure 19: Sworn Affidavits Do Not Refer to Case Particulars¹⁰⁹

VERIFICATION

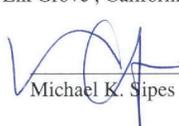
STATE OF CALIFORNIA)
)
COUNTY OF SACRAMENTO)

I, the undersigned, say:

I am the attorney for Plaintiff CACH, LLC. I make this verification on its behalf because it is absent from the county where I have my office. I have read the foregoing Complaint and know the contents thereof and I am informed and believe that the matters therein are true and on that ground allege that the matters therein are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 1/23/13, at Elk Grove, California.



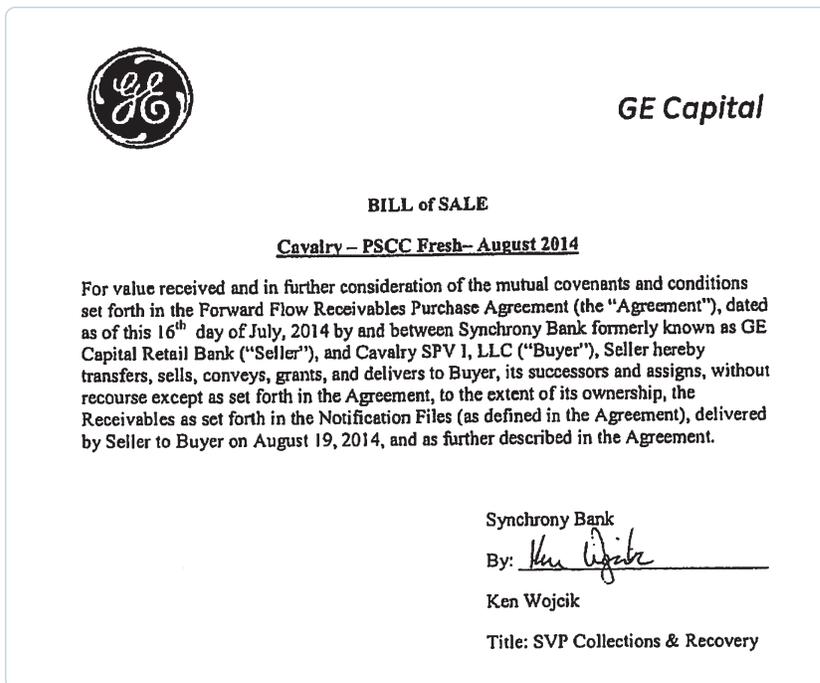
Michael K. Sipes

Note: Case was ultimately dismissed without prejudice due to documentation problems—primarily because the prayer amount did not match the amount shown on the bank statement.

In other cases, bank statements and bills of sale were also insufficient to establish the validity of the debts. In some cases, bills of sale did not refer to the consumer or the case by name (Figure 20). Some cases that were successfully defended referred to these problems; in one case, a lawyer from the East Bay Community Law Center successfully defended a client against a debt buyer by arguing that documentation was insufficient because the bill of sale did not link the plaintiff to ownership of the particular debt in question.¹¹⁰ She argues:

[T]his Bill of Sale contains no reference to [the defendant] or her alleged account and is unclear what specific assignments or rights were included.... Plaintiff has failed to produce the Purchase and Sale Agreement, Exhibit 1 which describes any accounts, or any final electronic file connected to the Bill of Sale and Agreement. Therefore, it is not clear what, if anything, was assigned, or under what authority the assignment occurred.... Establishing this line of title is crucial in a debt collector action, as debt collectors sometimes try to collect nonexistent debts.

Figure 20: Bills of Sale Do Not Refer to Case Particulars¹¹¹



Note: Case resulted in a default judgment and garnishment. The case was fully satisfied by October 1, 2018.

For defendants without representation, only seven cases, or just over 4%, were dismissed by the court due to insufficient documentation, even though at least 60% of cases did not submit documentation establishing the ownership and validity of the debt. In one of the seven rejected cases, a judge in Southern California objected to the validity of a sworn statement. In this case and in others, the plaintiff opted to dismiss the case rather than to produce a satisfactory sworn statement by a qualified professional. In another case in Northern California, a request for default was rejected by another judge because the “amount of demand [on the request] does not match the amount of prayer in complaint.” This case also lacked a sworn affidavit and was eventually dismissed without prejudice (Figure 21). Another case in San Diego was rejected by a clerk because the name on the proof of service did not match the name of the person being sued.

Figure 21: Judges Occasionally Reject Cases for Lack of Documentation¹¹²

Mandarich Law Group, LLP
 Attn: Mandarich, Chris D.
 6301 Owensmouth Avenue
 Ste. 850
 Woodland Hills, CA 91367

**Superior Court of California, County of Alameda
 Hayward Hall of Justice**

CACH, LLC <p style="text-align: right; margin-right: 20px;">Plaintiff/Petitioner(s)</p> <p style="text-align: center;">VS.</p> <hr/> Mendez <p style="text-align: right; margin-right: 20px;">Defendant/Respondent(s) (Abbreviated Title)</p>	No. <u>HG12650534</u> Request Re: Default Court Judgment (CCP 585) Rejected
--	---

The Request for Default Court Judgment is denied and NOT ENTERED for the following reasons:

The Court refers Plaintiff to its previous notice dated December 31, 2012. Plaintiff prayed for an award of \$3,251.86 in its Complaint. Plaintiff cannot now seek a judgment far in excess of that amount without amending the Complaint and causing it to be served on Defendant.

Plaintiff also failed to submit sufficient evidence in support of its Request. To obtain a judgment, a California Code of Civil Procedure Section 585 declaration/affidavit must be made by a person who can demonstrate a sufficient foundation to support the facts asserted therein. If the affiant or declarant seeks to authenticate documents, he/she must state foundational facts indicating how and/or why he/she has knowledge as to the authenticity of such documents.

Plaintiff did not submit adequate evidence in support of its assertion that HSBC Consumer Lending USA Inc. assigned the claim to Plaintiff.

Any new application must include mandatory Judicial Council form CIV-100. (See California Rules of Court, rule 3.1800(a).)

Dated: 08/09/2013



 Judge Evelio Grillo

Note: This case was dismissed without prejudice.

Unfortunately, these examples of judicial review are relatively uncommon, representing only 4% of dismissals. Many cases end in default judgment despite their lack of documentation: for cases that were subject to the CFDBPA, almost 25% of all default judgments were for cases lacking a sworn declaration (Figure 22).

Figure 22: One in Four Default Judgments Granted for Cases Lacking Minimum Required Evidence

	Cases Ending in Default Judgment					
	Not Subject to CFDBPA		Subject to CFDBPA		Total	
	Count	Percent	Count	Percent	Count	Percent
Declaration	76	51.0%	41	74.5%	117	57.4%
No Declaration	57	38.3%	13	23.6%	70	34.3%
Unknown	16	10.7%	1	1.8%	17	8.3%
Total	149	100.0%	55	100.0%	204	100.0%

Source: CRL analysis of cases ending in default judgment based on collections cases filed by top debt buyers in California from January 1, 2012 to December 31, 2017.

Discussion

Verification problems regarding key proof of debt documents highlight the need for more stringent legal requirements and judicial review. For example, Colorado added a provision in 2017 in connection with a sunset review of its Fair Debt Collection Practices Act to require debt collectors to submit additional documentation when suing to collect a debt owned by a debt buyer. But, in contrast to California’s law, Colorado explicitly requires that the documents the collector files with the court satisfy the Colorado rule of evidence that applies to business records, which states the collector must show the court that someone with personal knowledge can properly authenticate the documents.¹¹³

Finding 9: Court Clerks Play an Outsized and Questionable Role in Determining Case Outcomes

Background

At least one California attorney has asserted that court clerks, even after the CFDBPA passed, “are still processing default judgments, and they shouldn’t be because there is still too much reliance on affidavits and not enough information is disclosed...”¹¹⁴ Moreover, the CFDBPA’s requirements, he argues, requires determinations by judges, not clerks.¹¹⁵ This litigator, Ward Benshoof of Alston & Bird, went on to explain that “[f]ull implementation of [the CFDBPA’s] comprehensive scope might require significant case-by-case scrutiny from judges...” and even proposed a checklist that could help clerks “winnow cases filed by debt buyers without wandering beyond their ministerial function and encroaching on a judicial one.”¹¹⁶

Analysis

Many cases were adjudicated by court clerks and assistant clerks even though clerks are not trained to make legal judgments. In rare cases, judges intervened to hold plaintiffs to higher proof of debt standards, but clerks decided at least 30% of all cases. In these cases, almost 80% resulted in default judgments for the plaintiff, almost 15 percentage points higher than the comparable rate for all cases (Figure 23).

Figure 23. Court Clerks Enter High Rate of Default Judgment

	Cases Decided by Clerks		All Resolved Cases	
	Count	Percent	Count	Percent
Default Judgment	94	79.0%	204	64.4%
Dismissed	23	19.3%	103	32.5%
Decided for Plaintiff	0	0.0%	8	2.5%
Judgment Vacated	2	1.7%	2	0.6%
Total	119	100.0%	317	100.0%

Source: CRL analysis of sample based on collections cases filed by top debt buyers in California from January 1, 2012 to December 31, 2017. This analysis excludes cases that were dismissed for lack of service (23 cases) and those that were ongoing as of May 2019 (no cases). "All Resolved Cases" includes cases decided by clerks.

Policy Recommendations

Enforce existing documentation requirements.

Debt buyers should be prohibited from bringing lawsuits against consumers unless, at a minimum, they meet the “proof of debt” standard that the CFDBPA sets out. A majority of cases analyzed in this paper were filed without the statutorily-required documentation. Courts should stringently enforce these standards, especially with respect to documentation that the CFDBPA requires of debt buyers prior to entering default judgment against consumers. To the extent that courts are not aware of the legal requirements, court clerks and judges may benefit from more public education. A checklist of applicable civil procedures, which the Judicial Council could help design and implement, could help clerks make basic determinations about whether cases provide a minimum of required evidence without encroaching upon the role of judges.

Strengthen existing state law with respect to required documentation to establish proof of debt.

To the extent that some debt buyers are complying with the documentation requirements of the CFDBPA on its face, there is evidence that the legal requirements are not strong enough to protect against the wrong consumer being sued for the wrong amount. The bills of sale and sworn affidavits that debt buyers include to meet the CFDBPA's requirements often did not refer to the case particulars or refer to the consumer or case by name. California could strengthen the CFDBPA by removing language that gives debt buyers discretion to produce weak documentation. For example, currently before requesting default judgment, debt buyers must produce a copy of the contract “or other document” evidencing the consumer’s agreement to the debt, which gives debt buyers leeway to provide any document—however weak—to satisfy the law’s requirements.¹¹⁷ Moreover, Colorado specifically requires that the documents the collector files with the court satisfy the Colorado rule of evidence that applies to business records, which states the collector must show the court that someone with personal knowledge can properly authenticate the documents.¹¹⁸ In fact, the Colorado proof of debt law explicitly states that in the absence of such documentation, an affidavit is insufficient to satisfy the requirements.¹¹⁹ These heightened legal requirements may go further to protect consumers by disrupting debt buyers’ lawsuit mill model, whereby collectors rely on the ability to abuse the court system to obtain quick judgments in their favor.

Share debt collection case information publicly.

California Superior Courts, through the Judicial Council, should share more information with the public. Specifically, the state of California ought to collect and publish standard aggregate, case-level information from each county superior court that is easily downloadable in a spreadsheet (or some other accessible format) that consumers, attorneys, researchers, policymakers, and other advocates could obtain. Such case-level information should, at a minimum, include: whether the consumer was represented by an attorney or was self-represented; the zip code in which the cases were filed; the overall volume of debt collection cases; the case outcome; and the involved parties in collections cases. Zip code-level case data, in particular, will enable advocates to understand the extent to which debt collection cases are disproportionately impacting communities of color. Existing zip code-level analysis in the state has found a 12 percentage point difference between white communities versus communities of color in having a debt in collections, defined as zip codes where at least 60% of the population is white or of color, respectively; 19% of Californians in white communities have debt in collections versus 31% of people residing in communities of color.¹²⁰ To better facilitate the public availability of county superior court data, California should create a state-level

portal to aid in monitoring and accountability efforts. Moving California towards case transparency is consistent with the Judicial Council's stated intent to ensure "the consistent, independent, impartial, and accessible administration of justice."¹²¹ Currently, the complete dearth of information about debt collection cases benefits only the debt collectors at the expense of consumers.

Discourage debt buyers from acting as "lawsuit factories" by holding them accountable through existing enforcement mechanisms if they initiate unwarranted legal actions.

Courts should not be entering default judgments against consumers in cases where debt buyers bring unsubstantiated legal actions. Moreover, because of the harms that collections lawsuits inflict, debt buyers should face monetary penalties if they pursue collection actions in court without first meeting the "proof of debt" standard as per the CFDBPA. The CFDBPA does, in fact, impose monetary penalties on "a debt buyer that violates any provision of [the statute] with respect to any person."¹²² The CFDBPA provides consumers with a private right of action and includes penalties of up to \$1,000 for individual consumer litigation, and for class action suits, up to an additional \$500,000 or 1% of the debt buyer's net worth, whichever is less.¹²³ Attorney General Becerra should pursue these penalties and stringently enforce them against debt buyers to discourage them from filing cases in violation of the law.

Appendices

Appendix A. Methodology

Figure A.1. Population of 10 Largest Counties in California

County	Population	Percent of State Population
Los Angeles	10,105,722	25.9%
San Diego	3,283,665	8.4%
Orange	3,155,816	8.1%
Riverside	2,355,002	6.0%
San Bernardino	2,121,220	5.4%
Santa Clara	1,911,226	4.9%
Alameda	1,629,615	4.2%
Sacramento	1,495,400	3.8%
Contra Costa	1,123,678	2.9%
Fresno	971,616	2.5%
Top 10 Counties Total	28,152,960	72.2%
California	38,982,847	100.0%

Source: Table B01003: Total Population; American Community Survey, 2013–2017 5-year estimates.

Figure A.2. Collection Cases Filed by Estimated 20 Largest Debt Buyers, 2012–2017

	2012	2013	2014	2015	2016	2017	Total
Alameda	4,314	3,264	1,417	1,112	1,102	360	11,569
Fresno	3,643	3,537	2,244	1,016	1,777	1,838	14,055
San Bernardino	10,948	9,992	7,195	3,289	4,942	5,834	42,200
Orange	13,402	11,667	8,535	3,418	4,783	5,924	47,729
San Diego	11,455	12,113	7,573	3,283	4,983	5,735	45,142
Los Angeles	50,695	47,122	33,357	13,403	20,341	19,933	184,851
Riverside	10,568	9,589	6,455	2,821	3,769	5,270	38,472
Contra Costa	4,807	4,018	2,431	1,029	1,721	1,759	15,765
Sacramento	6,200	6,000	3,800	1,581	2,543	2,984	23,108
Santa Clara	3,679	3,015	2,779	1,286	1,881	2,113	14,753
Total	119,711	110,317	75,786	32,238	47,842	51,750	437,644

Source: CRL analysis of cases filed in California Superior Courts from January 1, 2012 to December 31, 2017. After determining the top 20 debt buyers active between 2012–2017 based on data provided by superior courts in Alameda, Fresno, Orange, San Diego, and Santa Clara Counties, the lists were trimmed to include only those 20 debt buyers. Publicly available case filing records from the five remaining most populous counties (Riverside, San Bernardino, Sacramento, Contra Costa, and Los Angeles) provided the rest of the data. Year is based on calendar year.

Figure A.3. Distribution of Sample Cases with Complete and Partial Documentation, and All Debt Buyer Cases

	Sample		All Debt Buyer Cases	
	Count	Percent	Count	Percent
Los Angeles	176	44.0%	184,851	42.2%
San Diego	42	10.5%	45,142	10.3%
San Bernardino	40	10.0%	42,200	9.6%
Orange	36	9.0%	47,729	10.9%
Riverside	34	8.5%	38,472	8.8%
Sacramento	16	4.0%	23,108	5.3%
Fresno	16	4.0%	14,055	3.2%
Contra Costa	16	4.0%	15,765	3.6%
Santa Clara	12	3.0%	14,753	3.4%
Alameda	12	3.0%	11,569	2.6%
Total	400	100.0%	437,644	100.0%

Source: CRL analysis of cases filed in California Superior Courts from January 1, 2012 to December 31, 2017.

Figure A.4. Distribution of Incomplete Sample Data by County

	Case File Ordered Destroyed	Otherwise Incomplete	Full Data	Total
Alameda	0	0	12	12
Contra Costa	7	0	9	16
Fresno	0	4	12	16
Los Angeles	38	19	120	177
Orange	0	0	35	35
Riverside	0	0	34	34
Sacramento	0	0	16	16
San Bernardino	0	0	40	40
San Diego	0	0	42	42
Santa Clara	0	2	10	12
Total	45	25	330	400

Source: CRL analysis of cases filed in California Superior Courts from January 1, 2012 to December 31, 2017.

Figure A.5. Coding Variables

Amount Requested in Complaint
Attorney Fees Amount
Attorney Name
Case Name
Case Number
CFDBPA Jurisdiction
Charge-Off Date
Consumer Address
Consumer Name
Consumer Representation
County
Court Fees Amount
Court House
Date Filed
Date of Satisfaction
Interest Amount
Judge or Clerk Name
Judgment Date
Law Group Representing Plaintiff
Most Recent Action Date
Original Creditor Name
Outcome Subtype
Outcome Type
Plaintiff
Presence of Bank Statement
Presence of Bill of Sale
Presence of Declaration of Non-Service
Presence of Garnishment Order
Presence of Order to Show Cause Declaration
Presence of Sworn Affidavit
Principal Amount
Satisfaction Type
Service Date
Service Type
Total Judgment Amount
Year

Appendix B. Cases Filed by Top Four Firms by County

Figure B.1. Estimation of Cases Filed by Top Four Firms by County

	Top 20 Debt Buyers	Count in Sample	Share of Sample	All Collection Cases	Estimated Collection Cases Filed by Top Four Firms
Alameda	8	13	61.5%	11,569	7,119
Contra Costa	10	16	62.5%	15,765	9,853
Fresno	10	15	66.7%	14,055	9,370
Los Angeles	113	176	64.2%	184,851	118,683
Orange	23	36	63.9%	47,729	30,494
Riverside	21	34	61.8%	38,472	23,762
Sacramento	12	16	75.0%	23,108	17,331
San Bernardino	22	40	55.0%	42,200	23,210
San Diego	24	42	57.1%	45,142	25,795
Santa Clara	8	12	66.7%	14,753	9,835
Total	251	400	62.8%	437,644	275,453

Source: CRL analysis of sample based on collections cases filed by top debt buyers in California from January 1, 2012 to December 31, 2017. Estimation calculated by multiplying the share of cases filed by top firms within the sample by the number of cases in the full dataset. Final estimation of cases filed by the top four firms during the study period (275,453) is the sum of county estimations rather than the total dataset number multiplied by the share of cases filed by the top four firms.

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Center for Responsible Lending

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The Center for Responsible Lending (CRL) is working to ensure a fair, inclusive financial marketplace that creates opportunities for all responsible borrowers, regardless of their income, because too many hard-working people are deceived by dishonest and harmful lending practices.

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