NATIONAL ASSOCIATION OF RETAIL COLLECTION ATTORNEYS (NARCA) COMMENTS FOR FEDERAL TRADE COMMISSION DEBT COLLECTION WORKSHOP

I. WHAT IS NARCA

The National Association of Retail Collection Attorneys (NARCA) is a nationwide trade association of over 700 law firms whose practice is primarily devoted to consumer debt collection and enforcement of creditors' rights. NARCA was formed in 1993 to assist attorneys and other legal professionals in learning about federal and state laws regulating debt collection and extensions of credit through educational conferences, seminars and publications; to advance the interests of debt collection law firms by publicizing the benefits of using an attorney to the credit granting and debt buying industries; and to advocate to federal and state legislatures, judiciaries and regulators the interests of attorneys practicing in the field of collections. NARCA believes that a significant majority of law firms that handle large numbers of consumer debt collection matters are members of NARCA. Many law firms that are non-members collect debt as only a small component of their practices. Because there is seldom a legal specialty offered by state bars for "debt collection," valid numbers for law firms collecting debt is not available.

Membership in NARCA is granted to a law firm and not to individual attorneys. Member firms assume an obligation to follow the NARCA Code of Ethics, which go beyond the minimum requirements of existing laws and regulations. The NARCA Code of Ethics is published on its website, www.narca.org. Many credit grantors and debt buyers have adopted policies that litigation accounts are only referred to law firms that are NARCA members.

II. NARCA EDUCATIONAL ACTIVITIES

NARCA conducts two general membership meetings per year that feature well known experts and authorities in the fields of credit and collection. In addition, NARCA holds

educational workshops and teleseminars at other times during the year. Lawyers and other experts in the industry present educational programs covering all aspects of federal and state laws and procedures. These programs are designed, in part, to keep NARCA members and non-member attendees from the industry up to date on compliance and enforcement of the Fair Debt Collection Practices Act and other relevant legislation. NARCA educational programs meet the continuing legal education requirements for attorneys practicing in states where Court rules require continuing education for lawyers.

III. WHAT TYPE OF DEBTS DO NARCA FIRMS COLLECT AND HOW HAS THE TYPE OF DEBT REFERRED FOR LITIGATION CHANGED OVER THE PAST TEN (10) YEARS

NARCA members collect on all forms of consumer debt including installment loans issued by banks, credit unions and finance companies; credit card debts issued by bank credit card companies and individual retailers; secured loans for automobile and other consumer goods; medical bills incurred from physicians and/or hospital services; delinquent obligations for goods or services provided by merchants or service providers, as well as other consumer based obligations.

Market changes in the consumer lending industry began to accelerate around the time NARCA was formed. The changes primarily deal with extensions of credit card debt and collection of those defaulted obligations. Subsequent to the Supreme Court's decision in Marquette National Bank of Omaha v. First Omaha Service Corp., 439 U.S. 299 (1978) which allowed national banks to export the interest rate from their home states to non-resident borrowers and Smiley v. Citibank, N.A., 517 U.S. 735 (1986) which permitted national banks to export late fee charges from the bank's home state, most credit cards, whether MasterCard, Visa or retail cards, are now issued by national banks.

Another development that changed the collection industry was the emergence of third party debt buyers. Delinquent credit card debts are now frequently assigned to debt buyers who then secure the services of law firms to pursue collection through litigation. The growth of the debt buying industry has been fueled by banks and financial institutions making the economic decision that selling defaulted debt is more economically advantageous than managing in-house recovery resources to collect defaulted accounts, which average between 3% and 5% of total account portfolios.[1]

The positive impact on the sale of delinquent debts was explained by Alan Greenspan, former Chairman of the Federal Reserve Board, during a speech on September 25, 2002 in London, England[2] where he observed that "a major contributor to the dispersion of risk in recent decades has been the wide ranging development of markets in . . . credit card receivables . . . these markets have tailored the risks associated with holding such assets to fit the preferences of a broader spectrum of investors." Chairman Greenspan used this example to illustrate the fact that "despite significant losses (attribute to the events of 9/11), no major U.S. Financial Institution has been driven to default."

Judge Richard Posner of the United States Court of Appeals for the Seventh Circuit, a Court that has rendered several important decisions interpreting the FDCPA, similarly commented on the economic utility of credit card delinquencies being purchased and collected by debt buyers:

> It might be thought that assignees, since the debtors were not their consumers, are more ruthless in collection than the original creditors, who might

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[1] Historical information about credit card default rates is published at the Federal Reserve Statistical Release, Charge-Off and Delinquency Rates on Loans and Leases at Commercial Banks, www.federalreserve.gov/releases/chargeoff. According to this publication, the delinquency rate for credit cards was 3.54% for 2006, within the historic 3% to 5% range.

[2] Remarks by Chairman Alan Greenspan at Lancaster House, London U.K., September 25, 2002, www.federalreserve.gov/Boarddocs/speeches/2002/200209253.

> not wish to offend their customers, would be. But once a customer defaults, he is no longer a valued customer that the creditor is likely to want to coddle. And if the creditor does want to coddle his defaulting customers, maybe to reassure his other customers, he will not assign the debt or assign to a coddler.
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> There is an innocent reason that creditors can reduce their costs or increase their yield by assigning collection to other firms rather than doing it themselves. It is the same reason that manufacturers sell to consumers through independent distributors and dealers rather than doing their own distribution. Outsourcing phases of the total production process facilitates specialization, with resulting economies. Specialists in debt collection are likely to be better at it than specialists in creating credit card debt in the first place.

Olvera v. Blitt and Gaines, 431 F.3d 285, 287 (7th Cir. 2005).

The Court's focus on debt buying reflects judicial recognition that more consumer debts are being referred to law firms by third party debt buyers rather than by credit card companies. Although these referrals reflect an increasing percentage of the accounts subject to litigation, NARCA members continue to represent medical providers, banks, credit unions, and finance companies, as well as other furnishers of goods and services.

NARCA estimates that about five percent (5%) of delinquent accounts are referred to collection law firms. The percentage of referrals depends on the type, amount and age of the debt as well as the solvency and availability of the debtors. Many delinquent accounts are first worked in-house by the creditor, then referred to one or more collection agencies, before being placed with a law firm for possible litigation.

IV. THE FDCPA APPLIES TO LAWYERS WHO REGULARLY COLLECT CONSUMER DEBTS

Over twenty (20) years ago, Congress repealed the prior exemption from the definition of a "debt collector" under the FDCPA enjoyed by attorneys collecting consumer debts. Twelve (12) years ago, the Supreme Court in Heintz v. Jenkins, 514 U.S. 291 (1995) held that the FDCPA applies to lawyers who file debt collection lawsuits. Since the repeal of the attorney exemption and the Supreme Court's decision in Heintz v. Jenkins, attorneys who sue consumer

debtors have been the frequent source of FDCPA lawsuits, a significant portion of which have involved "technical" violations where the debtor has not suffered any actual damages.

The increasing number of these lawsuits has unnecessarily increased the cost of collecting legitimate, undisputed debts. The comments which follow address a selected number of FDCPA provisions that have resulted in the overwhelming number of suits against collection law firms. The comment suggests both legislative and regulatory changes that would result in the reduction of technical FDCPA lawsuits where there has been no harm suffered by the debtors and where the collection law firm has, in good faith, pursued its client's claim in the zealous manner contemplated by an attorney's obligations under the Model Rules of Professional Conduct.

V. VALIDATION OF DEBTS PROVISION

A. ITS BENEFITS AND BURDENS

Debt collectors must send a written validation of debts notice as provided under 15 U.S.C. § 1692g when initiating communication with debtors. NARCA members routinely engage in pre-litigation communications. Even before enactment of the FDCPA, attorneys representing creditors would customarily send a presuit "demand." The concept of a demand for payment on a debt is explicit in provisions of the Uniform Commercial Code regarding payment of promissory notes and other negotiable instruments. It has long been considered a good business practice to make a written demand on any type of debt before filing suit. By notifying a debtor that an account has been referred to a law firm, the attorney can facilitate a prompt resolution of the account, resulting in a savings of court costs for the client, the time and expense of litigation, and the burden on the judicial system.

The mailing of the validation notice provides an economic incentive to both the attorney and the debtor. Many NARCA firms charge a blended fee whereby the creditor pays a smaller contingent fee if the debt is collected without litigation. This fee arrangement inures to the benefit of the debtor, who saves the imposition of Court costs and payment of attorney fees to the creditor, where the agreement authorizing the debt requires the filing of a lawsuit for collection of the attorney fee.

Although the economic benefits of sending of a presuit demand are well recognized, a significant burden has been placed upon NARCA members, who have been forced to defend FDCPA suits based on technical violations that are filed by debtors' attorneys who claim that the validation notice is somehow confusing, misleading or overshadowing. The Seventh Circuit Court of Appeals, which has heard an overwhelming number of appellate FDCPA cases, has expressed its frustration with these technical violation claims by attempting to craft a so-called "safe harbor" letter for attorney debt collectors who wish to avoid liability for sending an initial letter notifying the debtor of a possible lawsuit. See, Bartlett v. Heibl, 128 F.3d 497 (7th Cir. 1997). The same court later addressed lawsuits based on hyper-technical readings of a debt collection letter, commenting that "any document can be misread. The Act is not violated by a dunning letter that is susceptible of an ingenious misreading, for then every dunning letter would violate (the Act)." White v. Goodman, 200 F.3d 1016 (7th Cir. 2000). Recently, one Federal court has even gone to the extent of labeling a claim based on allegedly false statement in a validation notice to be "patently absurd" Robbins v. Wolpoff & Abramson, 2007 WL 601458 (E.D. Wis. 2007).

Weighing the benefits and burdens of the validation of debts requirement, NARCA supports the Federal Trade Commission's efforts to draft a model initial collection letter that

would meet the requirements of §1692g and provide a statutory or regulatory "safe harbor" from technical lawsuits. NARCA would not be opposed to a requirement that the initial letter include the name of the original creditor, information which now must be furnished only if a debtor makes a written demand for verification of the debt within thirty (30) days of the initial notice.

However, for several reasons, NARCA does not recommend that the address of the original creditor be included in the §1692g notice. First, the identification of the original creditor by name is sufficient to connect the claim to the current owner of the debt. Second, most creditor grantors include at least two (2) addresses on their billing statements; one for payment information; the second for disputes under the Fair Credit Billing Act, leaving the collection attorney to speculate which address to use, resulting in a potential compliance error. Third, the placement of the original creditor's address on the §1692g notice, in addition to the address of the collector/attorney would tend to confuse the debtor, leading to a dispute notification being sent to the wrong party.

B. THE NEED FOR CLARITY

Attorneys collecting consumer debts should be allowed to follow uniform rules regarding disputes under §1692g. Under the FDCPA, it is clear that a collector who receives a dispute may not assume the debt is valid. Additionally, if the debt is reported to credit reporting agencies, the collector is required by 15 U.S.C. § 1692e(8) to report the debt as disputed. There is presently a divergence of opinion as to whether a dispute under §1692g must be in writing. Compare, Graziano v. Harrison, 950 F.2d 107 (3rd Cir. 1991) (A dispute under §1692g must be in writing), with Camacho v. Bridgeport Financial, Inc., 430 F.3d 1078 (9th Cir. 2006). (The FDCPA requires a collector to recognize an oral dispute.) Because of the consequences that follow from

receipt of a dispute under the FDCPA, there is a paramount need for clarity on the question of whether debtor is allowed to make an oral dispute or whether the dispute must be in writing.

NARCA believes that a debtor should be required to dispute a debt in writing. "There are strong reasons to prefer that a dispute of a debt collection be in writing: a writing creates a lasting record of the fact that the debt has been disputed, and thus avoids a source of potential conflicts". Graziano v. Harrison, supra at p.112. The writing requirement is also consistent with related consumer protection laws. The Fair Credit Billing Act, 15 U.S.C. § 1666, requires a credit card customer to make a written billing error dispute within sixty (60) days of receipt of the billing statement. Likewise, the Fair Credit Reporting Act, 15 U.S.C. § 1681, et. seq., requires a written dispute where a consumer challenges an entry made by a furnisher of credit information [15 U.S.C. § 1681s-2(6)].

For these reasons, NARCA recommends that the FDCPA be amended to clarify that a written dispute is required in order to trigger the benefits of the dispute provisions of the Act.

C. THE VERIFICATION PROCESS

The process by which a debt collector verifies a debt was intended "to eliminate the . . . problem of debt collectors dunning the wrong person or attempting to collect debts which the consumer had already paid." S. Rep. No. 95-382, at 4 (1977), reprinted in 1977 U.S.C.C.A.N. 1695, 1699. The verification process is simple and straightforward. "[T]here (is) no concomitant obligation to forward copies of bills or other detailed evidence of the debt." Chaudhry v. Gallerizzo, 174 F.3d 394, 406 (4th Cir. 1999) (emphasis added). "At a minimum, verification of a debt involves nothing more than the debt collector confirming in writing that the amount being demanded is what the creditor is claiming is owed." Clark v. Capital Credit and Collection Services, Inc., 460 F.3d 1162, 1173 (9th Cir. 2006) (adopting holding in Chaudhry) (internal

citations omitted). NARCA believes these Court rulings set the proper standard and are consistent with the legislative intent of the FDCPA.

The documentation required to verify the debt will vary depending on the nature of the original obligation. Any effort by the FTC to provide a "checklist" of information that would be required for adequate verification should be rejected because detailed proof of the debt is a matter reserved for a Court proceeding, rather than a pre-litigation collection process which, at any time, can be stopped in its tracks by a debtor's cease and desist demand pursuant to 15 U.S.C. § 1692c.

VI. COMMUNICATIONS WITH THE DEBTOR

A. TELEPHONE CALLS

When the FDCPA was passed, telephone communications with the debtor would result in either: (1) an individual would answer the phone or (2) the telephone would ring and not be answered because no one was there to answer the call or the individual decided not to answer.

The FDCPA was drafted to ensure that when someone answered the phone, the collector would not disclose to a third party that the communication was about a debt. See, 15 U.S.C. § 1692c(c). When no one answered the phone, the collector would call back again. The statute declared it a violation of the FDCPA if the collector proceeded to allow the telephone to ring repeatedly. See, 15 U.S.C. § 1692d(5).

Today, there are many additional scenarios that ensue when a debtor receives a telephone call but does not answer. First, with the almost universal use of Caller-ID, a record is made on the debtor's telephone as to the date, time and number of the call. Second, if a debtor uses an answering machine, a message can be left. Each of these new alternatives to a call that is not answered present challenges to FDCPA compliance. The obstacles addressed below were not

contemplated when the original law was enacted because the technology that creates these challenges did not exist thirty (30) years ago.

The use of a Caller-Id allows a debtor to know that he or she was called from a certain telephone number. Caller identification software limits the amount of information on the caller identification so it cannot include a "meaningful disclosure of the caller's identity." 15 U.S.C. § 1692d(6). This statute should be clarified so that the placement of a telephone call, where the call is not answered, does not require a disclosure of a debt collector's identity on a Caller-Id. The information the debtor receives about the unanswered call is not a "communication" from a collector, but instead is information acquired through use of advanced technology that allows one to record an unsuccessful effort to communicate about a debt.

The advent of answering machines and voice mail services to record messages where the debtor is not available presents another scenario unknown to those who drafted the FDCPA. A number of Federal decisions have recently held that a debt collector violates 15 U.S.C. § 1692e(11) by leaving a message on an answering machine and failing to disclose that the message concerns an attempt to collect the debt. These rulings present a conundrum to a debt collecting attorney. If a message is left on an answering machine, even in response to call from the debtor, and the §1692e(11) disclosure is provided, the collector has violated the law if the disclosure is heard by a third party. If a message is received by the debtor that does not include the §1692e(11) disclosure, Court decisions hold that the collector has violated the FDCPA. See, e.g., Foti v. NCO, 424 F.Supp.2d 643 (S.D.N.Y. 2006).

Although the Court in the Foti case believed that the debt collector who left a message created this conundrum of its own choosing, this reading is unnecessarily restrictive of a collector's right to communicate with a debtor concerning the debt, particularly where

communication may well result in the matter being resolved without litigation or before the case proceeds to trial. The emergence of answering machines as a new technology requires the FTC and/or Congress to resolve the conflict between the concept that a collector should not disclose to a third party that the call is about a debt and collector's right to leave a benign message requesting a return telephone call.

Although answering machines did not exist in 1977, the FDCPA addressed by analogy an attempt to communicate with the debtor where the "message" could be received by a third party. 15 U.S.C. § 1692f(8) prohibits debt collectors from using any information on the outside of an envelope to convey that they are the business of debt collection. This part of the FDCPA was written to ensure that a debt collection letter mailed to a debtor would not result in a third party disclosure to, for example, a family member or roommate who receives the mail and looks at the outside of the envelope. This analogy is appropriate in analyzing an answering machine message. The information conveyed in a recorded message may be heard by family members or roommates. The message "please call me" is similar to the implied message when a letter is sent: "please open the letter".

The FTC and/or Congress should address a collector's need to leave a benign message requesting a return telephone call while at the same time protecting a consumer's right that the message not reveal that the call is about the debt, so as to avoid third party disclosure. Although it is anticipated that consumer advocates will argue that messages should not be left at all where there is any question the message would be overheard by a third party, this response is unacceptable and inconsistent with the purpose of the FDCPA to permit collectors to pursue fair, non-misleading and non-abusive collection efforts.

B. CELLULAR PHONES

15 U.S.C. § 1692f declares an unfair practice for a collector to cause "charges to be made to any person for communications by concealment of the true purpose of the communications. Such charges include, but are not limited to, collect telephone calls and telegram fees". When the FDCPA was enacted, cellular telephones had not yet come into existence. Today, many American consumers use cell phones rather than landline phones as the primary means of communication and cellular telephone numbers are now listed by many consumers as their primary contact information. Recently, a National Health Information Survey conducted by the Centers for Disease Control[3] found that one of every eight (8) American households (12.8%) had only wireless telephone service during 2006, when compared with only 3.2% in 2003. The number of cell-phone-only households among younger people is even greater. This remarkable growth in wireless only households will likely continue unabated into the future. A collector may not know that the telephone number furnished by its client or the debtor is a cell phone number.

Although some customers pay per minute charges for cellular telephone calls, many plans now include hundreds of minutes for a set monthly fee. Moreover, unlimited calling plans have recently been offered by wireless providers. The changing environment by which American consumers use telephones requires a reexamination of 15 U.S.C. § 1692f(5). This review should address a collector's legitimate attempts to reach a consumer through a telephone number provided by the creditor, the debtor and/or discovered through public sources. Given the ubiquitous use of cellular telephones in the United States today, a collector should not be subject to liability for making a call to a cell phone.

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[3] Blumberg SJ, Luke JV. Wireless substitution: Early release of estimates based on data from the National Health Interview Survey, July – December 2006. National Center for Health Statistics. Available from www.cdc.gov/nchs/nhis.htm. May 14, 2007.

C. LOCATION INFORMATION

15 U.S.C. § 1692b addresses acquisition of "location information" through "skip tracing" efforts. When the law was written, skip tracing required personal contact with third parties. For this reason, the law was written to ensure that collectors who communicated with neighbors, family members or employers would not state that a debt is owed, would only communicate with the person one time and would not state the name of his or her employer unless expressly requested.

The internet age has revolutionalized skip tracing. Private vendors relying on internet resources compile up to date information and provide location information to debt collection law firms. The use of these vendors has significantly decreased, if not outright eliminated, telephone skip tracing efforts. The accepted norm is to locate new information on debtors through these internet sources.

VII. THE EXPANDING NATURE OF "COMMUNICATIONS"

Congress drafted a sufficiently broad definition of "communication" [15 U.S.C. § 1692a(2)] to cover technologies that had not yet been invented in 1977: "'Communication' means the conveying of information regarding a debt directly or indirectly to any person through any medium." This definition allows the inclusion of fax transmissions, text messaging and email, all of which first came into the marketplace after the FDCPA was written. Email has now become a preferred method of communication with many consumers. Financial institutions send monthly statements by email. Consumers pay monthly bills such as mortgages, utilities, automobile payments and other periodic obligations by using their bank's website. The Check 21 law is aimed at eliminating paper checks and creating a paperless world of consumer financial transactions.

Many consumers now provide email addresses when obtaining credit. In the future, it is likely that debt collectors will have email address information when contacting debtors. The validation notice required by 15 U.S.C. § 1692g requires "written notice" to the consumer. This statute is written in a manner that would permit email "written notice" to comply with the law. Collectors should be explicitly permitted to engage in e-mail communication without unnecessary restrictions or regulatory oversight, much as a debt collector can communicate by letter to a debtor as long as the communication is not misleading or deceptive.

VIII. CONSUMER ISSUES

One of the trends observed by NARCA members is the increased use by dishonest or naïve consumers of pleadings and other instruments obtained over the internet that attempt to eliminate credit card debt. Many of the materials are based on convoluted and incorrect readings of GAAP (Generally Accepted Accounting Principles), as well as selective and out-of-context use of passages from government publications, constitutional provisions, court decisions and statutes. Courts have uniformly rejected these theories, but debtors continue to pay good money for these products, which only serve to add to litigation expenses and take up precious court time. [see article "Fighting the Debtor Scams" authored by Harvey M. Moore and published in Credit Card Management Dec. 2004, Vol. 17, No. 10]

IX. FTC REGULATORY AUTHORITY WOULD FOSTER COMPLIANCE WHILE AVOIDING CONFUSION AND UNCERTAINTY

When Congress enacted the FDCPA in 1977, it designated the Federal Trade Commission as the agency responsible for enforcement of this consumer protection statute, but declined to authorize the FTC to adopt interpretive regulations. In the intervening years, Congress repealed the attorney exemption and the Supreme Court has held that attorneys who litigate consumer debts are "debt collectors" under the FDCPA. This development has resulted

in an ever increasing number of FDCPA lawsuits, which has correspondingly increased the number of Court decisions interpreting the Act, particularly as applied to lawyers.

NARCA members report an increasing level of frustration in their good faith efforts to comply with the FDCPA and to follow court rulings interpreting the law. NARCA members follow an appellate decision addressing the FDCPA, only to be met with conflicting rulings by lower courts that disagree with the earlier rulings. These conflicting court decisions have made regulatory compliance a guessing game, rather than a predictable endeavor. For example, contradictory court rulings addressing whether the service of a summons and complaint is an "initial communication" under the FDCPA were only resolved through recent legislative action that amended 15 U.S.C. § 1692g. Other significant conflicting interpretations remain unresolved regarding the question of whether a dispute must be in writing[4]; whether a passive debt buyer is liable under the FDCPA[5] and whether the FDCPA governs violations of the Bankruptcy Code.[6]

Although the FTC is empowered to write advisory opinions upon which collectors can place good faith reliance, the role of the FTC should be expanded to include rulemaking authority. This expansion of regulatory oversight would help resolve potentially conflicting interpretations and would help ensure compliance, given the rapid technology changes in debt collection, without requiring the extensive and time consuming legislative process.

X. "LAWSUIT" PROTECTION

A disturbingly increasing number of FDCPA claims have been brought against law firms where there are no actual damages sustained. Many NARCA members have over twenty-five (25) years experience in the practice of law and can recall an earlier time where an attorney

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[4]Compare, Graziano v. Harrison, supra, with Camacho v. Bridgeport Financial, Inc., supra.
[5]Compare, Scally v. Hilco Receivables, LLC, 392 F.2d 1036 (N.D. Ill. 2005) (debt buyer not vicariously liable for actions of collection agency) with Schutz v. Financial Services, LLC, 465 F.Supp. 2d 872 (N.D. Ill. 2006) (contra).
[6]Compare, Walls v. Wells Fargo Bank, N.A., 276 F.3d 502 (9th Cir. 2002) (Bankruptcy Code provides exclusive remedy) with Randolph v. IMBS, Inc., 366 F.3d 726 (7th Cir. 2004) (contra).

representing a debtor would either pick up the phone or write a courteous letter articulating defenses to the lawsuit. The matter would then be resolved by the creditor's attorney going back to the client and determining if the defenses were valid. On occasion, the matter could not be resolved through pretrial negotiation and the case will be heard by an impartial judge who would decide whether the money is owed.

This paradigm is out of date. All too often the following scenario arises. A debt collection attorney sends out a validation of debts notice. The debtor does not dispute the debt. The attorney then files suit. Rather than hearing from the debtor's attorney with an explanation of possible defenses, the attorney is sued under the FDCPA for an attempt to collect monies not due under the agreement or for claiming amounts that are not allowed by the agreement or by law. As a result, many attorneys have become overly cautious and will not aggressively and zealously pursue their client's rights. See, "Pre-Judgment Collection of Legal Fees: A Right Without a Remedy?" *Consumer Finance Law Quarterly Report*, Vol. 59, No. 4, pp. 350-356, 2005, reprinted in *Journal of Texas Consumer Law*, Volume 9, No. 3, pp. 110-115, 2006. These FDCPA suits are driven not by the debtor but by the attorney, who uses the FDCPA suit as leverage to get the creditor to drop the claim, rather than for the purpose of compensating a debtor who was actually damaged by a creditor's attorney filing a lawsuit.

NARCA suggests as a possible solution that the FDCPA be amended to include a provision similar to what a debtor's counsel is now required to file when a bankruptcy petition is filed. In any case where the allegations are made against a debt collecting attorney based on the filing of the lawsuit for collecting a debt, rather than on communications or conduct outside of the suit process, the plaintiff/debtor should be required to sign a verification under oath that the

lawsuit was filed for purposes of seeking damages because of FDCPA violations and has not been filed so as to extract any advantage of settlement or compromise on the underlying debt.

NARCA appreciates this opportunity to bring to the attention of the FTC a number of issues that have developed as the FDCPA has evolved and which impact attorneys in the collection of consumer debt.