

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

CREDIT SMART, LLC, d/b/a UNITED  
ABSTRACT, HENRY STARK &  
ASSOCIATES, STAR PROCESSING,  
CREDIT STAR, LLC, CREDIT STAR  
FINANCE, LLC, and CS PROCESSING;  
CARD SMART, INC.;  
PAYSTAR INTERNATIONAL, LLC, d/b/a  
PAY STAR INTERNATIONAL, LLC;  
UNITED ABSTRACT GROUP, INC.;  
U.S. RECEIVABLES SERVICES, INC.;  
BARRY CALVAGNA, individually and as  
corporate officer.; DAWN VENERONI,  
individually and as a corporate officer;  
ANTHONY PICONE, individually and as a  
corporate officer; LAUREN PICONE,  
individually and as a corporate officer,

Defendants.

Case No. 14-CV-4650 (LDW) (GRB)

**STIPULATED ORDER FOR  
PERMANENT INJUNCTION AND  
CIVIL PENALTY JUDGMENT**

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission (“Commission” or “FTC”), filed its Complaint to obtain a permanent injunction, civil penalties, and other equitable relief, pursuant to Sections 13(b) and 16(a)(1) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 56(a)(1), and Section 814 of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692*l*. Defendants have waived service of the summons and Complaint. The parties, represented by the counsel identified below, stipulate to this Order for Permanent Injunction and Civil Penalty Judgment (“Order”).

**THEREFORE, IT IS ORDERED** as follows:

## FINDINGS

1. This Court has jurisdiction over this matter.
2. The Complaint charges that Defendants participated in deceptive acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, and the FDCPA, 15 U.S.C. §§ 1692-1692p, in connection with collecting on debt.
3. Defendants neither admit nor deny any of the allegations in the Complaint, except as specifically stated in this Order. Only for purposes of this action, Defendants admit the facts necessary to establish jurisdiction.
4. All parties waive all rights to appeal or otherwise challenge or contest the validity of this Order.
5. Defendants waive any claim that they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and agree to bear their own costs and attorney fees. Defendants also waive and release any claim that they may have against the Commission or its agents that relates to this action.

## DEFINITIONS

For the purpose of this Order, the following definitions apply:

- A. **“Clearly and prominently”** means:
1. that information presented in writing shall be in a type size and location sufficient for an ordinary consumer to read and comprehend it, and shall be disclosed in a manner that would be easily recognizable and understandable in language and syntax to an ordinary consumer. If the information is contained in a multi-page print document, the disclosure shall appear on the first page; and
  2. that information presented orally shall be disclosed in a volume, cadence, and syntax sufficient for an ordinary consumer to hear and comprehend.
- B. **“Collecting on debt”** means a debt collector recovering or attempting to recover, directly or indirectly, debts owed or due or asserted to be owed or due.
- C. **“Debt”** means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.
- D. **“Debt collector”** means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Notwithstanding the exclusion provided by Clause 6 of the last sentence of this paragraph, the term includes any creditor who, in the process of collecting his own debts, uses

any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. For the purpose of this Order, such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests. The term does not include—

1. any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;
2. any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of such person is not the collection of debts;
3. any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties;
4. any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;
5. any nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors; and
6. any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity:
  - (a) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement;
  - (b) concerns a debt which was originated by such person;

(c) concerns a debt which was not in default at the time it was obtained by such person; or

(d) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.

E. **“Debtor”** means any person obligated or allegedly obligated to pay any debt, as well as that person’s spouse, parent (if the debtor is a minor), guardian, executor, or administrator.

F. **“Defendants”** means all of the Individual Defendants and the Corporate Defendants, individually, collectively, or in any combination.

1. **“Corporate Defendants”** means, individually, collectively, or in any combination: Credit Smart, LLC, also d/b/a United Abstract, Henry Stark & Associates, Star Processing, Credit Star, LLC, Credit Star Finance, LLC, and CS Processing; Card Smart, Inc.; Paystar International, LLC, also d/b/a Pay Star International, LLC; United Abstract Group, Inc.; U.S. Receivables Services, Inc.; and their successors and assigns.

2. **“Individual Defendants”** means, individually, collectively, or in any combination: Barry Calvagna, Dawn Veneroni, Anthony Picone, and Lauren Picone.

G. **“Plaintiff”** means the United States of America.

H. **“Commission”** means the Federal Trade Commission.

I. **“Investigation,”** for purposes of this Order, includes objectively evaluating the circumstances and considering information, including an assessment of the relevance, reliability, accuracy, integrity, and completeness of such information, to determine whether a debtor owes a debt in the amount asserted by Defendants while collecting on debt. The information Defendants

shall assess in an Investigation, where applicable, shall include but not be limited to:

1. the information that Defendants received from the credit originator or the creditor to whom the debt is owed, such as: (a) the debtor's credit application, (b) the credit contract between the debtor and the credit originator, (c) documents with the current or former name, address, and telephone phone number of the debtor, (d) documents with the debtor's account number, in whole or in part, and account statements, (e) documents with the date and amount of any payments, (f) documents with the date and outstanding balance at charge-off, and (g) collector's notes;
2. the information that Defendants received from data aggregators, data brokers, consumer reporting agencies, skip tracers, and other third-parties, such as: (a) documents with the current or former name, address, and telephone number of the debtor, (b) documents with consumer report information, including credit scores and updates to the information in credit reports, and (c) the scoring of the debt through the use of a predictive model;
3. the information that Defendants created or maintained in collecting on the debt, such as collectors' notes; and
4. the information Defendants received from the debtor denying, disputing, or challenging the claim that the debtor owes the debt or the amount of the debt, such as: (a) documents with the debtor's current or former name, address, and telephone number, (b) receipts or other evidence of payment from the credit originator, the creditor to whom the debt is owed, or a debt collector, (c) canceled checks, bank account statements, credit card statements, and other documents evidencing payment, and (d) a consumer report relevant

to the disputed item.

## **ORDER**

### **I. MONETARY JUDGMENT FOR CIVIL PENALTY AND PARTIAL SUSPENSION**

**IT IS ORDERED** that:

A. Judgment in the amount of ONE MILLION TWO HUNDRED THOUSAND DOLLARS (\$1,200,000) is entered in favor of Plaintiff against Defendants, jointly and severally, as a civil penalty.

B. Defendants are ordered to pay to the Plaintiff, by making payment to the Treasurer of the United States, FOUR HUNDRED NINETY THOUSAND DOLLARS (\$490,000). Such payment must be made in the following installments: (1) by the later of ten (10) days from the entry of this Order or August 1, 2014, Defendants shall have paid a total aggregate amount of no less than \$250,000; and (2) by no later than April 1, 2015, Defendants shall have paid a total aggregate amount of no less than \$490,000. All payments shall be made by electronic fund transfer in accordance with instructions previously provided by a representative of the Plaintiff. Upon payment of a total aggregate amount of \$490,000, the remainder of the judgment is suspended, subject to the Subsections below.

C. The agreement of the Commission and Plaintiff to the suspension of part of the judgment is expressly premised upon the truthfulness, accuracy, and completeness of Defendants' sworn financial statements and related documents (collectively, "Financial Attestations") submitted to the Commission, namely:

1. The Financial Statement of Individual Defendant Barry Calvagna, signed on

February 2, 2014, including the attachments;

2. The Financial Statement of Individual Defendant Dawn Veneroni, signed on February 14, 2014, including the attachments;

3. The Financial Statement of Individual Defendant Anthony Picone, signed on February 18, 2014, including the attachments;

4. The Financial Statement of Individual Defendant Lauren Picone, signed on February 18, 2014, including the attachments;

5. The Financial Statement of Corporate Defendant Credit Smart, LLC, signed by Patrick Resti on March 27, 2014, including the attachments;

6. The Financial Statement of Corporate Defendant Card Smart, Inc., signed by Barry Calvagna on March 27, 2014, including the attachments;

7. The Financial Statement of Corporate Defendant Paystar International, LLC, signed by Patrick Resti on March 27, 2014, including the attachments;

8. The Financial Statement of Corporate Defendant United Abstract Group, Inc., signed by Barry Calvagna on March 20, 2014, including the attachments;

9. Additional documentation submitted by letter from Defendants' counsel Michael Salomon to Commission counsel Colin Hector dated March 28, 2014, including: (i) a sworn statement from Individual Defendant Barry Calvagna, attesting that Corporate Defendant U.S. Receivables Services, Inc., has not been operational for the past three years; and (ii) a sworn statement from Individual Defendant Barry Calvagna, attesting to an accounting error on a Balance Sheet previously submitted to Commission counsel for Corporate Defendant United Abstract Group, Inc..



D. The suspension of the judgment will be lifted as to any Defendant if, upon motion by the Commission or Plaintiff, the Court finds that Defendant failed to disclose any material asset, materially misstated the value of any asset, or made any other material misstatement or omission in the Financial Attestations identified above.

E. If the suspension of the judgment is lifted, the judgment becomes immediately due as to that Defendant in the amount specified in Subsection A above (which the parties stipulate only for purposes of this Section represents the amount of the civil penalty for the violations alleged in the Complaint), less any payment previously made pursuant to this Section, plus interest computed from the date of entry of this Order.

F. Defendants relinquish dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets.

G. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the Commission, including in a proceeding to enforce its rights to any payment or monetary judgment pursuant to this Order.

H. Defendants agree that the judgment represents a civil penalty owed to the government of the United States, is not compensation for actual pecuniary loss, and, therefore, as to the Individual Defendants, it is not subject to discharge under the Bankruptcy Code pursuant to 11 U.S.C. § 523(a)(7).

I. Defendants acknowledge that their Taxpayer Identification Numbers (Social Security Numbers or Employer Identification Numbers), which Defendants previously submitted to the Commission, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. § 7701.

## II. INJUNCTION AGAINST DECEPTIVE COLLECTION PRACTICES

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with collecting on debt, are permanently restrained and enjoined from:

A. Misrepresenting, expressly or by implication:

1. that Defendants are calling in coordination with or on behalf of an attorney or attorneys;
2. that Defendants have filed or intend to file a lawsuit against the debtor for failing to pay a debt;
3. that nonpayment of a purported debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any person's property or wages, when such action is not lawful and when Defendants do not intend to take such action;
4. the purpose of Defendants' communication with debtors, including but not limited to misrepresenting that Defendants are offering financial relief or assistance;
5. the character, amount, or legal status of a debt;
6. that Defendants will take action that they cannot or do not intend to take, including filing a lawsuit against the debtor; and

B. Using false representations or deceptive means to collect or attempt to collect a debt or to obtain information about a debtor.

**III. INJUNCTION AGAINST VIOLATIONS OF  
THE FAIR DEBT COLLECTION PRACTICES ACT**

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order and are operating as a debt collector, whether acting directly or indirectly, in connection with collecting on debt, are permanently restrained and enjoined from:

- A. Failing to disclose in initial communications that Defendants are attempting to collect a debt and that information obtained will be used for that purpose, or failing to disclose in subsequent communications that the communication is from a debt collector;
- B. Communicating, except when seeking to acquire location information in compliance with Section 804 of the FDCPA, 15 U.S.C. § 1692b, with any person other than the debtor; the debtor's spouse, parent (if the debtor is a minor), guardian, executor, or administrator; a consumer reporting agency; the creditor; the attorney of the creditor; or the attorney of the Defendants; unless Defendants have the prior consent of the debtor given directly to Defendants or the express permission of a court of competent jurisdiction, or Defendants can show that such communication is reasonably necessary to effectuate a postjudgment judicial remedy or related to an administrative wage garnishment pursuant to and in compliance with Department of Education regulations;
- C. Engaging in conduct the natural consequence of which is to harass, oppress, or abuse a person, including but not limited to placing telephone calls without meaningful disclosure of the caller's identity or as otherwise allowed by section 804 of the FDCPA, 15 U.S.C. § 1692b;

D. Failing to provide debtors, either in an initial communication or a written notice sent five days after the initial communication, with information about the debt and the right to dispute the debt; and

E. Violating any provision of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692-1692p (a copy of which is attached hereto as Attachment A), including, but not limited to: (1) Section 807, 15 U.S.C. § 1692e; (2) Section 805(b), 15 U.S.C. § 1692c(b); (3) Section 806, 15 U.S.C. § 1692d; and (4) Section 809(a), 15 U.S.C. § 1692g(a).

**IV. INJUNCTION AGAINST UNSUBSTANTIATED CLAIMS  
THAT CONSUMERS OWE DEBTS IN PART OR IN WHOLE**

**IT IS FURTHER ORDERED** that Defendants and their officers, agents, servants, employees, and all persons or entities in active concert or participation with any of them, who receive actual notice of this Order and are operating as a debt collector, whether acting directly or indirectly, in connection with collecting on debt, are hereby permanently restrained and enjoined from:

A. Representing, expressly or by implication, that a debtor owes a debt or as to the amount of a debt, when, at the time of the representation, Defendants do not have a reasonable basis for such a representation, including but not limited to instances where:

1. debtors have disputed or attempted to dispute the validity or accuracy of the debt and Defendants have failed to review information substantiating the amount of debt, or failed to consider the debtors' disputes, prior to continuing collection; or
2. Defendants have knowledge or reason to believe that a specific debt portfolio contains unreliable data but fail to obtain information substantiating the accuracy of the

data prior to collecting; and

B. Failing, after a debtor denies, disputes, or challenges the Defendants' claim that the debtor owes the debt or owes the debt in the amount asserted, to:

1. within fourteen (14) days after the denial, dispute, or challenge, or when the debt is next reported to a consumer reporting agency, if earlier: report the debt as disputed or request deletion of that item from the debtor's credit reporting file by any credit reporting agency to which the debt was reported by Defendants; and

2. promptly after the denial, dispute, or challenge:

(a) cease collection, and not sell, provide, or transfer the debt to any person or entity other than the creditor to whom the debt is owed; or

(b) commence and complete, within thirty (30) days after a debtor denies, disputes, or challenges Defendants' claim that the debtor owes the debt or that it owes the debt in the amount asserted, an Investigation of the denial, dispute, or challenge, *provided that* Defendants shall not be required to investigate any denial, dispute, or challenge more than once unless the debtor provides to Defendants or the Defendants otherwise acquire or obtain information, data, or documentation that was not considered in any prior investigation. Defendants shall notify the debtor within five (5) business days if the denial, dispute, or challenge is not investigated under this proviso.

(i) if Defendants reasonably conclude after their Investigation that the debtor owes the debt in the amount asserted, Defendants, within five (5) days of reaching their conclusion, shall provide verification of the debt to the

debtor, inform the debtor of their conclusion, and provide the basis for it, after which they may continue collection. If the debtor continues to dispute the debt, nothing in this order supersedes the requirement of § 623(a)(3) of the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681s-2(a)(3), that Defendants convey the dispute when furnishing information on the debt to any consumer reporting agency.

(ii) if Defendants reasonably conclude after their Investigation that the debtor does not owe the debt or the debt cannot be verified, Defendants shall, within five (5) days of reaching their conclusion: (a) inform the debtor of their conclusion and the basis for it; (b) request that each consumer reporting agency to which the debt has been reported delete the debt from the debtor’s credit reporting file; (c) cease collection; and (d) not sell, provide, or transfer the debt to any person or entity other than the creditor to whom the debt is allegedly owed.

(iii) if Defendants reasonably conclude after their Investigation that the debtor does owe the debt but not in the amount that Defendants asserted, Defendants shall, within five (5) days of reaching their conclusion: (a) inform the debtor of their conclusion and the basis for it; and (b) provide to each consumer reporting agency to which the debt has been reported any correction to the reported information that is necessary to make the information provided by Defendants accurate, after which they may continue collection.

*Provided that*, if the debtor initiates contact with Defendants by any means, Defendants may respond to the debtor prior to the completion of the Investigation.

*Provided further that*, nothing in this Part affects Defendants' obligation to comply with all applicable provisions of the FDCPA and the FCRA.

*Provided further that*, nothing in this Part prohibits Defendants from requiring debtors who deny, dispute, or challenge a debt on the grounds of fraud or identity theft to do so in writing, so long as Defendants clearly and conspicuously disclose these requirements to debtors.

#### **V. INJUNCTION AGAINST UNSUBSTANTIATED OR FALSE REPRESENTATIONS THAT CONSUMERS OWE INTEREST**

**IT IS FURTHER ORDERED** that Defendants and their officers, agents, servants, employees, and all persons or entities in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with collecting on debt, are hereby permanently restrained and enjoined from misrepresenting, directly or indirectly, expressly or by implication, that debtors owe interest on debts, including but not limited to instances in which:

- A. Defendants lack a contractual or statutory basis, or other reasonable basis, for applying a particular rate of interest to the debt; or
- B. The owner of the debt had waived the assessment and collection of interest.

#### **VI. REQUIRED DISCLOSURES**

**IT IS FURTHER ORDERED** that Defendants and their officers, agents, servants, employees, and all persons or entities in active concert or participation with any of them, who receive actual notice of this Order and are operating as a debt collector, whether acting directly or

indirectly, in connection with collecting on debt, are hereby permanently restrained and enjoined from:

A. At the time of Defendants' initial communication with a debtor in connection with the collection of a debt, for any debt that the Defendants know or should know may be beyond the applicable statute of limitations, failing to make the disclosure(s) set forth in Part VI.D, below, in the validation notice or other written communication containing the information required by Section 809 of the FDCPA, 15 U.S.C. § 1692g;

B. Subsequent to its initial communication with a debtor, for any debt where Defendants come into possession of information from which the Defendants know or should know that the debt has passed the applicable statute of limitations, failing to make the disclosure(s) set forth in Part VI.D, below, in the next communication with the debtor, whether oral or written;

*Provided that* Defendants may satisfy this provision by making the disclosure(s) set forth in Part VI.D, below, on or before the date that the debt has passed the applicable statute of limitations;

C. In addition to making the applicable disclosure(s) required by Part VI.A or VI.B, above, in any subsequent communication in connection with collecting a debt, failing to make the disclosure(s) set forth in Part VI.D, below, if failure to do so would be likely to mislead a debtor acting reasonably under the circumstances about the Defendants' ability or intent to take legal action to collect the debt and the debtor's rights in connection with such legal action. Factors to consider when assessing whether the net impression of the communication is likely misleading to a debtor acting reasonably under the circumstances include, but are not limited to: (1) the amount of time that has lapsed since Defendants last communicated with the debtor; (2) the form of the



Defendants' communication with the debtor; (3) the content of Defendants' communication with the debtor; (4) the context of Defendants' communication with the debtor; and (5) any information learned from the debtor;

*Provided that*, for purpose of this provision, if one-hundred eighty (180) days or more has elapsed since Defendants previously communicated with the debtor in connection with collecting a debt, then there shall exist a rebuttable presumption that failure to make the disclosure(s) would be likely to mislead a debtor acting reasonably under the circumstances about the Defendants' ability or intent to take legal action to collect the debt and the debtor's rights in connection with such legal action;

*Provided further that*, after one (1) year has lapsed after the date of entry of this Order, any competent and reliable evidence (including appropriate and adequate reports, studies, surveys, or other extrinsic evidence) relating to whether failure to make a subsequent disclosure(s) required under Part VI.C. of this Order is likely to mislead a debtor acting reasonably under the circumstances about the Defendants' ability or intent to take legal action to collect the debt and the debtor's rights in connection with such legal action shall constitute a change in circumstances, providing a party good cause to file a motion under Fed. R. Civ. P. 60(b) to modify or amend the terms of Part VI.C;

D. As required by Parts VI.A, B, and C, above, failing to make the following disclosure(s), clearly and prominently, as applicable:

1. when collecting on debt where the debt is not past the date for obsolescence provided for in Section 605(a) of the Fair Credit Reporting Act, 15 U.S.C. § 1681c:

The law limits how long you can be sued on a debt. We won't sue you for this debt because the time for filing a lawsuit has passed. But if you pay anything on this debt now – or promise in writing to pay it – it may restart the clock for filing a lawsuit. [Company Name] may still report any unpaid debt to a credit reporting company;

2. when collecting on debt where the debt is passed the date for obsolescence

provided for in Section 605(a) of the Fair Credit Reporting Act, 15 U.S.C. § 1681c:

The law limits how long you can be sued on a debt. We won't sue you for this debt because the time for filing a lawsuit has passed. But if you pay anything on this debt now – or promise in writing to pay it – it may restart the clock for filing a lawsuit. In any case, because the debt is old, we won't report it to a credit reporting company;

E. Making any representation or statement, or take any other action that interferes with, detracts from, contradicts, or otherwise undermines the disclosures required in Part VI.D, above.

Defendants shall be deemed to have complied with the disclosure requirements of Part VI.A, B, and C if Defendants make a disclosure to debtors in a specific state, county, or city that (1) is required by the laws or regulations of that jurisdiction, (2) complies with those laws or regulations, and (3) is substantially similar to the disclosure(s) required in Part VI.D, above.

F. For any debt where the Defendants have provided the applicable disclosure(s) required by Parts VI.A, B, or C to the debtor:

1. initiating any arbitration or legal action to recover on such debt;
2. selling, transferring, or assigning with such a debt any right to commence any arbitration or legal action to recover on the debt.
3. failing to include in all contracts to sell, transfer, or assign such debt a provision that contains a clear and prominent notification to the buyer, transferee, or assignee that:
  - (a) Defendants are not selling, transferring, or assigning all of its rights to

collect the debt; and

(b) Defendants are expressly withholding from the sale, transfer, or assignment any rights it may have to initiate any arbitration or legal action to recover on the debt.

4. failing to provide a copy of this Order to any person to whom Defendants sells, transfers, or assigns any such debt.

*Provided that* nothing in this Part shall be construed to supersede or be in lieu of any other applicable requirements, including but not limited to Section 809 of the FDCPA, or any state or local statutes. Defendants shall be responsible for the requirements in Part VI forty-five (45) days after entry of this Order.

## VII. NOTICE REQUIREMENTS

**IT IS FURTHER ORDERED** that:

A. For a period of 5 years from the date of entry of this Order, Defendants that are operating as a debt collector, whether acting directly or indirectly, shall make the following disclosure clearly and conspicuously on each written collection communication that is sent to a debtor for the purpose of collecting on debt:

Federal and state law prohibit certain methods of debt collection, and require that we treat you fairly. If you have a complaint about the way we are collecting your debt, please visit our website at [applicable corporate website] or contact the FTC online at [www.ftc.gov](http://www.ftc.gov); by phone at 1-877-FTC-HELP; or by mail at 600 Pennsylvania Ave., NW, Washington, DC 20580. If you want information about your rights when you are contacted by a debt collector, please contact the FTC online at [www.ftc.gov](http://www.ftc.gov).

The above disclosure shall be given in the language(s) that appear in such communications sent to debtors. Defendants shall be responsible for the requirement in Part VII.A sixty (60) days after

entry of this Order. Defendants may also satisfy the requirements in Part VII.A through use of an insert added to written collection communications for six (6) months after responsibility for the requirement in VI.A begins.

B. Defendants shall be deemed to have complied with the notice requirement of Part VII.A of this Order if Defendants provide a notice in a specific state, county, or city that (1) is required by the laws or regulations of that jurisdiction, (2) complies with those laws or regulations, and (3) is substantially similar to the notice required in Part VII.A, above.

C. Defendants that are operating as a debt collector, whether acting directly or indirectly, shall provide a written (electronic or paper) copy of the following notice to all officers, servants, agents, and employees having responsibility with respect to the collection of debts, within sixty (60) days of the date of entry of this Order, and to each employee hired for a period of five (5) years after that date, no later than the time the employee assumes responsibility with respect to the collection of such debts, and shall secure from each such person, within thirty (30) days of delivery, a signed and dated statement acknowledging that he or she has read the notice:

Debt collectors must comply with the federal Fair Debt Collection Practices Act, which limits our activities in trying to collect money from debtors.

Section 805 of the Act says that, in connection with the collection of a debt, you may not communicate with any person other than the debtor for a purpose other than to obtain location information about the debtor. This means that you may not reveal the existence of a debt to anyone other than (1) the person who allegedly owes the debt or (2) the debtor's spouse, parent (if the debtor is a minor), guardian, executor, or administrator.

Section 806 of the Act states that you may not harass, oppress, or abuse any person in connection with the collection of a debt. Among other things, this includes placing telephone calls without meaningful disclosure of the caller's identity, except as provided in Section 804 of the Act.

Section 807 of the Act prohibits the use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information about a debtor.

Section 809 of the Act requires that you provide an initial written notice containing certain information within five days after the initial communication with a debtor in connection with the collection of any debt, unless this information is contained in the initial communication or the debtor has paid the debt. The information that must be contained in the notice includes, among other things, the amount of the debt, the name of the creditor to whom the debt is owed, and information pertaining to the debtor's right to dispute the debt.

**Individual debt collectors are liable for their violations of the Act, and may be required to pay penalties if they violate it.**

*Provided that*, for purposes of compliance with Part VII.C of this Order, the signature required for the employee's statement that he or she has read the notice may be in the form of an electronic signature.

### **VIII. ORDER AND FDCPA ACKNOWLEDGMENTS**

**IT IS FURTHER ORDERED** that Defendants obtain acknowledgments of receipt of this Order and of the FDCPA (attached hereto as Attachment A):

- A. Each Defendant, within seven (7) days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.
- B. For 5 years after entry of this Order, each Individual Defendant for any business that collects on debts, or buys or sells debts, that such Defendant, individually or collectively with any other Defendants, is the majority owner or controls directly or indirectly, and each Corporate Defendant, must deliver a copy of this Order and the FDCPA to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives who participate in conduct related to the subject matter of the Order; and (3) any business entity

resulting from any change in structure as set forth in the Part titled Compliance Reporting.

Delivery must occur within thirty (30) days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

C. From each individual or entity to which a Defendant delivered a copy of this Order and the FDCPA, that Defendant must obtain, within sixty (60) days, a signed and dated acknowledgment of receipt of this Order and the FDCPA.

### **IX. COMPLIANCE REPORTING**

**IT IS FURTHER ORDERED** that Defendants make timely submissions to the Commission:

A. One (1) year after entry of this Order, each Defendant must submit a compliance report, sworn under penalty of perjury:

1. each Defendant must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with Defendant; (b) identify all of that Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant (which Individual Defendants must describe if they know or should know due to their own involvement); (d) describe in detail whether and how that Defendant is in compliance with each Part of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.

2. additionally, each Individual Defendant must: (a) identify all telephone numbers and all physical, postal, email and Internet addresses, including all residences; (b) identify all business activities, including any business for which such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest; and (c) describe in detail such Defendant's involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.

B. For ten (10) years after entry of this Order, each Defendant must submit a compliance notice, sworn under penalty of perjury, within fourteen (14) days of any change in the following:

1. each Defendant must report any change in: (a) any designated point of contact; or (b) the structure of any Corporate Defendant or any entity that Defendant has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

2. additionally, each Individual Defendant must report any change in: (a) name, including aliases or fictitious name, or residence address; or (b) title or role in any business activity, including any business for which such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest, and identify the name, physical address, and any Internet address of the business or entity.

C. Each Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Defendant within fourteen (14) days of its filing.

D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: \_\_\_\_\_” and supplying the date, signatory’s full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: FTC v. Credit Smart, LLC, *et al.*, No. \_\_\_\_\_.

## **X. RECORDKEEPING**

**IT IS FURTHER ORDERED** that Defendants must create certain records for ten (10) years after entry of the Order, and retain each such record for five (5) years. Specifically, each Corporate Defendant that operates as a debt collector, and each Individual Defendant for any business that operates as a debt collector and that such Defendant, individually or collectively with any other Defendants, is a majority owner or controls directly or indirectly, must create and retain the following records:

- A. Accounting records showing the revenues from all goods or services sold;
- B. Personnel records showing, for each person providing services, whether as an employee or



otherwise, that person's: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;

C. Debtor files containing the names, addresses, phone numbers, dollar amounts of debt owed, records of collection activity, and amounts collected;

D. For every debtor complaint, whether received directly or indirectly, such as through a third party, records that include:

1. any complaint and the date received, and the nature of the complaint as reflected in any notes, logs, or memoranda, including a description of the conduct alleged; and

2. the basis of the complaint, including the names of any debt collectors or supervisors complained about; the nature of any investigation conducted concerning the validity of any complaint; all documents relating to the disposition of the complaint, including records of all contacts with the debtor; Defendants' response to the complaint and the response date; whether the complaint was resolved; the date of resolution; and any action taken to correct the conduct complained about;

E. Copies of all scripts and other training materials related to the collection of debts;

F. Copies of advertisements and other marketing materials relating to offering or providing debt collection goods or services; and

G. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission.

## **XI. COMPLIANCE MONITORING**

**IT IS FURTHER ORDERED** that, for the purpose of monitoring Defendants' compliance with this Order, including the Financial Attestations upon which part of the judgment

may be suspended, and any failure to transfer any assets as required by this Order:

A. Within fourteen (14) days of receipt of a written request from a representative of the Commission or Plaintiff, each Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents for inspection and copying. The Commission is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

B. For matters concerning this Order, the Commission and Plaintiff are authorized to communicate directly with each Defendant. Defendants must permit representatives of the Commission and Plaintiff to interview any employee or other person affiliated with any Defendant who has agreed to such an interview. The person interviewed may have counsel present.

C. The Commission and Plaintiff may use all other lawful means, including posing, through its representatives as consumers, suppliers, or other individuals or entities, to Defendants or any individual or entity affiliated with Defendants, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

**XII. RETENTION OF JURISDICTION**

**IT IS FURTHER ORDERED** that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

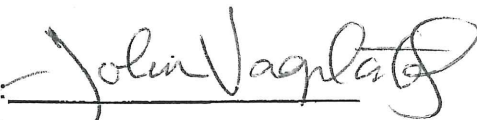
**SO ORDERED** this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE


**FOR PLAINTIFF:**

LORETTA E. LYNCH  
United States Attorney  
Eastern District of New York  
271 Cadman Plaza East  
Brooklyn, New York 11201

STUART F. DELERY  
Assistant Attorney General  
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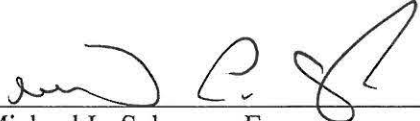
By:   
\_\_\_\_\_  
MICHAEL S. BLUME

Director  
ANDREW E. CLARK  
Assistant Director  
JAMES W. HARLOW  
Trial Attorney  
Consumer Protection Branch  
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By:   
\_\_\_\_\_

JAMES REILLY DOLAN  
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Federal Trade Commission  
600 Pennsylvania Avenue  
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Washington, DC 20580  
P: (202) 326-3376 (Hector)  
chector@ftc.gov

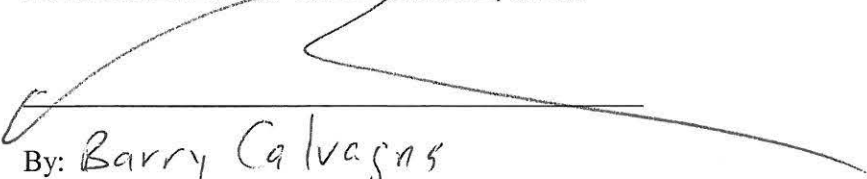
**COUNSEL FOR DEFENDANTS:**

  
\_\_\_\_\_  
Michael L. Salomon, Esq.  
Zemsky & Salomon, P.C.  
33 Front Street  
Suite 207  
Hempstead, New York 11550  
(516) 485-3800 (Phone)  
(516) 485-3280 (Fax)


**FOR DEFENDANT CREDIT SMART, LLC:**

  
\_\_\_\_\_  
By: Patrick Resti  
of Credit Smart, LLC  
Date: 3-28-14

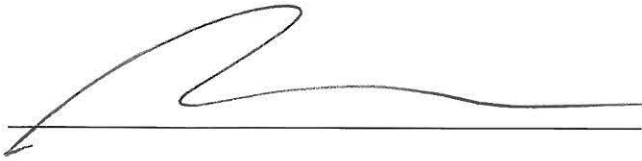
**FOR DEFENDANT CARD SMART, INC.:**

  
\_\_\_\_\_  
By: Barry Calvagas  
of Card Smart, Inc.  
Date: 3-28-14

**FOR DEFENDANT PAYSTAR INTERNATIONAL, LLC:**

  
\_\_\_\_\_  
By: Patrick Resti  
of Paystar International, LLC  
Date: 3-28-14

**FOR DEFENDANT UNITED ABSTRACT GROUP, LLC:**



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By: Barry Calvagna  
of United Abstract Group, LLC

Date: 3-28-14

**FOR DEFENDANT U.S. RECEIVABLES SERVICES, INC.:**

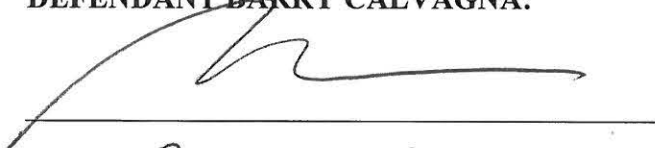


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By: Barry Calvagna  
of U.S. Receivables Services, Inc.

Date: 3-28-14

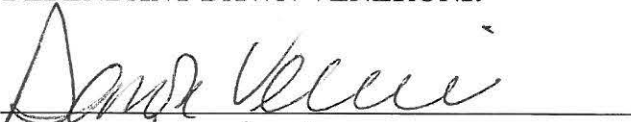
**DEFENDANT BARRY CALVAGNA:**



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Date: 3-28-14

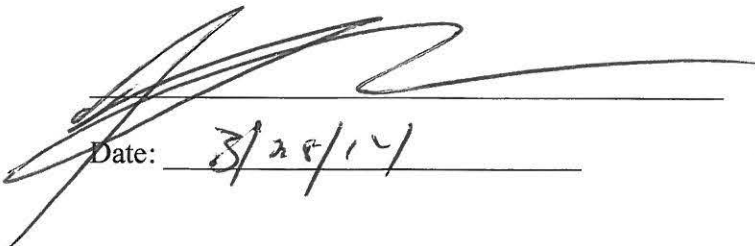
**DEFENDANT DAWN VENERONI:**



---

Date: 3/28/14

**DEFENDANT ANTHONY PICONE:**



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Date: 3/28/14

**DEFENDANT LAUREN PICONE:**

*Lauren Picone* \_\_\_\_\_

Date: 3/28/14 \_\_\_\_\_

**ATTACHMENT A**





# Fair Debt Collection Practices Act

15 U.S.C. §§ 1692-1692p

Last amended July 2010

# THE FAIR DEBT COLLECTION PRACTICES ACT

As amended by Pub. L. 111-203, title X, 124 Stat. 2092 (2010)

As a public service, the staff of the Federal Trade Commission (FTC) has prepared the following complete text of the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. §§ 1692-1692p.

Please note that the format of the text differs in minor ways from the U.S. Code and West's U.S. Code Annotated. For example, this version uses FDCPA section numbers in the headings. In addition, the relevant U.S. Code citation is included with each section heading. Although the staff has made every effort to transcribe the statutory material accurately, this compendium is intended as a convenience for the public and not a substitute for the text in the U.S. Code.

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- § 807 False or misleading representations
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- § 812 Furnishing certain deceptive forms
- § 813 Civil liability
- § 814 Administrative enforcement
- § 815 Reports to Congress by the Bureau; views of other Federal agencies
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- § 818 Exception for certain bad check enforcement programs operated by private entities
- § 819 Effective date

15 USC 1601 note

### **§ 801. Short Title**

This title may be cited as the “Fair Debt Collection Practices Act.”

15 USC 1692

### **§ 802. Congressional findings and declaration of purpose**

(a) Abusive practices

There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.

(b) Inadequacy of laws

Existing laws and procedures for redressing these injuries are inadequate to protect consumers.

(c) Available non-abusive collection methods

Means other than misrepresentation or other abusive debt collection practices are available for the effective collection of debts.

(d) Interstate commerce

Abusive debt collection practices are carried on to a substantial extent in interstate commerce and through means and instrumentalities of such commerce. Even where abusive debt collection practices are purely intrastate in character, they nevertheless directly affect interstate commerce.

(e) Purposes

It is the purpose of this title to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.

**§ 803. Definitions**

15 USC 1692a

As used in this title—

- (1) The term “Bureau” means the Bureau of Consumer Financial Protection.
- (2) The term “communication” means the conveying of information regarding a debt directly or indirectly to any person through any medium.
- (3) The term “consumer” means any natural person obligated or allegedly obligated to pay any debt.
- (4) The term “creditor” means any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.
- (5) The term “debt” means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.
- (6) The term “debt collector” means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Notwithstanding the exclusion provided by clause (F) of the last sentence of this paragraph, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. For the purpose of section 808(6), such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the

enforcement of security interests. The term does not include—

- (A) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;
- (B) any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of such person is not the collection of debts;
- (C) any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties;
- (D) any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;
- (E) any nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors; and
- (F) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity
  - (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement;
  - (ii) concerns a debt which was originated by such person;
  - (iii) concerns a debt which was not in default at the time it was obtained by such person; or
  - (iv) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.

- (7) The term “location information” means a consumer’s place of abode and his telephone number at such place, or his place of employment.
- (8) The term “State” means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing.

#### **§ 804. Acquisition of location information**

Any debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall—

15 USC 1692b

- (1) identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;
- (2) not state that such consumer owes any debt;
- (3) not communicate with any such person more than once unless requested to do so by such person or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information;
- (4) not communicate by post card;
- (5) not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the debt collector is in the debt collection business or that the communication relates to the collection of a debt; and
- (6) after the debt collector knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, such attorney’s name and address, not communicate with any person other than that attorney, unless the attorney fails to respond within a reasonable period of time to the communication from the debt collector.

**§ 805. Communication in connection with debt collection****(a) Communication with the consumer generally**

Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt—

- (1) at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8 o'clock antimeridian and before 9 o'clock postmeridian, local time at the consumer's location;
- (2) if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer; or
- (3) at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.

**(b) Communication with third parties**

Except as provided in section 804, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than a consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.

**(c) Ceasing communication**

If a consumer notifies a debt collector in writing that the

consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt, except—

- (1) to advise the consumer that the debt collector's further efforts are being terminated;
- (2) to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or
- (3) where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy.

If such notice from the consumer is made by mail, notification shall be complete upon receipt.

(d) "Consumer" defined

For the purpose of this section, the term "consumer" includes the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator.

**§ 806. Harassment or abuse**

15 USC 1692d

A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

- (1) The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person.
- (2) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.
- (3) The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of section 603(f) or 604(3)<sup>1</sup> of this Act.

1. Section 604(3) has been renumbered as Section 604(a)(3).



- (4) The advertisement for sale of any debt to coerce payment of the debt.
- (5) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.
- (6) Except as provided in section 804, the placement of telephone calls without meaningful disclosure of the caller's identity.

15 USC 1692e

### **§ 807. False or misleading representations**

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

- (1) The false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform, or facsimile thereof.
- (2) The false representation of—
  - (A) the character, amount, or legal status of any debt; or
  - (B) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.
- (3) The false representation or implication that any individual is an attorney or that any communication is from an attorney.
- (4) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action.
- (5) The threat to take any action that cannot legally be taken or that is not intended to be taken.

- (6) The false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to—
  - (A) lose any claim or defense to payment of the debt; or
  - (B) become subject to any practice prohibited by this title.
- (7) The false representation or implication that the consumer committed any crime or other conduct in order to disgrace the consumer.
- (8) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.
- (9) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval.
- (10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.
- (11) The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action.
- (12) The false representation or implication that accounts have been turned over to innocent purchasers for value.
- (13) The false representation or implication that documents are legal process.

- (14) The use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization.
- (15) The false representation or implication that documents are not legal process forms or do not require action by the consumer.
- (16) The false representation or implication that a debt collector operates or is employed by a consumer reporting agency as defined by section 603(f) of this Act.

15 USC 1692f

### **§ 808. Unfair practices**

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

- (1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.
- (2) The acceptance by a debt collector from any person of a check or other payment instrument postdated by more than five days unless such person is notified in writing of the debt collector's intent to deposit such check or instrument not more than ten nor less than three business days prior to such deposit.
- (3) The solicitation by a debt collector of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution.
- (4) Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument.
- (5) Causing charges to be made to any person for communications by concealment of the true propose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.
- (6) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if—

- (A) there is no present right to possession of the property claimed as collateral through an enforceable security interest;
  - (B) there is no present intention to take possession of the property; or
  - (C) the property is exempt by law from such dispossession or disablement.
- (7) Communicating with a consumer regarding a debt by post card.
- (8) Using any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his business name if such name does not indicate that he is in the debt collection business.

## § 809. Validation of debts

15 USC 1692g

### (a) Notice of debt; contents

Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing—

- (1) the amount of the debt;
- (2) the name of the creditor to whom the debt is owed;
- (3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;
- (4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and

(5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

(b) Disputed debts

If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or any copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector. Collection activities and communications that do not otherwise violate this title may continue during the 30-day period referred to in subsection (a) unless the consumer has notified the debt collector in writing that the debt, or any portion of the debt, is disputed or that the consumer requests the name and address of the original creditor. Any collection activities and communication during the 30-day period may not overshadow or be inconsistent with the disclosure of the consumer's right to dispute the debt or request the name and address of the original creditor.

(c) Admission of liability

The failure of a consumer to dispute the validity of a debt under this section may not be construed by any court as an admission of liability by the consumer.

(d) Legal pleadings

A communication in the form of a formal pleading in a civil action shall not be treated as an initial communication for purposes of subsection (a).

(e) Notice provisions

The sending or delivery of any form or notice which does not relate to the collection of a debt and is expressly

required by the Internal Revenue Code of 1986, title V of Gramm-Leach-Bliley Act, or any provision of Federal or State law relating to notice of data security breach or privacy, or any regulation prescribed under any such provision of law, shall not be treated as an initial communication in connection with debt collection for purposes of this section.

### **§ 810. Multiple debts**

15 USC 1692h

If any consumer owes multiple debts and makes any single payment to any debt collector with respect to such debts, such debt collector may not apply such payment to any debt which is disputed by the consumer and, where applicable, shall apply such payment in accordance with the consumer's directions.

### **§ 811. Legal actions by debt collectors**

15 USC 1692i

#### **(a) Venue**

Any debt collector who brings any legal action on a debt against any consumer shall—

- (1) in the case of an action to enforce an interest in real property securing the consumer's obligation, bring such action only in a judicial district or similar legal entity in which such real property is located; or
- (2) in the case of an action not described in paragraph (1), bring such action only in the judicial district or similar legal entity—
  - (A) in which such consumer signed the contract sued upon; or
  - (B) in which such consumer resides at the commencement of the action.

#### **(b) Authorization of actions**

Nothing in this title shall be construed to authorize the bringing of legal actions by debt collectors.

15 USC 1692j

**§ 812. Furnishing certain deceptive forms**

- (a) It is unlawful to design, compile, and furnish any form knowing that such form would be used to create the false belief in a consumer that a person other than the creditor of such consumer is participating in the collection of or in an attempt to collect a debt such consumer allegedly owes such creditor, when in fact such person is not so participating.
- (b) Any person who violates this section shall be liable to the same extent and in the same manner as a debt collector is liable under section 813 for failure to comply with a provision of this title.

15 USC 1692k

**§ 813. Civil liability**

- (a) Amount of damages

Except as otherwise provided by this section, any debt collector who fails to comply with any provision of this title with respect to any person is liable to such person in an amount equal to the sum of—

- (1) any actual damage sustained by such person as a result of such failure;
- (2) (A) in the case of any action by an individual, such additional damages as the court may allow, but not exceeding \$1,000; or  
(B) in the case of a class action,
  - (i) such amount for each named plaintiff as could be recovered under subparagraph (A), and
  - (ii) such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of \$500,000 or 1 per centum of the net worth of the debt collector; and
- (3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court. On a finding by the court that an action under this sec-

tion was brought in bad faith and for the purpose of harassment, the court may award to the defendant attorney's fees reasonable in relation to the work expended and costs.

(b) Factors considered by court

In determining the amount of liability in any action under subsection (a), the court shall consider, among other relevant factors—

- (1) in any individual action under subsection (a)(2)(A), the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, and the extent to which such noncompliance was intentional; or
- (2) in any class action under subsection (a)(2)(B), the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, the resources of the debt collector, the number of persons adversely affected, and the extent to which the debt collector's noncompliance was intentional.

(c) Intent

A debt collector may not be held liable in any action brought under this title if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(d) Jurisdiction

An action to enforce any liability created by this title may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within one year from the date on which the violation occurs.

(e) Advisory opinions of Bureau

No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any advisory opinion of the Bureau, notwith-



standing that after such act or omission has occurred, such opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

15 USC 1692f

## **§ 814. Administrative enforcement**

### **(a) Federal Trade Commission**

The Federal Trade Commission shall be authorized to enforce compliance with this subchapter, except to the extent that enforcement of the requirements imposed under this subchapter is specifically committed to another Government agency under any of paragraphs (1) through (5) of subsection (b), subject to subtitle B of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5511 et seq.]. For purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act (15 U.S.C. 41 et seq.), a violation of this subchapter shall be deemed an unfair or deceptive act or practice in violation of that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Federal Trade Commission to enforce compliance by any person with this subchapter, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act, including the power to enforce the provisions of this subchapter, in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.

### **(b) Applicable provisions of law**

Subject to subtitle B of the Consumer Financial Protection Act of 2010, compliance with any requirements imposed under this subchapter shall be enforced under—

- (1) section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818], by the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), with respect to—

- (A) national banks, Federal savings associations, and Federal branches and Federal agencies of foreign banks;
  - (B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act [12 U.S.C. 601 et seq., 611 et seq.]; and
  - (C) banks and State savings associations insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), and insured State branches of foreign banks;
- (2) the Federal Credit Union Act [12 U.S.C. 1751 et seq.], by the Administrator of the National Credit Union Administration with respect to any Federal credit union;
  - (3) subtitle IV of title 49, by the Secretary of Transportation, with respect to all carriers subject to the jurisdiction of the Surface Transportation Board;
  - (4) part A of subtitle VII of title 49, by the Secretary of Transportation with respect to any air carrier or any foreign air carrier subject to that part;
  - (5) the Packers and Stockyards Act, 1921 [7 U.S.C. 181 et seq.] (except as provided in section 406 of that Act [7 U.S.C. 226, 227]), by the Secretary of Agriculture with respect to any activities subject to that Act; and
  - (6) subtitle E of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5561 et seq.], by the Bureau, with respect to any person subject to this subchapter.

The terms used in paragraph (1) that are not defined in this subchapter or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

(c) Agency powers

For the purpose of the exercise by any agency referred to in subsection (b) of this section of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this subchapter shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (b) of this section, each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this subchapter any other authority conferred on it by law, except as provided in subsection (d) of this section.

(d) Rules and regulations

Except as provided in section 1029(a) of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5519(a)], the Bureau may prescribe rules with respect to the collection of debts by debt collectors, as defined in this subchapter.

15 USC 1692m

**§ 815. Reports to Congress by the Bureau; views of other Federal agencies**

- (a) Not later than one year after the effective date of this title and at one-year intervals thereafter, the Bureau shall make reports to the Congress concerning the administration of its functions under this title, including such recommendations as the Bureau deems necessary or appropriate. In addition, each report of the Bureau shall include its assessment of the extent to which compliance with this title is being achieved and a summary of the enforcement actions taken by the Bureau under section 814 of this title.
- (b) In the exercise of its functions under this title, the Bureau may obtain upon request the views of any other Federal agency which exercises enforcement functions under section 814 of this title.

**§ 816. Relation to State laws**

15 USC 1692n

This title does not annul, alter, or affect, or exempt any person subject to the provisions of this title from complying with the laws of any State with respect to debt collection practices, except to the extent that those laws are inconsistent with any provision of this title, and then only to the extent of the inconsistency. For purposes of this section, a State law is not inconsistent with this title if the protection such law affords any consumer is greater than the protection provided by this title.

**§ 817. Exemption for State regulation**

15 USC 1692o

The Bureau shall by regulation exempt from the requirements of this title any class of debt collection practices within any State if the Bureau determines that under the law of that State that class of debt collection practices is subject to requirements substantially similar to those imposed by this title, and that there is adequate provision for enforcement.

**§ 818. Exception for certain bad check enforcement programs operated by private entities**

15 USC 1692p

(a) In general

(1) Treatment of certain private entities

Subject to paragraph (2), a private entity shall be excluded from the definition of a debt collector, pursuant to the exception provided in section 803(6), with respect to the operation by the entity of a program described in paragraph (2)(A) under a contract described in paragraph (2)(B).

(2) Conditions of applicability

Paragraph (1) shall apply if—

(A) a State or district attorney establishes, within the jurisdiction of such State or district attorney and with respect to alleged bad check violations that do not involve a check described in subsection (b), a pretrial diversion program for alleged bad check offenders who agree to participate voluntarily in such program to avoid criminal prosecution;

- (B) a private entity, that is subject to an administrative support services contract with a State or district attorney and operates under the direction, supervision, and control of such State or district attorney, operates the pretrial diversion program described in subparagraph (A); and
- (C) in the course of performing duties delegated to it by a State or district attorney under the contract, the private entity referred to in subparagraph (B)—
  - (i) complies with the penal laws of the State;
  - (ii) conforms with the terms of the contract and directives of the State or district attorney;
  - (iii) does not exercise independent prosecutorial discretion;
  - (iv) contacts any alleged offender referred to in subparagraph (A) for purposes of participating in a program referred to in such paragraph—
    - (I) only as a result of any determination by the State or district attorney that probable cause of a bad check violation under State penal law exists, and that contact with the alleged offender for purposes of participation in the program is appropriate; and
    - (II) the alleged offender has failed to pay the bad check after demand for payment, pursuant to State law, is made for payment of the check amount;
  - (v) includes as part of an initial written communication with an alleged offender a clear and conspicuous statement that—
    - (I) the alleged offender may dispute the validity of any alleged bad check violation;
    - (II) where the alleged offender knows, or has reasonable cause to believe, that the alleged bad check violation is the result of theft or forgery of the check, identity theft,

or other fraud that is not the result of the conduct of the alleged offender, the alleged offender may file a crime report with the appropriate law enforcement agency; and

(III) if the alleged offender notifies the private entity or the district attorney in writing, not later than 30 days after being contacted for the first time pursuant to clause (iv), that there is a dispute pursuant to this subsection, before further restitution efforts are pursued, the district attorney or an employee of the district attorney authorized to make such a determination makes a determination that there is probable cause to believe that a crime has been committed; and

(vi) charges only fees in connection with services under the contract that have been authorized by the contract with the State or district attorney.

(b) Certain checks excluded

A check is described in this subsection if the check involves, or is subsequently found to involve—

- (1) a postdated check presented in connection with a payday loan, or other similar transaction, where the payee of the check knew that the issuer had insufficient funds at the time the check was made, drawn, or delivered;
- (2) a stop payment order where the issuer acted in good faith and with reasonable cause in stopping payment on the check;
- (3) a check dishonored because of an adjustment to the issuer's account by the financial institution holding such account without providing notice to the person at the time the check was made, drawn, or delivered;
- (4) a check for partial payment of a debt where the payee had previously accepted partial payment for such debt;
- (5) a check issued by a person who was not competent, or was not of legal age, to enter into a legal contractual

obligation at the time the check was made, drawn, or delivered; or

- (6) a check issued to pay an obligation arising from a transaction that was illegal in the jurisdiction of the State or district attorney at the time the check was made, drawn, or delivered.

(c) Definitions

For purposes of this section, the following definitions shall apply:

(1) State or district attorney

The term “State or district attorney” means the chief elected or appointed prosecuting attorney in a district, county (as defined in section 2 of title 1, United States Code), municipality, or comparable jurisdiction, including State attorneys general who act as chief elected or appointed prosecuting attorneys in a district, county (as so defined), municipality or comparable jurisdiction, who may be referred to by a variety of titles such as district attorneys, prosecuting attorneys, commonwealth’s attorneys, solicitors, county attorneys, and state’s attorneys, and who are responsible for the prosecution of State crimes and violations of jurisdiction-specific local ordinances.

(2) Check

The term “check” has the same meaning as in section 3(6) of the Check Clearing for the 21st Century Act.

(3) Bad check violation

The term “bad check violation” means a violation of the applicable State criminal law relating to the writing of dishonored checks.

15 USC 1692 note

**§ 819. Effective date**

This title takes effect upon the expiration of six months after the date of its enactment, but section 809 shall apply only with respect to debts for which the initial attempt to collect occurs after such effective date.

## LEGISLATIVE HISTORY

House Report: No. 95-131 (Comm. on Banking, Finance, and Urban Affairs)

Senate Report: No. 95-382 (Comm. on Banking, Housing and Urban Affairs)

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99-361 (July 9, 1986)

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102-242 (December 19, 1991)

102-550 (October 28, 1992)

104-88 (December 29, 1995)

104-208 (September 30, 1996)

109-351 (October 13, 2006)

111-203 (July 21, 2010)



