

**APPENDIX TO NCLC AND NACA COMMENTS  
TO THE FEDERAL TRADE COMMISSION  
REGARDING THE FAIR DEBT COLLECTION PRACTICES ACT:**

**ABUSIVE DEBT COLLECTION EXAMPLES**

The following stories are only a few of the many examples of abusive debt collection practices that have recently come to the attention of NCLC and NACA attorneys. We have made no attempt to compile a complete list of recent cases; the following examples are simply a few of those that have been brought to us in the last few months, along with a few stories from news reports. These stories illustrate the problems that are pervasive throughout the country and that persist even when the conduct is clearly unlawful.

**Alabama**

*Collector uses methods designed to maximize harassment.*

“A woman is contacted by a debt collection agency regarding a debt that she challenges as not belonging to her. The debt collection agency makes no efforts to verify the debt, but instead begins to call her until she pays. She refuses to do so, again denying that the debt is hers, and when the collection agency finally sues her, they deliver service at her workplace, calculated to cause maximum embarrassment.” *NACA attorney.*

*Collectors move in on exempt social security funds, consumer suffers numerous charges.*

“In 2003, a debt collector decided Mrs. Kell in Alabama owed \$125 on a three-year-old hospital bill. It obtained a court judgment and sent a garnishment order to her bank. The bank froze her account, which contained \$679, all from Social Security. “I was scared to death,” Mrs. Kell says. “I didn’t have any way of getting any money.” What Mrs. Kell didn’t know was that account holders can file a claim with a debt collector to have any funds that came from Social Security or Veteran’s benefits exempted. But federal law doesn’t say who should tell them this. Even Social Security’s Web site doesn’t.” “*The Debt Collector vs. The Widow*” *The Wall Street Journal* (Apr. 28, 2007).

*\$1,700 in payday loan “extension fees” deducted from consumer’s account.*

“The consumer takes out a \$300 payday loan. Over the course of the next nine months the creditor deducts nearly \$1700 dollars from the consumer’s account. The creditor claims that these charges are due to “extension fees” as detailed in a contract that the consumer never received. The creditor then sends the consumer a letter claiming that the original \$300 is due within two weeks.” *NACA attorney.*

**California**

*Creditor denies receiving payment after proof check was cashed.*

“An elderly couple takes out an auto loan with [Lender 1]. They mail in their latest payment, only to be contacted by [Lender 2] who claims not to have received the payment. They check their banking records and find that the payment has been cashed by [Lender 1], whom they have no prior relationship with. They send the record of the transaction to both companies to evidence the error. [Lender 2] continues to dun the couple, and [Lender 1] does not take any action.” *NACA attorney.*

## **Connecticut**

### *Intentional service of notice to wrong address.*

“The lawyer directs marshal to serve my client at a ‘usual place of abode’ which lawyer has reason to know is not.” *NACA attorney.*

## **Florida**

### *Consumer strong-armed into waiving her day in court.*

“A collection attorney sends a sheriff with a stipulation and complaint to the consumer. The consumer is unsophisticated and asks the sheriff what to do. He says to call the attorney. She does so and is told that he is suing her, and that he will be able to garnish her wages and take her property, and that “I am pretty sure that the court will give it all to me.” She states that she cannot afford to pay anything, and he tells her that if she signs the stipulation and sends a payment she will not hear from him again. She signs the paper to get him off her back. Judgment is entered against her because she was unable to pay.” *NACA attorney.*

### *Debt collector seeks default judgment for damages with “no evidence that the parties agreed on any balance due and owing.”*

The debt collector obtained a default judgment on liability against the consumer, then sought a further judgment for damages. The court denied final judgment. “Not only did the Plaintiff fail to attach a bill, statement or contract to the complaint, the Plaintiff has not attached ANYTHING to its affidavit or the complaint that has the Defendant’s name or signature on it.... Here there was no evidence that the parties agreed on any balance due and owing.” Order Denying Plaintiff Final Judgment and Closing the Court’s File, LVNV Funding, LLC v. Moehrlin, No. 2006-10917-CODL (7<sup>th</sup> Judicial Cir. Ct., Volusia Co., FL Aug. \_\_, 2006).

## **Georgia**

### *Arbitration without validation.*

“My client received multiple collection letters from multiple collection agencies, she sent requests for validation to most of them...she received a collection letter from [Law Office] on behalf of their client [Collector]. Then [Collector] filed an arbitration action, which included the FDCPA language regarding the right to request validation...of course

they never validated and continued to proceed with the arbitration action.” NACA attorney.

### **Illinois**

Debt buyer use fraud to collect debts beyond the statute of limitations, previously discharged, or from an entirely wrong person.

“Charges have been filed against a company that has made a routine of buying up old debt at pennies on the dollar from creditors and then beginning collection proceedings without even a minimal investigation into the nature and status of each debt. The Illinois AG’s office received at least 88 complaints of abusive and erroneous debt collection practices from consumers who were contacted by the company. Consumers who contacted the company to request verification of the debts were ignored, and fraudulent statements were made to the consumers in an attempt to induce them to pay debts that were beyond the statute of limitations, previously discharged, or even associated with an entirely wrong person.” *Press Release, Illinois Attorney General (May 18, 2006), available at [http://www.illinoisattorneygeneral.gov/pressroom/2006\\_05/20060518.html](http://www.illinoisattorneygeneral.gov/pressroom/2006_05/20060518.html).*

Debt buyers file suit in small claims without evidence of debt, seek repeated continuances.

“I have had at least three clients who appeared pro se, disputed the debt entirely or in part, asked for proof, and the court ordered documents to be produced at the next status date. The cases were continued several times, but no documents were ever produced. Finally these individuals retained me to appear and defend. At least one of these cases involved identity theft. No competent evidence of the accounts or amounts claimed was ever produced.” NACA attorney.

### **Louisiana**

Consumer is the victim of identity theft, and cannot get collectors to discharge debt.

Consumer was the victim of identity theft, resulted in a \$5,045 credit card bill in her name. She battled collection agencies for years to get the debt discharged, and every time she would convince them that the debt was not hers it would be sold to another debt collector and the process would start all over again. “Zombie Debt is Hard to Kill.” *MSN Money* (c. May 18, 2006), available at <http://articles.moneycentral.msn.com/SavingandDebt/ManageDebt/ZombieDebtIsHardToKill.aspx>.

### **Maryland**

Default judgment, with inflated interest, based on affidavits falsifying service on consumer living in another state.

Activus Financial, which bought “something” from Citibank, used three false certificates of service to get a judgment and collect for a \$4,500 debt that somehow had more than that added in interest in the final judgment, despite Maryland's 6% interest limit rate. The consumer lived in Kentucky the whole time the last four years when he was supposedly served in Maryland. *Motion to Vacate Judgment, Activus Financial, LLC v. Mateti (Prince George's Co., MD Dist. Ct. No. 502-31225-2005, filed May 5, 2007)*

*Debt collector pressures payment on debt consumer never had.*

The consumer gets a letter from a debt collection agency claiming that she owes \$1200 on a credit card that she never had. The debt collector insisted over the phone that the debt was hers and was on her credit report. She finally sent a letter to the collection agency disputing the debt, at which point they dropped it. *Eileen Ambrose, “Debt that Won't Die,” Baltimore Sun (May 6, 2007).*

*Debt collector promises to call until consumer loses her job.*

“According to the suit, a collector threatened to sue her for a bill for a home-security system that had been incurred by Henderson's deceased mother. Although Henderson was not responsible for the debt, she agreed to have money automatically debited from her bank account on the 15th of every month. According to the complaint, the next thing she knew, the collector tried to withdraw money five times in three weeks, with Henderson incurring a returned check charge each time.

Henderson ordered a stop to the wire transfers, but then the collector started calling her at work, threatening to garnish her wages if she didn't pay. Henderson asked the collector to stop calling her at work, her right under federal law, but the collector told her he'd continue to call her there "until she lost her job," the lawsuit said. The lawsuit was settled under a confidentiality agreement.” *Caroline Mayer, New Breed Of Collectors Has Debtors Seeing Red,” Washington Post (May 28, 2005).*

## **Massachusetts**

*One wrong letter leads to grief and lost wages.*

“George Rodrigues of New Bedford twice had to go to court over a \$1,665 NStar bill that was not his. Both times, the DHL driver had to take time off work, costing him \$200 a day, to convince the court it had the wrong guy. The NStar debt belonged to a different George Rodriguez - ending with a z. The fellow NStar was after was 21; Rodrigues is twice his age. But in court, it was Rodrigues who faced the burden of proving he was innocent. "How many times can I show them my information?" Rodrigues asked. The clerk would not accept Rodrigues's proof of his identity; he insisted on a hearing, at which NStar's lawyer finally dropped the case.” *“Debtor's Hell, Part II: Dignity Faces a Steamroller,” The Boston Globe (July 31, 2006), available at [http://www.boston.com/news/special/spotlight\\_debt/part2/page1.html](http://www.boston.com/news/special/spotlight_debt/part2/page1.html).*

*Debt Collector fails to serve proper notice.*

“Fitzpatrick, a 37-year-old single mother who lives in South Boston's D Street public housing project, was about to drive her three children to school when Dorsey drove up and blocked her car. Fitzpatrick figured it must be something to do with unpaid parking tickets; she said she had no idea there were court judgments against her for two delinquent credit card accounts, totaling \$3,800. That's because Norfolk Financial Corp., the debt collector who sued Fitzpatrick, had given the court the wrong address. She says she was never notified of the lawsuit, and a Globe check of court and public records shows she's right. "They went out of their way to find my car but they didn't go through the trouble to find my address" to notify me about the lawsuit, Fitzpatrick said. “That's what kills me.” *“Debtors’s Hell, Part I: No Mercy for Consumers,” The Boston Globe* (July 30, 2006), available at [http://www.boston.com/news/special/spotlight\\_debt/part1/page1.html](http://www.boston.com/news/special/spotlight_debt/part1/page1.html)

## **Minnesota**

### Exempt funds are fair game.

“In Minnesota, the debt collector doesn’t even need to file a lawsuit to start garnishment, due to our ‘pocket service’ laws. A bank gets a garnishment summons, and locks down funds. Public assistance like Social Security Income is technically exempt from garnishment, but a debtor has to file exemption papers to get their money back. The bank takes the money, and the debtor has to fight to get it back. That’s how the system works....In other cases, the debt collector has nothing more than a vague piece of paper that may or may not prove the individual owes the debt.” *NACA attorney.*

### Collection attorneys pursue exempt funds knowingly.

Cloette Rice, 79, faced possible eviction from her nursing home in late 2002 after a collector garnished her bank account three times, seeking repayment of a department-store debt incurred before she had a stroke. A social worker at Ebenezer Ridges Care Center in Burnsville, Minn., repeatedly wheeled Ms. Rice to her office and put her on the speakerphone to the bank, collectors or Social Security. "She was just so completely stressed out about it," says the social worker, Kimberly Worrall. At a resulting court hearing, a judge, after a three-month delay, agreed Ms. Rice's funds were exempt and ordered Messerli & Kramer to return \$1,472 and pay Ms. Rice \$100 for disregarding her claims in bad faith. The law firm did so. But two days later, it filed a garnishment order again -- the fifth time it had done so.” *“The Debt Collector vs. The Widow” The Wall Street Journal* (Apr. 28, 2007).

## **Missouri**

### Consumer “served” while in hospital having liver removed.

“Looking at one single docket in one single courtroom on one single morning, in the city of St. Louis, there were over 500 cases on the docket. I recognized 330 of the cases as being brought by debt buyers, and no telling how many of the others were also debt buyer plaintiffs. Defaults are granted a vast majority of the time- one day last month 10 people,

not counting lawyers, were in the courtroom where there was a docket of 180 cases. One consumer was “served” while she was undergoing removal of part of her cancerous liver. The private process server claimed he served a woman matching her description at 10:00 a.m., but instead her husband found the summons and petition in the mailbox on the street when he returned home the next day after her surgery. Similar allegations had been made against that same process server in the past, but process servers do not need a license in Missouri.” *NACA attorney*.

*Debt buyer obtained default judgment despite receiving police report and other proof showing consumer was victim of identity theft.*

In 2002, Ms. Abdul-Latif proved to AT&T that a debt for telephone service was not hers and that she was a victim of identity theft. AT&T agreed, and removed the trade line from her credit report and ceased all attempts to collect. The debt was apparently sold and suit was filed against Ms. Abdul-Latif. She notified the debt buyer’s law firm that the debt was not hers, notified the firm of AT&T’s action, and provided the police report regarding the identity theft, a copy of her lease to prove she was not a resident in the state where the phone service was obtained, and an affidavit of fraud. The law firm confirmed that the documents had been received and that the debt buyer was “reviewing them.” But the debt buyer nevertheless proceeded to take a default judgment, forcing Ms. Abdul-Latif to seek an attorney to get the judgment vacated. *Abdul-Latif v. Cavalry SPV I, LLC, No. 4:07-CV-00229 SNL (E.D. Mo., motion to vacate filed Aug. 31, 2006)*

## **Nebraska**

*Debt collector files hundreds of small claims court actions and wins default judgments, though many cases are beyond statute of limitations or based on unsubstantiated affidavits.*

A class action has been filed alleging that a collection agency and its lawyer are attempting to recover credit card debt by filing in small claims courts collection actions which are (1) time barred complaints and/or (2) supported by a standard affidavit attesting to the validity of the debt claiming that credit card debt contain penalties and interest is actually original debt for goods and services. *Jenkins v. General Collection Co., No 8:06cv00743 (D. Neb. Filed May 15, 2007).*

## **New York**

*Default judgment after consumer “served” while out of country.*

“The process server claimed to have served papers at Mr. X’s home by handing them to a young woman named Y. No one named Y resided at the address and no one fitting the age range and physical description provided by the process server resided at the address, and at the time of alleged service the entire family was out of the country. As a result, the debt buyer obtained a default judgment which Mr. X only received notice of when he received a notice indicating that his wages were garnished.” *NACA attorney*.

Courts frustrated with creditors' and collectors' failure to offer proof of debt.

"With great frequency, courts are presented with summary judgment motions by credit card issuers seeking a balance due from credit card holders which motions fail to meet essential standards of proof and form in one or more particulars. *Citibank v. Cybel Martin*, 2005 NY Slip Op. 25536 (Civil Court New York Co., Dec. 16, 2005).

Debt collector refused to remove restraint on exempt account.

Mrs. L, lives with her husband and 8 year old daughter. They subsist on their monthly income from Social Security. When her checking account was frozen, they were unable to pay the rent or the utilities. In fact, the utility company threatened to shut off the utilities and would have done so if Mrs. L. had not obtained a grant from a charitable organization. Mrs. L called the attorney who had restrained the account to notify them that the money in the account was exempt from collection. He asked for proof that the funds were exempt which she promptly provided. Nevertheless, rather than remove the restraint on the account, the attorney demanded that Mrs. L agree to pay him \$100 per month in exchange for releasing the account. Like many debt collectors, he hoped to evade New York law prohibiting him from restraining Mrs. L's account by holding her checking account hostage and forcing Mrs. L to enter into a "voluntary" payment plan. *NACA attorney.*

Victim of Identity Theft Lost \$400 in Wages and Fees From Garnishment of Exempt Account.

Mrs. M is a single mother with a full-time job who earns \$1600 a month. As a result of identify theft, an \$800 judgment she'd had no notice of was entered against her and her bank account was restrained. The account consisted of exempt wages from the last sixty days. The restraint lasted for six weeks, causing her to be late on a number of bills: rent, credit card, life insurance, and phone. The bank assessed fees because of the restraint. Unable to resolve the matter with the bank and the creditor's lawyer, she retained a legal services lawyer who got the account released. All in all, Mrs. M. lost a week's income -- \$400 -- in lost wages and fees. *NACA attorney.*

Debt collectors freeze accounts known to contain only exempt funds.

"We've had clients with frozen accounts who have appeared in court and explained that the frozen accounts contained only exempt income; in some instances, collectors have maintained their hold on these accounts even after the court dates, despite being on notice of the exempt character of the funds. Also, we've had clients who have had their account with exempted income frozen, thawed, and then frozen again by the same collector -- we see that as evidence that the collector knows it's going after protected income." *NACA attorney.*

Social Security funds totally wiped out by debt collector's actions.

"In 2005, a collector got a judgment against Marlene Butts, 72, a former toll-taker in New York, for \$920 of unpaid dental bills. Chase bank froze her account on Sept. 27. It contained \$929, mostly from Social Security. The freeze caused a \$53.83 check Mrs. Butts wrote two days earlier to Time Warner Cable to bounce. Chase debited the frozen account a \$30 fee for that, reducing the balance to \$899.

In the next week, six more checks bounced -- including the Time Warner check again, which Chase resubmitted for payment even though it had frozen the account. Each of these brought another \$30 fee to Chase, which also collected \$125 for freezing the account. By Nov. 22, fees had consumed all of the Social Security funds deposited in Ms. Butts's checking account, which were supposed to be exempt from the debt collector anyway." *"The Debt Collector vs. The Widow" The Wall Street Journal (Apr. 28, 2007).*

*Debt collector gains electronic access to account and cleans it out.*

"My client, a soldier in Iraq, gives [Debt Collector] permission to debit his account for \$300 on 5/1. They proceed to clean out his account. He called [his bank] and asked that [Debt Collector] be blocked from any further access to the account. [The Bank] tells him that is not enough; that [Debt Collector] is well known to them, and they will simply take further monies under a different name--they do this to soldiers all the time." *NACA attorney.*

## **Ohio**

*Settled debt resold to new debt buyer.*

"The consumer settled a credit card debt only to have a subsequent debt buyer make efforts to collect the settled debt from him. The information on the debt did not appear to be correct, and so the consumer exercised his rights by requesting validation of the debt. He stated that he had paid the debt, and requested verification of the amount of the debt, the original account number, and the dates that the account was active. The debt collector responded with a debt validation letter and a request for a paid affidavit, but did not provide any of the requested verification information. The letter stated that if the consumer did not respond the debt collector would consider the dispute resolved." *NACA attorney.*

## **Oregon**

*Creditors and debt collectors do not share information.*

"The case I am dealing with is a debt buyer who repeatedly assigns client to different debt collectors and she has repeatedly told each debt collector that she does not owe the debt. We have sued debt buyer who claims that none of the assignees have informed buyer of dispute." *NACA attorney.*

## **Pennsylvania**

*Consumer sued for debt that isn't his.*

"The consumer receives a dunning letter from a collector, and recognizes that it belongs to his wife, who is in bankruptcy proceedings. He writes a letter explaining the situation to the debt collector, and requesting that the collector verify the debt, and provide a copy

of the original credit application. The debt collector responds with a lawsuit.” *NACA attorney.*

## **Texas**

*“We’re going to take your mommy away forever.”*

“I thought I had heard it all. This as of yet unidentified collector told the nine year old child of my college friend, who is the victim of identity theft, that they were going to take her mommy away forever. The number on caller I.D was 50000000, obviously fake.” *NACA attorney.*

*Debt collector sends threatening letter.*

“A consumer is sent an email by a debt collection agency claiming the following: (1)The consumer has committed fraud and owes the debt collector \$600 immediately. (2)There are civil and probable criminal charges pending against the consumer if the debt is not paid. (3)The consumer is required to respond within 72 hours. (4)The debt collector claims to have already contacted the local district attorney, who has assured him that he can get a grand jury indictment for criminal charges.” *NACA attorney.*

*Creditor sells disputed debt to a debt collector, who uses illegal collection methods.*

“A creditor contacts the consumer about a supposed debt that she has. The consumer disputes the debt. The creditor then sells the debt to a debt collector who begins to dun the consumer aggressively, using tactics that are illegal under the FDCPA.” *NACA attorney.*