

May 22, 2015

Dear Legislators,

The undersigned groups submit this letter in strong opposition of HB 2252 A-Engrossed regarding debt buyers. This bill not only fails to address the core abusive debt collection practices by debt buyers, it also codifies existing harmful practices. Put simply, HB 2252 A-Engrossed is a step backward, not a step forward.

The Center for Responsible Lending estimates that debt buyer lawsuits are poised to extract over \$18.7 million from Oregonians, including \$3.7 million via wage garnishment (See Table 1). Without the adequate protections against lawsuit abuses, Oregonians will continue to be harmed.

### **Background on Debt Buying and Abuses**

Debt buyers are third-party companies that purchase debts, for pennies on the dollars, from a creditor that thinks it can no longer collect on the original debt. The types of debt being sold include credit cards, auto loans, medical bills, student loans, and others. These debt sales often occur with very little documentation to ensure the validity of the debt.<sup>1</sup> In fact, in most debt buying deals, the purchaser simply receives an electronic database or spreadsheet with little more than names and last known addresses.<sup>2</sup>

Given the inaccuracies and lack of basic information, as well as the collection tactics used by debt buyers, consumers are often harassed and wrongly sued for debts they do not owe or have already paid or settled.<sup>3</sup> Recently, the Consumer Financial Protection Bureau dubbed one collection company of eight attorneys a lawsuit “factory” after it filed 350,000 suits against consumers since 2009, clogging the courts and causing unnecessary financial distress to aggrieved consumers.”<sup>4</sup> The company’s clients included debt buyers.<sup>5</sup>

Reports suggest these tactics are often aimed at low-income people, military veterans, and elders. For example, more than 40% of debt collection complaints by service members, veterans, and their families to involve attempts to collect debt that is not owed.<sup>6</sup> For older Americans, those over 65, nearly half of all complaints about debt collection are for debts they do not even owe.<sup>7</sup>

### **HB 2522 A-Engrossed Will Not Stop Debt Buying Abuses**

The abusive tactics used by debt buyers illustrate the need for targeted reforms. HB 2522 A-Engrossed unfortunately does not address these abuses, and would instead codify the current business practice of bringing collection lawsuits without sufficient documentation. Moreover, although the bill would give the Attorney General some enforcement power, this power is illusory when it is attached to so-called reforms that give the stamp of approval to harmful practices. It is not unlike having the ability to enforce a law that allows 400% payday loans. Many states have been aggressively taking action against debt buying abuses as unfair and deceptive practices.<sup>8</sup> By codifying existing practices, HB 2252-Engrossed hampers Oregon’s ability to similarly prevent them under its UDAP authority.

### **Does Not Prevent Oregonians From Being Sued for Debt They Do Not Owe**

As originally introduced, HB 2522 would have taken significant steps to address abuses in debt buyer lawsuits by requiring debt buyers to provide notice with detailed information about the debt *prior* to the initiation of a lawsuit, and requiring documentary proof to be included with any complaint. **HB 2522 A-Engrossed removes all of these protections and instead codifies inadequate current debt buying practices as the standards for debt buyer legal actions.**

In Oregon, debt buying lawsuits have boomed in recent years. For example, the number of cases filed by a single out-of-state company in Multnomah County grew from 27 cases to over 900.<sup>9</sup> Another out-of-state debt buyer, Encore Capital, owns 234,000 accounts of consumer debt in Oregon, indicating that many Oregonians risk being sued for debt they may not owe.<sup>10</sup>

#### *Does Not Protect Against Improper Judgments*

Relying on the assumption that most people will not show up in court when sued on their debts, debt buyers have increased their usage of the court system across the country. If a consumer does not respond to or appear in court to defend a debt collection lawsuit, a debt buyer typically obtains a default judgment against them, and problems with insufficient and inaccurate proof of debt, robo-signed affidavits, and improper service of process usually go unquestioned.

The result is that default judgments are obtained against consumers based on questionable evidence, falsified court documents, or in cases that should never have been filed in the first place.<sup>11</sup> One review of a sample of New York City debt buyer cases revealed that debt buyers prevailed in 94.3% of lawsuits, usually by obtaining default judgments.<sup>12</sup>

Judges and clerks, facing overburdened dockets, generally do not challenge the evidence that debt buyers offer for default judgments, without specific legal authority requiring them to do so.<sup>13</sup> It is not surprising then that default judgments appear to be the norm in debt collection lawsuits. A recent report on cases in New York State found that in 2011, 80% of all default judgments in the state were in debt-collection cases.<sup>14</sup> A 2014 Washington Post analysis of debt collection lawsuits filed by debt buyer Encore Capital found that 55% of its lawsuits result in default judgments.<sup>15</sup>

Default judgments extend the life of the debts and allow collectors to seize bank accounts, garnish wages, and place liens on property. Default judgments may be difficult to overturn, even if wrongly obtained or against the wrong person. HB 2252-Engrossed will not prevent these practices.

#### *Narrowly Applies to Credit Card Debt*

In large part, HB 2522 A-Engrossed limits its application to “open-end credit accounts.” While the majority of debt buyer accounts are credit card debt, they also buy and collect medical debt, student loans, auto loans, and other debt. Real debt buyer reforms should have appropriate standards for documentation to collect on a debt, and those protections should apply to all consumer debt. HB 2252 A-Engrossed has neither.

#### *Provides An Unnecessary Stamp of Approval to Insufficient Industry Standards*

HB 2522 A-Engrossed provides that the Department of Consumer and Business Services could consider requiring certification by a national nonprofit trade association in addition to registration. This provision serves no function other than to legitimize the debt buyer industry’s own voluntary standards, standards that were created without any consumer input or endorsement. These certainly do not constitute substantive protections against the abuses.

In conclusion, debt collection does serve an important role in the economy. It is not an efficient functioning of the market, however, unless the system ensures that only the actual owners of debt are pursuing the right people for the correct amount of debt, based upon actual evidence. HB 2252-Engrossed would ensure the opposite.

Debt collection abuses by debt buyers are worthy of state policymakers' attention. States are uniquely positioned to address the lack of documentation prevalent in debt buyers' collection attempts. Many states, such as North Carolina, California, and Maryland, have taken the appropriate steps to develop strong standards that require debt buyers to possess adequate information and documentation before collecting or pursuing collection litigation in their states. Not only does HB 2252-A-Engrossed not meet these standards, but it provides a stamp of approval to the very abusive practices that many other states are trying to eliminate.

For these reasons, we urge you to vote against it. For additional information or questions, please contact Diane Standaert at 919-313-8550 or [dianes@responsiblelending.org](mailto:dianes@responsiblelending.org).

Sincerely,

Center for Responsible Lending

Consumer Federation of America

Consumers Union

National Association of Consumer Advocates

National Association of Consumer Bankruptcy Attorneys

**Table 1: Estimating Cost of Debt Buyer Lawsuits to Oregonians**

We estimate that just one debt buyer, Encore Capital Group, through its subsidiaries such as Midland Funding and Midland Credit Management, stands to extract millions of dollars from the Oregon economy and Oregonians’ pockets. The debt buyer owns the debt of 234,000 Oregonians<sup>19</sup> and the majority (51%) of its collections revenue nationally is generated by taking people to court.<sup>20</sup>

	<b>Estimates of Debt Buyer Lawsuit Outcomes<sup>16</sup></b>	<b>Estimates based on 234,000 Oregon Accounts</b>
Estimated lawsuits <sup>17</sup>	5% of accounts in portfolio	11,700
Lawsuits that result in default judgments	55%	6,432
Lawsuits that result in ruling in favor of debt buyer	10%	1,154
<b>Total lawsuits that result in award to debt buyer</b>	65%	7,586
<b>Estimated amount extracted from Oregonians through litigation<sup>18</sup></b>	\$2,467 average per case that results in award to debt buyer	<b>\$18,716,673</b>
<b>Estimated amount to be extracted through Wage Garnishment</b>	20% of lawsuits that result in award to debt buyer	<b>\$3,743,335</b>

<sup>1</sup> Federal Trade Commission, “The Structure and Practices of the Debt Buying Industry” (Jan. 2013), *available at* <http://www.ftc.gov/os/2013/01/debtbuyingreport.pdf>.

<sup>2</sup> Federal Trade Commission, “Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration” (July 2010), *available at* <http://www.ftc.gov/os/2010/07/debtcollectionreport.pdf>.

<sup>3</sup> The Attorney General of New York recently brought and settled claims against four large debt buyers, including Encore Capital. *See* Press Release, “A.G. Schneiderman Announces Settlements with Two Major Consumer Debt Buyers for Unlawful Debt Collection Actions” (May 8, 2014), *available at* <http://www.ag.ny.gov/press-release/ag-schneidermanannounces-settlements-two-major-consumer-debt-buyers-unlawful-debt>; Press Release, “A.G. Schneiderman Obtains Settlement From Major Debt Buyer Who Filed Thousands of Time-Barred Debt Collection Actions” (Jan. 9, 2015), *available at* <http://www.ag.ny.gov/press-release/ag-schneiderman-obtains-settlement-major-debt-buyerwho-filed-thousands-time-barred>; Press Release, “A.G. Schneiderman Obtains Settlement With Fourth Debt Buyer Vacating \$1.7m In Improperly Obtained Debt Collection Actions” (Apr. 15, 2015), *available at* <http://www.ag.ny.gov/press-release/ag-schneiderman-obtains-settlement-fourth-debt-buyer-vacating-17mimproperly-obtained>. These actions illustrate the types of abuses in the industry, such as robo-signing and improperly suing on time-barred debt. The weak standards in HB 2522 would hinder the ability of Oregon’s Attorney General to get similar relief for Oregon residents.

<sup>4</sup> Press Release, “CFPB Files Suit Against Debt Collection Lawsuit Mill: Georgia Firm Relies on Deceptive Filings and Faulty Evidence to Churn Out Lawsuits” (July 14, 2015), *available at* <http://www.consumerfinance.gov/newsroom/cfpb-files-suit-against-debt-collection-lawsuit-mill/>.

<sup>5</sup> *Id.*

<sup>6</sup> Consumer Financial Protection Bureau, “A Snapshot of Complaints Received From Servicemembers, Veterans, and Their Families” (2015), *available at* [http://files.consumerfinance.gov/f/201504\\_cfpb\\_snapshot-of-complaints-received-from-servicemembers-veterans-and-their-families.pdf](http://files.consumerfinance.gov/f/201504_cfpb_snapshot-of-complaints-received-from-servicemembers-veterans-and-their-families.pdf).

<sup>7</sup> Consumer Financial Protection Bureau, “A Snapshot of Debt Collection Complaints Submitted By Older Consumers,” (Nov. 2014), *available at* [http://files.consumerfinance.gov/f/201411\\_cfpb\\_snapshot\\_debt-collection-complaints-older-americans.pdf](http://files.consumerfinance.gov/f/201411_cfpb_snapshot_debt-collection-complaints-older-americans.pdf).

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<sup>8</sup> Center for Responsible Lending, “State, Federal Regulator Actions Highlight Widespread Debt Buyer Abuses” (Apr. 2015) (summarizing recent enforcement actions against debt buyers), *available at* <http://www.responsiblelending.org/other-consumer-loans/debt-settlement/research-analysis/state-federal-regulator.html>.

<sup>9</sup> Matthew Kish, “Debt collectors under fire in Oregon,” *Portland Business Journal*, March 15, 2013, *available at* <http://www.bizjournals.com/portland/print-edition/2013/03/15/debt-collectors-under-fire-in-oregon.html>

<sup>10</sup> Encore Capital Group, March 25, 2012, Memorandum of Opposition to HB 2252, *available at* <https://olis.leg.state.or.us/liz/2015R1/Downloads/CommitteeMeetingDocument/56735>

<sup>11</sup> See generally Peter A. Holland, “The One Hundred Billion Dollar Problem in Small Claims Court: Robo-Signing and Lack of Proof in Debt Buyer Cases,” 6 *Journal of Business and Technology Law* 259 (2011), *available at* [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1875727](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1875727).

<sup>12</sup> Claudia Wilner & Nasoan Sheftel-Gomes, *Debt Deception: How Debt Buyers Abuse the Legal System to Prey on Lower-Income New Yorkers* at 8 (May 2010), *available at* [http://www.nedap.org/pressroom/documents/DEBT\\_DECEPTION\\_FINAL\\_WEB.pdf](http://www.nedap.org/pressroom/documents/DEBT_DECEPTION_FINAL_WEB.pdf).

<sup>13</sup> Beth Healy, “Dignity Faces a Steamroller; Small-Claims Proceedings Ignore Rights, Tilt to Collectors,” *The Boston Globe* (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).

<sup>14</sup> Susan Shin and Claudia Wilner, *The Debt Collection Racket in New York: How the Industry Violates Due Process and Perpetuates Economic Inequality* at 3 (New Economy Project 2013), *available at* <http://www.nedap.org/documents/DebtCollectionRacketUpdated.pdf>.

<sup>15</sup> See Danielle Douglas, “Taking on the Nation’s Largest Debt Buyer,” *Washington Post*, May 19, 2014. [http://www.washingtonpost.com/business/economy/a-breakdown-of-midland-fundings-collected-debt/2014/05/09/331f723e-d790-11e3-95d3-3bcd77cd4e11\\_graphic.html](http://www.washingtonpost.com/business/economy/a-breakdown-of-midland-fundings-collected-debt/2014/05/09/331f723e-d790-11e3-95d3-3bcd77cd4e11_graphic.html)

<sup>16</sup> These estimates are based on an investigation on the debt buying industry by the *Washington Post*, which examined the court filings of 16,878 collection lawsuits by debt buying company, Encore Capital Group’s affiliate Midland Funding. The lawsuits were filed between 2003 and 2013 in five counties in Northern Virginia. The estimates here are based on the *Washington Post*’s findings of the analysis of these 16,878 lawsuits. The analysis estimates that Encore was awarded \$27 million in these lawsuits. See Danielle Douglas, “Taking on the Nation’s Largest Debt Buyer,” *Washington Post*, May 19, 2014. [http://www.washingtonpost.com/business/economy/a-breakdown-of-midland-fundings-collected-debt/2014/05/09/331f723e-d790-11e3-95d3-3bcd77cd4e11\\_graphic.html](http://www.washingtonpost.com/business/economy/a-breakdown-of-midland-fundings-collected-debt/2014/05/09/331f723e-d790-11e3-95d3-3bcd77cd4e11_graphic.html)

<sup>17</sup> Danielle Douglas, “Taking on the Nation’s Largest Debt Buyer,” *Washington Post*, May 19, 2014. (“[Encore] said it files lawsuits in fewer than 5 percent of the open accounts in its total portfolio...”)

<sup>18</sup> The *Washington Post* analysis estimates that Encore was awarded \$27 million through its 16,878 lawsuits. Of those lawsuits, 65% (10,943) could have resulted in recovery either through default judgment (55%) or a ruling in Encore’s favor (10%). The remaining (35%) were dismissed by the judge or abandoned by Encore (23%), could not locate the defendant (9%), still pending (3%), or the borrower won (.0001%). The average amount owed to debt buyer per case which results in a default judgement or ruling in favor of debt buyer is estimated by dividing the \$27 million by 10,943 cases, totaling \$2,467.

<sup>19</sup> Encore Capital Group, March 25, 2012, Memorandum of Opposition to HB 2252, *available at* <https://olis.leg.state.or.us/liz/2015R1/Downloads/CommitteeMeetingDocument/56735>.

<sup>20</sup> Encore Capital Group, Annual Report, Form 10-K (Feb. 26, 2015). Retrieved from U.S. Securities and Exchange Commission website.