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Legal Guide DC-2

SUMMARY OF THE FAIR DEBT COLLECTION PRACTICES STATUTES

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The federal and California fair debt collection practices statutes, and the debt collection tort law, combine to promote reasonable, honest and fair debt *collection* practices by establishing enforceable minimum standards of conduct for debt collection.

Part 1
Introduction

This Legal Guide covers the federal and California fair debt collection practices statutes. The federal statute is called the "Fair Debt Collection Practices Act." The California statute is called the "Rosenthal Fair Debt Collection Practices Act."

Creditors and debt collection agencies are permitted to take reasonable steps to enforce and collect payment of debts. That's because an efficient economy requires a credit process. The debt collection practices statutes promote fair and responsible credit extension and enforcement practices by placing reasonable boundaries on the kinds of activities that creditors and debt collection agencies can employ to enforce and collect debts.

The fair debt collection practices statutes also promote fair and responsible debt collection by giving consumer debtors specific rights. These include the right to cut off contacts by a debt collection agency, the right to specify periods when and places where contacts with the debtor may and may not be made, and the right to *dispute* a debt and require a debt collection agency to verify its existence and amount.

The assumptions that underlie both the California statute and the federal statute are that (1) credit is an important feature of the economy, (2) some default in repayment can be anticipated, (3) only reasonable enforcement measures may be employed, and (4) debtors must always be treated honestly and fairly.

In this Legal Guide, the term "debtor" means a consumer who is a debtor, and the term 'collector" includes original creditors and debt collection agencies. If a rule applies only to debt collection agencies and not original creditors, the term "debt collection agency" is used to describe the party that is subject to the rules. "Federal statute" means the federal debt collection practices statute, and "California statute" means the California debt collection practices statute. Words in *italic typeface* are defined in the Glossary on pages 19-212.

Article 1.1
The California Statute

The California Fair Debt Collection Practices Act,[1] adopted in 1977, regulates the conduct of "debt collectors." The Act prohibits numerous unreasonable, deceptive, dishonest and unfair debt collection practices by debt collectors, and it also regulates the form and content of communications by a debt collector to a consumer debtor and others.

Under the California statute, a "debt collector" is "any person who, in the ordinary course of business, regularly, on behalf of himself or others, engages in ... the collection of *consumer debts*."[2] A "consumer debt" is a debt "incurred by a natural person in exchange for property, services or money acquired, on credit, for personal, family, or household purposes" -- that is, a debt arising from a consumer marketplace transaction in which payment is deferred or delayed.[3] The California statute applies to the debt collection activity of both original creditors and debt collection agencies that regularly collect debts.[4] See Part 3, on pages 15-16 below, for more discussion.

Article 1.2
The Federal Statute

The federal Fair Debt Collection Practices Act,[5] adopted in 1977, also regulates "debt collectors," but the term "debt collector" is more narrowly defined than under the California statute. The federal statute regulates the form and content of communications by debt collection agencies to consumer debtors and others; mandates certain affirmative disclosures; prohibits a variety of deceptive and unfair debt collection practices; and grants consumer debtors and others specific rights, including the right to dispute a debt and require a debt collection agency to verify the

debt's existence and amount, to cut off contacts by the collector, and to specify periods and places that contacts with the debtor may not be made.

Under the federal statute, a "debt collector" is a person whose "principal purpose ... is the collection of ... debts" or who "regularly collects or attempts to collect, directly or indirectly, debts owed or due [to] another"[6] -- that is, debts originally owed or due to someone other than the business collecting the debt. In general, original creditors are not covered by the federal statute. Like the California statute, moreover, the federal statute only covers debts arising from "transactions ... primarily for personal, family or household purposes."[7] In general, the federal statute applies only to the collection of debts arising from consumer marketplace transactions, and then only to the activities of debt collection agencies. See Part 3, pages 15-16 below, for more discussion.

Article 1.3
The Federal Standards May Apply to Original Creditors

The California statute applies to the collection of debts by both *original creditors* and *debt collection agencies*. In contrast, the language of the federal statute limits its application and remedies to debt collection agencies, and not the activities of most (but not all) original creditors. Hence, the coverage of the federal statute (as it is written) is not as broad as the California statute.[8]

However, while the federal statute states that it only covers debt collection agencies, and not original creditors, the practical effect of the federal standards changed on January 1, 2000. Beginning then, all creditors and debt collection agencies subject to the California statute are also subject to the federal statute. That means that companies subject to the California statute (that is, both original creditors and debt collection agencies) must comply with the standards expressed in both the California statute and the federal statute, and are subject to the remedies in both statutes.[9]

Article 1.4
What If Neither Statute Applies?

Not all kinds of debts and debt collection activities are covered by these two debt collection practices statutes. In general, these statutes only apply to the collection of debts arising from consumer marketplace transactions. They do not apply to non-marketplace transactions, to business transactions, or to creditors who do not principally or regularly engage in collecting debts.[10]

A claim based on an unpaid check, for instance, may be covered by one or both of the fair debt collection practices statutes, but only if it originated in a consumer marketplace transaction. A claim by a landlord against a residential tenant may be covered, but probably only if the landlord rents to and collects rent from at least several tenants. A debt that does not arise from a consumer marketplace transaction, such as a debt resulting from a marital dissolution or automobile accident, or a debt owing by a business (even a sole proprietor), is not covered by the federal and California debt collection practices statutes.

Other laws, not described in this Legal Guide, may apply to abusive misconduct by entities that are not subject to the fair debt collection practices statutes, and with respect to debts that are not covered by those statutes. These laws include general tort law, as well as the laws on unfair trade practices. Torts (legal wrongs) capable of being committed by entities collecting debts are discussed in a Legal Guide entitled "Debt Collector's Wrongful Conduct: Some Tort Remedies for Debtors" (Legal Guide DC-3).[11]

Article 1.5
Organization of this Legal Guide

This Legal Guide is organized as follows:

- The standards expressed in the federal and California fair debt collection statutes are discussed in Part 2, pages 2-14.
- The rules that define what kinds of collectors and debts are subject to the two statutes are discussed in Part 3, pages 14-16.
- The legal duties of debtors are discussed in Part 4, page 16.
- Debtors' remedies for violations of the two statutes are discussed in Part 5, pages 16-19.
- A glossary of terms used by collectors and courts appears in Part 6, pages 19-21.

Part 2
The Fair Debt Collection Practices Statutes

Persons who counsel debtors can use this Legal Guide to help determine (1) what acts and practices are covered by one or the other (or both) of the two debt collection practices statutes, and (2) what legal standards apply to a particular act or practice. By referring to the endnotes, the reader can determine the applicable code section or

sections. "CC" (Civil Code) refers to the California statute, and "USC" (United States Code) refers to the federal statute. If both statutes are cited in an endnote, that means that both statutes cover the misconduct described in the text above the endnote.

The most important legal rights and protections of debtors are summarized in the following 13 articles:

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Most but not all of the federal standards are incorporated into the California statute and therefore apply to both original creditors and debt collection agencies. Those federal standards that are not incorporated into the California statute therefore apply only to debt collection agencies, and not original creditors. The term "debt collection agency" rather than "collector" is used to describe an entity that must comply with those federal standards that are not incorporated into the California statute, and that therefore only apply to debt collection agencies.

Article 2.1
Disclosure of Purpose at First Contact

In a debt collection agency's first communication to the debtor, it must: (a) describe the purpose of that communication, and (b) inform the debtor that any information that it obtains from the debtor will be used for that purpose. In general, it is a violation for a debt collection agency to fail to disclose either of these. The following specific rules apply:

1. Disclosure of purpose of contact required at first contact. At the time of the first written or oral communication from a *debt collection agency* to a debtor, the debt collection agency must inform the debtor that the collector is attempting to collect a debt, and that any information that it obtains from the debtor will be used for that purpose.[12] In the debt collection agency's subsequent communications to the debtor, the debt collection agency need only inform the debtor that the caller or writer is a debt collection agency.[13] (In all communications, a disclosure of the debt collection agency's true name is also generally required; see Article 2.2, Disclosure of Identity, pages 3-4.)

2. Written "validation notice" required then or soon after. At the time of its initial communication, or within five days after that date, a debt collection agency also must send the debtor a written "validation notice" which discloses, among other things, the debtor's opportunity to dispute the debt and require the collector to verify its enforceability and amount. (This rule is discussed in Article 2.3, pages 4-5, below.)

> ✔ **Action:** If a creditor or debt collection agency has failed to describe (a) the purpose of the communication, or (b) that any information that it obtains from the debtor will be used for that purpose, the debtor should make a written note of the facts, as suggested above. For remedies and practical suggestions, see Part 5, pages 17-19.

Article 2.2
Disclosure of Identity

Whenever a person who represents a creditor or debt collection agency contacts a debtor, the person must correctly identify himself or herself, and must not misrepresent himself or herself or the entity that he or she represents. The following specific rules apply:

1. Identity of caller. It is unlawful for any person of a creditor or a debt collection agency to contact a debtor regarding a debt without disclosing the calling person's and entity's true names.[14] This applies to the initial contact and all subsequent contacts, and to all forms of communication, including letters, telegrams, faxed documents, e-mail messages, and telephone calls. The names of both the individual caller or writer, and the company that the caller or writer represents, must be given. A collector may not attempt to collect a debt by means of any communication with the debtor other than in the true name of the collector that is collecting the debt.[15] Exceptions: There are several exceptions to these rules: (a) An employee of a collector may identity himself or herself by using an alias, provided that the alias is used only by a single identifiable person, and that the caller or writer correctly identifies the collector that he or she represents,[16] and (b) In exercising its right to contact third parties to locate the debtor, the collecting entity's name may not be given unless the name of the caller's or writer's employer is specifically requested (this rule is discussed in Article 2.12, Communications to Third Parties, pages 12-13, below). Example: An

employee of a debt collection agency might make proper disclosure to the debtor of both identity and purpose by stating, "Mrs. Jones, I am Janet Moore, an employee of Incredible Collectors in San Diego. I am calling about your unpaid account at ABC Stores, which has been referred to Incredible Collectors for collection. My job is to collect the amount you owe without going through formal collection procedures, and I will use any information you provide for that purpose."

2. Misleading statements of identity or function. A creditor or a debt collection agency may not collect or attempt to collect a debt by any of the following kinds of misleading statements of identity: (a) Using any business, company, or organization name other than the true name of the collector's business, company, or organization;[17] (b) misrepresenting the true nature of the business or services furnished by the collector;[18] (c) representing that the collector is affiliated with, bonded by, or vouched for by any agency of the federal, state or local government;[19] (d) falsely representing that the person calling, or someone else, is an attorney;[20] (e) falsely representing that the collector is a consumer credit reporting agency;[21] (f) falsely representing that a creditor is a debt collection agency;[22] or (g) falsely representing that the communication is being sent on behalf of the claim, credit, audit or legal department of the collector.[23]

3. Disclosure of name and title of attorney for collector. Whenever an attorney or an employee of an attorney communicates with the debtor or with any other person concerning a consumer debt, the attorney or employee must correctly identify himself or herself, give the name of the client by whom he or she is employed, and give his or her title or job capacity.[24] An attorney who signs a *dunning letter* must actually perform the function of attorney -- that is, the attorney must have reviewed the debtor's file, and have some knowledge about the specific alleged debt.[25]

> ✔ **Action:** If a creditor or debt collection agency fails to disclose the purpose of its initial communication, or refuses to provide its true name, or misrepresents its identity, the debtor should make a written note of the facts, as suggested above. For remedies and practical suggestions, see Part 5.

Article 2.3
Debtor's Right to Dispute Debt

When a debt collection agency first contacts the debtor, or within five days of the initial contact, it must notify the debtor in writing of the debtor's opportunity to dispute the debt and to obtain verification, and it must provide the debtor with verification of the existence and amount of the debt if the debtor requests it. It is a violation to fail to provide this notice or to fail to provide the required verification. The following specific rules apply:

1. Verification notice and rights. A *debt collection agency* must give the debtor a written notice, either with its initial communication or within five days after the initial contact, that states all of the following: (a) the amount of the debt that the debtor allegedly owes; (b) the name of the *original creditor* to whom the debt is owed; (c) that unless the debtor disputes the validity of the debt, or any portion of the debt, within 30 days after receipt of the notice, the debt collection agency will assume that the debt is valid; (d) that if the debtor disputes the debt or any portion, and so notifies the debt collection agency in writing, the debt collection agency will obtain and send the debtor verification of the debt; and (e) that if the debtor so requests, the debt collection agency will send the debtor the name and address of the original creditor, if not already provided.[26] An attorney who represents a debt collection agency in debt collection activities (whether or not a lawsuit is filed) also must give a verification notice.[27]

2. Function and purpose of verification notice. Collectors refer to the required notice as a "validation of debt notice," or simply "validation notice," although the debtor's silence does not "validate" a debt that is not legally valid.[28] The actual function of the statutory notice is to inform the debtor of the debtor's right to dispute the debt, and to require the collector to obtain and provide verification of its existence or amount.[29] For that reason, this notice is called in this Legal Guide a "verification notice." In effect, the verification notice informs the debtor of his or her right to launch an informal dispute resolution process, which the debtor can launch if he or she so desires.[30]

3. The verification notice must communicate effectively. An inconspicuous or otherwise ineffective verification notice does not satisfy the statutory requirement. Courts have ruled that the verification notice must be large enough to be easily read and sufficiently prominent to be easily noticed by even the "least sophisticated debtor," and that it must not be overshadowed or contradicted by anything else displayed or said in the document, and must not be designed or presented in a way that undermines its statutory purpose.[31]

4. The debtor has the right to require verification of the

debt's existence or amount. The debtor can require a debt collection agency to verify the existence or amount of a debt that the debtor disputes, or may dispute. In order to exercise that right, the debtor must notify the debt collection agency in writing and within 30 days after the debtor first receives the collector's verification notice. The debtor can either tell the collector (in writing) that the debtor disputes the debt, or some portion of it, or ask the collector (in writing) to verify the existence or amount of the debt. The debtor's communication is not subject to technical requirements, and need only question the demand for payment in some way. For instance, it may consist of an inquiry about the origin or date of the alleged debt, a request to verify its enforceability, an assertion that the amount demanded is incorrect, an assertion that nothing is owing, an assertion that it is owing by someone else, a question concerning the fact or amount of any previous payments, or an expression of some other kind of dispute, concern or question relating to the debt. All the debtor needs to do is to send the collector a letter that includes the statement, "I dispute the debt," with the debtor's name and a description of the alleged debt.

5. The debtor may require verification of the existence or unpaid balance of a judgment. The debtor also has the right to require a debt collection agency to verify the existence or validity of, or amount owing under, a court judgment against the debtor. In order to exercise that right, the debtor must contact the debt collection agency in writing, within 30 days after the debtor first receives the verification notice. The debtor must inform the collector that the debtor disputes the existence or validity of the judgment or the amount demanded, and that the debtor requests verification of the existence, validity or unpaid balance of the judgment debt. The debtor's communication is not subject to technical requirements, and need only question the demand for payment. For instance, the debtor might question the existence or validity of the judgment, the amount of the original debt, the amount of the judgment debt (the asserted "payoff amount"), the legitimacy or amount of any of its components, the fact or amount of any previous payments or recoveries, the identity of the judgment debtor, or an expression of some other kind of dispute, concern or question relating to the judgment.

6. How the debtor can obtain the name and address of the original creditor. In order to exercise the debtor's right to require a debt collection agency to provide the debtor with the name and address of the *original creditor*, the debtor must contact the debt collection agency in writing, and within 30 days after the debtor first receives the verification notice, and ask the debt collection agency to provide the name and address of the original creditor.

7. Debt collection agency's obligations on receipt of a notice of dispute or verification request. Upon receipt of the debtor's notice of a dispute or request to verify the existence or amount of a debt or obtain information relating to it, the debt collection agency must stop its efforts to collect the debt until it obtains the required verification or other information and provides it to the debtor.[32] The verification that is needed will depend on the character of the inquiry, dispute or other expression of concern. Unless and until the debt collection agency receives such a notice, it may continue informal collection efforts, provided that they do not overshadow and are not inconsistent with the disclosure of the debtor's right to dispute the debt.[33] While informal collection efforts must stop if the collector receives a response to its verification notice which raises a question about the alleged debt, a collector's option to file a collection lawsuit is not affected.[34]

8. Obligation of debt collection agency to report dispute to credit reporting agency. Upon receipt of the debtor's notice of a dispute or refusal to pay, the debt collection agency must notify any credit reporting agency to which the collector has reported adverse credit information that the debtor has registered a dispute, so that the credit reporting agency can reinvestigate the matter and determine whether the debtor's credit record should be modified to reflect that the debt is disputed.[35]

9. Debtor's notice to a credit reporting agency. If the original creditor or debt collection agency has reported to a credit reporting agency that a debt is delinquent (which the debtor may only know by obtaining and checking his or her credit report), the debtor also may inform the credit reporting agency that the debt is disputed. If it is written, the communication will trigger an obligation by the credit reporting agency,[36] and possibly by the creditor or debt collection agency that reported that the debt was delinquent,[37] to investigate the dispute.

> ✔ **Action:** If the debt collection agency does not give the debtor the required written verification notice or does not provide verification of the debt or other information that is required, the debtor should make a written note of the facts, and notify the debt collection agency of its violation. The debtor may also register a complaint with the Federal Trade Commission (FTC). On how to do that, see Part 5.

Article 2.4
Debtor's Right to Stop Communications

The debtor has the right to require a debt collection agency to stop contacting the debtor. The debtor can also require that it direct all of its communications to the debtor's attorney. In general, it is a violation of law for a debt collection agency to fail to halt communications when requested. The following specific rules apply:

1. The debtor can require a debt collection agency to stop contacting the debtor. The debtor has the right to require a *debt collection agency* to stop contacting the debtor with respect to an alleged debt. The debtor's spouse, parent (if the debtor is a minor), or guardian can also require that such contacts stop. In order to require the debt collection agency to halt communications, the debtor or the debtor's spouse, parent or guardian need only notify the debt collection agency in writing that that person desires it to stop communicating.[38] Exceptions: A debt collection agency may contact a debtor or other protected party to inform that party of any of the following: (a) that no further attempt will be made to collect the debt; or (b) that it or the *original creditor* may use specified remedies which it ordinarily uses, such as filing a lawsuit; or (c) that the debt collection agency intends to use a specified remedy, such as filing a lawsuit.[39] (Under a California law effective January 1, 2000, the debtor may have a similar right to require the original creditor to no longer contact the debtor regarding an unpaid debt.[40]) A letter from the debtor might state as follows:

Address
Date

ABC Collection Agency

Dear Sir or Madam:

I am writing to request that you stop communicating with me about my account (No. 000723) with Amy's Department Store. [The federal Fair Debt Collection Practices Act, 15 USC section 1692c(c), requires that you honor this request.]

[I am making this request because I was laid off from work two months ago and cannot pay this bill at this time. I am enrolled in a training program which I will complete in March, and expect to find work that will enable me to resume payments soon after that. You may expect to receive word from me then. Until then, please do not contact me or anyone in my household for any reason.]

[Thank you for your cooperation.]

Yours very truly,

The debtor should modify this form. A debtor should not use this form letter without first changing it to describe his or her own situation, and to request exactly what he or she desires. The language in brackets suggests how the debtor might describe his or her situation, but it is not legally required. If the debtor disputes the debt, or if the debt may not actually be owing (because it is too old, for instance), the debtor should only include the first paragraph and not anything in brackets. In all situations, it is desirable for a debtor to be diplomatic, to explain his or her true situation to the collector, and to inform the collector of the true factual and legal basis for the request (which the debt collector may not know). It is also desirable to send requests of this kind by certified mail, so that the debtor can prove that it was delivered. The effect of requiring a collector to stop contacting a debtor will ordinarily be to give the debtor at least temporary relief from the effects of repeated communications, which may be interfering with his or her attempts to deal with the situation he or she is facing. On the other hand, a request of this kind may result in a *lawsuit*, *repossession* of property, or claim against a *co-signer*, that might not otherwise have occurred. For that reason, requiring the collector to stop contacting the debtor may be a dangerous strategy.

2. Communications also must stop if the debtor informs the debt collection agency that he or she refuses to pay. A debt collection agency must stop communicating with the debtor if the debtor informs the debt collection agency in writing that he or she refuses to pay the debt.[41] A debt collection agency also must stop communicating if a spouse, parent (if the debtor is a minor) or guardian who is contacted informs it that he or she refuses to pay the debt.[42] The debtor need only notify the debt collection agency in writing that he or she refuses to pay the debt. Ordinarily, this will be because the debtor disputes all or part of the debt. The debtor can also do this if he or she is not able to pay, and does not wish to receive calls until he or she has acquired the funds needed to make payment. Exceptions: After a debt collection agency is informed in writing that the debtor refuses to pay, it may communicate with the debtor to inform the debtor of any of the following: (a) that no further attempt will be made to collect the debt; or (b) that it or the *original creditor* may use specified remedies which it ordinarily uses, such as filing a *lawsuit*; or (c) that the debt collection agency intends to use a specified remedy, such as filing a lawsuit.[43] (Under

a newly-adopted California law effective January 1, 2000, an original creditor may have a similar obligation when notified in writing that the debtor refuses to pay.[44]) A letter from the debtor to a debt collection agency might state as follows:

Address
Date

ABC Collection Agency

Dear Sir or Madam:

I am responding to your notice regarding my account (No. 000834) at Amy's Department Store. I refuse to pay the $_____ charged to my account for the purchase on [date].

[I returned the TV I purchased on [date] because it was too large for where I planned to install it. The sales clerk, John, told me I could return it if it didn't fit, and it didn't fit.]

[John did not want to take it back, but I left it with him anyway. Since I returned it, I do not owe Amy's anything. That was our agreement. Please do not contact me further on this.]

[This notice is given under the federal Fair Debt Collection Practices Act, 15 USC section 1692c(c).]

[Thank you for your cooperation.]

Yours very truly,

The debtor should modify this form: The debtor should modify this form to describe his or her own situation and to express his or her own requests. The language in brackets is not legally required, but it is usually desirable for a debtor to be diplomatic, and inform the collector of the true factual and any legal basis for his or her refusal to pay. If the debtor disputes the debt, or part of it, the debtor should inform the debt collection agency that he or she disputes the debt and should explain why. This will also trigger a legal requirement that the collector inform any credit reporting agency to which the collector reports adverse credit information that the debt is disputed.[45] If the debtor only disputes part of the debt, the collector can continue to communicate with the debtor regarding the rest of the debt. In that situation, the debtor would need to specifically request the debt collection agency to stop contacting him or her if that were his or her desire. Requiring a collector to stop contacting the debtor may be a dangerous strategy. It may only force the collector to file a lawsuit, repossess property, or make a claim against a co-signer, when it otherwise might not do so. In almost all situations, the debtor's best interests will be served by actively interacting with the collector.

✔ **Action:** If a debt collection agency does not honor the debtor's request to stop contacting the debtor, or if it contacts the debtor after he or she has notified the collector that he or she refuses to pay the alleged debt, the debtor should inform the collector's management about the violation. If the collector repeats the violation, the debtor may register a complaint with the FTC. See Part 5.

Article 2.5
Obligation to Respect Debtor's Privacy

A collector has a duty to respect certain privacy interests of a debtor. The collector must observe limits on the time and place that communications can be made; on the content of communications to both the debtor and third persons; on the use of non-private means of communication; on communications to the debtor at work or when represented by an attorney; and on dissemination of defamatory information. The following specific rules apply:

1. Communications to third parties. In general and with limited exceptions -- such as communications to locate the debtor, and communications with the debtor's spouse, parent (if the debtor is a minor), guardian, executor or administrator -- a collector may not communicate any information to any third party in connection with the collection of a debt. (This rule, and its limited exceptions, are discussed in Article 2.11, Communications to Debtor's Employer; Article 2.12, Communications to Family Members; and Article 2.13, Communications to Third Parties.)

2. Communicating at unusual or inconvenient times or places. In general, it is unlawful for a collector to communicate with the debtor regarding an unpaid debt at a time or place that the collector knows or should know is either unusual or inconvenient to the debtor. Unless the debtor has given his or her prior consent, a collector may not communicate with the debtor in connection with the debt at any of the following times or places: (a) at any time that is either (i) unusual, or (ii) inconvenient to the debtor (but unless the collector knows otherwise, the collector can assume that anytime between 8:00 a.m. and 9:00 p.m., debtor's local time, is convenient to the debtor); or (b) at any place (including the debtor's place of employment) that is either (i) unusual, or (ii) inconvenient to the debtor.[46]

The debtor can specify what times **are ok** and are **not ok**. While the collector is permitted to assume that anytime between 8:00 a.m. and 9:00 p.m., debtor's local time, is convenient to the debtor[47] the collector can no longer assume that if the debtor notifies the collector that any portion of that period is in fact inconvenient and unsuitable for the debtor. The debtor can also specify exactly what places of contact are and are not convenient. The debtor may tell the collector, orally or in writing, what times and places are acceptable and what times are not acceptable. The prohibition against communicating at an unusual or inconvenient time or place also applies to communications with the debtor's spouse, parent (if the debtor is a minor), guardian, executor or administrator.[48] All of these can also specify what times and places are, and are not, convenient to that person.

3. Disclosing purpose of written communication to third persons. When communicating with the debtor by mail or telegram, a debt collection agency may not use any language or symbol on the outside of any envelope, other than (a) its address, and (b) its name (provided that the collector's name does not indicate that it is in the debt collection business).[49] It is unlawful for a collector to attempt to collect a debt by means of a written communication that displays or conveys any information about the debt or about the debtor (other than the names and addresses of the collector and the debtor) which is intended both to be seen by others and to embarrass the debtor.[50] For instance, a collector may not use a postcard to communicate with the debtor regarding the debt,[51] since others may see the postcard's contents. Similarly, sending a demand for payment to a debtor by fax may violate this prohibition if anyone else has access to the debtor's fax machine. (Other prohibitions against communicating information about an unpaid debt to third parties are discussed in Article 2.13, Communications to Third Parties, pages 13-14, below.)

4. The debtor can require the collector not to contact the debtor at his or her place of employment. An original creditor or a debt collection agency is not permitted to contact the debtor at the debtor's place of employment if the collector knows that the debtor's employer prohibits its employees from receiving communications from creditors at work.[52] If that is the debtor's employer's policy, it is important that the debtor notify the creditor or debt collection agency of that fact. So that the debtor can prove it later if necessary, it is desirable for a debtor to notify the collector in writing (although this is not required). The debtor also can specifically request that the collector not contact the debtor at work, even if the debtor's employer does allow such calls (this right is discussed in paragraph 2, above).

5. The debtor can require the collector to address all communications to his or her attorney. A debtor or the debtor's attorney may request a creditor or debt collection agency to address all future communications to the debtor's attorney instead of to the debtor.[53] Even if a request of this kind has not been made, a debt collection agency may not contact anyone other than the debtor's attorney if the debt collection agency knows that the debtor is represented by the attorney with regard to the debt, and knows or can readily ascertain the attorney's name and address (but the attorney must respond to such communication).[54]

6. Advertising existence of debt. It is unlawful for a collector to communicate the fact that someone has failed to pay a debt to any third person other than: (a) a credit reporting agency, or (b) a person to whom a credit reporting agency may lawfully disseminate the information (for example, a prospective creditor).[55] It is unlawful for a collector to disseminate a list of debtors which discloses the nature or existence of a consumer debt, or to advertise any debt for sale by naming the debtor.[56] A collector may not advertise the sale of a debt for the purpose of coercing its payment.[57]

7. Disseminating defamatory information. A collector may not communicate to anyone the fact that the debtor has engaged in conduct (other than failing to pay a debt) that the collector knows or has reason to believe would defame the debtor.[58] To "defame" is to harm a person's reputation, as by an allegation of disgraceful conduct or the commission of a crime.[59]

> ✔ **Action:** If a collector contacts the debtor at a time or place that is unusual or that the collector knows is inconvenient to the debtor, the debtor should make a written note of the facts, and then notify the collector in writing that the debtor objects to its misconduct and why. If the misconduct has serious consequences or is

repeated, the debtor may register a complaint with the FTC. See Part 5.

Article 2.6
Unfair Collection Practices

The law prohibits all debt collection practices that are judicially determined to be "unfair."[60] The law also prohibits certain practices on the legislatively expressed basis that they are unfair. The following specific rules apply:

1. Physical force or criminal means. It is unlawful for a collector to collect a debt by using physical force or any criminal means to cause harm to the person, reputation or property of anyone.[61]

2. Amount or charges lawfully owing. It is unlawful for a collector to collect any amount (including any interest, fee, charge, or expense incidental to the principal amount of the debt) unless such amount is either: (a) expressly authorized by the agreement between the debtor and the original creditor, or (b) expressly permitted by statute.[62] Attempts to collect "interest," "service charges," "collection charges," "attorney's fees," "legal notice fees" and other fees, charges or penalties, result in a violation unless the charge is expressly authorized by a statute or a valid agreement between the parties.[63] It is also a violation to misrepresent a debt's character, amount or legal status.[64] For example, it is a violation to attempt to collect a claim that is too old to be enforceable.[65] Charges of the following kinds are frequently asserted against debtors when the required factual or legal *prerequisites* do not exist:

- Prejudgment interest. Prejudgment interest is an element of damages that is subject to and limited by legal rules. For instance, if the prejudgment interest rate is not specified by contract, a debt arising from a loan of money bears interest at the rate of 10 percent per year after breach,[66] and no more.

- Statutory penalty. The general rule is that private parties may not impose penalties. Traditionally, only governments could impose penalties. Now, statutes sometimes allow private parties to impose penalties, but unless specifically authorized by statute, a penalty (such as an extra charge for doing or failing to do something) is not lawful or recoverable.[67] If a statute authorizes a penalty, a demand for it is unlawful unless all of the statutory *prerequisites* to the particular charge have already been met.

- Attorney's fees. Unless specifically authorized by statute or an agreement between the debtor and the original creditor, attorney's fees are not recoverable.[68] Courts scrutinize attorney's fee claims, where permitted, carefully before allowing them, in order to assure that they are authorized by statute or contract, and are reasonable in amount. Some courts promulgate charts that define "reasonable" attorney's fees for different amounts claimed.

- Collection expenses. The collection of all or part of a collector's fee or charge is prohibited "except as permitted by law."[69] A contract term that obligates a debtor to pay "collection expenses" is enforceable only if it meets rigorous and usually insurmountable rules on both "liquidated damages" and unfair business practices.[70]

3. Application of payment. If the debtor owes multiple debts, the collector may not apply a payment to a disputed debt, and must follow the debtor's instructions, if any, on allocation of payments to one particular debt (such as a secured debt, or a high-interest-bearing debt) instead of another.[71]

4. Postdated checks. It is unlawful for a collector to: (a) accept or deposit a check that is postdated by more than five days, unless the collector gives written notice to the person giving the check, at least three but not more than ten business days before deposit, of its intention to deposit the check;[72] or (b) solicit a postdated check or other postdated instrument for the purpose of threatening or instituting criminal prosecution;[73] or (c) deposit a postdated check or other instrument prior to the date on the check or instrument.[74]

5. Inconvenient venue. It is unlawful for a collector to enforce payment of a consumer debt by filing a lawsuit in a county other than: (a) where the debtor incurred the debt, or (b) where the debtor resided when the lawsuit was filed, or (c) where the debtor resided when the debt was incurred.[75] If a collector files a lawsuit to enforce a security interest in real property, the lawsuit must be filed where the real property is located.[76]

6. Defective service of process. It is unlawful for a collector to collect a debt through a lawsuit if the collector knows that the summons and complaint were not legally served.[77]

7. Reaffirmation of discharged debt. It is unlawful for a collector to obtain a reaffirmation of a debt discharged in the debtor's bankruptcy, unless the collector discloses to the debtor in writing, before the affirmation of the debt is sought, that the debtor is not legally obligated to affirm the discharged debt.[78]

8. Other unconscionable or unfair means. It is unlawful for a collector to use any unfair or unconscionable means

to collect or attempt to collect a debt.[79] Companies that compose and sell debt collection forms and letters (other than attorneys) are also subject to the prohibition against unfair practices.[80] This means that any conduct by an original creditor, debt collection agency or forms supplier that is unconscionable or unfair violates the federal statute, even if the particular conduct is not expressly prohibited by the statute.[81]

> ✔ **Action:** If a collector employs an unfair or unconscionable practice, the debtor should make a written note of the facts, and then inform the collector in writing that the debtor objects to its apparent misconduct and why. If the misconduct has serious consequences or is repeated, the debtor may register a complaint with the FTC. See Part 5.

Article 2.7
Misrepresentations

A collector may not pretend to be a court, government agency, or anything that it isn't, or make any other kind of false or deceptive representation. The following specific rules apply:

1. Misrepresentation of identity. It is unlawful for a collector to use any name other than its true name, or to otherwise misrepresent its identity or function. This rule is discussed in Article 2.2, Disclosure of Identity, pages 3-4 above

2. Deceptive simulation. It is unlawful for a collector to: (a) use any form of demand for payment or other written communication that 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;[82] (b) use any form of demand for payment or other written communication that creates a false impression as to its source, authorization, or approval;[83] (c) use stationery bearing an attorney's name, or give a communication the appearance of being authorized or approved by an attorney, unless the communication is by or has been approved by that attorney;[84] (d) make any communication that gives the appearance of being authorized, issued or approved by a government agency;[85] or (d) make any communication that simulates legal process.[86]

3. Pretending to be a collection agency. It is unlawful for a creditor to use (and for anyone to design, produce or furnish) a demand letter or form that falsely represents or implies that a debt collection agency or some other third party is participating in the collection of a debt.[87] In that situation, the creditor is considered a debt collection agency for purposes of the federal statute and its standards and penalties.[88]

4. Affiliation with another entity. A collector may not collect or attempt to collect a debt by making misrepresentations of any of the following kinds: (a) misrepresenting that the collector is vouched for bonded by, or affiliated with the United States or any state government;[89] (b) misrepresenting or falsely implying that any person is an attorney or that any communication is from an attorney;[90] or (c) misrepresenting or falsely implying that the collector is, or is employed by, a credit reporting agency.[91]

5. Character, amount or status of debt. It is unlawful for a collector to: (a) falsely represent the character, amount, or legal status of the debt,[92] or (b) falsely represent any services rendered, or any compensation recoverable, for the collection of a debt.[93] (These are also considered "unfair collection practices," which are discussed more fully in "Amount or charges lawfully owing," in Unfair Collection Practices, Article 2.6, pages 8-9.)

6. Legal right to assert claim. The collector must have the legal right to collect the particular debt.[94] It is unlawful for a debt collection agency to falsely represent the legal status of the debt as one that has been assigned to it.[95]

7. Past or intended future action. A collector may not attempt to collect a debt by means of any of the following false representations of past or intended future action: (a) that information concerning nonpayment has been or is about to be furnished to a consumer reporting agency;[96] or (b) that a lawsuit has been, is about to be, or will be, filed if payment is not made.[97] Representations of these kinds are unlawful if they are not factually true.

8. Legal procedure. It is unlawful for a collector to make any of the following misrepresentations regarding legal procedures: (a) to falsely represent or imply that a document constitutes legal process;[98] (b) to falsely represent or imply that a document does not constitute legal process;[99] (c) to falsely represent or imply that a document does not require action by the debtor;[100] or (d) to represent that nonpayment will result in the arrest or imprisonment of any person, or the seizure, garnishment, attachment, or sale of the property or wages of any person, unless (i) such action is lawful, and (ii) the collector actually intends to take such action.[101]

9. Effect of nonpayment. It is unlawful for a collector to misrepresent the effect of nonpayment by falsely representing or implying: (a) that a debt has been transferred to an innocent purchaser for value;[102] (b) that a sale, assignment or other transfer of a debt will cause

the debtor to lose any claim or defense to payment;[103] or (c) that a sale, referral or other transfer of a debt will subject the debtor to any debt collection activity of a kind prohibited by statute.[104]

10. Ruse to obtain information. It is unlawful for a collector to use any false representation or deceptive means to obtain information concerning a debtor.[105]

11. Use of any other false representation or deceptive means. It is unlawful for a collector to use any kind of false representation or deceptive means to collect or attempt to collect any debt.[106] Companies that compose and sell debt collection forms and letters are also subject to this rule.[107] Deceptive methods of debt collection that are not expressly identified and prohibited by statute, whether engaged in by an original creditor, debt collection agency or forms supplier, may therefore be unlawful.[108] Representations are judged by how they are perceived by unsophisticated consumers.[109]

> ✔ **Action:** If a collector makes any false or deceptive representation in its attempt to collect a debt, the debtor should make a written note of the facts, and then inform the collector that he or she objects to its misrepresentation and why. If a misrepresentation has serious consequences or is repeated, the debtor may register a complaint with the FTC. See Part 5.

Article 2.8
Unlawful Threats

It is unlawful for a collector to make certain kinds of threats (expressions of intention to inflict harm). In general, a collector is prohibited from threatening the debtor physically, threatening to harm the debtor's reputation, or threatening to damage the debtor's property, in order to collect a debt. The following specific kinds of threats are prohibited:

1. Threatening physical force or criminal action. A collector may not: (a) threaten to use physical force or violence;[110] (b) threaten to use any criminal means to cause harm to the person, reputation or property of anyone;[111] (c) threaten to accuse the debtor of the commission of a criminal offense if the debt is not paid, where the accusation, if made, would be false;[112] or (d) threaten to use violence or other criminal means to harm the physical person, reputation or property of any person.[113]

2. Threatening to increase charges. A collector may not collect or attempt to collect a debt by threatening that the debt may be increased by the addition of attorney's fees, investigation fees, service fees, finance charges, or other charges, unless the additional charges can lawfully be imposed.[114]

3. Threatening action not intended or permitted. A collector may not state that it intends to: (a) take action that it does not actually intend to take;[115] (b) take action that it cannot lawfully take;[116] (c) assign the debt to a third person, accompanied by a false representation that the assignment would cut off a defense;[117] (d) file suit if it does not intend to do so,[118] (e) garnish wages, seize property, or arrest anyone, unless the action is lawful and is in fact contemplated;[119] or (f) take possession of property without a court order, if either (i) the collector does not intend to take possession, or (ii) there is no enforceable security interest in the property, or (iii) the property is exempt by law from such taking.[120]

4. Threatening to communicate defamatory information. A collector may not threaten to communicate to anyone information (other than nonpayment of the debt) that will defame the debtor.[121] To "defame" is to harm a person's reputation, as by an untrue allegation of disgraceful conduct or the commission of a crime.[122]

5. Threatening to communicate false credit information. A collector may not threaten to communicate to any person (including a *credit reporting agency*) credit information that the debtor knows or should know to be false.[123]

> ✔ **Action:** If a collector makes any kind of a prohibited threat, the debtor should make a written note of the facts, including the date, time and place, what was said, and the names of any witnesses, and then inform the collector in writing that he or she objects to the collector's misconduct and why. If the misconduct has serious consequences or is repeated, the debtor may register a complaint with the FTC. See Part 5.

Article 2.9
Harassment or Abuse

It is a violation to harass or abuse a debtor or any person in order to cause payment of a debt. For example, a debtor may not vex, trouble or annoy the debtor or anyone continually or chronically, as by repeated telephone calls, in order to induce payment. The following specific rules apply:

1. Harassment or abuse by telephone. A collector may not make the following uses of the telephone to collect a consumer debt: (a) to cause the debtor's or anyone's telephone to ring, or to engage the debtor or any person

in telephone conversation, repeatedly or continuously for the purpose of annoying the person called;[124] (b) to call the debtor or anyone with a frequency that is unreasonable and that constitutes harassment;[125] (c) to cause the debtor or anyone expenses for long-distance telephone charges, telegram fees, or charges for other similar communications, by concealing or misrepresenting the purpose of the call;[126] or (d) to call the debtor or anyone without disclosing the caller's identity.[127]

2. Other forms of harassment. A collector may not engage in any conduct in connection with the collection of a debt whose natural effect is to harass, oppress, or abuse the debtor or any other person.[128] ("Natural" means how an ordinary person would ordinarily feel; the term "harass" has no statutory definition, but probably includes rude, nasty or other un-civil or unreasonable behavior.) Conduct that is similar in purpose and effect to the conduct described at paragraph 1, but is accomplished by some means other than a telephone (for example, publication on the Internet or by e-mail), is probably unlawful.[129]

✔ **Action:** If the debtor or someone in the debtor's household receives and is harassed by repeated telephone calls or by any other repeated acts by a collector or any of its employees, the debtor should make a written note of the facts, and then send the collector a letter notifying it of the misconduct. If the misconduct has serious consequences or is repeated, the debtor may register a complaint with the FTC. See Part 5.

Article 2.10
Profane, Obscene or Abusive Language

A collector may not use language that is profane, obscene, vulgar or abusive in order to induce payment of a debt, whether in communications with a debtor a member of his or her family, or any other person. The following specific rules apply:

1. Profane or obscene language. A collector may not use language that is obscene or profane in connection with the collection of a debt.[130]

2. Language whose effect is to abuse. A collector may not use any kind of language in connection with the collection of a debt whose natural effect is to abuse the debtor.[131]

3. Allegations of disgraceful conduct. A collector may not use language that states or implies that the debtor has engaged in disgraceful conduct, such as the commission of a crime.[132]

✔ **Action:** If the debtor receives a communication that is abusive in any of these ways, the debtor should make a written note of the facts, and then send the collector a letter informing it of the misconduct. If the misconduct has serious consequences or is repeated, the debtor may register a complaint with the FTC. See Part 5.

Article 2.11
Communications to Debtor's Employer

A collector may communicate with a debtor's employer, but only to verify the debtor's employment, to locate the debtor, or to garnish the debtor's wages. In the case of a medical debt, the collector may call to discover the existence of medical insurance. The following specific rules apply:

1. Limited purposes only. A collector may communicate with a debtor's employer only for the following purposes: (a) to verify the debtor's employment; (b) to locate the debtor; (c) to garnish the debtor's wages; or (d) in the case of a medical debt, to discover the existence of medical insurance.[133] No other communication to the debtor's employer is permitted.[134]

2. Limits on what is said. If the purpose is to locate the debtor, or to verify whether the debtor is employed there, there are limits on what can be said. The caller must give his or her name, must state that he or she is confirming or correcting information about the debtor's location, and, only if expressly requested, must give the collector's true name. The caller may not state that the debtor owes any debt. (See "Communications to locate debtor" in Article 2.13, pages 13-14, below.)

3. No more contacts than necessary. Communications to a debtor's employer for an authorized purpose can be made only as many times as are really necessary for the authorized purpose.[135] If the purpose of the call is to locate the debtor or verify employment, only a single call is permitted.[136] Any further communication is unlawful.[137]

4. Most communications must be in writing. All communications to the debtor's employer must be in writing, except that: (a) one oral communication may be made solely for the purpose of verifying the debtor's employment; (b) a health care provider or agent may communicate orally for the purpose of discovering the existence of medical insurance; and (c) a collector may communicate orally if no response to a written communication is received within 15 days.[138]

5. Abusive or other improper language prohibited.

Communications to the debtor's employer may not contain language that would be improper if the communication were made to the debtor.[139] (See Articles 2.7, 2.8, 2.9 and 2.10, above.)

✔ **Action:** If a collector engages in any unlawful communication, the debtor should make a written note of the facts, and then notify the collector in writing that the debtor objects to its misconduct. If the misconduct has serious consequences or is repeated, the debtor may register a complaint with the FTC. See Part 5.

Article 2.12
Communications to Family Members

A collector is prohibited, with certain exceptions, from attempting to collect a debt by communicating information regarding the debt to any member of the debtor's family. The following specific rules apply:

1. Limited purposes only. With certain exceptions, a collector may not attempt to collect a debt by communicating information regarding the debt to any member of the debtor's family.[140] Exceptions: A collector can: (a) communicate with the debtor's spouse; (b) contact any family member to locate the debtor; (c) contact any family member if the debtor or the debtor's attorney has previously consented in writing to the communication; or (d) contact the debtor's parents or guardians, if the debtor is a minor or resides with them in the same household.[141] The prohibition against contacting family members no longer applies once the debt becomes a judgment.[142] Communications to any of these persons, where permitted, are subject to the same prohibitions that apply to communications made directly to the debtor. (See Articles 2.7, 2.8, 2.9 and 2.10, above.)

2. Termination of communications to family members. All of the prohibitions against continuing to communicate with the debtor after the debtor requests that communications stop, or expresses a refusal to pay, or who is known to be represented by an attorney, also apply to communications to the debtor's family members. In particular:

- Denial of liability or request to stop communicating. With certain limited exceptions, a collector may not communicate with the debtor's spouse or parent (if the debtor is a minor) regarding the debt anytime after the debtor or family member has notified the collector in writing that: (1) the debtor or family member requests the collector to stop communicating, or (2) the debtor refuses to pay the debt.[143] For sample letters, see Article 2.4 above. Exceptions: The collector may communicate with the debtor or a family member to inform him or her that (1) no further attempt will be made to collect the debt;[144] or (2) the collector may use specified remedies, which the collector ordinarily uses;[145] or (3) the collector intends to use a specified remedy.[146]

- When debtor is represented by an attorney. A collector may not communicate with the debtor, the debtor's spouse, or the debtor's parent (if the debtor is a minor) regarding the debt, if: (1) the debtor is represented by an attorney with regard to the debt; (2) the collector knows this; and (3) the collector knows the attorney's name and address or can readily ascertain it. However, the prohibition no longer applies if the attorney fails to respond within a reasonable time to communications from the collector.[147] (See also Article 2.5, Obligation to Respect Debtor's Privacy, paragraph 5.)

3. Communications to family member's employer. A collector may not communicate with the debtor's spouse or his or her parent (if the debtor is a minor) regarding the debt at the family member's place of employment, if the collector knows or has reason to know that the family member's employer prohibits its employees from receiving communications from creditors at work.[148] (See also Article 2.5, Obligation to Respect Debtor's Privacy, paragraph 4.)

4. Inconvenient time or place. Unless the person gives his or her prior consent, a collector may not communicate with the debtor's spouse, the debtor's parent (if the debtor is a minor), or guardian, in connection with the debt, at any time that the collector knows or has reason to believe is either unusual or inconvenient to that person, or at any place that is either unusual or inconvenient to that person.[149] Unless the collector knows otherwise, it can assume that anytime between 8:00 a.m. and 9:00 p.m. (debtor's local time) is convenient.[150]

✔ **Action:** It is important that a protected party inform the collector in writing of any particular period of time, or place, that is not convenient for receiving communica-tions concerning a debt. If a collector engages in any prohibited communication, the protected party should make a written note of the facts, and then notify the collector in writing that he or she objects to its misconduct and why, and (where appropriate) request that communications stop. If the misconduct has serious consequences or is repeated,

the party may register a complaint with the FTC.

Article 2.13
Communications to Third Parties

Communications regarding a debt made by a collector to someone other than the debtor or the debtor's spouse or parents (if the debtor is a minor) are rigorously limited. The following rules apply:

1. General prohibition. With several limited exceptions, a collector may not communicate any information to any third person in connection with the collection of a debt.[151] This also means that a collector may not communicate with a debtor using a method (such as a postcard) that informs third parties that the communication is from a debt collection agency. (For statutory provisions that protect debtors' privacy, see Article 2.5, Obligation to Respect Debtor's Privacy, pages 6-8, above.) Exceptions: A collector may communicate with a third person in connection with the collection of a debt: (a) where the communication is needed to locate the debtor (subject to stringent limitations, see "Communications to locate debtor" in paragraph 2, below);[152] (b) if the communica-tion is to the debtor's spouse, parent (if the debtor is a minor), guardian, executor or administrator;[153] (c) if the debtor has given his or her prior consent directly to the collector;[154] (d) if the communication is authorized by a court of competent jurisdiction;[155] (e) if the communica-tion is reasonably necessary to carry out a post-judgment judicial remedy;[156] or (f) subject to certain limitations (see "Communication of credit information," paragraph 6, below), to a *credit reporting agency* or other person with a legitimate business need for the information.[157]

2. Communications to locate debtor. When a collector communicates with a third person for the purpose of locating the debtor, the person representing the collector must: (a) identify himself or herself, (b) state that the caller is confirming or correcting information about the debtor's location, and (c) only if expressly requested, identify the collector by name.[158] In making such contacts, however, the collector's representative may not: (a) state that the debtor owes any debt;[159] (b) contact the third person more than once, unless (i) requested to do so by that person, or (ii) the caller reasonably believes that the earlier response was in error and that the third person now has correct or complete location information;[160] (c) communicate by postcard;[161] or (d) use any language or symbol on any envelope or in the contents of any mailed communication or telegram indicating that the sender is a debt collection agency or that the communication relates to the collection of a debt.[162]

3. Communications with debtor's attorney. A collector may not communicate with a debtor regarding a debt at any time after the debtor or the debtor's attorney has made a written request to the collector to direct all future communications to the attorney, provided that the attorney's name and address are provided. However, this prohibition no longer applies if the attorney authorizes the collector to contact the debtor, or to the extent that the debtor initiates communications with the collector.[163] Even if such a written request has not been made, a collector may not communicate with the debtor or any other person regarding the debt if: (a) the debtor is represented by an attorney with regard to the debt, and (b) the collector knows this, and (c) the collector knows the attorney's name and address or can readily ascertain it. However, this prohibition no longer applies if the attorney fails to respond within a reasonable time to communications from the collector.[164]

4. Communication of credit information. The limits on communications to third parties (summarized in paragraphs 1-3, above) do not prohibit a collector from communicating information that relates to a consumer debt or to the debtor to a *credit reporting agency*.[165] Exceptions and qualifications: It is unlawful for a collector, when communicating credit information to a credit reporting agency, to do either of the following: (a) to communicate information which the collector knows or should know is false;[166] or (b) if the knows that the debtor disputes the debt, to fail to communicate that the debt is disputed.[167] To help assure that a collector will notify its credit reporting agency or agencies that a debt is disputed, the debtor should inform the collector in writing that the debt is disputed, and also explain why the debtor disputes it. If the debt is listed in the debtor's credit report as delinquent, the debtor also should notify the credit reporting agency that the debt is disputed. These will trigger obligations on the part of both the collector[168] and the credit reporting agency.[169] For an example of a letter of this kind, see Article 2.3.[170]

> ✔ **Action:** If a collector makes any prohibited communication (even a contacting a relative or friend not specifically authorized), or if a collector reports the debt to a credit reporting agency without reporting that it is disputed (if the collector knows that), the debtor should record the facts, ask the party who was contacted to also record what happened, and then notify the collector in writing that the debtor objects to its conduct and why. If the misconduct has serious consequences or is repeated, the debtor may register a complaint with

the FTC. See Part 5.

Part 3
WHAT COLLECTORS AND DEBTS ARE COVERED?

Not all collectors, and not all kinds of debts, are covered by the California and federal fair debt collection practices statutes. The scope of the California statute is discussed in Article 3.1, below. The scope the federal statute is discussed in Article 3.2, below.

Article 3.1
California Debt Collection Practices Act

The California Fair Debt Collection Practices Act, adopted by the California Legislature in 1977, regulates the form and content of communications by a collector to the debtor and others, and prohibits a variety of dishonest, deceptive, unreasonable and unfair debt collection practices.[171] The California statute covers the debt collection practices of both *original creditors* and *debt collection agencies* that are engaged in activities subject to the statute.

1. Debt collectors subject to California statute. The California statute regulates persons and legal entities that are "debt collectors." A "debt collector" is "any person who, in the ordinary course of business, regularly, on behalf of himself or others, engages in debt collection."[172] Hence, the statute only covers those collectors who regularly engage in the collection of debts, including both original creditors and debt collection agencies. (By contrast, the federal statute, discussed in Article 3.2 below, generally applies only to debt collection agencies.) The California statute also applies to persons who compose and sell, or offer to compose and sell, forms, letters and other collection materials used or intended to be used for debt collection.[173] The California statute does not apply to attorneys engaging in debt collection,[174] but other provisions of law do cover attorneys. (See Article 3.4, page 16, below.) Directors and officers of a corporation are not personally merely because of their position, but may be liable if they directly order, authorize or participate in the unlawful conduct.[175]

2. Debts subject to California statute. The California statute only applies to "debt collection," which is "any act or practice in connection with the collection of consumer debts."[176] A "consumer debt" is a debt incurred by a natural person in exchange for property, services, or money acquired on credit for personal, family, or household purposes[177] -- that is, a claim arising from a consumer marketplace transaction.[178] Hence, a business debt is not covered (even one incurred by a sole proprietor). A debt resulting from a non-marketplace event such as an automobile accident, also is not covered. The statute does not define "credit," which probably includes a debt arising from an express or implied promise to pay for consumer goods or services. The statute only applies to debts owing by "natural persons."[179] Hence, its protections do not apply with respect to debts owing by corporations or other legal entities (limited liability companies or partnerships), regardless of the nature of the debt.

3. What rules apply – California or federal? Creditors and debt collection agencies that are subject to the California statute are also subject to both the California and the federal standards. Before January 1, 2000, the standards in the federal statute only applied to debt collection agencies, with the result that original creditors were not subject to the federal statute's standards or remedies. However, an amendment to the California statute effective January 1, 2000, made most of the federal standards and remedies applicable to debt collection agencies also applicable to the debt collection activities of all creditors subject to the California statute, including debt collection agencies and original creditors.[180] As a result, most of the standards described in Part 2 (pages 3-14) apply to the debt collection activities of both original creditors and debt collection agencies (referred to collectively as "collectors"). (Where a standard only applies to debt collection agencies, the text of Part 2 of the Legal Guide uses the term "debt collection agency" instead of "collector" to describe who must comply.)

Article 3.2
Federal Debt Collection Practices Act

The federal Fair Debt Collection Practices Act, adopted by Congress in 1977, regulates the form and content of communications by debt collection agencies to debtors and others; mandates certain affirmative disclosures and activities; prohibits a variety of deceptive and unfair debt collection practices; and grants consumers specific rights, including the right to cut off contacts by the collector, to specify times and places that contacts may not be made, and to dispute the debt and obtain verification of its existence and amount. In contrast to the California statute, whose reach extends to the debt collection practices of both original creditors and debt collection agencies or other assignees, the federal statute and its remedies are written to apply only to debt collection agencies.[181]

1. Debt collectors subject to federal statute. The federal

statute applies to "debt collectors," and it generally excludes original creditors from its coverage. A "debt collector" is there defined as a person either "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 ... debts owed or due or asserted to be owed or due another."[182] The federal statute also applies to original creditors who, in collecting debts that are owing to them, use a name that implies that a third person is attempting to collect the debt.[183] The federal statute's remedies are also recoverable against a debt collection agency's actively participating managers and employees who personally violate the statute.[184] A violation by an attorney may give rise to remedies against its collector client.[185]

- The federal statute generally includes: debt collection agencies; creditors that pretend to be a debt collection agency; creditors collecting for some other person; repossession companies; attorneys; suppliers or designers of deceptive forms; for-profit debt poolers; and check guarantee services. The federal statute also covers third parties who regularly collect consumer debts for others, including but not limited to attorneys, and employees of attorneys, who are employed by or represent debt collection agencies. A company's activities rather than its form of organization or label determines whether the activities are covered by the federal statute.[186]

- The federal statute generally excludes: creditors (when collecting their own debts), including retail stores, banks and finance companies; assignees (when the debt is assigned before default); government employees; business credit collectors; persons who collect a debt for another person in an isolated instance; and nonprofit credit counseling services.[187] The federal statute also excludes repossessors, except insofar as they violate its specific rules on the conduct of repossessions.[188] The federal statute once excluded attorneys, but it now expressly includes the debt collection activities of attorneys.[189]

2. Debts subject to federal statute. The federal statute only covers debts arising from "transactions," and then only if "the money, property, insurance, or services ... are primarily for personal, family or household purposes."[190] In general, therefore, only debts arising from consumer marketplace transactions are covered. A business debt is therefore not covered (even if incurred by a sole proprietor), and a claim arising from an automobile accident is also not covered, unless the claim is based on a contract to pay the resulting damages. Nor are claims for taxes, fines, alimony or child support covered.[191] The scope of the federal statute is not limited to debts arising from "credit" transactions, and includes claims for the unpaid purchase price of consumer goods or services, as well as claims based on dishonored checks given in consumer marketplace transactions.[192]

Article 3.3
What Rules Apply -- California or Federal?

The federal statute and its remedies are written to apply only to the conduct of debt collection agencies and not that of original creditors. However, as a result of a California law that became effective on January 1, 2000, all creditors and debt collection agencies that are subject to the California statute are also subject to most (but not all) of the provisions of the federal statute.[193] Hence, as a general rule, any original creditor or debt collection agency that is subject to the California statute is now subject to the substantive rules and remedies of both the California statute and the federal statute. Where a rule only applies to debt collection agencies, the text in Part 2 uses the term "debt collection agency" instead of "collector" to describe who must comply.

Article 3.4
Coverage of Attorneys

Attorneys and employees of attorneys who are employed primarily to assist in the collection of consumer debts, or who regularly collect or attempt to collect consumer debts, are subject to the federal statute.[194] They are declared to be exempt from the California Fair Debt Collection Practices Act,[195] but are subject to professional standards expressed in California's Business & Professions Code.[196] These in turn, however, require attorneys to comply with the standards expressed in the California Fair Debt Collection Practices Act.[197] As a result, attorneys and their employees are subject to both the federal and state fair debt collection statutes, as well as California's professional standards for attorneys.

California's professional standards for attorneys also provide that whenever an attorney or an employee of an attorney communicates with either the debtor or any other person concerning a consumer debt, the attorney or employee must identify himself or herself, state by whom he or she is employed, and give his or her title or job capacity.[198]

Attorneys who wilfully violate the professional standards are subject to disciplinary action by the State

Bar of California.[199]

Part 4
DEBTOR'S RESPONSIBILITIES

The California statute imposes some legal duties on the consumer debtor.

It is a violation of the California statute for a consumer debtor to do any of the following, provided that the creditor has previously disclosed the prohibition to the debtor both clearly and conspicuously: (a) to apply for credit without intending to repay it;[200] (b) to apply for credit with knowledge that there is no reasonable probability of being able to repay it;[201] (c) to knowingly submit false or inaccurate credit information;[202] (d) to willfully conceal adverse credit information;[203] or (e) to incur obligations on an account after the option to do so has been terminated.[204]

The California statute also requires a consumer debtor to notify the creditor of any change in the person's name, address, or employment,[205] and to notify the creditor of a loss or theft of a credit card or other instrument within a reasonable time after discovery.[206]

Any intentional violation by a debtor of any of the debtor's statutory duties may be raised as a defense by the collector if the violation is relevant to the debtor's claim against the creditor.[207]

PART 5
DEBTOR'S REMEDIES FOR A VIOLATION

Article 5.1
Non-Judicial Remedies and Options

1. Private mediation. A debtor may owe all or part of an alleged debt, and the collector may have some liability to the debtor because of a violation. If there are two or more separate claims, all of the claims can be taken into account in calculating the net amount owing. In that situation, the interests of both the debtor and collector may be served by having a neutral third party attempt to *mediate* and resolve both disputes. Mediation can also be used if the dispute only involves the amount that is asserted to be owing by one party to the other, such as a penalty or the alleged debt itself.

2. Complaint to government agency

- California government agencies. The California state agency that regulated debt collection agencies was abolished by the California Legislature in 1992. Now, district attorneys in California as well as the California Attorney General can enforce the debt collection rules under their general law enforcement authority. However, these agencies operate on limited resources, and there are practical limits on what they can do. The district attorney's address and telephone number can be found in the introduction to the white pages of the telephone directory under County Government. Complaints to the Attorney General can be addressed to the Public Inquiry Unit at 1-800-952-5225, and at www.caag.state.ca.us. Referral services and information are available from the Department of Consumer Affairs at 1-800-952-5210, TDD 1-800-326-2297, www.dca.ca.gov.

- Federal government agencies. The FTC enforces the federal statute with respect to debt collection agencies; the Comptroller of the Currency enforces compliance by national banks; the Federal Reserve Board enforces compliance by its member banks; the FDIC enforces compliance by its insured banks; and the National Credit Union Administration enforces compliance by federal credit unions. Complaints involving debt collection agencies can be telephoned to the FTC's Consumer Response Center at 1-877-382-4357 (1-877-FTC-HELP) (TDD 1-202-326-2502). Complaints can also be mailed to the Consumer Response Center, Federal Trade Commission, Washington, D.C. 20580-0001. Information is available on the FTC's website at www.ftc.gov. Since a violation of the federal statute is also a violation of the FTC Act,[208] the FTC has broad administrative enforcement authority. Although the FTC does not ordinarily intervene in individual disputes, it uses information submitted by consumers to identify patterns of law violations requiring enforcement action by the FTC.

3. Enforcement lawsuit by debtor. Both of the fair debt collection practices statutes create a private right of action for violations. Both statutes give a debtor power to file a court action to recover a penalty and any resulting damages from a collector who violates an applicable statute. The claim must be filed within one year after the date of the violation. The California remedies can be asserted against the creditor or debt collection agency that committed the violation. The federal remedies can be asserted against a debt collection agency, but not ordinarily against an original creditor (unless the original creditor is subject to the California statute). Forms suppliers and attorneys may also be subject to suit. In some situations, a court will deduct from the amount that a debtor owes to the creditor any damages or penalty that the debtor is entitled to recover because of the violation. Ordinarily, a lawyer is needed

to successfully prosecute an enforcement lawsuit. The debtor may also seek enforcement of a penalty and any right to damages in small claims court. If a lawsuit is not filed in *good faith* -- that is, without a factual and legal basis -- a debtor may be liable to pay the attorney's fees incurred by the collector in defending the lawsuit.

Article 5.2
Overview of California Legal Remedies

1. Lawsuit by debtor. The California statute gives a debtor the right to file a lawsuit and obtain certain relief for violations of its provisions. Recovery is subject to a one-year *statute of limitation*, and can be sought "only in an individual action."[209] The action can be filed in any California court of general jurisdiction, including small claims court.[210] The following kinds of awards are allowed:

- Damages: A creditor or debt collection agency that violates the California statute is liable to the debtor, in an individual action (that is, not a class action), for the actual damages suffered by the debtor as a result of the violation.[211] Companies that compose and sell debt collection forms and letters (other than attorneys) are liable for damages resulting from their misrepresentations and other prohibited acts.[212]

- Civil penalty: If the court determines that the violation of law was willful and knowing, the creditor or debt collection agency is also liable, in an individual (non-class) action only, for a penalty (sometimes referred to as statutory damages) of not less than $100 nor more than $1,000, in an amount determined by the court.[213]

- Attorney's fees: If the debtor prevails, the debtor is entitled to recover a reasonable attorney's fee from the collector that committed the violation.[214] A prevailing collector is entitled to recover reasonable attorney's fees from the debtor if the court finds that the debtor's prosecution or defense of a claim was not in *good faith*.[215]

2. Defenses by collector. A collector can assert any one of three kinds of defenses to a claim for damages or penalties for violation. A collector may have a defense if it can demonstrate that: (a) it notified the debtor of the violation and corrected the violation within 15 days after either discovering it or receiving written notice of it;[216] or (b) it had established procedures designed to avoid the violation and the specific violation was unintentional,[217] or (c) the debtor intentionally failed to perform a statutory obligation of the debtor which was pertinent or relevant to the debtor's claim.[218] (The debtor's responsibilities are summarized in Part 4, page 16.)

3. Remedies for violation of other laws. The California statute states that its remedies "are intended to be cumulative and ... in addition to any other procedures, rights, or remedies under any other provision of law."[219] Conduct that also violates the federal statute therefore may result in remedies under both statutes.[220] If the debtor disputes all or part of an alleged debt and notifies the collector of that fact, the collector may incur liability for not performing obligations under other laws, e.g.. the Fair Credit Reporting Act as well as general law.[221] The rule barring recovery of duplicative items of damage doubtless bars multiple recoveries of actual damages.[222]

4. Administrative enforcement. The California Legislature repealed the state's Collection Agency Act[223] and its regulations[224] in 1992.[225] While there is no longer any state agency that is funded and staffed to enforce the statute, the FTC enforces the federal act. For addresses, see paragraph 2 of Article 5.1, above.

Article 5.3
Overview of Federal Legal Remedies

1. Lawsuit by debtor. Like the California statute, the federal Fair Debt Collection Practices Act gives debtors the right to file a lawsuit and obtain certain relief for violations of its provisions, subject to a one-year *statute of limitation*.[226] Action can be filed in any federal district court, or in any other state court of competent jurisdiction, including small claims court.[227] If the collector has violated the statute "with respect to" someone other than the debtor -- for instance, has harassed or abused the debtor's spouse, or has failed to observe that person's request to stop communications -- that person too has a right to sue.[228] Under the federal statute, the lawsuit can be filed against a debt collection agency that violates the federal standards, but not against an original creditor unless the original creditor represented that it was a debt collection agency.[229] An officer or employee of a collector, when collecting debts for that collector, is not generally liable for violations,[230] but when the conduct of a manager or other employee meets the criteria for "debt collector" he or she may incur personal liability for his or her violation. The federal remedies are:

- Damages: A debt collection agency that fails to comply with any requirement of the federal statute is liable for any actual damages sustained by the debtor or other protected party as a result of the violation.[231]

- Civil penalty: The court in such a lawsuit may also award a civil penalty (statutory damages) not exceeding $1,000 if the lawsuit is an individual action.

In a class action, the court may award civil penalties not exceeding (a) $1,000 for each named plaintiff, and (b) for all other class members, an aggregate amount not exceeding $500,000 or one percent of the collector's net worth.[232]

- Attorney's fees: The court may award reasonable attorney's fees to the prevailing plaintiff. If the court finds that the debtor's prosecution or defense of a claim was not in *good faith,* a prevailing party is entitled to recover reasonable attorney's fees from the debtor.[233]

2. Defenses by debt collection agency. A debt collection agency can defend against a claim for a violation of the federal statute on either of the following grounds: (a) if it demonstrates persuasively that: (i) it established procedures to avoid the error; and (ii) the violation was not intentional and resulted from a bona fide error;[234] or (b) if it shows that the act was done or omitted in *good faith* in conformity with an advisory opinion of the Federal Trade Commission.[235]

3. Class actions. While the private right of action for actual damages and penalties created by the California statute can be asserted "only in an individual action,"[236] the federal statute allows use of a class action to recover both actual damages and penalties.[237]

4. Administrative enforcement. The FTC enforces the federal statute against most debt collection agencies,[238] but certain other federal administrative agencies enforce it against the entities that they regulate.[239] For their telephone numbers and addresses, see paragraph 2(b) of Article 5.1, above.

5. Federal preemption of state law. The federal statute states that its provisions do not displace state law, excepting state law provisions that are inconsistent with federal law. These are preempted, unless they provide consumers with greater protection.[240]

Article 5.3
Creditors Subject to Federal Remedies

The California statute expressly applies to debt collection by both *original creditors* and *debt collection agencies*, while the federal statute, by its terms, generally applies only to the activities of debt collection agencies, not the activities of original creditors. (See Article 3.3, page 16, above.)

While the federal statute states that it only covers debt collection agencies and not original creditors,[241] the practical impact of the federal statute in California changed on January 1, 2000. In 1999 the California statute was amended to provide that beginning January 1, 2000, collectors subject to the California statute (both original creditors and debt collection agencies) "shall comply with the provisions of Sections 1692b to 1692j, inclusive, of, and be subject to the remedies in Section 1692k of" the federal statute.[242] The result is that a debtor who sustains a violation of the federal standards by a creditor who is subject to the California statute can assert the federal remedies against that creditor.

This legislation expressly required collectors to comply with the version of the federal statute that existed on January 1, 2000. The California statute was amended in 2000, to change that date to January 1, 2001.[243]

PART 6
GLOSSARY
(Terms Used in This Legal Guide)

acknowledgment of satisfaction of judgment – a form signed by the *judgment creditor* that states that the debtor (the debtor) have paid the *judgment debt* in full

agree – to reach and express a mutual agreement and understanding about something

allege (or **assert**) – to claim or maintain that something is true (for instance, that the debtor signed something)

agreement – the result of an expression of mutual understanding, including what was agreed to

assign – to transfer a claim from the *original creditor* to a *debt collection agency* for collection

attorney (or **lawyer**) – a person who has special knowledge about the law and is licensed to give legal advice

attorney's fees – fees paid to an attorney, sometimes included as part of a court *judgment*

bankruptcy – a federal court process that wipes out most of a debtor's debts in exchange for the debtor's non-exempt property; see also *wage earner plan*

bargaining power – control over the situation, sufficient to affect the results

barred – prevented; for example, a *statute of limitation* may bar (prevent) the filing of an old claim

bill – a written notice from a creditor to a debtor stating a particular amount of money that is owing

cancel – to back out of, rescind, extinguish, terminate; a debtor might seek to cancel (rescind) a *contract*

case – the reasons and arguments why a party should win a dispute; that party's "side of the dispute"

charges – any amount added to a debt, such as *interest*, *court costs*, *attorney's fees*, or *collection fees*

claim (or **amount claimed**) – the amount that a collector believes (whether rightly or wrongly) is owing

claim (or **assert**) – to demand payment of an alleged

debt, or to assert a defense to an alleged debt

collateral – property given by the debtor to the creditor to secure payment of the debt (see *secured debt*)

collect – to receive and/or enforce payment of a debt

collection fees – fees that a collector might try to add to the debt to cover the expenses of collecting it

collector – a business or person who attempts to collect a debt; may be a *creditor* or a *debt collection agency*

complete defense – where the person against whom a claim is made has no legal *obligation* to pay anything

compromise – an *agreement* to settle a dispute by giving up something, as by "splitting the difference"

consumer debt – a debt incurred by a natural person, in a marketplace transaction, for personal, family, or household purposes

contract – a legally enforceable *agreement*

corroborating evidence – facts or documents that help to support a party's side of the dispute (*case*)

co-signer – someone other than the debtor who has promised to pay the debt if the debtor does not

court costs – certain kinds of court-related expenses of the winning party, which the court may add to the debt

credibility – reputation for honesty

credit – the right to incur a debt, or the right to delay repayment of a debt

credit counselor – a professional person who is an expert in personal finance and financial problem solving

credit record – a history of one's use and repayment of credit, including any delays in payment, compiled by a *credit reporting agency*

credit report – a summary of a person's *credit record* prepared by a *credit reporting agency* and sold to prospective creditors and others

credit reporting agency – a business (sometimes called a credit bureau) that compiles and sells people's *credit reports* to other businesses

credit standing – a person's reputation for the payment of debts, as documented in his or her *credit record*

creditor – a business or individual who extends credit, or to whom a debt is owed (in this Legal Guide, it usually means the *original creditor*).

debt – a legal obligation to pay money, often resulting from a purchase on credit or a loan of money; in this Legal Guide, debt means an obligation that arises from a consumer transaction

debt collection agency – a business that collects debts that were originally owing to some other creditor

debt counselor – a professional person who is an expert in personal finance and financial problem solving

debt management service – an organization or office that helps debtors work out their financial difficulties

debtor – a person who has a legal duty to pay money to someone else

defame – to harm someone's reputation

defense – where all or part of a claim is not legally *enforceable (*a *partial defense* or *complete defense*)

demand for payment – a creditor's or debt collection agency's request for payment of an alleged debt

dispute – to assert that one does not owe the amount claimed (or when used as a noun, a controversy)

dunning letter – a letter from a creditor or debt collection agency that demands payment of a debt

enforceable – where a court would find the claimed debt to be lawfully owed to another, and would issue a court *judgment* that declares that the debtor owes it

evidence – an oral or written statement, or a document, photograph or drawing (etc.), that is offered to show that a fact is or is not so

execution – the enforcement of a *judgment* by a *sheriff*, pursuant to a *writ of execution*, against the debtor's earnings, bank account, or other property

exempt – earnings or property that is protected by law against being taken to satisfy a *judgment*

fraud – one example is a false statement that is made knowingly, intended to be relied upon, and relied upon justifiably by another, with resulting loss

garnishment of earnings – a *levy of execution* by a court officer on someone's earnings, a portion being taken each pay period to pay off the *judgment*

good faith – honestly, based on a reasonable belief that something is authorized and legitimate

grace period – the number of days after a due date within which the debtor can pay without paying a penalty

indebtedness – the total of the debts the debtor owe

installment or **installment payments** – monthly or weekly payments to a creditor or debt collector

interest – a charge for using or delaying repayment of money (amount x rate x time = interest charge)

judgment – a court document that states the amount that the court has determined that a debtor owes

judgment creditor – a party to a *lawsuit*, who was awarded a court *judgment* against another party

judgment debt – the total amount that will pay off the *judgment*, including: (a) the original debt; (b) and pre-judgment *interest*, *court costs* and other *charges*; and (c) any interest and court costs after judgment

judgment debtor – a party to a *lawsuit*, against whom another party was awarded a *judgment*

judgment lien – a security interest in real property, which prevents its sale until the *judgement debt* is paid

judgment-proof – where, since the debtor has no income or property, a court judgment is worthless
harass – to vex, trouble, or annoy someone continually or chronically
lawsuit – a court action or proceeding, as where one person or business goes to court to seek money or other relief from another person
legitimate – lawful, authorized, honest, genuine
levy of execution – action taken by a court officer to enforce a *judgment* against a debtor's earnings, bank account or property, pursuant to a *writ of execution*
lump sum payment – payment (usually in full) by a single check, money order, or cash payment
mediate – to help the parties to a dispute to reach a voluntary *settlement* of the dispute
negative item – an entry in a person's *credit record* (maintained by a *credit reporting agency*) that is adverse to that person
negotiate – interact with someone (as by talking with that person), in an attempt to reach an *agreement*
obligation – a legal duty owed to another person
original creditor – the business to which the debtor first owed the debt, before the business assigned it to the debt collection agency for purposes of collection
owe – to be legally obligated to pay
partial defense – where the person against whom a claim is made has a legal *obligation* to pay part of a claim, but not all of the claim
payout agreement – a written agreement between a debtor and collector that expresses the promises of both of them regarding the payment of a debt
preponderance of evidence – evidence that is at least a bit more persuasive than the contrary evidence
prerequisite – a requirement that must be met before a claim is legally owing, or before some other right exists
principal amount – the amount owed, before adding *interest* or other *charges*
privacy – a person's interest in being left alone, or in not having others know things they have no right to know
remedy – a legal method of enforcing the payment of a debt, or of enforcing some other right, as by filing a *lawsuit*, or by arranging for a *levy of execution* to enforce the *judgment* of a court
repossess – to take possession of property (such as a car) that secures repayment of a *secured debt* that had not been paid
right – an interest protected by law, such as a right to possess property, enforce a contract, recover money, receive information, or enjoy privacy
right to cancel – a legal right to back out of, rescind, extinguish, or terminate, a *contract*
secured debt – where the debtor has given the creditor a legal right to take certain described property of the debtor (such as the debtor's car or home), using proper procedures, if the secured debt is not paid
settlement – an agreed solution to a problem, usually including payment of money, and release of claims
settlement offer – an offer to the other party to resolve a dispute by some kind of a *compromise*
sheriff – a court officer whose job it is to enforce court *judgments*, as by a *levy of execution* on earnings
standards – rules of conduct, often set by law -- for example, the fair debt collection practices statutes described in this Legal Guide
statute – a rule adopted by a legislative body, such as a law that regulates debt collection activities
statute of limitation – a *statute* that limits the time within which a *lawsuit* can be filed to enforce a claim
subprime lender – a lender who charges very high interest rates to homeowners with poor credit
substantiate – to provide substantial evidence that proves or verifies the truth of something
transaction – the entire *contract*, including all *agreements* that are related to its subject or purpose
unsecured debt – where the debt is not backed by *collateral*, and the creditor therefore has no right to take the debtor's property if the debt is not paid
verification notice – a written communication from a collector to a debtor that invites the debtor to inform the collector of any *defense* to a claim (sometimes called "validation notice"
voidable – subject to *cancellation* (rescission) at the election of a party; if a contract is "void," it is altogether invalid
wage earner plan – an arrangement for the repayment of creditors under bankruptcy court protection
waive – to forgive something, such as *interest*, *court costs*, part of a claim, or a deadline for payment
writ of execution – a court order to the sheriff to *levy execution* on the debtor's earnings and property

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ENDNOTES

1. Stats. 1977, ch. 907, Civil Code §§ 1788-1788.32, whose official title is the Rosenthal Fair Debt Collection Practices Act.

2. Civil Code § 1788.2(b).

3. Civil Code §§ 1788.2(e),(f).

4. Civil Code § 1788.17.

5. 15 USC §§ 1692-1692o, Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 874, whose official title is the Fair Debt Collection Practices Act.

6. 15 USC § 1692a(6).

7. 15 USC § 1692a(5).

8. On the scope of the federal and California statutes, see Part 3 of this Legal Guide. See also Pridgen, Consumer Credit and the Law (Clark Boardman Callaghan, 1990, (2000 Supp.), ch. 4; Fair Debt Collection, 4th ed (National Consumer Law Center 2000), § 5.7.16; Debt Collection Practice in California, 2d ed. (CEB 1999), ch. 2.

9. Civil Code § 1788.17 (Stats. 1999, ch. 310). This 1999 statute states that "every debt collector [subject to the California statute] shall comply with ... Sections 1692b to 1692j, inclusive, of, and shall be subject to the remedies in Section 1692k of, Title 15 of the United States Code ... as they read January 1, 2000." However, creditors collecting their own debts are expressly exempted from 15 USC §§ 1692e(11) and 1692g (on purpose of contact and verification notice.

10. Civil Code § 1788.2(b)-(f); 15 USC § 1692a(3)-(6).

11. The general law of California includes several legal doctrines that can give rise to liability by a business or individual engaged in collecting or enforcing debts. One of these is tort law. A "tort" is a civil (as opposed to criminal) wrong, other than a breach of contract, for which there is a remedy in the form of a lawsuit for *damages*. *Nagy v. Nagy* (1989) 210 Cal.App.3d 1262, 1269 [258 Cal.Rptr. 787, 790]. While there is no single tort of "unfair debt collection," a debt collector can incur liability under any of the following torts, depending on the situation: (a) infliction of emotional distress (done either negligently or intentionally); (b) invasion of privacy; (c) defamation; (d) interference with employment relation; (e) malicious prosecution; (f) abuse of process; and (g) a tort arising from statutory violation ("negligence per se") See 5 Witkin, Sum. Cal. Law (9th ed. 1988) Torts §§ 402-417 (intentional causing of emotional distress); §§ 459-470 (abuse of process); Torts §§ 471-566 (defamation); §§ 577-603 (invasion of privacy); §§ 640-641 (interference with employment relation); §§ 674-728 (fraud and deceit). See Guide DC-3, "Debt Collector's Wrongful Conduct: Some (Tort) Remedies for Debtors."

12. 15 USC § 1692e(11); Civil Code § 1788.17 (effective 1/1/2000). This requirement does not apply to a creditor collecting its own debt; however, it does apply to attorneys engaging in debt collection. (Civil Code § 1788.17, 15 USC §§ 1692a(6)(A),(B), 1692e(11).

13. 15 USC § 1692e(11); Civil Code § 1788.17 (effective 1/1/2000). These rules do not apply to a creditor collecting its own debt. (Civil Code § 1788.17, 15 USC §§ 1692a(6)(A),(B), 1692e(11).

14. Civil Code § 1788.11(b); 15 USC § 1692d(6).

15. Civil Code § 1788.13(a).

16. Civil Code § 1788.11(b). The California statute requires that the alias be registered with a presently non-existent state agency; the underlying intent of this section would seem to require that the alias identify a particular person that the collector can name if necessary. See also *Wright v. Credit Bureau of Georgia, Inc.* (N.D. Ga. 1982) 548 F.Supp.591.

17. 15 USC § 1692e(14); Civil Code § 1788.13(a); see Fair Debt Collection, 4th ed (National Consumer Law Center 2000), § 5.5.

18. Civil Code § 1788.13(i) (c).

19. Civil Code § 1788.13(d). The FTC has construed § 5 the Federal Trade Commission Act, 15 USC § 45 (hereafter "FTC Act") to prohibit misrepresenting a collector's affiliation with the government. See Fair Debt Collection, 4th ed. (National Consumer Law Center 2000), § 8.3.10.

20. Civil Code §§ 1788.13(b),(c); see also Civil Code § 1788.16 (e).

21. Civil Code § 1788.13(f) and (g).

22. Civil Code § 1788.13 (k).

23. Civil Code § 1788.13(h). The FTC has construed the FTC Act to prohibit misrepresenting that a claim has been or will be sent to an attorney or separate department of the collector. See Fair Debt Collection, 4th ed. (National Consumer Law Center 2000), § 8.3.9.

24. Business & Professions Code § 6077.5(b).

25. Civil Code § 1788.13(b); 15 USC § 1692e(3); see *Masuda v. Thomas Richards & Co.* (C.D. Cal. 1991) 759 F.Supp. 1456, 1460; see *Clomon v. Jackson* (2d Cir. 1993) 988 F.2d 1314, and *Anthes v. Transworld Systems, Inc.* (D. Del. 1991) 765 F.Supp. 162, 166-167.

26. 15 USC § 1692g(a); see Fair Debt Collection, 4th ed (National Consumer Law Center 2000), § 5.5. This requirement does not apply to a creditor collecting its own debt; however, it does apply to attorneys engaging in debt collection. Civil Code § 1788.17, 15 USC § 1692a(6)(A),(B), 1692g. (If this is the first communication to the debtor, it must also include (a) the collector's identity (see Article 2.2, "Disclosure/ Misrepresentation of Identity"), and (b) a description of the purpose of the contact and a notice that any information that the collector receives from the debtor will be used

for that purpose (see Article 2.1, Disclosure of Purpose of Communication.")

27. 15 USC § 1692a; see Pub. L. 99-361, July 9, 1986, 100 Stat. 768, deleting prior exemption of attorneys.

28. 15 USC § 1692g(c).

29. 15 USC § 1692g(a)(4).

30. A notice of this kind will ordinarily obligate the debt collection agency to inform any credit reporting agency to which the collector reports adverse credit information that the debt is disputed. (15 USC § 1692e(8).) The duty to do this also arises under the federal Fair Credit Reporting Act. (15 USC § 1681s-2(a)(3).) If the debtor has informed the debt collection agency about the *basis for* the dispute, this may also give rise to an obligation under one or both of the federal statutes to provide that information to any credit reporting agency and, in particular, to correct any inaccurate information already provided. (15 USC §§ 1692e(8), 1681s-2; *Brady v. Credit Recovery Co.* (1st Cir. 1998) 160 F.3d 64; see also CC §§ 1785.25(f) and 1785.26(b),(c).) If the debtor sends a written inquiry by certified mail, the collector must give the debtor a "timely response" in writing under California Civil Code § 1720.. If a response is not mailed within 60 days of the debtor's written inquiry, the collector is not entitled to interest, financing charges, services charges, or any similar charges on the disputed amount from and after the date of your written inquiry. (Civil Code § 1720.)

31. In judging whether the content of a verification notice meets the statutory standards, courts interpret the federal statute from the perspective of, and based on its probable impact on, a hypothetical "least sophisticated debtor," as distinguished from an "average" or "reasonable" debtor. (*Jeter v. Credit Bureau, Inc.* (11th Cir. 1985) 760 F.2d 1168, 1174; *Swanson v. Southern Oregon Credit Service* (9th Cir. 1988) 869 F.2d 1222, 1225.) The "least sophisticated debtor test" is used to evaluate the adequacy of compliance with numerous provisions of the Act, including the verification notice requirement and the standards that apply to the collector's representations to the debtor. Whether a representation is false or deceptive, for instance, is judged by the message's impact on a least sophisticated debtor. (See §§ 30.XX-30-XX.) In the *Swanson* case, the 9th Circuit Court of Appeal held that a debt collection agency's verification notice violated 15 USC § 1692g because it failed to effectively inform the least sophisticated debtors to whom it was directed. (*Swanson v. Southern Oregon Credit Service, supra,* at 1225.) The court stated that "[t]he statute is not satisfied merely by inclusion of the required debt validation notice; the notice Congress required must be conveyed effectively to the debtor." (*Id* at 1225.) The required notice "must be large enough to be easily read and sufficiently prominent to be noticed -- even by the least sophisticated debtor," and "to be effective, the notice must not be overshadowed or contradicted by other messages or notices appearing in the initial communication from the collection agency." (*Id* at 1225.) The court decided that the notice in issue in that case failed these tests because it was dwarfed and contradicted by the dunning message. In 1996 and 1997 decisions, the 9th Circuit Court of Appeal reaffirmed that compliance with the standards set by the federal statute is determined by assessing the collector's impact on "a hypothetical 'least sophisticated debtor." (*Wade v. Regional Credit Ass'n* (9th Cir. 1996) 87 F.3d 1098, 1100; *Terran v. Kaplan* (1997) 109 F.3d 142, 143; see also *Baker v. Citibank* (*South Dakota) N.A.* (S.D.Cal.1998) 13 F.Supp.2d 1037.) "[C]ourts have consistently found inadequate debt validation notices where the typefaces and layouts of the overall documents overshadowed the notices." (*Baker v. Citibank* (*South Dakota) N.A, supra*, at 1441.) A 1980 federal district court held that positioning the notice on the *back* of a form demanding payment within *five* days was insufficient notice of the debtor's rights because the message in the notice was contradicted by the collector's demand for payment. The court found that the design of the collector's notice reflected "a deliberate policy ... to evade the spirit of the notice statute and mislead the debtor into disregarding the notice." (*Ost v. Collection Bureau, Inc.* (D.N.D. 1980) 493 F. Supp. 701, 703; see also *U.S. v. National Financial Services, Inc.* (D.Md. 1993) 820 F.Supp. 228; *Rabideau v. Management Adjustment Bureau* (W.D.N.Y. 1992) 805 F.Supp. 1086); *Anthes v. Transworld Systems, Inc.* (D.Del. 1991) 765 F.Supp. 162.) Similarly, a federal district court in *Baker* held that a collector's demand that payment be made "now" violated the statute because it contradicted and diluted the effect of the statutory notice of the debtor's 30-day right to dispute and obtain verification. In a 1991 case, the collector had included all of the required debt verification information in three paragraphs on the back of a collection letter, but the court nevertheless found a violation because other provisions of the letter contradicted and undercut the verification notice. (*Miller v. Payco-General Am. Credits, Inc.* (4th Cir. 1991) 943 F.2d 482, 483.) In that case, the front of the letter demanded immediate payment, with the single word "NOW" filling the bottom third of the document in white letters nearly two inches tall against a red background, thereby undercutting the statement on the back of the letter, printed in grey ink, that the debtor had 30 days in which to contest the validity of the debt and request verification. The court stated that "[a] demand for payment within less than the thirty-day timeframe necessarily requires the debtor to forego the statutory right to challenge the debt ... within thirty days ..." and therefore "conflicts with the protections for debtors set forth in [the statute]." (*Terran v. Kaplan* (1997) 109 F.3d 1432, 1434.) The content of the verification notice must include an accurate statement of all of the information required by the statute. Applying the "least sophisticated debtor test," the 7th Circuit Court of Appeal held that the notice must include an accurate statement of the amount actually owing, and not require the debtor to call an "800" number for the exact figure. (*Miller v. McCalla*, et al, 2000 WL 715001 (7th Cir. June 5, 2000).) See also *Heintz v. Jacobs* (1995) 514 U.S. 291, 115 S.Ct. 1489, 131 L.ED.2d 395, and *Romine v. Diversified Collection Services, Inc.* (9th Cir. 1998) 115 F.3d 1142; Pridgen, Consumer Credit and the Law (2001 looseleaf), **§ 13.04[3];** Fair Debt Collection, 4th ed. (National Consumer Law Center 2000), § 5.2.1. An attorney who represents a debt collection agency in debt collection efforts (whether or not a lawsuit is filed) is governed by the same rules that apply to debt collection agencies, and therefore must give the debtor a verification notice as required. (15 USC § 1692a; see Pub. L. 99-361, July 9, 1986, 100 Stat. 768, deleting prior exemption of attorneys.)

32. 15 USC § 1692g(b). The House Report indicates that compliance with the verification notice requirement would be achieved if the debt collection agency obtained from the creditor a statement including an itemization of the debt, the name of the

consumer, a statement that the debt had not been paid, and a statement that the consumer had received a specified product or a properly rendered service. H.R. Rep. No. 131, 95th Cong., 1st Sess. 6 (1977); see *Mahon v. Credit Bureau of Placer* (9th Cir. 1999) 171 F.3d 1197; Pridgen, Consumer Credit and the Law (Clark Boardman Callaghan, 1990, 2000 Supp.), § 13.04[4]. In *Castro v. ARS National Services, Inc.*, 2000 U.S. Dist. LEXIS 2618 (S.D.N.Y. March 8, 2000), a federal district court in New York held that a debt collector violated the federal statute by including language in its verification notice that the least sophisticated consumer could read as imposing requirements beyond those set out in the statute. According to the court, all that was needed to dispute the validity of a debt was a letter by the consumer with the statement, "I dispute the debt."

33. FTC Advisory Opinion, March 31, 2000, http://www.ftc.gov/os/2000/ 04/dcpaadvisoryopinion.htm; see Fair Debt Collection, 4th ed. (National Consumer Law Center 2000), § 5.7.2.3.

34. Staff Commentary on the FDCPA, 53 Fed.Reg. 50097, 50109 (FTC 1988); see *Baker v. Citibank (South Dakota) N.A. et al* (S.D. Cal.1998) 13 F.Supp.2d 1037, 1043.

35.15 USC §§ 1681s-2; see Fair Credit Reporting Act, 4th ed. 1998 (National Consumer Law Center, 1998), § 9.9.

36. 15 USC § 1681i; see Fair Credit Reporting Act, 4th ed. 1998 (National Consumer Law Center, 1998), §§ 9.3-9.10.

37. 15 USC §§ 1681s-2; see Fair Credit Reporting Act, 4th ed. 1998 (National Consumer Law Center, 1998), § 9.9; *Campbell v. Baldwin* (E.D. Tex., 2000) 90 F.Supp.2d 754; *Dornheckler v. Ameritech Corp.* (N.D. Ill., 2000) 99 F.Supp.2d 918.

38. 15 USC §§ 1692c(c)(1)-(3), (d).

39. 15 USC § 1692c(c)(1)-(3).

40. Civil Code § 1788.17 (Stats. 1999, ch. 319, eff. 1/1/2000). This legislation states that original creditors, when collecting their own debts, are specifically exempted from having to state the purpose of the initial contact or provide the verification notice that debt collection agencies must provide, but original creditors are not specifically exempted from the requirements discussed in the text that accompanies this endnote. No court has yet interpreted this legislation, or ruled on the validity of this requirement, if original creditors are not exempted from compliance.

41. 15 USC §§ 1692c(c)(1)-(3).

42. 15 USC § 1692c(d).

43. 15 USC §§ 1692c(c)(1)-(3).

44. Civil Code § 1788.17 (Stats. 1999, ch. 319, eff. 1/1/2000). See comments in the endnotes to paragraph 1 of this Article 2.4.

45. 15 USC § 1692e(8), Civil Code § 1785.26(b), (c); see also Civil Code § 1785.25(f) and *Brady v. Credit Recovery Co.* (1st Cir. 1998) 160 F.3d 64.

46. 15 USC § 1692c(a)(1); see Fair Debt Collection, 4th ed (National Consumer Law Center 2000), § 5.3. The federal statute defines "communication" as "the conveying of information regarding a debt directly or indirectly to any person through any medium." 15 USC § 1692a(2). The FTC has ruled that the term "communicate" is given its commonly accepted meaning, and that inconvenient contacts are prohibited when related to the collection of a debt whether or not the debt is specifically mentioned. FTC Staff Commentary, at p. 50,103; see also Pridgen, Consumer Credit and the Law (Clark Boardman Callaghan, 1990, (2000 Supp.), § 13.05[2].) See also discussion of harassment by telephone, at Article 2.9.

47. 15 USC § 1692c(a)(1).

48. 15 USC § 1692c(d); see Pridgen, Consumer Credit and the Law (Clark Boardman Callaghan, 1990, (2000 Supp.), § 13.05[3].)

49. 15 USC § 1692f(8). In *Kleczy v. First Federal Credit Control, Inc.* (1984) 21 Ohio App. 3d 56 [486 N.E.2d 204], the court held that a collection agency violated the federal statute when it mailed a collection letter to a consumer at his place of employment. The court found that because the words "FINAL DEMAND FOR PAYMENT" could be easily read through the envelope addressed to the consumer at his place of work, a third party was being notified of the debt, a violation of the statute. See Pridgen, Consumer Credit and the Law (Clark Boardman Callaghan, 1990, (2000 Supp.), § 13.05[3]; and Fair Debt Collection, 4th ed (National Consumer Law Center 2000), § 5.3.

50. Civil Code § 1788.12(d).

51. 15 USC § 1692f(7).

52. 15 USC § 1692c(a)(3).

53. Civil Code § 1788.14(c).

54. 15 USC §§ 1692b(6), 1692c(a)(2).

55. 15 USC § 1692d(3); see Fair Debt Collection, 4th ed (National Consumer Law Center 2000), § 5.4.4.

56. Civil Code § 1788.12(c).

57. 15 USC § 1692d(4).

58. Civil Code § 1788.10(e).

59. See 5 Witkin, Sum. of Cal. Law (9th ed. 1988) Torts, § 471. On a debtor's private remedies for an unlawful privacy invasion or defamation, see the sources cited in endnote 11, above.

60. 15 USC § 1692f. See, generally, Pridgen, Consumer Credit and the Law (Clark Boardman Callaghan, 1990, (2000 Supp.), § 13.08, and Fair Debt Collection, 4th ed (National Consumer Law Center 2000), § 5.8.

61. Civil Code § 1788.10(a); 15 USC § 1692d(1).

62. Civil Code § 1788.14(b); 15 USC § 1692f(1). Even though the demand for interest of $1.29, $1.84 and $.65 on unpaid checks was "only slightly overstated," the court held that this violated the federal statute's plain language. *Duffy v. Landberg*, 2000 U.S. App. LEXIS 11614 (8th Cir. 2000).

63. See *Newman v. Checkrite California, Inc.* (E.D. Cal. 1995) 912 F.Supp. 1354, 1367-1369, 1376-1378. In a later case, a court held that a service charge can only be imposed on a check writer if (a) the check writer and the merchant have agreed that the charge might be imposed in the event a check given in payment is not paid, and (b) the payee or transferee actually proves the existence of such an agreement by evidence of a posted sign or other evidence of agreement. *Ballard v. Equifax Check Services, Inc.*, 27 F.Supp.2d 1201 (E.D. Cal. 1998). The California statute that authorizes a service charge for returned checks (CC § 19719) has been revised to provide that a service charge is now a statutory penalty recoverable if certain statutory prerequisites are met. See Legal Guide K-5, "California's Bad Check Law."

64. 15 USC § 1692e(2)(A); see also Civil Code § 1788.14. The FTC has construed the FTC Act to prohibit misrepresenting that an obligation exists when it does not. See Fair Debt Collection, 4th ed. (National Consumer Law Center 2000), § 8.3.3.

65. In *Kimber v. Federal Financial Corp.* (M.D. Ala. 1987) 668 F.Supp. 1480, the court held that it is unfair under the federal statute to file a time-barred collection suit against a consumer, and that it is deceptive to even threaten to file such a suit.

66. Civil Code § 329(b). The rules on pre-judgment and post-judgment interest are summarized at 1 Consumer Law Sourcebook (Department of Consumer Affairs, 1996), § 13.21. Non-credit sales agreements often call for 1.5% per month for delayed payment. 1 Consumer Law Sourcebook (Department of Consumer Affairs, 1996), §§ 13.27-13.32. A demand for even a small amount in excess of a statutory ceiling constitutes a violation. See *Duffy v. Landberg*, 215 F.3d 871 (8th cir. 2000).

67. In situations in which a penalty is authorized by statute (e.g., for late payment on a home mortgage or credit card account, or for agreed "liquidated damages" for breach of contract), the same statute ordinarily defines the conditions that must be met before the penalty can be assessed. For instance, a court held that a check guarantee company's demand for payment of a dishonored check fee violated the law on the basis that it misrepresented the character and legal status of the debt, where, under the facts, the dishonored check charge was not yet lawfully chargeable under state law. *Ballard v. Equivax Check Services* (E.D. Cal. 1998) 27 F.Supp.2d 1201. See also discussion in endnote 58 above.

68. A claim for "reasonable attorney's fees" or "reasonable collection expenses" must meet the statutory prerequisite that the parties' contract "expressly" authorize its imposition. Code of Civil Procedure § 1021; these are summarized in 1 Consumer Law Sourcebook (Department of Consumer Affairs, 1996), § 12.53. A claim for "reasonable attorney's fees" is the kind of claim that ordinarily necessitates judicial action to liquidate it; an attorney's fee claim is deemed to be a claim for "costs" whose amount is ordinarily assessed on noticed motion at which this determination is made. See Code of Civil Procedure §§ 1033.5(a)(10), 1033.5(c)(5). See, generally, 1 Consumer Law Sourcebook (Department of Consumer Affairs, 1996), §§ 13.82-83, and Fair Debt Collection, 4th ed (National Consumer Law Center 2000), § 15.2.

69. Civil Code § 1788.14(b).

70. In a case in which there was no genuine attempt by the parties to estimate a fair compensation for the failure to pay the debt, the court held that the charge was invalid as a "penalty" and also unlawful under the unfair trade practices law. *Bondanza v. Peninsula Hospital and Medical Center* (1979) 23 Cal.3d 260, 266-267 [152 Cal.Rptr. 446, 450], discussed in 1 Witkin, Sum. of Cal. Law (Contracts) § 533. See also Fair Debt Collection, 4th ed (National Consumer Law Center 2000), § 15.2.3, and 1 Consumer Law Sourcebook (Department of Consumer Affairs, 1996), §§ 12.53 and 13.82-83.) Only if a flat rate is judicially determined to be valid "liquidated damages" does it not constitute a penalty. See *Beasley v. Wells Fargo Bank* (1992) (235 Cal.App.3d 1383, 1389 [1 Cal.Rptr.2d 446, 418], and *Hitz v. First Interstate Bank* (1995) 38 Cal.App.4th 274 [44 Cal.Rptr.2d 890]. Even then, it might not be enforceable under *Bondanza*. In that case, the debt was paid shortly after assignment to the debt collection agency and with very little effort on its part. The court concluded that the fee, calculated as a percentage of the debt, was disproportionately large and therefore unfair. The net effect of *Bondanza* is that a third party collector's fee is ordinarily deducted from the proceeds collected rather than being added to the amount paid by the debtor, similar to the attorney's fee in a typical personal injury case.

71. 15 USC § 1692h.

72. 15 USC § 1692f(2))(b); Bus. & Prof. Code §17538.6 imposes additional requirements..

73. 15 USC § 1692f(3).

74. 15 USC § 1692f(4).

75. Civil Code § 1788.15(b); 15 USC § 1692i(a). The FTC has construed the FTC Act to prohibit filing suit in unfairly distant forums. See Fair Debt Collection, 4th ed. (National Consumer Law Center 2000), § 8.3.6.

76. 15 USC § 1692i(a); see Fair Debt Collection, 4th ed (National Consumer Law Center 2000), §§ 5.9 and 8.3.6.

77. Civil Code § 1788.15.

78. Civil Code § 1788.14(a). The federal Bankruptcy Act also rigorously limits reaffirmations of discharged debts.

79. 15 USC § 1692f; see, generally, Pridgen, Consumer Credit and the Law (Clark Boardman Callaghan, 1990, (2000 Supp.), § 13.08, and Fair Debt Collection, 4th ed (National Consumer Law Center 2000), § 5.6, 8.3.14.

80. Civil Code § 1788.2(c). See also *People v. National Research Co.* (1962) 201 Cal.App.2d 765 [20 Cal.Rptr. 516], where a defendant who sold deceptive "skip tracing" forms was held to be in violation of California's unfair trade practices statutes (then CC § 3369, now B&P 17200 et seq).

81. In *Kimber v. Federal Financial Corp.* (M.D. Ala. 1987) 668 F.Supp. 1480, the court held that it is "unfair" within the meaning of the federal statute to file a time-barred collection suit against a consumer, and that it is a deceptive act to even threaten to file such a suit. The court found that the suit itself misrepresented the legal status of the claim by implying that the claim was lawful and that the collector would prevail. The court found that strong legal and ethical policies existed against filing suits after the statute of limitations had expired, and that the collector had no reason to believe that the statute of limitations had been tolled. These policies, the court said, were strengthened by the federal statute's purpose to protect even unsophisticated debtors who might pay a time-barred claim rather than assert a defense. Other examples include claiming a debt exists when it is asserted against a person who is not legally obligated (for example, a consumer's relative), or when the debt has been discharged in bankruptcy, or when it arises out of unordered mailed merchandise. See Fair Debt Collection, 4th ed (National Consumer Law Center 2000), §§ 5.3.3 and 8.3.3, and Pridgen, Consumer Credit and the Law (Clark Boardman Callaghan, 1990, (2000 Supp.), § 13.07[4]. In determining whether conduct violates the statutory rules, courts take into account the inherently coercive nature of debt collection. See, e.g., *Johnson v. NCB Collection Services* (D.Conn. 1992) 799 F.Supp. 1298; *Juras v. Aman Collection Service, Inc.* (9th Cir. 1987) 829 F.2d 739; *Catherman v. Credit Bureau of Greater Harrisburg* (E.D.Pa. 1986) 634 F.Supp. 693. For a discussion of what constitutes "unfair" conduct for purposes of the laws prohibiting unfair trade practices, see *People v. National Research Co.* (1962) 201 Cal.App.2d 765 [20 Cal.Rptr. 516].

82. 15 USC § 1692e(9).

83. 15 USC § 1692e(9).

84. Civil Code §§ 1788.13(b),(c), 1788.16. For an example of the application of this rule, see *Clomon v. Jackson* (C.A.2 Conn. 1993) 988 F.2d 1314.

85. Civil Code § 1788.16.

86. 15 USC § 1692e(13), Civil Code § 1788.16. The FTC has construed the FTC Act to prohibit simulation of legal process. See Fair Debt Collection, 4th ed. (National Consumer Law Center 2000), § 8.3.12.

87. 15 USC § 1692j(a). The FTC has construed the FTC Act to prohibit this practice. See Fair Debt Collection, 4th ed. (National Consumer Law Center 2000), § 8.3.8.

88. 15 USC § 1692a(6).

89. 15 USC § 1692e(1).

90. 15 USC § 1692e(3).

91. 15 USC § 1692e(16).

92. 15 USC § 1692e(2)(A); see also Civil Code § 1788.14. It is a violation to demand charges, such as bad check charges, that are not owing under state law. *West v. Costen* (W.D.Va. 1983) 558 F.Supp.564. It is also a violation to demand charges, such as bad check charges, that are lawful under state law but still unliquidated in amount. *Duffy v. Landberg*, 2000 U.S. App. LEXIS 11614 (8th Cir. 2000). The FTC has construed the FTC Act to prohibit misrepresenting that an obligation exists when it does not. See Fair Debt Collection, 4th ed. (National Consumer Law Center 2000), § 5.3.3. The FTC has also construed the FTC Act to prohibit misrepresentation of the effect of default on the debtor's credit standing. See Fair Debt Collection, 4th ed. (National Consumer Law Center 2000), § 8.3.7.

93. 15 USC § 1692e(2)(B); see also Civil Code § 1788.14. This code section assumes, probably in error that a debt must be "assigned" to a debt collection agency in order for the latter's activity to be lawful. There seems to be no prohibition against empowering an agent to enforce a debt without "assigning" the debt to the agent.

94. Civil Code § 1788.13(l).

95. 15 USC § 1692e(2)(A).

96. Civil Code § 1788.13(f).

97. Civil Code § 1788.13(j). In *Jeter v. Credit Bureau, Inc.*, 760 F.2d 1168, a debt collection agency informed the debtor that "unless satisfactory arrangements are made within five (5) days from this date, we will recommend to our client suit and subsequent action (judgment, garnishment, levy, and/or attachment proceedings) may be instigated against you by their attorneys." The collector did not in fact recommend legal action, and the court concluded that a jury might properly conclude no legal action was ever intended -- a violation of the statute. In construing meaning of the collector's demand letter, the court adopted the perspective of the "unsophisticated consumer."

98. 15 USC § 1692e(13).

99. 15 USC § 1692e(15).

100. 15 USC § 1692e(15).

101. 15 USC § 1692e(4).

102. 15 USC § 1692e(12).

103. 15 USC § 1692e(6)(A).

104. 15 USC § 1692e(6)(B).

105. 15 USC § 1692e(10). For instance, a regular mailed letter that simulates a telegram was found to violate the federal statute. *In re Scrimpsher* (Bankruptcy N.D.N.Y. 1982) 17 B.R. 999. In *Romine v. Diversified Collection Services, Inc.*, 155 F.3d 1142 (9th cir. 1998), the court held that Western Union was a "debt collector" subject to the federal statute by virtue of its Automated Voice Telegram (AVT) service, whose chief purpose was to obtain unlisted or otherwise unavailable telephone numbers of debtors which were then turned over to creditors and debt collection agencies for use in collecting debts. The court held that Western Union's practice of sending notices to debtors requesting them to call a toll-free number was misleading and a violation of the statute in that it concealed the true purpose of the call. See Fair Debt Collection, 4th ed. (National Consumer Law Center 2000), § 8.3.2.

The FTC has construed the FTC Act to prohibit using a subterfuge top obtain the debtor's current address or place of employment. See Fair Debt Collection, 4th ed. (National Consumer Law Center 2000), § 8.3.11.

106. 15 USC § 1692e(10); see Fair Debt Collection, 4th ed (National Consumer Law Center 2000), §§ 5.5, 8.3.2l, 8.3.14.

107. Civil Code § 1788.2(c).

108. See, generally, Pridgen, Consumer Credit and the Law (Clark Boardman Callaghan, 1990, (2000 Supp.), § 13.07, and Fair Debt Collection, 4th ed (National Consumer Law Center 2000), § 5.7.

109. In applying this and other provisions of the federal statute, the courts have adopted the "least sophisticated" consumer standard of deception (discussed in endnote 28 above). A collector's letter that stated that "We have tried repeatedly to talk to you but no avail" was held to be false and misleading, where the collector had called the wrong telephone number. *Baker v. Citibank (South Dakota) N.A.* (S.D. Cal. 1998) 13 F.Supp.2d 1037.

110. Civil Code § 1788.10(a).

111. Civil Code § 1788.10(a).

112. Civil Code § 1788.10(b).

113. 15 USC § 1692d(1).

114. Civil Code § 1788.13(e); see § 1788.14(b).

115. 15 USC § 1692e(5). A threat to take legal action that the collector does not intend to take is a violation. *In re Belile* (Bkcy. E.D. Pa. 1997) 209 B.R. 658; *Bentley v. Great Lakes Collection Bureau* (2nd Cir. 1993) 6 F.3d 60; *U.S. v. National Financial Services, Inc.* (D.Md. 1993) 820 F.Supp. 228; *Graziano v. Harrison* (D. N.J. 1991) 763 F.Supp. 1269. In judging whether a communication to a debtor constitutes a prohibited threat, the courts consider its effect on an unsophisticated consumer, not a sophisticated consumer. *Swanson v. Southern Oregon Credit Service* (9th Cir. 1988) 869 F.2d 1222, 1228; see discussion in endnote 28, above. A prohibited threat may also constitute a violation of the FTC Act. See Fair Debt Collection, 4th ed. (National Consumer Law Center 2000), § 8.3.1.

116. Civil Code § 1788.10(f), 15 USC § 1692e(5). It is a violation, for instance, to threaten to seek attorney's fees if the demanded account is not paid, if state law does not in fact allow attorney's fees in that situation. *Duffy v. Landberg*, 2000 U.S. App. LEXIS 11614 (8th Circ. 2000).

117. Civil Code § 1788.10(d).

118. Civil Code § 1788.13(k). From the perspective of an unsophisticated debtor just mentioning court remedies may constitute an unlawful threat.

119. Civil Code § 1788.10(e).

120. 15 USC § 1692f(6).

121. Civil Code § 1788.10(c).

122. See 5 Witkin, Sum. of Cal. Law (9th ed. 1988) Torts, § 471. On private remedies for defamation, see Fair Debt Collection, 4th ed. (National Consumer Law Center 2000), § 10.5.

123. 15 USC § 1692e(8).

124. Civil Code § 1788.11(d); 15 USC § 1692d(5); see Fair Debt Collection, 4th ed (National Consumer Law Center 2000), § 5.5, and PC § 653m. For an example of conduct violating the federal statute, see *Fox v. Citicorp Credit Corp. Services, Inc.* (9th Cir. 1994) 15 F3d 1507. Protection against harassment or abuse is extended to third persons (for instance, the debtor's spouse or partner, children, parents, or other third persons).

125. Civil Code § 1788.11(e); see Fair Debt Collection, 4th ed (National Consumer Law Center 2000), § 5.4. *Romine v. Diversified Collection Services, Inc.*, 155 F.3d 1142 (9th cir. 1998). The FTC has construed the FTC Act to prohibit harassing or abusive telephone calls. See *Trans World Accounts, Inc., v. Federal Trade Commission*, 594 F.2d 212, 215 (9th circ. 1979); and *Fair Debt Collection*, 4th ed. (National Consumer Law Center 2000), § 8.3.4.

126. Civil Code § 1788.11(c); 15 USC § 1692f(5).

127. Civil Code § 1788.11(b); 15 USC § 1692d(6).

128. 15 USC § 1692d.

129. Racial or ethical slurs may constitute a violation. See *Jeter v. Credit Bureau, Inc.* (11th Cir. L1985) 760 F.2d 1168; see, generally, Pridgen, Consumer Credit and the Law (Clark Boardman Callaghan, 1990, (2000 Supp.), § 13.20, and Fair Debt Collection, 4th ed (National Consumer Law Center 2000), § 5.4.1.

130. Civil Code § 1788.11(a); 15 USC § 1692d(2).

131. 15 USC § 1692d(2).

132. 15 USC § 1692e(7).

133. Civil Code § 1788.12(a).

134. Civil Code § 1788.12(a). The FTC has construed the FTC Act to prohibit or limit employer contacts or threats thereof. See Fair Debt Collection, 4th ed. (National Consumer Law Center 2000), § 8.3.5.

135. Civil Code § 1788.12(a).

136. 15 USC § 1692b(3).

137. Civil Code § 1788.12(a).

138. Civil Code § 1788.12(a).

139. Civil Code § 1788.12(a).

140. Civil Code § 1788.12(b).

141. Civil Code § 1788.12(b).

142. Civil Code § 1788.12(b).

143. 15 USC §§ 1692c(c),(d).

144. 15 USC § 1692c(c)(1).

145. 15 USC § 1692c(c)(2).

146. 15 USC § 1692c(c)(3).

147. 15 USC §§ 1692b(6), 1692c(a)(2).

148. 15 USC § 1692c(a)(3).

149. 15 USC §§ 1692c(a)(1),(d).

150. 15 USC § 1692c(a)(1).

151. 15 USC § 1692c(b). In *Kleczy v. First Federal Credit Control, Inc.* (1984) 21 Ohio App. 3d 56 [486 N.E.2d 204], the court held that a collection agency violated the federal statute when it mailed a collection letter to a consumer at his place of employment. The court found that because the words "FINAL DEMAND FOR PAYMENT" could be easily read through the envelope addressed to the consumer at his place of work, a third party was being notified of the debt, a violation of the statute. See Pridgen, Consumer Credit and the Law (Clark Boardman Callaghan, 1990, (2000 Supp.), § 13.05[3]; and Fair Debt Collection, 4th ed (National Consumer Law Center 2000), § 5.3. (See also Article 2.5, "Obligation to Respect Debtor's Privacy," above.)

152. 15 USC §§ 1692c(b), 1692b.

153. 15 USC § 1692(d).

154. 15 USC § 1692c(b).

155. 15 USC § 1692c(b).

156. 15 USC § 1692c(b).

157. Civil Code § 1788.12(e).

158. 15 USC § 1692b(1).

159. 15 USC § 1692b(2).

160. 15 USC § 1692b(3).

161. 15 USC § 1692b(4).

162. 15 USC § 1692b(5).

163. Civil Code § 1788.14(c).

164. 15 USC §§ 1692b(6), 1692c(a)(2).

165. Civil Code § 1788.12(e).

166. 15 USC § 1692e(8).

167. 15 USC § 1692e(8). See *Brady v. Credit Recovery Co.* (1st Cir. 1998) 160 F.3d 64.

168. 15 USC § 1692e(8); 15 USC § 1681s-2(a)(13).

169. 15 USC § 1681i(a); FTC Official Staff Commentary § 611, item 5; Fair Credit Reporting Act, 4th ed. (National Consumer Law Center, 1998). There is a similar California requirement at CC1785.21. See Consumer Law Sourcebook for Small Claims Court Judicial Officers, §§ 31.32-31.39.

170. The statutes that regulate credit reporting require a collector to notify the debtor when it reports that a debt has not been paid. Civil Code § 1785.26(b),(c).

171. Civil Code §§ 1788-1788.32.

172. Civil Code § 1788.2(c).

173. Civil Code § 1788.2(c).

174. Civil Code § 1788.2(c).

175. Civil Code § 2338; *Clark v. Andrews* (1952) 109 Cal.App.2d 193 [240 P.2d 330]; *Wyatt v. Union Mortgage Co.* (1979) 24 Cal.3d 773 [157 Cal.Rptr. 392]; see 2 Witkin, Sum.Cal.Law (9th ed. 1987) Agency and Employment §§ 113-143..

176. Civil Code § 1788.2(b).

177. Civil Code §§ 1788.2(e),(f).

178. Civil Code § 1788.2(e).

179. Civil Code § 1788.2(c).

180. Civil Code § 1788.17 (Stats. 1999, ch. 310).

181. A comprehensive coverage of the federal statute and decisions interpreting and applying it is provided in Fair Debt Collection, 4th ed (National Consumer Law Center 2000), which also provides the text of many of the FTC staff letters. See also Pridgen, Consumer Credit and the Law (Clark Boardman Callaghan, 1990, (2000 Supp.), ch. 13; and Debt Collection Practice in California, 2d ed. (Cal.CEB 1999), ch. 2.

182. 15 USC § 1692a(6); emphases added.

183. 15 USC § 1692j; see also 15 USC § 1692a(6)(b).

184. *Martinez v. Albuquerque Collection Services* (D.N.M. 1994) 867 F.Supp. 1495; *Newman v. Checkrite California, Inc.* (E.D. Cal. 1995) 912 F.Supp. 1354, 1372; see Fair Debt Collection, 4th ed (National Consumer Law Center 2000), § 6.2.3. Liability may also be present under California law; see Civil Code § 2338; *Clark v. Andrews* (1952) 109 Cal.App.2d 193 [240 P.2d 330]; *Wyatt v. Union Mortgage Co.* (1979) 24 Cal.3d 773 [157 Cal.Rptr. 392]; 2 Witkin, Sum.Cal.Law (9th ed. 1987) Agency and Employment §§ 113-143.

185. See 2 Witkin, Sum.Cal.Law (9th ed. 1987) Agency and Employment § 115.

186. See 15 USC § 1692a(6)(F); S. Rpt. No. 95-382, 95th Cong., 1st Sess. 2 (1977); *Romine v. Diversified Collection Services, Inc.*, 155 F.3d 1142 (9th cir. 1998); *Jenkins v. Heintz*, 25 F.3d 536, 539 (7th cir. 1994). In the *Romine* case, the court held that Western Union was a "debt collector" subject to the federal statute by virtue of its Automated Voice Telegram (AVT) service, whose chief purpose was to obtain unlisted or otherwise unavailable telephone numbers of debtors which were then turned over to creditors and debt collection agencies for use in collecting debts.

187. See itemized exclusions at 15 USC § 1692a(6); and see also Pridgen, Consumer Credit and the Law (Clark Boardman Callaghan, 1990, (2000 Supp.), § 13.03[2], and Fair Debt Collection, 4th ed (National Consumer Law Center 2000), §§ 4.2, 4.3.

188. 15 USC §§ 1692a(6), 1692f(6).

189. The exclusion of attorneys at 15 USC § 1692a(6)(F) was repealed in 1986. See *Fox v. Citicorp Credit Corp. Services, Inc.* (9th Cir. 1994) 15 F3d 1507, 1512.

190. 15 USC § 1692a(5).

191. See also Pridgen, Consumer Credit and the Law (Clark Boardman Callaghan, 1990, (2000 Supp.), § 13.03[3], and Fair Debt Collection, 4th ed (National Consumer Law Center 2000), § 4.4.

192. *Bass v. Stolper*, 111 F.3d 1322 (7th Cir. 1997); see also *Ryan v. Wexler*, 113 F.3d 91 (7th Cir. 1997), *Charles v. Lundgren*, 119 F.3d 739 (9th Cir. 1997), *Newman v. Boehm*, 119 F.3d 477 (7th Cir. 1997), and *Thies v. Law Offices of William A. Wyman*, 969 F.Supp. 604 (S.D. Cal. 1997). While numerous courts have awarded damages and penalties for violations committed by creditors enforcing returned checks, some courts have denied recovery. See Fair Debt Collection, 4th ed (National Consumer Law Center 2000), § 4.4.2.1 and Appx. H.1.1.3.

193. Civil Code § 1788.17 (Stats. 1999, ch. 310).

194. *Heintz v. Jenkins*, 514 U.S. 291, 115 S.Ct. 1489, 131 L.Ed.2d 395 (1995).

195. Civil Code § 1788.2(c).

196. B&P § 6077.5.

197. B&P § 6077.5(a). The California standards for debt collection attorneys require attorneys and their employees to comply with (a) all of the provisions of the California Fair Debt Collection Practices Act, and (b) some of the provisions of the federal statute (in particular, 15 USC §§ 1692c(a)(1), c(c), f(6), f(5), g, and h, which have been recodified at B&P §§ 6077.5(c), (d), (e), (f), (g), (h), and (i), respectively).

198. B&P § 6077.5(b).

199. B&P § 6077.5(i).

200. Civil Code § 1788.20(a).

201. Civil Code § 1788.20(a).

202. Civil Code § 1788.20(b).

203. Civil Code § 1788.20(b).

204. Civil Code § 1788.22(a)(1).

205. Civil Code § 1788.21.

206. Civil Code § 1788.22(a)(2).

207. Civil Code § 1788.30(g).

208. 15 USC § 1692*l*(a); see *Jeter v. Credit Bureau, Inc.* (11th Cir. 1985) 760 F.2d 1168, 1174, fn. 5.

209. Civil Code § 1788.30.

210. Civil Code § 1788.30(f).

211. Civil Code § 1788.30(a).

212. Civil Code § 1788.2(c).

213. Civil Code § 1788.30(b).

214. Civil Code § 1788.30(c).

215. Civil Code § 1788.30(c).

216. Civil Code § 1788.30(d).

217. Civil Code § 1788.30(e).

218. Civil Code § 1788.30(g).

219. Civil Code § 1788.32.

220. Civil Code § 1788.17 states that original creditors and debt collection agencies that (a) are subject to the California statute and (b) violate either statutes are subject to both the standards and the remedies of the federal statute. Civil Code § 1788.17 does not state whether the federal remedies can be awarded for violations of both statutes, or just the federal statute. It can be inferred from the statutory language that the federal remedies were incorporated and are available for the purpose of enforcing the federal standards.

221. If the debtor sends a written inquiry by certified mail, the collector must give the debtor a "timely response" in writing. If a response is not mailed within 60 days of the debtor's written inquiry, the collector is not entitled to interest, financing charges, services charges, or any similar charges on the disputed amount from and after the date of the written inquiry. (Civil Code § 1720.)

222. 6 Witkin, Sum. of Cal. Law (9th ed. 1988) Torts, § 1322; see Greater Westchester Homeowners Assn. v. Los Angeles (1979) 26 Cal.3d 86, 103 [160 Cal.Rptr. 733, 741]. Were it not for Civil Code § 1788.32, the rule would apply that "when a new right has

been created by statute, and a statutory remedy for its infringement is provided, the statutory remedy is exclusive and no other remedy will be allowed." 3 Witkin, Cal. Proc. (4th ed. 1996) Actions, § 7.

223. Business and Professions Code §§ 6850-6956.

224. 16 Code of California Regulations §§ 600-641

225. Stats. 1988, ch. 338.

226. 15 USC § 1692k. See, generally, Fair Debt Collection, 4th ed. (National Consumer Law Center 2000), ch. 6; Pridgen, Consumer Credit and the Law (Clark Boardman Callaghan, 1990, (2000 Supp.), § 13:29; Debt Collection Practice in California, 2d ed. (Cal.CEB 1999), ch. 2.

227. 15 USC § 1692k(d); *Miller v. Municipal Court* (1943) 22 Cal.2d 818, 851 [142 P.2d 297]; *Lackey v. Lackey* (143 Cal.App.3d 698, 704 [191 Cal.Rptr. 309, 313]; 2 Witkin, California Procedure (4th ed. 1996), Courts § 287.

228. 15 USC § 1692k(a); see also 15 USC §§ 1692b, 1692d, 1692e, 1692f. On recovery by protected persons other than the debtor, see Fair Debt Collection, 4th ed. (National Consumer Law Center 2000), 6.3.

229. 15 USC § 1692j.

230. 15 USC § 1692a(4); see Fair Debt Collection, 4th ed. (National Consumer Law Center 2000), 4.3.1.

231. 15 USC § 1692k(a)(1); Fair Debt Collection, 4th ed. (National Consumer Law Center 2000), 6.3. See *Wright v. Financial Services of Norwalk, Inc.* (6th Cir. 1994) 22 F.3d 647.

232. 15 USC § 1692k(a)(2); Fair Debt Collection, 4th ed. (National Consumer Law Center 2000), § 6.4. In determining the amount of the penalty, the court must consider relevant factors such as the frequency and persistence of non-compliance, and in a class action, the number of persons affected. (15 USC § 1692k(b).) An award of actual damages is not a prerequisite to the recovery of statutory damages. *Baker v. G.C. Service Corp.* (9th Cir. 1982) 677 F.2d 775.

233. 15 USC § 1692k(a)(3); Fair Debt Collection, 4th ed. (National Consumer Law Center 2000), § 6.8. See *Tolention v. Freidman* (7th Cir. 1995) 46 F.3d 645.) The debtor's attorney has a duty to make "reasonable inquiry" into the factual and legal basis for a claim of violation, and may be liable for a portion of the creditor's attorney's fees under this section for failure to do so. *Terran v. Kaplan* (9th Cir. 1997) 109 F.3d 1428.

234. 15 USC § 1692k(c). See *Fox v. Citicorp Credit Services, Inc.* (9th Cir. 1994) 15 F.3d 1507; Fair Debt Collection, 4th ed. (National Consumer Law Center 2000), § 7.4.

235. 15 USC § 1692k(e); Fair Debt Collection, 4th ed. (National Consumer Law Center 2000), § 7.6.

236. Civil Code § 1788.30(a), (b).

237. 15 USC § 1692k(a), (b).

238. 15 USC § 1692*l*(a),(b); see Fair Debt Collection, 4th ed (National Consumer Law Center 2000), § 8.2.1 and Appx. J. A violation of the federal Fair Debt Collection Practices Act is also a violation of the Federal Trade Commission Act. 15 USC § 1692*l*; *see* Fair Debt Collection, 4th ed. (National Consumer Law Center 2000), § 8.2.4.

239. 15 USC § 1692*l*(b).

240. 15 USC § 1692n. Under 15 USC § 1692o, the FTC may issue regulations that displace particular provisions of the federal statute, if it finds that state law provides substantially similar requirements with adequate provision for enforcement.

241. On the scope of the federal and California statutes, see Part 3 of this Legal Guide.

242. Civil Code § 1788.17 (Stats. 1999, ch. 310), emphasis added. This 1999 statute states that "every debt collector [subject to the California statute] shall comply with ... Sections 1692b to 1692j, inclusive, of, and shall be subject to the remedies in Section 1692k of, Title 15 of the United States Code ... as they read January 1, 2000." The statute states, however, that creditors collecting their own debts need not comply with 15 USC §§ 1692e(11) and 1692g (on purpose of contact and verification notice).

243. Civil Code § 1788.17, as amended by Stats. 2000 ch. 688.