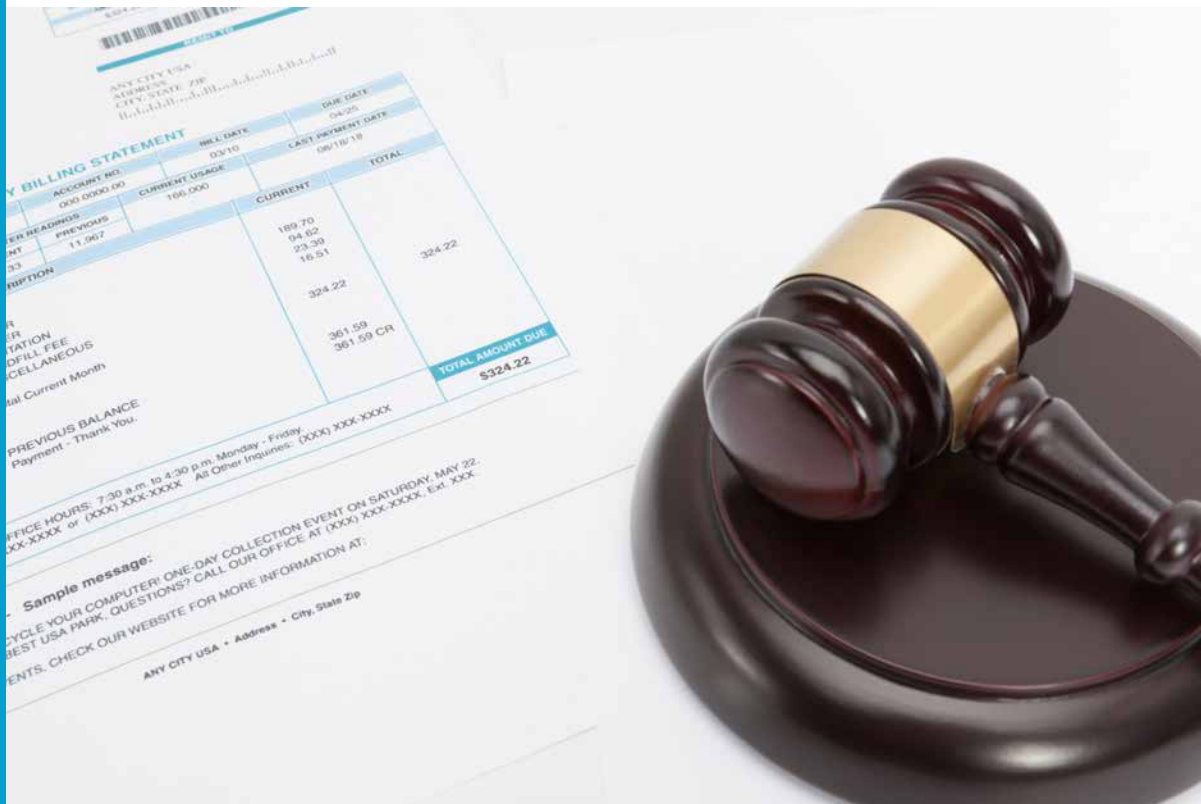


UNDUE BURDEN

The Impact of Abusive Debt Collection Practices in Oregon

Lisa Stifler, deputy director of state policy
Tom Feltner, director of research
Safa Sajadi, researcher

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EXECUTIVE SUMMARY

In recent decades, an increase in consumer debt has led to substantial growth in the debt collection industry as Americans struggled to pay down their debts. A subset of the debt collection industry, debt buyers, emerged in the wake of this growth in consumer debt. Debt buyers purchase debts from lenders and other creditors at a steep discount and then attempt to collect the debt themselves, often without the underlying documentation of the debt. With the advent and growth of debt buyers has come an increase in the use of litigation to collect debts. Because of their use of the court system to collect old debts, debt buyers frequently are able to win a court judgment against a person even if that person does not actually owe the debt. The impacts of a court judgment can be severe—the person’s wages are frequently garnished, forcing them to pay a debt they may not owe. This report confirms that debt buyers in Oregon are misusing the court system to pursue likely undocumented debts, and Oregon borrowers are at risk of a default judgment to repay a debt they may not owe.

- **Oregon consumers and servicemembers frequently complain about debt collection practices.** Oregonians filed more complaints about debt collection practices to the Consumer Financial Protection Bureau (CFPB) than any other financial product besides mortgages. “Debt was not mine” was the most frequent reason for their complaints, and inaccuracies related to the debt (wrong amount, debt paid) are also common. Among servicemembers, debt collection was the most frequent financial complaint topic, representing over 30% of all Oregon servicemember complaints submitted to the Bureau.
- **Debt buyer lawsuits are clogging the Oregon court system.** In the last five years, over 75,000 cases were filed in the state by just six debt buyers. These cases represent close to 25% of all the civil suits filed in the state’s circuit courts.
- **The system is rigged in favor of debt buyers, to the detriment of consumers.** Even though debt buyers rarely have the evidence to win their cases on the merits of evidence, consumers still rarely prevail in debt buyer suits. Debt buyers won almost 50% of the lawsuits they filed without having to prove their cases. Not one Oregon consumer won a case against a debt buyer. While all debt buyers had attorney representation in court, consumers were almost never represented by an attorney.

- Oregonians are estimated to owe as much as \$18 million per year in judgments for cases won by just six debt buyers, even though debt buyers likely lacked sufficient documentation for their cases. From 2014–2016, the six debt buyers won an estimated 19,746 lawsuits without having to prove their cases. These judgments averaged \$3,115. Based on estimates from the Federal Trade Commission (FTC), 88% of all accounts purchased by debt buyers lack documentation, suggesting that, in Oregon, 17,376 cases filed and won by just six debt buyers between 2014 and 2016 likely lack sufficient documentation to prove their cases. As a result, Oregonians are estimated to owe more than \$54 million during that time period for debts that may not be owed. Examples of these types of debt include cases where the debt claimed is for the wrong amount, may be attributed to the wrong person, may be paid already, or the statute of limitations may have run out on the debt. The consequences of these judgments can be dire, including wage garnishment and the ability to seize people’s current—and future—property.
- Oregon can take additional steps to ensure that people are not harassed or sued by debt buyers for debt they do not owe. While Oregon recently passed legislation increasing oversight of debt buyers and their collection practices, including suing for time-barred debt, more can be done. State-level law changes to protect against these abuses include setting a “proof of debt” standard that debt buyers must meet before suing or collecting on the debt. While Oregon’s new law requires debt buyers to include additional information about the debt and consumer in the initial court filing and to possess business records that establish the nature and amount of the debt, the new law does not require debt buyers to provide those “proof of debt” documents to the court. “Proof of debt” must be established by detailed information *and* original account-level documentation about the consumer and the debt. Critically, any future reforms requiring debt buyers to provide documentation of the debt and consumer to the court should clarify that affidavits are not sufficient to establish “proof of debt” unless accompanied by original account-level documents to support the claims made in the affidavits.

BACKGROUND

Creditors, third-party debt collectors, and debt buyers are three entities that collect delinquent debt. Debt buyers purchase delinquent debts¹ by paying pennies on the dollar and typically collect the full amount of the debt.² Often having little more than a spreadsheet that details the last known address of the person whose account was purchased and the amount believed to be owed, debt buyers can end up pursuing the wrong person, the wrong amount, time-barred debt³, or even debt that has been paid off. Debt buyers heavily utilize state courts to collect these debts, but it can be extremely difficult, if not impossible, for the consumer and court to determine the legitimacy of the debt with the limited information provided by debt buyers.⁴

An estimated 33% of adults with credit files have debt in collections reported on their credit files, with a median amount in collections of \$1,450.⁵ In Oregon, 31% of residents have debt in collections and carry a median debt of \$1,435 in collections.⁶

Previous research used data collected through an analysis of court collection cases to understand better what happens in these cases. A 2014 report analyzed court cases in Maryland and found that a majority of cases filed by debt buyers result in a default judgment, and 98% of consumers do not have a lawyer representing them in these suits.⁷ Reports analyzing court cases in Texas and New York found similar results.⁸ In New York, New Economy Project analyzed 90 randomly selected debt collection suits and found that no default judgment application submitted by a debt buyer complied with New York law, but that these judgments were still granted 97% of the time.⁹ In Oregon, the *Willamette Week* published an article called “The Enforcer,” which detailed the trends, issues, and practices of debt collection litigation in the state. The article found that a single law firm filed 9,151 debt collection suits in 2010 alone—approximately one out of every eight civil lawsuits filed in Oregon that year.¹⁰ Most recently, the Center for Responsible Lending documented frequent debt collection abuses in Colorado and found that over 70% of the cases brought by debt buyers resulted in a default judgment and 38% resulted in wage garnishment.¹¹

Debt collection suits are far more common in predominately African American communities than in predominately white ones.¹² In 2015, ProPublica analyzed five years of court judgments from three metropolitan areas—St. Louis, Chicago, and Newark—and showed that even accounting for income, the rate of judgments was twice as high in predominately African American neighborhoods as it was in predominately white neighborhoods.¹³ In St. Louis, the only area where garnishment information was available, residents of majority-black neighborhoods were about 20% more likely to deal with wage garnishment than those who lived in predominately white neighborhoods.¹⁴ Other legal aid and community development organizations have examined debt collection practices and how they negatively impact low-wealth communities and communities of color.¹⁵ In 2016, the Urban Institute published *Local Conditions and Debt in Collections* which used Trans Union credit panel data to highlight the list of factors that are associated with having a debt in collections.¹⁶ Living in a community with a higher share of African Americans and Latinos was a significant factor associated with debt collection, as was living in areas with low home values, high unemployment rate, and low educational attainment.¹⁷ In Oregon, though nonwhite residents comprise only 23% of the state’s population, 42% of Oregon’s nonwhite residents have a debt in collection, compared to 25% of the state’s white residents.¹⁸

One in three Americans has a debt in collection documented on their credit files, and a similar proportion reported that they were contacted by a debt collector or creditor attempting to collect a debt in the previous year.¹⁹ Further, 15% of people reported being sued by a debt collector or creditor in the preceding year, and 74% of those people sued did not make an appearance in court.²⁰ Once a judgment is secured in court, debt collectors can obtain wage garnishment against the consumer.²¹ In 2013, ADP, the country's largest payroll provider, found that 7.2% of all employees had their wages garnished and 2.9% had garnishments related to student and consumer loans.²² Furthermore, ProPublica's report, *Racial Disparity in Debt Collection Lawsuits: A Study of Three Metro Areas*, found that defendants who live in majority black areas are 20% more likely to have their wages garnished.²³

Debt buyers are governed under federal law by the Fair Debt Collection Practices Act (FDCPA). They are also subject to state debt collection laws, many of which are modeled after the FDCPA.²⁴ Under the FDCPA, debt buyers must not engage in "unfair, deceptive, and abusive acts and practices" in collecting debts.²⁵ The CFPB and the FTC, both responsible for the enforcement of the FDCPA, have issued enforcement actions against debt buyers in recent years.²⁶ Most notable were the enforcement actions taken against the country's largest debt buyers, Encore Capital Group and Portfolio Recovery, for attempting to collect debts they knew, or should have known, were inaccurate or could not legally be enforced.²⁷ The CFPB also found that the companies filed lawsuits against consumers without having the intent to prove many of the debts, winning the vast majority of the lawsuits by default when consumers failed to defend themselves.²⁸

In 2015, the Oregon Attorney General along with the CFPB and Attorneys General from 46 other states took action against JP Morgan Chase for unfair and deceptive debt collection practices in violation of the Dodd-Frank Wall Street Reform and Consumer Protection Act.²⁹ The CFPB and states found that the bank sold "bad" debts to debt buyers, including debts with erroneous or incomplete information, debts that had already been paid or settled in full, or debts no longer owned by the bank.³⁰ The enforcement agencies also found that JP Morgan Chase aided deceptive debt buyer practices by providing more than 150,000 robo-signed affidavits to debt buyers to use in cases the debt buyers brought against consumers.³¹ More recently, the Oregon Supreme Court held that the state's Attorney General has the authority to pursue a debt-collection attorney for "unconscionable tactics," including obtaining default judgments in debt collection cases without filing the underlying contract to support claims that interest and fees are owed, in violation of the state's consumer protection law.³²

METHODOLOGY

To better understand Oregon residents' experiences with debt collection, this report examines Oregon consumer complaints filed with the CFPB and court cases filed in state circuit courts and identifies debt buyer activity and litigation behaviors in the state's circuit courts.

The first data set used in this report is information about debt collection and other product complaints filed by Oregon consumers with the CFPB between 2012 and 2016.³³ CRL analyzed these complaints to determine common concerns with debt collection practices in Oregon.

The second data set includes all closed civil collection cases filed between 2012 and 2016 in Oregon circuit courts³⁴ by Midland Funding (Encore Capital Group subsidiary), Asset Acceptance (Encore Capital Group subsidiary), Portfolio Recovery Associates (PRA Group Subsidiary), LVNV Funding (Sherman Financial Group subsidiary), CACH, LLC (SquareTwo Financial subsidiary),³⁵ and Jefferson Capital Systems, LLC. Collectively these companies purchase a significant portion of the debt that is available for purchase at the national level. For example, in 2013, just three of these companies—Sherman Financial, Encore, and Portfolio—purchased 59% of the debt sold by credit card issuers.³⁶ Court case data were collected through the Oregon Judicial Case Information Network (OJCIN), which allows users to search for civil, small claims, tax, domestic, and criminal cases for all 36 of Oregon's circuit courts, in addition to the tax and appellate courts.³⁷ The OJCIN system includes case information such as the date the case was filed, the county where the case was filed, the status of the case, the names of the parties involved, the case type, and other relevant information. A search of the OJCIN system found that the six debt buyers filed 75,361 cases in Oregon circuit courts from 2012 to 2016.³⁸ Small claims cases were not included in the court case data collected through OJCIN.

The third data set is a sample of 300 cases randomly drawn from the 32,533 cases filed by the six debt buyers in circuit courts between 2014 and 2016 in the ten largest Oregon counties by population, representing 78.6% of the total Oregon population. This date range was selected because, before 2014, only a handful of circuit courts provided electronic access to complaints, court orders, and judgment records through OJCIN. As of June 2016, all Oregon circuit court case documents are available, and subscribers can access these materials if they are not privileged or suppressed by the court. Information on the names of the parties, date filed, case status, case type, judgment totals, court costs, attorney costs, filing fees, attorney representation, the final disposition of the cases, and whether a lien was placed was gathered for all the cases included in the sample. Information on county population, the total number of collection cases filed by six large debt buyers by county, and the sample distribution is provided in Appendix A.

FINDINGS

Finding 1: Oregon consumers and servicemembers frequently complain about debt collection practices

Complaints about debt collection represent the second most frequent type of complaint among Oregon consumers that filed complaints with the CFPB between 2012 and 2016. Debt collection also ranked among the 10 most frequent reasons for filing a complaint with the state's Attorney General between 2012 and 2016.³⁹

During this period, Oregon consumers filed 8,234 complaints about 11 types of products, ranging from mortgages to student loans, and debt collection to prepaid cards. Complaints about debt collection problems totaled 1,670, or 20.3%, of these complaints.

Debt collection was the most frequent complaint among servicemembers. Among Oregon consumers who self-identified to the CFPB as servicemembers or a member of a servicemember's family, complaints about debt collection problems made up 31.2% of these complaints (Figure 1).

"Please help me stop these harrassing calls"

I have owned my land line phone number since XXXX 2015. In that time from XXXX 2015 to the present time, I receive up to six calls from Portfolio Recovery Associates every week and sometimes four calls in one day. I block the number on my telephone but they have so many different numbers they call from, it is not possible to keep all the blocked numbers in my phone. I absolutely have no debt owing, and have never been delinquent in terms of financial monies owing. The first few times when I did answer the call, they were very aggressive and would not even provide their personal details, except to tell me I owe them something. Following is a small list of some of the phone numbers they are calling from: XXXX, XXXX, XXXX, XXXX, XXXX, XXXX, XXXX, XXXX, XXXX, XXXX, XXXX, XXXX, please help me stop these harassing calls.

Complaint filed against Portfolio Recovery Associates on March 14, 2016 by an Oregon consumer (Complaint ID: 1830394). "XXXX" represents complaint text redacted by CFPB to protect consumer privacy.

Figure 1. Frequency of debt collection complaints among Oregon consumers and servicemembers

Product	All consumers		Product	Servicemembers	
	Count	%		Count	%
Mortgage	2,661	32.3%	Debt collection	164	31.2%
Debt collection	1,670	20.3%	Mortgage	128	24.3%
Credit reporting	1,208	14.7%	Credit reporting	99	18.8%
Credit card	997	12.1%	Bank account or service	40	7.6%
Bank account or service	977	11.9%	Credit card	37	7.0%
Student loan	301	3.7%	Consumer loan	33	6.3%
Consumer Loan	265	3.2%	Student loan	10	1.9%
Payday loan	49	0.6%	Prepaid card	7	1.3%
Money transfers	46	0.6%	Payday loan	4	0.8%
Prepaid card	44	0.5%	Other financial service	3	0.6%
Other financial service	16	0.2%	Money transfers	1	0.2%
Total	8,234		Total	526	

Source: Consumer complaints filed with the CFPB between 2013 and 2016 and accessed March 7, 2017.

Figure 2. Reason for debt collection complaint

Reason for complaint	Count	Percent
Debt is not mine	453	27.1%
Not given enough info to verify debt	182	10.9%
Debt was paid	180	10.8%
Frequent or repeated calls	178	10.7%
Attempted to collect the wrong amount	108	6.5%
Right to dispute notice not received	80	4.8%
Threatened to take legal action	71	4.3%
Talked to a third party about my debt	65	3.9%
Debt was discharged in bankruptcy	43	2.6%
Threatened to sue on too old debt	38	2.3%
All other reasons	272	16.3%
Total	1,670	

Source: Consumer complaints filed with the CFPB between 2013 and 2016 and accessed March 7, 2017. All other reasons include taking/threatening an illegal action, communication tactics, improper contact or sharing of information, false statements or representation, continued attempts to collect debt not owed, and problems with the disclosure or verification of the debt.

"This is not, nor has this ever been my account"

I have an incorrect collection showing on my credit report with the original creditor being XXXX, but reporting as Pinnacle LLC.⁴⁰ The original account was supposedly opened in XX/XX/XXXX, and was recorded as delinquent. I disputed the account because it did not belong to me and thought the matter had been resolved. Unfortunately, the account has come back and Pinnacle LLC is showing delinquent with a date of XX/XX/XXXX, pushing the old account forward XXXX Years from the original account date. This is not, nor has this ever been my account and I would like it removed from all of the reporting bureaus.

Complaint filed against Resurgent Capital, a subsidiary of LVNV, on December 24, 2016 by an Oregon consumer (Complaint ID: #2262237). "XXXX" represents complaint text redacted by CFPB to protect consumer privacy.

Finding 2: Debt buyer lawsuits are clogging the Oregon court system

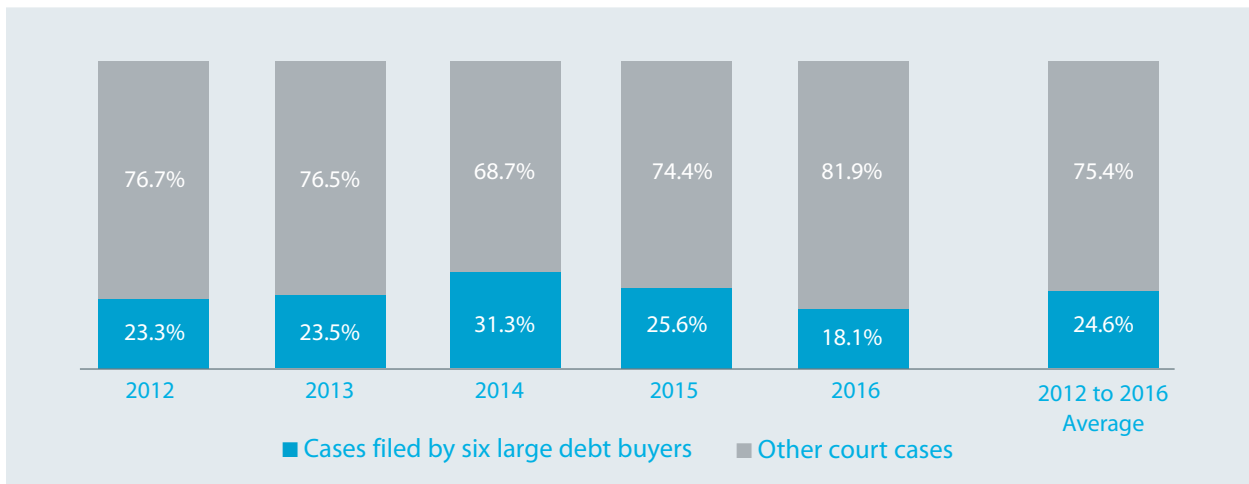
Between 2012 and 2016, cases filed by the six debt buyers included in this study accounted for nearly one-quarter (24.6%) of all civil cases filed in Oregon circuit courts. This number likely underestimates the volume of debt buyer cases filed in Oregon, however. Although this report analyzes six debt buyers and their circuit court filings in Oregon Circuit court, there are many other debt buyers who are filing collection cases in circuit courts throughout the state.⁴¹ Furthermore, these cases do not include any cases filed in courts other than circuit courts, like the Justice or small claims courts. Since the peak of debt buyer activity in Oregon in 2014, the overall number of cases filed by debt buyers has declined in real terms (Figure 3). However, in 2016, cases filed by large debt buyers still exceeded 18% of all civil cases filed in Oregon (Figure 4).

Figure 3. Change in total civil court cases filed in circuit courts and collection cases filed by debt buyers

	2012	2013	2014	2015	2016	Total
Cases filed by the six large debt buyers	16,320	17,645	19,959	13,464	7,973	75,361
Other court cases	53,770	57,542	43,806	39,147	36,113	230,378
All civil court cases filed in circuit courts	70,090	75,187	63,765	52,611	44,086	305,739
Percent of total cases filed	23.3%	23.5%	31.3%	25.6%	18.1%	24.6%

Source: CRL analysis of data collected from the OJCIN and information from the Oregon Judicial Department on file with CRL.

Figure 4. Collection cases filed by six large debt buyers as a percentage of all civil circuit court cases filed



Source: CRL analysis of data collected from the OJCIN and information from the Oregon Judicial Department on file with CRL.

Between 2012 and 2016, the six debt buyers included in this study filed 75,361 collection cases against Oregon consumers, peaking in 2014 at 19,959 cases or 31.3% of the total number of civil cases filed in circuit courts that year. Midland Funding and Portfolio Recovery Associates filed the greatest number of cases during this period, representing 41.2% and 39.4% of the total cases filed by the six debt buyers, respectively (Figure 5).

Since peaking in 2014, the number of cases filed by each of the six debt buyers has declined. This decline is likely the result of a variety of external factors. Following the Great Recession, the pool of debt portfolios available for purchase declined as consumer default rates decreased,⁴² and some creditors temporarily stopped selling charged-off debts altogether.⁴³ However, there is evidence that debt sales are on the rebound.⁴⁴

The CFPB has also taken a number of enforcement actions against debt buyers and law firms for using deceptive tactics to collect bad debt, failing to verify debt information, robo-signing affidavits, illegally threatening consumers with litigation, and reporting inaccurate information to credit agencies.⁴⁵ Most notably, in 2015 the CFPB made headlines for taking action against Portfolio Recovery Associates and Encore Capital Group for using deceptive tactics to collect bad debt and ordered the companies to pay \$61 million in consumer refunds and civil penalties.⁴⁶ Lastly, some debt buyers have changed their business models. Many have directed their attention more towards European or Asian markets while others have focused efforts on out-of-court collection methods.⁴⁷

Figure 5. Collection cases filed in circuit court by six debt buyers in Oregon between 2012 and 2016

Company	2012	2013	2014	2015	2016	Total	Percent
Midland Funding	7,690	8,965	6,969	4,777	2,628	31,029	41.2%
Portfolio Recovery Associates	4,974	5,376	9,149	6,083	4,079	29,661	39.4%
CACH, LLC	891	466	2,495	2,475	1,209	7,536	10.0%
Asset Acceptance	1,208	2,286	743	50	1	4,288	5.7%
LVNV Funding	1,430	7	3	2	54	1,496	2.0%
Jefferson Capital Systems	127	545	600	77	2	1,351	1.8%
Grand Total	16,320	17,645	19,959	13,464	7,973	75,361	

Source: CRL analysis of data collected from the OJCIN.

Finding 3: The system is rigged in favor of debt buyers, to the detriment of consumers

As described in the background section of this report, previous research has extensively documented that the debt buyer business model is largely dependent on consumers' inability to defend themselves in court. Debt buyer lawsuits often go uncontested because of failure to properly notify people of the lawsuit or because the clear majority of people simply cannot afford a lawyer. In Oregon, individuals may not even be able to afford to enter an appearance in court to defend themselves without an attorney.⁴⁸ When this happens, the debt buyer stands to collect the entire claim, without proving in court that they are suing the right person for the right debt. When the debt buyer wins, the court issues a judgment in the debt buyer's favor, essentially a court-sanctioned stamp of approval of their collection of the debt. These court judgments give the debt buyers extraordinary collection powers over consumers for a debt they may not even owe, including the power to garnish wages and attach liens to people's property. This section examines the extent of these practices in Oregon.

Analysis of a random sample of 300 debt buyer court cases filed in the 10 largest counties between 2014 and 2016 found that 47.7% of cases resulted in a judgment for the debt buyer with the consumer mounting no defense. The remainder of the cases, 52.3%, were dismissed by either the court or the debt buyer. Significantly, no consumer prevailed in a case, and no debt buyer won their case on the merits. Additionally, of the sample of 300 debt buyer cases, only one Oregon consumer was represented by an attorney.

Debt buyer lawsuits favor debt buyers

Default judgments,⁴⁹ stipulated judgments between the parties,⁵⁰ and confessions of judgments⁵¹ made up 47.6% of the cases in the sample.⁵² Collectively, these cases signify a successful and unchallenged collection effort for the debt buyer, because the defendant is not contesting the debt or amount alleged to be owed. As a result, the debt buyer not only collects the amount claimed owed but also any court costs, interest, or attorney's fees that may have accrued. In Oregon, debt buyer attorneys are entitled to recover \$300 in attorney's fees when there are no questions about the laws or facts of a case.⁵³

The average judgment amount in the study sample was \$3,115, and judgment amounts ranged from \$751 to \$20,009. Of the 300 cases in the sample, 92.3% of the cases (277 cases) were for amounts under \$10,000 and ranged from \$751 to \$10,094.⁵⁴ The remaining 23 cases in the sample were for claim amounts of \$10,000 or more and resulted in judgments ranging from \$10,126 to \$20,009 (Figure 6). Of the cases included in the sample, 157, or 52%, of the cases in the sample resulted in a case dismissal.

Oregon court rules do not require a detailed explanation of the reason for seeking a dismissal. Cases were dismissed for a variety of reasons: the consumer may have settled, made a payment on, or paid off the debt after the debt buyer filed the lawsuit; the debt buyer was unable to serve notice of the lawsuit on the consumer; or the consumer filed bankruptcy. While the debt buyer sought voluntary dismissal of the lawsuit in many instances, the court also dismissed cases when it was clear the debt buyer was not pursuing the case. Even in cases dismissed by the court due to the debt buyer's failure to pursue the case, the underlying reason for this failure is unknown. As a result, based on the data and information available, we were unable to determine why the cases were dismissed. However, to the extent a case was dismissed voluntarily or no longer pursued because the consumer settled, made a payment on, or paid off the debt in full, the case would be considered a "win" for the debt buyer.

Judgments cause significant harm

The consequences of these judgments can be dire, including obtaining liens on people’s current—and future—property, and garnishing their wages. Under Oregon law, it is exceedingly easy for a debt buyer to obtain a lien once they have a judgment in hand. In fact, so long as the application for the judgment complies with a few simple requirements, a debt buyer can obtain a lien simultaneously with the judgment.⁵⁵ In nearly every case they won, debt buyers sought and obtained a lien on the consumer’s home or other real property—48% of consumers had liens placed against their property because of the judgments obtained in these suits (See Figure 6). The lien attaches to any real property currently owned by the consumer in the county and to any property the consumer may acquire in the future⁵⁶ and can impair the person’s ability to sell their home or refinance a loan. Because judgments in Oregon can last for up to 20 years,⁵⁷ these liens can attach to any property acquired by the consumer at any time in the next 20 years.

Once a judgment has been entered, debt buyers are also able to garnish the wages of the person sued, a similarly easy process in Oregon. As described in complaints from Oregon residents to the CFPB, for some individuals, an unexpectedly depleted paycheck is their first notice that they were sued. In Oregon, a debt buyer’s attorney can seek to garnish wages immediately after a judgment is entered; no additional court order or procedure is required.⁵⁸ Because no court order is needed, our review of court records did not reveal the number of instances in which this occurred. However, debt buyers who garnish wages can take up to 25% of an Oregonian’s net wages, provided that the paycheck is not reduced below \$218 for a one-week period.⁵⁹

Figure 6. Case outcomes from random sample of 300 debt collection cases filed in 10 largest Oregon counties

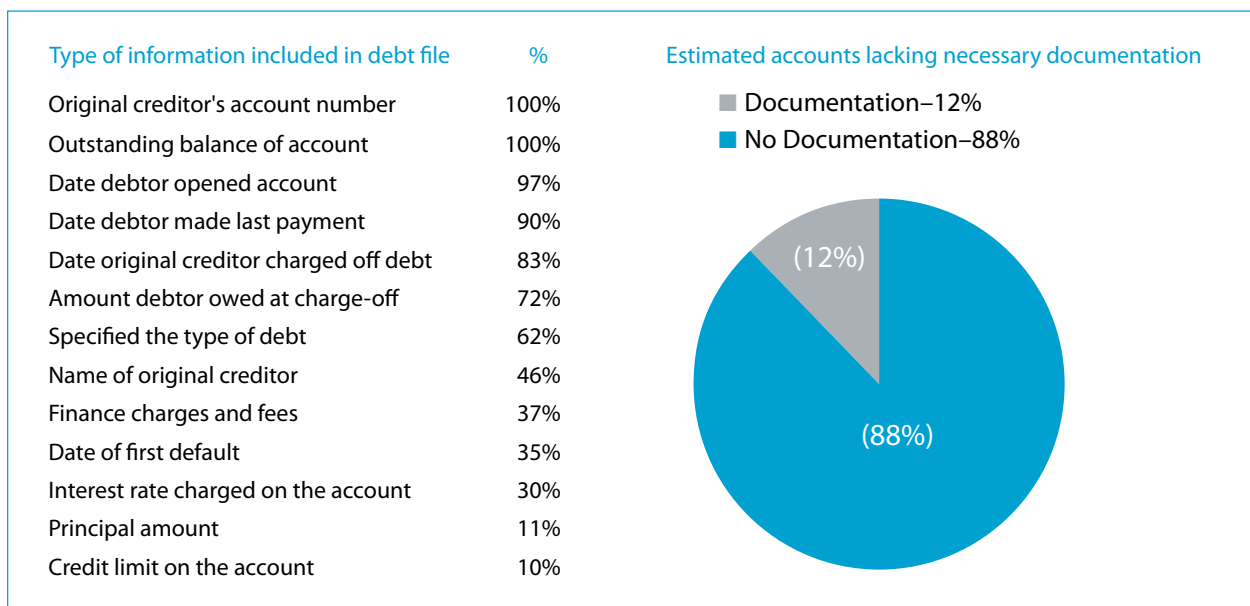
	Count	Percentage
Total cases in sample	300	
Cases resulting in a default judgment, stipulated judgment or confession of judgment	143	47.7%
<i>Default Judgment Cases</i>	131	43.7%
<i>Stipulations</i>	11	3.7%
<i>Confession of Judgment</i>	1	0.03%
Dismissals	157	52.3%
Judgment amounts		
<i>Average</i>	\$3,115	
<i>Low</i>	\$751	
<i>High</i>	\$20,009	
Attorney Representation		
<i>Consumer represented by attorney</i>	1	0.3%
<i>Debt buyer represented by attorney</i>	299	99.7%
Liens		
<i>Lien imposed on consumer</i>	143	47.7%
<i>No immediate lien imposed</i>	157	52.3%
Cases by claim amount⁶⁰		
<i>Under \$10,000</i>	277	92.3%
<i>Low</i>	\$751	
<i>High</i>	\$10,094	
<i>Over \$10,000</i>	23	7.7%
<i>Low</i>	\$10,126	
<i>High</i>	\$20,009	

Source: CRL analysis of a sample of 300 court cases filed by six large debt buyers in Oregon.

Finding 4: Oregonians owe as much as \$18 million per year, in judgments for cases won by just six debt buyers that likely lacked sufficient documentation

Incomplete information is common when debt buyers purchase charged-off debt from creditors, and for most debts, no supporting documentation is provided to the debt buyer. In 2013, the FTC found that the information and documentation substantiating the debts purchased by debt buyers was frequently incomplete.⁶¹ While all or most of the debt records included information on the account number of the charged-off debt, the outstanding balance of the account, and the date the account was opened, the name of the original creditor was only provided 46% of the time, and the finance charges and fees were provided for only 37% of the accounts purchased (Figure 7). Without this information, it is difficult or impossible for consumers to identify and properly contest a debt collection complaint in court.

Figure 7. Incomplete information is common in debt files acquired and used by debt buyers



Source: FTC, "The Structure and Practices of the Debt Buying Industry."

Furthermore, based on a sample analysis of 3.9 million accounts purchased by six large debt buyers, the FTC found that documentation of the debt, such as account statements or terms and conditions, was absent for 88% of the accounts at the time of purchase.⁶² This number is a conservative one—the FTC estimated that debt buyers received any documentation of the accounts for only 6% of the accounts they purchased.⁶³ The likelihood of receiving specific documentation, such as account statements or the account terms and conditions, was even lower.⁶⁴ Thus, for the accounts purchased, the debt buyer may receive data about the creditor, the outstanding debt, and the status of previous collection efforts on the debt, but it likely has no original account-level documentation substantiating the debt, nor is there a guarantee that the information obtained is accurate.⁶⁵

Using the findings from the FTC study on the debt buying industry, Oregon residents owe an estimated \$54,127,735 over a three-year period due to default judgments and other easy wins in favor of the six debt buyers studied in this report based on insufficient documentation. This estimate does not include the judgments won by other debt buyers operating in the state, and as a result, the total amount won by all debt buyers based on insufficient documentation is likely higher (see Appendix B for details on this estimate).

POLICY RECOMMENDATIONS

The facts and abusive tactics highlighted here illustrate the need for targeted reforms of debt buying practices in Oregon. These reforms include the following:

1. Ensure debt buyers prove that the debt is owed. Debt buyers should be prohibited from bringing lawsuits against consumers unless they first meet a “proof of debt” standard. “Proof of debt” must be established by detailed information and original account-level documentation about the consumer and the debt, such as full name, account numbers, original creditor’s name, itemization of the amount owed, the contract or account document indicating the consumer agreed to the debt, and documentation establishing the debt buyer’s ownership of the debt (e.g., purchase and sale agreement). Legislation passed in Oregon in 2017 requires debt buyers to include additional information about the debt and consumer in the initial court filing and to possess business records that establish the nature and amount of the debt. However, the new law does not require debt buyers to file those documents with any cases filed to collect debts.

In any future reform efforts, it is important that the debt buyer provide to the court actual business records from the original creditor, as opposed to just affidavits setting out information contained in spreadsheets obtained from the previous account owner. Affidavits are not sufficient to establish “proof of debt” unless accompanied by original account-level documents to support the claims made in the affidavits. As previously described, debt buyers file pleadings and affidavits replete with false or inaccurate information. This is why it is crucial that debt buyers should not be allowed to obtain default judgments based on court pleadings and affidavits that do not attach actual documents evidencing the debt. The proof of debt standard is especially important because debt collectors in Oregon may easily garnish wages or obtain a lien against property once a debt buyer obtains a judgment against the consumer.

2. Discourage debt buyers from acting as “lawsuit factories” by holding them accountable for initiating unwarranted legal actions. Debt buyers should not be able to obtain judgments in cases where they bring unsubstantiated legal actions. They should further face monetary penalties if they pursue collection actions, including court cases against consumers, without first meeting the “proof of debt” standard.

3. Require that debt buyers substantiate their claims made during collection attempts. Debt collectors should be prohibited from attempting to collect a debt without having detailed information about the consumer and the debt and original account-level documentation establishing the “proof of debt.” Oregon recently enacted legislation that requires debt buyers to cease collection attempts if they cannot provide consumers with certain documents supporting the claimed debt upon request.

4. Prohibit the collection of time-barred debts and other “zombie” debts. Debt buyers should not be allowed to collect on debts that are past the statute of limitations. In 2017, Oregon passed legislation prohibiting debt buyers from filing lawsuits on time-barred debts. Debt buyers should also be prohibited from restarting the clock on this type of debt by extracting payment from the consumer. Similarly, debt buyers should be banned from filing lawsuits or otherwise collecting on “zombie” debts—debts that have already been paid, settled in full, or discharged in bankruptcy.

APPENDICES

Appendix A. Population, total collection cases filed, and sample distribution by county

County	Population			Cases filed 2014–2016			Sampled cases		
	Count	Percent	Cumulative (%)	Count	Percent	Cumulative (%)	Count	Percent	Cumulative (%)
Multnomah	768,418	19.51%	19.51%	8,481	20.49%	20.49%	75	25%	25%
Washington	556,210	14.12%	33.63%	5,095	12.31%	32.80%	54	18%	43%
Clackamas	389,438	9.89%	43.51%	3,775	9.12%	41.91%	38	13%	56%
Lane	357,060	9.06%	52.58%	3,788	9.15%	51.07%	34	11%	67%
Marion	323,259	8.21%	60.78%	3,572	8.63%	59.69%	31	10%	77%
Jackson	208,363	5.29%	66.07%	2,601	6.28%	65.98%	20	7%	84%
Deschutes	166,622	4.23%	70.30%	1,615	3.90%	69.88%	17	6%	90%
Linn	118,971	3.02%	73.32%	1,456	3.52%	73.40%	11	4%	93%
Douglas	107,194	2.72%	76.04%	1,095	2.65%	76.04%	10	3%	97%
Yamhill	101,119	2.57%	78.61%	1,055	2.55%	78.59%	10	3%	100%
Benton	86,495	2.20%	80.81%	494	1.19%	79.78%			
Josephine	83,409	2.12%	82.92%	1,119	2.70%	82.49%			
Polk	77,264	1.96%	84.89%	798	1.93%	84.41%			
Umatilla	76,738	1.95%	86.83%	817	1.97%	86.39%			
Klamath	65,972	1.67%	88.51%	749	1.81%	88.20%			
Coos	62,775	1.59%	90.10%	714	1.72%	89.92%			
Columbia	49,389	1.25%	91.36%	583	1.41%	91.33%			
Lincoln	46,347	1.18%	92.53%	571	1.38%	92.71%			
Clatsop	37,382	0.95%	93.48%	495	1.20%	93.91%			
Malheur	30,551	0.78%	94.26%	327	0.79%	94.70%			
Union	25,745	0.65%	94.91%	257	0.62%	95.32%			
Wasco	25,492	0.65%	95.56%	281	0.68%	95.99%			
Tillamook	25,430	0.65%	96.20%	257	0.62%	96.62%			
Hood River	22,749	0.58%	96.78%	171	0.41%	97.03%			
Curry	22,338	0.57%	97.35%	185	0.45%	97.48%			
Jefferson	22,061	0.56%	97.91%	252	0.61%	98.08%			
Crook	20,956	0.53%	98.44%	241	0.58%	98.67%			
Baker	16,052	0.41%	98.85%	200	0.48%	99.15%			
Morrow	11,204	0.28%	99.13%	96	0.23%	99.38%			
Lake	7,842	0.20%	99.33%	69	0.17%	99.55%			
Grant	7,276	0.18%	99.51%	43	0.10%	99.65%			
Harney	7,229	0.18%	99.70%	61	0.15%	99.80%			
Wallowa	6,857	0.17%	99.87%	54	0.13%	99.93%			
Gilliam	1,883	0.05%	99.92%	15	0.04%	99.97%			
Sherman	1,795	0.05%	99.97%	9	0.02%	99.99%			
Wheeler	1,348	0.03%	100.00%	5	0.01%	100.00%			
Total 10 largest counties	3,096,654			32,533					
Grand Total All counties	3,939,233			41,396			300		

Appendix B. Estimating the cost of debt collection cases filed without sufficient documentation

Cases filed by six debt buyers, statewide 2014–2016	41,396
Cases won by default judgment, stipulated judgment, or confession of judgment in case sample	143
Cases won by default judgment, stipulated judgment, or confession of judgment in case sample	47.7%
Total amount won by default judgment, stipulated judgment, or confession of judgment	\$445,411
Average amount won by default judgment, stipulated judgment, or confession of judgment per case	\$3,115
Estimated cases won by default judgment, stipulated judgment, or confession of judgment (41,396 cases x 47.7%)	19,746
Estimate of total amount won by default judgment, stipulated judgment, or confession of judgment in cases lacking documentation, statewide	\$61,508,790
FTC estimate of collection accounts that lack documentation	88.0%
Estimate of total amount won by default judgment, stipulated judgment, or confession of judgment in cases lacking in documentation, statewide 2014–2016	\$54,127,735
Estimate of total amount won by default judgment, stipulated judgment, or confession of judgment in cases lacking documentation per year, statewide	\$18,042,578

Source: CRL calculations based on data collected from OJCIN and the FTC. Cases won by default judgment, stipulated judgment, or confession of judgment in case sample, estimate of total judgment amount and average amount won based on sample of 300 cases.

ENDNOTES

1 Banks and other credit card issuers often sell defaulted credit card debt, which debt buyers either collect in-house or place with other collection agencies. Debt buyers may also repackage purchased debt portfolios and sell them to other buyers. The *Structure and Practices of the Debt Buying Industry*, Federal Trade Commission (2013), available at <https://www.ftc.gov/sites/default/files/documents/reports/structure-and-practices-debt-buying-industry/debtbuyingreport.pdf>.

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49 Default judgments are a judgment in favor of the plaintiff without the consumer having mounted a defense. *Default Orders and Judgments*. ORCP §69. Oregon Rules of Civil Procedure available at https://www.oregonlegislature.gov/bills_laws/Pages/orcp.aspx.

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55 Or. Rev. Stat. §§ 18.042, 18.150 (2017). Under Oregon law Rev. Stat. §§ 18.042, 18.150, a judgment in a civil action that includes a money award creates a judgment lien if it complies with certain requirements. Rev. Stat. §§ 18.042, 18.150

56 Or. Rev. Stat. § 18.150(2) (2017).

57 Or. Rev. Stat. §§ 18.180(2), 18.182(5) (2017). Judgments last 10 years and can be renewed one time for another 10 years.

58 Or. Rev. Stat. Ann. § 18.605 (2017). A writ may be issued for a monetary obligation based on a judgment other than a judgment for support after the judgment is entered in the register of a circuit court or after the judgment is docketed in the docket of a justice, county, or municipal court.

59 Or. Rev. Stat. § 18.385 (2017).

60 In a small number of cases, the original claim amount slightly exceeded \$10,000, but the amount of the court filing fee suggested that the original claim was less than \$10,000. In these cases, the case was classified as having an original claim of less than \$10,000.

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62 *Ibid.*, 35. The FTC sample from the report shows lower percentages when taking into account the types of documents provided. Debt buyers in the sample reported receiving only three types of documents: account statements (received for 6% of accounts), “terms and conditions” documents (also received for 6% of accounts), and account applications documents (received for less than 1% of accounts).

63 *Ibid.* This is a conservative estimate because the FTC sample did not include an analysis of the full 3.9 million accounts. The FTC estimated that the number would be closer to 6% for the full 3.9 million accounts in the sample.

64 *Ibid.*

65 *Ibid.*



Center for Responsible Lending

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The Center for Responsible Lending (CRL) is working to ensure a fair, inclusive financial marketplace that creates opportunities for all responsible borrowers, regardless of their income, because too many hard-working people are deceived by dishonest and harmful lending practices.

While the housing crash was devastating to families at all income levels, it was disproportionately destructive to entire communities of low- and moderate-income families and borrowers of color. In fact, it wiped out generations of family wealth in these communities. Many of these families had successful 30-year loans, but they were lured by the promises of deceptive marketing and then financially devastated when they were placed in egregious loan products.

CRL is a nonprofit, non-partisan organization that works to protect homeownership and family wealth by fighting predatory lending practices. Our focus is on consumer lending: primarily mortgages, payday loans, credit cards, bank overdrafts and auto loans.

North Carolina

302 West Main Street
Durham, NC 27701
Ph (919) 313-8500
Fax (919) 313-8595

California

1970 Broadway
Suite 350
Oakland, CA 94612
Ph (510) 379-5500
Fax (510) 893-9300

District of Columbia

910 17th Street NW
Suite 500
Washington, DC 20006
Ph (202) 349-1850
Fax (202) 289-9009