

Legal News Round-Up

Keep Current With Industry-Related News From Around The U.S.,
Courtesy of Our Washington Hot News Correspondent David Goch

California AG Sues JPMorgan In Debt Collection-Related Case

On May 9, California Attorney General Kamala D. Harris filed suit against JPMorgan Chase in state court. The suit claims that the firm engaged in fraudulent and unlawful debt collection practices against tens of thousands of Californians [California v. JPMorgan Chase & Co., Cal. Super. Ct. (Docket No. unavailable, filed 5/9/13)].

According to the suit, “robo-signing” and other practices were allegedly used to file thousands of debt collection actions against 100,000 California credit card borrowers over at least a three-year period.

Specifically, the suit says that Chase failed to redact consumers’ personal information in attachments, potentially exposing them to identity theft, in violation of California law.

The lawsuit seeks a court order that would permanently enjoin Chase from the debt collection practices at issue; asks for restitution for consumers and, as appropriate, requests civil penalties and other relief that would be available under California laws.

View the complaint at <http://op.bna.com/bar.nsf/r?Open=cbre-97jtq7>.

Bankruptcy Filings Decline in 2013

The Administrative Office of the United States Courts has reported that bankruptcy cases filed in federal courts fell 14.4 percent in the 12-month period ending on March 31, 2013, compared to the 12-month period ending March 31, 2012.

The majority of the bankruptcy filings involved non-business debts, according to the AOUSC.

The number of bankruptcies, filed by Bankruptcy Code chapter, are as follows:

- Chapter 7 filings totaled 804,885, down from 958,757 in the previous year.
- Chapter 11 filings totaled 9,811, down from 11,339 in the previous year.
- Chapter 13 filings totaled 355,081, down from 396,175 in the previous year.

The AOUSC news release is available at <http://news.uscourts.gov/bankruptcy-filings-down-14-percent-march-2013>.

New Claims Transfer Fee Began May 1

Bankruptcy courts instituted a new \$25 fee for filing evidence of claims transfer on May 1, 2013.

The new fee was approved by the Judicial Conference of the U.S. The fee must be paid by the creditor who files evidence of the transfer and must be paid by “credit card, using Pay.gov, when the claims

transfer is filed with the courts’ Case Management/Electronic Case Files system or by whatever means is designated by the court if the claim transfer is not filed electronically.”

Debtors filing for bankruptcy protection will not be affected by the fee.

IRS Interprets Bankruptcy Code Section 1328f2 In Informal Chief Counsel Advice

On April 12, the IRS Office of Chief Counsel released informal legal advice (CCA 201315022), with respect to its interpretation of Bankruptcy Code Section 1328(f)(2).

The IRS interprets this section to mean a debtor is not entitled to a Chapter 13 discharge if the person received a Chapter 13 discharge during the two-year-period preceding an order for relief in a current Chapter 13 case.

Full text of the IRS’ Chief Counsel advice is available at <http://www.irs.gov/pub/irs-wd/1315022.pdf>.

Proposed Amendments To Bankruptcy Federal Rules Delivered To Congress By Supreme Court

The U.S. Supreme Court announced in April that proposed amendments to the federal rules of appellate, bankruptcy, civil and criminal procedure, along with the Federal Rules of Evidence, had been delivered to Congress.

Relevant changes to the Rules of Bankruptcy Procedure include:

- **Rules 1007 and 5009** -- Changes intended to relieve an individual debtor of the obligation to file a statement of completion of a personal financial management course with the court, if the provider of the course provides the notification.
- **Rule 4004** -- Clarifying a court’s obligation to grant a discharge, updating the rule to address changes to Rule 1007 and addressing the court’s obligation when a presumption of undue hardship “is in effect.”
- **Rules 9006, 9013, and 9014** -- Addressing time limits for the service of written motions and responses, with Rule 9006 being expanded from the timing of serving opposing affidavits to address the timing of the service of any written response to a motion. The other two rules are amended to cross-reference the time limits of Rule 9006.

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FTC Staff Releases First Debt Buying In Debt Collection Sector Report

In a recently released FTC report, FTC staff concluded that “there is room for improvement in the information debt buyers have when they contact consumers and try to collect.”

The key findings in “The Structure and Practices of the Debt Buying Industry” report — the first empirical study of the collection industry’s debt buying sector — comes primarily from analysis on nine of the largest debt buyers.

The FTC noted that the “most significant change in the debt collection business in recent years has been the advent and growth of debt buying.”

The FTC initiated this debt-buyer study for several reasons:

- To obtain a better understanding of the debt buying market and the process of buying and selling debt
- And to explore any relationship between debt buying practice and the types of problems that the FTC has found when debt collectors try to recover and verify debts.

While the FTC staff acknowledged that debt buying can reduce losses creditors incur in providing credit -- and enable them to provide credit at lower prices — it did note that debt buying raises consumer protection concerns.

Staff reported that “debt collectors, including debt buyers, may have insufficient or inaccurate information when they collect on debts, which may result in collectors seeking to recover from the wrong consumer or recover the wrong amount” or both. Thus, at a minimum, consumers would benefit from better information in debt collection.

According to the report, the 9 companies examined collectively bought more than 75 percent of the debt sold in 2008; six of them provided the information used by the staff in most of its analysis.

The companies submitted data on more than 5,000 portfolios, containing almost 90 million consumer accounts purchased during

the three-year study period.

The debt buyers spent nearly \$6.5 billion to acquire accounts with a face value of \$143 billion. Most of this debt, 62 percent, was credit card debt. The debt buyers also provided copies of purchase and sale agreements between themselves and sellers of debts, as well as narrative responses to relevant questions.

The key findings of the study are:

- Buyers paid an average of 4¢ per face value dollar.
- Buyers typically received required information for validation notices.
- Buyers typically received additional information that could make validation notices more useful, but usually the info was not provide to consumers.
- Buyers received few underlying documents concerning debts, but they generally knew the debt’s age.
- There is no guarantee of the accuracy of the information provided about debts at time of sale.
- There is no guarantee of the accuracy of the information in sellers’ documents.
- Limitations were placed on debt buyer access to account documents.
- Additional limitations applied to the resale of purchased debt.
- Buyers rarely received prior dispute history and consumers then disputed 3.2 percent of debts that buyers attempted to collect.
- About half of disputed debts were reported as verified.
- Few disputed debts were resold.
- A minority of the debt was beyond the statute of limitations.

Text of the staff’s report is available at <http://www.ftc.gov/os/2013/01/debtbuyingreport.pdf>.

CFPB Issues Proposal To Begin Oversight Of Non-Bank Student Loan Services

Last spring, the Consumer Financial Protection Bureau issued a proposed rule allowing the agency to supervise the nation’s largest non-bank servicers of student loans.

Any non-bank student loan servicer that handles more than 1 million borrower accounts would be subjected to the same type of CFPB supervision that currently applies to banks with student loan servicing operations.

The rule defines certain non-bank

student loan servicers as “larger participants” in the financial services marketplace and allows the CFPB to oversee their compliance with federal consumer protection laws through on-site examinations and other supervisory tools. The examination process will be an ongoing process of data collection and analysis, on-site visits and regular communication with CFPB staff.

The public was to be given 60 days to comment on the proposed rule after it

was published in the Federal Register, with the comment period ending in late May. If the rule is finalized, it would make student loan servicing the third nonbank market in which the CFPB has defined “larger participants” as required by the Dodd-Frank Wall Street Reform and Consumer Protection Act.

More information on the rule is available at http://files.consumerfinance.gov/f/201303_cfpb_nprm_larger-participants-student-loan-servicing.pdf.

