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MEMORANDUM

April 4, 2017

To Our Clients and Friends

Re: Recent Seventh Circuit Decision on Fair Debt Collection Practices Act

The U.S. Court of Appeals for the Seventh Circuit has held that an attempt by a collection agency to collect a consumer's debt that was no longer enforceable violated the Fair Debt Collection Practices Act's prohibition on using false, deceptive or misleading representations in connection with the collection of a debt. The collection agency, which had purchased the consumer's credit card obligation from the card issuer, sent the consumer a collection letter long after the applicable statute of limitations had run. The lower court had held that the collection letter was deceptive or misleading because (1) it did not tell the consumer that the collection agency could not sue on the debt because it was time-barred, and (2) it did not tell the consumer that if he made, or agreed to make, a partial payment on the debt, he could restart the clock on the statute of limitations, thereby bringing the debt back to life. The Court of Appeals affirmed the lower court's decision.

The collection agency stated in its letter to the consumer that because of the age of the debt, it would not sue the consumer. The court stated that the letter should have indicated that because of the age of the debt, the holder could not sue the consumer for the debt. The opinion stated that it is settled law that a debt collector violates the Act by suing to collect a debt after the statute of limitations has expired as well as threatening to take an action that it cannot legally take or does not intend to take. The court noted that while a debt collector does not violate the Act when, in the absence of an express threat of litigation it attempts to collect on a valid debt that is time barred, an effort to collect a debt could violate the Act if it could lead unsophisticated consumer to believe time-barred debt is legally enforceable. The court believed the debt collector should have provided a clear and unambiguous warning that an unsophisticated consumer would understand regarding the effect of accepting a settlement offer (*i.e.*, it restarts the clock on the statute of limitations). The court affirmed the award of \$1,000 statutory damages. The district court will now consider whether to award attorney fees to the consumer.

A copy of the court's decision in the case, *Pantoja. v. Portfolio Recovery Associates, LLC*, is available on our website at <http://www.schwartzandballen.com/news.html>

If you have any questions, please call Gilbert Schwartz, Robert Ballen, Tom Fox, Heidi Wicker or Magda Gathani at (202) 776-0700.