Studies show that between ninety-one and ninety-nine percent of consumers are unrepresented by an attorney when they are sued on a debt.\footnote{364} However, being represented by counsel in debt collection lawsuits dramatically improves outcomes for consumers,\footnote{365} including increasing the likelihood that the case will simply be dismissed.\footnote{366} Having access to legal advice can also play a critical role in alerting clients to their rights prior to the filing of debt collection actions. Moreover, consumers without access to affordable legal services may turn to predatory debt relief scams for assistance,\footnote{367} often with disastrous financial results.

Unrepresented consumers have to navigate a variety of challenges that may include: filing a response to the complaint, answering discovery, and arguing their case before a judge or magistrate. Some defense may be hard to identify without any legal training. Moreover, once identified, unrepresented consumers may find it hard to explain their defenses to a court. Judges may be reluctant to probe the plaintiffs’ cases too much for fear of violating judicial neutrality or simply because they are so overwhelmed by the number of cases in their docket that they do not want to waste too much time responding to any single case.\footnote{368}

Plaintiffs in collection actions are almost always represented by counsel. Indeed, some states require that a corporation only appear in court through counsel and not through a non-attorney employee.\footnote{369} In a 2015 study of civil filings in ten urban areas, the National Center for State Courts found that “[s]mall claims dockets had an unexpectedly high proportion (76%) of plaintiffs who were represented by attorneys, which suggests that small claims courts, which were originally developed as a forum for self-represented litigants to obtain access to courts through simplified procedures, have become the forum of choice for attorney-represented plaintiffs in lower-value debt collection cases.”\footnote{370}

Footnotes

364 See Testimony of April Kuehnhoff, National Consumer Law Center, Before the Massachusetts Joint Financial Services Committee In support of S.120/H.2811, An act relative to fairness in debt collection (Sept. 25, 2017), citing data collected by Erika Rickard, Associate Director of Field Research at Harvard Law School’s Access to Justice Lab, in September 2017 using the Massachusetts Trial Court Electronic Case Access at http://www.masscourts.org [1] (in four Massachusetts district court small claims sessions, the percentage of consumers sued to collect consumer debts who were represented by attorneys ranged from 0.3% to 1.4% in 2016); Paul Kiel, So Sue Them: What We’ve Learned About the Debt Collection Lawsuit Machine, ProPublica, May 5, 2016 (99% of defendants sued by New Jersey collection law firm Pressler & Pressler did not have attorneys; 97% of defendants in debt collection cases filed in New Jersey’s lower level court in 2013 did not have attorneys; 91% of defendants in Missouri debt collection cases in 2013 did not have attorneys); Samantha Liss, When a nonprofit health system outsources its ER, debt collectors follow, St. Louis Post-Dispatch, Apr. 17, 2016 (reporting that in 1078 lawsuits filed by CP Medical in St. Louis, St. Louis County, and St. Charles County between December 2, 2014 and March 10, 2016, only 17 defendants had an attorney); Chris Albin-Lackey, Rubber Stamp Justice: US Courts, Debt Buying Corporations, and the Poor (Human Rights Watch, Jan. 2016) (consumers had legal representation in 3 out of 247 cases in a randomized sample of lawsuits filed in New York by debt buyers in 2013 that resulted in judgments); Peter Holland, Junk Justice: A Statistical Analysis of 4400 Lawsuits Filed by Debt Buyers, 26 Loy. Consumer L. Rev. 179 (2014) (consumers were represented by an attorney in only 2% of debt collection lawsuits in Maryland); Susan Shin & Claudia Wilner, The Debt Collection Racket in New York (New Economy Project, June 2013) (attorneys represented consumers in only 2% of debt collection cases filed in New York City); Mary Spector, Debts, Defaults, and Details: Exploring the Impact of Debt Collection Litigation on Consumers and Courts, 6 Va. L. & Bus. Rev. 257, 289 (2011) (fewer than 10% of defendants served in debt collection lawsuits were represented by an attorney in Dallas County, Texas); Claudia Wilner & Nasono Sheftel-Gomes, Debt Deception: How Debt Buyers Abuse the Legal System to Prey on Low Income New Yorkers 1 (Neighborhood Economic Development Advocacy Project, 2010) (only 1% of people sued by debt buyers in New York City are represented by counsel). See also Paula Hannaford-Agor, et al., The Landscape of Civil Litigation in State Courts 32 (National Center for State Courts, 2015) (noting that defendants were represented in 13% of small collection cases but not distinguishing between debt collection and other small claims cases).

365 See Mary Spector and Ann Baddour, Collection Texas-Style: An Analysis of Consumer Collection Practices in and out of the Courts, 67 Hastings Law Journal 1427, 1463 (2016) (in cases where defendant was represented by an attorney, defendant won 25.92% of the time and plaintiff won 15.38% of the time; in cases where defendant was unrepresented, defendant won 12.73% of the time and plaintiff won 52.73% of the time); Chris Albin-Lackey, Rubber Stamp Justice:
US Courts, Debt Buying Corporations, and the Poor (Human Rights Watch, Jan. 2016) (“Legal aid and consumer rights attorneys across several states told Human Rights Watch that they win the overwhelming majority of the cases they defend against debt buyers.”); Peter Holland, *Junk Justice: A Statistical Analysis of 4400 Lawsuits Filed by Debt Buyers*, 26 Loy. Consumer L. Rev. 179, 2011 (2014) (“Of the 13% of defendants who proceeded pro se . . . debt buyers obtained judgment by affidavit, consent, default, or trial 47% of the time, and recovered 62% of the amount sought in the complaints . . . Of the 2% of defendants who had a lawyer enter an appearance in the case, debt buyers obtained an affidavit, consent, or default judgment only 15% of the time, and recovered only 21% of the principal amount sought in the complaints.”); Mary Spector, *Debts, Defaults, and Details: Exploring the Impact of Debt Collection Litigation on Consumers and Courts*, 6 Va. L. & Bus. Rev. 257, 297 (2011) (11% of cases ended with affirmative recovery for defendant, default judgment, or agreed judgment when the consumer was represented by counsel as compared to 40% of cases that ended with affirmative recovery for defendant, default judgment, or agreed judgment when the consumer appeared pro se).

366 Chris Albin-Lackey, *Rubber Stamp Justice: US Courts, Debt Buying Corporations, and the Poor* (Human Rights Watch, Jan. 2016) (“Some attorneys reported that if they advanced a vigorous defense, debt buyers often simply dropped the case.”); Consumer Fin. Protection Bur. v. Frederick J. Hanna & Assoc., 114 F. Supp. 3d 1342, 1350 (N.D. Ga. 2015) (noting that “consumers who retained attorneys were almost four times more likely to have their cases dismissed” by defendant); Mary Spector, *Debts, Defaults, and Details: Exploring the Impact of Debt Collection Litigation on Consumers and Courts*, 6 Va. L. & Bus. Rev. 257, 297 (2011) (82% of cases were dismissed when the consumer was represented by counsel as compared to 53% of cases that were dismissed when the consumer appeared pro se); Robert Hobbs, 2009/2010 IOLTA Grants Program Final Report Narrative (NCLC, Sept. 17, 2010) (debt collectors dismissed 60 of 60 collection actions in Massachusetts Small Claims courts in 2009–2010 when faced with clinical law students’ mere appearance in court).

367 See § 1.3.9[2], supra.


370 Paula Hannaford-Agor, et al., *The Landscape of Civil Litigation in State Courts*, p. iv–v (National Center for State Courts, 2015). *See also* Testimony of April Kuehnhoff, National Consumer Law Center. Before the Massachusetts Joint Financial Services Committee In support of S.120/H.2811, An act relative to fairness in debt collection (September 25, 2017), citing data collected by Erika Rickard, Associate Director of Field Research at Harvard Law School’s Access to Justice Lab, in September 2017 using the Massachusetts Trial Court Electronic Case Access at http://www.masscourts.org [1] (a study of four Massachusetts district court small claims sessions found that, in cases filed to collect consumer debts, between 85.7% and 94.9% of plaintiffs were represented by an attorney in 2016).


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