Defining Pre–Acceleration "Debt"

"I owe HOW MUCH?"

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I. Introduction

The basic concept of "debt" is simple: a specific amount of money is owed by one party to another, whether by contract or otherwise. On a more formal basis, a debt has been defined as the obligation to pay a sum certain or a sum that may be ascertained by simple mathematical calculation from known facts, regardless of whether the liability arises by contract or is implied or imposed by law.[1] Likewise, in the realm of consumer collections, the term debt should be a simple concept. Ordinarily, the consumer borrows money (either with a promise to pay or a non-cash transaction) and later the amount borrowed, plus interest and authorized charges, is owed by the consumer as the debt. These basic theories of debt are direct and easy to apply to most types of day-to-day consumer transactions. For example, in dealing with open accounts, demand notes, and similar short-term obligations, the consumer, at all relevant times, owes the full amount that has been advanced by the lender, plus interest (as it is earned) and authorized fees, expenses, and charges. When combined, these amounts constitute the debt that is owed by the consumer.

These same principles apply to installment loans after the obligation has matured or all the installments have been accelerated. At that point, under the terms of most loan documents, the amount owed by the consumer is the full principal balance, plus all earned interest and authorized fees and expenses, which collectively constitute the post-acceleration debt. When dealing with installment debt that has neither matured nor been accelerated, however, a different situation is presented. This article will address some of the issues that should be considered by a debt collector when pursuing pre-acceleration consumer installment debt. The first issue is a determination of what amount must be disclosed to the consumer as debt in a pre-acceleration demand letter. The second issue is an evaluation of a debt collector's options regarding disputes or validation requests and whether separate debts are created by consecutively cured defaults.

II. Disclosing the Amount of the Debt

The Federal Fair Debt Collection Practices Act (Federal Act)[2] requires a debt collector to notify a consumer of the amount of the debt.[3] For past due accounts, matured debts, and accelerated obligations, the amount of the debt to be disclosed is relatively simple to determine. At the time a post-acceleration demand is made, the consumer owes the full amount of the debt, which is the amount that should be disclosed to the consumer. The amount of an accelerated, but unpaid, obligation, however, does not remain fixed for very long. Immediately after acceleration, various fees, costs, expenses, and interest (at the rate applicable after default) begin to accrue. This moving target of an amount owed has been cumbersome to disclose in post-acceleration consumer collections.

For example, in *Miller v. McCalla*,[4] the Seventh Circuit held that the obligation imposed by the Federal Act to notify the consumer of the amount of the debt required the collector to "…state the total amount due—interest and other charges as well as principal—on the date the dunning letter was sent."[5] The court acknowledged that this amount varied on a day to day basis and suggested that this amorphous sum be harnessed by including in the required disclosure a statement that the amount demanded might not be enough to pay off the loan; or a toll-free telephone number could be provided that would allow a consumer to verify the precise amount of money that would be owed on a future date.[6]

In *Wilkerson v. Bowman*,[7] the Federal District Court in Illinois specifically relied upon the holding of *Miller* confirming that the amount of the debt that must be disclosed is, in fact, the amount that is being sought for collection. The court held that the collection letter in question violated the obligation of the Federal Act to disclose the amount of the debt, where the court, upon its own review of the letter, could not determine the amount that the law firm sought to recover. The District Court for the Eastern District of Wisconsin in *Person v. Stupar*[8] also relied upon *Miller*, holding that the Federal Act requires a debt collector disclose to the consumer the amount that is owed as of the date of the demand for payment.

This article will address some of the issues that should be considered by a debt collector when pursuing pre–acceleration consumer installment debt.

Each of these decisions, however, dealt only with an accelerated, fully matured obligation, and did not have before it, nor did it comment upon, those circumstances where the obligation at issue was an unaccelerated installment debt. When a debt collector seeks to collect pre-acceleration installment debt, unique issues regarding the disclosure of the amount of the debt must be considered.

III. Debt vs. Obligation

For purposes of the issues addressed in this article, the key element in the definition of debt in the Federal Act is the premise that debt is an "obligation or an alleged obligation of a consumer to pay money."[9] Therefore, in establishing what must be disclosed as debt in a pre-acceleration demand letter, the collector must determine the consumer's obligations to pay money.

Prior to acceleration, neither the principal balance of the loan nor the pay-off amount is due.[10] Prior to acceleration, the consumer only owes those periodic payments that have come due and remain unpaid. The late fees, attorney fees, and other costs related to these defaulted payments (which are authorized to be collected pursuant to the terms of the loan documents) are combined with the pre-acceleration past due installments to total the current amount due.[11] These combined non-accelerated items are the only obligation of a consumer prior to acceleration, and, therefore, it is only the current amount due that must be disclosed as the amount of the debt at that time. In a pre-acceleration collection, in order to comply with the mandate of the Federal Act, the collector need only state the current amount due, which is the amount due on the date of the pre-acceleration collection letter, rather than the pay-off amount.[12]

Special issues are presented in the case of a debt arising out of a mortgage. The requirement that a mortgagor be given written notice of a condition of default and an opportunity to cure that default before acceleration[13] precludes the consumer from being obligated to pay the accelerated balance or pay-off amount before the requisite notice is given. Pursuant to the terms of most residential loan documents, the consumer cannot be obligated, bound, or required to pay the pay-off amount prior to lawful acceleration (or maturity) of the debt. Because acceleration has not yet occurred in a pre-acceleration collection, only the current amount due (not the pay-off amount) can be owed by the consumer, and therefore it is the current amount due that must be disclosed as the amount of the debt under the requirements of the Federal Act.

It might be argued that in a global sense, the term obligated can be construed to mean that a consumer is somehow bound to pay the full amount, or pay-off amount, of the loan at all times, even though only one small installment is due each month for a period of years. The continuation of that argument would be that if the consumer were always in some way obligated to pay the entire amount of the loan, the pay-off amount is the amount that should be disclosed to the consumer as debt in order to comply with the Federal Act. Such an argument may sound as though it protects consumers and provides them with important information that will benefit and assist them. However, if such an argument is accurately analyzed in the light of reality, the terms of the loan documents, and the law applicable to the parties and the transaction, the argument must fail. The result of such an argument is that the collector would be required to disclose to the consumer an amount the collector is prohibited by law from demanding (because the loan has not been acceler-

ated) and the consumer is not required to pay. The resulting confusion is obvious and should be diligently avoided. The current amount due is the only amount the consumer is obligated to pay at the time of a pre-acceleration demand letter; it is the only amount the debt collector may lawfully demand; and it is only this amount that is required to be disclosed to the consumer as the amount of the debt pursuant to section 1692g(a)(1) of the Federal Act.

IV. Caution with Belt and Suspenders

Some practitioners may assume that the safest course is to disclose to the consumer, as the amount of the debt, both the current amount due and the pay-off amount. While this has the sound of practicality and reasonableness, debt collectors must exercise extreme caution when making such dual disclosures to ensure that there can be absolutely no confusion in the mind of the least sophisticated or unsophisticated consumer.

As previously stated, the term "debt" is defined, in part, by the Federal Act as an "obligation of the consumer."[14] Thus, when a debt collector is required to disclose to the consumer the "amount of the debt,"[15] the sum to be disclosed is the amount that the consumer is obligated to pay at the time of the dunning letter.[16] On the day that a pre-acceleration demand letter is sent to a consumer, the consumer is obligated to pay only one amount of money; the current amount due, typically consisting of a few past due payments and related authorized fees and expenses. A casually drafted approach to the disclosure of both the current amount due and the pay-off amount may imply to an unsophisticated consumer that the pay-off or accelerated amount of the loan is due, when it is not due.

With those concerns as a guide, if a debt collector deems it useful or advisable to disclose both amounts (current amount due and pay-off amount) in a pre-acceleration demand letter, the debt collector must make a special effort to clarify, in easily understood language, precisely what amount the debt collector is seeking to collect. At the same time, the debt collector must affirmatively avoid, in equally clear and understandable language, any implication that the pay-off amount is due. Merely including the pay-off amount in a demand

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letter may sound simple, but such a practice requires abundantly clear language indicating that the pay-off amount is not being sought for collection and is not currently due or owing by the consumer. Some collectors may routinely include the pay-off amount within the portion of a pre-acceleration collection letter that discloses the amount of the debt as required by the Federal Act. Such a practice may be deceiving to a consumer because the amount of the debt that must be disclosed is founded upon the current and immediately due obligations of the consumer.[17] Because the pay-off amount is included within the portion of the demand letter that describes the amount of the debt (without carefully crafted conspicuous disclaimers), the unsophisticated consumer could read the letter to infer that the pay-off amount is being asserted by the collector as an immediate obligation of the consumer. By creating such confusion, the collector risks claims by the consumer that the collector is seeking to collect a debt that is not due,[18] misrepresenting the amount due,[19] committing usury,[20] etc. The end result of stating the pay-off amount in a pre-acceleration demand letter and then carefully and conspicuously explaining to the debtor that the pay-off amount is not due, however, may also confuse the debtor by implying that no amount (not even the current amount due) is due and owing. At the very least, the effectiveness of the demand letter, from the standpoint of collecting the debt, may be substantially reduced if both amounts are disclosed and then the appropriate disclosures are made.

The best practice in a pre-acceleration demand letter is to disclose only the current amount due as the amount of the debt under the Federal Act. The current amount due is the amount that the collector seeks to collect; it is the only amount that the collector may lawfully demand; it is the amount that the consumer is obligated to pay; and it is the amount that is the most logical and practical to disclose in the pre-acceleration situation, with the least risk of confusion for the consumer. If a debt collector deems the pay-off amount to be an important item of disclosure, and is aware of the potential risk of confusion in the mind of the consumer, the pay-off amount should not be included in that portion of the pre-acceleration demand letter that discloses the amount of the debt under the Federal Act. The pay-off amount is not an obligation of the consumer, is not sought by the debt collector and, if disclosed at all, should be clearly separated from any of the direct demands for payment, or any definition of any item that is sought for collection in the pre-acceleration demand letter. For example, the pay-off amount might be included within the definition portion of the pre-acceleration demand letter, specifically within the definition of the term "loan," so long as appropriate disclaimers and explanations are included, insuring that the consumer is not confused into thinking that the pay-off amount is immediately due for payment.

V. Consecutively Cured Defaults and the "Clean Slate Rule"

Having determined the amount of the debt, which is required to be disclosed by the Federal Act[21] in a pre-acceleration demand letter, further issues arise when a pre-acceleration default is cured and a subsequent default occurs. The collector must determine whether two or more cured pre-acceleration defaults collectively constitute the same debt for purposes of responding to validation requests.[22] The first element in this evaluation is a consideration of the status a debtor reaches after a pre-acceleration default is cured.

In *Miller*[23] and its progeny, the

courts were presented with only a single instance of default by the consumer, which resulted in acceleration of the debt.[24] In the practical world of pre-acceleration consumer debt, a consumer may repeatedly fail to timely pay a monthly obligation, and the following month cure the default by paying two monthly payments and the applicable late fees and expenses. For example, assume that a consumer fails to pay the February 1 and March 1 monthly installments of a consumer loan. In response to dunning letters, the consumer pays all outstanding amounts on March 10, which is received by her lender on March 14. A typical chronology of events for such a scenario might be as follows:

Date	Activity	Amount Due
February 1	First payment of $1,000 missed	$1,000
February 12	Letter to debtor –"payment is late"	$1,000
February 17	Late fee of $50 added	$1,050
February 23	Second dunning letter to debtor	$1,050
March 1	Second payment of $1,000 missed	$2,050
March 3	Notice of default- $75 attorneys fees added	$2,125
March 8	Debtor mails request for debt verification	$2,125
March 10	Payment of $2,125 mailed to lender	$2,125
March 14	Lender receives and posts payment	$0

In this scenario, the consumer is deemed to have brought the loan current, at least as of March 14, in that all payments and fees due and owing on the loan were fully paid as of that date, and there is no outstanding obligation to make any payment to the lender until April 1, when the consumer's next monthly installment comes due. Therefore, the consumer has cured the condition of default that was claimed in the March 3 notice of default/breach letter and the loan is current, just as though the consumer never defaulted. The only negative result from this assumed set of facts is that the credit record of the consumer will show that one of the monthly installments was paid forty-one days late,[25] and a second monthly payment was paid thirteen days late.[26] While this may affect the consumer's ability to secure other credit, it does not affect the status of the loan. This ability to start with a "clean slate" after curing a default has been acknowledged by at least a few courts.

For example, in *Bailey v. Security National Servicing Corporation*,[27] the Seventh Circuit clarified and approved of the right, or at least the ability, of consumers to elevate themselves to the status of having a clean slate upon curing a default. In that case, the consumers curiously argued that their default never went away and continued to haunt them even after a forbearance agreement was executed and partially performed. The court, in firmly dismissing that argument and holding that a forbearance agreement supersedes a defaulted promissory note, stated:

> *The advantage of these renegotiated plans is quite clear—the creditor wins because he believes he'll be better off restructuring the loan obligation and perhaps even entering into an entirely new agreement rather than litigating or pursuing the typical remedies available to him by virtue of a default (acceleration, foreclosure, etc.). The debtor wins because in a sense his slate (and the previous default) is wiped clean under the terms of the new agreement so long as he stays current on his new obligations.*[28]

While the *Bailey* case dealt with a formal forbearance agreement for a post-acceleration default, its concept of the consumer getting a clean slate after resolving or curing a condition of default is fair, logical, and clear. A consumer is entitled to a clean slate if the underlying post-acceleration default is superseded, paid, cured, or resolved. That same rationale is logically applicable to a consumer who defaults on a loan and then cures that default before the loan is accelerated. The consumer is entitled to a clean slate after a default (whether pre- or post-acceleration) is cured.

The rationale for this entitlement arises, in part, from the terms of most loan documents which specifically require that a consumer be given written notice of a condition of default and some period of time (typically fifteen to thirty days) within which to cure that default prior to acceleration.[29] If the default is cured during that notice period, the consumer's slate is wiped clean. That default, as required by the loan documents, is deemed cured, and thereafter the consumer is only obligated to make the periodic payments as they come due.[30] To hold that a pre-acceleration default is never cured and that the debtor does not get a clean slate even after all pre-acceleration amounts owed have been paid, would directly contradict the terms of the loan documents and the intent of the parties who executed them, as well as basic concepts of logic and fairness.

VI. Each Cured Default is a Separate Debt for Verifications

The fulfillment of the clean slate concept is that each cured default in a series of consecutively cured defaults must be treated as a separate debt for purposes of responding to verification requests under the Federal Act.[31] This allows a collector to exercise its established options as to each debt and choose either to respond to each verification request and continue with collection activity or to terminate all collection efforts regarding each debt.[32] When a collector sends a collection letter resulting in a written verification request from the debtor, the collector need not respond to the request immediately.[33] If the debtor pays the current amount due and cures the default prior to the collector responding to the request for verification, the collector can then exercise its right to

terminate all future collection activities and do nothing. At that point, there is no need for the collector to pursue that debt because the debt (the current amount due, rather than the total loan amount or pay-off amount) the collector disclosed to the debtor and sought to collect has been paid, the condition of default has been cured, and the debtor has achieved the status of a clean slate. The loan is not in default because the missed payments and related fees and costs that made up the debt have been paid.

In the spring default scenario described earlier, the consumer sent a request for verification of the debt to the collector on March 8 and then paid that debt on March 10. There is no obligation on the part of the collector under the Federal Act to ever respond to that request. The debt was paid on March 14, and therefore the collector will never again pursue collection of those amounts. If the collector will never engage in activity for the collection of that debt then the collector may, at its option, choose not to respond to a request for verification of that debt.[34]

When a subsequent default occurs, and a collector seeks to collect the amount due for the new default, the debt the collector is then seeking to collect is a new debt. The elements that make up the new debt being sought by the collector are not the same elements that made up the debt that was sought to be collected previously. The new debt being sought is made up of past due installments, expenses, and fees that had not yet come due, and that the consumer was not obligated to pay, as of the date of the earlier cured default. Because the elements that make up the new debt were not due at the time of the prior default, the new default involves an entirely new debt. The collection activity brought about by the new default is not to collect the amounts, installments, fees, or costs that were paid to cure the previous default. The new collection efforts are to collect the new amounts due that make up the new amount in default. These efforts are to collect the new debt, which is the subject of the new default. The collector cannot be said to be seeking to collect the prior debt that was cured and paid in full.

For example, if the spring scenario of the consumer is repeated in the fall, the dollar amounts at issue might be identical to those in the earlier scenario, but those amounts would be distinctly different pre-acceleration debts for purposes of the Federal Act. The fall default chronology would be as follows:

Date	Activity	Amount Due
September 1	First payment of $1,000 missed	$1,000
September 12	Letter to debtor –"payment is late"	$1,000
September 17	Late fee of $50 added	$1,050
September 23	Second dunning letter to debtor	$1,050
October 1	Second payment of $1,000 missed	$2,050
October 3	Notice of default- $75 attorneys fees added	$2,125
October 8	Debtor mails request for debt verification	$2,125
October 10	Payment of $2,125 mailed to lender	$2,125
October 14	Lender receives and posts payment	$0

The notice of default/breach letter sent on October 3, seeking to collect the missed September 1 and October 1 installments, did not seek to collect the February 1 and March 1 installments that were deemed to be fully paid as of March 14 in the spring default scenario. None of the collection efforts described in the fall default chronology relate to or seek to collect any sum that was involved in the spring default. The two amounts that were in controversy are distinctly separate obligations and separate debts of the pre-acceleration consumer under the Federal Act.

This concept of separate debts would be dispositive of a claim from a consumer alleging that the collection efforts to collect the new defaulted amount violate the Federal Act provisions[35] that require a collector to terminate collection activity until written verification of the debt is mailed to the consumer, when requested in writing. The consumer might assert that the prior default amount and the current default amount are the same debt, and therefore no collection activity can take place regarding either defaulted amount until the verification data is mailed to the consumer in response to the written verification request lodged regarding the prior cured default.

To expand upon the previous examples, under the facts assumed above, the consumer might assert that the collection efforts in the fall (September and October) violate the Federal Act because the collector never responded to the request for debt verification that the consumer submitted in writing earlier in the spring (March), and, therefore, all collection activity must stop until the written verification is mailed to the consumer.

As established earlier, however, because the prior cured default is not the same debt that is involved in the new default, the collection activity regarding the new default involves, and seeks to collect, a separate and distinct debt. The collection activity in question is not directed to the earlier debt that was paid in full, and the claim of the consumer is groundless. The collector is free to engage in collection activity to collect the new defaulted amount because the collector properly elected not to respond to the request for verification that related solely to the prior cured defaulted amount.

One purpose of the debt validation provisions of the Federal Act is, in effect, to permit the parties to engage in an informal mediation process to try to resolve disputes about mistaken identity or mistakes over the amount of the debt before the collection process escalates. The steps to be followed are: (1) the debtor is notified of the right to request validation of the debt; (2) the collector receives the request from the debtor; (3) the collector terminates collection activities until the requested information is

mailed; and (4) after the information is mailed, the collector can resume collection activities.[36] If the debt is paid during this process, there is no need for the collector to continue with collection activities and the collector can choose not to provide a response to the validation request.[37] The debt verification/dispute process is sculpted to fit the circumstances where, if a debt is not owed or once a debt is paid, there is no further obligation on the part of a collector to respond to verification requests attributable to the paid debt. If a collector has the right to choose not to pursue collection activity toward a debt, and therefore not respond to a validation request,[38] the payment of the debt by the consumer effectively makes that choice for the observant collector.

Contrary to the cases discussed above, the court in *Bailey v. TRW Receivables Management Service, Inc.*[39] disagreed with the notion that a collector is not required to respond to a validation request if the collector chooses not to pursue collection of the debt in question. In *Bailey*,[40] the District Court of Hawaii, without citing legal authority other than the Federal Act, held that a collector violated the Federal Act when the collector did not respond to a verification request that was submitted after the debt in question had been paid.[41]

The holding in *Bailey* is in direct conflict with the specific language of the Federal Act that permits a collector to choose not to pursue collection activity.[42] It is also inconsistent with the cases recognizing that the statutory language permits a collector to close its file after receiving a verification request from a consumer and choose to do nothing more, including choosing not to send a response to a request for verification.[43] *Bailey* was decided several years before the better reasoned and more authoritatively documented contrary opinions discussed above, and apparently the Hawaii court was not presented with the direct and specific provisions of the Federal Act that permit a collector to choose not to pursue collection activities until the verification information has been mailed to the consumer.[44] In short, the holding in *Bailey* is an unsubstantiated minority position that does not reference the specific controlling language of the Federal Act and, as such, should not be considered persuasive authority on this issue.

In pre-acceleration collection letters, the collector should use the current amount due, rather than the pay-off amount.

VII. Conclusion

In pre-acceleration collection letters, the collector should use the current amount due, rather than the pay-off amount, as the amount of the debt that is required to be disclosed to the consumer under the Federal Act. The current amount due is the amount that the consumer is obligated to pay at the time a collection letter is sent and the amount that the collector is seeking to collect. The pay-off amount is not owed by the pre-acceleration debtor and is not sought by the collector in a pre-acceleration collection letter. If the collector can justify the risk of disclosing both amounts, great care must be taken to avoid implying that the pay-off amount is due or being sought by the collector, thereby confusing the unsophisticated or least sophisticated consumer.

Where a consumer defaults on an installment debt and then cures that default, only to default again on a subsequent installment, each such consecutively cured default constitutes a separate debt for purposes of responding to requests for verification of the debt. Each such consecutively cured default that permits a choice by a collector not to pursue collection activity or respond to a verification request is a separate action unrelated to the other previous debts. A subsequent demand for the new default amount will not violate the prohibition of engaging in collection activity under the Federal Act where there has been no response mailed to the consumer to resolve the prior verification request that arose solely from the earlier cured default.

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[1] BLACK'S LAW DICTIONARY 490 (4th ed. 1968).
[2] 15 U.S.C. § 1692 (1997).
[3] 15 U.S.C. § 1692g(a)(1) (1997).
[4] *Miller v. McCalla*, 214 F.3d 872 (7th Cir. 2000).
[5] *Id.* at 875.
[6] Unfortunately, this court proposed some troubling "safe harbor" language for a debt collector that can raise serious problems. From a practical standpoint, the suggested language may require the debt collector to make a demand for an amount that the debt collector knows will not be accepted by the lender by the time it is received by the lender, raising the possibility of a claim for deceptive or similar offensive conduct.
[7] *Wilkerson v. Bowman*, 200 F.R.D. 605 (N.D. Ill. 2001).
[8] *Person v. Stupar*, 136 F. Supp. 2d 957, 961 (E.D. Wis. 2001).
[9] Debt is defined by the Federal Act as "any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment." *See* 15 U.S.C. § 1692a(5) (1997).
[10] Until the maturity or lawful acceleration of an installment debt, the total amount of the debt (or pay-off amount) is not due and owing; the pay-off amount can only be due and owing after acceleration or maturity of the debt. *See Allen Sales and Servicenter, Inc. v. Ryan*, 525 S.W.2d 863, 866 (Tex. 1975).
[11] As used herein, the phrase "current amount due" means the pre-acceleration amount required to bring a loan current, which usually includes one or more past due payments, late fees, at-

torneys fees incurred by the lender, and other fees and costs authorized to be added to the amount owed pursuant to the terms of the loan documents.

[12] As used herein, the phrase "pay-off amount" means the amount required to totally retire an accelerated or matured debt, which includes the entire principal balance, all accrued but unpaid interest, and all fees and expenses authorized to be added pursuant to the terms of the loan documents.

[13] TEX. PROP. CODE ANN. § 51.002(d) (Vernon 1999); *see also Ryan,* 525 S.W.2d at 866.

[14] 15 U.S.C. § 1692a(5).

[15] 15 U.S.C. § 1692g(a)(1).

[16] *Miller v. McCalla*, 214 F.3d 872, 875 (7th Cir. 2000).

[17] *See* 15 U.S.C. § 1692a(5) which includes within the definition of "debt" various obligations of the consumer; *Miller*, 214 F.3d at 876.

[18] 15 U.S.C. § 1692f(1) (unfair or unconscionable conduct to collect any amount unless such amount is expressly authorized by the agreement creating the debt or permitted by law).

[19] 15 U.S.C. § 1692e(2); *see also* TEX. FIN. CODE ANN. § 392.303(8) (Vernon 1998).

[20] A creditor who contracts for, charges, or receives interest that is greater than the amount authorized commits usury; *see* TEX. FIN. CODE ANN. § 305.001 (Vernon 1998).

[21] 15 U.S.C. § 1692g(a)(1).

[22] 15 U.S.C. § 1692g(b).

[23] *Miller v. McCalla*, 214 F.3d 872, 874 (7th Cir. 2000).

[24] There may have been other events of default that were cured, but they are not mentioned in the opinions and would not be directly relevant to the courts' decisions in a post-acceleration dispute.

[25] The February 1 payment was past due on February 2 and remained past due for the balance of February (27 days) plus 14 days in March, for a total of 41 days.

[26] The March 1 payment was past due on March 2 and remained past due for thirteen days until March 14.

[27] *Bailey v. Sec. Nat'l Servicing Corp.,* 154 F.3d. 384 (7th Cir. 1998)

[28] *Id.* at 387.

[29] *Allen Sales and Servicenter, Inc. v. Ryan,* 525 S.W.2d at 863, 866 (Tex. 1975).

[30] The other obligations imposed upon the consumer by the loan documents (payment of taxes, insurance, etc.) must also be fulfilled to avoid default.

[31] 15 U.S.C. § 1692g(b) (1997).

[32] *Id.*; When a debt collector receives a written request for verification of a debt, the collector must cease all collection efforts until the required verification or relevant response has been mailed to the consumer; *see Jang v. A.M. Miller & Assocs.* 122 F.3d 480, 483 (7th Cir. 1997); *see also Smith v. Transworld Sys., Inc.*, 953 F.2d 1025, 1031 (6th Cir. 1992) (because defendant ceased collection activities, defendant was not obligated to send a separate validation of the debt to plaintiff). Thus, the collector has two options upon receipt of a verification request: (1) send the verification information and continue collection activities, or (2) elect not to respond to the request for validation of the debt and cease all collection activities for that debt.

[33] Debt collectors should consider whether to respond to a dispute or verification request during the thirty day debt validation period. If the response is provided after the thirty day validation period, no further validation requests or disputes can be submitted by the consumer as to that debt and the issues will have been limited to those stated by the consumer in the response received during that thirty day period.

[34] *Jang*, 122 F.3d at 483; *Smith*, 953 F.2d at 1032.

[35] 15 U.S.C. § 1692g(b).

[36] *Smith*, 953 F.2d at 1033.

[37] *See id.* (a collector does not violate the Federal Act by failing to respond to a validation request after choosing not to pursue collection activity); *see also Lamb v. M&M Assocs., Inc.* 1998 U.S. Dist. LEXIS 13773, at *31(S.D. Ohio 1998);

[38] *Jang*, 122 F. 3d at 483; *Smith*, 953 F. 2d at 1031; *Lamb,* 1998 U.S. Dist. LEXIS, at *31.

[39] *Bailey v. TRW Receivables Mgmt. Serv., Inc.*, No. Civ-90-192, 1990 U.S. Dist. LEXIS 19638, at *7 (D. Haw. Aug. 16, 1990).

[40] *Id.*

[41] The court held: There is nothing in the statute, which indicates that the debt collector is not required to provide verification where a consumer requests it after paying the debt. Accordingly, the court finds that defendant has violated the FDCPA by not providing verification of the debt after requested to do so, even though the debt had been paid. … Although perhaps not usual, it is certainly conceivable that a consumer might pay the debt and then request verification. In such circumstances, there is no reason that the debt collector should be exempt from the requirements of the FDCPA.

[42] 15 U.S.C. § 1692g(b) (1997).

[43] *Jang v. A.M. Miller & Assocs.*, 122 F.3d 480, 483 (7th Cir. 1997); *see also Smith v. Transworld Sys., Inc.,* 953 F.2d 1025, 1032 (6th Cir. 1992); *Lamb v. M&M Assoc., Inc.*, No. C-3-96-463, 1998 U.S. Dist. LEXIS 13773 (D. Oh. West. Div. 1998).

[44] 15 U.S.C. § 1692g(b).