



ONE-SIDED LITIGATION

Lessons from Civil Docket Data in
California Debt Collection Lawsuits

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July 2023



DEBT COLLECTION LAB

About the Authors

The Debt Collection Lab

The Debt Collection Lab uses arts and different storytelling traditions to interrogate, transform, and spread new dignifying narratives for debt justice. The Debt Collection Lab is an interdisciplinary collaboration of researchers led by Frederick F. Wherry, the Townsend Martin, Class of 1917 Professor of Sociology at Princeton. The Debt Collection Lab conducts research on debt collection in state courts and collects and reports data on the Debt Collection Lawsuit Tracker to monitor monthly updates to the number of debt cases being filed across the United States.

Claire Johnson Raba

Claire Johnson Raba is an Assistant Professor of Law at the University of Illinois Chicago School of Law where she researches access to civil justice and the impact of the civil legal system on low-income borrowers and their communities. At the intersection of big data, emerging legal technologies, consumer protection, and racial and social justice, her work is directed at substantively improving the experiences of self-represented litigants in state court. Professor Raba is a former legal aid attorney and a 2023-24 American Bar Foundation Access to Justice Scholar. She is a co-Principal Investigator with the Debt Collection Lab.

Research Assistance and Special Thanks:

Research assistance: Oliver Kassenbrock, UIC Law
Peer reviewers: Bonnie Rose Hough, Peter Hepburn
Data check: Jeff Reichman, January Advisors
Civil court record data vendor: UniCourt, Inc.

Research funded by The Pew Charitable Trusts Civil Legal System Modernization Project.

The logo for Pew, consisting of the word "Pew" in a large, blue, serif font.

Executive Summary

Findings in this study by the Debt Collection Lab show the impact of debt cases filed in California's most populous counties on consumers and the court. Researchers examined 2.2 million court records over an 11-year span from 2009-2020 to understand how debt collectors use the courts to obtain judgments against borrowers and collect payments on defaulted consumer debt.

Debt cases filed in civil courts are an increasing burden on California consumers and the court system. These claims comprised an average of 25 percent of the civil docket over the 11-year study period, with the percentage of debt claims on the rise since 2016, making up 37 percent of the total civil docket in 2019 across the 16 counties studied.¹ Debt collection case filings dropped by only a third in 2020, despite the closure of courts statewide due to Covid-19.²

The findings show a strikingly low rate of consumer engagement throughout the court process. This one-sided litigation system excludes the voices, perspectives, and legal defenses of people sued to collect these debts.

Debt collectors are represented by lawyers, which means that under California law even very low dollar consumer debt claims are generally not heard in small claims court, but on the regular civil docket.³ This leaves unrepresented consumer defendants attempting to understand and respond to complex processes of civil procedure and decode confusing forms. Depending on the county, 95 to 99 percent of defendants do not have an attorney.⁴

Court record data shine a light on high-volume creditor plaintiffs who file hundreds of thousands of cases each year against unrepresented consumers in California. These claims are brought to court by a handful of California law firms who represent a mix of third-party debt buyers and original creditors. These include traditional credit card issuers like American Express, Discover, and Capital One, but also many store credit cards, such as Synchrony Bank, and TD Bank, which issues the Target Red Card.⁵ The data also show that auto lenders regularly sue to collect the remaining balance on vehicle loans after a car is repossessed.⁶

In each type of debt claim, cases proceed similarly and the outcomes are much the same. Unrepresented consumer defendants rarely file a response with the court, which is required to appear in the case, creating a one-sided litigation process where the creditor obtains a judgment in 57 percent of cases.⁷ A consumer files a responsive pleading with the court and participates in the case in, on average, only 9 percent of cases.⁸ In some counties this is as low as 6 percent.⁹ Overall, out of 2.2 million case filings, a debt collection matter went to trial less than 5,000 times – that is, less than two-tenths of a percent of cases – in the 16 counties studied over the 11-year study period.¹⁰ In the 185,983 cases in which a consumer filed an answer or another form of response called a general denial, the case only went to trial in 2.6 percent of cases.¹¹ Consumers are not being heard in court.

Lack of consumer engagement in debt collection cases in California means that the court system works only for creditor plaintiffs and their attorneys. In highlighting the practices of the repeat players who drive one-sided litigation in the courts, this report identifies the high-volume litigation practices that lead to default judgments. The data show that responding to lawsuits reduces defaults and leads to more case dismissals. These findings should galvanize consumer advocates and courts to reduce complexity in court filings and processes and drive the development of streamlined self-help solutions.

Highlights

- Debt claim filings are increasing in California. Over 16 counties, 255,089 debt cases were filed in California in 2019, the highest number of debt cases filed annually since 2010 during the Great Recession.
- California debt collection cases have increased significantly as a percentage of overall civil filings. In 2019, debt cases comprised 37% of the total civil docket in California over the 16 counties studied.
- Although the two largest debt buyers in California comprise most of the debt cases, original creditor plaintiffs make up an increasingly large percentage of creditors filing in state court in California. The top five creditors are comprised of two debt buyers and three national banks.
- The top 5 creditors filed 533,307 cases over the study period, accounting for almost 25% of all debt claims filed.
- Defendants are more likely to obtain a dismissal in a lawsuit if they file an answer or general denial, indicating that responding to the lawsuits may contribute to a negotiated resolution instead of entry of judgment.
- Between 6 and 14 percent of consumers filed an answer or general denial with the court. The statewide average of consumers who responded to the lawsuit in court was 8.8 percent, with a higher rate of answers filed in urban compared to rural counties.
- Rates of answer are higher in cases brought by original creditors, nationally chartered banks, and other prime lenders than for third party debt collector claims, auto deficiencies, and store credit cards.
- When consumers file an answer, a case has a one-in-six chance of ending by dispositive motion, in which the creditor files a motion to have the case resolved as an issue of law.
- A few law firms file the most debt cases in California. One law firm in California was responsible for more than ten percent of filings. This law firm, with only 12 attorneys on the payroll, filed 34,376 cases in one year alone.
- Debt collection cases continue to impact consumers long after the court case has ended. Creditors seek a writ of execution to collection in about half of judgments, but many of those writs of execution are returned unsatisfied, indicating that consumer defendants do not have the funds to pay.

I. THE LANDSCAPE OF DEBT AND DEBT COLLECTION IN CALIFORNIA

For many consumer defendants, being sued in a debt collection case may be a first experience with the civil legal system. Responding to a lawsuit and defending a case in court is a complicated process that requires adherence to rules of procedure and evidence and the filing of correct forms within prescribed deadlines. Defendants may not even recognize that they have the right to raise legal defenses or that responding to the court case may benefit them.¹² On the other hand, creditors that lend to consumers and companies that buy debts and sue to collect them hire lawyers to navigate the courts as a part of everyday debt collection business practices.¹³

The disconnect between expert users of the court system that file thousands of cases each year and unrepresented litigants leads to very low rates of consumer response and high rates of entries of default judgment. This imbalance between the parties in debt collection lawsuits creates unequal access to processes intended to provide a lawful resolution of a legal dispute.¹⁴

In an analysis of civil court record data, this study helps courts, advocates, legal services innovators, and legislators better understand the role of the courts in facilitating the collection of private debt. The data and findings from this study of California debt cases from 2009-2020 provide a baseline against which to evaluate the impacts of recent legislative changes to protect low-income consumers from post-judgment debt collection and help to understand the relationship between courts and consumers.

A. CONSUMER BORROWERS IN FINANCIAL TROUBLE

Debt collection starts when bills are overdue and a person is unable to make their scheduled payments.¹⁵ When a borrower falls behind on a loan, credit card bill, or payment owed for goods or services, like medical bills or utility payments, a debt collector is allowed under federal and state law to call, as well as send texts and social media messages, to try to persuade the consumer to bring the account current.¹⁶

An increasingly large share of consumers owe on non-mortgage monthly balances, with 45 percent of families nationally carrying credit card debt and 37 percent with vehicle loans.¹⁷ Overall debt not tied to housing costs is increasing as well – non-mortgage debt reached a total of \$4.2 trillion in 2020.¹⁸ After a

short reprieve during the Covid-19 pandemic, credit card balances have continued to rise. In the fourth quarter of 2022, American consumers carried \$986 billion in credit card debt, surpassing pre-pandemic levels.¹⁹

Federal Reserve data show that the percent of consumers who are more than 90 days delinquent on their credit card accounts and auto loans is on the rise, on track to return to rates commensurate with 2017-2019 rates.²⁰ Despite being in one of the longest economic expansions on record, the percentage of California non-mortgage consumer loans that are delinquent is rising, with the share of loans delinquent more than 90 days more than doubling since 2015.²¹

Missed payments on credit card bills lead to an increase in the balance owed by the consumer, as creditors impose late fees and are permitted to dramatically increase the interest rate once a consumer falls 60 days behind on payments.²² This penalty interest rate, which is sometimes as high as 29.99 percent, is applied to the entire balance on the account, significantly adding to the total amount owed.²³ Late bills become seriously delinquent after 90 days when a consumer is unable to bring the account current for a medical bill, a credit card, an auto loan, or other debt for three months in a row.²⁴ At 120 days late on a closed-end loan like a car loan, and 180 days late for revolving credit like a credit card, a credit issuer is required to charge off and close the account.²⁵ A debt that is charged off is “deemed uncollectible” by the creditor issuer and written off, classified as a “bad debt expense” on the creditor’s accounting books.²⁶

For the consumer, however, the debt collection process is still only beginning.

B. DEBT COLLECTORS TURN TO THE COURTS

When Californians do not reach an agreement with the creditor to pay back the balance they owe in full, debt collectors may use the court system to collect. An original creditor or debt buyer places the debt with a law firm which then files a complaint on behalf of the creditor and arranges to have a process server deliver a court summons to the consumer.

In California, the state statute of limitations gives creditors four years to file a civil lawsuit to collect the debt.²⁷ Cases may be brought for breach of contract or under the California cause of action of common counts, in which a creditor may

assert allegations that there was an “account stated” between the parties, that there was an “open book,” or that there was “money had and lent.” These forms of pleading date back to the late 1800’s, when consumers would purchase items on credit from merchants, and the merchant would keep a book of the transactions.²⁸

The four-year statute of limitations runs from the date of breach of the contract or from the last entry on the account, depending on how the claims are pled.²⁹ These debt cases may be brought in the names of the original creditors (the lenders who originated the loan), or by third-party debt buyers, who buy debts in bulk at a deep discount after they are charged off.³⁰ In California, cases are filed by a mix of original creditors, third-party debt buyers, and assignees that are assigned the rights to collect a debt on behalf of original creditors.

When consumers fail to respond to debt cases, the creditor wins automatically through a default judgment. This is the most common outcome for a debt case. Research by The Pew Charitable Trusts and the Aspen Institute finds that more than 70 percent of debt cases in jurisdictions throughout the United States end without the participation of the consumer.³¹

C. CALIFORNIA’S LEGISLATIVE AND REGULATORY PROTECTIONS FOR CONSUMERS

A judgment in favor of the creditor allows for collection of the debt judgment through wage garnishment, bank levies, or placement of a judgment lien on real property of the debtor. Although the California Legislature has taken steps to protect low-income consumers against these involuntary collection processes in recent years, consumer wages and bank accounts remain at risk of garnishment and levy.³² Senate Bill 616, enacted in 2020, automatically exempts the first \$1,851 in a consumer’s bank account from levy.³³ Prior to passage, a consumer had to initiate the exemption process by filing a claim of exemption with the courts. Findings herein show that fewer than four percent of consumers in cases where a writ was executed asserted this right.³⁴ California law permits the garnishment of wages above minimum wage and places the burden on consumers to assert and prove that wages are needed to support themselves and their families.³⁵

In California, consumers have more protection against unscrupulous debt collectors than in many states. Still, findings from this study show that state laws aimed at reducing the volume of debt collection cases only briefly impacted filing

rates, if at all.³⁶ In 2014, for example, California enacted the Fair Debt Buying Practices Act (FDBPA), which requires third-party debt buyers to attach documentary proof of the debt to the complaint filed in court, and to provide proof of ownership of the debt to the application for a default judgment.³⁷

This law may have reduced filing rates temporarily, but has not significantly impacted the annual default judgment rate.³⁸ Cases filed by creditor type by year show a drop in third-party debt buyer cases and an increase in the number of original creditor filings following the implementation of the law, but by 2019, third-party debt buyers were again engaged in high-volume filing.³⁹ These reductions in filing may also have been due to the Consumer Financial Protection Bureau settling in 2015 major enforcement actions against the two largest third-party debt buyers, Encore Capital Group (owner of debt collection companies Midland Funding and Midland Credit Management) and Portfolio Recovery Associates.⁴⁰ The CFPB entered into consent orders in 2015 against these companies, which likely also had a temporary impact on third-party debt buyer filing rates.⁴¹

The FDBPA also extends the time for a consumer defendant to file a motion set aside a default judgment entered in favor of a debt buyer from two years to six, but the data in this study shows that few consumers have asserted this right, as rates of filing of motions to set aside default judgment have decreased since the passage of the 2013 law.⁴²

California established a state-level consumer protection agency with the passage of the California Consumer Financial Protection Law in 2020.⁴³ The new Department of Financial Protection and Innovation (DFPI) has regulatory and enforcement authority over debt collectors operating in California. While the DFPI requires debt collectors to be licensed, many of these lenders, including Lobel Financial Corporation and leading third-party debt buyers Portfolio Recovery Associates and Midland Funding are operating under pending licenses.⁴⁴

II. METHODOLOGY: DOCKET-LEVEL ANALYSIS DATA COLLECTION AND ANALYSIS

A. CALIFORNIA AS A CASE STUDY

California was selected as a case study because of its geographic and demographic diversity, its large population size, and the high number of debt

collection cases filed in state courts and because availability of case record data over the 11-year study period allows for longitudinal analyses within California. We encourage replication of the research study design in other states and comparison against California.

In California's disaggregated court system, civil case data are stored in case management systems maintained by each county. The data set studied is limited to the trial court stage of cases and excludes appellate matters.

Civil court record data are publicly available through each county's website portal, maintained by third-party software companies. The public may access individual court records through these portals but not download bulk data. Researchers seeking civil court record data in bulk must automate retrieval calls to the website portals.⁴⁵ This is called "scraping" the public data. In California, public record scraping results in acquisition of two kinds of data:

- 1) Caption-level data include information about the case name, the court in which the case is filed, the parties, and the attorneys, and other information that designates information about the case itself; and
- 2) Docket-level data comprised of entries recording information about each document filed or event occurring in a case, such as a hearing or a trial.

Researchers engaged in exploratory analysis of the data set, identifying patterns and events across time using year of filing, county, creditor plaintiff, and plaintiff attorney as key variables. Docket event measurement focused on consumer defendant engagement with the court system, case disposition, and post-judgment collection actions.

B. SCRAPING RECORDS IDENTIFIED AS DEBT COLLECTION LAWSUITS

California court record data are compiled in a data set of 2,277,507 court records spanning 11 years (January 1, 2009 through December 31, 2020), scraped from publicly available website portals in 16 counties. The counties in the study include 14 of the 15 most populous counties in California, all of which have full docket data available online.⁴⁶ Eighty percent of California's population resides in the 16 counties studied over the eleven-year study period, and the counties studied include a sample of both predominantly urban and predominantly rural counties.⁴⁷ Counties that do not have publicly accessible website portals or do not have much usable docket-and caption-level data available for download were excluded from the study.

FIG. 1 STUDY COUNTIES: TOTAL DEBT CASES FILED 2009-2020 AND 2020 POPULATION

Total Debt Collection Cases Filed and Population by County

| | Debt Cases Filed 2009-2020 | Population (U.S. Census 2020) |
|----------------|----------------------------|-------------------------------|
| Los Angeles | 812,468 | 10,014,009 |
| San Diego | 241,915 | 3,298,634 |
| Orange | 227,881 | 3,186,989 |
| Riverside | 226,328 | 2,418,185 |
| San Bernardino | 203,339 | 2,181,654 |
| Santa Clara | 83,086 | 1,936,259 |
| Alameda | 79,403 | 1,682,353 |
| Contra Costa | 79,165 | 1,165,927 |
| Fresno | 76,713 | 1,008,654 |
| Kern | 64,843 | 909,235 |
| San Francisco | 63,118 | 873,965 |
| Ventura | 59,210 | 843,849 |
| San Joaquin | 33,397 | 779,233 |
| San Mateo | 11,967 | 764,442 |
| Merced | 8,471 | 281,202 |
| Butte | 6,203 | 211,632 |

Plaintiffs designate court jurisdiction and case type through selection of checkboxes on a mandatory civil case cover sheet. Cases for damages under \$25,000 are filed in limited civil while cases over \$25,000 are designated unlimited civil matters.⁴⁸ Court records were collected for all cases designated as limited or unlimited civil debt collection matters on the civil case cover sheet. Records were also obtained for breach of contract cases in matters where the plaintiff is a business, the defendant is an individual, and the plaintiff files more than 100 cases per year for both limited and unlimited cases. Of the breach of contract matters, a representative sample was viewed to ensure that these are consumer debt collection cases, and it was confirmed that this methodology captured creditor plaintiffs as well as student loan debt collectors suing in unlimited civil court, where claims for over \$25,000 in damages are filed.⁴⁹

C. NORMALIZATION OF FIELDS AND VALUES

Court record data were purchased from a third-party data vendor, UniCourt, Inc. UniCourt scrapes both state court record caption-level and docket-level data. Variables from caption-level data include case caption and civil case cover sheet variables, such as case type, filing jurisdiction, party, case, and attorney

names; and party, law firm, and attorney normalization tables that reduce misspellings and other variations in party and attorney data to keyed variables.

Docket-level data analysis was performed by UniCourt to identify and normalize documents filed in a case. Data collected by UniCourt include all fields populated by court clerks, as well as variables extracted from text-based entries, including post-judgment collection activity (e.g., writs of execution, claims of exemptions, returns of writs of execution, satisfactions of judgment). UniCourt's normalization applied the same names to each of these docket events, allowing comparison across counties. Prior to export by UniCourt, each case docket was updated to ensure current docket events as of December 31, 2020. Case data were exported by UniCourt to researchers in individual files with data written in the JavaScript Object Notation (JSON) data-interchange format.⁵⁰

Researchers used UniCourt's normalization of values as an initial pass on analysis and then engaged in additional cleaning and normalization to create variables that could be analyzed across the data set. Within the normalized party and law firm caption case data, the top thirty entities were identified by sorting normalized names for plaintiffs by volume of cases filed over the entire study period. Top creditor plaintiffs were categorized as original creditor or third-party debt buyer and creditor type by sorting entity names and viewing company websites, cross checked with the California Secretary of State website and the California DFPI debt collector registration database.⁵¹

Caption-level data are relatively consistent across counties, requiring minimal normalization of field names. Docket-level data vary greatly depending on the fields that counties use in case management systems and the processes in place for court clerks to enter information. Many systems also contain fields in which court clerks record case events in text strings that require coding into normed values to represent stages of the lawsuit. Analysis requires natural language processing of these values.

Of the 2,277,507 records in the data set for which case caption-level data is available, 2,117,771 records have docket entries, starting with the complaint filed in the lawsuit and including subsequent case events. The various record-keeping practices of the 16 counties in the study, and the migration of some counties from paper to electronic records during the study period, means that some case filings do not have docket information. Where there is no complaint

in the docket-level data, case records were excluded from analysis so as not to skew the results. Within the docket-level analysis, events that indicated case outcome within docket entries were identified, such as type of judgment and dismissal of the entire case, and then grouped generally to obtain a count of case disposition.⁵² Data analysis, cleaning, and normalizing of data was conducted using R and Excel and data visualizations were created with Tableau and DataWrapper.⁵³

D. COMPARING COURT RECORD DATA WITH OTHER DATA SOURCES

Total case filings for the counties in the study period were compared to total civil cases filed in California in Figures 4 and 5 using totals for debt collection lawsuits by county in the scraped data set at the case caption level. This data was compared with values reported by each county to the California Judicial Branch Statistical Information System, which is published in annual reports by the Judicial Council of California, the agency for the state court system.⁵⁴ This analysis presents debt collection cases alongside overall civil filings during the study period and shows the prevalence of these claims on the court's civil docket.

III. FINDINGS FROM CALIFORNIA - LESSONS IN DOCKET-LEVEL DATA

A. CASES FILED OVER TIME BY COUNTY

The highest filing rates during the study occurred during and after the Great Recession.⁵⁵ Debt collection case filings peaked in 2009-2010 following the financial crisis of 2007-2008, when consumer credit became less widely available and many borrowers defaulted on non-mortgage debt.⁵⁶ This study captures the high spike in debt collection claims filed at a time when 12.4 percent Californians were out of work and consumers were facing the impacts and after-effects of the foreclosure crisis.⁵⁷

After a significant decline in debt collection cases in 2012 as the Great Recession came to an end, consumer debt filings comprised a smaller percent of total civil cases for 5 years. Filings dramatically increased in 2018-2019 immediately prior to the COVID-19 pandemic. 2020 was an unusual year for court activity, with court filing rates down across all counties and all state courts; however, debt cases were only down about 30 percent during 2020, showing that many debt collectors and their attorneys continued to file cases despite pandemic impacts on court operations and access.⁵⁸

FIG. 2 CASE FILING DATA FOR 16 COUNTIES OVER 11 YEARS WITH TOTALS OF FILING BY YEAR AND COUNTY.

Total Debt Collection Case Filings by County and Year

| | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | Grand To.. F |
|---------------|---------|---------|---------|--------|---------|---------|--------|---------|---------|---------|---------|---------|--------------|
| Los Angeles.. | 107,373 | 107,851 | 89,809 | 31,453 | 69,111 | 49,653 | 33,261 | 37,968 | 47,163 | 81,449 | 93,147 | 64,230 | 812,468 |
| Orange Cou.. | 33,538 | 36,692 | 28,206 | 7,267 | 18,471 | 14,329 | 9,860 | 13,094 | 15,323 | 21,585 | 25,093 | 18,457 | 241,915 |
| San Diego C.. | 31,075 | 31,808 | 23,673 | 5,697 | 19,560 | 14,312 | 10,315 | 12,622 | 15,289 | 21,661 | 25,082 | 16,787 | 227,881 |
| Riverside C.. | 29,979 | 32,507 | 24,287 | 11,863 | 17,576 | 13,103 | 8,814 | 11,588 | 15,222 | 22,379 | 26,537 | 12,473 | 226,328 |
| San Bernar.. | 29,388 | 28,566 | 21,267 | 6,490 | 15,642 | 12,155 | 8,149 | 10,802 | 13,189 | 20,388 | 24,519 | 12,784 | 203,339 |
| Alameda Co.. | 13,495 | 13,801 | 10,248 | 6,016 | 6,072 | 3,776 | 3,791 | 4,061 | 3,753 | 5,959 | 6,700 | 5,414 | 83,086 |
| Contra Cost.. | 11,461 | 11,701 | 8,873 | 5,737 | 6,428 | 4,445 | 3,204 | 4,068 | 4,638 | 6,538 | 7,840 | 4,470 | 79,403 |
| Santa Clara.. | 7,785 | 9,657 | 6,806 | 4,288 | 7,967 | 5,807 | 3,721 | 4,537 | 5,230 | 7,943 | 9,188 | 6,236 | 79,165 |
| Fresno Cou.. | 9,602 | 8,737 | 7,158 | 4,673 | 5,839 | 4,549 | 3,801 | 4,917 | 5,281 | 7,745 | 8,735 | 5,676 | 76,713 |
| Ventura Co.. | 9,004 | 9,120 | 6,749 | 3,712 | 4,804 | 3,763 | 2,817 | 3,537 | 4,210 | 5,975 | 6,801 | 4,351 | 64,843 |
| Kern Count.. | 4,897 | 7,090 | 5,845 | 3,309 | 4,542 | 4,016 | 2,945 | 4,307 | 5,171 | 8,033 | 8,378 | 4,585 | 63,118 |
| San Joaqui.. | 8,034 | 7,245 | 5,534 | 3,405 | 4,518 | 3,319 | 2,374 | 3,211 | 3,768 | 5,623 | 6,932 | 5,247 | 59,210 |
| San Mateo .. | 5,999 | 6,572 | 4,767 | 2,690 | 3,433 | 2,376 | 1,506 | 1,371 | 995 | 1,174 | 1,386 | 1,128 | 33,397 |
| San Francis.. | 1,290 | 1,479 | 995 | 461 | 657 | 548 | 534 | 811 | 1,143 | 1,428 | 1,631 | 990 | 11,967 |
| Butte Coun.. | 214 | 178 | 188 | 237 | 247 | 322 | 528 | 1,156 | 1,383 | 1,650 | 1,540 | 828 | 8,471 |
| Merced Cou.. | 375 | 398 | 189 | 94 | 49 | 98 | 324 | 467 | 520 | 777 | 1,580 | 1,332 | 6,203 |
| Grand Total | 303,509 | 313,402 | 244,594 | 97,392 | 184,916 | 136,571 | 95,944 | 118,517 | 142,278 | 220,307 | 255,089 | 164,988 | 2,277,507 |

Figures 2 and 3 show the predominance of Los Angeles County cases within the sample. Overall, 812,468 cases were filed during the study period in Los Angeles County, comprising 36 percent of the total cases in the data. Behind Los Angeles County are high filing-rate counties Orange, San Diego, Riverside, and San Bernardino Counties, each with over 200,000 total cases filed.

Figures 3 and 4 show the rise and fall of debt claims over the 11-year study period. Reductions in filing rates coincide with, and may be attributable to, legislative changes at the state level and enforcement actions by federal consumer protection agencies. Important events during 2014-2015 include the enactment of the California Fair Debt Buying Practices Act in January 2014 and the Consumer Financial Protection Bureau Encore Capital Group (Midland) and Portfolio Recovery Associates September 2015 consent orders, discussed herein. The reduction in debt collection case filings from 2009 to 2015 also coincides with a drop in overall civil filings, as shown in Figure 4.

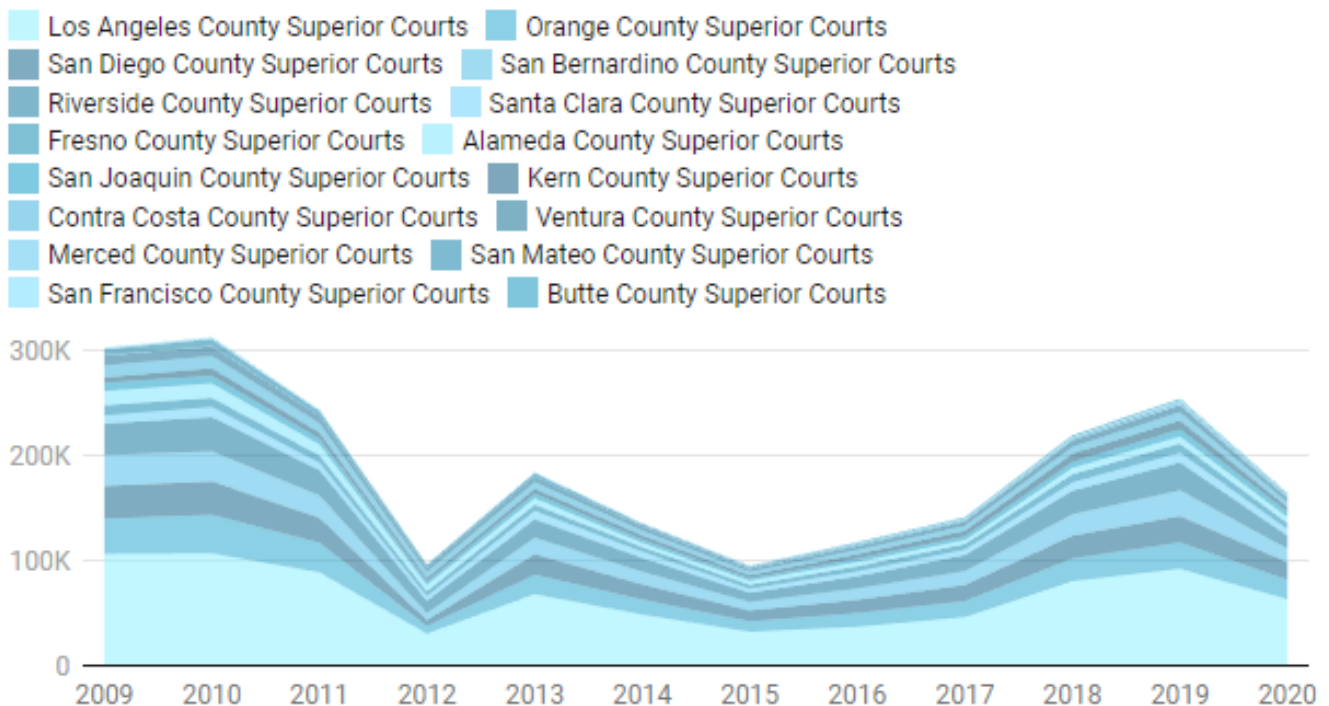
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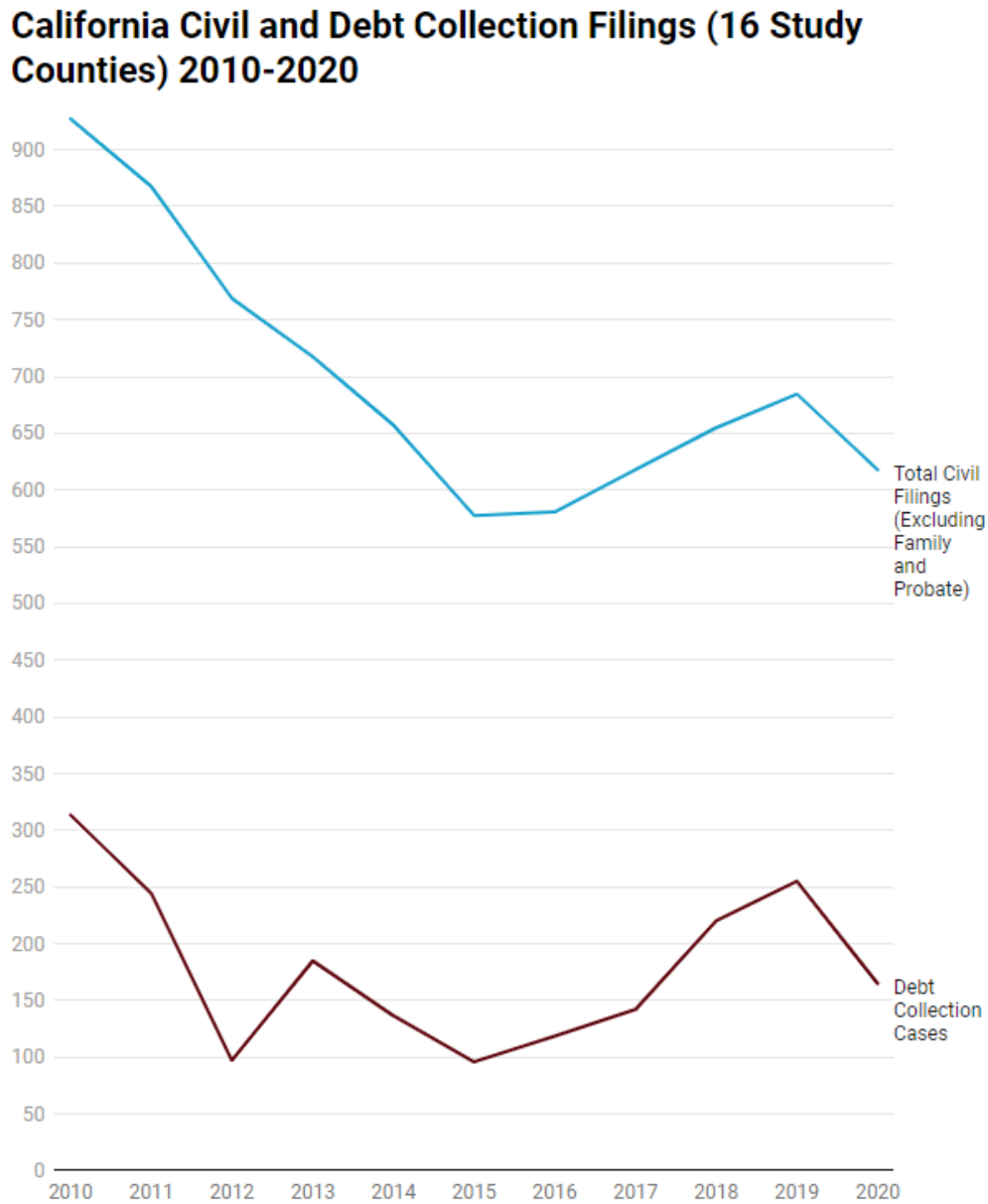
FIG. 3 CASE FILING DATA FOR 16 COUNTIES SHOWING PATTERNS OF FILING RATES BY COUNTY BY YEAR

California Debt Collection Cases Filed 2009-2020



Debt collection lawsuits make up an increasing percentage of civil dockets. In reporting that analyzes data from the National Center for State Courts, The Pew Charitable Trusts found that debt collection cases nationally increased from 12 percent of civil dockets to 24 percent over a ten-year period from 1993 to 2013.⁵⁹ Figures 4 and 5 show that for the 16 California counties in this study, from 2010 to 2019, the percentage of debt collection cases on civil dockets rose and fell, as compared to total civil filings, with a decrease in the burden on the docket in the mid-2010s. Data from 2009 is excluded because California's statewide data on total civil filings was calculated differently before 2010.⁶⁰ By 2019, California debt cases surged to a high of 37 percent of all civil case filings, and even during the pandemic, continued to make up more than a quarter of all civil cases filed.⁶¹

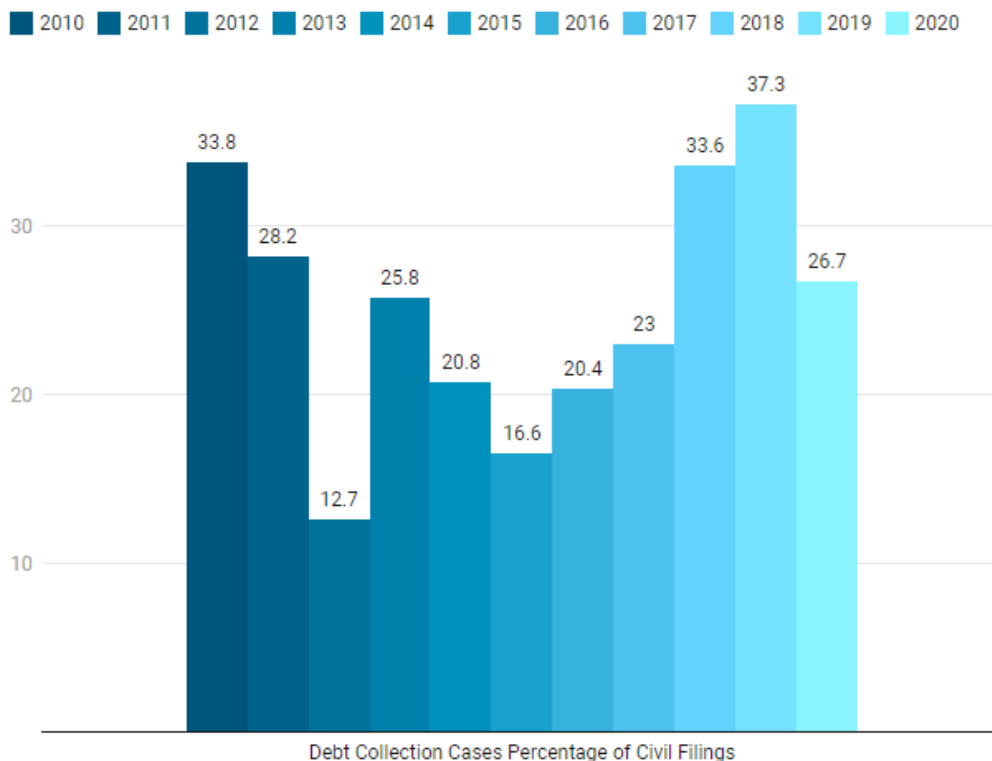
FIG. 4 DEBT CASE FILINGS AND TOTAL CIVIL FILINGS OVER TIME FOR THE 16 COUNTIES STUDIED - ANNUAL FILINGS BY HUNDREDS OF THOUSANDS.



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FIG. 5 CALIFORNIA DEBT COLLECTION CASES AS A SHARE OF TOTAL CIVIL FILINGS BY YEAR

Percent of Total Civil Filings that Are Debt Collection Cases (16 Study Counties) 2010-2020



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B. FILINGS BY CREDITOR TYPE

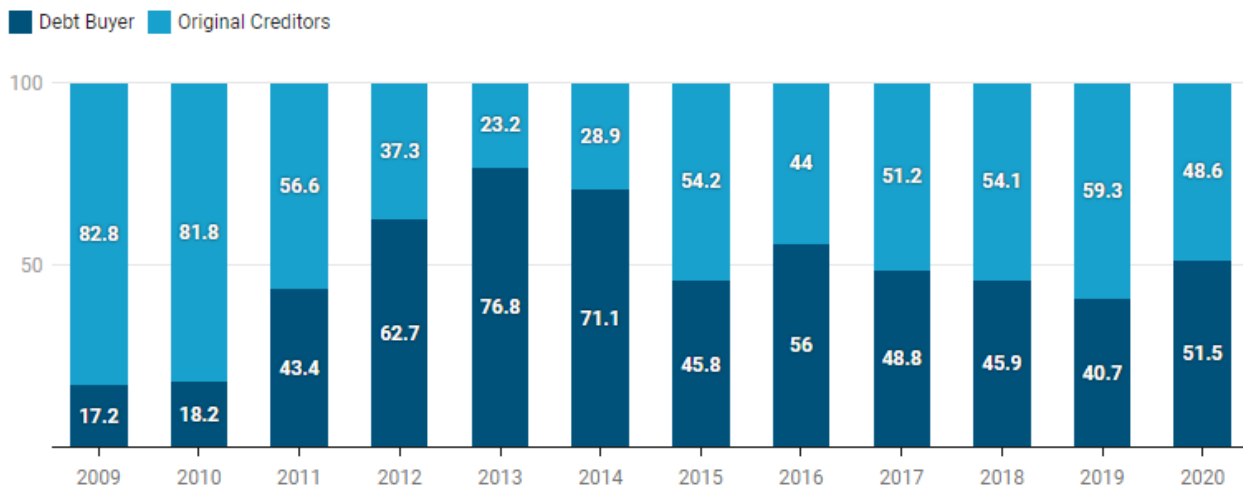
California debt collection cases are comprised of a mix of original creditors and third-party debt collectors, and the top twenty filers include original creditors such as automobile lenders collecting deficiency balances, traditional bank credit card lenders, and store credit cards. Statewide, the number of store credit cards, primarily Synchrony Bank and TD Bank, which issues the Target Red Card, increased significantly over the second five years of the study.

As shown in Figure 6, the distribution of filing by original creditors and third-party debt collectors among the top twenty filers changes over time. During the Great

Recession, original creditors led filers, to be taken over the third-party debt collectors in the middle of the decade, only to switch back again in 2018 and 2019, when original creditors were filing a greater percentage of cases again.

FIG. 6 DEBT COLLECTION CASES - TOP 30 FILERS ANNUALLY BY PLAINTIFF TYPE

Top 30 Filers: Percentage of Debt Collection Cases Filed by Plaintiff Type



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C. TOP FILING CREDITOR BURDEN

Of the original creditors in debt cases in the sample, most are national banks, along with some non-bank lenders such as auto finance companies. In the top thirty filers, the debt collectors that filed the most cases are Portfolio Recovery Associates, LLC and two wholly owned subsidiaries of Encore Capital Group (Midland Funding LLC and Midland Credit Management). These entities filed about 250,000 cases in California over the study period.

Close behind in total numbers of filings are Capital One Bank, Discover Bank, and Citibank. Overall, the percentage of claims filed by the top 5 high-volume filers, Portfolio, Midland, Capital One, Discover, and Citibank, is as high as all other filers in the data set combined.

As shown in Figure 7, large national bank credit cards, like Chase, Citibank, and Capital One filed record numbers of cases in the years of the Great Recession, with Capital One suing more than 25,000 Californians in 2009 and Chase suing over 28,000 in 2010, likely seeking to collect on credit cards consumers became

unable to pay when unemployment spiked. Chase Bank voluntarily halted collections litigation in 2011, and suspended debt sales in 2013, prior to entering into a five-year consent decree with the Consumer Financial Protection Bureau in 2015 agreeing to halt state debt collection actions⁶² Data from other states shows that as this consent decree expired in 2022, Chase has resumed filing cases in its own name.⁶³ Portfolio, Chase, and the Midland entities faced federal agency enforcement actions directed at the unfair and deceptive acts and practices found the in high-volume filing of court cases in state courts leading to entry of default judgments against consumers.⁶⁴

The prevalence of original creditors filing a high volume of cases to collect on their own debts counters early research that focused on third-party debt buyer cases in state court.⁶⁵ Original creditors often have documentation of the debt, posing a challenge to the narrative that consumers could beat these cases through evidentiary challenges, or that legislative and court reform should target issues unique to third-party debt buyer cases.⁶⁶

FIG. 7 TOP 30 CREDITORS - CASES FILED BY YEAR

Filing Totals 2009-2020 Top 30 Filers by Volume

| | Grand .. F | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 |
|----------------------------|------------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|
| PORTFOLIO RECOVERY AS.. | 226,087 | 3,375 | 8,755 | 14,175 | 8,662 | 39,292 | 36,095 | 12,435 | 19,463 | 12,320 | 25,050 | 26,367 | 20,098 |
| MIDLAND CREDIT MANAG.. | 204,995 | 7,979 | 10,526 | 19,159 | 10,720 | 27,155 | 13,285 | 6,535 | 16,189 | 15,472 | 25,640 | 30,749 | 21,586 |
| CAPITAL ONE BANK USA N.. | 196,388 | 41,704 | 29,870 | 23,415 | 7,676 | 8,068 | 6,917 | 5,564 | 7,676 | 12,043 | 26,886 | 20,800 | 5,769 |
| DISCOVER BANK | 141,131 | 14,988 | 7,319 | 9,763 | 3,405 | 5,464 | 8,785 | 12,472 | 11,670 | 12,432 | 16,838 | 24,370 | 13,625 |
| CITIBANK (SOUTH DAKOT.. | 112,922 | 24,660 | 38,954 | 15,281 | 2,695 | 2,528 | 961 | 1,151 | 1,097 | 2,076 | 2,966 | 9,645 | 10,908 |
| AMERICAN EXPRESS BAN.. | 94,325 | 14,441 | 15,241 | 11,258 | 3,268 | 5,707 | 5,240 | 5,631 | 4,350 | 5,021 | 6,286 | 10,546 | 7,336 |
| CACH LLC | 90,935 | 5,436 | 6,204 | 20,639 | 10,030 | 21,249 | 15,524 | 3,207 | 3,778 | 2,653 | 2,215 | | |
| BANK OF AMERICA N.A. & .. | 85,612 | 10,241 | 12,261 | 9,052 | 1,570 | 2,096 | 1,833 | 3,593 | 3,148 | 6,552 | 11,460 | 19,446 | 4,360 |
| CAVALRY PORTFOLIO SER.. | 81,340 | 2,896 | 3,117 | 4,155 | 3,458 | 4,928 | 4,764 | 6,212 | 4,976 | 9,039 | 14,844 | 11,691 | 11,260 |
| CHASE BANK USA, N.A. & .. | 69,871 | 19,396 | 37,707 | 7,543 | | | | | | | | | 5,225 |
| LVNV FUNDING LLC | 43,367 | 4,987 | 2,223 | 1,343 | 1,255 | 1,470 | 1,119 | 1,415 | 1,324 | 8,275 | 6,280 | 8,023 | 5,653 |
| TD BANK USA N.A. | 41,410 | | | | | 1,254 | 847 | 916 | 1,509 | 4,943 | 12,716 | 15,908 | 3,317 |
| WELLS FARGO BANK, N.A. | 35,933 | 2,629 | 3,919 | 2,028 | 821 | 1,477 | 872 | 1,851 | 2,763 | 4,912 | 5,370 | 5,621 | 3,670 |
| FORD MOTOR CREDIT CO.. | 25,417 | 6,057 | 4,770 | 3,204 | | 1,287 | 1,251 | 1,251 | 1,315 | 1,369 | 1,602 | 2,236 | 1,075 |
| TARGET NATIONAL BANK | 25,502 | 11,332 | 8,017 | 4,975 | 1,178 | | | | | | | | |
| SYNCHRONY BANK | 24,705 | | | | | | | 2,256 | 2,414 | 3,116 | 6,114 | 8,000 | 2,805 |
| UNIFUND CCR LLC | 21,705 | | | | 1,353 | 4,027 | 1,497 | | | | 2,374 | 6,389 | 6,065 |
| BARCLAYS BANK DELAWA.. | 19,214 | | | | | | | 1,050 | 2,908 | 3,855 | 4,438 | 5,649 | 1,314 |
| ONEMAIN FINANCIAL GR.. | 19,368 | 1,798 | 1,342 | 981 | | 969 | 863 | 960 | 1,753 | 1,431 | 2,642 | 3,756 | 2,873 |
| ASSET ACCEPTANCE LLC | 18,620 | 2,654 | 2,721 | 4,905 | 4,746 | 3,594 | | | | | | | |
| LOBEL FINANCIAL CORP | 18,123 | 1,329 | 1,056 | 1,055 | | 1,655 | 2,069 | 2,208 | 2,431 | 2,147 | 1,884 | 1,399 | 890 |
| EQUABLE ASCENT FINANC.. | 14,439 | | 4,822 | 6,417 | 1,649 | 1,551 | | | | | | | |
| ARROW FINANCIAL SERVI.. | 12,833 | 8,224 | 4,609 | | | | | | | | | | |
| HSBC BANK NEVADA NA | 12,530 | 2,857 | 9,673 | | | | | | | | | | |
| GCFS INC. A CALIFORNIA C.. | 6,864 | 2,760 | 2,214 | 1,890 | | | | | | | | | |
| JEFFERSON CAPITAL SYST.. | 6,737 | | | | | | | | 1,195 | 1,627 | 1,964 | | 1,951 |
| CROWN ASSET MANAGE.. | 6,697 | | | | | | | | 1,048 | 1,767 | 1,837 | | 2,045 |
| PERSOLVE LLC | 4,569 | | | 2,102 | 1,063 | 1,404 | | | | | | | |
| VELOCITY INVESTMENTS .. | 6,589 | | | | | | | | | 812 | 1,412 | 2,718 | 1,647 |
| CMRE FINANCIAL SERVIC.. | 1,661 | | | 834 | | | | | | | 827 | | |

Original creditor national banks, filing on their own behalf, show a high rate of filing during and immediately after the Great Recession, with a noticeable drop in filings in the middle of the decade, followed by a significant increase in cases filed in 2018 and 2019. Original creditors overall filed fewer cases in 2020, during the COVID-19 pandemic, while third-party debt collector filings were down by about one-third. Portfolio Recovery Associates and Encore Capital's Midland subsidiaries' high volume of filing over all study years shows that these two entities dominate the third-party debt buying industry in California, while smaller debt buyers enter and leave the market over the eleven years observed.

FIG. 8 ANNUAL FILINGS BY TYPE OF CREDITOR

Top 30 Filers: Percentage of Cases by Creditor Type

| | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 |
|--------------------|------|------|------|------|------|------|------|------|------|------|------|------|
| Debt Buyer | 20.2 | 29.0 | 46.1 | 67.6 | 77.4 | 70.9 | 43.4 | 52.2 | 46.1 | 45.4 | 40.8 | 52.7 |
| Bank Credit Card | 69.0 | 72.0 | 47.7 | 30.6 | 18.8 | 24.1 | 44.1 | 34.0 | 38.1 | 38.1 | 42.0 | 38.1 |
| Auto Deficiency | 3.9 | 2.7 | 2.6 | 0.0 | 2.2 | 3.3 | 5.0 | 4.2 | 3.2 | 1.9 | 1.7 | 1.5 |
| Store Credit Card | 6.0 | 3.7 | 3.0 | 1.9 | 0.9 | 0.8 | 6.1 | 7.6 | 10.7 | 12.8 | 13.7 | 5.6 |
| Installment Lender | 1.0 | 0.6 | 0.6 | 0.0 | 0.7 | 0.9 | 1.4 | 2.0 | 1.3 | 1.5 | 1.8 | 2.2 |

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Figure 8 shows the distribution of creditor type, categorizing the top thirty filers as bank credit cards, store credits cards, automobile deficiency claims, and third-party debt buyers, and examines these types of creditors' filings by year. The increase in store credit cards collecting in their own names started in 2015, leading to store cards playing a role in dramatic rise in debt claims filed against California consumers prior to the slowdown in filings during the COVID-19 pandemic. Of the top filers, store card original creditors Synchrony Bank and Target, which later contracted with TD Bank to issue its Red Card, show a large increase in filing activity in 2018-2019. Mainstream bank credit issuers also resumed filing in greater numbers after the drop-off in filings from 2012-2017.

The patterns shown in Figure 7 heatmap for top creditor filings provide insights into the behavior of specific creditors. The significant drop in filings from

Portfolio Recovery Associates and Midland Funding in 2015 may be related to consent orders entered against these two lead creditors by the Consumer Financial Protection Bureau in 2015 for unfair and deceptive practices, such as robo-signing state court complaints.⁶⁷ This slowdown was only temporary, however, as both Portfolio and Midland steadily ramped up filing rates from 2016-2019. Both entities have faced recent enforcement actions for similar wrongful and abusive acts against consumers, including continuous violations of the 2015 consent orders.⁶⁸ Although 2020 was an odd filing year due to the pandemic, Portfolio and Midland filing rates were only down by about 30%, with Portfolio's filings dropping from 18,021 to 11,412.

D. CONSUMER ENGAGEMENT AS MEASURED BY RATE OF ANSWER OR GENERAL DENIAL

Consumers – defendants in these debt collection filings – rarely respond to the suits that have been brought against them. The overall rate of response is less than 9 percent over the entire data set, although this varies significantly by county and creditor type. As shown in Figure 9, rates of response are as high as 14 percent in San Francisco, while Merced, Ventura, and San Bernardino Counties have response rates of around 6 percent. Factors that may influence rates of filing include disparities in English-language proficiency, education and levels, and the presence of legal aid programs that assist unrepresented defendants with completing court paperwork. The court records here do not provide sufficient data points to determine causal relationships, but the differences in filing rates present a starting point for additional research into these disparities.

The Judicial Council of California promulgates forms for court users, although a litigant may choose to file an answer with the court on pleading paper.⁶⁹ In response to a debt collection lawsuit, a defendant may respond to the case by filing an answer or a general denial.⁷⁰ The general denial form is simpler and has a single checkbox to deny all of the allegations in the complaint, although the instructions may be confusing to an unrepresented user as to when the general denial is applicable.⁷¹ The docket-level data show that an answer is filed much more frequently.

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FIG. 9 ANSWER OR GENERAL DENIAL AS PERCENT OF COMPLAINTS BY COUNTY

Percent of Cases with Answer or General Denial Filed

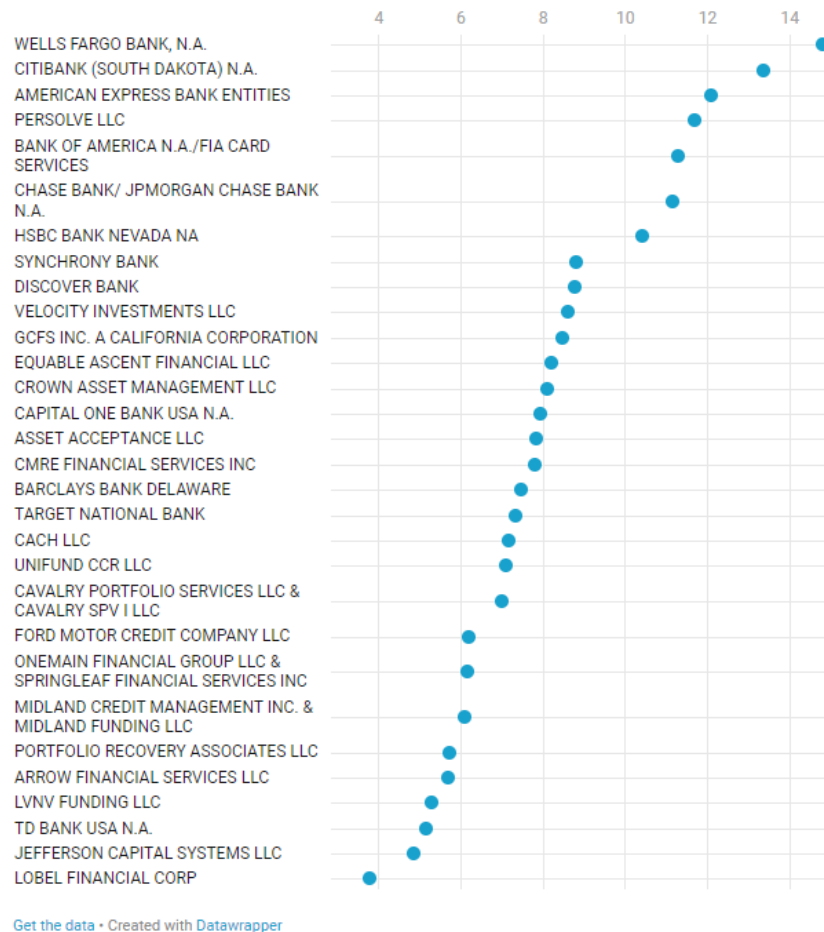
| | Complaints Filed | % Answer | % General Denial |
|---------------------------------------|------------------|----------|------------------|
| Los Angeles County Superior Courts | 664,971 | 6.37 | 0.77 |
| Orange County Superior Courts | 241,108 | 12.2 | 0.09 |
| San Diego County Superior Courts | 226,936 | 7.8 | 1.17 |
| Riverside County Superior Courts | 226,249 | 11.26 | 0.22 |
| San Bernardino County Superior Courts | 201,688 | 6.42 | 0.58 |
| Alameda County Superior Courts | 82,913 | 9.5 | 0.98 |
| Contra Costa County Superior Courts | 77,411 | 8.36 | 0.76 |
| Fresno County Superior Courts | 76,438 | 6.94 | 0.45 |
| Santa Clara County Superior Courts | 73,631 | 8.35 | 0.8 |
| Ventura County Superior Courts | 64,554 | 6.7 | 0.92 |
| Kern County Superior Courts | 62,772 | 5.57 | 0.36 |
| San Joaquin County Superior Courts | 59,171 | 7.6 | 0.76 |
| San Mateo County Superior Courts | 33,389 | 10.57 | 1.13 |
| San Francisco County Superior Courts | 11,899 | 12.24 | 1.99 |
| Butte County Superior Courts | 8,465 | 7.99 | 0.04 |
| Merced County Superior Courts | 6,176 | 5.89 | 0.19 |

Third-party debt collector cases have a lower percentage of consumer defendants who respond, while original creditors such as Wells Fargo, Citibank, American Express, Bank of America, Chase, and HSBC have answer rates of 10 to 15 percent. Installment loan lender OneMain Financial/Springleaf is a company that originates installment loans targeted at subprime borrowers pursuant to California law that permits creditors to offer financial products of at least \$2500 and below \$10,000 at 36 percent interest.⁷² Only one in 16 consumers sued by OneMain Financial responds to these suits.

The data show two automobile deficiency original creditors in the top thirty filers, Lobel Financial Corporation and Ford Motor Credit Company. The rate of answers filed in Lobel cases is only 3.77 percent and in Ford cases 6.18 percent, despite California's strong protections against errors in automobile repossession and deficiency actions.⁷³ Prior to contracting with TD Bank for issuance of the Target RedCard, Target suing in its own name had an answer rate of 7.32 percent, but TD Bank has only a 5.13 percent answer rate.

FIG. 10 TOP 30 PLAINTIFFS - RATE OF ANSWER BY CREDITOR -

Top 30 Plaintiffs - Percent of Cases with Answer or General Denial Filed



The percent of answers or general denials filed in original creditor cases and prime credit card lender cases exceeds ten percent. In contrast, consumers responded in only about 6 percent of Portfolio and Midland cases. This remarkable discrepancy indicates an opportunity for further research, particularly given California's strong protections for consumer defendants in third-party debt collection cases. The rate of answer indicates a dismally low number of California consumers who may be aware of or able to assert their rights under the California Fair Debt Buying Practices Act.

As an outlier in the data, there is a high rate of answers filed in cases initiated by Department Stores National Bank, an original creditor that did not make the top 30 creditors by volume.⁷⁴ This lender is a subsidiary of Citibank and is the issuer

for the Macy's Store Card. Compared with the rates of answers in TD Bank, Target Bank, and Synchrony cases, which range from 4.32 to 7.62 percent, Macy's Store Card holders file answers in 17.23 percent of cases. The court record data alone does not make clear the relationship between the type of creditor and consumer defendant engagement, although borrowers of prime credit cards may be more motivated to file an answer because they have the means to enter into a settlement agreement, or it may be that these defendants have better access to self-help materials.

E. CASE OUTCOMES

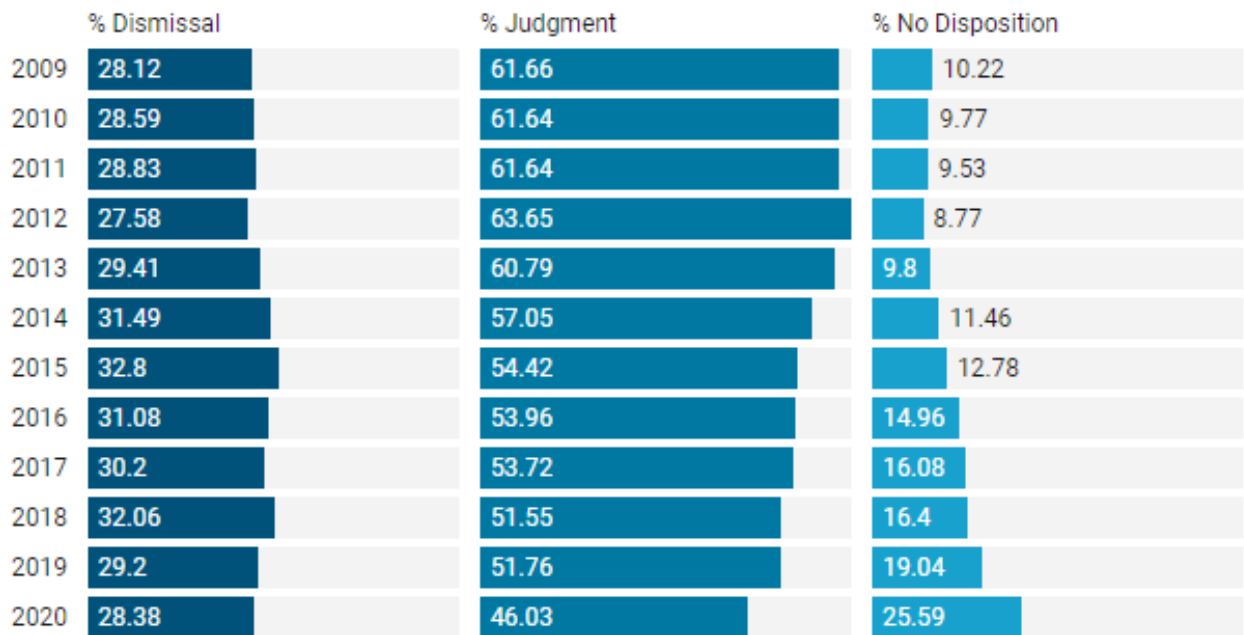
i. CASE DISPOSITIONS

Figure 12 shows the rate at which cases were resolved by judgment or dismissal, by year of filing. Cases that show no disposition had a complaint filed in the docket but did not have either a dismissal or entry of judgment listed in the docket. Cases still open in the court system in active litigation will be coded as "no disposition." Older cases with no disposition may also reflect incomplete docket entries due to migration to electronic case records or to a new case management system.

In analyzing the California data, over the entire study period the rate of judgments entered in California debt cases varies by year from close to 64 percent in 2012 to 46 percent in 2020, when many of the cases were recently filed and were still pending at the end of the study period. Dismissals were entered in around 30 percent of cases consistently over the study years. In the remaining 14 percent of cases, the cases do not have final dispositions and are still pending in the court, either because they are recent filings and the case has not yet resolved through judgment or dismissal without the involvement of the consumer defendant, or because an answer was filed and the case is being actively litigated.

FIG. 11 CASE DISPOSITIONS BY YEAR AS A PERCENT OF TOTAL COMPLAINTS FILED.

Case Dispositions - Overall



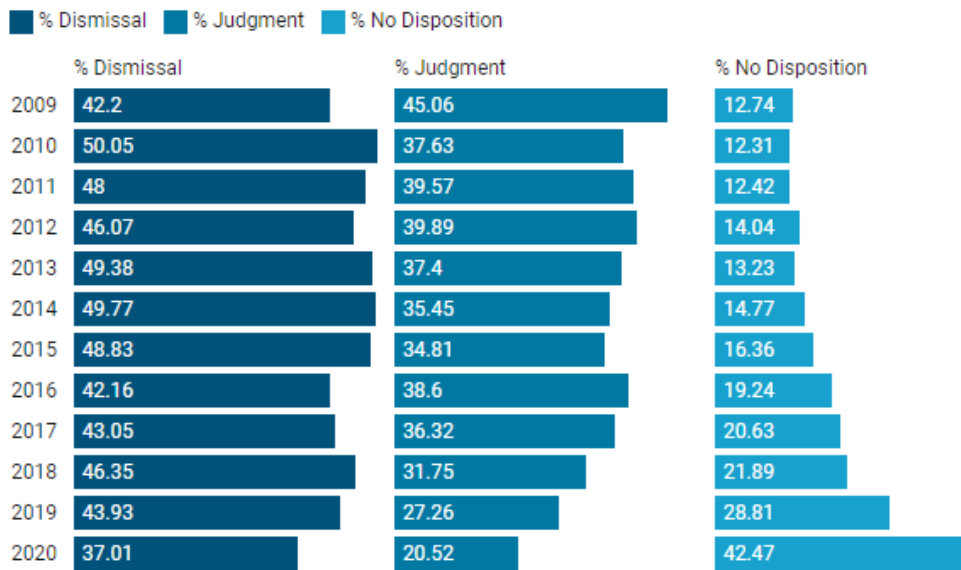
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ii. OUTCOMES IN CASES WITH ANSWERS FILED

Filing an answer makes a difference in the distribution of case outcomes. The rate of default judgments in cases where an answer was filed was 36 percent compared to 56 percent when no answer was filed. Similarly, the rate of dismissals was much higher: 45 percent compared to 29 percent. Although case data does not show the terms of settlement agreements reached, dismissals filed after an answer is filed indicate a higher rate of continued consumer engagement after the action is filed. In the high-filing years of 2018 and 2019, consumer engagement by filing an answer is more closely correlated with a higher dismissal rate and lower judgment rate. This may track with economic improvements, and consumers who had more incentive to file an answer because they had the ability to enter into a negotiated settlement agreement.

FIG. 12 CASE OUTCOMES AFTER ANSWER FILED BY YEAR

Case Dispositions with Answer/General Denial Filed



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As shown in Figures 11 and 12, the filing of an answer or general denial shifts outcomes. Consumers who file a responsive pleading have cases that end less often in judgment and more frequently in dismissal. This change in outcomes affirms that defendants who participate in the court case are less likely to have a judgment entered. Consumers who answer the court case also have more time to figure out how to resolve the matter, as shown by the higher rate of 2019 and 2020 cases pending with no disposition at the time docket data was collected, on December 31, 2020.

iii. POST-JUDGMENT COLLECTION REFLECTED IN DOCKET ENTRIES

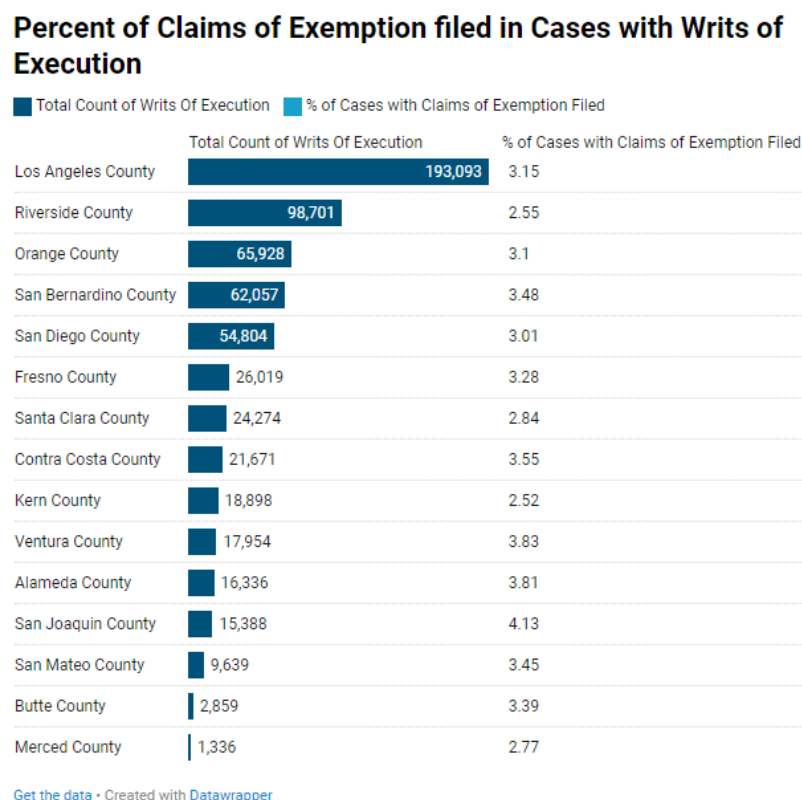
State debt collection processes allow a judgment creditor to use the court system to collect on a debt. Once a judgment has been entered, a creditor may apply to the court to initiate a legal process, often executed by a county sheriff, to collect from a judgment debtor's assets. In California, the post-judgment collection process begins with a writ of execution issued by the court. The creditor may then take the writ of execution to the sheriff's office to process a levy on a bank account or an earnings withholding order to garnish the debtor's wages. California statutes allocate as exempt from execution of judgment many

types of personal property and unearned income, including retirement accounts and distributions, pensions, and personal property that follow California's bankruptcy exemptions.⁷⁵ Following the study period, new California law places an automatic exemption on consumer bank accounts, exempting by law the first \$1,851 in a deposit account.⁷⁶

Wages below minimum wage are automatically exempted from garnishment, but above that threshold, a consumer must file a claim of exemption and show the court that income is necessary for the support of the debtor and their family.⁷⁷ For all cases observed, a judgment creditor would have been able to levy the full non-exempt balance of a consumer debtor's account. With the exception of federal benefits directly deposited, for all cases in this study, the burden was on the consumer to initiate a claim of exemption to execution of judgment.

Only 18,944 total claims of exemption were filed across all counties over the 11-year study period. In San Joaquin County, with the highest rate of filing for claims of exemption, claims of exemption were filed in 4.13 percent of cases. Overall, the rate of claims of exemption as a percentage of writs of execution was only 3 percent.⁷⁸

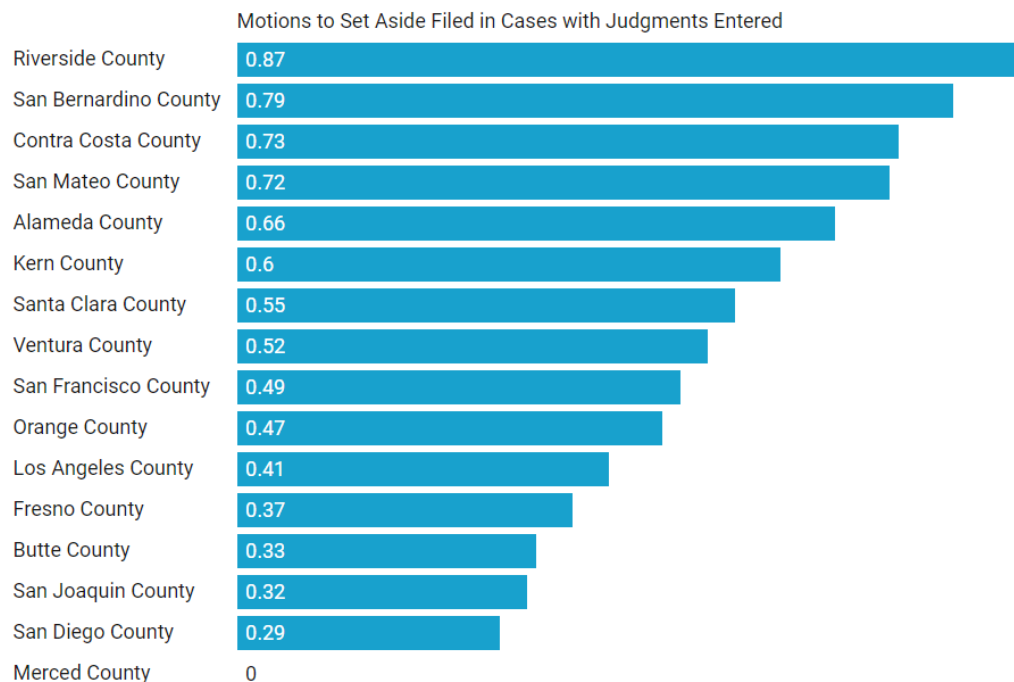
FIG. 13 CLAIMS OF EXEMPTION FILED BY COUNTY AS A PERCENT OF WRITS OF EXECUTION



For the 91 percent of defendants who do not answer, the case ends in either a default judgment or a dismissal, which may reflect a negotiated settlement was reached out of court. However, another rate of consumer engagement can be measured through the consumers who seek relief from the court after a default judgment is entered. In cases where consumers are not properly served with service of the summons and complaint, or those properly served who fail to respond, a default judgment is entered in favor of the creditor plaintiff. Consumers who petition the court to overturn the judgment based on lack of service, mistake, inadvertence, or excusable neglect may file a motion to set aside a default judgment.⁷⁹ Few litigants exercised this right.⁸⁰ Figure 14 shows that over the 11-year study, only 6,143 consumers filed a motion to set aside default judgment, in an average .55 of one percent of cases in which an entry of judgment was entered.

FIG. 14 MOTIONS TO SET ASIDE DEFAULT JUDGMENT FILED

Percent of Motions to Set Aside Filed in Cases with Entry of Judgment



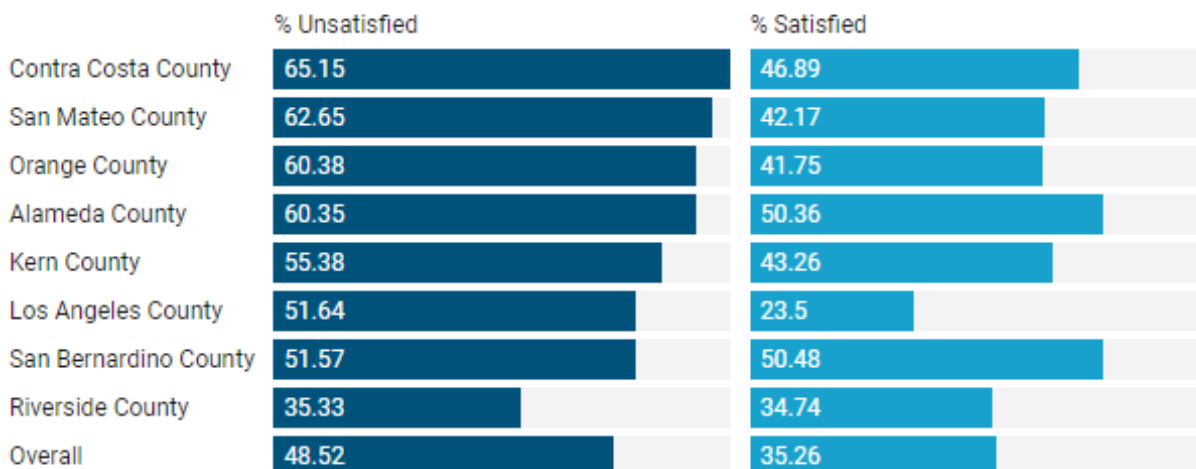
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Creditor plaintiffs sought a writ of execution on judgments in almost half of cases in which judgment was entered. However, despite applying to the court for a writ

of execution in 47 percent of cases with an entry of judgment, those writs of execution were returned unsatisfied in 51 percent of cases in the counties in which data was available, meaning there were not funds available in the bank account to pay the judgment.⁸¹ The numbers in Figure 15 do not add to up 100 percent because a creditor may seek to collect on a judgment multiple times, with partial payments returned on writs of execution, until the judgment is satisfied in full. The data shows that individuals who were unable to make their payments when a bill was in good standing appear to also not have the means to satisfy a judgment following court processes and entry of judgment, as writs are often returned unsatisfied.

FIG. 15 PERCENT OF WRITS OF EXECUTION RETURNED UNSATISFIED

Return of Writs of Execution



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iv. HOW CASES END: DISPOSITIVE MOTIONS AND TYPES OF JUDGMENTS

In California, as in many states, the rate of default judgment is high, and even in cases where both parties participate, cases rarely go to trial. Consumers who answer the lawsuit may find themselves defending against a motion to dispose of the case. In addition to evaluation of case outcome, docket-level analysis allows for determination of how many cases end before trial in a dispositive motion or in stipulated judgment. A party may ask the court to decide the case in a motion for judgment on the pleadings or a motion for summary judgment,

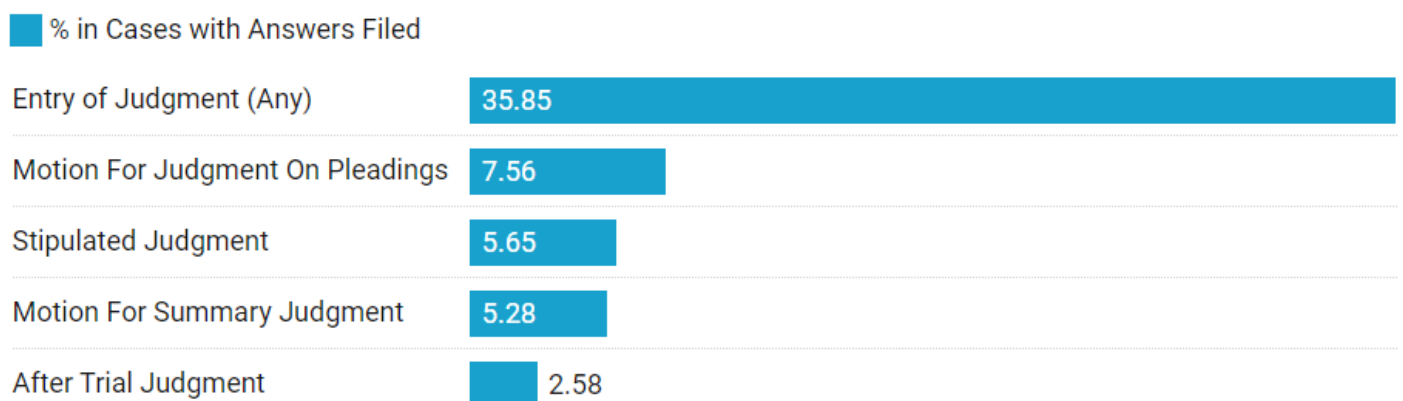
through which the court may dispose of the matter before any trial is held or witnesses called. Both motions ask the court for a legal ruling that one party has prevailed as a matter of law, precluding any evidentiary trial. In a stipulated judgment, the parties agree to an entry of judgment. Filing an opposition to a motion or understanding the terms of a stipulated judgment are difficult for someone without an attorney.

Docket-level analysis also shows how creditor plaintiffs and the law firms that represent them use these tools of civil procedure to obtain judgment. Five percent of litigants who answer a debt collection lawsuit enter into a stipulated judgment and over 6 percent end up with a default judgment, even after responding to the case.

Consumers who answered debt collection lawsuits had motions for summary judgment and motions for judgment on the pleadings filed against them in 13 percent of cases. The docket data shows that the rate of entry of judgment on these dispositive motions is only about one-third, demonstrating that consumers either beat the motion or that the filing of such motions is a driver for negotiated settlement.⁸²

FIG. 16 DISPOSITIVE MOTION FILINGS AFTER ANSWER AND DISTRIBUTION OF JUDGMENT TYPES

Cases with Answers Filed: Dispositive Motions and Other non-Default Entries of Judgment



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The data indicate that consumers who respond to debt collection lawsuits fare better and have more options to resolve a case. This presents a rationale for courts and legal services providers to continue to invest in advancements and improvements for self-represented litigants.

F. REPRESENTATION BY COUNSEL AND PATTERNS BY CREDITOR LAW FIRMS

Court record data contain the identity of creditor law firms, showing that one law firm, Hunt & Henriques, dominates the dockets. With only 12 attorneys, but employing a team of debt collectors, this one firm files case on behalf of Citibank, Portfolio Recovery Associates, Capital One, Midland, Bank of America, Chase, and HSBC, among others. In an onslaught of filings during the Great Recession, the firm filed more than 60,000 cases between 2009 and 2010 alone. Hunt & Henriques filed an average of 1,500 cases per attorney in 2019 and kept up the pace during the COVID-19 pandemic in 2020 with almost 12,000 cases filed throughout the 16 counties studied. Figure 18 shows the case filings over time by year. Two law firms, the Legal Recovery Law Office, and the Brachfeld Law Group that were very active during the Great Recession went out of business after 2012, but still filed enough cases to make the top 15. Erica Brachfeld of the Brachfeld Law Group admitted in court filings that her law firm filed between 500 and 2,500 cases a month.⁸³

Mark Walsh of the Legal Recovery Law Offices (LRLO) was sanctioned by the State Bar of California and disciplined in 2013 and lost his license to practice law for one year for failing to show up to hearings in debt collection cases in multiple counties over a multi-year period.⁸⁴ In the Decision and Order, LRLO is described as having 4 attorneys and 21 legal clerks. This legal team was responsible for bringing almost 20,000 cases against California consumers in 2010, and more than 12,000 in 2011. This high-volume practice resulted in a failure to abide by the duties of his law license and the disciplinary proceeding brought by the State Bar.⁸⁵

FIG. 17 CASES FILED BY TOP 15 MOST PROLIFIC LAW FIRMS

Top Filing Law Firms by Year

| | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 |
|-------------------------|--------|--------|--------|-------|--------|--------|-------|--------|-------|--------|--------|--------|
| HUNT & HENRIQUES | 24,721 | 34,761 | 17,493 | 5,969 | 16,659 | 8,116 | 5,629 | 10,577 | 9,277 | 11,499 | 18,480 | 11,987 |
| PORTFOLIO RECOVERY AS.. | 617 | 1,481 | 3,675 | 2,474 | 13,123 | 14,293 | 2,935 | 3,454 | 2,883 | 4,046 | 2,996 | 1,570 |
| MIDLAND FUNDING | 1,675 | 3,336 | 2,797 | 2,950 | 8,623 | 2,233 | 1,173 | 1,952 | 2,458 | 8,693 | 12,717 | 3,939 |
| PATENAUE & FELIX | 8,835 | 11,805 | 10,948 | 2,355 | 2,471 | 952 | 1,454 | 1,279 | 2,033 | 7,304 | 1,897 | 143 |
| WALSH, MARK D. | 11,879 | 19,624 | 12,878 | 1,892 | 11 | 11 | 6 | | | | | |
| MOORE LAW GROUP | 3,714 | 9,204 | 10,377 | 4,332 | 7,982 | 4,674 | 725 | 665 | 354 | 560 | 252 | 2 |
| NELSON & KENNARD | 2,779 | 4,576 | 4,098 | 1,907 | 2,891 | 1,971 | 1,836 | 1,532 | 2,941 | 5,210 | 5,266 | 3,244 |
| HARRIS & ZIDE | 4,823 | 3,167 | 4,615 | 2,190 | 5,834 | 4,592 | 2,085 | 755 | 1,992 | 2,253 | 2,929 | 1,844 |
| JPMORGAN CHASE LEGAL.. | 10,532 | 15,179 | 3,232 | | | | | | | | | |
| KENOSIAN & MIELE | 1,485 | 1,183 | 998 | 920 | 2,626 | 760 | 303 | 1,967 | 1,360 | 2,066 | 2,597 | 1,832 |
| WINN LAW GROUP | 4,210 | 3,508 | 2,580 | 1,027 | 870 | 716 | 441 | 300 | 772 | 509 | 1,953 | 114 |
| BRACHFELD, ERICA L. | 9,973 | 2,696 | 2,294 | 1,028 | 492 | | 1 | | | | | |
| MICHAEL, LINA M. | 1,132 | 660 | 1,324 | 751 | 1,907 | 1,957 | 1,846 | 451 | 945 | 2,155 | 1,528 | 1,119 |
| JACK POGOSIAN | 2 | 13 | 42 | 48 | 96 | 59 | 71 | 851 | 1,086 | 4,058 | 4,606 | 1,849 |
| LEE RAYMOND J. | 3,818 | 2,062 | 1,402 | 366 | 1,351 | 1,530 | 1,875 | 5 | | | | |

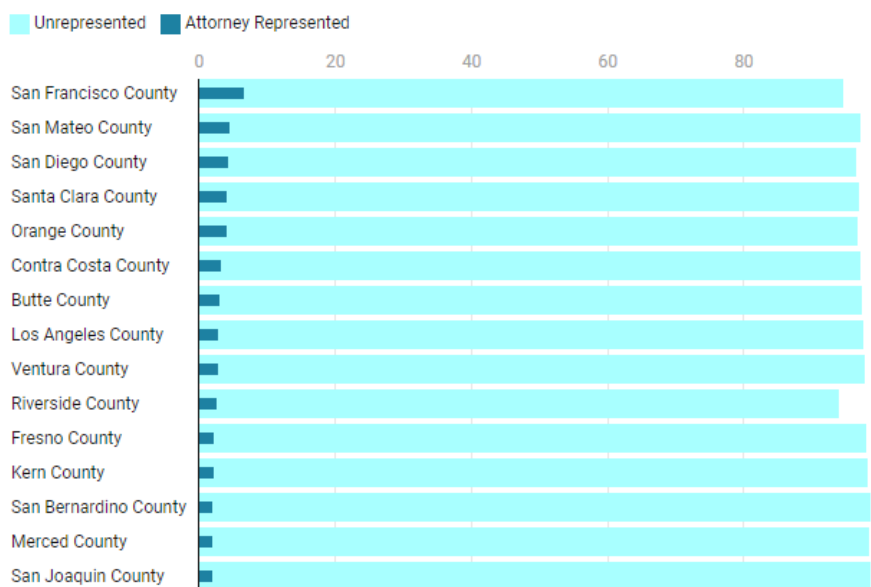
The high volume of filing by these law firms may indicate that additional oversight is needed, not only of creditor plaintiffs, but also of the law firms that facilitate case filings.

G. CONSUMER DEFENDANTS ARE UNREPRESENTED BY ATTORNEYS

Consumer defendants almost never have attorneys in court. In San Francisco County, where the rate of representation is highest, only 6.12 percent of consumer defendants had counsel of record, and that rate in many counties drops down below 2 percent. Across the 2 million records studied over 11 years, only 56,129 attorney appearances were made on behalf of consumer defendants.⁸⁶

FIG. 18 OVERALL PERCENTAGES OF ATTORNEY REPRESENTATION FOR DEFENDANT.

Attorney Representation Rates by County



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Unfortunately, legal aid offices have limited resources and income guidelines that inhibit their ability to serve the vast number of debt collection defendants who need assistance. For low-dollar debt collection lawsuits, it may not make financial sense for a litigant to hire an attorney, but the findings in this study show that going it alone consistently results in outcomes that favor the creditor. The data show that filing an answer makes a difference in a debt collection lawsuit. Legal aid programs and other services providers engaged in assisting self-represented litigants should be encouraged to increase access to services and outreach to unrepresented consumer debtors.

The data in this study does not capture self-help and unbundled services assistance, as this information is not captured in the docket data. Some legal aid offices that provide assistance in debt collection cases offer unbundled services, in which a litigant is kept in pro per but executes a limited scope representation agreement. Within the study data set counties, legal aid programs in San Diego, Riverside, San Bernardino, San Francisco, Santa Clara, San Mateo, Alameda, Los Angeles, Orange, and Contra Costa Counties provide this type of service, presenting an opportunity for further study on the impact of these interventions.

IV. CONCLUSION

Debt collection litigation proceeds as a business practice for the creditors and their attorneys on one side of the case, but these court actions are often a singular event in the lives of consumer defendants. For the repeat player creditor plaintiff, debt collection case filing trends over time reflect business decisions, but each of these 2.2 million cases is filed against an individual consumer defendant. For defendants, the court record data show that the court system is not accessible or available to unrepresented consumers. The findings from the docket level analysis of these cases confirm that debt collection litigation in California courts is a one-sided process, instituted and litigated almost exclusively by a handful of leading creditor plaintiffs and their law firms.

The data from this study show that debt collection is prevalent throughout the state of California, with consumer defendants left to navigate court systems by themselves. The outcomes of these cases, and the patterns over time, show that debt collector plaintiffs and their attorneys adapt to regulatory and legislative changes, continuing to seek entries of judgments against consumers.

Debt is a lifeline, but one that can ensnare and hobble people moving forward. These findings can inform changes to court processes and innovations in legal services delivery as well as help evaluate the efficacy of new interventions to improve the outcomes of consumers in the courts. The data show that unrepresented litigants are not effectively navigating the system and that current California court processes in debt collection cases do not give a voice to the consumer who has become unable to pay their debts.

Endnotes

¹ See *infra* Figures 3, 4, 5

² See *infra* Figures 2, 3, 4; *Emergency Rules Related to COVID-19*, California Courts, <https://www.courts.ca.gov/43820.htm> (last visited May 21, 2023); See also Daniel Wilf-Townsend, *Assembly-Line Plaintiffs*, 135 HARV. L. REV. 1704, 1726 fn. 104 (2022), noting impacts of Covid-19 pandemic on debt collection filings; see also Benjamin P. Cooper, *Preliminary Thoughts on Access to Justice in the Age of COVID-19*, 56 GONZ. L. REV. 227 (2020) on the pandemic's impact on access to justice.

³ While California small claims court allows businesses to sue consumers for up to \$5,000 in debt, the small claims court system requires that neither party be represented by counsel, so debt collection cases are not filed in these courts. *Self-Help - Basics*, CAL. CTS., <https://www.courts.ca.gov/1061.htm?rdeLocaleAttr=en> (last visited Apr. 21, 2023). Small claims court filing fees are smaller, \$30-\$100 to initiate a case, and a defendant does not have to file an answer or other responsive pleading, but merely appear in court; however, the representation requirement precludes the debt collection industry from filing in this forum, instead electing to file in limited or unlimited civil courts. *Small Claims in California*, CAL. CTS., <https://selfhelp.courts.ca.gov/small-claims-california> (last visited Apr. 21, 2023); *Plaintiff's Claim and Order to Go to Small Claims Court (form SC-100)*, CAL. CTS., <https://selfhelp.courts.ca.gov/small-claims/respond-claim-order> (last visited May 11, 2023).

⁴ See *infra* Figure 19.

⁵ See *infra* Figure 7.

⁶ Id. Id. Ford Motor Credit “offers a wide variety of automotive financing products to and through automotive dealers around the world.” company that Ford Motor Credit Company LLC, *Form S-3 Registration Statement Under the Securities Act of 1933*, U.S. SECURITIES AND EXCHANGE COMMISSION, <https://www.sec.gov/Archives/edgar/data/38009/000104746912002626/a2206701zs-3asr.htm> (last visited May 18, 2023). Ford Motor Credit engages in both prime and sub-prime lending. Robyn Meredith, *Financial Powerhouse Takes Aim at Bad Credit Risks*, THE NEW YORK TIMES, Dec. 15, 1996, <https://www.nytimes.com/1996/12/15/business/financial-powerhouse-takes-aim-at-bad-credit-risks.html> (last visited May 18, 2023). Non-bank lender Lobel Financial Corporation partners with both franchise and independent dealers to serve the auto lending market in California and 10 additional states. *Branches*, LOBEL FIN., <https://www.lobelfinancial.com/branches> (last visited Apr. 21, 2023); *Dealers*, LOBEL FIN., <https://www.lobelfinancial.com/dealers> (last visited May 11, 2023).

⁷ See *infra* Figures 9, 13.

⁸ See *infra* Figures 9, 10.

⁹ Data on file with author.

¹⁰Data on file with author.

¹¹ California's General Denial form, PLD-050 (available at <https://selfhelp.courts.ca.gov/jcc-form/PLD-050>), contains very confusing instructions. Under California law, the form is required for claims up to \$1,000, and may additionally be used to respond to unverified claims or claims between \$1,000-\$25,000 from original creditors (but not third-party debt collectors). See *infra* Figure 17.

¹² Rebecca L. Sandefur, *Bridging the Gap: Rethinking Outreach for Greater Access to Justice*, 37 UALR L. Rev. 721 (2014).

¹³ Paul Kiel, *At Capital One, Easy Credit and Abundant Lawsuits*, PROPUBLICA (2015), <https://www.propublica.org/article/at-capital-one-easy-credit-and-abundant-lawsuits> (last visited May 20, 2023).

¹⁴ Rebecca L. Sandefur, *Access to What?*, 148 DAEDALUS 49, 53 (2019), observing that access to justice is restricted and unequal, particularly in disputes with an imbalance in power, as between a represented landlord and an unrepresented tenant.

¹⁵ The Aspen Institute identifies the connection between financial marginalization and debt collection. A FINANCIAL SECURITY THREAT IN THE COURTROOM, THE ASPEN INST. 3 (2021), available at <https://www.aspeninstitute.org/publications/how-unpaid-bills-end-up-in-court/>. Consumers unable to pay bills are subjected to collection actions, which result in further economic insecurity. *Id.*

¹⁶ Recently passed revisions known as Regulation F to the Fair Debt Collection Practices Act at 15 U.S.C. 1692 et seq. permit creditors to use text messages, social media, and other digital forms of communication in an attempt to collect a debt. *Comprehensive New FDPCA Regulation F Takes Effect November 30: Regulation F and the Use of Electronic Mediums to Collection Debts*. NATIONAL CONSUMER LAW CENTER. <https://library.nclc.org/article/comprehensive-new-fdcpa-regulation-f-takes-effect-november-30>; California's Rosenthal Fair Debt Collection Practices Act extends the application of most of the federal law to original creditors. CAL. CIV. CODE § 1788 et seq.

¹⁷ THE ASPEN INST, *supra* n. 13, at 3.

¹⁸ *Id.*

¹⁹ *Total Household Debt Reaches \$16.90 trillion in Q4 2022; Mortgage and Auto Loan Growth Slows*, FED. RSRV. BANK OF N.Y. (Feb. 16, 2023), <https://www.newyorkfed.org/newsevents/news/research/2023/20230216>.

²⁰ QUARTERLY REPORT ON HOUSEHOLD DEBT AND CREDIT: 2022: Q4, FED. RSRV. BANK OF N.Y. 14, (2023), available at https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/pdf/HHDC_2022Q4.

²¹ Brian Uhler, *A Look at Household Debt in California*, CAL. LEGIS. ANALYST'S OFF. (Feb. 12, 2020), <https://lao.ca.gov/LAOEconTax/Article/Detail/435>; Mia Taylor, *Credit card delinquency to be a serious issue in 2023*, FORTUNE, <https://fortune.com/recommends/credit-cards/consumer-credit-debt-forecast-2023/> (last visited May 18, 2023), forecasting a 20.3 percent increase in credit card delinquencies in 2023 with the end of pandemic-era economic stimulus.

²² The Truth in Lending Act at 12 C.F.R. §§ 1026.55(b)(3)-(4) permit issuers of credit to “reprice the outstanding balance on the account according to a penalty rate” at 60 days late. Bureau of Consumer Fin. Protection, *Credit Card Penalty Fees (Regulation Z): Proposed Rule with Request for Public Comment*, Docket No. CFPB-2023-0010 at 14. The Consumer Financial Protection Bureau has issued a recent report on the predatory nature of late fees, noting that the rate of imposition of these fees is higher for subprime credit cards. *Credit Card Late Fees*, CONSUMER FIN. PROT. BUREAU (Mar. 29, 2022), <https://www.consumerfinance.gov/data-research/research-reports/credit-card-late-fees/>. The CFPB has also issued an Advance Notice of Proposed Rulemaking Regarding Credit Card Late Fees and Late Payments, Consumer Fin. Protection Bureau (June 22, 2022), <https://www.consumerfinance.gov/rules-policy/rules-under-development/advance-notice-of-proposed-rulemaking-regarding-credit-card-late-fees-and-late-payments/>.

²³ There is no federal law governing the maximum interest rates on credit cards, as the CARD Act of 2009, in reforming many credit card issuer practices to be more consumer friendly, did not impose a maximum interest rate. Pub. L. No. 111-24, 123 Stat. 1734, codified in relevant part to 15 U.S.C. §§ 1601-1667f, 1681 et seq. and 1693 et seq; Michelle Black, *What Is The CARD Act Of 2009? - FORBES*, <https://www.forbes.com/advisor/credit-cards/what-is-the-card-act-of-2009/> (last visited May 18, 2023). Industry practice is to increase the interest rate to 29.99 percent as a penalty for missed payments when an account is 60 days late. Barry Bridges, *What Is Penalty APR And How Do You Avoid It?*, BANKRATE, <https://www.bankrate.com/finance/credit-cards/what-is-penalty-apr/> (last visited May 18, 2023).

²⁴ Consumer Financial Protection Bureau defines serious delinquencies as 90 or more days late, with 30-89 delinquency rates measuring “early stage delinquencies.” *About the Data*, CONSUMER FIN. PROT. BUREAU, <https://www.consumerfinance.gov/data-research/mortgage-performance-trends/about-the-data/> (last visited Apr. 21, 2023). The Federal Reserve Bank of New York also measures non-mortgage delinquencies as early as 30 days late, with serious delinquencies starting at the 90-day mark. QUARTERLY REPORT ON HOUSEHOLD DEBT AND CREDIT: 2022: Q4, *supra* note 15 at 13-14.

²⁵ The Uniform Retail Credit Classification and Account Management Policy issued by the Office of Comptroller of Currency initially as OCC Bulletin 99-13 (superseded by OCC Bulletin 2000-20) requires that providers of retail credit charge off closed-end loans at 120 days past due and open-end credit at 180 days past due. Uniform Retail Credit Classification and Account Management Policy, Fed. Fin. Inst. Examination Council, 65 Fed. Reg. 36903 (Jun. 12, 2000) <https://www.occ.treas.gov/news-issuances/federal-register/2000/65fr36903.pdf>.

- ²⁶ This definition of charged-off debt is provided by the Consumer Financial Protection Bureau in CONSUMER CREDIT REPORTS: A STUDY OF MEDICAL AND NON-MEDICAL COLLECTIONS, CONSUMER FIN. PROT. BUREAU 10, n. 9 (2014), available at https://files.consumerfinance.gov/f/201412_cfpb_reports_consumer-credit-medical-and-non-medical-collections.pdf.
- ²⁷ CAL. CIV. PRO. CODE § 337(a) (Deering 2023). However, as discussed *infra*, many California cases are brought as common counts claims, which are governed CAL. CIV. PROC. CODE § 337(b) (Deering 2023).
- ²⁸ Common counts “are not a specific cause of action, however; rather, it is a simplified form of pleading normally used to aver the existence of various forms of monetary indebtedness. . . .” *McBride v. Boughton*, 123 Cal. App. 4th 379, 394. Clinton Rooney, 43 Clearinghouse Rev. 543, 544 (2009-2010), noting that California’s common counts date back to the late 1800’s.
- ²⁹ For counts which plead “account stated,” the statute of limitations runs from the date of the last item on the account, which some creditor attorneys have argued means the statute may run from the date of the last interest charge or late payment applied to the account, which can extend the time to file by months. *See, e.g.*, *Ordinario v. LVNV Funding, LLC*, 721 Fed. Appx. 602, 604 (9th Cir. 2017), (granting summary judgment on a Fair Debt Collection Practices Act claim on the grounds that a late fee charged by original creditor Chase constituted the last item on the account).
- ³⁰ Dalié Jiménez, *Dirty Debts Sold Dirt Cheap*, 52 HARV. J. ON LEGIS. 41, 42 (2015), (describing the process by which third-party debt buyers purchase debt).
- ³¹ THE ASPEN INST., *supra* note 13, at 1; HOW DEBT COLLECTORS ARE TRANSFORMING THE BUSINESS OF STATE COURTS, PEW CHARITABLE TRUSTS 2 (2020), available at <https://www.pewtrusts.org/-/media/assets/2020/06/debt-collectors-to-consumers.pdf>.
- ³² California Senate Bill 616 (effective September 1, 2020) creates a floor for exemption from execution of judgment “in an amount equal to or less than the minimum basic standard of adequate care for a family of four,” which in 2023 is approximately \$1,850. S.B. 616, 2019 Legis., Reg. Sess. (Cal. 2020); *CalWORKS Program Fact Sheet*, SACRAMENTO CNTY DEP’T OF HUMAN ASSISTANCE (Jan. 2023), <https://ha.saccounty.gov/benefits/Documents/CalWORKs%20Fact%20Sheet%20January%202023.pdf> (listing current “Minimum Basic Standards of Adequate Care”). To protect funds beyond this amount, a consumer must file a claim of exemption. *Id.* California Senate Bill 1200 (effective January 1, 2023), limits the renewal of entries of judgment to one renewal of five years for consumer debt judgments of less than \$50,000 and reduces the post-judgment interest rate on these judgments from 10 percent to 5 percent. S.B. 1200, 2022 Legis., Reg. Sess. (Cal. 2023). California Assembly Bill 2463 (effective January 1, 2021), prohibits the sale of real property to satisfy a judgment lien for a judgment of less than \$75,000, significantly increasing protections for low-income homeowners. A.B. 2463, 2020 Legis., Reg. Sess. (Cal. 2021).
- ³³ S.B. 616, 2019 Legis., Reg. Sess. (Cal. 2020), available at https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB616.
- ³⁴ *See infra* Figure 14.
- ³⁵ CAL. CIV. PRO. CODE §§ 706.050; 706.0511 (Deering 2023) provides for the claim of exemption from wage garnishments. The forms for this process are confusing and require onerous disclosures of income and expenses that are difficult for self-represented consumers to understand.
- ³⁶ *See infra* Figure 2.
- ³⁷ CAL. CIV. CODE §§ 1788.50-1788.66 (Deering 2023). This law applies to debt buyers and applies only to debts bought on or after January 1, 2014.
- ³⁸ *See infra* Figure 12,. Findings by the Center for Responsible Lending in a 2020 report affirm that this reform targeted at the evidentiary requirements for third-party debt buyers did not seem to impact the business of debt collection through the courts in California. *Court System Overload: The State of Debt Collection in California after the Fair Debt Buyer Protection Act*, CTR. FOR RESPONSIBLE LENDING (Oct. 13, 2020), <https://www.responsiblelending.org/research-publication/court-system-overload-state-debt-collection-california-after-fair-debt-buyer>.

³⁹ See *infra* Figure 8.

⁴⁰ CFPB Takes Action Against the Two Largest Debt Buyers for Using Deceptive Tactics to Collect Bad Debts, CONSUMER FIN. PROT. BUREAU (Sept. 9, 2015), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-the-two-largest-debt-buyers-for-using-deceptive-tactics-to-collect-bad-debts/>. In the Matter of Encore Capital Group, Inc., CFPB No. 2015-CFPB-0022 (Sept. 9, 2015); In the Matter of Portfolio Recovery Associates, LLC, CFPB No. 2015-CFPB-0023 (Sept. 9, 2015).

⁴¹ *Encore Capital Group, Inc.*, CFPB No. 2015-CFPB-0022; *Portfolio Recovery Associates, LLC*, CFPB No. 2015-CFPB-0023; see *infra* Figures 6, 8. However, the rates of filing by Portfolio and Midland increased in subsequent years, with 2019 being the highest rate of filing in the study period for Midland, in which it filed over 21,000 cases. See *infra* Figure 7.

⁴² See *infra* Figure 15.

⁴³ Assembly Bill 1864 and Assembly Bill 107 (effective January 1, 2021) created the California Consumer Financial Protection Law and the California Department of Financial Protection and Innovation. A.B. 1864, 2020 Legis. Reg. Sess. (Cal. 2021); A.B. 107, 2020 Legis. Reg. Sess. (Cal. 2021). This agency has regulatory and enforcement authority over state-chartered banks, non-bank lenders, and debt collectors, among other entities. *Division of Consumer Financial Protection*, DEP'T OF FIN. PROT. & INNOVATION (Mar. 1, 2023), <https://dfpi.ca.gov/division-of-consumer-financial-protection/>.

⁴⁴ Lobel Financial is licensed as a sales finance company in Maryland and New Mexico and is permitted by the California Department of Financial Protection and Innovation to operate while its application is pending. Ford Motor Credit Company is licensed with the California DFPI. *Ford Motor Credit Company*, NATIONWIDE MULTISTATE LICENSING SYS. CONSUMER ACCESS, <https://www.nmlsconsumeraccess.org/EntityDetails.aspx/COMPANY/3018> (last visited Apr. 21, 2023).

⁴⁵ California courts are exempt from California's Public Records Act, which excludes judicial records at Government Code section 6252 precluding access to records of the judicial branch of the California government as defined by the California Constitution at Article VI. California Rule of Court 10.500 permits public access to court administrative records, but not to the underlying case data itself, which necessitates the scraping of civil data. CAL. RULE OF COURT § 10.500. CAL. GOV. CODE section 6250 et seq. (Deering 2023).

⁴⁶ Sacramento County data was in the initial set of scraped data but was excluded from analysis because it was missing data from 2011, 2016-2018, and 2020, which skewed the totals for this county over the full study period. The remaining counties included in the data set comprise 14 of the 15 most populous California counties. U.S. CENSUS BUREAU. <https://www.census.gov/library/stories/state-by-state/california-population-change-between-census-decade.html>

⁴⁷ California population is 39,538,223 and the county population of the 16 counties studied as of July 2022 is 31,556,216, providing coverage in the data set for counties in which close to 80% of Californians reside. U.S. CENSUS BUREAU. <https://www.census.gov/library/stories/state-by-state/california-population-change-between-census-decade.html>.

⁴⁸ California's Civil Case Cover Sheet, CM-010 classifies Collections and Rule 3.740 Collections as case type (09). Rule 3.740 cases are limited civil economic litigation matters in California courts and permit limited discovery and relaxed rules of evidence at trial, permitting the trial witnesses to appear by affidavit in lieu of live testimony. Most debt collection cases valued at \$25,000 or less are filed as limited civil economic litigation cases. CALIFORNIA COURTS. <https://selfhelp.courts.ca.gov/jcc-form/CM-010>. Breach of contract cases are designated as case type (06) and may be filed in limited or unlimited civil.

⁴⁹ Within the data set, only about 1.2% of cases, 27,605 matters, are clearly designated as unlimited civil cases, pleading breach of contract and seeking more than \$25,000. The overwhelming majority of debt cases are filed to collect less than \$25,000. (Data on file with author).

⁵⁰ JavaScript Object Notation (JSON) is a file format that transmits human-readable text in a way that is easily for software to read and generate. *Introducing JSON*, <https://www.json.org/json-en.html>.

⁵¹ *Business Search*, California Secretary of State, <https://bizfileonline.sos.ca.gov/search/business> (last visited May 20, 2023); *How to look up licenses and those debt collectors allowed to do business in CA*. California Department of Financial Protection and Innovation, <https://dfpi.ca.gov/debt-collection-licensee/debt-collectors/> (last visited May 20, 2023).

⁵² Each unique case has a series of docket events, which may include a response filed by a defendants, motions filed to ask the court to resolve the case before trial, and entries of judgment and filings of dismissals. Some of the entries were grouped in order to categorize docket events, such as the filing of an answer or other responsive pleading. California permits the filing of either an answer or a general denial in response to a complaint. Answers and general denials were identified through docket entries and grouped together as “responsive pleading - Answer(any).” California permits allegations pled against “Doe” defendants, permitting a plaintiff to amend in, as of right, the true name of the defendant when it becomes known. Creditor plaintiffs often plead against a known defendant and include “Does 1-10.” CAL. CODE CIV. PROC. § 474. (Deering 2023). This results in each docket having a request to enter dismissal as to Doe defendants, which must be disaggregated from a dismissal as to all parties and of the entire case. To identify a single case outcome for each case, researchers used the chronological last event of entry of judgment or dismissal, and a field was added of “no disposition” where no dismissal or judgment was on file.

⁵³ R version 4.2.2; Excel version 2304; Tableau version 2022.4; DataWrapper <https://www.datawrapper.de/>.

⁵⁴ The California Judicial Branch Statistical Information System (JBSIS) data is available through the California Courts website. Data is in PDF format, and researchers extracted values for each county’s full set of civil filings and analyzed this information for each county in the study in comparison to the number of debt collection cases filed. *Court Statistics Report*, CAL. CTS., (2009 - 2021) <https://www.courts.ca.gov/13421.htm>.

⁵⁵ Unemployment and Federal Reserve data shows that high numbers of consumers defaulted on credit cards and other unsecured debts, leading to high numbers of debt cases filed during the four-year statute of limitations in which creditors may sue defaulted borrowers in California. Board of Governors of the Federal Reserve System (US), Delinquency Rate on Consumer Loans, All Commercial Banks [DRCLACBS], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/DRCLACBS>, April 20, 2023.

⁵⁶ The Great Recession curtailed the growth of credit and household debt, making new credit less available to consumers. Carlos Garriga, Bryan Noeth & Don Schlagenhauf, *Household Debt and the Great Recession*, FEDERAL RESERVE BANK OF ST. LOUIS REVIEW, 183 (Second Quarter 2017). This lack of available credit coupled with dependence on credit card borrowing and a rise in unemployment contributed to high rates of consumer default. Atif Mian & Amir Sufi, *Household Leverage and the Recession of 2007 to 2009*, 7 SBP RESEARCH BULLETIN 125 (2011).

⁵⁷ California’s unemployment rate spiked to 12.4 percent in 2010, the third highest in the United States. *State unemployment rates in 2010*: THE ECONOMICS DAILY: U.S. BUREAU OF LABOR STATISTICS, https://www.bls.gov/opub/ted/2011/ted_20110301.htm (last visited May 22, 2023).

⁵⁸ In a study of debt cases filed in San Bernardino County during the height of the pandemic, study author Claire Johnson Raba found that Hunt & Henriques continued to e-file debt collection lawsuits even while the courts were closed to the public. Johnson Raba, Claire, *Going Remote: Due Process and Self-Represented Debt Collection Defendants During the COVID-19 Pandemic* (November 10, 2021). Available at SSRN: <https://ssrn.com/abstract=4064918> or <http://dx.doi.org/10.2139/ssrn.4064918>

⁵⁹ HOW DEBT COLLECTORS ARE TRANSFORMING THE BUSINESS OF STATE COURTS, *supra* note 27, at 8. A 2019 snapshot using Westlaw to extract the number of cases filed by top creditor filers shows these debt collection plaintiffs filing more than 40 percent of cases in some states. Daniel Wilf-Townsend, *Assembly-Line Plaintiffs*, 135 HARV. L. REV. 1704, 1729 (2022).

⁶⁰ Source data for the civil filing numbers was obtained through the California Judicial Branch Statistical Information System annual reports, available at <https://www.courts.ca.gov/13421.htm>. *Court Statistics Report*, CAL. CTS., (2009 - 2021). These reports provide a county-by-county reporting of the total number of civil cases filed in the previous fiscal year. Data in this study measures calendar years, so there is not a one-to-one mapping of time on these two data points, but each data set calculates 12 months of case filing for each county in the study. Although the full study period is from 2009 to 2020, the California Judicial Council included family law and probate filings in 2009, so that year was excluded from the calculation.

⁶¹ The California Judicial Branch Statistical Information System excludes family law cases from its count of civil cases starting in 2010. JBSIS, *supra* n. 60. The comparison of debt cases to non-family law civil filings is a similar methodology as used by Daniel Wilf-Townsend in his 2019 study of multiple jurisdictions based on the Westlaw Litigation Analytics tools. Daniel Wilf-Townsend, *Assembly-Line Plaintiffs*, 135 HARV. L. REV. 1704, 1726 (2022).

⁶² *In the Matter of Chase Bank, USA N.A. and Chase Bankcard Services, Inc.*, CFPB No. 2015-CFPB-0013 Consent Order (Jul. 8, 2015).

⁶³ ProPublica, *A Return to Robo-Signing: JPMorgan Chase Has Unleashed a Lawsuit Blitz on Credit Card Customers*, <https://www.propublica.org/article/a-return-to-robo-signing-jpmorgan-chase-has-unleashed-a-lawsuit-blitz-on-credit-card-customers> (Jan. 5, 2022).

⁶⁴ *Encore Capital Group, Inc.*, CFPB No. 2015-CFPB-0022; *Portfolio Recovery Associates, LLC*, CFPB No. 2015-CFPB-0023.

⁶⁵ See Daniel Wilf-Townsend, *Assembly-Line Plaintiffs*, 135 HARV. L. REV. 1704, 1732 (2022). At Table 2, Wilf-Townsend notes that Capital One Bank and Discover Bank are among the top filers in the in-sample states. This challenges the narrative in early studies of debt collection litigation that found a predominance of third-party debt collection plaintiffs.

⁶⁶ See generally Peter A. Holland, *Current Trends in Consumer Junk Debt Buyer Litigation*, (2016), <https://papers.ssrn.com/abstract=2781562>; Peter A. Holland, *The One Hundred Billion Dollar Problem in Small Claims Court: Robo-Signing and Lack of Proof in Debt Buyer Cases*, 6 J. BUS. & TECH. L. 259 (2011); Judith Fox, *Do We Have a Debt Collection Crisis - Some Cautionary Tales of Debt Collection in Indiana* Feature Article, 24 LOY. CONSUMER L. REV. 355, 360 (2011).

⁶⁷ *Encore Capital Group, Inc. supra* n. 64. *Portfolio Recovery Associates, LLC, supra* n. 64.

⁶⁸ See the 2020 stipulated judgment by the CFPB against Encore Capital Group and its Midland entities and the 2023 stipulated order against Portfolio for ongoing violations of the 2015 consent orders. *Consumer Financial Protection Bureau v. Encore Capital Group, Inc, et al*, Case No. 20-cv-1750-GPC-KSC (S.D. Cal. Oct. 16, 2020)(agreeing to a \$15 million penalty and ongoing obligations); *Consumer Financial Protection Bureau v. Portfolio Recovery Associates, LLC*, Case No. 2-23-cv-00110 (E.D. Va. March 23, 2023) (agreeing to continuing restrictions, a \$12 million civil penalty, and a \$12.18 million restitution fund for consumers).

⁶⁹ The Answer Form, PLD-C010 is an approved form that is not mandatory, but the general denial form PLD-C-050 is mandatory for a litigant that wants to deny all of the allegations in the complaint. California Courts, *Using Forms*, <https://www.courts.ca.gov/3019.htm> (last visited May 22, 2023).

⁷⁰ California Courts Self-Help Guide, *General Denial (PLD-050) and Answer-Contract (PLD-C-010)*, <https://selfhelp.courts.ca.gov/jcc-form/PLD-C-010> (last visited May 22, 2023); <https://selfhelp.courts.ca.gov/jcc-form/PLD-050> (last visited May 22, 2023).

⁷¹ The legacy statewide court self-help website informs instructs defendants to that they may file an answer or a general denial, while a newer version has the link only to the answer form. California Courts Self-Help Guide, *California Courts*, <https://selfhelp.courts.ca.gov/debt-lawsuits/respond> (last visited May 22, 2023); *Self-Help Problems with Money Being Sued*, California Courts, <https://www.courts.ca.gov/1305.htm> (last visited May 22, 2023).

⁷² CAL. FIN. CODE § 22304.5 (Deering 2023). Origination of these high-cost installment loans has dropped following the California Supreme Court's decision in *De La Torre v. CashCall, Inc.*, which held that the greater than 100% APR cost of credit on some of these loans is so high as to constitute an unconscionable interest rate. 5 Cal. 5th 966, 994 (2018). Data from debt collection cases likely reflects loans originated prior to this decision. The California DFPI licenses these lenders under CAL. FIN. CODE §§ 22100 et seq. (Deering 2023).

⁷³ California's Rees-Levering Act, CAL. CIV. CODE §§ 2981 et seq. (Deering 2023), protects consumers against deficiency judgments if the lender did not carefully follow the law during the repossession and sale of the vehicle against which the loan was secured.

⁷⁴ Data on file with author.

⁷⁵ See generally CAL. CIV. PROC. CODE §§ 703.010-706 (Deering 2023) bankruptcy exemptions which are also compiled on Judicial Council form EJ-155, available at <https://selfhelp.courts.ca.gov/jcc-form/EJ-155>.

⁷⁶ CAL. CIV. PROC. CODE § 704.220 (Deering 2023). This amount adjusts annually pursuant to the minimum basic standard of adequate care for a family of four tied to the CAL. WELF. & INST. CODE §§ 11452, 11453 (Deering 2023).

⁷⁷ CAL. CIV. PROC. CODE §§ 706.050-706.051 (Deering 2023).

⁷⁸ San Francisco County was excluded from this chart, as the docket-level data does not have information on writs of execution. Data on file with author.

⁷⁹ CAL. CODE CIV. PROC. §§ 473, 473.5; CAL. CODE CIV. PROC. § 1788.61 (Deering 2023).

⁸⁰ The California Fair Debt Buying Practices Act, *supra* at n. 43, extends the time to file a motion to set aside a default judgment entered in favor of a third-party debt buyer from two years to six from the date of entry of judgment. The data shows that the total number of motions to set aside filed increased only slightly after the passage of the CFDBPA, and the motions filed as a percentage of entries of judgment dropped from 2015-2020.

⁸¹ The following counties were excluded from these findings, as the counties did not record the type of return of writ of execution in the docket: San Diego, San Francisco, San Joaquin, Ventura, Butte, Fresno, Merced, and Santa Clara. Data on file with author

⁸² Data on file with author.

⁸³ Bernice Yeung, *Some Lawyers Want to Keep Debt Collection Out of the Courts*, THE NEW YORK TIMES, Apr. 23, 2010, <https://www.nytimes.com/2010/04/23/us/23sfdebt.html> (last visited May 19, 2023). Dun and Bradstreet reports that the Brachfeld Law Group had annual revenue of \$15,400,000. ERICA L. BRACHFELD, A PROFESSIONAL CORPORATION - EL SEGUNDO, CA - Company Page, <https://www.dandb.com/businessdirectory/erical.brachfeldaprofessionalcorporation-elsegundo-ca-22017442.html> (last visited May 19, 2023).

⁸⁴ In the Matter of Mark. D. Walsh, Member No. 206059 (State Bar Cal. Hearing Dep't, Jun. 6, 2013), available at <https://apps.calbar.ca.gov/courtDocs/11-O-15956-1.pdf>.

⁸⁵ *Id.*

⁸⁶ Alameda County was excluded from the data analysis for attorney representation. A recent migration of data to a new case management system populated both the Plaintiff and Defendant attorney fields for cases in Alameda County, making it impossible to determine whether a party was represented by counsel. Data on file with author.