

# UNVEILING DEBT COLLECTORS: DOES THE FDCPA LIMIT “DEBT COLLECTOR” LIABILITY TO CORPORATE ENTITIES?

## I. INTRODUCTION

Congress passed the Fair Debt Collection Practices Act (“FDCPA”) to deter debt collectors from abusing debtors while attempting debt collection.<sup>1</sup> Congress recognized that the debt collection industry’s growth would likely result in more contact between debt collectors and consumers, and that the likelihood of abuse would increase absent regulation and consistent state action against abusive practices. While the FDCPA provides greater anti-abuse safeguards than the previous regime, the FDCPA’s arguably ambiguous definition of “debt collector” hinders the FDCPA’s prospect of promoting consistent state action.<sup>2</sup>

The issue of whether shareholders, employees, directors, and officers can be held personally liable under the FDCPA has become a hotly contested topic, resulting in a split among federal circuit courts.<sup>3</sup> The issue’s ultimate resolution will impact attorneys, consumers, agents of debt collection companies, the debt collection industry itself, and the confines of state corporate law when it conflicts with the broad reading of a federal statute. Debt collectors, some of whom are attorneys,<sup>4</sup> may incorporate their business and reasonably expect immunity from personal liability under state law for acts taken on behalf of the corporation. While a few courts have ruled that debt collectors, working in their corporate capacity, cannot be held personally liable for violations of the FDCPA without piercing the corporate veil,<sup>5</sup> the clear majority of courts will impose personal liability on a corporate actor if he or she is personally involved with the FDCPA violation at issue, notwithstanding state corporate law that may effect a different result.<sup>6</sup>

This Comment will examine the circuit split among federal courts on this issue and will argue for the adoption of the personal involvement approach, which provides a standard more in tune with the FDCPA’s legislative history, purpose, and plain meaning. Part II of this Comment will review the current state of the circuit split existing among the federal courts on this issue. Part II.A will focus on the legislative history of the FDCPA and the provisions of the FDCPA pertaining to debt collectors. Part II.B.1 will provide a brief overview of the veil piercing doctrine and limited liability. Part II.B.2 will examine the reasoning of the Seventh Circuit in *White v.*

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1. See *infra* Part II.A for a discussion of the FDCPA’s purpose and history.

2. See *infra* Part II.B for an overview of the inconsistent standards applied by courts addressing the issue.

3. See *infra* Part II.B for an analysis of the circuit split.

4. See, e.g., *Kistner v. Law Offices of Michael P. Margelefsky, LLC*, 518 F.3d 433, 436–38 (6th Cir. 2008) (dealing with attorney acting as debt collector within LLC).

5. See *infra* Part II.B.2 for a description of cases using the Seventh Circuit’s approach.

6. See *infra* Part II.B.3 for a description of cases adopting the personal involvement approach.

*Goodman*<sup>7</sup> and *Pettit v. Retrieval Masters Creditors Bureau, Inc.*,<sup>8</sup> as well as a supporting federal district court decision.<sup>9</sup> This line of authorities holds that in order for an employee, shareholder, officer, or director to be held personally liable for a violation of the FDCPA, the plaintiff must first show a basis for piercing the corporate veil.<sup>10</sup> Finally, Part II.B.3 will examine the arguments of the opposing authorities, which hold employees, shareholders, directors, and officers personally liable for violations of the FDCPA in which they were personally involved, without resorting to a veil piercing analysis.

Part III.A will address the fundamental flaws of *Pettit's* and *White's* reasoning that justified the interjection of the veil piercing analysis for purposes of determining whether a debt collector can be held personally liable. Specifically, Part III.A.1 will examine the flaws of the Seventh Circuit's narrow reading of the statute while Part III.A.2 will analyze the problems with the Title VII analogy relied upon by the Seventh Circuit in making its decision. Part III.B will highlight the strengths of the premises underlying the personal involvement approach and contend that the approach furthers the purposes and policies of the FDCPA. Part III.B.1 proposes that the clear jurisprudential trend favors disregarding the corporate veil analysis. Part III.B.2 argues that applying veil piercing theory in these cases frustrates, rather than furthers, the FDCPA's purpose. Lastly, Part III.B.3 asserts that analogizing the FDCPA to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") is more persuasive than the Seventh Circuit's Title VII analogy.

## II. OVERVIEW OF EXISTING LAW

### A. *The Fair Debt Collection Practices Act*

Before passing the Fair Debt Collection Practices Act ("FDCPA"),<sup>11</sup> Congress faced an alarming national problem of third-party debt collectors employing scurrilous tactics against consumers.<sup>12</sup> Abusive collection practices included use of obscene language, violent threats, telephone calls at odd hours, misrepresentation of legal rights, disclosure of personal information, acquisition of personal information through false pretenses, and impersonation of public officials.<sup>13</sup> To add insult to injury, debt collectors routinely filed suit in forums inconvenient for the consumer, thereby obtaining default judgments and denying the consumer his day in court.<sup>14</sup>

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7. 200 F.3d 1016 (7th Cir. 2000).

8. 211 F.3d 1057 (7th Cir. 2000).

9. *Ernst v. Jesse L. Riddle, P.C.*, 964 F. Supp. 213 (M.D. La. 1997).

10. See *infra* Part II.B.2 for a description of cases using the Seventh Circuit's approach.

11. Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692–1692p (2006).

12. S. REP. NO. 95-382, at 2 (1977), reprinted in 1977 U.S.C.C.A.N. 1695, 1696–97.

13. *Id.*

14. *Id.* at 5, reprinted in 1977 U.S.C.C.A.N. at 1699. An example of such a practice, although used by a creditor in this instance, can be found in *Spiegel, Inc. v. FTC*, 540 F.2d 287, 290–92 (7th Cir. 1976). In *Spiegel*, the retailer-creditor routinely brought suits to collect debts in Illinois, using the Illinois long-arm statute to establish personal jurisdiction over defendants who lived in other states. *Id.* *Spiegel* typically withdrew those suits where the defendant objected to the inconvenience of the forum, but the defendant would have had to travel to Illinois or obtain local counsel first to raise such an objection. *Id.* Practically speaking, the

The substantial number of collection agencies and their proactive nature compounded the problem. Prior to the FDCPA's passing, more than five thousand collection agencies operated within the United States and creditors turned billions of dollars worth of debt over to these agencies.<sup>15</sup> As a result, the amount of consumers contacted by these agencies numbered in the millions.<sup>16</sup>

To make matters worse, state law seemed unfit to address these abusive practices. Thirteen states utterly lacked debt collection laws.<sup>17</sup> The remaining states had such laws, but the laws provided little effective protection.<sup>18</sup> The U.S. Senate Committee on Banking, Housing, and Urban Affairs concluded that eighty million Americans lacked "meaningful protection from debt collection abuse."<sup>19</sup> As interstate collections increased, the states that provided some protection encountered difficulty acting against abusive debt collectors operating from other states.<sup>20</sup>

### 1. The FDCPA's Purpose and Provisions

Congress tailored the FDCPA to eliminate debt collection abuse, to protect ethical debt collectors from competitive disadvantage, and to stimulate consistent state action against abusive debt collection practices.<sup>21</sup> To fulfill these purposes, Congress expressly prohibited debt collectors from taking certain actions while attempting to collect an outstanding debt.<sup>22</sup> The Act penalizes debt collectors who: (1) contact consumers at an inconvenient time or place;<sup>23</sup> (2) contact unrelated third parties in connection with the debt collection;<sup>24</sup> (3) verbally harass or threaten the consumer;<sup>25</sup> (4) deceive or mislead the consumer;<sup>26</sup> and (5) engage in any unfair or unconscionable

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amount in dispute in most of the cases was too small to justify obtaining local counsel or traveling to Illinois. *Id.*

15. S. REP. NO. 95-382, at 2, *reprinted in* 1977 U.S.C.C.A.N. at 1696. The U.S. Senate Committee on Banking, Housing, and Urban Affairs further noted that one trade association, which then represented around half of the country's independent debt collectors, claimed that its members contacted eight million consumers in 1976. *Id.*

16. *Id.*

17. *Id.* The states included Alabama, Delaware, Georgia, Kansas, Kentucky, Mississippi, Missouri, Montana, Ohio, Oklahoma, Rhode Island, South Carolina, and South Dakota. *Id.*

18. *Id.*, *reprinted in* 1977 U.S.C.C.A.N. at 1697. As an example, the Committee pointed out that of the sixteen states that regulate using debt collection boards, twelve states require debt collectors themselves to constitute a majority of the board. *Id.*

19. *Id.*

20. *Id.* at 2-3, *reprinted in* 1977 U.S.C.C.A.N. at 1697.

21. *See* Fair Debt Collection Practices Act, 15 U.S.C. § 1692(e) (2006) (stating Congress hoped to "eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses").

22. §§ 1692b-1692f.

23. § 1692c(a).

24. § 1692c(b).

25. § 1692d.

26. § 1692e.

practices to facilitate debt collection.<sup>27</sup> The violation of these standards can result in civil liability or administrative enforcement by the Federal Trade Commission.<sup>28</sup>

## 2. The Meaning of “Debt Collector”

To prevail on an FDCPA claim, a plaintiff must show that the defendant is a debt collector within the meaning of the FDCPA and that the defendant targeted him for the collection of consumer debt using practices prohibited by the FDCPA.<sup>29</sup> The FDCPA defines a “debt collector” as “any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.”<sup>30</sup> In addition, the term includes creditors who use a name other than their own to indicate that a third party is collecting the debt.<sup>31</sup>

Congress geared the Act toward independent third-party debt collectors who routinely collect consumer debts for others.<sup>32</sup> Accordingly, the FDCPA specifically excludes certain classes from the definition of “debt collector.” The term “debt collector” does not include officers or employees of a creditor collecting debts for the creditor;<sup>33</sup> individuals who act as debt collectors for another if they are affiliated by common ownership or corporate control and the principal business of the person is not the collection of debts;<sup>34</sup> officers or employees of a state or the United States who collect any debt in accordance with their official duties;<sup>35</sup> process servers acting in accordance with the judicial enforcement of a debt;<sup>36</sup> bona fide nonprofit consumer credit counseling organizations who receive payments from consumers to assist in the liquidation of their debts;<sup>37</sup> bona fide fiduciaries;<sup>38</sup> persons collecting loans they originated;<sup>39</sup> and persons who obtain a debt as a secured party in a commercial credit transaction.<sup>40</sup>

Defendants can prove they are not a debt collector if they show that they do not satisfy the definition facially or that they fall under one of the exclusions provided by

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27. § 1692f.

28. §§ 1692k-1692l.

29. *Som v. Daniels Law Offices, P.C.*, 573 F. Supp. 2d 349, 356 (D. Mass. 2008).

30. § 1692a. See generally Michael A. Rosenhouse, Annotation, *What Constitutes “Debt Collector” for Purposes of Fair Debt Collection Practices Act (15 U.S.C.A. § 1692a(6))*, 173 A.L.R. FED. 223 (2001) (collecting and summarizing state and federal cases where courts decided whether individuals or organizations are “debt collectors” within meaning of FDCPA).

31. 15 U.S.C. § 1692a(6). When unconscionable means are involved, the term includes persons who use the instrumentalities of interstate commerce when their business’s principal purpose is the enforcement of security interests. *Id.*

32. S. REP. NO. 95-382, at 7 (1977), reprinted in 1977 U.S.C.C.A.N. 1695, 1696-97.

33. 15 U.S.C. § 1692a(6)(A).

34. § 1692a(6)(B).

35. § 1692a(6)(C).

36. § 1692a(6)(D).

37. § 1692a(6)(E).

38. § 1692a(6)(F)(i).

39. § 1692a(6)(F)(ii).

40. § 1692a(6)(F)(iv).

the Act.<sup>41</sup> If a court finds that the defendant is not a debt collector within the meaning of the FDCPA, then liability will not attach to the defendant under the FDCPA.<sup>42</sup>

*B. Individuals Collecting Debts Within a Corporate Entity*

A problem may arise when a plaintiff joins an employee, shareholder, officer, or director as a defendant in addition to a corporate entity for violations of the FDCPA. Federal circuit and district courts split on whether such individuals can be held liable as “debt collectors” within the meaning of the Act.<sup>43</sup> On one side of the split, courts have held that individuals who act on behalf of debt collection companies do not become “debt collectors” within the meaning of the Act unless some basis is shown for piercing the corporate veil.<sup>44</sup> On the other side, courts have applied the plain meaning of the Act to the alleged debt collector and if it was personally involved in the debt collection, it may become personally liable without piercing the corporate veil.<sup>45</sup>

1. A Brief Overview of the Veil Piercing Doctrine and Limited Liability

Although veil piercing and limited liability in and of themselves are not the focus of this Comment, a brief discussion of the doctrines is nonetheless appropriate in light of the circuit split. A central aspect of the corporate form is that the corporation exists as a legal entity separate from its shareholders and owners.<sup>46</sup> Accordingly, the obligations of a corporate entity are not assigned to owners, directors, employees or shareholders of the corporation, and shareholder liability is typically limited to the amount the shareholder has invested in the business.<sup>47</sup> Limited liability promotes the organization of large, publicly held corporations, but also encourages smaller-scale entrepreneurial activity.<sup>48</sup> Limited liability also fosters economic efficiency by decreasing the need to monitor agents, reducing the costs of monitoring other shareholders, promoting the free transferability of shares, allowing efficient investor diversification, and facilitating optimal investment decisions.<sup>49</sup> Notably, these purposes

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41. § 1692a(6).

42. *See, e.g.*, *MacDermid v. Discover Fin. Servs.*, 488 F.3d 721, 735 (6th Cir. 2007) (affirming magistrate judge’s 12(b)(6) dismissal of plaintiff’s claim because plaintiff could not show defendant was “debt collector” within meaning of FDCPA).

43. *See Kistner v. Law Offices of Michael P. Margelefsky, LLC*, 518 F.3d 433, 436–38 (6th Cir. 2008) (describing split of authority).

44. *E.g.*, *Pettit v. Retrieval Masters Creditors Bureau, Inc.*, 211 F.3d 1057, 1059 (7th Cir. 2000); *White v. Goodman*, 200 F.3d 1016, 1019 (7th Cir. 2000); *see also Ernst v. Jesse L. Riddle, P.C.*, 964 F. Supp. 213, 216 (M.D. La. 1997) (finding that corporate veil must be pierced for individuals acting on behalf of debt collection agency).

45. *E.g.*, *Kistner*, 518 F.3d at 437–38.

46. JEFFREY D. BAUMAN ET AL., *CORPORATIONS: LAW AND POLICY: MATERIALS AND PROBLEMS* 20 (6th ed. 2007).

47. *Id.* at 269.

48. *Id.* at 272.

49. *Id.* at 272–74; FRANK H. EASTERBROOK & DANIEL R. FISCHER, *THE ECONOMIC STRUCTURE OF CORPORATE LAW* 414–44 (1991); *see also Lee C. Hodge & Andrew B. Sachs, Piercing the Mist: Bringing the Thompson Study into the 1990s*, 43 WAKE FOREST L. REV. 341, 341 (2008) (noting limited liability’s importance in minimizing agency costs and fostering efficient investment decisions).

do not apply as strongly to closely held corporations or companies where ownership and management are not separate.<sup>50</sup>

When appropriate, however, courts will permit creditors to pierce the corporate veil, which allows creditors to disregard the limited liability of corporate actors and recover from them personally.<sup>51</sup> Veil piercing is the most litigated issue in corporate law,<sup>52</sup> and also one that continues to confuse law students, attorneys, and judges.<sup>53</sup> Commentators criticize the uncertainty associated with the doctrine's application,<sup>54</sup> with one scholar even calling for its abolition.<sup>55</sup> "Veil piercing cases are highly fact-specific," rendering the doctrine "all too often characterized by ambiguity, unpredictability, and even a seeming degree of randomness."<sup>56</sup> While conducting a veil piercing analysis, a court may consider "no fewer than twenty separate . . . factors, many of which have multiple sub-factors."<sup>57</sup> Judges considering veil piercing thus have great discretion;<sup>58</sup> accordingly, courts weigh veil piercing factors differently, apply different factors,<sup>59</sup> and sometimes reach inconsistent conclusions.<sup>60</sup>

## 2. No Personal Liability Unless Corporate Veil Pierced

The U.S. District Court for the Middle District of Louisiana was the first court that refused to hold an individual who acts on behalf of a debt collection company personally liable when the plaintiff provides no basis for piercing the corporate veil. In *Ernst v. Jesse L. Riddle, P.C.*,<sup>61</sup> the plaintiff sued both the debt collection corporation and one of its employees.<sup>62</sup> While the employee-defendant did not dispute that the corporation could be held liable as a "debt collector" under the Act, he argued that he could not be held personally liable as the letter in controversy only referred to the corporation, did not bear his signature, and did not refer to him as an individual.<sup>63</sup>

The court applied state law to determine whether the employee-defendant could be held personally liable.<sup>64</sup> The court adopted this course because it discovered no

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50. BAUMAN ET AL., *supra* note 46, at 274. In closely held corporations, the reduction of agency costs and promotion of stock-trading markets are also irrelevant. *Id.*

51. *Id.* at 269.

52. *Id.* at 270.

53. *Id.*

54. See, e.g., Franklin A. Gevurtz, *Piercing Piercing: An Attempt to Lift the Veil of Confusion Surrounding the Doctrine of Piercing the Corporate Veil*, 76 OR. L. REV. 853, 854-58 (1997) (describing "tremendous indeterminacy" of applying multi-factored veil analysis).

55. Stephen M. Bainbridge, *Abolishing Veil Piercing*, 26 J. CORP. L. 479, 481 (2001).

56. *Id.* at 506-07.

57. *Id.* at 510; see also *Associated Vendors, Inc. v. Oakland Meat Co.*, 26 Cal. Rptr. 806, 812-15 (Ct. App. 1962) (listing veil piercing factors).

58. Bainbridge, *supra* note 55, at 481.

59. *Id.* at 509-17; see also Gevurtz, *supra* note 54, at 854-58 (discussing problems associated with veil piercing analysis).

60. Bainbridge, *supra* note 55, at 506-07. "Successful veil piercing claims differ only in degree, but not in kind, from unsuccessful claims." *Id.*

61. 964 F. Supp. 213, 216 (M.D. La. 1997).

62. *Ernst*, 964 F. Supp. at 214-15.

63. *Id.* at 216.

64. *Id.*

language in the FDCPA indicating that Congress intended to abrogate state corporate law when assessing one's liability as a debt collector.<sup>65</sup> The plaintiff's allegations did not support a finding that the corporate veil should be pierced.<sup>66</sup> Accordingly, the court held that the defendant personally owed no duty to the plaintiff for actions taken within his authority on behalf of the corporation.<sup>67</sup>

The U.S. Court of Appeals for the Seventh Circuit decided the next line of cases that supports the Louisiana approach.<sup>68</sup> In *White v. Goodman*,<sup>69</sup> the plaintiff brought suit against a book club, a debt collection company, and one of the company's shareholders.<sup>70</sup> Judge Posner characterized the joinder of the shareholder as "frivolous" and deserving of sanctions for what "amount[ed] to malicious prosecution."<sup>71</sup> The court declared that shareholders of debt collectors operating in the corporate form cannot be held personally liable without showing some basis for piercing the corporate veil.<sup>72</sup> The court, however, did not provide much detail on how it reached this conclusion.<sup>73</sup>

The Seventh Circuit provided greater substantiation for the *White* rule in *Pettit v. Retrieval Masters Creditors Bureau, Inc.*<sup>74</sup> The court faced a situation where the plaintiff sued an alleged debt collection company and its president, who was also the largest shareholder.<sup>75</sup> The plaintiff argued that the company's president should be held personally liable for the violations in which he was personally involved.<sup>76</sup> The district court rejected this argument because it found that the president exercised little control over the company's day-to-day affairs.<sup>77</sup> The court of appeals rejected both the district court's approach and the plaintiff's argument because it found an officer or shareholder's level of control irrelevant to the determination of personal liability.<sup>78</sup>

Instead, the court stated that the FDCPA utilizes the principle of respondeat superior liability.<sup>79</sup> The court analogized the FDCPA's vision of liability to the Title VII context, where companies answer for their employees' statutory violations.<sup>80</sup> The court reasoned that this approach would incentivize debt collection companies to

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65. *Id.*

66. *Id.*

67. *Id.*

68. *See Pettit v. Retrieval Masters Creditors Bureau, Inc.*, 211 F.3d 1057, 1059 (7th Cir. 2000) (holding that FDCPA does not allow individuals to be held liable for violations unless corporate veil is pierced); *White v. Goodman*, 200 F.3d 1016, 1019 (7th Cir. 2000) (holding that shareholders of debt collectors are only personally liable if some basis for corporate veil piercing is shown).

69. 200 F.3d 1016 (7th Cir. 2000).

70. *White*, 200 F.3d at 1019.

71. *Id.*

72. *Id.*

73. *See id.*

74. 211 F.3d 1057 (7th Cir. 2000).

75. *Pettit*, 211 F.3d at 1058–59.

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.* (citing *Wadlington v. Credit Acceptance Corp.* 76 F.3d 103, 108 (6th Cir. 1996); *Fox v. Citicorp Credit Servs., Inc.*, 15 F.3d 1507, 1516 (9th Cir. 1994)).

80. *Pettit*, 211 F.3d at 1059.

discipline unruly employees and to train employees to avoid actions that could impose liability.<sup>81</sup>

Courts that require veil piercing as a prerequisite to personal liability under the FDCPA do so for two underlying reasons. First, these courts read the FDCPA's silence on the issue as indicative of an absence of congressional intent to supplant state corporate law when affixing liability.<sup>82</sup> Second, some judges reason that because the FDCPA incorporates vicarious liability principles in the attorney-client context,<sup>83</sup> and because Congress intended the FDCPA to apportion liability like Title VII,<sup>84</sup> vicarious liability should apply to redress the FDCPA violations of debt collectors.<sup>85</sup>

### 3. The Personal Involvement Approach

Courts that impose liability on individuals working on behalf of a corporate debt collection entity without requiring piercing the corporate veil vastly outnumber those applying the Seventh Circuit approach. District courts within the First,<sup>86</sup> Second,<sup>87</sup> Third,<sup>88</sup> Ninth,<sup>89</sup> and Tenth Circuits,<sup>90</sup> as well as the U.S. Court of Appeals for the Sixth Circuit,<sup>91</sup> hold an employee, officer, director, or shareholder liable if they meet the definition of "debt collector" and violate the FDCPA notwithstanding state

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81. *Id.* (citing *EEOC v. AIC Sec. Investigations, Ltd.*, 55 F.3d 1276, 1282 (7th Cir. 1995)).

82. *Ernst v. Jesse L. Riddle, P.C.*, 964 F. Supp. 213, 216 (M.D. La. 1997).

83. *Pettit*, 211 F.3d at 1059 (citing *Wadlington*, 76 F.3d at 108); *see also Fox*, 15 F.3d at 1516 (holding companies employing attorneys who violate FDCPA vicariously liable when companies satisfy definition of "debt collector").

84. *Pettit*, 211 F.3d at 1059.

85. *Id.*

86. *See, e.g., Som v. Daniels Law Offices, P.C.*, 573 F. Supp. 2d 349, 356 (D. Mass. 2008) (holding employee and stakeholder liable for FDCPA violations based on personal involvement in debt collection).

87. *See, e.g., Musso v. Seiders*, 194 F.R.D 43, 46–47 (D. Conn. 1999) (holding that defendant could be liable for FDCPA violations without veil piercing if he was personally involved as "debt collector"); *Teng v. Metro. Retail Recovery Inc.*, 851 F. Supp. 61, 67 (E.D.N.Y. 1994) (finding that President and Manager of debt collection agency are "debt collectors" under FDCPA language).

88. *See, e.g., Piper v. Portnoff Law Assocs.*, 274 F. Supp. 2d 681, 689–90 (E.D. Pa. 2003) (holding that individuals could be liable for FDCPA violations without veil piercing where they signed debt collection letters and were involved in daily operations), *aff'd*, 396 F.3d 227 (3d Cir. 2005).

89. *See, e.g., Schwarm v. Craighead*, 552 F. Supp. 2d 1056, 1070–73 (E.D. Cal. 2008) (holding that shareholder, director, or officer meeting requirements of "debt collector" can be liable for violations of FDCPA even if corporate veil is not pierced); *del Campo v. Kennedy*, 491 F. Supp. 2d 891, 903 (N.D. Cal. 2006) (holding that private actor can be liable for violations of FDCPA without veil piercing if he materially participated in debt collection); *Brink v. First Credit Res.*, 57 F. Supp. 2d 848, 862 (D. Ariz. 1999) (holding that plain language of statute and agency theory allowed plaintiffs to hold defendants liable as "debt collectors" for FDCPA violations absent veil piercing); *Newman v. CheckRite Cal., Inc.*, 912 F. Supp. 1354, 1372 (E.D. Cal. 1995) (holding actor could be liable for any debts he attempted to collect directly or indirectly in violation of FDCPA); *United States v. ACB Sales & Serv., Inc.*, 590 F. Supp. 561, 575 (D. Ariz. 1984) (using tort and agency principles to hold that individual defendants cannot be liable under FDCPA if they did not actually participate in violations).

90. *See, e.g., Brumbelow v. Law Offices of Bennett & Deloney, P.C.*, 372 F. Supp. 2d 615, 617–22 (D. Utah 2005) (finding that indirect participation by oversight of debt collection corporation raised factual question regarding whether defendants were personally liable for FDCPA violations as "debt collectors").

91. *See, e.g., Kistner v. Law Offices of Michael P. Margelefsky, LLC*, 518 F.3d 433, 436, 437–38 (6th Cir. 2008) (holding sole member of limited liability corporation individually liable for FDCPA violation as a "debt collector").

corporate law, which may shield such actors from personal liability.<sup>92</sup> Given the relative abundance of cases adopting this approach, it is prudent to consider the reasoning of the leading cases.

The earliest cases applied the plain meaning of the FDCPA's definition of "debt collector" to the defendant and apply the principles of tort and agency law to assess liability.<sup>93</sup> *West v. Costen*,<sup>94</sup> the first opinion dealing with this issue, involved a defendant who was both the president and controlling shareholder of a debt collection agency.<sup>95</sup> The court held that a corporate officer cannot be held vicariously liable for the corporation's employees' unlawful conduct absent personal involvement.<sup>96</sup> The court noted that it could hold the controlling shareholder-defendant personally liable absent personal involvement, however, when the situation justifies piercing the corporate veil.<sup>97</sup> The *West* court ultimately disregarded the collection agency's corporate form and pierced the corporate veil because the corporation was undercapitalized, the defendant used the corporation as his own personal business vehicle, and the plaintiffs would not have recovered unless the court found the defendant personally liable.<sup>98</sup> The *West* court's conclusion differs from that in *Pettit*<sup>99</sup> because the *West* court only reached the corporate veil analysis after it determined that the defendant was not personally involved in the violation.<sup>100</sup> One could thus reasonably infer that had the *West* defendant involved himself personally in the collection, the court would have imposed personal liability without piercing the corporate veil.

The U.S. District Court for the District of Arizona used tort and agency principles to hold that a corporate director may be held personally liable for those FDCPA violations in which he "materially participates."<sup>101</sup> The court noted, however, that the corporate veil piercing doctrine did not factor into its analysis.<sup>102</sup> In *Teng v. Metropolitan Retail Recovery Inc.*,<sup>103</sup> the court used tort principles to justify its assessment of liability.<sup>104</sup> The court found that each employee-defendant fell within the definition of "debt collector" provided by the statute, and noted that if the action had been a normal tort action, they would both have been held personally liable as they

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92. See, e.g., *id.* at 436, 441–42 (holding sole member of limited liability corporation liable for FDCPA violation within definition of "debt collector" despite Ohio law precluding personal liability for such individuals).

93. See, e.g., *Teng v. Metro. Retail Recovery Inc.*, 851 F. Supp. 61, 67 (E.D.N.Y. 1994) (applying common law tort principles to determine whether defendant can be held liable as "debt collector"); *ACB Sales & Serv.*, 590 F. Supp. at 575 (using tort and agency principles to assess defendant's liability as "debt collector").

94. 558 F. Supp. 564 (W.D. Va. 1983).

95. *West*, 558 F. Supp. at 585.

96. *Id.*

97. *Id.*

98. *Id.* at 586–87.

99. See *supra* notes 74–81 for a discussion of *Pettit*.

100. *West*, 558 F. Supp. at 585.

101. *United States v. ACB Sales & Serv., Inc.*, 590 F. Supp. 561, 575 (D. Ariz. 1984).

102. *Id.* at 575 n.12.

103. 851 F. Supp. 61 (E.D.N.Y. 1994).

104. *Teng*, 851 F. Supp. at 67.

were affirmative actors who made the actionable phone calls.<sup>105</sup> Like the opinion in *United States v. ACB Sales & Serv., Inc.*,<sup>106</sup> the *Teng* opinion lacked a corporate veil analysis.<sup>107</sup>

In *Brumbelow v. Law Offices of Bennett & Deloney, P.C.*,<sup>108</sup> the court directly addressed the issue of whether a corporate shareholder may be held personally liable as a “debt collector” without piercing the corporate veil.<sup>109</sup> The court reasoned that holding the defendant, who served as the debt collection firm’s sole attorney, liable as a “debt collector” without piercing the corporate veil adhered to the FDCPA’s plain meaning.<sup>110</sup> The court further pointed to the broad language of the FDCPA and the unlikelihood that Congress wished to confine liability to the small corporate entities often used in debt collection.<sup>111</sup>

The *Brumbelow* opinion also assailed the premises of the *Pettit* decision.<sup>112</sup> In *Pettit*, the Seventh Circuit asserted that the FDCPA, like Title VII, employs respondeat superior liability.<sup>113</sup> The *Brumbelow* court disagreed, stating that the language of Title VII differs significantly from the language of the FDCPA.<sup>114</sup> Unlike the FDCPA, Title VII expressly limits liability to business entities or employers.<sup>115</sup> The FDCPA, on the other hand, extends liability to all debt collectors, the definition of which includes the language “any person.”<sup>116</sup> The court reasoned that while one can reasonably conclude that Title VII’s language intends to provide for respondeat superior liability, the language of the FDCPA does not.<sup>117</sup>

The *Brumbelow* opinion ostensibly influenced the Sixth Circuit in *Kistner v. Law Offices of Michael P. Margelefsky, LLC*.<sup>118</sup> The court found *Brumbelow*’s argument against *Pettit* persuasive and accordingly held that a member of a limited liability company (“LLC”) can be held personally liable under the FDCPA, even though state law precludes personal liability for LLC members.<sup>119</sup>

*Brumbelow* likewise influenced the Eastern District of California’s subsequent *Schwarm v. Craighead*<sup>120</sup> holding. The *Schwarm* opinion articulated additional reasons for imposing personal liability on individuals working on behalf of a corporate entity in the FDCPA context without piercing the corporate veil.<sup>121</sup> The court relied on the FTC

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105. *Id.*

106. 590 F. Supp. 561 (D. Ariz. 1984).

107. *See Teng*, 851 F. Supp. at 67 (analyzing FDCPA liability based on factors other than corporate veil piercing).

108. 372 F. Supp. 2d 615 (D. Utah 2005).

109. *Brumbelow*, 372 F. Supp. 2d at 617.

110. *Id.* at 618.

111. *Id.* at 619.

112. *Id.* at 621–22.

113. *Pettit v. Retrieval Masters Creditors Bureau, Inc.*, 211 F.3d 1057, 1059 (7th Cir. 2000).

114. *Brumbelow*, 372 F. Supp. 2d at 621–22.

115. *Id.* at 622.

116. *Id.*

117. *Id.*

118. 518 F.3d 433 (6th Cir. 2008).

119. *Kistner*, 518 F.3d at 436–37.

120. 552 F. Supp. 2d 1056, 1071–72 (E.D. Cal. 2008).

121. *Schwarm*, 552 F. Supp. 2d at 1070–72.

Staff Commentary to the FDCPA,<sup>122</sup> which explains that the definition of “debt collector” includes “[e]mployees of a debt collection business, including a corporation, partnership, or other entity whose business is the collection of debts owed another.”<sup>123</sup> After the court rejected the Seventh Circuit’s comparison of the FDCPA to Title VII,<sup>124</sup> the court instead analogized the FDCPA to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA”).<sup>125</sup> Like the FDCPA, CERCLA imposes liability on “any person” who violates the statute.<sup>126</sup> The court noted that because Congress did not limit the statutory definition of “person,” every court applying CERCLA “imposes personal liability on shareholders, officers, and directors without requiring a plaintiff to pierce the corporate veil.”<sup>127</sup> Accordingly, the court found that holding individuals working on behalf of a corporate debt collection entity personally liable for their violations of the FDCPA was more in tune with Congress’s intent.<sup>128</sup>

The holdings of the latest decisions mark a clear trend toward imposing personal liability, without piercing the corporate veil, when an employee, shareholder, officer, or director violates the Act as a “debt collector.”<sup>129</sup> The newest cases echo the material participation standard of *ACB Sales* while challenging the premises underlying the *Pettit* decision.<sup>130</sup> The cases further point to the broad language of the FDCPA<sup>131</sup> and how federal courts interpret similar language in other statutes<sup>132</sup> to vindicate giving the Act a sweeping effect.<sup>133</sup>

### III. DISCUSSION

The Middle District of Louisiana and the Seventh Circuit’s requirement that a plaintiff provide a basis for piercing the corporate veil before a corporate agent can be held personally liable as a debt collector for violations of the FDCPA lacks the viability

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122. FTC Staff Commentary on the Fair Debt Collection Practices Act, 53 Fed. Reg. 50,101, 50,102 (Dec. 13, 1988).

123. *Id.* at 50,101, 50,102.

124. *Schwarm*, 552 F. Supp. 2d at 1071–72.

125. *Id.* at 1072 (citing Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601–9675 (2006)).

126. *Id.* (citing *United States v. Bestfoods*, 524 U.S. 51, 55–56 (1998)).

127. *Id.*

128. *Id.*

129. *See Kistner v. Law Offices of Michael P. Margelefsky, LLC*, 518 F.3d 433, 437–38 (6th Cir. 2008) (imposing individual liability on member of LLC for violations of FDCPA); *Schwarm*, 552 F. Supp. 2d at 1071–72 (concluding that shareholders, officers, and directors can be personally liable for FDCPA violations); *Brumbelow v. Law Offices of Bennett & Deloney, P.C.*, 372 F. Supp. 2d 615, 621–22 (D. Utah 2005) (finding that individuals with supervisory authority over corporations and involvement in procedures can be liable, regardless of lack of personal knowledge about particular debt collection).

130. *See Kistner*, 518 F.3d at 437–38 (adopting *Brumbelow* analysis); *Schwarm*, 552 F. Supp. 2d at 1071 (articulating *Brumbelow* argument); *Brumbelow*, 372 F. Supp. 2d at 621–22 (arguing against Seventh Circuit’s Title VII analogy).

131. *See, e.g., Brumbelow*, 372 F. Supp. 2d at 621 (noting Congress’s use of “broad language”).

132. *See Schwarm*, 552 F. Supp. 2d at 1072 (analogizing FDCPA to CERCLA).

133. *See, e.g., Brumbelow*, 372 F. Supp. 2d at 621 (stating that legislature’s expansive language “should be given its full effect”).

of the personal involvement majority rule.<sup>134</sup> The Seventh Circuit's approach fails to persuade other courts for various reasons, and the following subsections will address these weaknesses and others. The Seventh Circuit, for instance, reads a broadly phrased statute narrowly, and arguably disregards the FDCPA's plain meaning.<sup>135</sup> Moreover, the Seventh Circuit partially based its holding on a Title VII-FDCPA analogy that failed to survive the scrutiny placed upon it by other courts.<sup>136</sup> The Seventh Circuit approach also faces new challenges that the court has not yet answered. For one, the legal trend clearly favors those opposed to requiring the corporate veil to be pierced before a debt collector can be held personally liable.<sup>137</sup> In addition, the notion that Congress intended to limit liability to corporate entities seems unlikely in light of its awareness about the small corporate vehicles typically used in debt collection.<sup>138</sup> Lastly, after the rejection of the Title VII-FDCPA analogy by several courts,<sup>139</sup> a recent decision unveiled a new and more persuasive CERCLA-FDCPA analogy that supports the conclusion that the FDCPA intended to impose personal, and not vicarious, liability on debt collectors who violate the statute.<sup>140</sup>

A. *The Veil Recedes: Analytical Problems of the Louisiana and Seventh Circuit Approach*

The Middle District of Louisiana and the Seventh Circuit base their requirement that the plaintiff show a basis for piercing the corporate veil when suing an individual working on behalf of a debt collector corporate entity on several premises.<sup>141</sup> The following subsections will evaluate each premise and its challenges in turn.

1. The Narrow Reading Versus the Plain Meaning

First, the Middle District of Louisiana and Seventh Circuit Court of Appeals maintain that no language in the FDCPA indicates that Congress intended to displace state corporate law.<sup>142</sup> However, the plain language of the FDCPA clearly envisions

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134. See *supra* Part II.B.3 and accompanying text for a discussion of the post-*Pettit* decisions and their bases of disagreement with the Seventh Circuit.

135. See *infra* Part III.A.1 for a discussion of the problems inherent in the Seventh Circuit's narrow reading of the FDCPA.

136. See *infra* Part III.A.2 for a discussion of the problems with the Seventh Circuit's analogy of the FDCPA to Title VII.

137. See *infra* Part III.B.1 for a discussion of the legal trend following *Pettit*.

138. See *infra* Part III.B.2 for an analysis of why incorporation of the veil analysis for purposes of assessing debt collector liability under the FDCPA may frustrate the FDCPA's purposes.

139. See *infra* Part III.A.2 for a discussion of why courts reject the Seventh Circuit's Title VII-FDCPA analogy.

140. See *infra* Part III.B.3 for a discussion of the CERCLA-FDCPA analogy and its strengths.

141. See *supra* Part II.B.1 for a discussion of the premises underlying the Louisiana and Seventh Circuit approach.

142. See *White v. Goodman*, 200 F.3d 1016, 1019 (7th Cir. 2000) (stating flatly that FDCPA is "not aimed at the shareholders of debt collectors operating in the corporate form unless some basis is shown for piercing the corporate veil"); *Ernst v. Jesse L. Riddle, P.C.*, 964 F. Supp. 213, 216 (M.D. La. 1997) (finding lack of legislative intent to supplant state laws based on language of FDCPA).

liability for persons working on behalf of a debt collection business.<sup>143</sup> If Congress intended the FDCPA to reach these individuals without regard to the corporate form of their employer, then state corporate law will necessarily have to be displaced.<sup>144</sup>

The decisions following *Pettit* question the notion that Congress intended to honor state corporate law when attaching liability to debt collector defendants on several grounds.<sup>145</sup> These decisions draw attention to the fact that the FDCPA uses broad language to support the notion that courts should give the language its sweeping effect.<sup>146</sup> Congress also likely intended the statute's plain meaning to apply to debt collector defendants, and the statute's plain meaning does not distinguish between corporations and corporate employees.<sup>147</sup> Moreover, the statute defines a "debt collector" as "any person . . . in any business,"<sup>148</sup> which indicates that Congress intended to impose liability on a business entity's employees when they violate the statute, and not just business entities alone.<sup>149</sup> The plain reading approach further calls *Pettit's* vicarious liability analysis<sup>150</sup> into question: if Congress intended the doctrine of respondeat superior to determine liability for FDCPA violations, why would Congress expressly define an individual working within a business as a debt collector<sup>151</sup> and impose liability directly on debt collectors?<sup>152</sup>

A holistic reading of the FDCPA suggests the same result. Congress explicitly excludes individuals working on behalf of a corporate entity from liability in other parts of the statute, but did not do so here.<sup>153</sup> The fact that Congress forbids the personal liability of officers and employees of creditors,<sup>154</sup> while not expressly precluding personal liability for officers and employees of debt collectors,<sup>155</sup> suggests that Congress intended to include employees and officers of a debt collection company within the meaning of "debt collector."

The legislative history likewise echoes the broad language of the statute. When defining the scope of the act, the Senate Committee on Banking, Housing, and Urban Affairs stated that they intended the term "debt collector" to "cover *all third persons*

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143. See 15 U.S.C. § 1692a (2006) (defining "debt collector" as any individual who attempts to collect debt).

144. See, e.g., *Kistner v. Law Offices of Michael P. Margelefsky, LLC*, 518 F.3d 433, 436, 441–42 (6th Cir. 2008) (overriding Ohio statute precluding personal liability for LLC members by holding LLC member personally liable for FDCPA violation).

145. See *supra* Part II.B.3 for a discussion of the approach taken by the post-*Pettit* decisions.

146. See, e.g., *Brumbelow v. Law Offices of Bennett & Deloney, P.C.*, 372 F. Supp. 2d 615, 621 (D. Utah 2005) (observing that broad statutory language should be given its full effect).

147. See, e.g., *Newman v. CheckRite Cal., Inc.*, 912 F. Supp. 1354, 1372 (E.D. Cal. 1995) (applying plain language of statute to defendant-employee); *Teng v. Metro. Retail Recovery Inc.*, 851 F. Supp. 61, 67 (E.D.N.Y. 1994) (same).

148. 15 U.S.C. § 1692a(6).

149. See *Brumbelow*, 372 F. Supp. 2d at 618–19 (discussing cases that apply plain meaning of statute).

150. *Pettit v. Retrieval Masters Creditors Bureau, Inc.*, 211 F.3d 1057, 1059 (7th Cir. 2000).

151. 15 U.S.C. § 1692a(6).

152. § 1692k(a).

153. See, e.g., § 1692a(6)(A) (excluding officers or employees of creditors from definition of debt collector).

154. *Id.*

155. See § 1692a(6) (expressly excluding officers or employees of creditors but not officers or employees of debt collectors).

who regularly collect debts for others.”<sup>156</sup> The Committee did not mention corporate employees, officers, directors, or shareholders in the paragraphs describing the persons to be excluded from the definition.<sup>157</sup> When defining the FDCPA’s relation to state law, the Committee failed to include language evincing intent to honor or supplant state corporate law.<sup>158</sup> The Staff Commentary, however, provides that when the FDCPA defines a “debt collector” as “any person,” this includes an employee of a corporation.<sup>159</sup>

## 2. The Flawed Title VII Analogy

The *Pettit* court improperly buttressed its analysis by suggesting that the FDCPA uses the principle of vicarious liability, much like Title VII.<sup>160</sup> The *Pettit* court further justified the Title VII approach as it incentivizes debt collection companies to properly train and discipline their aberrant employees.<sup>161</sup> The problem here, though, is that Title VII is inapposite to the FDCPA because it contains wholly different language.<sup>162</sup>

As the U.S. District Court for the District of Utah pointed out, the problem with concluding that the FDCPA provides for vicarious liability because Title VII apportions liability in such a way is that the language of Title VII lacks the breadth of the language of the FDCPA.<sup>163</sup> The Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, and the Age Discrimination in Employment Act forbid discrimination by employers, employment agencies, and labor organizations.<sup>164</sup> The FDCPA, on the other hand, does not single out employers, labor organizations, or other entities when defining “debt collector.”<sup>165</sup> This rebuttal to the *Pettit* analysis ultimately persuaded the Sixth Circuit Court of Appeals in *Kistner v. Law Offices of Michael P. Margelefsky, LLC*, thus splitting the circuits.<sup>166</sup> Other circuits should follow suit

156. S. REP. NO. 95-382, at 3 (1977), reprinted in 1977 U.S.C.C.A.N. 1695, 1697 (emphasis added).

157. *Id.* at 3–4, reprinted in 1977 U.S.C.C.A.N. at 1698.

158. *Id.* at 6, reprinted in 1977 U.S.C.C.A.N. at 1700. The section deals primarily with preemption of state law by the FDCPA:

The Committee believes that this law ought not to foreclose the States from enacting or enforcing their own laws regarding debt collection. Accordingly, this legislation annuls only “inconsistent” State laws, with stronger State laws not regarded as inconsistent. In addition, States with substantially similar laws may be exempted from the act’s requirements (but not its remedies) by applying to the Federal Trade Commission.

*Id.*

159. FED’L TRADE COMM’N, STAFF COMMENTARY ON THE FAIR DEBT COLLECTION PRACTICES ACT, <http://www.ftc.gov/os/statutes/fdcpa/commentary.htm>.

160. *Pettit v. Retrieval Masters Creditors Bureau, Inc.*, 211 F.3d 1057, 1059 (7th Cir. 2000).

161. *Id.*

162. See *supra* notes 80–85 and Part II.B.3 for a discussion of the Title VII–FDCPA analogy.

163. *Brumbelow v. Law Offices of Bennett & Deloney, P.C.*, 372 F. Supp. 2d 615, 621–22 (D. Utah 2005).

164. See 29 U.S.C. § 623 (2006) (prohibiting discrimination based on age by entities); 42 U.S.C. § 12111(2) (defining “covered entity” to include employer, labor organization, or employment agency); § 12112(a) (forbidding discrimination based on disability by any covered entity); § 2000e-2 (proscribing unlawful employment practices by entities); *Brumbelow*, 372 F. Supp. 2d at 621–22 (emphasizing statutory language that imposes liability on discriminatory employers as opposed to individual employees).

165. See 15 U.S.C. § 1692a (2006) (providing expansive definition of debt collector).

166. 518 F.3d 433, 437–38 (6th Cir. 2008).

because the *Pettit* analysis not only relies upon an unpersuasive analogy,<sup>167</sup> but also conflicts with the statute's plain meaning and purpose.<sup>168</sup>

#### B. *The Personal Involvement Approach's Superiority*

The personal involvement approach enjoys numerous advantages over the Seventh Circuit and Louisiana approach. Not only does the personal involvement approach include more adherents, but the approach rebounded after its rejection by the Seventh Circuit.<sup>169</sup> In light of the rebound, the Seventh Circuit has failed to convince any other courts of its position's applicability,<sup>170</sup> and its approach will likely continue to wane as other courts address the issue.

The Seventh Circuit's interjection of the veil piercing analysis for the purpose of assessing debt collector liability will likely frustrate the FDCPA's purpose of consistent state action in light of the veil piercing doctrine's inconsistent application throughout the courts.<sup>171</sup> The personal involvement approach, on the other hand, will likely foster consistent state action as it applies the plain meaning of the statute to the facts at hand,<sup>172</sup> as opposed to requiring a preliminary multifaceted veil analysis which provides courts with wide discretion.

While the Seventh Circuit's FDCPA–Title VII analogy has failed to provide an answer to the personal liability problem, the Eastern District of California's FDCPA–CERCLA analogy bolsters the credibility of the personal involvement approach.<sup>173</sup> With the premises of the Seventh Circuit's FDCPA–Title VII analogy thoroughly undermined,<sup>174</sup> courts will likely look to the new FDCPA–CERCLA analogy for guidance.

##### 1. The Trend Toward Disregarding the Corporate Veil Analysis

Before the *Ernst v. Jesse L. Riddle, P.C.*,<sup>175</sup> *White v. Goodman*,<sup>176</sup> and *Pettit v. Retrieval Masters Creditors Bureau, Inc.*<sup>177</sup> decisions, no courts required plaintiffs to show a basis for piercing the corporate veil when they sued defendants who worked for a corporate debt collector.<sup>178</sup> After *Pettit*, the courts outside of the Seventh Circuit

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167. See *Kistner*, 518 F.3d at 437–38 (rejecting *Pettit* reasoning in favor of *Brumbelow* analysis).

168. See *supra* Part III.A.1 for a discussion of the inconsistency between the Seventh Circuit's approach and the FDCPA's plain meaning and purpose.

169. See *supra* notes 86–92 and accompanying text for a list of cases that do not require the plaintiff to pierce the corporate veil in order to find a defendant personally liable as a debt collector under FDCPA.

170. See *supra* notes 86–91 and accompanying text for a list of courts that have rejected the Seventh Circuit's approach.

171. See *supra* Part II.B.1 for a discussion about the veil piercing doctrine's consistency in application.

172. See *infra* Part III.B.2 for a brief discussion of the plain meaning approach and consistency in application.

173. See *infra* Part III.B.3 for a discussion of the FDCPA–CERCLA analogy.

174. See *supra* note 133 for a list of cases challenging *Pettit*'s analysis.

175. 964 F. Supp. 213 (M.D. La. 1997).

176. 200 F.3d 1016 (7th Cir. 2000).

177. 211 F.3d 1057 (7th Cir. 2000).

178. See, e.g., *Teng v. Metro. Retail Recovery Inc.*, 851 F. Supp. 61, 67 (E.D.N.Y. 1994) (noting that veil piercing argument was not made and instead focusing on lack of material participation); *United States v. ACB Sales & Serv., Inc.*, 590 F. Supp. 561, 575 (D. Ariz. 1984) (finding that debt collection company's

reaffirmed the prevailing original approach,<sup>179</sup> rejected *Pettit*'s arguments,<sup>180</sup> and provided additional bases for concluding that Congress did not intend claimants to pierce the corporate veil when suing debt collectors working within a corporate entity.<sup>181</sup>

The weight of authority and jurisprudential trend of the law clearly favors the Sixth Circuit's approach in *Kistner*. Not only does the Sixth Circuit's rule command more adherents,<sup>182</sup> but several courts disagree with the premises underlying *Pettit*.<sup>183</sup>

## 2. Veil Piercing Requirement Is Unhelpful in Light of the FDCPA's Purpose

The U.S. District Court for the District of Utah attacked *Pettit* based upon the practical unlikelihood that Congress desired to restrict liability to the small corporate entities typically used for debt collection.<sup>184</sup> Indeed, the FDCPA's legislative history suggests that Congress was well aware of the small corporate vehicles used for debt collection.<sup>185</sup> The broad, sweeping language of the FDCPA's definition of debt collector further amplifies the unlikelihood that Congress intended to restrict liability to these small corporate vehicles.<sup>186</sup>

Applying the veil piercing doctrine in this context may frustrate the FDCPA's purpose. Congress intended the FDCPA to "promote consistent State action to protect consumers against debt collection abuses."<sup>187</sup> Application of the veil piercing doctrine by different courts, however, could very well lead to inconsistent results.<sup>188</sup> Courts vary in how they apply the array of veil piercing factors, and judges possess wide discretion.<sup>189</sup> The doctrine's application by all courts in this context would likely foster

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president and manager fit FDCPA definition of "debt collector" without piercing corporate veil); *West v. Costen*, 558 F. Supp. 564, 585 (W.D. Va. 1983) (finding alternate grounds to pierce corporate veil). While the *West* court ultimately pierced the corporate veil of a defendant, the court only reached the corporate veil analysis because this defendant did not personally violate any provisions of the FDCPA. *West*, 558 F. Supp. at 584–87.

179. See, e.g., *Kistner v. Law Offices of Michael P. Margelefsky, LLC*, 518 F.3d 433, 437–38 (6th Cir. 2008) (holding that plaintiff need not pierce corporate veil to hold defendant personally liable); *Schwarm v. Craighead*, 552 F. Supp. 2d 1056, 1072 (E.D. Cal. 2008) (same); *Brumbelow v. Law Offices of Bennett & Deloney, P.C.*, 372 F. Supp. 2d 615, 617–19 (D. Utah 2005) (same).

180. See, e.g., *Kistner*, 518 F.3d at 437–38 (finding *Brumbelow* argument persuasive); *Schwarm*, 552 F. Supp. 2d at 1071–73 (attacking *Pettit*'s argument); *Brumbelow*, 372 F. Supp. 2d at 621–22 (same).

181. See *Schwarm*, 552 F. Supp. 2d at 1072 (comparing FDCPA to CERCLA to help determine legislative intent).

182. See *supra* notes 86–92 and accompanying text for a list of cases that do not require the plaintiff to pierce the corporate veil in order to find a defendant personally liable as a debt collector under FDCPA.

183. See *supra* note 131 for a list of cases challenging *Pettit*'s analysis.

184. *Brumbelow*, 372 F. Supp. 2d at 619 (quoting *Pikes v. Riddle*, 38 F. Supp. 2d 639, 640 (N.D. Ill. 1998)).

185. See S. REP. NO. 95-382, at 2 (1977), reprinted in 1977 U.S.C.C.A.N. 1695, 1696 ("There are more than 5,000 collection agencies across the country, each averaging 8 employees.").

186. See *supra* Part III.A.1 for a discussion of the FDCPA's language.

187. 15 U.S.C. § 1692(e) (2006).

188. See *supra* Part II.B.1 for a discussion of the veil piercing doctrine's application.

189. See *supra* notes 56–60 and accompanying text for a discussion of the many factors which lead courts to apply the veil piercing doctrine differently.

unpredictability.<sup>190</sup> Some courts will less reluctantly pierce the veil and hold defendants liable personally as debt collectors; others will more often uphold the corporate form and hold defendants immune from personal liability, even though those defendants may meet the FDCPA's definition of debt collector.<sup>191</sup> Moreover, the rationales supporting limited liability apply with less force to the closely held corporations<sup>192</sup> typically used in debt collection.<sup>193</sup>

The personal involvement approach lacks this flaw and stands to harmonize the FDCPA's application across jurisdictions due to its simplicity. Instead of applying a multifactor test to determine personal liability,<sup>194</sup> the courts adopting this approach only apply the plain meaning of the FDCPA to the defendant.<sup>195</sup> The personal involvement approach likewise imposes less of a burden on plaintiffs, who would otherwise have to plead a basis for piercing the corporate veil.<sup>196</sup> Further, the FDCPA itself provides adequate protection for employees or shareholders of debt collection corporations who do not involve themselves in debt collection activity.<sup>197</sup> Thus, a shareholder or manager not personally involved in an FDCPA violation will not be sued as a "debt collector,"<sup>198</sup> making a corporate veil piercing analysis in this context unnecessary to protect an uninvolved corporate actor. This should not lead the reader to believe, however, that veil piercing has no place in personal involvement jurisdictions. Personal involvement jurisdictions will conduct a veil piercing analysis to determine whether or not an uninvolved shareholder may be held vicariously liable.<sup>199</sup>

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190. See *supra* notes 52–55 and accompanying text for a discussion of the uncertainty associated with application of the doctrine.

191. The Middle District of Louisiana's interjection of the veil piercing requirement has already produced a similar outcome in one instance. The court found that one defendant, a debt collection corporation shareholder and employee, therefore could be "personally and individually a 'debt collector'" in one jurisdiction but "merely a shareholder and employee" in another. *Brumbelow v. Law Offices of Bennett & Deloney, P.C.*, 372 F. Supp. 2d 615, 620 (D. Utah 2005) (referencing inconsistent outcome regarding defendant's liability in *Pikes v. Riddle*, 38 F. Supp. 2d 639, 640 (N.D. Ill. 1998) and *Ernst v. Jesse L. Riddle, P.C.*, 964 F. Supp. 213 (M.D. La. 1997)). While the *Pikes* court did not apply a veil piercing analysis to produce the inconsistent result, application of the murky doctrine could lead to similarly inconsistent results. See *Bainbridge, supra* note 55, at 481 ("The standards by which veil piercing is effected are vague, leaving judges great discretion. The result has been uncertainty and lack of predictability . . .").

192. *BAUMAN ET AL., supra* note 46, at 274.

193. *Brumbelow*, 372 F. Supp. 2d at 619 (quoting *Pikes*, 38 F. Supp. 2d at 640).

194. See *Bainbridge, supra* note 55, at 510 (noting one decision applying veil piercing analysis incorporated twenty separate factors).

195. See, e.g., *Teng v. Metro. Retail Recovery Inc.*, 851 F. Supp. 61, 67 (E.D.N.Y. 1994) (applying plain meaning of statute to defendant).

196. *Ernst*, 964 F. Supp. at 216.

197. 15 U.S.C. § 1692a(6) (2006). One must use instrumentalities of interstate commerce or the mails in a debt collection business or "regularly collect[] or attempt[] to collect, directly or indirectly, debts owed." *Id.*

198. § 1692a.

199. See *supra* notes 94–100 and accompanying text for a discussion of *West v. Costen*, which held a shareholder not personally involved in an FDCPA violation personally liable after piercing the corporation's veil. 558 F. Supp. 564, 585 (W.D. Va. 1983). The court did *not* pierce the corporate veil in order to find the corporate defendants who were personally involved with the violation liable.

### 3. If the Shoe Fits: Analogizing FDCPA to CERCLA

Unlike the FDCPA–Title VII analogy,<sup>200</sup> the language in CERCLA is a fitting analogue to the FDCPA’s language.<sup>201</sup> Like the FDCPA, CERCLA imposes liability on violators of the statute when they fit into the category of “*any person* who at the time of disposal of any hazardous substance owned or operated any facility.”<sup>202</sup>

In *Schwarm v. Craighead*,<sup>203</sup> the Eastern District of California countered *Pettit’s* analogy to Title VII statutes with an analogy to CERCLA.<sup>204</sup> The *Schwarm* court noted that because Congress did not limit the statutory definition of “person” to exclude corporate shareholders or employees, “every circuit court that has addressed the issue has held that CERCLA imposes personal liability on shareholders, officers, and directors without requiring a plaintiff to pierce the corporate veil.”<sup>205</sup> In contrast, Title VII lacks the broad language of the FDCPA and CERCLA.<sup>206</sup> Unlike the FDCPA and CERCLA, Title VII applies only to particular entities.<sup>207</sup>

The U.S. Supreme Court applies the plain meaning of CERCLA to defendants who are direct participants in the tortious act, notwithstanding state corporate law that may require a contrary result.<sup>208</sup> It is important to note, however, that the Court would still require piercing of the corporate veil when a defendant is charged with derivative liability under CERCLA.<sup>209</sup> This approach mirrors that of the Western District of Virginia in *West v. Costen*,<sup>210</sup> where the court pierced the corporate veil only after the court determined that the defendant did not personally violate any provision of the

200. See *supra* Part III.A.2 for a discussion of the Title VII–FDCPA analogy’s weaknesses.

201. *Schwarm v. Craighead*, 552 F. Supp. 2d 1056, 1072 (E.D. Cal. 2008).

202. *United States v. Bestfoods*, 524 U.S. 51, 55 (1998) (emphasis added) (quoting 42 U.S.C. § 9607(a)(2) (2006)) (internal quotation marks omitted); see also *Schwarm*, 552 F. Supp. 2d at 1072 (relying on language from *Bestfoods*).

203. 552 F. Supp. 2d 1056 (E.D. Cal. 2008).

204. *Schwarm*, 552 F. Supp. 2d at 1072; see also Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601–9675 (imposing personal liability on corporate shareholders, officers, and directors for violations of environmental regulations).

205. *Schwarm*, 552 F. Supp. 2d at 1072 (citing *Carter-Jones Lumber Co. v. Dixie Distrib. Co.*, 166 F.3d 840, 846–47 (6th Cir. 1999); *Bedford Affiliates v. Sills*, 156 F.3d 416, 431 (2d Cir. 1998); *Sidney S. Arst Co. v. Pipefitters Welfare Educ. Fund*, 25 F.3d 417, 420 (7th Cir. 1994); *Witco Corp. v. Beekhuis*, 38 F.3d 682, 692 (3d Cir. 1994); *Riverside Mkt. Dev. Corp. v. Int’l Bldg. Prods., Inc.*, 931 F.2d 327, 330 (5th Cir. 1991); *United States v. Ne. Pharm. & Chem. Co.*, 810 F.2d 726, 743–46 (8th Cir. 1986)).

206. See *id.* at 1071–72 (analyzing Title VII to FDCPA and CERCLA to FDCPA analogies).

207. *Id.* at 1071. A “covered entity” is defined as “an employer, employment agency, labor organization, or joint labor-management committee.” 42 U.S.C. § 12111(2).

208. *United States v. Bestfoods*, 524 U.S. 51, 65 (1998). The Court stated:

[A]ny person who operates a polluting facility is *directly liable* for the costs of cleaning up the pollution . . . regardless of whether that person is the facility’s owner, the owner’s parent corporation or business partner, or even a saboteur who sneaks into the facility at night to discharge its poisons out of malice. If any such act of operating a corporate subsidiary’s facility is done on behalf of a parent corporation, the existence of the parent-subsidiary relationship *under state corporate law is simply irrelevant to the issue of direct liability.*

*Id.* (emphasis added).

209. *Id.* at 63–64.

210. 558 F. Supp. 564 (W.D. Va. 1983).

FDCPA.<sup>211</sup> By contrast, this approach differs markedly from one where “the extent of control exercised by an officer or shareholder is irrelevant to determining his liability under the FDCPA.”<sup>212</sup>

In sum, the Seventh Circuit’s approach to determining personal “debt collector” liability under the FDCPA will not likely persuade other courts to adopt its reasoning in the future. All other courts addressing the issue after the Seventh Circuit have rejected the Seventh Circuit’s FDCPA–Title VII analogy.<sup>213</sup> By reading the FDCPA as narrowly as possible, the Seventh Circuit conflicted with the FDCPA’s plain meaning and purpose.<sup>214</sup> Moreover, the justifications underlying the imposition of the veil piercing analysis in tort suits involving corporations do not apply to small corporate vehicles with the same weight as they do to large corporate entities.<sup>215</sup> Due to the doctrine’s multifaceted and murky approach,<sup>216</sup> the interjection of the doctrine in this context will sometimes lead to different results in similar situations, thus hindering the FDCPA’s purpose of using consistent state action to deter abusive debt collectors.<sup>217</sup>

#### IV. CONCLUSION

Contact between third-party debt collectors and debtors is currently a fact of life, and such contact will likely increase given the growth and profitability of debt collection entities.<sup>218</sup> One can reasonably expect that violations of the FDCPA will likewise continue to occur, and the courts should adhere to a standard that affixes liability in a manner consistent with the letter and spirit of the FDCPA to effectively deter such violations. Currently, the federal circuit split over the standard to employ arguably frustrates the FDCPA’s purpose of promoting consistent state action against debt collection abuses,<sup>219</sup> and thus a uniform standard is inherently more desirable.

The personal involvement approach, articulated in cases like *West v. Costen*,<sup>220</sup> *Brumelow v. Law Offices of Bennett and Deloney, P.C.*,<sup>221</sup> and *Schwarm v. Craighead*,<sup>222</sup> presents the best possible candidate for such a uniform standard. The approach holds those who meet the statutory definition of “debt collector” liable for the offenses in which they were personally involved, regardless of the liability-limiting

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211. *West*, 558 F. Supp. at 585–87.

212. *Pettit v. Retrieval Masters Creditors Bureau, Inc.*, 211 F.3d 1057, 1059 (7th Cir. 2000) (citing *White v. Goodman*, 200 F.3d 1016, 1019 (7th Cir. 2000)).

213. See *supra* notes 179–83 and accompanying text for a discussion of the Seventh Circuit’s failure to attract adherents.

214. See *supra* Part III.A.1 for a discussion of the problems inherent in the Seventh Circuit’s narrow reading of the FDCPA.

215. See *supra* Parts II.B.1 and 2 for a discussion of the veil piercing doctrine.

216. See *supra* Part II.B.1 for a discussion of the veil piercing doctrine’s innumerable factors.

217. See *supra* Part III.B.2 for a discussion of how application of the veil piercing doctrine may frustrate the FDCPA’s purpose.

218. See, e.g., Sam Glover, *For Debt Collectors, Business Is Booming*, CAVEAT EMPTOR, Aug. 26, 2008, <http://caveatemptorblog.com/for-debt-collectors-business-is-booming/> (noting projected 9.8% growth for debt collection companies in 2008).

219. See *supra* Part II.B for a discussion of the circuit split.

220. 558 F. Supp. 564 (W.D. Va. 1983).

221. 372 F. Supp. 2d 615 (D. Utah 2005).

222. 552 F. Supp. 2d 1056 (E.D. Cal. 2008).

aspects of that defendant's corporate form. The personal involvement approach requires a showing that the corporate veil should be pierced only in instances where the defendant was not personally involved in the debt collection practices at issue.<sup>223</sup> Thus, the corporate form will still protect those who were not personally involved with the FDCPA violation unless the court finds a basis for piercing the corporate veil.<sup>224</sup> The personal involvement approach also adheres to the plain meaning and legislative history of the FDCPA.<sup>225</sup> Application of the approach is straightforward, without a need for the weighing of factors or for much judicial discretion, making the approach more likely to promote consistent state action.<sup>226</sup>

It is now up to the courts to resolve the circuit split. Alternatively, Congress could amend the FDCPA to specifically address the issue. The courts, though, appear to be in the process of resolving the dispute, as the trend of authority clearly indicates the superiority of the personal involvement approach and the wholesale rejection of the Seventh Circuit approach.<sup>227</sup> If this practice continues, a uniform personal involvement standard that serves the FDCPA's purpose, history, and meaning holds great potential.

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223. See *West*, 558 F. Supp. at 586–87 (piercing corporate veil of defendant after defendant showed no personal involvement with debt collection at issue).

224. *Id.*

225. See *supra* Parts II.B.3, III.A.1, and III.B.2 for discussion of the personal involvement approach.

226. See *supra* Part II.B.1 for a discussion of the veil doctrine analysis and how application of such could lead to inconsistent results.

227. See *supra* Part III.B.1 for a discussion of the trend favoring the personal involvement approach.