

Better Off Deadbeat: Craig Cunningham Has a Simple Solution for Getting Bill Collectors Off His Back. He Sues Them.

Unlike his neighbors' homes, Craig Cunningham's house in Northeast Dallas looks abandoned. The grass is dried out. The concrete slab under the front door is lopsided and cracked. The green exterior has faded to a toxic-looking shade. Yellow Pages pile up near the front door, and the black mailbox is stuffed full. Maybe the home has been foreclosed on. That wouldn't be a surprise in this economy.

But no, that's not the case. Inside, the 29-year-old Cunningham hunkers his 6-foot-2-inch frame on a dumpy couch. His heavy arms extend from his sides, palms up, so two Chihuahuas, Angel and Chuay, can curl under them. Although it's 10 a.m. on a weekday, he's wearing slippers.

He leans forward to lift some paperwork out of a plastic tub on the coffee table. The phone rings, and he answers with a soft voice. It's just a friend, and soon he hangs up. He's waiting for a particular type of phone call—one from a representative of a debt collection agency or a credit card company, whom he'll try to ensnare like a Venus fly trap. It's not unlikely that Cunningham's next call will be from a bill collector, since he's between jobs—except for being in the Army Reserve—and owes \$100,000 in debts.

While most Americans with unpaid bills dread the collector's call, Cunningham sees them as lucrative opportunities. Many collection and credit card companies, intentionally or not, violate little-known consumer rights laws, and Cunningham's favorite pastime is catching them doing so and then suing them. In fact, it's a profitable side job.

Call it ironic, but the only house on the block that appears to be the foreclosed end to some sad financial story is in fact the home of one of the debt collection industry's emerging and persistent threats. Cunningham calls himself a private attorney general—someone who files private lawsuits in the public interest. Debt collectors call him a credit terrorist.

Patrick Lunsford, who edits *InsideARM*, a trade magazine for the debt collection industry, knows the term. "There is a sub-group out there that does actually advise people on how to bait [collectors]," he says. "That's something that really gets under the skin of, well, obviously, collectors."

Cunningham beats the debt collectors at their own game. He turns their money-making practice into a financial liability. He is a regular guy who has become a radical enemy of the banking system.



Craig Cunningham says no one offered hurting small-time investors like him a government bailout when he landed deep in debt. That made him mad, so he decided to get even.



Steven Katz, author of a book on fighting bill collectors, says the idea that consumers have a moral obligation to pay their creditors is a myth created by lenders.



"It's their system. I didn't make the rules. I'm just learning what the rules are."

In 2005, two foreclosures pushed Cunningham near financial ruin. Like many Americans, he fell enchanted by the siren's song of easy credit and borrowed more than \$100,000 to bet on risky, high-yielding investments, such as stock in the now vilified sub-prime mortgage industry. Then, while stationed with the Army in El Paso, he attempted to become an absentee landlord and got zero-percent-down sub-prime mortgages to buy low-income four-plexes in Houston and Dallas. With the interest earned on his high-yielding stocks he was paying back his low-interest credit card debt; now, he was using the mortgages to borrow even more.

Then, the bottom fell out. Investors like Cunningham fell the fastest. He sold his Houston homes, but his Dallas properties were foreclosed on. The collection calls started. He was running scared.

Desperation took him online in a search of anything that could save him from his own \$100,000 in bad choices. One afternoon while sitting on his couch in his El Paso home, he found a way to fight back. He stumbled across hundreds of other distraught consumers like himself on credit message boards, each with some different version of the same story of bad choices and greed. And, he found a new way to deal with his debt: He could hide behind the law.

His new online friends pointed him to a number of federal and state statutes protecting consumers like him against overly aggressive and abusive debt collectors and a credit system stacked against the little guy. If you knew your rights, he learned on the message boards, you were very likely to catch a collector violating them. Then you could sue.

Cunningham armed himself with this knowledge, and the next time a debt collector called, the trap was set.

It didn't take long. Cunningham had canceled a home alarm service with ADT Security after two months, and the company had billed him a \$450 early termination fee, which he disputed. ADT sent his account to Equinox Financial Management Solutions, a third-party debt collector. The collection agency sent him a letter asking that he call back immediately. He dialed, armed with a voice recorder.

"Can you garnish my wages if I don't pay?" he asked.

"Yes," the voice on the other end of the line said.

"Can you put a lien on my house?"

"Yes."

Wrong answers. Turns out, Texas consumer rights laws are some of the most consumer-friendly in the country. And according to a federal consumer protection law, the Fair Debt Collection Practices Act (FDCPA), debt collectors are prohibited from threatening legal action that would violate state laws. In this case, garnishing wages or putting a lien on Cunningham's house would violate the Texas Debt Collection Act.

Cunningham knew he had a good enough case to file a lawsuit against the debt collection agency, and for his first lawsuit, he decided to enlist the help of a lawyer. Two months later, he had a check in his hand for \$1,000.

"It's like discovering fire," says Cunningham, thumbing through the stack of lawsuit papers on his table.

He immediately started devouring as much information as he could about the three chief federal laws that protect consumers from collectors: the Fair Debt Collection Practices Act, the Fair Credit Reporting Act (FCRA) and the Telephone Consumer Protection Act (TCPA). In the next four years, Cunningham accused debt collectors of misrepresenting the amount he owed (an FDCPA violation that entitles a consumer to collect up to \$1,000). He sued over prerecorded and auto-dialed calls to his cellular phone (a TCPA violation worth up to \$1,500 per call). He also filed complaints that agencies failed to investigate his claims that his credit file contains inaccurate information, a breach of the Fair Credit Reporting Act worth up to \$1,000 per violation. All told, he filed 15 other lawsuits in federal court without the help of a lawyer, earning himself settlements totaling more than \$20,000.

"Most people hear about the abuses that debt collectors do, but you just didn't hear about the second part of it, where people sue the collectors," he says.

Cunningham is one of thousands of hounded debtors who are trading in their paralyzing fears and learning to stand up for themselves. Americans as a whole owe some \$2.5 trillion in consumer debt, according to the Federal Reserve, a figure that doesn't include home mortgages. Nearly four in five Americans have credit cards and half carry a balance, according to the Obama administration.

In 2008, the Federal Trade Commission, the nation's consumer protection agency, received more than 78,000 complaints against third-party debt collectors, 8,000 more than in 2007, and early numbers for 2009 indicate

the growth will double. While the FTC gets the bulk of consumer complaints, today more consumers are fighting back with their own lawsuits than ever before. In 2009, nearly 10,000 cases under FDCPA, FCRA or TCPA statutes were filed around the country, mostly in federal courts. That's a 50 percent increase from 2008, and an 83 percent growth from 2007.

A cottage industry has sprung up to counter the flood of cases. Two new companies now offer the credit and collection industries databases of repeat plaintiffs filing under the FDCPA. The companies, FDCPA Case Listing Service LLC and WebRecon, offer something akin to a background check for collection agencies. For example, if an agency received a delinquent account belonging to Cunningham, it could run his name through a database and learn he's a repeat litigant; then the agency could either close his account or sue him first.

Back in his dim living room, Cunningham returns to the pile of paperwork on the table. His soft voice gets bolder when he recounts his war stories with the collection industry. His 15 lawsuits include one filed in federal court against Alliance One, a third-party agency collecting on behalf of Verizon. Alliance One added a \$50 collection fee and misrepresented the debt he owed Verizon, he says, which is an unfair practice under FDCPA. Another lawsuit was over the collection of an outstanding bill from Time Warner. The collection agency, Advantage Cable Services, failed to post a surety bond required by the state of Texas in order to collect debts here. Plus, after telling them to stop calling his cellular phone with automated calls, they continued, so he sued and won around \$3,500, the industry standard for many consumer rights violations. (Collection agencies frequently settle such lawsuits because that's cheaper than taking them to trial.)

His debt with Time Warner hasn't gone away, and he's in the middle of his biggest FDCPA violation lawsuit ever, demanding upward of \$200,000 from the current collection agency.

Debtors, either because they feel morally obligated or because they don't know their options, get backed into a corner by their creditors and believe they *have* to repay their debts, he says. Not so with Cunningham. "I don't have to do anything but stay black and die," he says, a small, smug smile on his lips.

Cunningham wasn't always such a stickler.

As a kid growing up in Detroit, family time meant gathering around the living room table to play stock market

board games. His mother was a registered nurse, and his father worked for 25 years as a computer engineer for Ford. When he was 15, Cunningham met his "first millionaire," as he tells it, still wide-eyed. This high school teacher grew wealthy off the then-booming real estate market of the mid-'90s. "He accomplished it through business and not sports," he says. "For me, that was where the light first went on."

Cunningham, a high school athlete, dreamed of making millions playing pro football, but he was accepted to U.S. Military Academy at West Point, where a degree would give him a more grounded back-up plan. The economics major also sought out an additional perk unique to West Point: stipends and absurdly low-interest loans. In his junior year, in 2002, Cunningham took out the maximum amount for a loan and dumped the \$25,000 into the booming stock market.

"Everybody was making easy money," he recalls, and the young cadet wanted a shot at making even more. He spent hours on his dial-up Internet connection learning money-making strategies that capitalized on the cheap and easy credit of the times. By Googling "credit help" or "increase credit score," he landed on message boards on which posters shared how-to tips to boost his credit score and dupe major banks and credit card companies into giving him cards with credit limits around \$10,000 and \$20,000 at low interest rates. He'd borrow from the cards, invest the money in stocks with payouts higher than his interest rate and pay back the debt with the profits.

Cunningham learned on these boards that the credit card companies, banks and the credit bureaus worked together to determine not only your credit score but how much credit to extend you and at what interest rate.

Cunningham had no problem spending all the money anyone would loan him, but he needed to pay off some of the accrued debt to maintain his credit score. He knew his military loan did not get reported to any of the three major credit bureaus, Equifax, Experian and TransUnion. So, by paying off his credit card debt with money from that loan, he artificially maintained his credit score and continued to be approved for high credit. Sounds fishy, but Cunningham didn't feel that he was taking advantage of the system, at least not anymore than the next guy or the brokers and bankers at the time.

"It's their system," says Cunningham. "I didn't make the rules. I'm just learning what the rules are."

Cunningham now had more than \$100,000 in credit card

debt, but he had a lot of money coming in as well. He was a big-time shareholder in one sub-prime lending company, Nova Star Financial, and for three years in a row he saw dividends as high as 20 percent for his investment.

Any money he was making went right back into the system. Those good times, of course, wouldn't last.

Not wanting to miss out on the easy money in real estate buying and selling, he bought two low-income four-plexes in Dallas in 2005, using a mortgage company for the loan. He put no money down, but the interest rate was high.

Then he got burned. The four-plex's seller wasn't completely honest about the occupancy of the properties. Cunningham's scheme disintegrated within six months. He was scrambling to make the mortgage payments at the high interest rate without any tenants. He knew it wouldn't be long until he couldn't make the payments and he would be foreclosed on. Somehow, he didn't despair.

"I remember one day I just got pissed," Cunningham says. "I'm running around trying to keep the ship afloat, and the banks don't care."

Cunningham had called the bank as well as the FBI to report the mortgage fraud committed by the seller, but nobody pursued his case.

"The regulators, the FBI, they don't care. So, why should I care?" he says.

The Dallas properties were foreclosed, and his obsessively maintained credit score seemed wrecked. Cunningham returned to the online credit board for help. This time, however, he wasn't looking to add an artificial shine to his credit score, he was looking for a way out of the ashes. Cunningham discovered a whole other world of consumer-generated knowledge. This was a rogue group of disgruntled consumers who were trying to save themselves and their credit by filing lawsuits when the collection industry screwed up the mechanics of debt reporting and collection. What he found was an instrument not of repair or reconciliation, but of vengeance.

"All the conventional wisdom, all the right people say, 'Pay your bills on time and work with your creditors,'" Cunningham says, recalling his thoughts at the time. Yet he had discovered a new set of people who posted their credit reports on line and their successful lawsuits,

showing how much money they won in settlements that simultaneously removed a bad debt from their credit report. "I said, 'Maybe there's another way.' Again, just revolution. I never even thought about it."

The knowledge on these boards originated from consumers testing the boundaries of the credit system through their own experiences. The nature of this information, from the beginning, was a mixture of anarchistic tendencies, vengeance and greed. Now the wisdom of the boards has been distilled into an e-book published in January. *Debtsmanship* was written by Steven Katz, a former New York debt collector turned consumer advocate, who now lives in Phoenix. In 2005, Katz founded a message board called "Debtorboards," with the slogan "Sue your creditor and win!"

Katz doesn't believe that people are morally obligated to pay back their debts. That notion was invented by debt collectors as a way to beat people into submission, he says. "Bill collectors would love for you to send them a check and then explain to your kids because you have the moral obligation to pay your debt they're not eating this week," he says. "But they don't see the moral obligation to feed your children or yourself."

"People are brainwashed to think that paying a credit card is more important than paying for the necessities of life," Katz says. "If you're in a position where you have to make a choice, my argument is food, clothing and shelter come first... Nobody ever went to hell for not paying a debt."

"Fight back" is the take-away message from a visit to Debtorboards, which is intended to help consumers who wish to file lawsuits without the help of lawyers. Debtorboards outlines steps consumers can take to deal with bothersome debt collectors. For example, if a debt collector is only bothering you, you could send them a letter or sue them. However, if you're so far in debt that you see no way out but bankruptcy, then you can check out the board's "frustrating the skip tracer" technique. There, you'll find tips on how to run and hide from a collector.

Another Debtorboards user is 29-year-old Daniel Smith, who lives with his fiancé outside of Seattle, Washington. Early in 2009, he tried to obtain financing for a home, but was turned down by Bank of America. He soon discovered that an old girlfriend had put his name on her bank account before she fell into massive debt. He wrote angry letters to the bank, but nothing changed. He sat down at his computer and typed in "Bank of America" and "Fair Debt Collection Act" and soon landed on

Debtorboards. "I spent hours upon hours upon hours on there," Smith says. "The big epiphany is I'm a little guy but I've got a voice and I'm going to use it."

Like Cunningham, Smith now armed himself with voice recorders and began keeping meticulous financial files. His file cabinet grew quickly. "I mean there's nothing I don't document now and that's probably the best thing a consumer can do."

Smith is an Army vet, an EMT, and a project manager for a construction company. He doesn't advocate stiffing the original creditor on the bill. In fact, Smith will often pay the original creditor, but still go after the violating collection agency.

"The standard line from collection agencies is always, 'Oh, gosh, no, we never violate.'...For the most part, the reality of it is you can sit down and find violation in almost every collection attempt made in America."

Cunningham insists that the court system ignores lawsuits over frivolous violations. His cases, he claims, are built on true screw-ups. Cunningham won his first lawsuit, after all, after a collection company threatened to garnish his wages and put a lien on his house, both violations of Texas law.

Although that first lawsuit was filed with the help of a consumer rights lawyer, Cunningham has been filing on his own since then. Once he saw that the entire amount of the original settlement was upward of \$3,500, and he only got \$1,000, while his lawyer pocketed the rest as payment, Cunningham was motivated to go pro se.

"I remember seeing the \$3,500 and thinking shoot that's a lot of money, and I'm only getting a grand, so maybe I can do a little better than that if there is a next time."

Cunningham made sure there'd be a next time. A company was trying to collect on an outstanding utility bill. They threatened to send this debt to the credit bureaus and wreck his credit score. He ended up paying the utility company the money he owed, but sued the collection company because of how they threatened and harassed him for the debt. The case earned him close to \$3,500.

He was fast becoming one of the most hated debtors in Dallas, and part of an especially loathed minority of debtors in the country.

Cunningham returned to Texas from a year of active duty with the Army in late 2007, and moved to Dallas.

He continued filing lawsuits against debt collection agencies, and he became ever more active on the message boards, holding long conversations about the state of the country with his online pals. In the meantime, he noticed that Debtorboards founder Steven Katz had created a new thread titled "The list you want to be on." Here, Katz reported that a new company had appeared that was dedicated to aiding collection companies scrub their database against repeat FDCPA litigants, like Cunningham.

Cunningham toyed with the idea of suing them. After all, he thought, if they were working with the collection industry and the credit bureaus (FDCPA Case Listing Service partnered with TransUnion in 2009), then the companies sounded like credit reporting agencies to Cunningham, which would mean they would have to abide by certain credit reporting laws. Cunningham wrote to FDCPA Case Listing Service asking for a copy of his credit report (by law, a credit reporting agency must provide a consumer report if asked for one). Instead of a report, however, Cunningham found a lawsuit against him in his mailbox filed in May 2008 in Atlanta federal court. It alleged: "The defendant subscribes to and makes postings to a Web site in which consumers share information and promote litigation against the collection industry...The defendant has now conspired with others on the internet to incite civil litigation against plaintiff for the exclusive purpose of extorting money from the plaintiff."

FDCPA Case Listing Service asked the court to declare that they are not a consumer reporting agency and not subject to the Fair Credit Reporting Act. To Cunningham, this was a clear attempt to silence him. Cunningham filed a motion to dismiss the case. For one thing, filing the suit in Atlanta was improper venue, Cunningham wrote. They should have sued him in Texas. Furthermore, since Cunningham hadn't actually sued the company, the company had no valid reason to sue him. The court sided with Cunningham.

WebRecon offers a similar but expanded service to FDCPA Case Listing Service. Rather than only track FDCPA cases, WebRecon makes an effort to track FCRA, TCPA, and state and local cases, as well. WebRecon is headed by Jack Gordon out of Michigan. Gordon ran his own third-party collection agency for years until a spate of FDCPA lawsuits in 2008 forced him out of business. He is familiar with Cunningham's type.

"This is definitely, if I can use a really strong word, a cesspool," Gordon says. "The overwhelming majority of

these suits are not pro se. Now when you're focusing exclusively on pro se, I think you're getting into a little bit of a different area. I've spent time personally on some of the Web sites that a lot of pro se litigants frequent...I would have to say they are far more radicalized element of society, and there's certainly I think reason for concern.

"You're dealing with somebody who's looking for an opportunity. They revel in either getting opportunities or making opportunities to try out everything they're learning online. That's hardly an exaggeration," he says, laughing. "It's really an experience spending time there!"

Gordon may have a personal vendetta against Cunningham types, but so do others who represent the collection industry.

ACA International is the largest trade group representing third-party debt collection agencies. Tom Morgan is the Texas executive director for ACA International and he believes that FDCPA lawsuits will continue to rise as more and more people in this economy can't pay their debts. He views the agencies as a kind of indirect victim in the rising tide of consumer fury and desperation.

"While our members do get filed on from time to time, the FDCPA is so highly technical there are quote, technical, violations that can occur," Morgan says. "You know, somebody makes a mistake. But there's no intent, OK, to defraud people or to violate the law.

"Usually it's settled because the agency says, Uh, we didn't intend to do that. Our collector said the wrong thing and we fess up and say, 'I didn't mean to do it but I did it..."

"And this is where some of our members feel aggrieved in that because there's a hyper-technical opportunity for a plaintiff's attorney to come in, it is cheaper to settle than to fight it. And sometimes they'd really like to fight it because they don't believe they are guilty, but it's so costly, so they settle it."

Thomas Stockton is on the executive committee of ACA International and also the founder and chief executive of a local collection agency, CMI. (Cunningham is in the midst of an ongoing legal dispute with CMI, which picked up his outstanding Time Warner debt.)

"In my opinion there are two reasons why there are more suits being filed today," Stockton says. "You've got the Internet sites...And, it's easy to file suit. You can do it on your own. You don't have to have an attorney."

Stockton says, however, that the better question is how many of the suits are successful.

The answer depends on how you define success. Debt collectors point to all the settlements they are forced to make because it's cheaper than fighting a frivolous suit. To Cunningham and other pro se litigants, any payment is a victory.

"Does it make sense to spend \$10,000 to win this suit or pay the litigant \$500 to settle?" says Stockton.

"Depending on the situation, it becomes a business decision at some point."

Cunningham filed his lawsuit against Credit Management, L.P. (CMI) in August 2009, claiming violations in the amount of around \$200,000—by far his gutsiest lawsuit yet. The original bill for Time Warner was for \$79.84 back while he was living in El Paso. Cunningham admits he may have missed the last payment for the Time Warner bill. Time Warner, rather than validate the bill, sent his account to a collection agency. That was ACS, which Cunningham sued for violating his Texas rights, as well as federal law. ACS closed his account, but the debt wasn't forgiven. Instead, CMI picked it up.

CMI started calling Cunningham's cell phone with an auto-dialer, leaving prerecorded messages to please call them immediately regarding an outstanding bill. Cunningham told them to stop calling his cell phone on the auto-dialer, but they continued, each call a violation of TCPA. As Cunningham disputed the bill, CMI by law is also expected to cease collection efforts. So every call was another violation of FDCPA. Plus, to this day, CMI has not provided Cunningham with anything from Time Warner, he says, either a bill or a letter, verifying that he in fact owes anything, another violation of the law. "I don't really know if I owe it," Cunningham says. "If I do, send me a bill. If they don't want to send me a bill, I don't think I need to pay 'em."

CMI has countersued Cunningham, and even asked the court for a protective order from Cunningham: "Plaintiff Craig Cunningham (herein "Plaintiff") has filed suit against a business, Credit Management, LP (herein "CMI"), and twenty-seven (27) of its employees in their individual capacities," reads the motion for a protective order filed in Northern District of Texas in December 2009. "Defendants move for a protective order to protect Defendants from the annoyance, oppression, undue burden and expense of objecting and responding to improper, repetitive and irrelevant discovery requests."

In December, Cunningham was called in for a six-hour

deposition, the longest he's ever sat through, at which the lawyers printed out pages of his online comments to accuse him of acting like a lawyer. Plus, CMI insists that they didn't violate any laws and that Cunningham is acting in bad faith. Although the company already offered Cunningham money to settle the case, Cunningham refused, asking for much more than the "industry standard," as Cunningham calls it, of \$3,500.

"If they don't pay a bunch of money, if they don't feel pain, they will not change," he says.

A big win in his case against CMI could go a long way toward clearing Cunningham's debts—if he ever chose to pay them, that is.

"I took outsize risks, and I got burned," he says. "When myself and some other fellow small investors were losing their assets, nobody cared."

Up until now, everything was about making easy money for Cunningham. Now, it's about justice—or at least what he sees as justice.

"When you or I make a mistake, they say, 'Hey, tough nuts, be smarter next time, you know, bad luck, didn't work out for ya,'" he says. "When the fat cats on Wall Street make a mistake, they say, 'Oh, national emergency! We've got to bail these guys out.'"

Since nobody has showed up to bail Cunningham out, he's decided some of the \$100,000 debt he once amassed will never get paid back.

"I already paid them off," he says. "The government took my money without asking me and gave it to the banks. And since I owe the banks money, but they already got my money from the government, I say we're even."