No. 20-35158

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRETT ADAMS,
Plaintiff – Appellant

v.

SKAGIT BONDED COLLECTORS, LLC, D/B/A SB&C LTD.,
Defendant – Appellee

On appeal from the United States District Court
for the Western District of Washington
No. 2:19-cv-01005-TSZ
Hon. Thomas S. Zilly, Judge Presiding

BRIEF ON BEHALF OF ACA INTERNATIONAL AS *AMICUS CURIAE* IN SUPPORT OF APPELLEE AND AFFIRMANCE

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CORPORATE DISCLOSURE STATEMENT

Pursuant to FED. R. APP. P. 26.1 and 29(a)(4)(A), as well as Local Rule 26.1(a), (d), ACA International, the Association of Credit and Collection ("ACA"), presents the following Corporate Disclosure Statement:

(1) ACA has no parent corporation nor does any publicly-held corporation own 10% or more of ACA stock.[1]

[1] Pursuant to FED. R. APP. P. 29(a)(4)(E), ACA confirms that no counsel for any party authored this brief in whole or in part, and no person or entity other than ACA, its members, or its counsel, made a monetary contribution intended to fund the brief's preparation or submission.

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TO THE HONORABLE COURT OF APPEALS FOR THE NINTH CIRCUIT:

ACA files this Brief as *amicus curiae* in support of Defendant-Appellee Skagit Bonded Collectors, LLC, d/b/a SB&C Ltd.'s ("SB&C") request that the Court affirm the decision below (ECF Nos. 24–25).

STATEMENT OF IDENTITY, INTEREST, AND AUTHORITY

Pursuant to FED. R. APP. P. 29(a)(D), ACA states that it is a not-for-profit corporation based in Minneapolis, Minnesota.

Founded eighty years ago, ACA is now the largest trade association representing the debt-collection industry, with members located in every state. ACA brings together nearly 3,700 member organizations as well as their more than 300,000 employees worldwide, including third-party collection agencies, asset buyers, attorneys, creditors, and vendor affiliates. In the Ninth Circuit alone, ACA's some 436 members employ more than 9,600 people. The ACA-member workforce is incredibly diverse, with racial and ethnic minorities accounting for some 40% and women making up 70% of employees. In 2016, third-party debt collectors donated some $17.7 million in charitable contributions. In addition, debt-collection agencies and their employees directly contributed more than $850 million of federal tax, $390 million of state tax, and $285 million of local tax in 2016 alone.

ACA's members include sole proprietorships, partnerships, and corporations ranging from small businesses to large firms employing thousands of workers. These members include the very smallest of businesses operating within a limited geographic range of a single state, as well as the very largest of multinational

corporations operating in every state. About three-quarters of ACA's company members are small businesses with less than $15 million in annual revenue and fewer than twenty-five employees. Nearly half have fewer than nine employees. ACA members are not only small-businesses themselves, but they provide an essential service for their small-business clients as well—which comprise well over half of their clientele.

Through their attempts to recover outstanding accounts, ACA's members act as an extension of every community's businesses. ACA's members represent the local hardware store, the retailer down the street, and the family doctor. ACA members work with these businesses, large and small, to obtain payment for the goods and services received by consumers. Each year, their combined effort results in the recovery of billions of dollars that are returned to businesses and reinvested in local communities. Without an effective collection process, these businesses' economic viability—and, by extension, the local and national economies in general—are threatened. At the very least, absent effective and legal collections remedies, consumers would be

forced to pay more for their purchases to compensate those businesses for the uncollected debts of others.

ACA helps its members serve their communities and meet the challenges created by changing markets through leadership, education, and service. ACA provides its members with essential information, education, and guidance regarding how to comply with governing laws and regulations. ACA produces a wide variety of products, services, and publications, including educational and compliance-related information. ACA also articulates the value of the credit-and-collection industry to businesses, policymakers, and consumers.

ACA regularly files briefs as an *amicus curiae* in cases of interest to its membership like this one. ACA and its member organizations enthusiastically support the full and fair enforcement of the Fair Debt Collection Practices Act ("FDCPA"). *See* 15 U.S.C. § 1692, *et seq*. ACA submits this *amicus curiae* brief to share its significant expertise regarding the practical and deleterious impacts overturning the decision below (ECF Nos. 24–25) will have on creditors and debt collectors alike.

SB&C is an ACA member, and ACA has authorized the filing of this *amicus curiae* brief.

ACA's counsel has contacted each party to this matter. SB&C consents to ACA's filing, but Mr. Adams does not. As a result, ACA has filed a motion under FED. R. APP. P. 29(a)(3)(A)–(B) and Local Rule 29-3 seeking leave to file its *amicus curiae* brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

With some $3.5 trillion dollars in total outstanding consumer credit, the U.S. economy is heavily reliant upon the availability and accessibility of credit to consumers. *See* JOSH ADAMS, ACA INTERNATIONAL WHITE PAPER, THE ROLE OF THIRD-PARTY DEBT COLLECTION IN THE U.S. ECONOMY, at 1, 4 (Jan. 2016), j.mp/CollectionRole2016 [hereinafter DEBT-COLLECTION ROLE]. The $11 billion debt-collection industry serves a unique role in the marketplace by providing a third-party recovery mechanism desperately needed by lenders so that they can accurately account for their credit risk. *Id.* at 3; ERNST & YOUNG, THE IMPACT OF THIRD-PARTY DEBT COLLECTION

ON THE U.S. NATIONAL AND STATE ECONOMIES IN 2016, at 12 (Nov. 2017), j.mp/CollectionImpact2017 [hereinafter DEBT-COLLECTION IMPACT]. This market role is crucial because it supports the general availability of consumer credit to the public. DEBT-COLLECTION ROLE, at 4.

The debt-collection industry reduces the inherent risk assumed by granting creditors the "latitude to extend credit to a larger and riskier population that would ordinarily be excluded from the credit market." *Id.* at 4–5. In turn, this reduction in the risk borne by creditors eases the costs imposed upon all borrowers. *Id.* at 4. Indeed, the more than $67 billion in net debt returned to creditors in 2016 by third-party debt-collectors represented nearly $580 in annual savings on average per U.S. household. DEBT-COLLECTION IMPACT, at 2.

In this case brought under 15 U.S.C. §§ 1692g and 1692e, the debtor invites the Ninth Circuit to effectively rewrite the FDCPA—which already requires that creditors be identified in

Dunning letters[2] sent to debtors—to mandate that such creditors be further described as "current" if they presently own the debt being collected. (App't Br. at 1–2, 4–6). District courts within this Circuit, as well as the only other circuit court to address this issue, do not support the juristic remaking of the FDCPA that the debtor seeks here.

It is undisputed here that Skagit County Public Hospital District No. 1, d/b/a Skagit Regional Health ("Skagit Regional Health") was conspicuously identified in the four Dunning letters SB&C sent to the debtor (the "Letters") as being the original creditor of the debts noted in the Letters (the "Debts"). (ECF No. 3 at 3, 5, 7, 9). In turn, the Debts were also referenced by Skagit Regional Health's corresponding account numbers. (*Id.*). Moreover, the only creditor mentioned in each of the Letters, and the only creditor of the Debts, was Skagit Regional Health. (ECF No. 3 at 3, 5, 7, 9; *see* ECF Nos. 15 at 2, 20 at 2).

[2] "Dunning letters" are an industry term of art referring to debt-collection correspondence, and are also sometimes called debt-validation notices. *See, e.g.*, *Riggs v. Prober & Raphael*, 681 F.3d 1097, 1099 (9th Cir. 2012).

ACA's thousands of members located throughout the U.S. need uniformity in how the FDCPA is construed and enforced. In turn, such consistency ensures that credit remains readily available and accessible to consumers. Accordingly, and on behalf of its 436 members employing more than 9,600 people within the Ninth Circuit, ACA supports SB&C's request that the Court affirm the decision below (ECF Nos. 24–25).

ARGUMENT

I. SB&C's Letters Do Not Violate the FDCPA Because Each Clearly and Correctly Identify Skagit Regional Health as the One and Only Creditor to Which the Debts Were Owed

Both this Circuit's district courts and its sister circuit court have confirmed that, when—as here—a creditor is identified in a Dunning letter as the "original" creditor and is, in fact, the only creditor named in the letter, such a correspondence does not violate 15 U.S.C. § 1692g(a)(2) because even the least-sophisticated debtor is not likely to be misled by the notice. Therefore, ACA supports SB&C's request that the Court affirm the decision below (ECF Nos. 24–25).

A. The least-sophisticated debtor's interpretation cannot be bizarre, unreasonable, or idiosyncratic

Courts in the Ninth Circuit evaluate language alleged to violate §§ 1692g and 1692e under the "least sophisticated debtor" standard, which requires an assessment of whether the least sophisticated debtor "would likely be misled by the notice" as given. *Swanson v. S. Or. Credit Serv., Inc.*, 869 F.2d 1222, 1225 (9th Cir. 1988) (per curiam). Notices under § 1692g "must be conveyed effectively to the debtor" by, for instance, being "large enough to be easily read and sufficiently prominent to be noticed" and not being overshadowed or contradicted by other language. *Id.*, *quoted in Terran v. Kaplan*, 109 F.3d 1428, 1431 (9th Cir. 1997).

Even though the "'least sophisticated debtor may be uninformed [or] naive,'" the "debtor's 'interpretation of a collection notice cannot be bizarre or unreasonable.'" *Davis v. Hollins Law*, 832 F.3d 962, 964 (9th Cir. 2016) (quoting *Evon v. L. Offs. of Sidney Mickell*, 688 F.3d 1015, 1027 (9th Cir. 2012)); *Boucher v. Fin. Sys. of Green Bay, Inc.*, 880 F.3d 362, 366

(7th Cir. 2018) (the "'unsophisticated consumer' isn't a dimwit"). Courts "'have carefully preserved the concept of reasonableness' and have presumed that debtors have 'a basic level of understanding and willingness to read [the relevant documents] with care' in order to safeguard bill collectors from liability for consumers' 'bizarre or idiosyncratic interpretations of collection notices.'" *Davis*, 832 F.3d at 964 (quoting *Evon*, 688 F.3d at 1027); *Preston v. Midland Credit Mgmt., Inc.*, 948 F.3d 772, 787 (7th Cir. 2020) (unsophisticated consumers possess a "rudimentary knowledge about the financial world," are "wise enough to read collection notices with added care," and are "capable of making basic logical deductions and inferences" (cleaned up)[3]). To this end, courts "will not countenance lawsuits based on frivolous misinterpretations or nonsensical interpretations of being led astray." *Miller v. Javitch, Block &*

[3] Theodore "Jack" Metzler, *Cleaning Up Quotations*, 18 J. OF APP. PRAC. & PROCESS 143, 153–54 (Fall 2017) (discussing and explaining the "cleaned up" parenthetical as a way to shorten unnecessarily lengthy citations); *see, e.g.*, *Organic Cannabis Found., LLC v. Comm'r of I.R.*, 962 F.3d 1082, 1093, 1095 (9th Cir.) (using "cleaned up" parenthetical).

Rathbone, 561 F.3d 588, 592 (6th Cir. 2009) (cleaned up). Ultimately, courts aim to avoid "conflat[ing] lack of sophistication with unreasonableness." *Huebner v. Midland Credit Mgmt., Inc.*, 897 F.3d 42, 51 (2d Cir. 2018).

Here, within a conspicuous table located at the top of the correspondence, the Letters each prominently name Skagit Regional Health as the original creditor in easily readable capital letters. (ECF No. 3 at 3, 5, 7, 9). Moreover, SB&C is consistently noted as a debt collector, only. (*Id.*). Each Letter also includes corresponding Skagit Regional Health account numbers for the Debts. (*Id.*). Two lines after identifying Skagit Regional Health as the creditor, the Letters note the following: "Date of Last Payment to Creditor: No payment was received." (*Id.*). Skagit Regional Health is the only creditor named in the Letters. (*Id.*). Indeed, Skagit Regional Health is also the only creditor to whom the Debts are or have ever been owed. (*See* ECF Nos. 15 at 2, 20 at 2).

Therefore, Skagit Regional Health is not only correctly identified as the ***original creditor***, it is, in fact, also the ***current***

creditor as well. (*Compare* ECF No. 3 at 3, 5, 7, 9, *with* ECF Nos. 15 at 2, 20 at 2).

B. The Court should adopt the approach of its own district courts and the only other circuit court to address this issue

Several district courts within the Circuit, as well as the only other circuit court to address this issue, have held that Dunning letters including the information the Letters here contained—namely, identifying the only creditor to whom the Debts are owed at the top of each correspondence next to the caption, "Original Creditor," as well as the creditor account number—is sufficient under § 1692g(a)(2).

Among the district courts in this Circuit to have examined this issue, the Oregon district court did so on effectively identical facts just a little over two years ago. *Warner v. Ray Klein, Inc.*, No. 3:17-cv-01301-JE, 2018 WL 1865873, at *1, *3–4 (D. Or. Apr. 18, 2018). The court found that the Dunning letter sent therein did not violate § 1692g(a)(2) because it "identified [the creditor] as the original creditor along with the creditor account number." *Id.* at *3. Similarly, the Northern District of California

held that merely identifying the creditor at the top of the letter next to the caption "Name of Creditor" alone satisfies § 1692g(a)(2). *Quicho v. Mann Bracken, LLC*, No. C07-3478 BZ, 2007 WL 2782971, at *1 (N.D. Cal. Sept. 25, 2007), *quoted in Suellen v. Mercantile Bureau, LLC*, No. 12-cv-00916 NC, 2012 WL 2849651, at *6 (N.D. Cal. June 12, 2012). In turn, the Southern District of California unsurprisingly held in 2017 that identifying the creditor of the debt sought to be collected fulfills § 1692g(a)(2)'s requirement that debt collectors identify the creditor to whom the debt is owed. *Stuppiello v. Sw. Credit Sys., LP*, No. 16-cv-01811-H-JMA, 2017 WL 5983815, at *1, 4 (S.D. Cal. Jan. 10, 2017).

The *Warner* court reasoned that, because § 1692g "does not discern between 'original creditor' and 'current creditor' except to the extent that it requires notice that upon the consumer's written request 'the debt collector will provide the consumer with the name and address of the original creditor'" in § 1692g(a)(5), it was "***simply not plausible*** to conclude that the least sophisticated debtor, reading the letter as a whole, would not

understand that [the creditor], ***as the only creditor identified***, is the creditor to whom the debt is owed." *Warner*, 2018 WL 1865873, at *3 (emphasis added) ("attempts to persuade the Court to parse out distinctions between an 'original creditor' and a 'current creditor' or to find confusing the inclusion of the debt collector's account number fail in the face of the facts of this case and border on the 'idiosyncratic, or peculiar misinterpretations' that *Gonzales* eschews" (quoting *Gonzales v. Arrow Fin. Servs., LLC*, 660 F.3d 1055, 1062 (9th Cir. 2011)).

Each of these decisions from district courts within this Circuit confirm that the Letters here—which identify the only creditor to whom the Debts are or have ever been owed at the top of each correspondence next to the caption, "Original Creditor," along with the creditor account number—are sufficient under § 1692g(a)(2) because they were not likely to mislead the debtor. (*Compare Warner*, 2018 WL 1865873 at *3, *Stuppiello*, 2017 WL 5983815 at *1, 4, *and Suellen*, 2012 WL 2849651 at *6, *with* ECF No. 3 at 3, 5, 7, 9).

Without any analysis, the debtor here discounts *Warner*

merely by claiming it "erred." (App't Br. at 8). But if the *Warner* court erred, so too must have the only other circuit court to have examined this issue no less than twice over the past year, which came to the same conclusion. *See Steffek v. Client Servs., Inc.*, 948 F.3d 761, 765–66 (7th Cir. 2020); *Smith v. Simms Assocs., Inc.*, 926 F.3d 377, 381 (7th Cir. 2019).

In *Smith*, the Seventh Circuit examined a Dunning letter largely identical to the Letters here, which named only a "single creditor" and identified that creditor "as the 'original' instead of 'current' creditor." (*Compare Smith*, 926 F.3d at 379–81, *with* ECF No. 3 at 3, 5, 7, 9). In finding the letter's use of the term, "original creditor," sufficient to identify the creditor under § 1692g(a)(2), the court found two particular issues particularly persuasive. *Smith*, 926 F.3d at 380–81. First, and undercutting the fulcrum upon which the debtor here hinges his appeal, the court recognized that the express language of § 1692g(a)(2) "does not require use of any specific terminology to identify the creditor"—either as a "current" or "original" creditor. *Id.* at 381; *see* 15 U.S.C. § 1692g(a)(2). Accordingly, the court declined to

hold that a letter that did not comply with the FDCPA merely for failing to "contain a word that is absent from the language of [the] statue." *Smith*, 926 F.3d at 381; *see Maximiliano v. Simm Assocs., Inc.*, No. 17-cv-80341, 2018 WL 783104, at *6 (S.D. Fla. Feb. 8, 2018) (finding a Dunning letter noting an original creditor instead of a current one sufficient under the FDCPA because all it "require[s] is that the debt collector disclose the creditor to whom the debt is owed"—"[n]owhere in § 1692g is there a requirement that [current creditor] verbiage be used"). Second, as here, the court determined that, because the letter did not identify any other creditor apart from the one denoted as the "original creditor," the debtor was not likely to be misled. *Id.* Unlike in *Smith*, Skagit Regional Health was not only just the sole creditor mentioned in the Letters, it was—in fact—the actual current debtor as well. Therefore, the debtor here could not have been misled by the Letters because the only creditor they identified was the actual current creditor. (*See* ECF Nos. 15 at 2, 20 at 2).

Far from contradicting *Smith* on these grounds as the debtor argues here, the Seventh Circuit's decision earlier this year

actually confirms it. *See Steffek*, 948 F.3d at 765–66 (quoting *Smith*, 926 F.3d at 380–81). Indeed, the *Steffek* court reaffirmed its holding from *Smith* that a letter which identifies an "entity as the 'original creditor' and named no other potential creditor" leaves "no doubt as to who then owned the debt." *Steffek*, 948 F.3d at 765. Regardless, both *Steffek* and the case the court acknowledged its decision in *Steffek* was controlled by—*Janetos v. Fulton Friedman & Gullace, LLP*, 825 F.3d 317, 321 (7th Cir. 2016)—involved Dunning letters in which the creditor was never identified at all as a creditor. Because it is undisputed here that Skagit Regional Health was not only identified as the creditor in the Letters, but was the only creditor named, neither *Steffek* nor *Janetos* can guide the Court's determination of this case. (*Compare Steffek*, 948 F.3d at 765–66, *and Janetos*, 825 F.3d at 321, *with* ECF No. 3 at 3, 5, 7, 9).

CONCLUSION

For the foregoing reasons, and on behalf of its 436 members employing more than 9,600 people within the Ninth Circuit, ACA

supports SB&C's request that the Court affirm the decision below (ECF Nos. 24–25).

Respectfully submitted,

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July 29, 2020

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PROOF OF SERVICE

Pursuant to FED. R. APP. P. 25(b)–(d) and Local Rule 25-5, ACA hereby certifies that its counsel electronically filed the foregoing document and electronically served it on the counsel of record below on July 29, 2020.

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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