CASE NO. 20-1089

In the United States Court of Appeals For the Seventh Circuit

JOSEPH DEGROOT,

Plaintiff-Appellant,

v.

CLIENT SERVICES, INCORPORATED,

Defendant-Appellee.

On Appeal from United States District Court for the Eastern District of Wisconsin,
No. 1:19-cv-00951-WCG
The Honorable William C. Griesbach, Senior District Judge

BRIEF OF AMICUS CURIAE ACA INTERNATIONAL IN SUPPORT OF DEFENDANT-APPELLEE AND AFFIRMANCE OF THE DISTRICT COURT ORDER

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APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 20-1089

Short Caption: Joseph DeGroot vs. Client Services Incorporated

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

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(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):

ACA International (ACA)

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Gray, Reed & McGraw, LLP

(3) If the party, amicus or intervenor is a corporation:

i) Identify all its parent corporations, if any; and

Not applicable

ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:

Not applicable

(4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:

Not applicable

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

Not applicable

Attorney's Signature: /s James A. Moseley Date: May 15, 2020

Attorney's Printed Name: James A. Moseley

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** X **No** ☐

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Not applicable

Attorney's Signature: /s Angela L. Brown Date: May 15, 2020

Attorney's Printed Name: Angela L. Brown

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Not applicable

Attorney's Signature: /s London R. England Date: May 15, 2020

Attorney's Printed Name: London R. England

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** X

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BRIEF OF AMICUS CURIAE ACA INTERNATIONAL IN SUPPORT OF DEFENDANT-APPELLEE AND AFFIRMANCE OF THE DISTRICT COURT ORDER

To the Honorable Court of Appeals for the Seventh Circuit:

ACA International, the Association of Credit and Collection Professionals ("ACA"), files this Brief as *amicus curiae* in support of Defendant-Appellee Client Services, Incorporated ("Client Services").

STATEMENT OF IDENTITY, INTEREST, AND AUTHORITY[1]

ACA offers a unique perspective that will assist the Court beyond what the parties are able to do. ACA 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, bringing together nearly 2,500 member organizations, including third-party collection agencies, asset buyers, attorneys, creditors, and vendor affiliates.

The interests of ACA and its members in this case are substantial. The answers to the questions raised in the appeal will have a direct and significant impact on the wellbeing and livelihood of ACA members, their employees, and consumers across the nation. The *Amicus* Brief offers a nation-wide perspective and comprehensive analysis of the effects the reversal of the district court's order could have on the debt collection industry and consumers. The relationship between the FDCPA and state law governing pre- and post-judgment interest where creditors sue to collect on debts impacts all debt-collection professionals. Those who seek to comply with the law need clarification regarding the conflicting guidance they receive from lower courts.

[1] Appellee consents to the filing of this brief. Appellant has withheld his consent. No counsel of any party to this proceeding authored any part of this amicus brief. No party or party's counsel, or person other than *Amicus* and its members, contributed money to the preparation or submission of this brief. Client Services is an ACA member, and ACA has authorized the filing of this amicus brief.

Further, ACA is able to provide the Court with a statistical analysis of the debt-collection industry in general, and the impact of frivolous FDCPA litigation on its members, including their more than 129,000 employees worldwide.

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. They work with these businesses, large and small, to obtain payment for the goods and services received by consumers, and 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 collections, consumers would be forced to pay more for their purchases to compensate for uncollected debts.

ACA helps its members serve their communities and meet the challenges created by changing markets through leadership, education, and service. ACA produces a wide variety of products, services, and publications, including educational and compliance-related information; and 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. A reversal of the district court's decision would upset the statutory balance of rights,

liabilities, and defenses contained in the FDCPA. ACA members thus have a direct interest in this litigation, and ACA has authorized the filing of this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

ACA writes in support of the Appellee, Client Services, Inc., in *Degroot v. Client Services, Inc.*, No. 19-C-951, 2020 WL 231201 (E.D. Wis. Jan. 16, 2020). Rather than repeat the thorough arguments on the merits made in the Appellee's Brief, ACA would like to stress the real-world consequences of reversal of the district court's order. Affirmance of the district court's 12(b)(6) dismissal will allow courts who sit on the front lines of FDCPA litigation to efficiently dismiss baseless claims before parties incur substantial costs of litigation. Unfortunately, even though this Court's guidance has been clear, those debt collections professionals trying to comply with this Court's precedent are handicapped by inconsistent and often incoherent interpretations by lower courts. It is vital that the FDCPA be enforced in a way that allows those debt-collection professionals seeking to comply with the law to remain viable businesses.

Congress enacted the Fair Debt Collection Practices Act ("FDCPA") to halt "abusive debt collection practices," including harassing phone calls and threats of violence. 15 U.S.C. §§ 1692(e), 1692d ("A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt."). However, Congress recognized that

only a minority of debt-collection professionals engaged in these troubling practices. *See* S. Rep. No. 95-382, at 2 (1977), *reprinted in* 1977 U.S.C.C.A.N. 1695, 1699 (emphasizing that "unscrupulous debt collectors comprise only a small segment of the industry"). As a result, while the FDCPA regulates communications from debt collectors to consumers, it does not explicitly outline *how* debt collectors must communicate with consumers. At issue in this case is whether debt collection professionals who attempt to comply with the FDCPA while aiding consumers by providing clarity about their current balance due should be penalized for following this Court's guidance, and instead be forced to attempt to untangle complex state judgment law and offer additional information regarding possible unknown future interest.

ARGUMENT

I. Accurate Itemization Satisfies the FDCPA Requirements and this Court Should Not Extend Debt Collectors' Obligations to Require Notification of Possible Future Ramifications to Debtors' Accounts

Initial communications with consumers (sometimes referred to as "dunning letters") are regulated under the FDCPA. *See* 15 U.S.C. §§ 1692a (defining "communication[s]" sent by "debt collector[s]"), 1692e, 1692f. Here, Appellant argues that inclusion of a line in a debt collection letter listing "interest," when the debt has been charged-off and no interest is currently accruing, is false, misleading, or deceptive under the FDCPA. Not so. Itemization apprises consumers of how their

debt was calculated, gives consumers the opportunity to verify the accuracy of the letter, and are the type of "extra detail" that may aid consumer's understanding of their debt. *See Beler v. Blatt, Hasenmiller, Leibsker & Moore,* LLC, 480 F.3d 470, 473 (7th Cir. 2007).

As this Court noted in *Fields*, "[o]ne simple way to comply with § 1692e and § 1692f's requirements not to give a false impression of the character of the debt] in this regard would be to itemize the various charges that comprise the total amount of the debt." *Fields v. Wilber Law Firm, P.C.*, 383 F.3d 562, 566 (7th Cir. 2004). This is what happened here.

To adopt the Appellant's argument that the FDCPA requires debt collectors, in addition to itemization, to notify consumers of the *possible future interest*, or alternatively provide false guarantees that interest or fees of any kind would never accrue regardless if the debt remained unpaid, would radically transform their obligations under the FDCPA and require debt collectors to speculate about the future. An unpaid charged-off debt today could become a judgment tomorrow—and judgment interest on the debt is subject to a wide variety of state laws. Debt collectors cannot divine the future. This Court should uphold Circuit precedent and find that accurate itemization satisfies the standards of sections 1692e and 1692f, and is neither false, deceptive, nor misleading.

A. Debt Collection Professionals Should Not be Penalized for Ingenious Interpretations; Rather, Consumers are Benefited by Honest Itemization on Debt Collection Notices

"A dollar due is a dollar due." *Hahn v. Triumph P'ships LLC*, 557 F.3d 755, 757 (7th Cir. 2009) (recognizing that debt collectors need not break out principal and interest, "it is enough to tell the debtor the bottom line."). But where a debt collection letter helps a consumer understand *how* the dollars due are calculated, that notice serves the purposes of the FDCPA and should not be condemned as a false, deceptive, or misleading statement about a debt's character. *See Hahn*, 557 F.3d at 757; S. Rep. No. 95-382, at 2. Thus where, as here, the debt collection letter accurately states that $0.00 interest has accrued on the current amount due the notice is neither false, deceptive, nor misleading.

This Circuit applies the "unsophisticated consumer" standard to FDCPA cases. *Koehn v. Delta Outsource Group, Inc.*, 939 F.3d 863, 964 (7th Cir. 2019). The unsophisticated consumer is "uninformed, naïve, or trusting," *Veach v. Sheeks*, 316 F.3d 690, 693 (7th Cir. 2003), but does "possess[] 'reasonable intelligence,' basic knowledge about the financial world, and 'is wise enough to read collection notices with added care.'" *Koehn*, 939 F.3d at 964 (quoting *Gruber v. Creditors' Prot. Serv., Inc.*, 742 F.3d 271, 273 (7th Cir. 2014)). "[I]f it is apparent that 'not even a significant fraction of the population would be misled' by a collection letter, then the complaint can and should be dismissed." *Id.* (quoting *Zemeckis v. Glob. Credit*

& Collection Corp., 679 F.3d 632, 636 (7th Cir. 2012)). Unsophisticated consumers can understand basic debt collection terms, for example distinguishing between the amount of the debt, the balance, and the amount "now due." *See Olson v. Risk Mgmt. Alts., Inc.*, 366 F.3d 509, 513 (7th Cir. 2004).

Appellant argues that an unsophisticated consumer may be confused by the inclusion of "$0.00" in interest on the notice; Appellant incorrectly underestimates the reasonable intelligence of unsophisticated consumers to read accurate notices as written and adopts an ingenious, and unlikely, interpretation. This interpretation runs far afield of Circuit precedent and should be rejected.

The itemization at issue in this case, which has been used by debt collectors for more than thirty-five years, *see Pressley v. Cap. Credit & Collection Serv., Inc.*, 760 F.2d 922, 923 (9th Cir. 1985) (an itemized debt collection notice complied with § 1691 where the interest was listed at "0.00"), serves the critical role of accurately and honestly setting forth the character of the debt being collected. *See Singer v. Pierce & Assoc., P.C.*, 383 F.3d 596, 598 (7th Cir. 2004) ("And unlike the debt collector in *Fields*, Saxon segregated the attorneys' fees from the underlying debt in an itemized list of expenses, thus avoiding a § 1692e or § 1692f violation."); *Fields v. Wilber Law Firm, P.C.*, 383 F.3d 562, 566 (7th Cir. 2004); *see also* Appellant's Br. at 22 [Dkt. 13] (it is undisputed that the interest of $0.00 was accurate, Appellant merely argues that this designation implies interest *could* accrue). This Court should

uphold its own precedent and find that itemization of principal, interest, and fees satisfies the requirements of sections 1692e and 1692f.

⁂

Debt collection professionals bear an obligation under the FDCPA to accurately report the "amount due." *See Miller v. McCalla, Raymer, Padrick, Cobb, Nichols & Clark, LLC*, 214 F.3d 872, 875 (7th Cir. 2000). However, the FDCPA does not regulate *how* the amount due must be reported to consumers—indeed, a debt collector could correctly include the amount due as a bottom line figure which includes principal, interest, penalties, attorneys' fees, and other components. *See Hahn*, 557 F.3d at 756–57. Indeed, "[s]ection 1692e does not require clarity in all writings." *Beler v. Blatt, Hasenmiller, Leibsker & Moore,* LLC, 480 F.3d 470, 473 (7th Cir. 2007) (noting that section 1692e's prohibition "against trickery differs from a command to use plain English and write at a sixth-grade level."). As this Court has repeatedly noted, unsophisticated consumers should be protected from false or misleading statements, but the FDCPA does not penalize every letter or notice susceptible of an "ingenious misreading." *Koehn*, 939 F.3d at 865 (internal citations omitted); *see also Barnes v. Advanced Call Ctr. Techs., LLC*, 493 F.3d 838, 841 (7th Cir. 2007); *Chuway v. Nat'l Action Fin. Servs., Inc.*, 362 F.3d 944, 948 (7th Cir. 2004). Such an ingenious misreading is the essence of Appellant's case here.

This Court has repeatedly recognized that "providing some extra detail" may help customers to understand their debt. *See Koehn*, 939 F.3d at 865 ("Reporting the post-transfer interest separately also could have helped debtors to check whether Triumph had applied the correct interest rate to the balances acquired from HSBC."). "Classifying obligations in a way that helps customers to understand what has happened cannot be condemned as a false statement about a debt's character." *Id*. Itemization is the exact "extra detail" this Court has repeatedly recognized helps consumers understand the character of their debt. *Fields*, 383 F.3d at 566; *Taylor v. Cavalry Inv., L.L.C.*, 365 F.3d 572, 574 (7th Cir. 2004) ("The defendant sent each of them a letter which sets forth the amounts of the "PRINCIPAL BAL," INTEREST OWING," and "TOTAL BAL DUE." So far, so good.").

While Appellant analogizes this case with the debt collection letter sent in *Boucher v. Fin. Sys. of Green Bay, Inc.*, 880 F.3d 362, 367 (7th Cir. 2018), the letters are readily distinguishable. Like *Boucher*, the debt collection letter at issue here identifies the consumer's "principal balance, their interest balance, and their total account balance." *See id*. However, unlike *Boucher*, the letter does *not* go on to include any affirmative statements about the future of the debt, including that "interest, late charges, and other charges [ ] may vary from day to day, [and] the amount due on the day you pay may be greater." *Id*.

Rather, Appellant's theory bears a striking resemblance to the theory raised in *Koehn*. In *Koehn*, this Court *affirmed* Judge Griesbach's dismissal of a similar complaint under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim. In that case the consumer contended that a debt collection "letter was misleading because (a) the phrase 'current balance' implied that her balance could grow, even though (b) her account was actually 'static,' meaning that additional interest and fees could no longer be added to the balance." 939 F.3d at 864. This Court "d[id] not see anything inherently misleading in the phrase 'current balance.'" *Id*. at 865. Rather, it would take an "ingenious misreading" to find the letter misleading. *Id*. Likewise, in this case an unsophisticated consumer would not interpret "Interest: $0.00" to indicate anything other than that the interest was zero point zero dollars. To interpret this simple language otherwise is the type of ingenuity that cannot be countenanced and the judgment of the district court should be affirmed.

This Court should follow long-standing Circuit precedent and give "Interest" and "$0.00" their ordinary meaning, and find that an unsophisticated consumer is benefitted, rather than misled, by accurate itemization in debt collection letters. *Koehn*, 939 F.3d at 865; *Dunbar v. Kohn Law Firm, S.C.*, 896 F.3d 762, 767 (7th Cir. 2018); *Fields*, 383 F.3d at 566; *Taylor*, 365 F.3d at 574.

B. Requiring Debt Collectors to Make Affirmative Statements about the Future Runs the Risk the Statements Could be False Because a Static Debt Today Could Become an Interest-Bearing Judgment Tomorrow

> Dunning letters can comply with the Fair Debt Collection Practices Act without answering all possible questions about the future. A lawyer's ability to identify a question that a dunning letter does not expressly answer ("Is it possible the balance might increase?") does not show the letter is misleading, even if a speculative guess to answer the question might be wrong.

Koehn v. Delta Outsource Group, Inc., 939 F.3d 863, 865 (7th Cir. 2019). Such is exactly the problem raised by Appellant's argument in this case. Appellant argues that it is misleading to accurately tell a consumer what he owes *now*, because on a "static" debt no interest can accrue in the future. *See* Appellant's Br. at 22–23 [Dkt. 13]. This theory is legally incorrect and runs the risk of asking debt collectors to act as fortune tellers and counselors.

Specifically, Appellant argues that because his debt was "static," future interest could not accrue and therefore representing that the interest itemized on the debt collection letter was "$0.00" incorrectly implies that interest could accrue in the future. Appellant's Br. at 21 [Dkt. 13]. However, Appellant oversimplifies the nature of a static debt. While a static debt cannot accrue interest during a debt collector's collection efforts, should a creditor sue on the debt and obtain a judgment some state laws do, in fact, allow for either pre- or post-judgment interest to accrue *regardless of the contractual interest* on the debt that had ceased at the time of

charge-off. As such, prohibiting debt collectors from referencing interest on "static" debts would be unnecessary, would eschew the clarity that itemization offers consumers, and ignores the possibility that the debt *may* accrue judgment interest in the future.

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In cases arising under the FDCPA, a debt described as "static" generally means that additional interest and fees could no longer be added to the balance. *See, e.g.*, *Koehn*, 939 F.3d at 864; *see also Driver v. LJ Ross Assoc., Inc.*, No. 3:18-cv-00220-MPB-RLY, 2019 WL 4060098, at *2 (S.D. Ind. Aug. 28, 2019); *Wood v. Allied Interstate, LLC*, No. 17-C-4921, 2018 WL 2967061, at *2 (N.D. Ill. June 13, 2018). However, to distinguish between static and non-static debts is error because even static debts *may* accrue interest under the very circumstances noted by the district court below: a creditor may file suit to collect on the debt (typically in state court) and obtain a judgment. *See Degroot*, 2020 WL 321201, at *5. Once the creditor obtains a judgment, pre- and post-judgment interest may accrue under state law. *See id.* (setting forth Wisconsin judgment interest statutes). The question of whether statutory interest may accrue in the future hinges, *inter alia*, on what actions are taken to collect the debt and applicable state law. *Compare Haney v. Portfolio Recovery Assocs., L.L.C.*, 895 F.3d 974, 983–84 (8th Cir. 2016) (addressing

Missouri law); *Stratton v. Portfolio Recovery Assocs., LLC*, 770 F.3d 443, 445 (6th Cir. 2014).

Because state law governs whether judgments accrue interest, debt collectors attempting to divine whether interest could ever affect a specific debt would need to first determine which state's law applies and then what interest, if any, applies to a possible future judgment. In attempting to answer the question of whether the FDCPA permits creditors to charge judgment interest under state law following the charge-off of a credit card debt, two Circuit Courts, and several district courts, have reached varying conclusions based on differences in the underlying state law. *See Haney*, 895 F.3d at 983–84 (Eighth Circuit addressing Missouri law); *Stratton*, 770 F.3d at 445 (Sixth Circuit addressing Kentucky law); *see also Yip v. Dynamic Recovery Sols., LLC*, 1:18-CV-2586-WMR, 2019 WL 5549952, at *2 (N.D. Ga. Sept. 26, 2019) (slip copy) (applying Georgia law and following *Haney*); *Walkabout v. Midland Funding LLC*, Case No. CIV-14-939-M, 2016 WL 1169540, at *4 (W.D. Okla. Mar. 22, 2016) (Oklahoma); *Bunce v. Portfolio Recovery Assocs., LLC*, No. 14-2149-JTM, 2014 WL 5849252, at *3 (D. Kan. Nov. 12, 2014) (Kansas). Thus, analysis of whether interest could be applicable to a specific debt requires a difficult legal analysis for each debt collection letter sent.

To state that no interest could ever accrue, it is not enough for the debt collector to determine that it would not file suit against the consumer. Even if a

particular debt collector does not intend to file a lawsuit or seek a judgment, the debt could be sold in the future to a debt collector who does. *See, for example, Neff v. Cap. Acquisitions & Mgmt. Co.*, 352 F.3d 1118, 1120 (7th Cir. 2003). Notices commenting on whether a debt could *ever* accrue interest, as demanded by Appellant here, would constitute rampant speculation and go well beyond the risk of a "false impression" cautioned against in *Fields*. *See Fields v. Wilber Law Firm, P.C.*, 383 F.3d 562, 566 (7th Cir. 2004); *see also Dunbar v. Kohn Law Firm, S.C.*, 896 F.3d 762, 765 (7th Cir. 2018) (there is "nothing misleading" about open-ended statements that future "tax consequences are a possibility.").

Communications from debt collectors to consumers may not be false, deceptive or misleading; therefore, any affirmative statements about the future of that debt—and its interest—must also pass muster. *See* Appellant's Br. at 13 (incorrectly asserting that the amount of a static debt "could never increase."). Were debt collectors required to opine on whether a debt could *ever* be subject to interest, a statement that the debt is not subject to interest—while true at the time—could *become* false if the debt were sold and a subsequent debt collector chose to sue, and pursued state statutory judgment interest. At that point, a previously honest and accurate statement may become false or misleading and therefore actionable under the FDCPA. Debt collectors should not be required to divine what will happen in the future in order to give honest, accurate, and helpful information to consumers today.

This level of crystal ball-gazing is not a requirement of current FDCPA jurisprudence because it would impose upon debt collectors an obligation to undertake to answer all possible questions about the debt in the future. *See Koehn v. Delta Outsource Group, Inc.*, 939 F.3d 863, 865 (7th Cir. 2019).

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Consequently, this Court should reject the Appellant's invitation to split the requirements for notice and information provided to consumers by distinguishing between "static" and "non-static" debt. Rather, this Court should affirm the district court and uphold this Circuit's precedent that debt collector's should not be required to answer all possible questions about the future of a consumer's debt. *Koehn*, 939 F.3d at 865.

II. Debt Collection Plays a Critical Role in the U.S. Economy—and Meritless FDCPA Lawsuits Harm Responsible Debt Collection Professionals and Consumers.

Appellant's briefing paints a false impression of the critical role that the debt collection industry serves for business owners and consumers. *See* Appellant's Br. at 17 (describing the impact of debt collection on "marital instability" and "the loss of jobs").

Debt collections professionals do not fit any particular mold, and vary from the smallest of businesses that operate within a limited geographic range of a single state, and the largest of publicly held, multi-national corporations that operate in

every state. The majority of ACA-member debt collection companies are small businesses—about three-quarters of ACA's company members have less than $15 million in annual revenue and fewer than twenty-five employees.[2] The ACA-member workforce is also incredibly diverse, with racial and ethnic minorities accounting for some forty percent and women making up seventy percent of employees.[3] As of 2018, thirty-two percent of responding ACA members indicated that they were woman-owned businesses, while six percent reported that they were minority-owned businesses; an additional five percent indicated that they were both woman-and minority-owned.[4]

Claims like those asserted by Appellant have morphed the FDCPA from a shield aimed at protecting consumer rights to a sword for consumers to target debt collectors, even where the communications are accurate. The sheer number of FDCPA suits brought each year is staggering—in 2017 alone, plaintiffs filed more

[2] Josh Adams, *Small Businesses in the Collection Industry in 2018* (May 2018) (ACA International White Paper) *available at* https://www.acainternational.org/assets/research-statistics/aca-wp-smallbusiness-5-18.pdf at 2.

[3] Josh Adams, *Diversity in the Collections Industry: An Overview of the Collections Workforce* at 4 (Jan. 2016) (ACA International White Paper) *available at* j.mp/CollectionRole2016.

[4] Josh Adams, *Small Businesses in the Collection Industry in 2018* (May 2018), https://www.acainternational.org/assets/research-statistics/aca-wp-smallbusiness-5-18.pdf at 5.

than 9,000 FDCPA cases in the district courts.[5] While the benefits of increased regulation of the debt-collection industry to consumers are often illusory, the harm to law-abiding debt collectors, small businesses, and consumers is all too real. The cost of defending just one or two meritless lawsuits can have a severe impact on such a small businesses. There is no shortage of FDCPA actions, and a reversal of the district court's decision would encourage even more frivolous claims and handicap the lower court's ability to efficiently manage its docket.

A. The Ability to Effectively and Efficiently Collect Consumer Debt is a Crucial Underpinning of the American Economy.

The U.S. economy depends on collected debt and debt collections professionals play a critical role in that process. As the Consumer Financial Protection Bureau explains, "[c]onsumer debt collection is critical to the functioning of the consumer credit market."[6] By collecting delinquent debt, debt collection professionals help make credit more affordable to consumers, enabling them "to purchase goods and services that they could not afford if they had to pay the entire

[5] WebRecon, LLC, WEBRECON STATS FOR DEC 2017 & YEAR IN REVIEW *available at* https://webrecon.com/webrecon-stats-for-dec-2017-year-in-review/; See also WebRecon, LLC, WEBRECON JAN 2020: YEAR STARTS WITH COMPLAINTS UP ACROSS THE BOARD *available at* https://webrecon.com/webrecon-stats-for-jan-2020/.

[6] CFPB Annual Report 2012, *Fair Debt Collections Practices Act* at 4 (2012), *available at* https://files.consumerfinance.gov/f/201203_cfpb_FDCPA_annual_report.pdf.

cost at the time of purchase." The FDCPA should not be read to incentivize consumers to shirk legal and valid debts at the expense of honest businesses and other consumers seeking affordable credit. If courts makes collection efforts less certain and more hazardous, small and medium-sized business owners and their employees will be less willing to provide goods and services in advance of payment, or will increase prices to make up for increased collection costs and unpaid but valid debt. William P. Hoffman, *Recapturing the Congressional Intent Behind the Fair Debt Collection Practices Act*, 29 ST. LOUIS U. PUB. L. REV. 549, 556 (2010).

Small businesses in particular rely on the debt-collection industry, often lacking the resources to collect outstanding debts themselves. *Id*. at 557. They therefore rely on third-party debt collectors—providing cash flow that is critical for the sustainability of those businesses and for the workers they employ. *Id*. Because collecting unpaid debts requires time and expertise, many creditors rely on professional debt collectors. *Id*. at 557. Small businesses, which often lack "the resources or manpower to collect . . . debts on their own," depend especially heavily on these professionals. *Id*.

An academic study about the impact of debt collection confirms the basic economic reality that losses from uncollected debts are paid for by the consumers who meet their credit obligations:

> In a competitive market, losses from uncollected debts are passed on to other consumers in the form of higher prices and restricted access to credit; thus,

> excessive forbearance from collecting debts is economically inefficient. Again, as noted, collection activity influences on both the supply and the demand of consumer credit. Although lax collection efforts will increase the demand for credit by consumers, the higher losses associated with lax collection efforts will increase the costs of lending and thus raise the price and reduce the supply of lending to all consumers, especially higher-risk borrowers.

Todd Zywicki, *The Law and Economics of Consumer Debt Collection and Its Regulation*, 28 LOYOLA CONSUMER L. REV. 167, 168 (2016).

To develop a more complete picture of the economic importance of the third-party debt collection industry, ACA commissioned Ernst & Young to conduct a study to measure the various impacts of third-party debt collection on the national and state economies. Ernst & Young, *The Impact of Third-Party Debt Collection on the National and State Economies*, at 2 (November 2017), *available at* https://bit.ly/2N1Skz5 ("Ernst & Young Report").[7] The study revealed that in 2016 debt collection agencies returned nearly $67.6 billion in debt to creditors—an average savings of $579 for every American household. *Id*. Further, U.S. debt collection agencies and their employees were estimated to directly contribute $852 million of federal tax, $391 million of state tax, and $286 million of local tax, for a combined tax impact of more than $1.5 billion. *Id*. at 14. The study also shows that the debt collection market is extremely varied in the types of debts being collected

[7] ACA previously commissioned Ernst & Young to conduct similar studies in 2011 and 2013.

and the nature and size of the accounts receivable management industry encompasses a broad scope. *Id.* at 6-8.

By recovering billions of dollars of delinquent debt each year that would otherwise go uncollected, the industry generates benefits to U.S. businesses, including: (1) reduced consumer prices for consumers that pay their debts, (2) lower bad debt costs for businesses that diminishes financial insolvency risks, and (3) decreased future tax and fee increases or spending cuts on the part of government agencies. *Id*. at 1.

B. Ambiguity In Application of the FDCPA Encourages Meritless Lawsuits, Accruing Higher Costs for Both Businesses and Consumers.

As this Court has observed, plaintiffs' attorneys are particularly adept at using "the class action as a device for forcing the settlement of meritless claims," a practice the Court described as the "mirror image of the abusive tactics of debt collectors at which the statute is aimed." *White v. Goodman*, 200 F.3d 1016, 1019 (7th Cir. 2000). There is widespread abuse of the FDCPA, which caused it to become a debt relief statute rather than a shield for consumers as it was initially intended to be. As numerous authorities have recognized, law-abiding debt collectors are currently bombarded by FDCPA suits. *See Fed. Home Loan Mortg. Corp. v. Lamar*, 503 F.3d 504, 513 (6th Cir. 2007) (noting the "proliferation of litigation" under the Act) (internal quotation marks omitted); *Jacobson v. Healthcare Fin. Servs., Inc.*, 434 F.

Supp. 2d 133, 138 (E.D.N.Y. 2006), *aff'd in part, rev'd in part and vacated*, 516 F.3d 85 (2008) ("The interaction of the least sophisticated consumer standard with the presumption that the FDCPA imposes strict liability has led to a proliferation of litigation in this District … the cottage industry that has emerged does not bring suits to remedy the widespread and serious national problem of abuse that the Senate observed in adopting the legislation.... Rather, the inescapable inferences that the judicially developed standards have enabled a class of professional plaintiffs."). Although many of those lawsuits are entirely devoid of merit, plaintiffs' attorneys can often extract settlements from law-abiding debt collectors who face greater expense from litigating such nuisance suits than from settling them, and like the case before the Court, no actual damages to the plaintiff.[8]

[8] Nevertheless, meritless cases are often nonetheless "successful"—in that, the endgame is almost always a quick settlement, not a verdict. It is not surprising that plaintiffs' attorneys are often successful at coercing law-abiding debt collectors to settle. As noted above, the cost of successfully defending a nuisance lawsuit far exceeds the cost of settlement. Therefore, there is often a strong economic incentive to settle even meritless claims. *See Berther v. TSYS Total Debt Mgmt., Inc.*, No. 06-C-293, 2007 WL 1795472, at *4 (E.D. Wis. Jun 19, 2007) ("[I]t is the avoidance of attorney[']s fees that undoubtedly serves as the primary motivating factor in pushing defendants into settlements."); Hoffman, 29 ST. LOUIS U. PUB. L. REV. at 562 ("[F]or a collection agency, it is more cost effective to pay a settlement…. As a consequence, a "cottage industry" of consumer-advocacy attorneys has been very successful at exploiting the ambiguities in the law in order to coerce collection agencies to drop their legitimate claims."); Lynn A.S. Araki, *Rx For Abusive Debt Collection Practices: Amend The FDCPA*, 17 U. HAWAII L. REV. at 105–06 ("Attorneys who are familiar with the FDCPA provisions try to extract more money in the settlement process than they could reasonably expect to recover for a non-aggrieved client in court.").

Not surprisingly, "FDCPA litigation is a breeding ground for class actions." Lawrence Young & Jeffrey Coulter, *Class Action Strategies in FDCPA Litigation*, 52 CONSUMER FIN. L.Q. REP. 61, 70 (1998). "[I]t is these attorneys' fees which are a significant inducement for FDCPA class action lawsuits." *Sanders v. Jackson*, 209 F.3d 998, 1003 (7th Cir. 2000) (citing *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 52 (2d Cir. 2000) (In many class action cases the plaintiffs "are mere 'figureheads' and the real reason for bringing such actions is 'the quest for attorney's fees.'")); *see* Araki, 17 U. HAWAII L. REV. 69, 105–06 (noting that "it often is cost free for their clients to try a case for a nominal verdict" while "it costs the defendant his own attorney's fees"). The "history of FDCPA litigation shows that cases have resulted in limited recoveries for plaintiffs and hefty fees for their attorneys." *Sanders v. Jackson*, 209 F.3d 998, 1003 (7th Cir. 2000); *Berther*, 2007 WL 1795472, at *4 ("FDCPA cases appear to be much more about attorneys['] fees than the prosecution of consumer rights."); *Crawford v. Equifax Payment Servs., Inc.*, 201 F.3d 877, 880 (7th Cir. 2000) (negotiated settlement provided $2,000 to the class representative, $78,000 to the plaintiff's attorneys, and nothing for the rest of the class). Cases like *Crawford* illustrate "the all-too-common abuse of the class action as a device for forcing the settlement of meritless claims and is thus a mirror image of the abusive tactics of debt collectors at which the statute is aimed." *White v. Goodman*, 200 F.3d 1016, 1019 (7th Cir. 2000).

Affirmance of the district court's 12(b)(6) dismissal supports the district court judges by continuing this Circuit's clear precedent regarding interpretation of the unsophisticated consumer standard and allowing district courts to efficiently consider and dismiss baseless claims and permit meritorious claims to proceed. Moreover, continuing this Court's precedent that accurate and straightforward communications comply with the FDCPA would allow those debt-collection professionals seeking to comply with the law to remain viable businesses, for the benefit of businesses and consumers.

CONCLUSION

For the foregoing reasons, *Amicus Curiae*, ACA International respectfully requests this Court affirm the decision of the district court in this matter.

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CERTIFICATE OF COMPLIANCE

The undersigned attorney certifies that this brief conforms to the requirements of Federal Rule of Appellate Procedure 32. The length of the brief, excepting those parts excluded by Federal Rule of Appellate Procedure is 5506 words. The undersigned further certifies that this brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Rule 32(a)(6) because it appears in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

Dated: May 15, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on May 15, 2020, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF System, which will send a notice of electronic filing to all registered parties.

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