No. 16-349

IN THE

Supreme Court of the United States

RICKY HENSON, IAN MATTHEW GLOVER, KAREN PACOULOUTE, F/K/A KAREN WELCOME KUTEYI, AND PAULETTE HOUSE,

Petitioners,

v.

SANTANDER CONSUMER USA, INC.,

Respondent.

On Writ of Certiorari
to the United States Court of Appeals
for the Fourth Circuit

BRIEF OF PETITIONERS

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QUESTION PRESENTED

Whether a company that regularly attempts to collect debts it purchased after the debts had fallen into default is a "debt collector" subject to the Fair Debt Collection Practices Act?

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BRIEF OF PETITIONERS

Petitioners Ricky Henson, Ian Matthew Glover, Karen Pacouloute, f/k/a Karen Welcome Kuteyi, and Paulette House respectfully request that this Court reverse the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-20a) is published at 817 F.3d 131. The opinion of the district court (Pet. App. 21a-40a) is unpublished but available at 2014 WL 1806915.

JURISDICTION

The judgment of the court of appeals was entered on March 23, 2016. Pet. App. 2a. The court of appeals denied petitioners' timely petition for rehearing en banc on April 19, 2016. Pet. App. 41a-42a. On July 5, 2016, the Chief Justice extended the time to file this petition through August 17, 2016. No. 16A12. On August 4, 2016, the Chief Justice further extended the time to file the petition in this case through September 16, 2016. *Id.* Petitioners filed a timely petition for a writ of certiorari on September 16, 2016. No. 16-349. This Court granted the petition on January 13, 2017. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

The relevant portions of Title 15 U.S.C. §§ 1692-1692p are appended in a statutory appendix to this brief.

STATEMENT OF THE CASE

Congress enacted the Fair Debt Collection Practices Act (FDCPA) in 1977 in light of "abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors." 15 U.S.C. § 1692(a). Congress specifically targeted "debt collectors" because, "[u]nlike creditors, who generally are restrained by the desire to protect their good will when collecting past due accounts, independent collectors are likely to have no future contact with the consumer and often are unconcerned with the consumer's opinion of them." S. Rep. No. 95-382, at 2 (1977).

Respondent Santander Consumer USA, Inc. was hired as a "debt servicer" to collect money petitioners and other consumers owed on their automobiles to CitiFinancial Auto. Because it began servicing those loans after petitioners and thousands of other consumers defaulted on their debts, Santander qualified as a "debt collector" subject to the FDCPA. *See* 15 U.S.C. §§ 1692a(6), 1692a(6)(F)(iii). In December 2011, Santander purchased petitioners' debts from the original creditor as part of a larger debt purchase agreement. Santander knew that the originator had agreed to waive petitioners' debts as part of a settlement of other litigation that was pending final court approval. But Santander nonetheless persisted in attempting to collect from petitioners, securing partial payments from at least two of them.

As the case stands, there is no dispute that such conduct would violate the FDCPA if the statute continued to apply to Santander after the purchase. But the Fourth Circuit held that in buying the debts

it was previously hired to collect for CitiFinancial Auto, Santander exempted itself from the Act's coverage.

I. Statutory Background

A. The Statute

1. The FDCPA defines a covered "debt collector" through a three-stage process.

First, it initially defines "debt collector" to include two classes of persons and businesses, the second of which is most relevant to this case: (1) one whose "principal purpose" is "the collection of any debts"; and (2) one "who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another." 15 U.S.C. § 1692a(6).

Second, the statute then provides exceptions for certain people and debts. *See id*. § 1692a(6)(A)-(F). For example, the term "debt collector" "does not include . . . any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor." *Id*. § 1692a(6)(A). The definition also excludes:

> any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; (ii) concerns a debt which was originated by such person; (iii) concerns a debt which was not in default at the time it was obtained by such person; or (iv) concerns a debt obtained by such person as a secured

> party in a commercial credit transaction involving the creditor.

Id. § 1692a(6)(F).

The exemption for those who obtain debts prior to default finds a parallel in an exception to the definition of a "creditor," which is defined to include:

> any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.

Id. § 1692a(4).

Third, the statute provides an exception to the Clause (F) exceptions:

> Notwithstanding the exclusion provided by clause (F) of the last sentence of this paragraph, the term ["debt collector"] includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts.

Id. § 1692a(6).

2. Once a company is classified as a debt collector, it is subject to the FDCPA's substantive provisions, which apply to all of its collection efforts with respect to any debt unless that debt falls within a statutory exception. The statute provides, for example, that a debt collector

- generally "may not communicate with a consumer in connection with the collection of any debt . . . if the debt collector knows the consumer is represented by an attorney with respect to such debt," *id*. § 1692c(1)(2);
- "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," *id*. § 1692d;
- "may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt," *id*. § 1692e; and
- "may not use unfair or unconscionable means to collect or attempt to collect any debt," *id*. § 1692f.

3. The FDCPA may be enforced through civil actions by private persons, the Federal Trade Commission (FTC), or the Consumer Finance Protection Bureau (CFPB). *See id.* §§ 1692k, 1692*l*.

Defendants have a complete defense if they can show "by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error." *Id*. § 1692k(c). Any collector uncertain of its obligations can request an advisory opinion from the CFPB and is immune from liability for "any act done or omitted in good faith in conformity with" the opinion. *Id*. § 1692k(e).

Private plaintiffs may recover their actual damages and, in the discretion of the district court, statutory damages capped at $1,000 per case. *Id*.

§ 1692k(a). In class actions, statutory damages are limited to the lesser of $500,000 or one percent of the debt collector's net worth. *Id*. § 1692k(a)(2)(B).

B. Players In The Consumer Credit And Debt Collection Markets

In general, the FDCPA has potential application to four kinds of entities that collect consumer debt.

Loan Originators. Consumer debt is generally originated by banks, credit card issuers, and consumer finance companies. These lenders may collect on the debt themselves or they may hire outside servicers or debt collectors.[1]

Debt Servicers. Once a loan is originated, it must be "serviced." Servicing includes a variety of tasks when the loan is in good standing, including sending bills, responding to consumer inquiries, collecting payment and distributing the proceeds, administering escrow accounts for home loans, etc.[2] Originators often service their own loans, but they

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[1] *See* Fed. Trade Comm'n, Collecting Consumer Debts: The Challenges of Change – A Workshop Report ("*Challenges of Change*") 2-3 (Feb. 2009), https://www.ftc.gov/sites/default/files/documents/reports/collecting-consumer-debts-challenges-change-federal-trade-commission-workshop-report/dcwr.pdf.

[2] *See* 12 U.S.C. § 2605(i)(3); U.S. GOV'T ACCOUNTABILITY OFF., GAO-16-278, NONBANK MORTGAGE SERVICERS: EXISTING REGULATORY OVERSIGHT COULD BE STRENGTHENED ("NONBANK MORTGAGE SERVICERS") 4-5 (2016); Mariya Deryugina, *V. Mortgage Loan Modification: Barriers To Use*, 28 REV. BANKING & FIN. L. 426, 426 (2009).

may also hire outside servicers.[3] Those servicers may be paid a flat fee, but they are often compensated on a contingency basis.[4]

A servicer may be hired before or after a debt has fallen into default.[5] Servicers may also be assigned the debt in order to facilitate collection.[6]

Third-Party Debt Collectors. A lender or its servicer may also hire a third-party to collect the debt, which is particularly common when other collection efforts have failed. Third-party debt collectors are generally paid a portion of whatever money they recover.[7]

Debt Buyers. As noted, a debt may be assigned to servicers to facilitate collection. But debts are also assigned as a way of selling the debt to investors.[8] Some loans (particularly home loans) are regularly sold shortly after origination. The loan originator

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[3] NONBANK MORTGAGE SERVICES, *supra* at 4-5.

[4] *Id*. at 17; Diane E. Thompson, *Foreclosing Modifications: How Servicer Incentives Discourage Loan Modifications*, 86 WASH. L. REV. 755, 765-68 (2011).

[5] *See* Fed. Trade Comm'n, The Structure and Practices of the Debt Buying Industry ("*Structure and Practices*") 11 (Jan. 2013), https://www.ftc.gov/sites/default/files/documents/reports/structure-and-practices-debt-buying-industry/debtbuyingreport.pdf.

[6] *See* 15 U.S.C. § 1692a(4); *Challenges of Change, supra*, at 3, 23.

[7] *See Challenges of Change*, *supra*, at 3.

[8] *See* Dalié Jiménez, *Dirty Debts Sold Dirt Cheap*, 52 HARV. J. LEGIS. 41, 52 (2015) ("*Dirty Debts*").

may continue to service the debt, or the purchaser may do so or hire a third-party servicer.[9]

Other debt (particularly credit card debt) is often sold after default.[10] As the CFPB has noted, the advent and growth of the market for defaulted debt "is one of the most significant changes to the debt collection market" since Congress enacted the FDCPA in late 1970s.[11] Members of this new debt buying industry "purchase defaulted debt from original creditors" for pennies on the dollar and then "seek to collect on purchased debts themselves."[12] In 2015, debt buyers reported approximately $4.4 billion in revenue.[13]

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[9] In the mortgage context, servicing rights may sold to a third-party that obtains the right to retain a percentage of the monthly payment in return for the servicing. *See Thompson*, *supra*, at 765-68. The underlying debt is frequently sold separately and securitized. *Id.* at 762-65.

[10] *See, e.g.*, Consumer Fin. Prot. Bureau, Fair Debt Collection Practices Act: CFPB Annual Report 2016 ("*CFPB 2016 Annual Report*") 10 (March 2016), http://files.consumerfinance.gov/f/201603_cfpb-fair-debt-collection-practices-act.pdf; *Challenges of Change*, *supra*, at 13; *Dirty Debts*, *supra*, at 52.

[11] Consumer Fin. Prot. Bureau, Fair Debt Collection Practices Act: CFPB Annual Report 2014 ("*CFPB 2014 Annual Report*") 7 (March 2014), http://files.consumerfinance.gov/f/201403_cfpb_fair-debt-collection-practices-act.pdf; *see also Structure and Practices*, *supra*, at ii.

[12] *CFPB 2014 Annual Report*, *supra*, at 7; *see also Structure and Practices*, *supra*, at ii (on average, debt buyers pay four cents per dollar of debt face value).

[13] *See CFPB 2016 Annual Report*, *supra*, at 9.

The industry has grown quickly and is constantly evolving. There are presently "hundreds, if not thousands, of entities of varying sizes that purchase debts."[14] Some companies focus almost exclusively on purchasing and collecting defaulted debts.[15] Others have included debt purchasing and collecting as part of a broader mix of financial ventures or investments. As this case illustrates, purchasing and attempting to collect debt is a natural extension of many consumer finance businesses that already service debts for others or originate and service their own loans. In addition, a number of hedge funds and investment companies have begun purchasing defaulted debt as part of a diversified investment strategy.[16]

Some of the most common complaints the Government receives about debt collection are that consumers are being dunned for debts of some other person, for debts they do not owe (*e.g.*, because they have been paid, discharged in bankruptcy, or are beyond the statute of limitations), or for debts in the wrong amount.[17] Particularly when defaulted debts

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[14] *See Structure and Practices*, *supra*, at 14.

[15] *See Challenges of Change*, *supra*, at 13.

[16] *See, e.g., CFPB 2016 Annual Report*, *supra*, at 10-11; *Challenges of Change*, *supra*, at 12-14; *Hedge Fund Investing In Delinquent Mortgages*, NBC NEWS, http://www.nbcnews.com/id/25939227/ns/business-real_estate/t/hedge-funds-investing-delinquent-mortgages/#.WKHv6G8rKn8 (last visited Feb. 16, 2017); *What We Do: Direct Private Investing*, GOLDMAN SACHS, http://www.goldmansachs.com/what-we-do/investing-and-lending/direct-private-investing/ (last visited Feb. 16, 2017).

[17] *See Dirty Debts*, *supra*, at 75.

are sold and resold multiple times,[18] debt buyers can wind up with inaccurate information.[19] Debt buyers often purchase huge portfolios of debt, comprising thousands (sometimes hundreds of thousands) of accounts.[20] They frequently obtain relatively little information about the debt or the debtors – it is common for the debt buyer to receive just a spreadsheet listing only basic information about the debt and the consumer.[21] Debt buyers "rarely receive[] any information from sellers concerning whether a consumer had disputed the debt or whether the disputed debt had been verified."[22]

Debt sellers generally disclaim any warranty of the accuracy of the information they are providing the buyers.[23] Moreover, the vast majority of the time, debt sellers do not provide any supporting documents and, even if they are available after the sale, documents are rarely requested.[24] And even when

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[18] *Structure and Practices*, *supra*, at 19.

[19] *See, e.g.*, U.S. GOV'T ACCOUNTABILITY OFF., GAO-09-748, CREDIT CARDS: FAIR DEBT COLLECTION PRACTICES ACT COULD BETTER REFLECT THE EVOLVING DEBT COLLECTION MARKETPLACE AND USE OF TECHNOLOGY 43-47 (2009); *CFPB 2016 Annual Report*, *supra*, at 10-11, 32.

[20] *See Dirty Debts*, *supra*, at 52.

[21] *See, e.g., Structure and Practices*, *supra*, at ii-iii, 20-21; *Challenges of Change*, *supra*, at 22.

[22] *Structure and Practices*, *supra*, at ii.

[23] *See Structure and Practices*, *supra*, at iii; *Dirty Debts*, *supra*, at 61-63.

[24] *Structure and Practices*, *supra*, at iii, 35; *Dirty Debts*, *supra*, at 68-72.

they do provide underlying documentation, some sellers disclaim any warranty of its accuracy.[25]

Debt buyers may attempt to collect the debt themselves or hire third-party debt collectors.[26] These collection efforts are regularly undertaken on an industrial scale, using automated systems.[27] "Thousands of debt collection lawsuits are filed every day, most of them by debt buyers." *Dirty Debts*, *supra*, at 55; *see also Challenges of Change*, *supra*, at 55-57 (noting 60% of the 120,000 small claims suits filed in Massachusetts in 2005 were by debt collectors, while 119,000 debt collections suits were pending in Chicago courts as of June 2008).

C. History Of The FDCPA's Application To Assignees And Debt Purchasers

The FDCPA's "regularly collects" prong is easy enough to apply to loan originators and third-party collectors. Lenders that regularly collect only debts they originate are not attempting to collect debts "owed or due another," while third-party collectors clearly are. Applying the statutory language to assignees like debt buyers is more difficult.

On the one hand, one might think assignees are "owed" and "due" the debt within the meaning of the statute, so fall outside the definition. But that view immediately runs into the problem that Clause (F) provides an exception for those collecting a debt

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[25] *See Structure and Practices*, *supra*, at iii.

[26] *See, e.g.*, *CFPB 2016 Annual Report*, *supra*, at 8-9.

[27] *See, e.g.*, *Challenges of Change*, *supra*, at 14-21.

"owed or due another" if the collector obtained the debt before it fell into default – making clear Congress contemplated that it is possible for one to "obtain" a debt yet still be collecting a debt "owed or due another," and implying that someone (like a debt purchaser) who obtains a debt *after* it has fallen into default *is* a debt collector.

Until recently, the lower courts uniformly resolved these difficulties by holding that debt buyers are "debt collectors" to the extent they are collecting debt obtained while in default, but not when they are collecting debt obtained prior to default. *See, e.g.*, *Miller v. BAC Home Loans Servicing, L.P.*, 726 F.3d 717, 722 & n.5 (5th Cir. 2013); *Bridge v. Ocwen Fed. Bank, FSB*, 681 F.3d 355, 359-63 (6th Cir. 2012); *Ruth v. Triumph P'ships*, 577 F.3d 790, 796-97 (7th Cir. 2009); *Fed. Trade Comm'n v. Check Inv'rs, Inc.*, 502 F.3d 159, 172-74 (3d Cir. 2007); *Schlosser v. Fairbanks Capital Corp.*, 323 F.3d 534, 536-38 (7th Cir. 2003); *Perry v. Stewart Title Co.*, 756 F.2d 1197, 1208 (5th Cir. 1985); *but see* Pet. App. 4a-5a; *Davidson v. Capital One Bank (USA), N.A.*, 797 F.3d 1309, 1311, 1314-16 (11th Cir. 2015); *Schlegel v. Wells Fargo Bank, N.A.*, 720 F.3d 1204, 1208 (9th Cir. 2013).

The federal government has taken the same view, across agencies and administrations. *See, e.g.*, U.S. BIO 12, *Check Investors, Inc. v. FTC*, No. 08-37 ("[The] statutory distinction between a 'creditor' and a 'debt collector' depends, in the case of a third party to whom a debt has been transferred or assigned,

solely upon whether the debt in question was in default at the time of the transfer or assignment.");[28] Amicus Brief of the Federal Trade Commission Supporting Rehearing En Banc at 9, *Davidson v. Capital One Bank (USA), N.A.*, 797 F.3d 1309 (11th Cir. 2015) ("A company that regularly buys debts owed to others and collects them is a 'debt collector' under the FDCPA for debts that were in default at the time it acquired those debts."); [29] CFPB Bulletin 2013-07, Prohibition of Unfair, Deceptive, or Abusive Acts or Practices in the Collection of Consumer Debts 2 (July 10, 2013) ("The FDCPA generally applies to third-party debt collectors, such as collection agencies, debt purchasers, and attorneys who are regularly engaged in debt collection.").[30]

During the period of consensus, Congress amended the FDCPA without altering that understanding. *See* Dodd-Frank Wall Street Reform And Consumer Protection Act, Pub. L. 111-203, § 1089, 124 Stat. 1376, 2092 (2010); Financial Services Regulatory Relief Act of 2006, Pub. L. 109-351, § 802, 120 Stat. 1966, 2006.

II. Factual Background

Petitioners obtained car loans from CitiFinancial Auto. When they were unable to make the payments and defaulted, CitiFinancial Auto repossessed their cars, sold the vehicles, and informed petitioners they

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[28] *Available at* 2008 WL 4533650.

[29] *Available at* 2015 WL 5608572.

[30] *Available at* http://files.consumerfinance.gov/f/201307_cfpb_bulletin_unfair-deceptive-abusive-practices.pdf.

owed a deficiency balance. Pet. App. 5a. CitiFinancial Auto hired respondent Santander Consumer USA Inc., as a servicer to collect the defaulted debts. J.A. 23 (Complaint ¶ 47).

CitiFinancial Auto's repossession practices were subsequently the subject of a class action lawsuit in which petitioners were class members. *See Thomas v. CitiFinancial Auto Credit, Inc.*, No. 1:10-cv-00528-JKB (D. Md.). The *Thomas* class action alleged that CitiFinancial Auto violated various provisions of Maryland consumer protection law, including by failing to provide adequate pre-repossession notices as required by the statute. Pet. App. 22a.

The *Thomas* parties agreed to a settlement on September 30, 2011. Pet. App. 23a & n.1. Under the settlement, CitiFinancial Auto agreed to waive more than $30 million in alleged deficiency balances for more than 3,000 class members. *See id.*; *Thomas v. CitiFinancial Auto Credit, Inc.*, No. 1:10-cv-00528-JKB, Settlement Agreement, ECF 56-2 at 3 ¶ 8. On November 14, 2011, the district court certified the class action, appointed class counsel, and preliminarily approved the settlement pending a fairness hearing. Pet. App. 23a n.1. The court gave final approval to the settlement on May 29, 2012. *Id.* 23a.

Around December 1, 2011, Santander purchased a portfolio of debts from CitiFinancial Auto, which included the defaulted debts of the *Thomas* class action plaintiffs that it had previously been hired to service. J.A. 17 (Complaint ¶ 10); Pet. App. 23a.

When it purchased the debts, Santander knew of the *Thomas* litigation and that CitiFinancial Auto

had agreed to extinguish petitioners' debts in a settlement that was simply awaiting final approval from the district court. J.A. 24 (Complaint ¶¶ 49-50). It also knew that petitioners were represented by court-appointed counsel with respect to their debts. *Id*. (Complaint ¶ 50). Santander nonetheless bypassed petitioners' court-appointed attorney and proceeded to communicate directly with petitioners in an attempt to collect the debts. *Id*. 24-25 (Complaint ¶¶ 52-57). Santander also hired third-party debt collectors, who likewise communicated directly with petitioners, demanding payment. *Id*. 25-28 (Complaint ¶¶ 58-77). These efforts induced more than one class member to make payments on the debts, despite the impending settlement waiving the deficiencies. *Id*. 25, 27 (Complaint ¶¶ 57, 69).

III. Procedural Background

1. On November 29, 2012, petitioners filed the present putative class action against respondent, alleging violations of the FDCPA. Among other things, petitioners alleged that Santander violated the statute by misrepresenting its authority to collect the debt and the amount of the debt allegedly owed, and by communicating directly with consumers it knew to be represented by counsel. *See* Pet. App. 5a, 23a-24a; J.A. 17, 25 (Complaint ¶¶ 10, 55-56).

Santander moved to dismiss, arguing that it did not qualify as a "debt collector" because it had purchased the defaulted debt it was seeking to collect. Pet. App. 6a. The district court agreed with Santander and dismissed. *Id*. Petitioners appealed.

2. The Fourth Circuit affirmed, explaining that "[w]hile the FDCPA is a somewhat complex and

technical regulation of debt collector practices, we conclude that it generally does not regulate creditors when they collect debt on their own account and that, on the facts alleged by the plaintiffs, Santander became a creditor when it purchased the loans before engaging in the challenged practices." *Id*. 4a-5a.

That conclusion turned principally on the court's interpretation of the phrase "regularly collects . . . debts . . . owed or due another."[31] The court viewed "owed or due another" as unambiguously excluding a defendant collecting a purchased debt. *See id*. 11a-14a. Because Santander did not qualify as a "debt collector" under the main definition, the court believed that the exclusion in Clause (F)(iii) for debts obtained while in default, and similar language in the definition of a "creditor," was irrelevant. *Id*. 14a-16a.

Finally, the court rejected petitioners' argument that Santander was a debt collector even on its own definition of debts "owed or due another." *See id*. 18a-19a. The court acknowledged the Complaint's allegation that Santander had been hired as a servicer of petitioners' debts before it purchased them. *See id*. 12a. It further recognized that "as a consumer finance company," Santander not only collects on the loans it purchases, but also "collects debt for others." *Id*. 18a-19a. In that sense, then, the court acknowledged that Santander regularly collects debts "owed or due another" on anyone's definition of

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[31] There is no claim that Santander falls within the "principal purpose" definition.

that phrase, because it regularly services other lenders' loans. *Id*. 19a. But the court rejected petitioners' argument that this meant that Santander was "subject to the FDCPA for *all* of its collection activities simply because one of its several activities involves the collection of debts for others." *Id*. Instead, it held that a company that regularly collects debts owed or due another "qualifies as a debt collector [only] when it engages in collection activity on behalf of another." *Id.* (quoting 15 U.S.C. § 1692a(6)).

3. The Fourth Circuit denied a timely petition for rehearing en banc, Pet. App. 41a-42a, and this Court granted certiorari.

SUMMARY OF ARGUMENT

I. The FDCPA generally regulates debt collectors, but not lenders collecting their own debts. The distinction is premised on Congress's belief that lenders "generally are restrained by the desire to protect their good will when collecting past due accounts," while "independent collectors are likely to have no future contact with the consumer and often are unconcerned with the consumer's opinion of them." S. Rep. No. 95-382, at 2 (1977).

To implement that insight, Congress defined "debt collector" to include one who "regularly collects . . . debts . . . owed or due another." 15 U.S.C. § 1692a(6). Congress intended this definition to extend beyond the archetypal third-party debt collector hired to pursue a debt on behalf of its originator. It recognized, for example, that debt servicers can have the same incentives as debt collectors. Congress therefore subjected servicers to regulation whenever they collect debt obtained after it has fallen into default. *See id*. § 1692a(6)(F)(iii).

In this case, respondent Santander was hired to service petitioners' debts after they had fallen into default and therefore was a covered "debt collector." The question is whether it escaped its responsibilities under the Act when it purchased those defaulted debts.

II. The Fourth Circuit held that it had because the court believed that debt purchasers unambiguously are *not* collecting debts "owed or due another," as required by the relevant prong of the "debt collector" definition. There is surface appeal to that view of the language standing in isolation. But

it is not compelled, and other parts of the definition point strongly in the other direction.

A. In common usage, one can refer to an assigned debt as "owed" the originator but "due" the assignee. The word "owed" is ambiguous as to its time reference. A debt purchaser might well tell a debtor, for example, that "we are collecting on a debt you owed Wells Fargo, which we purchased last month. The debt *owed* Wells Fargo is now *due* to us." Likewise, a rule that requires applicants for federal jobs to list "all debts owed or due a foreign government" could be referring to any debt *ever* owed to a foreign government (thereby including debts subsequently sold to someone else) or only debts presently owed a foreign government.

B. The ambiguity inherent in the phrase "owed or due another" can be resolved by reference to the broader statutory text. Section 1692a(F) provides that "debt collector" does *not* include

> any person collecting . . . any debt . . . *owed or due another* to the extent such activity . . . (iii) concerns a debt which was not in default at the time it was obtained by such person; or (iv) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.

15 U.S.C. § 1692a(6)(F). The exception for debts obtained prior to default strongly suggests that collection of debts obtained *after* default *are* subject to the Act. Moreover, the exceptions contemplate that it is possible for a person to "obtain" a debt – *e.g.*, through an assignment – yet still be collecting a debt "owed or due another," something that is

impossible under the Fourth Circuit's interpretation of that phrase.

Indeed, the secured creditor in Clause (F)(iv) is indistinguishable from a debt purchaser in all relevant respects – when it obtains a commercial borrower's accounts receivables upon the borrower's default of a commercial loan, the secured creditor obtains an assignment of the debts owed to commercial borrower (the originator of the loan) in the same way a debt purchaser receives an assignment of debts owed to the debt seller. Congress nonetheless referred to the secured creditor as collecting a debt "owed or due another," which can only make sense under petitioners' interpretation of that phrase.

C. Petitioners' interpretation is also more consistent with the statute's purposes. Santander was classified as a "debt collector" when it was servicing petitioners' defaulted debt because Congress assumed that in those circumstances, servicers would lack the restraining incentives of a loan originator and instead be more in the position of an ordinary debt collector. When Santander purchased the loans it had been servicing, nothing about those incentives changed. Debt buyers have the same basic incentives as other debt collectors, getting paid only if they collect and having little reason to care what the debtors think of them.

The Fourth Circuit's rule also provides debt buyers a roadmap for evading the FDCPA, encouraging, for example, large debt buyers to diversify their businesses enough to avoid regulation as "principal purpose" collectors, knowing that they will not be regulated as "regularly collects"

companies so long as they are collecting debts they have purchased.

III. Respondent's attempts to defend the Fourth Circuit's interpretation are unpersuasive.

A. Respondent says that Clause (F)(iii) is aimed at servicers who "obtain" a defaulted debt for servicing without ever securing an assignment or other ownership right in it. That is an implausible reading of the provision for various reasons, but it also is no answer to the secured creditor exception, which plainly contemplates secured creditors obtaining a debt in precisely the same sense as a debt purchaser, yet collecting a debt "owed or due another."

Respondent's reliance on the "creditor" definition is likewise unavailing. Even if Santander qualified as a "creditor," the definition of "debt collector" does not exclude "creditors." And, in any event, "creditor" is defined to exclude assignees of defaulted debt, which is reasonably understood to include debt purchasers.

B. Respondent suggests a narrow construction of the "regularly collects" definition is consistent with Congress's purposes because the worst debt purchasers are covered by the "principal purpose" definition. But there is no basis for that assertion, and certainly no reason to think Congress adopted that attitude when it enacted the statute, years before the advent of the modern, still evolving debt buying industry.

Respondent also argues that because it engages in other activities beyond collecting debts, it has an incentive to act reasonably to preserve its general

business reputation among consumers. But if Congress believed that kind of interest in a company's general reputation were sufficient protection, it would not have included the "regularly collects" prong in the statutory definition. After all, *every* company brought under the Act by that prong will have other business activities and could make the same argument.

IV. Finally, even if the Court accepts the Fourth Circuit's interpretation of "owed or due another," Santander would still be covered because, as its history with petitioners' debts shows, Santander regularly collects debts on behalf of other lenders, as part of its third-party servicing business. The Fourth Circuit wrongly concluded that the Act applies to a "regularly collects" company only when it is collecting a debt "owed or due another." Instead, the statute defines a company as a debt collector based on its general business model, then provides in its substantive provisions that a "debt collector" is restricted in its collection of "*any* debt." *See, e.g.*, 15 U.S.C. § 1692e (emphasis added). That scheme makes sense, as Congress could well presume that a debt collector will not vary its collection practices based on the specific nature of the debt it is collecting.

ARGUMENT

Congress enacted the Fair Debt Collection Practices Act in response to abuses by debt collectors who had substantial financial incentives to engage in aggressive collection practices and little countervailing interest in maintaining good relations with borrowers. 15 U.S.C. § 1692(a). Although Congress focused most particularly on third-party debt collectors, it recognized that other entities with similar incentives also collect consumer debt. It provided, for example, that loan servicers should be treated as debt collectors when they obtain the debt after it has fallen into default. *See id.* § 1692a(6)(F)(iii). Under that rule, respondent Santander was operating as a debt collector when it began servicing petitioners' defaulted debt. The question is whether Santander successfully escaped the statute's restrictions when it purchased the defaulted debt it was previously servicing. That financial transaction did nothing to change the incentives that led Congress to regulate Santander as a debt servicer. And contrary to the court of appeals' conclusion, nothing in the language of the statute nonetheless requires depriving petitioners of the protections the Act affords them.

Instead, as the majority of circuits have long held, debt buyers are collecting debts "owed or due another," as that phrase is used in the statute, because the debts are properly viewed as "owed" the originator, even if "due" the purchaser. At the very least, a company like Santander – which regularly collects debts indisputably "owed or due another" as part of its third-party debt servicing practice – is a debt collector subject to the Act with respect to all its

collections, including its collection of purchased debts.

I. The FDCPA Generally Applies To All The Collection Activities Of A Company That Regularly Collects Debts Owed Or Due Another, Including Servicers That Obtain Debt In Default.

Unless a specific exception applies, a business is a "debt collector" if its "principal purpose . . . is the collection of any debts" or it "regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another." *See* 15 U.S.C. § 1692a(6). The archetypical debt collector under this definition is a third-party debt collector seeking to recover debts originated by some other lender. But Congress intended the Act to extend to others posing similar risks to consumers as well, including debt servicers, like Santander, who obtain debt after it has already fallen into default.

1. In defining who is and is not a debt collector, Congress was driven by the insight that while lenders have built-in incentives to act with restraint when collecting debt from their own customers, third parties lacking that customer relationship have substantial financial incentives to act aggressively without similar countervailing reasons for restraint. "Unlike creditors, who generally are restrained by the desire to protect their good will when collecting past due accounts," the Senate Report explained, "independent collectors are likely to have no future contact with the consumer and often are unconcerned with the consumer's opinion of them." S. Rep. No. 95-382, at 2 (1977).

Third-party debt servicers can occupy a middle ground between a lender collecting its own loans or a third-party debt collector hired to collect someone else's debt. On the one hand, a servicer tasked with collecting on a loan while it is still in good standing is in many ways like an originator's in-house servicer, performing a variety of tasks for the lender and the customer (such as maintaining escrow accounts, fielding customer questions, etc.) beyond debt collection. Treating customers decently helps ensure that they will continue to keep their accounts in good standing. And because they are performing a task that is often performed by the lender itself, the servicer's actions may be attributed to the lender by the customer and by the borrowing public.

On the other hand, the analogy is imperfect. Like a third-party debt collector, a servicer's customer is the lender, not the borrower. The servicer's customer will be happier if the servicer collects more money while the ill-will of debtors has, at best, only an indirect effect on the servicer's business prospects. Particularly when seeking payment of a loan that is in default when obtained, servicers may therefore have an incentive to engage in rough practices (since prior attempts to secure payment will have failed).

So Congress drew a line that depended on the status of the loan, treating services who obtain debt before it goes into default more like the lenders they serve and servicers who obtain debt after default as a species of debt collector. That is, because third-party servicers have no interest in the debt they service, they fall within the initial "debt collector" definition as companies that "regularly collect" debt "owed or

due another" under any understanding of that phrase. *See* 15 U.S.C. § 1692a(6). Clause (F)(iii) then exempts servicer's collection on any debt "not in default at the time it was obtained."

2. Accordingly, there can be no dispute that Santander was subject to the FDCPA with respect to petitioners' debts while it was servicing them on behalf of the loan originator, CitiFinancial Auto. J.A. 23 (Complaint ¶ 47) (alleging that Santander started servicing the loans after they had fallen into default). [32] The question is whether Santander successfully bought itself out of FDCPA coverage when it purchased the defaulted debt it was previously collecting.

II. Santander Did Not Exempt Itself From The FDCPA By Purchasing The Defaulted Debt It Was Previously Servicing.

The Fourth Circuit nonetheless held that Santander's purchase of the defaulted debts it was servicing excluded it from the Act. In the court's view, a company collecting purchased debt unambiguously is not collecting a debt "owed or due another" within the meaning of the "regularly collects" definition. Pet. App. 11a-13a. That conclusion was wrong. It is entirely reasonable to treat a purchased debt as "owed" the originator yet "due" the purchaser. While that may not be the most

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[32] Moreover, Santander was not acting as a creditor under any interpretation of that term, as it neither originated the loan nor had any claim that the loan was "owed" to it at that time. *See* 15 U.S.C. § 1692a(6)(A).

natural interpretation of the phrase standing in isolation, it is the best interpretation of that language in light of other text in the definition, other language in the statute, and the Act's purposes.

A. A Debt Buyer Is Collecting A Debt "Owed" The Originator And "Due" The Purchaser Within The Meaning Of The Statute.

In common usage, it is easy enough to say that someone collecting on an assigned debt is collecting a debt "owed" the originator, even if the assignee has a right to collect it.[33]

It would be perfectly natural, for example, for an assignee to tell a consumer "we are collecting on a debt you owed Wells Fargo, which we purchased last month. The debt owed Wells Fargo is now due to us." After all, consumers may naturally think of a debt as being "owed" to the person who loaned them the money, not to someone with whom they have had no dealings.

That conception of an assigned debt is not novel; in fact, it was the prevailing view in the law for many years. Historically, assignees could sue on an assigned debt only by securing a power of attorney that allowed them to collect the debt in the name of the originator, precisely because the law viewed the debt as owed the originator not the assignee. *See Sprint Commc'ns Co., L.P. v. APCC Servs., Inc.*, 554

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[33] The words Congress used to describe debts – *e.g.*, "owed," "due," "obtained," or "transferred," *see* 15 U.S.C. § 1692a(4), (6)(F)(iii) – are not legal terms of art.

U.S. 269, 277 (2008); RESTATEMENT (SECOND) OF CONTRACTS ch. 15 introductory note (AM. LAW. INST. 1981). In modern times, that formality has given way, *Sprint*, 554 U.S. at 279-80, but the original intuition that an assigned debt can be viewed as owed the originator, but collectable by the assignee, remains.

Accordingly, Congress's reference to a debt "owed or due another" can be understood to contemplate that an assigned debt is *presently* owed the originator, even though it is due the assignee. But even if this Court disagreed, the statute refers to debts "owed" another, not debts "owing" another. And that formulation is ambiguous with respect to the relevant time frame. It can refer to debts that are presently owing another, were previously owed another, or both.

For example, consider a rule that requires applicants for federal jobs to list "all debts owed or due a foreign government." The rule would be ambiguous as to whether the applicant must list loans originated by a foreign government, but later assigned to someone else or paid off. To decide which was meant, one would need to consider the purpose of the rule.

Respondent points out that "debt owed or due another" is the direct object of the present-tense verbs "collects" and "attempts to collect." BIO 26 (quoting 15 U.S.C. § 1692a(6)). It gives the example of a librarian who "regularly collects books placed on the table" and insists that as a matter of grammar, the books must be on the table at the time of collection. *Id*. Not so. Take the example of the "person who regularly collects artwork owned by

celebrities." Such a person could collect works currently or previously owned by celebrities, or both. The present tense of the verb "collects" does not resolve the ambiguity. The assumption that the librarian is collecting books that are on the table at the time of collection arises not from grammar, but from context – the sentence literally requires only that the books have been placed on the table at some point in the past; we assume they are still there at the time of collection because, otherwise, how would the librarian find them? But that implication will not always arise. Here, for example, it is perfectly possible for an assignee to presently collect a debt that was previously owed to someone else.

B. Petitioners' Interpretation Of "Owed Or Due Another" Is Most Consistent With Other Uses Of That Phrase, And Other Textual Cues, In The "Debt Collector" Definition.

Of course, the phrase "owed or due another" cannot be read in isolation from the rest of the "debt collector" definition. *See, e.g.*, *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. 573, 587-88 (2010) ("In reading a statute we must not look merely to a particular clause, but consider in connection with it the whole statute." (citation omitted)). An examination of the broader statutory text is particularly revealing in this case because the phrase "owed or due another" is repeated elsewhere in the "debt collector" definition.

Specifically, section 1692a sets out a series of exceptions to the general "debt collector" definition, culminating in Clause (F), which excludes:

> any person collecting or attempting to collect ***any debt owed or due or asserted to be owed or due another*** to the extent such activity . . . (iii) concerns a debt which was not in default at the time it was ***obtained*** by such person; or (iv) concerns a debt ***obtained*** by such person as a secured party in a commercial credit transaction involving the creditor.

15 U.S.C. § 1692a(6)(F) (emphasis added).

Clause (F) as a whole applies only to those collecting debts "owed or due another," the same phrase in the general definition. At the same time, subsections (iii) and (iv) both address persons who collect a debt they "obtained" from another. The most obvious way in which one "obtains" a debt is through assignment, which Congress understood to be common among debt servicers. *See, e.g.*, § 1692a(4) (addressing those who receive "an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another"); *Glazer v. Chase Home Fin. LLC*, 704 F.3d 453, 456-57 (6th Cir. 2013). And, of course, debt buyers are also assignees of debt originated by others.[34] Accordingly, Clause (F) provides important insights into the meaning of "owed or due another" and how Congress intended debt buyers and other assignees to be treated.

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[34] *See Dirty Debts*, *supra*, at 45 ("A debt sale, at its essence, is an assignment from a seller to a buyer of 'any legal interest' the seller has against the account holder.").

First, Clause (F) itself uses the phrase "owed or due another" to refer to debts assigned to the collector after origination by someone else. That is, Clause (F) as a whole applies only to a person "collecting . . . any debt . . . owed or due another," the same phrase used in the "regularly collects" definition. Subclauses (iii) and (iv) then exclude such persons when they are collecting a debt "which was not in default at the time it was obtained by such person" or was obtained through a secured credit transaction. Thus, Clause (F)(iii) contemplates the existence of assignees who "obtained" a debt originated by someone else, yet are collecting a debt "owed or due another."

That usage is completely consistent with petitioners' interpretation – a debt is "owed or due another" so long as it was originated by someone other than the collector. But it is very difficult, if not impossible, to square with the Fourth Circuit's interpretation, under which it is nonsense to talk about an assignee collecting a debt "owed or due another." *See* Pet. App. 13a-14a.

Second, Clause (F)(iv), confirms that "owed or due another" can refer to those, like debt purchasers, who are presently due payment on a debt originated by someone else. This "secured creditor" provision applies to "a commercial lender who acquires a consumer account that was used as collateral" in a commercial credit transaction "following default on a loan from the commercial lender to the original

creditor."[35] If the borrower defaults, the secured creditor obtains the right to collect the debts owed the borrower. *See, e.g.*, *Friedman v. Textron Fin. Corp.*, No. 96 C 7983, 1997 WL 467175 (N.D. Ill. Aug. 12, 1997) (applying exception).

A secured creditor thus "obtains" debts in the same sense as a debt purchaser: as a consequence of extending money to the debt originator, the secured creditor and the debt buyer obtain an assignment of the right to collect the debt for themselves.

Clause (F)(iv) thus contemplates a secured creditor who is owed a debt it has obtained from another, yet is collecting a debt "owed or due another." The only way to make sense of that language is to understand that when the secured creditor collects on the debt it has thus obtained, it is collecting a debt that is *owed another* in the sense of having been originated by another but presently *due* the secured creditor. And if the same phrase is to be given a consistent interpretation throughout the definition, Santander was likewise collecting a debt "owed or due another" when it collected debts originated by others but due itself by virtue of its debt purchases.

Third, in stating that those who obtain a non-defaulted debt are *not* debt collectors, Clause (F)(iii) strongly suggests that those who obtain a debt *after*

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[35] Statements of General Policy or Interpretation Staff Commentary on the Fair Debt Collection Practices Act, 53 Fed. Reg. 50097, 50103 (Dec. 13, 1988).

it has fallen into default (as Santander did here) *are* debt collectors.

Fourth, creating an exception for those who obtain non-defaulted debt implies that Congress believed an exception was necessary – *i.e.*, that the assignees would otherwise fall within the statutory definition of "debt collector." If the Fourth Circuit were right that assignees are not collecting debts "owed or due another," they would need no exception and the Clause (F)(iii) and (iv) exceptions would be largely surplusage.[36]

C. Petitioners' Interpretation Best Aligns With The Statute's Purposes.

Treating buyers of debt already in default as debt collectors also best accords with the statute's premises and purposes.

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[36] Clause (F)(ii) also provides an exception for those collecting a debt "originated by such person." That exception applies when a loan originator sells a loan, but continues to service the loan (as is common for mortgage loans, *see supra*, at 8 n.10). On petitioners' interpretation, the originator/servicer falls within the main definition of "debt collector" because it regularly collects debts presently due debt purchasers ("owed or due another" being written in the disjunctive). But it exempted from coverage with respect to the loans it originated by Clause (F)(ii).

1. Purchasers Of Defaulted Debt Have The Same Incentives For Abuse As Other Debt Collectors, While Lacking The Countervailing Incentives Of Ordinary Creditors.

In every respect relevant to Congress's guiding rationale, purchasers of defaulted debt are virtually indistinguishable from the servicers of defaulted debt Congress took care to bring within the Act's coverage.

a. As discussed, the central premise of Congress's distinction between the debt collectors it intended the FDCPA regulate and the creditors it intended to exclude was that creditors have built-in incentives to act with restraint when collecting debt from their own customers, whereas debt collectors have substantial financial incentives to act aggressively without similar countervailing incentives for restraint. *See* S. Rep. No. 95-382, at 2 (1977).

The incentives for restraint come not from owning a debt, but from having originated it. Lenders make their money by originating debts, and how they treat their customers during loan servicing can affect not only customers' propensity to borrow again, but also their willingness to recommend (or bad mouth) the lender to friends and family. The creditors Congress had in mind thus must balance the desire to collect fully on their debts against the need not to alienate existing customers or establish a bad reputation among potential future customers. *See, e.g.*, H.R. Rep. No. 94-1202, at 3 (1976) ("An example of a person that would not be covered by the bill is a business that extends credit and only collects debts incidental to the extension of such credit or

debts owed to such business. . . ."); Senate Comm. on Banking, Housing & Urban Affairs, Markup Session: S. 1130 Debt Collection Legislation 23 (June 30, 1977) (Sen. Riegle) (sponsor of FDCPA stating "the concern about third parties, whether they be banks or anybody else that put themselves in business to collect debts where they were not *a party to the original transaction*, their good will is not on the line, their customer relationship is not on the line") (emphasis added); *id*. at 25 (banks "collecting from people who are not their customers but somebody else's customers" are debt collectors under the FDCPA).

In contrast, when Congress identified the kind of collectors it intended the Act to cover, it spoke of entities that, like debt purchasers, have no interest in loaning debtors money in the future. After all, a debt collector's customer is the creditor, not the borrower. And debt collectors generally earn their money by keeping a percentage of the funds they are able to collect.[37] Accordingly, Congress recognized that debt collectors have a very substantial economic incentive to do whatever works to collect a debt, even to the point of engaging in deception, harassment, and abuse. *See, e.g.*, S. Rep. No. 95-382, at 2-3 (1977).

Viewing servicers as falling somewhere in the middle, Congress drew a line that depended on the status of the loan, reasoning that companies that take on defaulted debt for servicing are acting with

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[37] *See Challenges of Change*, *supra*, at 3.

incentives more closely approximating a third-party debt collector than a lender. *See supra* § I.

b. The history of this case makes abundantly clear that debt purchasers have much more in common with defaulted debt servicers and other debt collectors than with the kinds of creditors Congress believed could be left to market constraints.

Before purchasing petitioners' debts, Santander *was* a covered servicer, hired to collect debts owed to the originator after those debts had fallen into default. The only thing that changed when Santander purchased the debt was the financial arrangement between Santander and CitiFinancial Auto. Instead of keeping a fixed percentage of the debts and forwarding the rest to the originator, Santander paid the originator's portion in advance in order to maintain the right to keep all of what it recovered. That transaction reallocated the risk of non-recovery between Santander and CitiFinancial Auto, but did nothing to eliminate the risk of abusive collection practices that led Congress to subject Santander to the FDCPA as a debt servicer.

If anything, the risk to consumers was enhanced. A servicer of defaulted debt at least maintains an ongoing relationship with the originator, creating the possibility that the originator might pressure the servicer to abandon abusive practices lest the servicer's bad conduct be attributed to the lender. Selling the debt severs that relationship and eliminates the originator's leverage over the collector.

At the same time, when debt is in default at the time of purchase, the incentives for aggressive collection practices are particularly high. After all,

the debt buyer knows that ordinary servicing and collection practices had failed to prevent the default.[38] To make any money off the transaction, the buyer will have to succeed where others have failed, perhaps through methods that risk crossing the line the FDCPA was enacted to maintain.

This case also illustrates how the sale of debts gives rise to the same kinds of informational problems as hiring third-party debt collectors, where miscommunications and poor records can lead to collectors demanding payment of debt that is satisfied, time-barred, or extinguished, seeking the wrong amount, providing debtors inaccurate information, or even dunning the wrong person. *See supra*, at 9-11.

c. Given the fundamental similarities between debt buyers, servicers of defaulted debt, and third-party debt collectors, it is not surprising that debt purchasers have regularly been accused of, or found to have engaged in, the same aggressive collection practices as their debt collector brethren. For example, in *Federal Trade Commission v. Check Investors, Inc.*, 502 F.3d 159 (3d Cir. 2007), the Government brought FDCPA claims against a debt buying company founded by individual who had been imprisoned for impersonating an FBI agent when working as a debt collector. *Id.* at 162-63. Believing he could avoid the FDCPA, the defendant purchased defaulted debt of the kind he had previously collected on contingency. *Id.* The new business's "primary

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[38] *See Challenges of Change*, *supra*, at 2-3.

modus operandi was to accuse consumers of being criminals or crooks, and threatening them with arrest and criminal or civil prosecution." *Id*. at 163. For instance, one "consumer was told that if she did not pay, her children would 'watch their mother being taken away in handcuffs,' and they would 'be bringing their mommy care packages in prison.'" *Id*. These threats "were all false," but effective. *Id*. "In one case, Check Investors repeatedly called a 64-year old mother regarding her son's debt; fearing that her son would be arrested and carted off to jail, she paid the amount of the demand." *Id*. at 164. The demanded amount typically included "a fee of $125 or $130 [added] to the face amount of each check; an amount that exceeded the legal limit for such fees under the laws of most states." *Id*. at 163.

The Federal Government has likewise brought charges against some of the largest debt buyers in the industry, accusing them of engaging in deceptive and abusive practices of the sort the FDCPA was enacted to prevent. For example, in 2004, the FTC settled claims against one debt buyer it alleged had "threatened and harassed thousands of consumers to get them to pay old, unenforceable debts or debts they did not owe," "[u]sing obscene or profane language," "[c]alling consumers continuously with the intention of annoying and abusing them," "[m]isrepresenting themselves as attorneys," and "[t]hreatening imprisonment, seizure, garnishment, attachment or sale of property or wages with full knowledge that such action could not legally be

taken."[39] Even after the settlement, the debt buyer continued to engage in illegal misconduct, requiring further enforcement action.[40]

More recently, the Government filed FDCPA claims against the country's two largest debt buyers, alleging, among other things, that "[w]ithout verifying the debt, the companies collected payments by pressuring consumers with false statements and churning out lawsuits using robo-signed court documents," including lawsuits that they knew or should have known were barred by the statute of limitations.[41] Similar abuses have been documented elsewhere.[42]

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[39] *See* Press Release, Fed. Trade Comm'n, Debt Buyer/Debt Collection Companies and Their Principals Settle FTC Charges (Mar. 24, 2004), *available at* https://www.ftc.gov/news-events/press-releases/2004/03/debt-buyerdebt-collection-companies-and-their-principals-settle.

[40] *See* Press Release, Fed. Trade Comm'n, Debt Collector Settles with FTC for Abusive Practices (Mar. 12, 2007), *available at* https://www.ftc.gov/news-events/press-releases/2007/03/debt-collector-settles-ftc-abusive-practices.

[41] *See* Press Release, Consumer Fin. Prot. Bureau, CFPB Takes Action Against the Two Largest Debt Buyers for Using Deceptive Tactics to Collect Bad Debts (Sept. 9, 2015), *available at* http://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-the-two-largest-debt-buyers-for-using-deceptive-tactics-to-collect-bad-debts.

[42] *See, e.g.*, Rick Jurgens & Robert J. Hobbs, Nat'l Consumer Law Ctr., The Debt Machine: How the Collection Industry Hounds Consumers and Overwhelms Courts 18 (July 2010), *available at* https://www.nclc.org/images/pdf/debt_collection/debt-machine.pdf; Neil L. Sobol, *Protecting Consumers from Zombie-Debt Collectors*, 44 N.M. L. REV. 327

2. Treating Purchasers Of Defaulted Debt As Debt Collectors Avoids Market-Distorting Incentives And Protects Ethical Debt Purchasers.

The court of appeals' interpretation also creates incentives that may distort market incentives for the debt collection industry and secondary debt markets.

To start, the decision may encourage companies to change their business models in ways that serve no purpose other than to avoid FDCPA coverage. For example, a debt servicer like Santander can avoid the Act simply by obtaining title to the debt it is collecting. It may even do so without materially changing the terms of its contract with the original debt owner (*e.g.*, the terms of the sale could retain the same basic financial arrangement, with the servicer keeping more or less the same portion of what it collects and being obligated to pass the remainder on to the originator). Likewise a law firm, like the one this Court considered in *Heintz v. Jenkins*, 514 U.S. 291 (1995), could avoid the Act by agreeing to take title to the debts it previously collected for clients, paying the client a portion of what it collects as the price (rather than keeping a portion of what it collects as a contingency fee, as it would have done before).

(2014); Jake Halpern, *Paper Boys: Inside the Dark, Labyrinthine, and Extremely Lucrative World of Consumer Debt Collection*, N.Y. TIMES MAG. (Aug. 15, 2014), https://nyti.ms/2jRQHU6.

Similarly, a company whose principal purpose is the collection of purchased defaulted debt may be encouraged to diversify its practices, or to merge previously separate subsidiaries, in order to create a company whose principal purpose is no longer debt collection, yet whose debt collection practices fall outside the scope of the FDCPA under the Fourth Circuit's interpretation because the debts collected are owed to the purchaser.

At the same time, debt purchasers engaged in ethical collection practices may suffer a competitive disadvantage if others with fewer scruples are free from FDCPA coverage. *See* 15 U.S.C. § 1692(e) (among statute's purposes is "to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged"). Debt buyers are generally participating in a common market to purchase defaulted debt.[43] The price for the debt depends substantially on predictions about collection prospects.[44] If there are some bidders whose collection practices are unrestrained by the FDCPA, they may perceive their chances of recovery as higher than do their competitors who are subject to the Act, and bid up the price. All companies pay more for defaulted debt as a result, including those restrained by the FDCPA or ethics to forego aggressive practices. At the same time, the increase in debt prices creates greater pressure on all winning bidders

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[43] *See Dirty Debts*, *supra*, at 52-53.

[44] *Id*. at 54.

to successfully collect, leading to exactly the risks the FDCPA was enacted to address.

3. Petitioners' Interpretation Avoids Anomalous Gaps In FDCPA Coverage.

The Fourth Circuit's interpretation also creates an anomalous gap in coverage that serves no statutory purpose.

As respondent seemingly acknowledges, even under the Fourth Circuit's interpretation of "owed or due another," a debt purchaser is a "debt collector" under the "principal purpose" prong if collecting debts (including purchased debts) is its principal purpose. *See* BIO 24; *see also Davidson*, 797 F.3d at 1311, 1316 n.8 (11th Cir. 2015). Moreover, nothing in the Act provides an exemption for a "principal purpose" collector's attempts to collect debts it acquired after they had fallen into default. *See* 15 U.S.C. § 1692a(6)(F)(iii).[45]

At the same time, even if this Court accepted the Fourth Circuit's interpretation of "owed or due another," that would exempt only a random slice of companies that regularly collect purchased defaulted debt. In particular, it would *not* exempt companies, like Santander, that regularly act as third-party servicers for other lender's loans *in addition* to collecting debts they have purchased for themselves. *Contra* Pet. App. 18a-19a. That is because a company's status as a "debt collector" under the main definitions turns on its general business model – *i.e.*,

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[45] Nor does the "creditor" definition provide any basis for exclusion. *See infra* § III.A.2.

what kind of debts does the defendant *regularly* collect – not the particulars of any given debt. Indeed, it makes no sense to ask whether a company "regularly" collects a specific debt. Accordingly, by regularly servicing others' loans, a debt buyer falls within the "regularly collects" definition because it regularly collects debts indisputably "owed or due" the owner of the serviced debt. *See* 15 U.S.C. § 1692a(6).

Moreover, once classified as a debt collector, *all* of a company's debt collection practices are subject to the Act's substantive requirements, unless specifically exempted. That is because the Act's substantive provisions apply to any "debt collector" attempting to collect "a" or "any" debt – they are not limited to attempts to collect a debt "owed or due another." *See* 15 U.S.C. § 1692c (regulating circumstances in which "a debt collector may . . . communicate with a consumer in connection with the collection of *any* debt") (emphasis added); *id.* § 1692d (prohibiting a "debt collector" from engaging in harassment "or abuse of any person in connection with the collection of *a* debt") (emphasis added); *id.* § 1692e (a "debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of *any* debt") (emphasis added); *id.* § 1692f ("A debt collector may not use unfair or unconscionable means to collect . . . *any* debt.") (emphasis added); *id*. § 1692g (regulating "a debt collector['s]" initial communications "with a consumer in connection with the collection of *any* debt") (emphasis added); *id*. § 1692i (regulating lawsuits filed by "[a]ny debt collector who brings any

legal action on *a* debt against *any* consumer") (emphasis added).

Instead, the Act provides specific exemptions for debt collectors attempting to collect particular kinds of debts, such as the debts obtained prior to default addressed in Clause (F)(iii). Significantly, there is no general exception for "regularly collects" companies attempting to collect debts "owed or due another." *See id.* § 1692a(6)(A)-(F). And there is no exemption for collecting debts that were obtained after falling into default. *See id*. § 1692a(6)(F)(iii).

As a result, adopting the Fourth Circuit's interpretation of "owed or due another" would exclude from coverage only debt purchasers that are diversified enough to avoid coverage under the "principal purpose" definition, yet not so diversified as to be servicing other lenders' debt. Nothing in the Act's purposes or history suggest why Congress would have intended to exempt that very particular slice of the debt purchasing industry.

III. Respondent's Arguments In Favor Of A Narrower Definition Cannot Be Squared With The Text Or Purposes Of The Act.

Respondent's attempts to defend the Fourth Circuit's interpretation are unpersuasive.

A. Respondent's Textual Arguments Are Unpersuasive.

Respondent has understandably emphasized the intuitive appeal of their interpretation of "owed or due another" standing in isolation. BIO 25-26. But as discussed, that interpretation is not compelled and

is very difficult to reconcile with the rest of the "debt collector" definition.

1. Respondent's Alternative Account Of Clause (F) Fails.

Respondent has suggested that the Fourth Circuit's interpretation can be reconciled with Clause (F)(iii) by viewing the exception as aimed at debt servicers that "obtain" a debt through some method other than assignment, such that they have "possession" of the debt, but not title to it. BIO 27-28. On that view, it says, Clause (F)(iii) is not rendered completely surplusage. BIO 28.

This is an odd usage of the word "obtain," which ordinarily connotes acquiring some ownership interest in the thing obtained.[46] Indeed, if all that is required to "obtain" a debt is securing a contract to collect it, ordinary third-party debt collectors would "obtain" every debt they collect. And by virtue of Clause (F)(iii), they would be freed from the Act's coverage whenever they begin to collect a debt prior to its going completely into default.[47] But there is no basis to believe Congress intended to scale back the scope of the FDCPA based on such an unintuitive interpretation of a subclause of an exception to the principal definition.

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[46] *See, e.g.*, 11 U.S.C. § 523(a)(2) (precluding discharge of a "debt . . . obtained by . . . false pretenses" or other improper means).

[47] A loan is generally understood to go into "default" within the meaning of the FDCPA only after a period of persistent nonpayment. *See, e.g.*, *Alibrandi v. Fin. Outsourcing Servs., Inc.*, 333 F.3d 82, 86-87 (2d Cir. 2003).

In any event, even assuming that servicers operating without an assignment have "obtained" a debt, that surely is not the only way in which a debt may be "obtained." As noted, the word most naturally refers to receiving a debt by virtue of an assignment. And if the phrase includes servicers with an assignment, the problem is not avoided – the assignee is owed the debt by virtue of the assignment yet is still collecting a debt "owed or due another" as Congress understood that term.

Respondent's proposal is also no response to Clause (F)(iv). Even if it is possible for a loan servicer to "obtain" a debt without being "owed" the debt, that certainly is not true of a secured creditor, who obtains a debt in exactly the same sense as a debt buyer – *i.e.*, through an assignment that results in the debt being "owed or due" the secured creditor on respondent's and the Fourth Circuit's interpretation of that phrase.

2. The "Creditor" Definition Does Not Salvage Respondent's Interpretation.

Respondent also claims support for the Fourth Circuit's ruling in the definition of a "creditor," which includes:

> any person who offers or extends credit creating a debt or *to whom a debt is owed*, but such term does not include any person *to the extent that he receives an assignment or transfer of a debt in default* solely for the purpose of facilitating collection of such debt *for another*.

15 U.S.C. § 1692a(4) (emphasis added); *see* BIO 26.

Santander reasons that as an assignee of a debt, a debt purchaser is a person "to whom a debt is owed," and is therefore a creditor not a debt collector. BIO 26, 29. That argument is wrong for two reasons.

First, the argument's premise – that a "creditor" cannot be a "debt collector" – is wrong.

While it is generally true that creditors tend not to qualify as debt collectors given the way the "debt collector" definition and its exceptions are written, the "debt collector" definition has no general exception for creditors. To the contrary, it expressly exempts only an "officer or employee of a creditor" in certain circumstances. *Id*. § 1692a(6)(A).

It also makes sense that some debt purchasers may qualify as both creditors and debt collectors, given the other uses of the word "creditor" in the statute. For example, the Act requires debt collectors' initial communications with a debtor to identify the "creditor" to facilitate payment of the claimed debt. 15 U.S.C. § 1692g(a)(2). It would make sense to require a debt purchaser to inform the debtor that payment of the debt is now due the purchaser, yet preclude the purchaser from collecting that debt through deceptive or abusive means.

This distinct function of "creditor" also explains why the "creditor" definition refers to one "to whom a debt *is* owed," using the present tense, while the definition of "debt collector" refers to a debt "owed or due another," a formulation capable of referring both to debts presently due another and those previously owed another. *See supra* § II.A. To serve its purpose in the Act's substantive provisions, "creditor" needs to refer to the person to whom the debt is presently

owed. But to serve *its* purpose, the definition of "debt collector" must be broader.

Second, Santander is not petitioners' "creditor" in any event. Even if a defaulted debt purchaser were a "creditor" under the initial definition of that term, it would nonetheless fall within the "assignee exception" properly construed because it obtained the debt by assignment after the debt had fallen into default.

The Fourth Circuit disagreed, pointing out that this "assignee exception" only applies to those who receive an assignment of defaulted debt "solely for the purpose of facilitating collection of such debt *for another*." Pet. App. 8a (quoting 15 U.S.C. § 1692a(4)). The court assumed that it was impossible for a party collecting on its own account to be collecting a debt "for another," and therefore the exception could not apply to a debt purchaser.

That line of reasoning points to an inherent ambiguity (one might even say contradiction) within the assignee exception itself, not a problem particular to petitioners' interpretation. That is, the "assignee exception" only ever applies to those assigned or transferred a debt. And an assignment ordinarily results in the debt being owed the assignee. *See, e.g.*, RESTATEMENT (SECOND) OF CONTRACTS § 317 (AM. LAW. INST. 1981). Yet the assignee exception contemplates an assignee collecting the assigned debt "for another." Conversely, someone collecting a debt "for another" in the sense assumed by the Fourth Circuit would be in no need of an exemption from the

"creditor" definition in the first place because the collector would not be the person "to whom a debt is owed." 15 U.S.C. § 1692a(4).[48]

These seeming contradictions can be resolved, consistent with the best interpretation of the "debt collector" definition, by viewing an assignee as being presently "owed" the debt but collecting the debt "for another" in the sense of standing in the originator's shoes. *See For*, MERRIAM-WEBSTER DICTIONARY, https://www.merriam-webster.com/dictionary/for (last visited Feb. 16, 2017) ("for" can mean "in place or" or "with respect to"); *see also* U.S. BIO 11-12, *Check Investors, Inc. v. FTC*, No. 08-37.

This resolution is consistent with another use of "creditor" in the main "debt collector" definition, which provides:

> ***Notwithstanding the exclusion provided by clause (F)*** of the last sentence of this paragraph, the term includes any ***creditor*** who, in the process of ***collecting his own debts***, uses any name other than his own . . . .

15 U.S.C. § 1692a(6) (emphasis added). This "own name" proviso assumes that a "creditor . . . collecting his own debts" might qualify for a Clause (F) exception. But Clause (F) only applies to a person "collecting . . . any debt . . . owed or due another."

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[48] The "creditor" definition also includes debt originators, *id*., but it is difficult to imagine that the assignee exception is aimed at a person who originates a debt and then somehow is later assigned the debt.

Congress thus contemplated that a "creditor . . . collecting his own debts" could also be a person collecting a debt "owed or due another." That is only possible if "owed or due another" is understood to include debts presently due the creditor but originated by someone else.

Treating purchasers of defaulted debt as within the "assignee exception" also aligns the references to defaulted debt in the "creditor" and "debt collector" definitions. The combined gist of the exceptions is that assignees who obtain a debt when it is in default are debt collectors, not creditors, while those who obtain the debts prior to default are creditors, not debt collectors.

B. Respondent Cannot Reconcile Its Interpretation With The Statute's Purposes.

Respondent has made two arguments thus far as to why its interpretation is consistent with the statutory purposes, but neither is convincing.

First, respondent suggests that coverage of companies like Santander is unnecessary because the worst debt buyer offenders will be covered by the "principal purpose" prong of the definition. BIO 3, 23-24.[49]

There is no factual basis for that claim. While principal purpose collectors have indeed engaged in

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[49] That suggestion fails at the outset unless respondent is willing to agree with petitioners that the "creditor" definition does not immunize debt purchasers collecting debt obtained in default.

some egregious practices, there are examples of unlawful conduct by others who regularly collect debts without debt collecting being the principal purpose of their business. *See, e.g.*, *Davidson*, 797 F.3d at 1311 (bank that purchased defaulted debt alleged to have engaged in "'mass produced, 'robo-signed'" lawsuits premised on false statement and inaccurate information); *Hoen v. FCC Finance, LLC*, 126 F. Supp. 3d 472, 473 (D.N.J. 2015) (debt sold three times, culminating in final purchaser, a consumer finance company like Santander, attempting to collect on debt allegedly paid thirteen years earlier).[50]

Nor, in any event, is there any basis for the assumption that at the time Congress enacted the statute, it was relatively unconcerned about entities like respondent. In fact, Congress was sufficiently worried about the much-less-suspect debt servicer industry that it made debt servicers subject to the Act whenever they obtain a debt that is already in default.

Moreover, the present structure of the debt buying market is a hazardous basis for inferring Congress's intent at the time the statute was enacted. The advent of the modern debt buying industry postdates the FDCPA's enactment.[51] This relatively new industry also continues to rapidly evolve. Whereas the debt buying industry was previously dominated by companies that specialized

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[50] *See* About Us, http://www.fccfinance.com/about-us/.

[51] *CFPB 2014 Annual Report*, *supra*, at 7.

in debt buying and may well fall within the "principal purpose" definition, in recent years they have been joined by hedge funds and the likes of Goldman Sachs, diversified companies that will be covered by the FDCPA if at all, only under its "regularly collects" prong. *See supra*, at 9.

Second, Santander also argues that "regularly collect" companies like Santander have other business and, therefore, an incentive to keep their good name. BIO 23-24.

This is not necessarily so. For example, hedge funds and other investors recently entering the debt purchasing market may have no other line of business that depends on maintaining the goodwill of the consumers whose loans they purchase.

But in any event, if Congress believed that simply having another line of business beyond debt collection was a sufficient restraint on collection activities, it is hard to see why it included "regularly collects" companies in the first place. After all, by definition, a defendant subject to the statute solely under the "regularly collects" prong will necessarily be conducting other business as well. Yet its presumed interest in keeping a good general reputation did not prevent Congress from subjecting them to the statute.

Indeed, as discussed, the statute covers financial services companies that obtain debt in default for servicing. *Supra* § I. Those servicing companies could well argue, as Santander does here, that because of their other servicing activities (*e.g.*, with respect to non-defaulted debt), they have an incentive to refrain from abusive practices. But Congress

obviously thought those incentives were insufficient. In fact, the Senate Report goes out of its way to make clear that the "debt collector" definition "would include 'reciprocal collections' whereby one creditor regularly collects delinquent debts for another pursuant to a reciprocal service agreement, unless otherwise excluded by the act." S. Rep. No. 95-382, at 3 (1977); *see also* Senate Comm. on Banking, Housing & Urban Affairs, Markup Session: S. 1130 Debt Collection Legislation 16-18, 23-25 (June 30, 1977) (debate over unsuccessful proposed amendment to exempt banks and retail establishments collecting each other's debts based on such reciprocal collection arrangements). This, despite the obvious need for banks and other creditors to maintain a good reputation with consumers generally.

IV. Purchasers Of Defaulted Debt Are At Least Covered "Debt Collectors" When They Regularly Collect Debts Owned By Others In Addition To Collecting The Debts They Have Purchased.

For the foregoing reasons, the answer to the Question Presented is that a company that regularly attempts to collect debt that it purchased after default is *always* a "debt collector" because, in collecting the defaulted debt, it is collecting a debt "owed or due another." But as discussed earlier, even if this Court accepted the Fourth Circuit's view that a purchased debt is owed and due the purchaser, not another, Santander is still a "debt collector" because it regularly collects debts owed others as part of its

third-party debt servicing practice. *See supra* § II.C.3.[52]

The Fourth Circuit reached the contrary conclusion below, believing that "an entity that 'collects or attempts to collect . . . debts owed or due . . . another' on a regular basis qualifies as a debt collector [only] *when it engages in collection activity on behalf of another*." Pet. App. 19a (emphasis in original) (quoting 15 U.S.C. § 1692a(6)). The italicized language, which is doing all the work in the sentence, is outside the quotation marks for a reason: the limitation is nowhere in the actual text of the statute.

Instead, Congress provided that defendants who regularly collect debt "owed or due another" are debt collectors, full stop. The obligations of a "debt collector" so defined, are laid out elsewhere. Those provisions apply to a "debt collector" collecting "*any* debt," 15 U.S.C. § 1692e (emphasis added), not any

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[52] Although the Question Presented is tailored most directly to the circuit conflict – in which courts have held that purchasers of defaulted debt are either *always* or *never* debt collectors – it also fairly presents the question whether debt purchasers may be "debt collectors" *sometimes*, as in the circumstances of this case. As the petition emphasized, the Act's provision cannot be construed in isolation, but must be considered in light of the proper understanding of its interconnected matrix of definitions, exceptions, and substantive requirements. *See* Pet. 23-26; Pet. Reply 1-2; *supra* § II.C.3. An issue that "is a predicate to an intelligent resolution of the question presented [is] therefore fairly included therein." *Ohio v. Robinette*, 519 U.S. 33, 38 (1996) (internal quotation marks omitted).

debt "owed or due another." And although Congress provided express exemptions with respect to certain debts "owed or due another" (like debts obtained prior to default) it notably did not provide a general exemption for all debts "owed or due another." *See id.* § 1692a(6)(F).

That decision makes perfect sense. Congress could readily believe that a company that regularly collects others' debts will not distinguish between those debts and those it purchased in deciding how to go about collecting payment.

2. In this case, petitioners allege in their Complaint that Santander was acting as a third-party servicer when it obtained the defaulted debts of the *Thomas* class members. J.A. 23 (Complaint ¶ 47). The servicing of those debts alone is more than sufficient to show that Santander regularly services debts "owed or due another" even on its own interpretation. *See id*. (Complaint ¶ 47) (Santander hired to service *Thomas* class action members' loans); *supra*, at 14 (*Thomas* class action included more than 3,000 members); *Schroyer v. Frankel*, 197 F.3d 1170, 1174 (6th Cir. 1999) ("Debt collection services may be rendered 'regularly' even though these services may amount to a small fraction of the firm's total activity."). Nor is Santander's third-party servicing limited to these loans. *See* Pet. App. 18a-19a (recognizing Santander "as a consumer finance company, lends money, services loans, collects debt for itself, *collects debt for others*, and otherwise engages in borrowing and investing its capital")

(emphasis added).[53] Santander therefore qualifies as a debt collector under the main "regularly collects" definition, and the Act therefore applies to *all* of its collection efforts, including its collection of petitioners' debts. *See supra* § II.C.3.

Accordingly, if the Court decides that a purchased debt is not a debt "owed or due another" within the meaning of Section 1692a(6), it should nonetheless reverse because the Complaint adequately alleges that Santander is a debt collector based on its servicing of other lenders' loans.

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[53] Santander successfully urged the courts below to take judicial notice of its filing with the Securities and Exchange Commission in relation to its purchase of petitioners' debts. *See* Resp't C.A. Br. 56 n.14; Pet. App. 13a. In that filing Santander represented that it "services contracts for third parties." *See* Santander Consumer, Prospectus Supplement (filed pursuant to Rule 424(b)(3)) at S-29 (Dec. 30, 2013), *available at* http://www.sec.gov/Archives/edgar/data/1383094/000119312514000794/d650648d424b3.htm. In another SEC filing, it has represented that its "serviced for others portfolio" was valued at "$11.9 billion as of December 31, 2016." Santander Consumer USA Holdings Inc., Current Report (Form 8-K) at 3 (Jan. 25, 2017), *available at* http://d18rn0p25nwr6d.cloudfront.net/CIK-0001580608/fd109f3d-45be-43ef-a021-47a87d513351.pdf.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed.

Respectfully submitted,

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APPENDIX

STATUTORY APPENDIX

The Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 *et seq*., provides in relevant part:

§ 1692. Congressional findings and declaration of purpose

(a) Abusive practices

There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.

(b) Inadequacy of laws

Existing laws and procedures for redressing these injuries are inadequate to protect consumers.

(c) Available non-abusive collection methods

Means other than misrepresentation or other abusive debt collection practices are available for the effective collection of debts.

(d) Interstate commerce

Abusive debt collection practices are carried on to a substantial extent in interstate commerce and through means and instrumentalities of such commerce. Even where abusive debt collection practices are purely intrastate in character, they nevertheless directly affect interstate commerce.

(e) Purposes

It is the purpose of this subchapter 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.

§ 1692a. Definitions

As used in this subchapter--

(1) The term "**Bureau**" means the Bureau of Consumer Financial Protection.

(2) The term "**communication**" means the conveying of information regarding a debt directly or indirectly to any person through any medium.

(3) The term "**consumer**" means any natural person obligated or allegedly obligated to pay any debt.

(4) The term "**creditor**" means any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.

(5) The term "**debt**" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether

or not such obligation has been reduced to judgment.

(6) The term "**debt collector**" means 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. Notwithstanding the exclusion provided by clause (F) of the last sentence of this paragraph, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. For the purpose of section 1692f(6) of this title, such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests. The term does not include--

(A) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;

(B) any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the

principal business of such person is not the collection of debts;

(C) any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties;

(D) any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;

(E) any nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors; and

(F) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; (ii) concerns a debt which was originated by such person; (iii) concerns a debt which was not in default at the time it was obtained by such person; or (iv) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.

(7) The term "**location information**" means a consumer's place of abode and his telephone number at such place, or his place of employment.

(8) The term "**State**" means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing.

§ 1692b. Acquisition of location information

Any debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall--

(1) identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;

(2) not state that such consumer owes any debt;

(3) not communicate with any such person more than once unless requested to do so by such person or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information;

(4) not communicate by post card;

(5) not use any language or symbol on any envelope or in the contents of any communication effected

by the mails or telegram that indicates that the debt collector is in the debt collection business or that the communication relates to the collection of a debt; and

(6) after the debt collector knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, such attorney's name and address, not communicate with any person other than that attorney, unless the attorney fails to respond within a reasonable period of time to communication from the debt collector.

§ 1692c. Communication in connection with debt collection

(a) Communication with the consumer generally

Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt--

(1) at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8 o'clock antemeridian and before 9 o'clock

postmeridian, local time at the consumer's location;

(2) if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer; or

(3) at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.

(b) Communication with third parties

Except as provided in section 1692b of this title, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.

(c) Ceasing communication

If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt, except--

(1) to advise the consumer that the debt collector's further efforts are being terminated;

(2) to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or

(3) where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy.

If such notice from the consumer is made by mail, notification shall be complete upon receipt.

(d) "Consumer" defined

For the purpose of this section, the term "consumer" includes the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator.

§ 1692d. Harassment or abuse

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. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person.

(2) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.

(3) The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of section 1681a(f) or 1681b(3) of this title.

(4) The advertisement for sale of any debt to coerce payment of the debt.

(5) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.

(6) Except as provided in section 1692b of this title, the placement of telephone calls without meaningful disclosure of the caller's identity.

§ 1692e. False or misleading representations

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform, or facsimile thereof.

(2) The false representation of--

(A) the character, amount, or legal status of any debt; or

(B) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.

(3) The false representation or implication that any individual is an attorney or that any communication is from an attorney.

(4) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is

lawful and the debt collector or creditor intends to take such action.

(5) The threat to take any action that cannot legally be taken or that is not intended to be taken.

(6) The false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to--

(A) lose any claim or defense to payment of the debt; or

(B) become subject to any practice prohibited by this subchapter.

(7) The false representation or implication that the consumer committed any crime or other conduct in order to disgrace the consumer.

(8) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.

(9) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval.

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

(11) The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action.

(12) The false representation or implication that accounts have been turned over to innocent purchasers for value.

(13) The false representation or implication that documents are legal process.

(14) The use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization.

(15) The false representation or implication that documents are not legal process forms or do not require action by the consumer.

(16) The false representation or implication that a debt collector operates or is employed by a consumer reporting agency as defined by section 1681a(f) of this title.

§ 1692f. Unfair practices

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

(2) The acceptance by a debt collector from any person of a check or other payment instrument postdated by more than five days unless such person is notified in writing of the debt collector's intent to deposit such check or instrument not more than ten nor less than three business days prior to such deposit.

(3) The solicitation by a debt collector of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution.

(4) Depositing or threatening to deposit any postdated check or other postdated payment

instrument prior to the date on such check or instrument.

(5) Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.

(6) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if--

(A) there is no present right to possession of the property claimed as collateral through an enforceable security interest;

(B) there is no present intention to take possession of the property; or

(C) the property is exempt by law from such dispossession or disablement.

(7) Communicating with a consumer regarding a debt by post card.

(8) Using any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his business name if such name does not indicate that he is in the debt collection business.

§ 1692g. Validation of debts

(a) Notice of debt; contents

Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing--

(1) the amount of the debt;

(2) the name of the creditor to whom the debt is owed;

(3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;

(4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and

(5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the

name and address of the original creditor, if different from the current creditor.

(b) Disputed debts

If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) of this section that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector. Collection activities and communications that do not otherwise violate this subchapter may continue during the 30-day period referred to in subsection (a) of this section unless the consumer has notified the debt collector in writing that the debt, or any portion of the debt, is disputed or that the consumer requests the name and address of the original creditor. Any collection activities and communication during the 30-day period may not overshadow or be inconsistent with the disclosure of the consumer's right to dispute the debt or request the name and address of the original creditor.

(c) Admission of liability

The failure of a consumer to dispute the validity of a debt under this section may not be construed by any court as an admission of liability by the consumer.

(d) Legal pleadings

A communication in the form of a formal pleading in a civil action shall not be treated as an initial communication for purposes of subsection (a) of this section.

(e) Notice provisions

The sending or delivery of any form or notice which does not relate to the collection of a debt and is expressly required by Title 26, title V of Gramm-Leach-Bliley Act, or any provision of Federal or State law relating to notice of data security breach or privacy, or any regulation prescribed under any such provision of law, shall not be treated as an initial communication in connection with debt collection for purposes of this section.

§ 1692h. Multiple debts

If any consumer owes multiple debts and makes any single payment to any debt collector with respect to such debts, such debt collector may not apply such payment to any debt which is disputed by the consumer and, where applicable, shall apply such payment in accordance with the consumer's directions.

§ 1692i. Legal actions by debt collectors

(a) Venue

Any debt collector who brings any legal action on a debt against any consumer shall--

(1) in the case of an action to enforce an interest in real property securing the consumer's obligation, bring such action only in a judicial district or similar legal entity in which such real property is located; or

(2) in the case of an action not described in paragraph (1), bring such action only in the judicial district or similar legal entity--

(A) in which such consumer signed the contract sued upon; or

(B) in which such consumer resides at the commencement of the action.

(b) Authorization of actions

Nothing in this subchapter shall be construed to authorize the bringing of legal actions by debt collectors.

§ 1692j. Furnishing certain deceptive forms

(a) It is unlawful to design, compile, and furnish any form knowing that such form would be used to create the false belief in a consumer that a person other than the creditor of such consumer is participating in the collection of or in an attempt to collect a debt such consumer allegedly owes such creditor, when in fact such person is not so participating.

(b) Any person who violates this section shall be liable to the same extent and in the same manner as a debt collector is liable under section 1692k of this title for failure to comply with a provision of this subchapter.

§ 1692k. Civil liability

(a) Amount of damages

Except as otherwise provided by this section, any debt collector who fails to comply with any provision of this subchapter with respect to any person is liable to such person in an amount equal to the sum of--

(1) any actual damage sustained by such person as a result of such failure;

(2) **(A)** in the case of any action by an individual, such additional damages as the court may allow, but not exceeding $1,000; or

(B) in the case of a class action, (i) such amount for each named plaintiff as could be recovered under subparagraph (A), and (ii) such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of $500,000 or 1 per centum of the net worth of the debt collector; and

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court. On a finding by the court that an action under this section was brought in bad faith and for the purpose of harassment, the court may award to the defendant attorney's fees reasonable in relation to the work expended and costs.

(b) Factors considered by court

In determining the amount of liability in any action under subsection (a) of this section, the court shall consider, among other relevant factors--

(1) in any individual action under subsection (a)(2)(A) of this section, the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, and the extent to which such noncompliance was intentional; or

(2) in any class action under subsection (a)(2)(B) of this section, the frequency and persistence of

noncompliance by the debt collector, the nature of such noncompliance, the resources of the debt collector, the number of persons adversely affected, and the extent to which the debt collector's noncompliance was intentional.

(c) Intent

A debt collector may not be held liable in any action brought under this subchapter if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(d) Jurisdiction

An action to enforce any liability created by this subchapter may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within one year from the date on which the violation occurs.

(e) Advisory opinions of Bureau

No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any advisory opinion of the Bureau, notwithstanding that after such act or omission has occurred, such opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

§ 1692l. Administrative enforcement

(a) Federal Trade Commission

The Federal Trade Commission shall be authorized to enforce compliance with this subchapter, except to the extent that enforcement of the requirements imposed under this subchapter is specifically committed to another Government agency under any of paragraphs (1) through (5) of subsection (b), subject to subtitle B of the Consumer Financial Protection Act of 2010. For purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act (15 U.S.C. 41 et seq.), a violation of this subchapter shall be deemed an unfair or deceptive act or practice in violation of that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Federal Trade Commission to enforce compliance by any person with this subchapter, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act, including the power to enforce the provisions of this subchapter, in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.

(b) Applicable provisions of law

Subject to subtitle B of the Consumer Financial Protection Act of 2010, compliance with any

requirements imposed under this subchapter shall be enforced under--

(1) section 1818 of Title 12, by the appropriate Federal banking agency, as defined in section 1813(q) of Title 12, with respect to--

(A) national banks, Federal savings associations, and Federal branches and Federal agencies of foreign banks;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act; and

(C) banks and State savings associations insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), and insured State branches of foreign banks;

(2) the Federal Credit Union Act, by the National Credit Union Administration Board with respect to any Federal credit union;

(3) subtitle IV of Title 49, by the Secretary of Transportation, with respect to all carriers

subject to the jurisdiction of the Surface Transportation Board;

(4) part A of subtitle VII of Title 49, by the Secretary of Transportation with respect to any air carrier or any foreign air carrier subject to that part;

(5) the Packers and Stockyards Act, 1921 (except as provided in section 406 of that Act), by the Secretary of Agriculture with respect to any activities subject to that Act; and

(6) subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau, with respect to any person subject to this subchapter.

The terms used in paragraph (1) that are not defined in this subchapter or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

(c) Agency powers

For the purpose of the exercise by any agency referred to in subsection (b) of this section of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this subchapter shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (b) of this section, each of the agencies referred to in that subsection may

exercise, for the purpose of enforcing compliance with any requirement imposed under this subchapter any other authority conferred on it by law, except as provided in subsection (d) of this section.

(d) Rules and regulations

Except as provided in section 5519(a) of Title 12, the Bureau may prescribe rules with respect to the collection of debts by debt collectors, as defined in this subchapter.

§ 1692m. Reports to Congress by the Bureau; views of other Federal agencies

(a) Not later than one year after the effective date of this subchapter and at one-year intervals thereafter, the Bureau shall make reports to the Congress concerning the administration of its functions under this subchapter, including such recommendations as the Bureau deems necessary or appropriate. In addition, each report of the Bureau shall include its assessment of the extent to which compliance with this subchapter is being achieved and a summary of the enforcement actions taken by the Bureau under section 1692l of this title.

(b) In the exercise of its functions under this subchapter, the Bureau may obtain upon request the views of any other Federal agency which exercises enforcement functions under section 1692l of this title.

§ 1692n. Relation to State laws

This subchapter does not annul, alter, or affect, or exempt any person subject to the provisions of this subchapter from complying with the laws of any State with respect to debt collection practices, except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency. For purposes of this section, a State law is not inconsistent with this subchapter if the protection such law affords any consumer is greater than the protection provided by this subchapter.

§ 1692o. Exemption for State regulation

The Bureau shall by regulation exempt from the requirements of this subchapter any class of debt collection practices within any State if the Bureau determines that under the law of that State that class of debt collection practices is subject to requirements substantially similar to those imposed by this subchapter, and that there is adequate provision for enforcement.

§ 1692p. Exception for certain bad check enforcement programs operated by private entities

(a) In general

(1) Treatment of certain private entities

Subject to paragraph (2), a private entity shall be excluded from the definition of a debt collector, pursuant to the exception provided in section 1692a(6) of this title, with respect to the operation by the entity of a program described in paragraph (2)(A) under a contract described in paragraph (2)(B).

(2) Conditions of applicability

Paragraph (1) shall apply if--

(A) a State or district attorney establishes, within the jurisdiction of such State or district attorney and with respect to alleged bad check violations that do not involve a check described in subsection (b) of this section, a pretrial diversion program for alleged bad check offenders who agree to participate voluntarily in such program to avoid criminal prosecution;

(B) a private entity, that is subject to an administrative support services contract

with a State or district attorney and operates under the direction, supervision, and control of such State or district attorney, operates the pretrial diversion program described in subparagraph (A); and

(C) in the course of performing duties delegated to it by a State or district attorney under the contract, the private entity referred to in subparagraph (B)--

(i) complies with the penal laws of the State;

(ii) conforms with the terms of the contract and directives of the State or district attorney;

(iii) does not exercise independent prosecutorial discretion;

(iv) contacts any alleged offender referred to in subparagraph (A) for purposes of participating in a program referred to in such paragraph--

(I) only as a result of any determination by the State or district attorney that probable cause of a bad check violation under State penal law exists, and that contact with the alleged offender for

purposes of participation in the program is appropriate; and

(II) the alleged offender has failed to pay the bad check after demand for payment, pursuant to State law, is made for payment of the check amount;

(v) includes as part of an initial written communication with an alleged offender a clear and conspicuous statement that--

(I) the alleged offender may dispute the validity of any alleged bad check violation;

(II) where the alleged offender knows, or has reasonable cause to believe, that the alleged bad check violation is the result of theft or forgery of the check, identity theft, or other fraud that is not the result of the conduct of the alleged offender, the alleged offender may file a crime report with the appropriate law enforcement agency; and

(III) if the alleged offender notifies the private entity or the district attorney in writing, not later than 30 days after being contacted for the first time pursuant to clause (iv),

that there is a dispute pursuant to this subsection, before further restitution efforts are pursued, the district attorney or an employee of the district attorney authorized to make such a determination makes a determination that there is probable cause to believe that a crime has been committed; and

(vi) charges only fees in connection with services under the contract that have been authorized by the contract with the State or district attorney.

(b) Certain checks excluded

A check is described in this subsection if the check involves, or is subsequently found to involve--

(1) a postdated check presented in connection with a payday loan, or other similar transaction, where the payee of the check knew that the issuer had insufficient funds at the time the check was made, drawn, or delivered;

(2) a stop payment order where the issuer acted in good faith and with reasonable cause in stopping payment on the check;

(3) a check dishonored because of an adjustment to the issuer's account by the financial institution holding such account without

providing notice to the person at the time the check was made, drawn, or delivered;

(4) a check for partial payment of a debt where the payee had previously accepted partial payment for such debt;

(5) a check issued by a person who was not competent, or was not of legal age, to enter into a legal contractual obligation at the time the check was made, drawn, or delivered; or

(6) a check issued to pay an obligation arising from a transaction that was illegal in the jurisdiction of the State or district attorney at the time the check was made, drawn, or delivered.

(c) Definitions

For purposes of this section, the following definitions shall apply:

(1) State or district attorney

The term "State or district attorney" means the chief elected or appointed prosecuting attorney in a district, county (as defined in section 2 of title 1, United States Code), municipality, or comparable jurisdiction, including State attorneys general who act as chief elected or appointed prosecuting attorneys in a district, county (as so defined), municipality or comparable jurisdiction, who may be referred to

by a variety of titles such as district attorneys, prosecuting attorneys, commonwealth's attorneys, solicitors, county attorneys, and state's attorneys, and who are responsible for the prosecution of State crimes and violations of jurisdiction-specific local ordinances.

(2) Check

The term "check" has the same meaning as in section 5002(6) of Title 12.

(3) Bad check violation

The term "bad check violation" means a violation of the applicable State criminal law relating to the writing of dishonored checks.