No. 08-1200

In The Supreme Court of the United States

KAREN L. JERMAN,

Petitioner,

v.

CARLISLE, McNELLIE, RINI, KRAMER & ULRICH LPA AND ADRIENNE S. FOSTER,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF FOR THE CALIFORNIA ASSOCIATION OF COLLECTORS AS *AMICUS CURIAE* SUPPORTING RESPONDENTS

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INTEREST OF *AMICUS CURIAE*

The California Association of Collectors, Inc. ("CAC") is a statewide association of California-based collection agencies, debt collectors, and other credit professionals, including lawyers, who form the California Unit of the American Collectors Association International, a national association of collection agencies, creditors, and credit professionals. The CAC has approximately 400 agency members. The purpose of the CAC is to promote, stimulate, increase and improve the educational, social, economic and ethical welfare of the California collection industry, and to educate its members, as well as the public which it serves. The CAC strives to apply the collective knowledge and experience of its members toward promoting ethical and professional standards of collection service.[1]

The CAC members represent approximately 15% of the total debt collector membership of ACA International. CAC members regularly act as "third-party collectors" in collecting debts assigned to them by California businesses and other businesses throughout the nation. Members of the CAC also

[1] No counsel for a party authored any part of this brief – the filing of which has been consented to by all parties – and no person other than *amicus curiae*, its members, or its counsel made a monetary contribution to the preparation or submission of the brief. Letters reflecting the blanket consent of the parties to permit briefing by *amicus curiae* have been filed with the clerk.

include "first-party" creditors (parties who are collecting their own debts), as well as government entity collection departments. Attorneys and law firms regularly represent the members of the CAC in state court collection actions.

The CAC assists its members with compliance with various laws and regulations, including the Fair Debt Collection Practices Act (FDCPA) through education, training and the like. The CAC encourages and emphasizes compliance with the FDCPA and other consumer protection statutes, and the organization acts as a resource to its members in keeping abreast of the changing developments in relevant law.

Notwithstanding this emphasis on professionalism and compliance, California debt collectors are frequently the targets of lawsuits brought under the FDCPA. Through October of 2009, 6,809 federal court cases alleging FDCPA violations have been filed in 2009 against debt collectors throughout the nation. (*See* Am. Collectors Assn. Int'l, Inc., Cases, Claims & Industry News, at http://www.acainternational.org/compliance-cases-claims-industry-news-8947.aspx (last visited Nov. 23, 2009) (providing statistical information regarding FDCPA case filings, itemized by month)). Sixteen percent of the 6,809 cases were filed in California – more than any other state. *Ibid.* At this pace, we can extrapolate that perhaps as many as 8,170 cases may be filed by the end of 2009. This is a 52% increase over the federal court filings in 2008, which totaled 5,383 cases. *Ibid.* The 2009 filing figure

is a 115% increase over the number of federal court filings in 2007, which totaled 3,807 cases. These figures do not include state court filings. They do not consider settlements reached before suit. Simply put, as the FDCPA case load becomes heavier, the bona fide error defense is more important than ever, and, hence, CAC's interest and concern.

SUMMARY OF ARGUMENT

I. Congressional intent and the purpose behind the FDCPA support the conclusion that the bona fide error defense applies to legal errors. The language of the statute itself at 15 U.S.C. section 1692k(c), the relevant legislative history (*see, e.g.*, S. Rep. No. 95-382, at 5 (1977)), as well as the goals of the statute are all consistent with applying the bona fide error defense to legal errors.

II. Petitioner's assertion that "ignorance of the law is never a defense" is a straw man argument. Applying the bona fide error defense to so-called errors of law is not at all equivalent to sanctioning an ignorance of the law defense. Indeed, the bona fide error defense relies on knowledge and procedures. The bona fide error defense is not an immunity; it is an affirmative defense that must be established by a collector. The bona fide error defense was designed to apply, and should apply, to all violations by a debt collector, whether a lay collector, or, as here, a law firm representing a creditor, where the elements of the bona fide error defense are met.

III. Given the seemingly ever-evolving requirements under the FDCPA's statutory scheme, the CAC submits it is doubtful that Congress meant to impose strict liability on debt collectors who have failed to correctly anticipate the ultimate resolution of legal issues that have divided the federal courts themselves. The CAC submits it would be unjust and unfair, and not consistent with the FDCPA's design,

if the bona fide error defense is not available to all debt collectors that exercise good faith in attempting to comply with the FDCPA and maintain reasonable procedures to ensure such compliance. Such a holding would competitively disadvantage debt collectors who set up procedures to avoid or eliminate abusive practices in contravention to the statute's intent. *See* 15 U.S.C. § 1692(e).

IV. The bona fide error defense should not be narrowly interpreted to merely apply to legal misinterpretations as to the rights and obligations arising under the FDCPA itself, or to the Act's coverage. While the FDCPA applies to such errors, other "errors of law" should also be deemed to provide a basis for asserting the defense, so long as the elements of the bona fide error defense are met.

ARGUMENT

Question: Does the bona fide error defense found at 15 U.S.C. section 1692k(c) apply to errors of law? ***Answer***: Yes, it does.

The CAC does not intend to duplicate the statutory interpretation and legislative history arguments and analyses already addressed and submitted by the parties or other *amici curiae*, to this Honorable Court in earlier briefs. The Respondents, the Ohio Creditor's Attorneys Association and the California Creditor's Bar Association have previously submitted briefing which exhaustively interprets the respective language and legislative histories of the bona fide error defenses found in the FDCPA and the Truth in Lending Act ("TILA").

The more persuasive view by far is that the FDCPA's bona fide error defense applies to legal errors. This is evidenced by, among other things, a review of the plain language of the FDCPA that contains no language of limitation, by a comparative review of the TILA bona fide error statute that demonstrates the intent to limit its application, and by a review of the FDCPA's legislative history that strongly suggests the bona fide error defense was to apply to conduct that "violates the act in any manner, including with regard to the act's coverage." S. Rep. No. 95-382, at 5 (1977).

I. Congressional Intent Underlying the FDCPA Must Be Considered When Determining Whether the Bona Fide Error Defense Applies to Legal Errors.

Congress enacted the FDCPA in 1977 in order to eliminate abusive debt collection practices by debt collectors, to ensure 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. 15 U.S.C. § 1692(e).

In determining whether a collection practice violates the FDCPA, the text of the statute is not the end of the inquiry; the text must be construed by reference to, and with consideration of, the purpose behind the FDCPA itself. *See, e.g., Pressley v. Capital Credit & Collection Service, Inc.*, 760 F.2d 922, 924 (9th Cir. 1985).

It is well established that one of the most important purposes of the FDCPA is to assist in preventing violations by providing a mechanism for debtors to "dispute" the validity or amount of the debt being collected, rather than penalizing collectors for their honest mistakes. *See, e.g.*, 15 U.S.C. § 1692g; *Bleich v. The Revenue Maximization Group*, 233 F.Supp.2d 496, 500-01 (E.D.N.Y. 2002) (debt collectors not liable for an FDCPA violation for demanding the wrong amount in its initial collection letter since the very purpose of the FDCPA is to provide a mechanism for consumers to dispute and permit debt

collectors to correct an erroneously asserted debt); *accord Palmer v. I.C. System, Inc.*, No. C-04-03237 RMW, 2005 WL 3001877, at *4-5 (N.D. Cal. Nov. 8, 2005). In *Terran v. Kaplan*, 109 F.3d 1428 (9th Cir. 1997), the Ninth Circuit recognized that Congress enacted the FDCPA in part to "eliminate the recurring problem of debt collectors dunning the wrong person or attempting to collect debts which the consumer has already paid." *Id.* at 1431.

A second purpose behind the enactment of the FDCPA was to provide a remedial scheme that permits wronged individuals to act as private attorneys general in enforcing the statutory scheme's rights and obligations; attorney's fees were provided as an incentive for private enforcement. 15 U.S.C. § 1692k(a)(3).[2] The FDCPA may be seen as codifying

[2] Several federal courts have commented upon the potentially adverse effects the attorney's fees provision plays in creating an incentive to file questionable FDCPA lawsuits (*see, e.g., Miller v. Javitch, Black and Rathbone*, 561 F.3d 588, 596 (6th Cir. 2009)), as well as creating an incentive to ask for excessive fees. *See Sanders v. Jackson*, 209 F.3d 998, 1004 (7th Cir. 2000) (noting that plaintiff's attorneys "have a strong interest to litigate these cases – often times despite their marginal impact – in the form of attorneys' fees and costs they hope to recover. . . . The history of FDCPA litigation shows that most cases have resulted in limited recoveries for plaintiffs and hefty fees for their attorneys"); *see also Murphy v. Equifax Check Servs., Inc.*, 35 F.Supp.2d 200, 204 (D. Conn. 1999) (suggesting that the continuation of the FDCPA action merely increased attorney's fees and noting the FDCPA was not intended to "create a cottage industry for the production of attorney's fees").

and making wrongful, uniformly and consistently, the type of activity by a debt collector previously deemed to constitute a common law tort under a hodgepodge of heterodox state laws such as abuse of process, malicious prosecution, intentional infliction of emotional distress and invasion of privacy.

The intent of Congress was to create a comprehensive, yet limited,[3] remedial scheme, uniform throughout the country, to prevent egregiously unfair and deceptive debt collection practices. 15 U.S.C. § 1692(a)-(e). The legislation was also designed to prevent harassment in the collection of debts, such as the use of obscene or profane language, threats of violence, and telephone calls at unreasonable hours. *Green v. Hocking,* 9 F.3d 18, 21 (6th Cir. 1993), *overruled on other grounds sub. nom.*, *Heintz v. Jenkins*, 514 U.S. 291 (1995); *accord Romaine v. Diversified Collection Services, Inc.*, 155 F.3d 1142, 1149 (9th Cir. 1998). In *Romaine,* the Ninth Circuit

[3] The limited nature of the remedial scheme is demonstrated by the FDCPA's damages scheme. Statutory damages in an individual action are limited to no more than $1,000, no matter how many violations. 15 U.S.C. § 1692k(a)(2)(A); *Wright v. Finance Service of Norwalk, Inc.*, 22 F.3d 647, 651 (6th Cir. 1994). Statutory damages in a class action are limited to no more than $500,000, or 1% of the debt collector's net worth, whichever is less. 15 U.S.C. § 1692k(a)(2)(B). Punitive damages are not permitted (*Gervais v. O'Connell, Harris & Associates, Inc.*, 297 F.Supp.2d 435, 440 (N.D. Conn. 2003)); nor is injunctive relief (*Weiss v. Regal Collections*, 385 F.3d 337, 342 (3d Cir. 2004)).

identified the type of prototypical collection abuses the legislation was designed to address:

> . . . obscene or profane language, threats of violence, telephone calls at unreasonable hours, misrepresentation of a consumer's legal rights, disclosing a consumer's personal affairs to friends, neighbors, or an employer, obtaining information about a consumer through false pretense, impersonating public officials and attorneys, and simulating legal process.

Romaine, 155 F.3d at 1149.

Where a collector's activity "in no way exemplifies the abusive behavior or false and misleading practices that Congress had in mind when it enacted the FDCPA," no violation should be deemed to exist. *Morse v. Dun & Bradstreet, Inc.*, 87 F.Supp.2d 901, 904 (D. Minn. 2000). This is because the FDCPA was enacted as a "shield" not a "sword." *Emanuel v. American Credit Exchange*, 870 F.2d 805, 808 (2d Cir. 1989). The statutory scheme was not intended to create a "windfall" for debtors. *Clark v. Capital Credit & Collection Services, Inc.,* 460 F.3d 1162, 1178 (9th Cir. 2006). As stated in *Ducrest v. Alco Collections, Inc.*, 931 F.Supp. 459 (M.D. La. 1996), the primary inquiry should be *whether the debt collector has acted unscrupulously toward the plaintiff in its conduct*. The Court in *Ducrest* observed:

> The Ninth Circuit illustrated this in *Baker v. G.C. Services Corp.* [677 F.2d 775, 777 (9th Cir. 1982)] saying, '[t]he act (FDCPA) is

> designed to protect consumers who have been victimized by unscrupulous debt collectors, regardless of whether a valid debt actually exists.' *The basis of Plaintiff's claim under the FDCPA should be that defendant has acted unscrupulously in attempting to collect a debt. . . . The focus of this inquiry is on the debt collector's conduct.*

Id. at 462 (emphasis added).

The current case before the Court perfectly illustrates the good and the bad aspects of the FDCPA. On the one hand, Respondent law firm filed a collection/enforcement lawsuit against Ms. Jerman for the foreclosure of property securing a debt. *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 538 F.3d 469, 471 (6th Cir. 2008). The law firm sent Ms. Jerman a so-called validation of debt notice, as required by 15 U.S.C. section 1692g.

Based upon Respondent law firm's policies and procedures and based upon continuing research and efforts to keep abreast with the controlling law (Respondent's Brief at pp. 1-2, ¶ 2), the notice advised that unless Ms. Jerman disputed the debt in writing, the debt would be assumed to be valid pursuant to 15 U.S.C. section 1692g(a)(3). *Id.* at 471.

Ms. Jerman's counsel responded with a letter of his own disputing the debt, as was Ms. Jerman's right under section 1692g. This written dispute placed a correlative duty upon Respondents to verify or "validate" the debt. 15 U.S.C. § 1692g(b). Pursuant to

section 1692g(b), Respondents, in turn, requested verification from their creditor client, and the creditor informed Respondents that, in fact, the debt had been paid in full. Respondents' Brief, p. 3, ¶ 3. Respondents thereafter promptly dismissed the foreclosure action less than one month after filing. *Jerman*, 538 F.3d at 471.

Thus, the FDCPA served its intended purpose. The notice and dispute process resulted in the erroneously initiated collection lawsuit being dismissed even before a response was filed.

On the other hand, after the Respondents dismissed the suit, Petitioner turned around and sued Respondents in a derivative class action lawsuit, pointing out that the validation notice added the phrase "in writing" to the language set forth in section 1692g(a)(3) and, as such, failed to follow the exact language of that subsection.

As correctly pointed out in the Respondents' briefing to the Court, and as discussed further *infra*, there was nothing unreasonable in Respondents' interpretation, based upon its research, that "in writing" should be added to comply with the purpose and intent of the validation mechanism embodied in section 1692g as a whole. *See, e.g.*, 15 U.S.C. § 1692g(a)(4) (referencing "writing"); § 1692g(a)(5) (referencing "written request"); § 1692g(b) (referencing "writing"); *Graziano v. Harrison,* 950 F.2d 107, 111-12 (3d Cir. 1999); *accord Ingram v. Corporate Receivables,*

Inc., No. 02 C 6608, 2003 WL 21018650, at *6-7 (N.D. Ill. May 5, 2003) (a refusal to imply a writing requirement into section 1692g(a)(3) "has the untoward effect of depriving the unsophisticated consumers who are the particular objects of the FDCPA's solicitude of important rights that Congress sought to confer on them").

There was nothing remotely unscrupulous about the conduct of the Respondents at issue here. But, Petitioner nonetheless attempted to turn the FDCPA into a "sword" after it had served its purpose as a "shield." *Compare Miller,* 561 F.3d at 596; *Fox v. Citicorp Credit Svcs., Inc.*, 15 F.3d 1507, 1518 (9th Cir. 1994) ("what mountains have been made of mole hills"). The District Court and the Sixth Circuit properly rejected Petitioner's claim based upon the bona fide error defense.

II. Petitioner's Assertion That Ignorance of the Law Is Not a Defense Is Not a Valid Argument with Respect to Applying the Bona Fide Error Defense to Legal Errors.

Petitioner, and the *amici curiae* supporting Petitioner, repeatedly argue that "ignorance of the law is no defense" and, thus, the bona fide error defense should not apply to legal errors. This argument is perplexing as Respondent has never suggested that ignorance of the law is a defense. This is simply a straw man argument set up by Petitioner for her to easily knock down.

The Sixth Circuit did not rule in favor of Respondents because they were *ignorant* of the law, rather quite the opposite. The Sixth Circuit granted Respondents' motion for summary judgment because Respondents established that they were extremely knowledgeable about the law based upon procedures put in place for education and compliance. *See generally* Respondents' Brief, at pp. 1-3. Yet, despite their compliance procedures, the firm sent a validation notice that was held, contrary to other federal court authority, not to comply with the FDCPA. *Jerman,* 538 F.3d at 477.

If Respondents' defense had been "we have never heard of the FDCPA so we should not be held liable," the Sixth Circuit could have, and certainly would have, denied Respondents' motion for summary judgment based upon the bona fide error defense.

Both Petitioner and *amicus curiae*, the United States, argue that applying the bona fide error defense to errors of law provides debt collectors with an ignorance of the law defense which is not provided to other members of society. This "ignorance of the law" argument is wholly inapplicable under the facts presented here. The mere fact that sending the violative notice was intentional is not the same as saying the violation was intended. *Lewis v. ACB Bus. Servs., Inc.*, 135 F.3d 389, 402 (6th Cir. 1998). Courts have long recognized this distinction. For instance, in *Juras v. Aman Collection Serv., Inc.*, 829 F.2d 739, 741 (9th Cir. 1987), a debt collector violated the FDCPA by calling before 8:00 a.m., notwithstanding

procedures designed to prevent this sort of violation. While the call was intentionally placed, the violation was not intentional. The Court found that the bona fide error defense applied.

III. As Compliance with the FDCPA Is an Ever-Moving Target, the Bona Fide Error Defense Should Be Available to Debt Collectors That Maintain Procedures Designed to Stay Abreast of Those Changes.

The FDCPA possesses the seemingly contradictory qualities of being both detailed and vague. In this way, it imposes some very specific requirements on debt collectors (*see, e.g.*, § 1692j) yet prohibits broad categories of activity such as harassment, deceptive and misleading statements, and unconscionable conduct. *See, e.g.*, 15 U.S.C. §§ 1692d, 1692e, 1692f. The statutory scheme is thus highly susceptible to, and dependent on, judicial interpretation.

As FDCPA jurisprudence is largely "judge-made," trying to anticipate the correct interpretation may constitute a trap for even the most careful and conscientious debt collector. "New" violations of the FDCPA, based upon often highly technical interpretations occur regularly, and these gain traction quickly, spreading throughout the district courts across the country. In this way, conduct that has long been an established safe practice in the debt collection industry, to which no objection has previously been

raised, may be determined to violate the law. Additionally, as the statute is vague in places, there is ample opportunity for different courts to disagree. Which ruling to follow is a quandary for collectors and supports application of the bona fide error defense to errors of law.

A. Whether a Validation Notice Violates the Law by Including or Failing to Include the Words "In Writing" Was and Remains an Unsettled Area of Law.

The instant case provides a paradigmatic example of an FDCPA violation found by the underlying District Court, where other courts would not have found a violation. The question presented was whether a validation notice sent to a debtor should provide a warning that a debtor's "written" dispute was necessary to prevent the debt collector from assuming the debt was valid. *See* 15 U.S.C. § 1692g(a)(3). The language of section 1692g itself is unclear. An in-depth review of the unsettled nature of the legal issue facing Respondents in early 2006, when the notice was sent to Ms. Jerman, helps to provide context for the issue before this Court.

At the time Respondents sent the challenged notice, courts were split on whether an "in writing" requirement was to be implied in section 1692g(a)(3). The Third Circuit had previously held that inclusion of the phrase "in writing" in a section 1692g(a)(3) notice was not a violation of the FDCPA but, instead, significantly advanced the public policies of the

FDCPA, and aided debtors. *See Graziano*, 950 F.2d at 111-12. In December 2005, shortly before the notice to Ms. Jerman was sent, the Ninth Circuit took the opposite position in *Camacho v. Bridgeport Fin., Inc.*, 430 F.3d 1078, 1082 (9th Cir. 2005). Prior to *Camacho*, however, the Ninth Circuit had seemingly ruled the other way. *Mahon v. Credit Bureau of Placer County*, 171 F.3d 1197, 1202 (9th Cir. 1997). There, the Ninth Circuit, in generally addressing the requirements that a debtor must fulfill in order to trigger the validation of debts mechanism, wrote: "If no *written* demand is made, the collector may assume the debt to be valid." *Id.* at 1202 (emphasis added). District courts in other circuits were likewise divided on the question. *Compare, e.g.*, *Wallace v. Capital One Bank*, 168 F.Supp.2d 526, 529 (D. Md. 2001) (finding an "in-writing requirement") *with Baez v. Wagner & Hunt, P.A.*, 442 F.Supp.2d 1273, 1276-77 (S.D. Fla. 2006) (finding no such requirement).

Section 1692g sets forth the FDCPA's "validation of debts" provisions. These provisions form the heart of the FDCPA's debt correction and dispute mechanism. *See, e.g.*, *Mahon*, 171 F.3d at 1200-02; *Bleich*, 233 F.Supp.2d at 499-500; 15 U.S.C. § 1692g. By this procedure, a debtor who is contacted by a debt collector about a putative debt has the right to notify the collector that he or she does not owe the debt, or only owes part of the debt. *See generally* 15 U.S.C. § 1692g(a)-(b).

In *Bleich*, the District Court reviewed carefully, both the intent underlying the FDCPA generally, and the purpose behind the validation notice provisions specifically:

> The FDCPA (the "Act") was enacted to eliminate the use of unscrupulous practices in the debt collection industry. *Russell v. Equifax A.R.S.*, 74 F.3d 30, 33 (2d Cir. 1996); *Grief v. Wilson, Elser Moskowitz, Edelman & Dicker, LLP*, 217 F.Supp.2d 336, 338 (E.D.N.Y. 2002). The Act makes certain particular practices, including threats of violence made in connection with the attempt to collect a debt, expressly unlawful. *See* 15 U.S.C. § 1692d. Also made illegal by the FDCPA are the general use of any "false, deceptive or misleading representation or means" used in the attempt to collect a debt. *See* 15 U.S.C. § 1692e.

Bleich, 233 F.Supp.2d at 499.

The District Court continued:

> In addition to the prohibition of certain practices, the FDCPA places an affirmative duty, on those engaged in the business of debt collection, to provide certain information to debtors. Specifically, the Act requires that particular language, that has come to be known as the "validation notice," be placed in correspondence used to collect debts.

Id. at 499.

The District Court explained the validation of debts mechanism this way:

> [T]he FDCPA sets forth a detailed procedure for disputing the validity of a debt. The consumer is given the immediate opportunity to dispute the debt and upon the making of a request for debt verification, all collection efforts must cease. *See* 15 U.S.C. § 1692g(a). This debt validation procedure must be clearly communicated to the consumer and courts are loathe to allow debt collectors to vary from, or contradict, the statutory notification. Indeed, the failure to communicate clearly the validation procedure forms the basis of many FDCPA lawsuits. *See e.g.*, *Russell*, 74 F.3d at 34 (requiring that validation notice be understood by the "least sophisticated consumer"); *see also Savino v. Computer Credit Inc.*, 164 F.3d 81, 85-86 (2d Cir. 1998) (holding validation notice unlawful because request for "immediate payment" overshadowed validation notice thirty day period); *Monokrousos v. Computer Credit, Inc.*, 984 F.Supp. 233, 234 (S.D.N.Y. 1997) (letter held to violate FDCPA where validation notice was contradicted by request for payment prior to expiration of thirty day validation period).

Id. at 500.

Subsections (a) and (b) of section 1692g make repeated reference to the *debtor's obligation* to provide *written notice* to the debt collector within 30 days (*see, e.g.*, 15 U.S.C. § 1692g(a)(4), (a)(5), (b)) in order

to invoke his or her rights, and so as to impose, or trigger, the statutorily mandated validation duties on the debt collector. Likewise, section 1692g(b) refers to the requirement that consumer notification of a dispute must occur (1) in writing and (2) within 30 days, in order to stop the collection process.

The specific language of section 1692g(a)(3) also references the requirements of (1) notice and (2) within 30 days, but the subsection is silent on whether the notice must be written – unlike the provisions of section 1692g(a)(4), (a)(5), and (b). In short, section 1692g(a)(3), when analyzed in isolation, is unique in not requiring that the debtor's dispute be in writing.

It is perhaps significant for purposes of the "interpretation" which Respondents chose to follow that the federal courts have repeatedly found that "[s]ection 1692g of the FDCPA itself is confusing," and even more so for the "least sophisticated debtor." *See, e.g.*, *In re Risk Mgmt. Alternatives, Inc.,* 208 F.R.D. 493, 502 (S.D.N.Y. 2002). Indeed, in *In re Risk Mgmt. Alternatives, Inc.*, the District Court grudgingly interpreted section 1692g(a)(3) in the way proposed by Petitioner and adopted by the District Court here, but noted that this interpretation did *not* appear to support the spirit or intent behind section 1692g, in particular, or the FDCPA's statutory scheme taken as a whole. *In re Risk Mgmt. Alternatives, Inc.*, 208 F.R.D. at 502 (finding a section 1692g(a)(3) violation because of the perceived judicial constraint limiting the Court's analysis to the strict or plain language of the statute). Thus, the Court in *In re Risk Mgmt.*

Alternatives, Inc., ruled in favor of the debtor, but observed that the debtor's reliance on a so-called "plain language" interpretation of the statute led to a "silly result and one hopes that it is not what Congress had in mind." *Id.* at 502.

The Third Circuit's *Graziano* decision highlighted the apparent contradiction between the absence of a writing requirement in section 1692g(a)(3) and the legislative intent embodied in section 1692g as a whole.

In *Graziano, supra*, the debtor made allegations against the defendant similar to the ones Ms. Jerman raised against the Respondents here. *Graziano*, 950 F.2d at 111-12. In rejecting the plaintiff's arguments, the Third Circuit held:

> [W]e are of the view that, given the entire structure of section 1692g, subsection (a)(3) must be read to require that a dispute, to be effective, must be in writing. . . . [¶] We therefore conclude that subsection (a)(3), like subsections (a)(4) and (a)(5), contemplates that any dispute, to be effective, must be in writing. The district court was not in error in determining that the requirements of a writing did not render the statutory notice invalid.

Id. at 112.

The *Graziano* Court reasoned:

> Adopting Graziano's reading of the statute would thus create a situation in which, upon

> the debtor's non-written dispute, the debt collector would be without any statutory ground for assuming that the debt was valid, but nevertheless would not be required to verify the debt or to advise the debtor of the identity of the original creditor and would be permitted to continue debt collection efforts. We see no reason to attribute to Congress an intent to create so incoherent a system. We also note that there are strong reasons to prefer that a dispute of a debt be in writing; a writing creates a lasting record of the fact that the debt has been disputed and thus avoids a source of potential conflicts.

Id. at 112.

Graziano's reasoning seems persuasive on this basis alone. Therefore, the *Graziano* Court held that the collector did not violate the FDCPA when it stated in its initial section 1692g notice that unless the debtor disputed the debt in writing within thirty days, the debt would be assumed valid. *Id*. at 112.

At the time that Respondents evaluated the state of the law and sent the section 1692g notice to Petitioner, *Graziano* was not the only court to have ruled that a collector did not violate the FDCPA when it stated in its initial section 1692g notice that unless the debtor disputed the debt in writing within thirty days, the debt would be assumed valid. *See, e.g.*, *Jolly v. Shapiro*, 237 F.Supp.2d 888, 894-95 (N.D. Ill. 2002) (finding reasoning of *Graziano* persuasive); *Wallace v. Capital One Bank*, 168 F.Supp.2d 526, 529 (D. Md.

2001) ("if [defendant] invited an oral communication disputing the debt from the debtor, it might induce the debtor to waive her rights under section 1692g(a)(4) and (5) which require a writing to invoke the rights conferred by those sections"); *Sturdevant v. Jolas*, 942 F.Supp. 426, 429 (W.D. Wis. 1996); *Forsberg v. Fid. Nat'l Credit Servs*., No. 03CV2193-DMS(AJB), 2004 WL 3510771, at *4 (S.D. Cal. Feb. 26, 2004) (writing requirement in a section 1692g(a)(3) notice did not violate the FDCPA because a writing requirement was necessary to ensure that the debtor obtained the protections offered under section 1692g(b)); *Savage v. Hatcher*, No. C-2-01-0089, 2002 WL 484986, at *4 (S.D. Ohio Mar. 7, 2002), *rev'd in part on other grounds at* 109 Fed. Appx. 759 (6th Cir. 2004) (inclusion of writing requirement is consistent with the legislative intent underlying the FDCPA); *Flowers v. Accelerated Bureau of Collections, Inc.*, No. 96 C 4003, 1997 WL 136313 (N.D. Ill. Mar. 19, 1997), *rev'd in part on reconsideration on other grounds*, 1997 WL 224987, *6 (N.D. Ill. Apr. 30, 1997) (to effectively "dispute the validity of a debt [or] verify a debt . . . the consumer must do so in writing"); *Morgovski v. Creditors Collection Serv. of S.F.*, No. C-92-0546-VRW, 1995 WL 316970, at *2-3 (N.D. Cal. May 16, 1995), *aff'd*, 92 F.3d 1193 (9th Cir. 1996) (District Court concluded that the only method of properly disputing a debt to trigger protection under the FDCPA was in writing); *Ingram v. Corporate Receivables, Inc.*, No. 02 C 6608, 2003 WL 21018650, at *6 (N.D. Ill. May 5, 2003) (following *Graziano*, the "rule of strict adherence to the statutory language yields when 'the literal

application of a statute will produce a result demonstrably at odds with the intentions of its drafters"); *Grief v. Wilson, Elser, Moskowitz, Edelman & Dicker*, *LLP*, 217 F.Supp.2d 336, 340 (E.D.N.Y. 2002) (permitting debtors to dispute orally reduces the protections afforded to debtors by 1692g); *see also Fasten v. Zager*, 49 F.Supp.2d 144, 149 (E.D.N.Y. 1999) (letter suggesting that the debtor may orally dispute debt contradicted section 1692g's requirements that dispute must be made in writing).[4]

As the above lengthy analysis hopefully makes clear, Respondents' exercise of judgment to include the phrase "in writing" in their notice, particularly given the state of the law in their Circuit (*see, e.g.*, *Savage v. Hatcher*, 109 Fed.Appx. 759 (6th Cir. 2004)), was perfectly understandable and defensible. It was certainly not a product of "ignorance." One court has considered the "Hobson's choice" presented to collectors like Respondents by the diverging interpretations of section 1692g(a)(3) at issue here, and concluded:

> It is easy to imagine that if [the debt collector] had sent another consumer-debtor

[4] The CAC does not mean to suggest that all courts, or even the majority of courts, followed *Graziano*. There are likely an equal, or perhaps greater number, of courts which have held that the inclusion of the words "in writing" violates the FDCPA.

> a collection letter that did not state that dispute messages should be in writing, the recipient of that letter could have sued him for failing to include that statement. That plaintiff would argue that the debt collector had an obligation to state expressly that the message should be in writing in order to give fair notice of what action is required to dispute the debt and to be consistent with *Graziano*. In fear of such a claim, a debt collector who is aware of *Graziano* might reasonably decide to include the writing requirement, as [the debt collector] did in this case.

Castillo v. Carter, No. IP 99-1757-C H/G, 2001 WL 238121, at *12 (S.D. Ind. Feb. 28, 2001).[5]

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[5] Examples of other conflicting legal interpretations of the FDCPA between circuits, between district courts, and even between courts within the same courthouse abound. For example, the question of whether and when a debt collector who leaves a message on a cell phone or answering machine must identify himself as a debt collector under 15 U.S.C. section 1692d(6) and state that he or she is attempting to collect a debt under 15 U.S.C. section 1692e(11) is another such recent issue where the courts disagree. *Compare Foti v. NCO Financial Systems, Inc.,* 424 F.Supp.2d 643, 669 (S.D.N.Y. 2006) (debt collector violated the FDCPA when he left a voice mail message and did not identify himself as a debt collector) *with Biggs v. Credit Collections, Inc.*, No. CIV-07-0053-F, 2007 WL 4034997, at *4 (W.D. Okla. Nov. 15, 2007) (debt collector did not violate the FDCPA by leaving a voicemail message that did not contain certain disclosures because the voice mail message was not a communication); *Fashakin v. Nextel Communications*, No. 05-CV-3080 (RRM), 2009 WL 790350, at *7-8 (E.D.N.Y. Mar. 25,

(Continued on following page)

Thus, the bona fide error defense must be available to debt collectors that actively attempt to make an informed decision about the law and to comply with the FDCPA.

B. The Bona Fide Error Defense Should Be Available to Help Mitigate the Effect of Unanticipated Judicial Interpretation of the Law.

Clearly, a good faith basis existed for reasonable debt collectors, such as Respondents, after diligent research undertaken pursuant to established procedures, to exercise their judgment and determine that the phrase "in writing" should be included in the section 1692g(a)(3) admonition, so as to make it consistent with sections 1692g(a)(4), 1692g(a)(5) and 1692g(b).

In other words, the question becomes: Did Congress intend for a debt collector that is operating in good faith, to be held strictly liable, under these circumstances?

The answer, based on the language of the statute itself, and the purposes behind the statute, is plainly

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2009) (defendant *does not* violate the FDCPA by not disclosing the nature of its calls (*i.e.,* debt collection), when communicating and leaving messages with an employer).

"no." As the Senate Report observes: "A debt collector has no liability however if he violates the act *in any manner*, including with regard to the act's coverage when such violation is unintended and occurred despite procedures designed to avoid such violations." S. Rep. No. 95-382, at 5 (1977). As persuasively stated by one District Court:

> The court doubts that Congress meant to impose liability on debt collectors who do not correctly anticipate the ultimate resolution of such issues that have divided the federal courts in ways that could trigger strict liability in either direction.

Castillo, 2001 WL 238121, at *4 n.1.

"[I]f an attorney acting in good faith exercises an honest and informed discretion . . . the failure to anticipate correctly the resolution of an unsettled principle does not constitute culpable conduct . . . . In short, the exercise of professional judgment rests upon considerations of legal perception and not prescience." *Davis v. Damrell*, 119 Cal.App.3d 883, 889, 174 Cal.Rptr. 257 (1981).

Under these circumstances, courts across the country have correctly held that the bona fide error defense must be available in such instances and, as such, have applied the defense to these types of "errors of law." *See, e.g.*, *Johnson v. Riddle*, 305 F.3d 1107, 1121-24 (10th Cir. 2002) (lawyer's attempts to

collect $250.00 charge while a violation of state law, was nonetheless subject to bona fide error defense); *Jenkins v. Heintz*, 124 F.3d 824, 834 (7th Cir. 1997); *Frye v. Bowman, Heintz, Boscia, Vician, P.C.*, 193 F.Supp.2d 1070, 1085-87 (S.D. Ind. 2002) (lawyer's practice based upon state court acquiescence in procedure was bona fide error); *Knight v. Schulman*, 102 F.Supp.2d 867, 873-75 (S.D. Ohio 1999) (violation of FDCPA arising from actions that ostensibly comported with apparently controlling state law constitutes proper basis for asserting bona fide error defense, even if the law subsequently changes); *Taylor v. Luper, Sheriff & Niedenthal Co., L.P.A.*, 74 F.Supp.2d 761, 765 (S.D. Ohio 1999) (lawyer's reasonable belief that Ohio state law permitted attorney fees to be added to a debt was subject to the bona fide error defense); *Watkins v. Peterson Ent., Inc.*, 57 F.Supp.2d 1102, 1107 (E.D. Wash. 1999) (collector's additional charges were ruled violation of FDCPA, though permitted by state courts, and held bona fide error); *Jenkins v. Union Corp*., 999 F.Supp. 1120, 1141 (N.D. Ill. 1998) (attorneys' attempt to collect client's $25.00 service charge was bona fide error); *Castillo,* 2001 WL 238121, at *4 n.1; *accord Heintz v. Jenkins*, 514 U.S. 291, 295-96 (1995) (attorneys are debt collectors under the FDCPA and bona fide error applies to them); J. Flaccus, *FDCPA: Lawyers and The Bona Fide Error Defense*, 2001 Ark. L. Notes, 95, 97 (2001) (reviewing cases and finding bona fide error defense often permitted when the controlling state legal authority is unclear, or unsettled).

IV. The Bona Fide Error Defense Should Be Available in All Circumstances When the Debt Collector Can Prove a Bona Fide Error of Law.

This case involves Respondents' good faith interpretation as to the requirements of the FDCPA itself, yet that is not the only "mistake of law" to which the bona fide error defense may apply. While in her brief she primarily focuses on the misinterpretation of the FDCPA itself, Petitioner also argues that the bona fide error defense should not be available for any other legal error. The "question presented" by Petitioner is very broad and is not limited to legal errors based on the interpretation of the requirements of the FDCPA. Petitioner spends the last three pages of her brief arguing that the Court should make a broad rule instead of articulating a narrow rule based on the facts of the case at hand. In contrast, the United States, in its *amicus curiae* brief, presents a much narrower question: "Whether [the bona fide error defense] applies to a violation of the FDCPA that results from a debt collector's incorrect interpretation of the statute." Brief of the United States, p. 1.

The CAC respectfully submits that these are very different questions to which a one-size-fits-all analysis is not appropriate. In an effort to illustrate this point, the CAC provides a brief analysis of selected cases from across the country that have found the FDCPA's bona fide error defense applies to legal errors.

A. *Johnson v. Riddle* Correctly Applied the Bona Fide Error Defense to an Error of Law Arising From a Good Faith Interpretation of a Previously Unconstrued State Statute.

In *Johnson v. Riddle*, *supra*, the plaintiff brought an action against a collection attorney, Jessie Riddle, who had attempted to collect a $250 "penalty" from Ms. Johnson, in addition to the face amount of the bad check she had written. The penalty was arguably permitted under Utah law but the Tenth Circuit determined the extra amount sought in the form of the "penalty" constituted a violation of the FDCPA. Nevertheless, the Tenth Circuit found that the bona fide error defense could be asserted by the attorney – as a complete defense. *Johnson*, 305 F.3d at 1111. Consequently, the Tenth Circuit remanded for a determination as to whether the attorney could prove the three elements of the defense. The *Johnson* Court wrote as follows:

> . . . the plain language of the FDCPA suggests no intent to limit the bona fide error defense to clerical errors. To the contrary, § 1692k(c) refers by its terms to any "error" that is "bona fide." We find no indication in the legislative history that Congress intended this broad language to mean anything other than what it says. Indeed, to the extent that the legislative history speaks to this issue, it suggests that the narrow reading advocated by Johnson is incorrect. In describing the bona fide error exception, the

> Senate Report stated: "A debt collector has no liability, however, if he violates the act *in any manner*, including with regard to the act's coverage, *when such violation is unintentional* and occurred despite procedures designed to avoid such violations." S. Rep. No. 95-382, at 5 (emphasis added).

Id. at 1123.

The Tenth Circuit's analysis of the FDCPA's bona fide error defense to an attorney's good faith mistake of law relied upon language from this Court in *Heintz v. Jenkins, supra*. The *Johnson* Court wrote:

> Our conclusion is bolstered by the Supreme Court's reasoning in *Heintz*, 514 U.S. at 295. . . . *The Court apparently believed that the bona fide error defense would apply in at least a portion of the cases where the lawyer brought suit to collect an amount beyond that legally owed by the debtor. This reasoning at least suggests that the defense is available for mistakes of law*, because presumably mistakes of law may contribute to the reasons why some of the underlying debt collection procedures are lost.

Id. at 1123 (emphasis added).

The *Johnson* Court concluded its analysis as follows:

> [A]bsent a clearer indication that Congress meant to limit the defense to clerical errors,

> we instead adhere to the unambiguous language of the statute as supported by the available legislative history.

Id. at 1123-24 (footnote omitted).

In sum, the Tenth Circuit Court of Appeals in *Johnson* found the bona fide error defense was properly available to collection attorneys as an affirmative defense to liability stemming from their innocent mistakes of law. A lawyer-debt collector, like other collectors, generally, can innocently commit an "error" when he or she mistakenly sues for a fee or charge beyond that legally owed by the debtor. *Id.* at 1123, 1125.

B. *Jenkins v. Heintz* Correctly Applied the Bona Fide Error Defense to Incorrect Legal Positions.

In *Jenkins v. Heintz*, 124 F.3d at 824, the U.S. Court of Appeals for the Seventh Circuit addressed the applicability of the FDCPA's bona fide error defense to attorneys who err, mistakenly seeking a remedy on behalf of their creditor clients. *Jenkins* involved a debtor who failed to make payments on a car that she had purchased which was repossessed and eventually sold at auction. The defendants were collection lawyers who sued Jenkins to recover the deficiency.

Jenkins countersued the lawyers in federal court under the FDCPA. Jenkins claimed that the original

creditor had charged an amount in excess of the amount still owed, and that the lawyers knew, or should have known this when they attempted to collect the deficiency.

The attorney defendants asserted the bona fide error defense. Plaintiff argued that the defense did not apply to errors of law or legal judgment by attorney debt collectors. Rejecting this position, the District Court found the bona fide error defense applied, and plaintiff appealed.

The Court of Appeals in *Jenkins* cited the *Johnson* analysis with approval. Moreover, the Court flatly rejected the plaintiff's effort to analogize the bona fide error defense of the FDCPA to that found in the TILA, as Petitioner attempts to do here. *Jenkins,* 124 F.3d at 832 n.7.

The Court noted that applying the bona fide error defense to attorney debt collectors would not undermine the purposes of the statute:

> Filing suit, as defendants did here, should not give lawyers dispensation from the FDCPA; the law still applies to them. And it does not hold them to a different standard. The Act reads that debt collectors are not liable for attempting to collect validly certified amounts owed their client. It does not say that the collector's status as an attorney should add a requirement of independent legal analysis for each aspect of the creditor's claim. . . . To interpret the FDCPA as not to treat lawyers and debt

> collectors equally would contort the statute's meaning, and ignore Congress' drafting and the Supreme Court's interpretation. . . . Lawyers meet the definition of debt collectors, even while litigating; thus the same standards apply to "attorney debt collectors" as apply to other debt collectors.

Jenkins, 124 F.3d at 833-34.

In sum, the *Jenkins* Court's analysis concludes that attorney debt collectors must be held *to the same standards with other* debt collectors under the FDCPA, and thus must have available the same defenses – including the bona fide error defense.

C. *Frye v. Bowman* Correctly Applied the Bona Fide Error Defense to an Error of Law Arising From the Use of a Form Summons Published by the State Courts Upon Which the Collectors Relied.

In *Frye,* the plaintiffs asserted a class action against attorney debt collectors alleging that the summonses the lawyer had served on consumers in debt collection lawsuits violated the FDCPA *because the summons misstated the law*. *Frye*, 193 F.Supp.2d at 1089. The plaintiffs further contended that because the defendants had *committed a mistake of law*, the FDCPA's bona fide error defense did not apply. However, the District Court rejected this argument and instead found that the bona fide error defense

applied to the collection lawyer's "reasonable" mistake of law.

The *Frye* Court found it significant that the defendant attorneys there had relied upon forms that had been published by the Indiana Superior Courts and the Indiana Supreme Court, for use as a template from which to model other summonses, including the ones in question. *Id.* at 1086. The *Frye* Court found the Indiana court's "tacit approval" of the defendant attorney's legal interpretation of Indiana law as set forth in their summonses to be sufficient to raise the bona fide error defense:

> Thus, Bowman has produced uncontradicted evidence that the language challenged by the Fryes in its Summonses was consistent with language in the summons forms available from state court clerks' offices submitted in this case. As a result, the alleged defects or mistakes in the Summonses were tacitly approved by the state court clerks. Following the reasoning of *Watkins* and *Baker's* implication that mistakes of law may in some circumstances entitle a debt collector to the defense, the court finds that Bowman is entitled to raise the bona fide error defense to the alleged violations of the FDCPA, provided Bowman proves the violations were unintentional and the maintenance of procedures reasonably adapted to avoid such errors. This conclusion is consonant with the Supreme Court's indication in *Heintz v. Jenkins* that the FDCPA's provisions should be read in such a way as to avoid anomalies

> in lawyers' litigation activities. *See* 514 U.S. at 296-97, 115 S.Ct. 1489. . . .

Id. at 1086-87.

As noted by the *Frye* Court, it would be troubling to hold a debt collector liable for misstatements of law when the collector committed the mistake by relying on court sanctioned language.

D. *Watkins v. Peterson Enterprises* Correctly Applied the Bona Fide Error Defense to an Error of Law Arising From Procedural Errors in Garnishments Ratified by State Courts.

In *Watkins*, *supra*, the plaintiffs brought an FDCPA action against a collection agency for violation of sections 1692e and 1692f. The plaintiffs asserted the agency, through its attorneys, was not permitted to seek, much less recover, costs and attorneys' fees associated with the filing of either (1) writs of garnishment or (2) pay orders. The defendants raised the defense of bona fide error, submitting "an affidavit stating not only that its collection practices were based upon advice of counsel, but *they were accepted by courts throughout the state*." *Watkins*, 57 F.Supp.2d at 1107 (emphasis added).

The Court began its analysis of the pay order issue with an analysis of the decision in *Baker v. G.C. Services*, 677 F.2d 755 (9th Cir. 1982), the ostensibly

controlling Ninth Circuit authority. In the Court's own words:

> Peterson's effort to invoke § 1692k(c) faces a significant obstacle. As the plaintiffs point out, "[r]eliance on advice of counsel or a mistake about the law is insufficient by itself to raise the bona fide error defense. . . .
>
> Peterson submits the plaintiffs are wrong in asserting that a mistake of law can never constitute a bona fide error. According to Peterson, the fact the *Baker* decision twice employs the phrase "by itself" is significant. To Peterson's way of thinking, the Circuit Court's repeated use of that phrase implies there are circumstances in which a mistake of law can constitute a bona fide error. This is such a case, Peterson insists. . . .
>
> Peterson has a point. . . . This, then, is not a situation in which an unlawful practice occurred solely as a result of a debt collector's mistaken view of the law. . . . As a result, *Baker* is not controlling.

Watkins, 57 F.Supp.2d at 1107-08.

The court in *Watkins* ultimately concluded that: "*Baker* is not controlling" and applied the bona fide error defense.[6] *Id*. at 1108.

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[6] Of note, however, the Court refused to immunize defendant's collection of fees associated with unsuccessful writs by application of the bona fide error defense. The Court

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The *Watkins* Court applied the bona fide error defense to mistakes of law arising from a collector's reliance on procedures required by state courts. This holding is consistent with the legislative history and expressed Congressional intent underlying the FDCPA's bona fide error defense.

E. *Taylor v. Luper* Correctly Applied the Bona Fide Error Defense to an Error of Law Arising From a Divergence in How State Courts Interpreted State Law.

In *Taylor, supra,* the plaintiffs alleged that the defendant attorneys had violated the FDCPA by attempting to collect attorney's fees upon a judgment. The plaintiffs claimed that recovery of attorney's fees by a creditor was not permitted under Ohio law and, as a result, the attorneys had violated section 1692f(1) of the FDCPA.

Initially, the District Court directed its attention to the public policy issues implicated if it accepted the proposition that the FDCPA's bona fide error provision applied only to mere clerical mistakes.

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explained that no "state court ever rule[d] that Peterson was entitled to such fees." *Watkins*, 57 F.Supp.2d at 1107. In a footnote, the Court recognized that judgments that support the attorney's position and bona fide belief are particularly relevant to the bona fide error defense.

> Under plaintiffs' view, the bona fide error defense could never be invoked by a lawyer who, in good faith, asserted a claim on behalf of a client if a court later ruled that all or part of the claim was unfounded. Under plaintiffs' view, the lawyer would be strictly liable under the FDCPA because the lawyer made a false representation of the character, amount or legal status of the debt, a violation of § 1692e(2)(A) of the Act, or because the lawyer attempted to collect an amount which was not permitted by law, a violation of § 1692f(1) of the Act. If plaintiffs' view is correct, the FDCPA poses serious problems for lawyers.

Taylor, 74 F.Supp.2d at 764-65.

The District Court noted:

> Here, the mistake of law relied upon to invoke the bona fide error defense was not a mistake about the requirements of the FDCPA itself. It was instead a mistake about whether the collection of a certain fee, charge or expense incidental to the principal obligation, attorneys fees, was permitted under the law of the state of Ohio.

Id. at 765.

In holding that the attorney had established the bona fide error defense, the Court noted: "[L]awyers should not be held strictly liable when they discharge their ethical duty to a client by asserting in good faith

a claim which is ultimately rejected by a court." *Id.* at 765.

The foregoing cases demonstrate the variety of bona fide legal errors that may arise in the context of debt collection. Good faith mistakes of law are not limited to incorrect interpretations of the FDCPA, nor should the bona fide error defense be so limited.

CONCLUSION

In sum, good faith legal errors may arise in a variety of contexts. The error may arise, as it did here, with respect to the requirements of the FDCPA itself. The errors may also arise based on a good faith misinterpretation of state law. The inadvertent error may have been a standard industry practice that is attacked as a violation of the FDCPA for the first time. Or the inadvertent error may have been explicitly or implicitly approved by other state or federal courts.

In every instance, the bona fide error defense requires a fact intensive inquiry with respect to collector's procedures designed to prevent errors and with respect to the unintentional nature of the violation. The burden of proof rests on the collector asserting the defense. Inclusion of legal errors under the framework of the bona fide error defense does not diminish the effectiveness of the FDCPA or limit its protections to consumers. However, a blanket rule of law holding that a legal error can never be the basis for the bona fide error defense leaves debt collectors, such as Respondents here, in an impossible situation and competitively disadvantaged. *Compare* 15 U.S.C. § 1692(e).

For all of the forgoing reasons, *amicus curiae,* the California Association of Collectors, respectfully submits that the ruling of the Sixth Circuit below should be affirmed.

Respectfully submitted,

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