No. 19-1325

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Robert L. Bender, et al.,

Plaintiffs-Appellants,

v.

Elmore & Throop, P.C.,

Defendant-Appellee.

On Appeal from the United States District Court
for the District of Maryland

Hon. Catherine C. Blake

Case No. 1:18-cv-979

Brief of Amicus Curiae Consumer Financial Protection Bureau in Support of Plaintiffs-Appellants and Reversal

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INTEREST OF AMICUS CURIAE

The Consumer Financial Protection Bureau is an agency of the United States charged with promulgating rules under the Fair Debt Collection Practices Act and enforcing compliance with the Act's requirements. *See* 15 U.S.C. § 1692*l*(b)(6), (d); 12 U.S.C. § 5512(b)(1), (4). Congress directed the Bureau in carrying out these duties to seek to "enforce Federal consumer financial law consistently for the purpose of ensuring … that markets for consumer financial products and services are fair, transparent, and competitive" and to ensure that "consumers are protected from unfair, deceptive, or abusive acts or practices." 12 U.S.C. § 5511(a)-(b).

The FDCPA authorizes individuals to bring suit for violations of the Act. 15 U.S.C. § 1692k. This case presents the question whether a private FDCPA action alleging violations that took place less than one year before the action was filed is barred by the Act's one-year statute of limitations. *See id.* § 1692k(d). The district court concluded that such an action was time-barred because the defendant had engaged in other, similar conduct more than one year before the action was filed. Because the private right of action under the FDCPA serves as an important supplement to the Bureau's own enforcement efforts, the Bureau has a substantial interest in the Court's resolution of the question presented.

STATEMENT

A. The Fair Debt Collection Practices Act

Congress enacted the FDCPA in 1977 in light of "abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors" and the serious harms these practices cause to individual consumers. Pub. L. No. 95-109, § 802(a), 91 Stat. 874, 874 (codified at 15 U.S.C. § 1692(a)). Congress intended the statute to "eliminate abusive debt collection practices by debt collectors." 15 U.S.C. § 1692(e).

The FDCPA generally prohibits "any" harassing or abusive conduct, "any" deceptive or misleading representation, and all "unfair or unconscionable means" used by debt collectors in connection with collecting debts. *Id.* §§ 1692d-1692f. It lists more than two dozen examples of prohibited abusive, misleading, and unfair debt collection practices. *Id.* Two such practices are relevant here. First, the Act prohibits a debt collector from falsely representing "the character, amount, or legal status of any debt." *Id.* § 1692e(2)(A). Any such misrepresentation "is a violation" of the Act's prohibition on misleading practices. *Id.* § 1692e. Second, the Act prohibits a debt collector from adding any amount to the underlying debt unless such additional amount is authorized by law or the agreement that

created the debt. *Id.* § 1692f(1). Attempting to collect such an amount "is a violation" of the Act's prohibition on unfair practices. *Id.* § 1692f.

In addition, the FDCPA generally prohibits a debt collector from "communicat[ing] further" with a consumer about a debt—with certain exceptions not relevant here—once the consumer has notified the debt collector in writing that he or she "refuses to pay" or wishes the debt collector "to cease further communications." *Id.* § 1692c(c); *see also Heintz v. Jenkins*, 514 U.S. 291, 296 (1995).

To ensure compliance with these requirements, Congress provided for administrative enforcement by a number of federal agencies—now chiefly the Bureau and the Federal Trade Commission. *See* 15 U.S.C. § 1692*l*. In addition, Congress created a "calibrated scheme of statutory incentives to encourage self-enforcement" by affected consumers. *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. 573, 603 (2010); *see also* S. Rep. No. 95-382, at 5 (1977) (Act was meant to be "primarily self-enforcing"); H. Rep. No. 95-131, at 3 (1977) (referring to "the important right to stop collection abuses by private suit").

The FDCPA's private-enforcement provision authorizes affected consumers to pursue remedies against "any debt collector who fails to comply with any provision" of the Act. 15 U.S.C. § 1692k(a). It also

establishes affirmative defenses for debt collectors in cases where the debt collector has relied in good faith on an agency advisory opinion, or in cases of "bona fide error" where the debt collector has reasonable procedures in place to avoid the violation and the violation was unintentional. *Id.* § 1692k(c), (e). The Act includes a statute of limitations that requires consumers to file suit "within one year from the date on which the violation occurs." *Id.* § 1692k(d).

B. Facts and Procedural History

Plaintiffs Robert and Deborah Bender are Maryland homeowners. Defendant Elmore & Throop, P.C., is a debt-collection law firm retained by the Benders' homeowners association. In April 2016, the Benders found a letter from Defendant taped to their door. The letter, which was dated February 2016, stated that they had failed to pay $77.09 in quarterly assessment charges to the association. J.A. 10-11, ¶¶ 21-22. It also stated that they now owed that amount plus roughly $1,000 in fees, costs, and attorney's fees. J.A. 10-11, ¶ 22. The Benders disputed the outstanding balance and provided proof of timely payment of the assessments. J.A. 11, ¶ 24. In response, Defendant acknowledged receipt of those payments but nonetheless claimed that the Benders owed an outstanding balance including costs, fees, and interest. J.A. 11, ¶ 25.

Following an additional demand for payment, the Benders wrote to Defendant in May 2016 requesting that it cease communications about the allegedly outstanding debt. J.A. 12, ¶¶ 27-29. Instead, Defendant continued to pursue the debt, sending a letter demanding payment in February 2017, and another in March 2017. J.A. 13, ¶¶ 35, 37.

These efforts continued into 2018. In January 2018, during an unrelated phone conversation about a meeting of the homeowners association, Defendant once more pressed the alleged debt and warned that a lien had been placed on the Benders' home. J.A. 15, ¶¶ 44-48. The following month, Defendant sent a letter purporting to verify the debt and demanding an amount that, with additional fees, had now risen to nearly $1,500. J.A. 15-16, ¶¶ 50-52; J.A. 22, ¶ 87.

The Benders filed suit under the FDCPA two months later, in April 2018. They alleged that Defendant violated 15 U.S.C. § 1692c(c) by continuing to contact them about the purported debt—via the January 2018 phone call and February 2018 letter—even after they properly requested that Defendant cease such communications. The Benders further alleged that Defendant's February 2018 letter violated the prohibitions on deceptive and unfair collection practices in 15 U.S.C. §§ 1692e and 1692f

because it attempted to collect amounts that were not owed and that were not authorized by law or the agreement creating the debt.

The district court granted Defendant's motion to dismiss on the basis that the suit was untimely. The FDCPA's statute of limitations authorizes private enforcement actions "within one year from the date on which the violation occurs." *Id.* § 1692k(d). The district court interpreted this provision to mean that the "the limitations period for FDCPA claims begins from the date of the *first* violation, and subsequent violations of the same type do not restart the limitations period." J.A. 233 (emphasis added).

The court thus held that the statute of limitations for the Benders' claim under Section 1692c(c) expired no later than March 2018, or one year after Defendant sent its March 2017 collection letter in disregard of the Benders' request to cease communications about the debt. J.A. 234-35. And it found that the limitations period expired for the Benders' claims under Sections 1692e and 1692f in February 2017, or one year after the date of Defendant's initial demand letter. J.A. 234. The court concluded that the January 2018 phone conversation and the February 2018 letter were not "independent violations of the FDCPA" but instead "merely subsequent iterations of the same allegedly unlawful debt collection practice initiated at a date preceding the actionable window." J.A. 233.

SUMMARY OF ARGUMENT

The FDCPA's statute of limitations provides that an action to enforce liability under the Act may be brought "within one year from the date on which the violation occurs." 15 U.S.C. § 1692k(d). "[T]he vast majority of federal cases that have considered the issue"—including four courts of appeals—have concluded that this one-year period runs separately for each discrete violation of the Act. *Solomon v. HSBC Mortg. Corp.*, 395 F. App'x 494, 497 n.3 (10th Cir. 2010). As a result, a plaintiff is not time-barred from challenging violations that occurred less than one year before he or she filed suit even if the defendant may have committed other, similar violations that are outside the limitations period.

The Bureau agrees with the vast majority of federal courts. The reading they have adopted follows from the plain text of the FDCPA, which requires plaintiffs to file suit within one year of when "the violation" occurs, not of when the "first similar violation" occurs. It is also consistent with how courts typically apply limitations provisions in other statutes, and with the express purpose of the FDCPA "to eliminate abusive debt collection practices by debt collectors." 15 U.S.C. § 1692(e). That purpose would be frustrated by a rule that allowed debt collectors to continue engaging in

abusive practices with impunity, so long as consumers did not sue within one year of the debt collector's initial violation.

Here, the conduct alleged in Plaintiffs' complaint would, if proved, constitute discrete violations of the FDCPA. It is a "violation" of the Act to communicate about a debt with a consumer who has requested in writing that such communications cease, or to make a misleading representation or use an unfair means in attempting to collect a debt. Indeed, this Court has held that "[a] separate violation [of the FDCPA] occurs every time a prohibited threat or misrepresentation is made … ." *United States v. Nat'l Fin. Servs., Inc.*, 98 F.3d 131, 141 (4th Cir. 1996). Because these discrete violations are alleged to have occurred just months before Plaintiffs filed suit, the claims challenging those violations are not barred by the one-year statute of limitations.

ARGUMENT

I. The FDCPA's One-Year Statute of Limitations Runs Separately for Each Discrete Violation of the Act

The FDCPA's requirement that private actions be brought within one year of when "the violation" occurs means what is says: A plaintiff may sue to challenge violations that occurred in the previous year. There is no exception for violations that are similar to earlier time-barred violations. The district court's contrary interpretation is inconsistent with the statutory

text, the great majority of case law, and Congress's express purpose in enacting the FDCPA.

1. Statutory text. The Supreme Court has said "time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous, then, this first canon is also the last: judicial inquiry is complete." *Crespo v. Holder*, 631 F.3d 130, 136 (4th Cir. 2011) (quoting *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992)). Here, the FDCPA's statute of limitations is unambiguous that a consumer may challenge a violation that occurred in the prior year, regardless of whether that violation may be related to earlier, time-barred violations.

The Act's limitations provision states that private actions "may be brought … within one year from the date on which the violation occurs." 15 U.S.C. § 1692k(d). "In interpreting the plain language of a statute, [this Court] give[s] the terms their ordinary, contemporary, common meaning," absent some indication of contrary congressional intent. *Crespo*, 631 F.3d at 133 (quotation marks omitted). A "violation" is, of course, a "breach of the law" or "the contravention of a right or duty." BLACK'S LAW DICTIONARY (10th ed. 2014). So the FDCPA's substantive requirements define what is a violation under the Act.

Those provisions prohibit a debt collector from using "any" deceptive or misleading representation and all "unfair or unconscionable means" in connection with collecting a debt. 15 U.S.C. §§ 1692e, 1692f. They further clarify that it "is a violation" of those provisions to misrepresent the "character, amount, or legal status" of a debt or to unfairly seek to collect amounts not authorized by law or the underlying agreement. *Id.* §§ 1692e(2)(A), 1692f(1). The Act also generally requires a debt collector to "cease further communications" about a debt with a consumer who has notified the debt collector in writing that he or she refuses to pay or wishes the debt collector to cease such communications. *Id.* § 1692c(c).

Under the plain text of the Act, a consumer may sue to challenge a debt collector's violations of these provisions "within one year from the date on which the violation occurs." Nothing in the Act suggests instead that consumers must file suit within one year of when a *first* violation occurs—even a violation they do not seek to challenge in court. The district court's contrary reading finds no basis in the words of the statute.

2. *Case law*. "[T]he vast majority of federal cases that have considered the issue" have agreed that the FDCPA's statute of limitations runs separately for each discrete violation of the Act. *Solomon v. HSBC Mortg.*

Corp., 395 F. App'x 494, 497 n.3 (10th Cir. 2010). That includes all four of this Court's sister circuits to have faced the question.

The Eighth Circuit, for example, recently adopted this view in *Demarais v. Gurstel Chargo, P.A.*, 869 F.3d 685 (8th Cir. 2017). The court there held that a consumer had timely brought FDCPA claims alleging that the defendant engaged in misleading and unfair collection practices during an appearance in a state-court collection action. It rejected the district court's view that the claims were time-barred because they "related back" to the defendant's initial violation—the filing of the state-court action—which fell outside the limitations period. *Id.* at 694. The Eighth Circuit explained that "[i]f a debt collector violates the FDCPA, an individual may sue to enforce FDCPA liability within one year of that violation. It does not matter that the debt collector's violation restates earlier assertions." *Id.*

The Tenth Circuit took the same view in *Llewellyn v. Allstate Home Loans, Inc.*, 711 F.3d 1173 (10th Cir. 2013). Although the court ultimately held that the plaintiff's FDCPA claims were untimely, it did so only after "evaluat[ing] each of [Plaintiff's] arguments individually to determine whether any portion of Plaintiff's claim is not barred by the statute of limitations." *Id.* at 1188. The Tenth Circuit emphasized this point by citing its earlier decision in *Solomon*, in which it reversed a district court's ruling

that the statute of limitations began to run for all of the plaintiff's FDCPA claims when the defendant first tried to collect the debt. "For statute-of-limitations purposes," the Tenth Circuit explained, "discrete violations of the FDCPA should be analyzed on an individual basis." *Llewellyn*, 711 F.3d at 1188 (quoting *Solomon*, 395 F. App'x at 497).

The Sixth Circuit too has consistently adopted this reading in a series of unpublished opinions, beginning with *Purnell v. Arrow Financial Services, LLC*, 303 F. App'x 297 (6th Cir. 2008). In *Purnell*, the court distinguished between "discrete violations of the statute occurring within the limitations period," which a plaintiff may challenge, and events that are merely "the later effects of an earlier time-barred violation," which on their own do not make an action timely. *Id.* at 302. It concluded that separate communications that misrepresented the "character, amount, or legal status" of the debt and unfairly sought to collect amounts not authorized by the underlying agreement "each would constitute a discrete violation of the FDCPA." *Id.* at 303. To the extent the plaintiff could show that such communications occurred within the limitations period, such claims would be timely, notwithstanding allegations of earlier violations. *Id.* at 303, 299. Other panels of the Sixth Circuit have since followed *Purnell*. *See Michalak*

v. LVNV Funding, LLC, 604 F. App'x 492, 493-94 (6th Cir. 2015); *Slorp v. Lerner, Sampson & Rothfuss*, 587 F. App'x 249, 259 (6th Cir. 2014).

The Ninth Circuit likewise has held in an unpublished decision that allegedly unfair collection practices used to collect a single debt "constituted a series of related but discrete acts rather than a continuing course of conduct." *McNair v. Maxwell & Morgan PC*, 728 F. App'x 751, 752 (9th Cir. 2018). The Ninth Circuit thus rejected the argument that the plaintiff could pursue the older conduct on a "continuing violation" theory, and it affirmed the district court's statute-of-limitations analysis, which considered each violation separately and held that only the two most recent were timely. *Id.*; *see also Baker v. Midland Funding, LLC*, 692 F. App'x 956, 958 (9th Cir. 2017) (FDCPA claims not time-barred *in toto* merely because the violations began outside the limitations period; allegations could involve some "separate violations" within the limitations period).[1] [2]

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[1] As well, in *Gajewski v. Ocwen Loan Servicing*, 650 F. App'x 283, 286-87 (7th Cir. 2016), the Seventh Circuit appeared to take it as a given that an FDCPA claim could be timely even if the alleged violation was preceded by other violations that fell outside the limitations period. *See also Tabiti v. LVNV Funding, LLC*, No. 13-cv-7198, 2019 WL 1382235, at *7, 10-11 (N.D. Ill. Mar. 27, 2019) (citing *Gajewski* for the proposition that later discrete violations of the FDCPA "began a new 'one-year limitations period'").

[2] The district court sought to distinguish several of these decisions, but its analysis rested on factual distinctions that ultimately make no legal difference. *See* J.A. 235-36. For example, the district court observed that in

The way these other circuits have interpreted the FDCPA's statute of limitations is in keeping with the ordinary way that courts apply limitations provisions in other statutes. For example, the Supreme Court has explained that under the Copyright Act's statute of limitations, "when a defendant has engaged … in a series of discrete infringing acts, the copyright holder's suit ordinarily will be timely … with respect to more recent acts of infringement (i.e., acts within the three-year window), but untimely with respect to prior acts of the same or similar kind." *Petrella v. Metro-Goldwyn-Mayer, Inc.*, 572 U.S. 663, 672 (2014). The Court took the same approach in *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101, 113 (2002), where it considered the time bar in Title VII for filing charges of discrimination and concluded that "[e]ach discrete discriminatory act starts a new clock for filing charges alleging that act." Nothing about the FDCPA or its statute of limitations suggests that it should function any differently.

The only federal appellate decisions the Bureau has found that appear to endorse the contrary view are a pair of unpublished per curiam orders by

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Solomon, "the balance of the violations, including new types of alleged violations, occurred within the limitations period," whereas here, "the bulk of allegedly unlawful activity occurred outside the limitations period." J.A. 236 & n.2. But nothing in the text of Section 1692k(d), or elsewhere in the Act, suggests that such a distinction matters for whether a plaintiff can challenge violations that occurred within the limitations period.

this Court. Those decisions, which are non-precedential, do not bind this panel. Moreover, their persuasive value in this case is limited by the fact that they did not seek to articulate this Court's own analysis of the Act's limitations provision or address the different reading of that provision that has been applied by four other circuits.

In *Bey v. Shapiro Brown & Alt, LLP*, 584 F. App'x 135 (4th Cir. 2014), this Court affirmed a district court decision that, among other things, dismissed FDCPA claims as untimely based on reasoning similar to the district court's here. The Court affirmed in a one-paragraph order stating only that it saw no "reversible error" and thus would affirm "for the reasons stated by the district court." In *Jackson v. Ocwen Loan Servicing, LLC*, 747 F. App'x 159 (4th Cir. 2019), this Court affirmed a similar district court decision, again without setting out its interpretation of Section 1692k(d). In these circumstances, and in light of the underlying merits of the question presented, the two unpublished orders should not weigh heavily in this panel's consideration of this case. *Cf. Collins v. Pond Creek Mining Co.*, 468 F.3d 213, 219-21 (4th Cir. 2006) (finding a prior unpublished opinion unpersuasive where its analysis of the issue was "confined to a single conclusory sentence").

To be sure, a number of district courts have held, as the district court did here, that "the limitations period for FDCPA claims begins from the date of the first violation, and subsequent violations of the same type do not restart the limitations period." J.A. 233. Their reasoning, however, is not persuasive. For example, some district courts have expressed a policy concern that FDCPA claims could be "kept alive indefinitely because each new communication would start a fresh statute of limitations." *Sierra v. Foster & Garbus*, 48 F. Supp. 2d 393, 395 (S.D.N.Y. 1999). But in that scenario, it is only a debt collector's repeated violations that would expose it to further liability. Nor would liability for each violation be "indefinite"—far from it. Instead, a claim challenging a particular violation could be barred on timeliness grounds after just one year.

District courts have also expressed concern about "continuing violation" theories under which plaintiffs may reach conduct outside the limitations period on the basis of more recent conduct. *E.g.*, *Kirscher v. Messerli & Kramer, P.A.*, No. 05-cv-1901, 2006 WL 145162, at *4-5 (D. Minn. Jan. 18, 2006). But that theory is simply not implicated by applying Section 1692k(d) according to its terms and allowing plaintiffs to challenge discrete violations that occurred within the limitations period, notwithstanding that other violations may be outside the limitations period.

See Solomon, 395 F. App'x at 497 n.3 ("The rule should not be confused … with a determination that defendants' collection activities amounted to a continuing violation, which generally allows later claims to bring earlier actions within the statute of limitations.").

At bottom, many of these decisions, including the district court's in this case, appear to assume—mistakenly—that separate efforts to collect a debt cannot constitute separate violations of the FDCPA if they concern the same debt. *E.g.*, J.A. 234 ("[T]he account ledger reports provided in 2018, both over the phone and in the letter, were for the same underlying debt as initially claimed by the defendant in 2016. Therefore, the statute of limitations expired on February 27, 2017 … ."); *Fontell v. Hassett*, 870 F. Supp. 2d 395, 404 (D. Md. 2012) ("Although each [collection] notice was undoubtedly unique …, the notices all related to collection of the same underlying debt.").

That conclusion finds no support in the Act itself, which makes clear, for example, that it is a discrete "violation" to employ any misleading or unfair collection practice. *See* 15 U.S.C. §§ 1692e, 1692f; *see also id.* § 1692k(a) (debt collector that "fails to comply" with "any provision" in the Act is liable). As these provisions demonstrate, the FDCPA is not only or even primarily addressed to the existence of debts themselves but to the

means by which debt collectors seek to collect them. *See, e.g.*, *id.* § 1692(e) ("It is the purpose of this title to eliminate abusive debt collection *practices* by debt collectors…"). A debt collector that repeatedly uses prohibited tactics trying to collect the same debt repeatedly violates the statute.

3. Congressional purpose. The majority view of the FDCPA's statute of limitations is also consistent with the central purpose of the Act: "to eliminate abusive debt collection practices by debt collectors." *Id.* In enacting the FDCPA, Congress was concerned by the "abundant evidence" of abusive, deceptive, and unfair collection practices by debt collectors, practices that Congress found "contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy." *Id.* § 1692(a); *see also* H. Rep. No. 95-131, at 4 ("[T]he facts of frequent consumer abuse and inadequate Federal or State regulation … make this legislation necessary and appropriate."). The plain-language reading of the Act's limitations provision that most courts have adopted neatly fits the Act's objective of allowing consumers "to enforce … liability" for recent violations, 15 U.S.C. § 1692k(d), and "to stop collection abuses" via private actions, H. Rep. No. 95-131, at 3.

In contrast, the atextual reading adopted by the district court would thwart the purposes of the Act because it would serve to "immunize debt

collectors from later wrongdoing." *Solomon*, 395 F. App'x at 497 n.3. Under the district court's view, a debt collector's past violations would effectively shield it from liability for similar violations in the future so long as a consumer did not sue within a year of the first violation. The absurd result would be that a debt collector could continue to engage in exactly those activities that Congress sought to prohibit, merely on the ground that it had been doing so for a long time. *E.g.*, *Costley v. Bank of Am., N.A.*, No. 13-cv-02488, 2017 WL 5564641, at *6-7 (D. Md. Nov. 20, 2017) (consumer who "began receiving harassing telephone calls, multiple times a day, beginning in March 2011 and continuing through June 2013" and sued in August 2013 was time-barred from challenging *any* of the calls).

Another result of the district court's rule would be to create new incentives for extra FDCPA litigation. A consumer who did not rush to court to challenge any initial violation could wind up being barred from challenging later abusive attempts to collect the same debt. This would seem to hold even in cases where the debt collector's later attempts escalate to become more egregious or injurious than its initial efforts had been, or where the consumer reasonably thought that collections efforts had ceased, only for them to start back up later. There is no indication in the text or

legislative history of the FDCPA that Congress sought to create that spur to consumers filing protective suits they would not otherwise choose to bring.

At the same time that it would undermine the purposes of the FDCPA, the district court's reading would not even serve to advance the general purposes of statutes of limitations: to "promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared." *Gabelli v. SEC*, 568 U.S. 442, 448 (2013). Those objectives are fully satisfied by a rule that bars plaintiffs from reaching violations outside Act's one-year limitations period while allowing them to challenge more recent violations. Instead of eliminating stale claims, the rule adopted by the district court would bar fresh ones.

II. Plaintiffs Have Alleged Discrete Violations of the FDCPA Taking Place Within the One-Year Limitations Period

Plaintiffs have alleged discrete violations of the FDCPA taking place just months before they filed suit in April 2018. They allege that Defendant violated 15 U.S.C. § 1692c(c) during the January 2018 phone call and again in the February 2018 letter when it disregarded their prior written request to cease communications about the debt. Plaintiffs also allege that Defendant's February 2018 letter violated the prohibitions on deceptive and unfair collection practices in 15 U.S.C. §§ 1692e and 1692f.

These allegations concern separate and independent violations of the FDCPA. Indeed, this Court has previously held that "[a] separate violation [of the FDCPA] occurs every time a prohibited threat or misrepresentation is made." *United States v. Nat'l Fin. Servs., Inc.*, 98 F.3d 131, 141 (4th Cir. 1996); *accord Solomon*, 395 F. App'x at 497 ("separate communications can create separate causes of action arising from collection of a single debt"); *Purnell v. Arrow Fin. Servs., LLC*, 303 F. App'x 297, 304 (6th Cir. 2008) ("each 'communication' of false credit information under § 1692e(8) … presents a discrete claim for violation of the FDCPA").

Thus, the Court explained in that case, each of the defendants' "millions of collection letters that threatened suit was a separate violation" for which the district court properly imposed an additional civil penalty. *Nat'l Fin. Servs.*, 98 F.3d at 141. While recognizing that some consumers had received multiple deceptive letters from the defendants, *id.* at 133-34, the Court drew no distinction between the first letters consumers received and those that followed. Instead, each misleading collection letter constituted an independent "violation" of the Act.

The Court's conclusion in *National Financial Services* follows from the text of the Act, which makes clear that "any" misrepresentation of "the character, amount, or legal status of a debt" is "a violation," 15 U.S.C.

§ 1692e(2)(A), as are attempts to collect any amount not "expressly authorized by the agreement creating the debt or permitted by law," *id.* § 1692f(1). So too, the Act states that debt collectors "shall not communicate" about a debt with a consumer who has asked that such communications cease. *Id.* § 1692c(c). A debt collector that "fails to comply" with any of these provisions has violated the Act. *Id.* § 1692k(a).

The district court erred in concluding to the contrary that the January 2018 phone call and February 2018 letter did not involve "independent violations of the FDCPA" but were instead "merely subsequent iterations of the same allegedly unlawful debt collection practice initiated at a date preceding the actionable window."[3] J.A. 233. Nothing in the text of the

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[3] The district court also thought it relevant to Plaintiffs' claim under Section 1692c(c) that Plaintiffs "reestablished contact with the defendant" prior to Defendant's renewed communications about the debt. J.A. 236. But Plaintiffs allege that they contacted Defendant for the unrelated purpose of returning a phone call about a meeting of the homeowners association, and that it was Defendant who changed the subject during the call to the purported debt. J.A. 14-15, ¶¶ 39-49.

Plaintiffs' inquiry about the meeting did not constitute an invitation for Defendant to resume its collection efforts such that Plaintiffs have failed to state a claim under Section 1692c(c). *See Clark v. Capital Credit & Collection Servs., Inc.*, 460 F.3d 1162, 1172 (9th Cir. 2006) (consumer's inquiry to a debt collector partially waived her prior cease-communication request, but only to the extent necessary for debt collector to provide the requested information); CFPB, Safe Harbors From Liability Under FDCPA, 81 Fed. Reg. 71977, 71980-81 (Oct. 19, 2016) (mortgage servicers do not violate Section 1692c(c) when they respond to consumer inquiries about

FDCPA supports that view. Rather, each such communication may constitute a separate violation of the FDCPA, even where a debt collector has committed similar violations trying to collect the same debt.

CONCLUSION

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

May 28, 2019

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loss mitigation "as long as the servicer's response is limited" to that topic; "the cease communication prohibition continues to apply" to other communications about the debt).

Certificate of Compliance

This brief complies with the length limits permitted by Federal Rule of Appellate Procedure 29(a)(5). The brief is 5,088 words, excluding the portions exempted by Rule 32(f). The brief's typeface and type style comply with Rule 32(a)(5) and (6).

May 28, 2019 */s/ Kevin E. Friedl*

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Certificate Of Service

I hereby certify that on May 28, 2019, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system. The participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

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