No. 20-1089

In the United States Court of Appeals
for the Seventh Circuit

JOSEPH DEGROOT,

Plaintiff-Appellant,

v.

CLIENT SERVICES, INCORPORATED,

Defendant-Appellee.

On Appeal from the
United States District Court for the Eastern District of Wisconsin
Hon. William C. Greisbach
Case No. 1:19-cv-00951

BRIEF OF *AMICUS CURIAE* CONSUMER FINANCIAL PROTECTION BUREAU IN SUPPORT OF APPELLEE AND AFFIRMANCE

Mary McLeod
General Counsel
John R. Coleman
Deputy General Counsel
Steven Y. Bressler
Assistant General Counsel
Christopher Deal
Senior Counsel
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, D.C. 20552
(202) 435-9582 (telephone)
(202) 435-7024 (facsimile)
christopher.deal@cfpb.gov

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QUESTIONS PRESENTED

1. Does a debt collector violate the FDCPA by accurately itemizing the interest and fees that are included in a debt it is seeking to collect, including when the interest and fees are $0.00?

2. Does a debt collector violate the FDCPA by accurately disclosing as part of a time-limited settlement offer that interest will not be charged while the collector services the consumer's account?

INTEREST OF AMICUS CURIAE

The Consumer Financial Protection Bureau, an agency of the United States, files this brief pursuant to F.R.A.P. 29(a)(2).

In 2010, Congress established the Bureau "to protect consumers from abusive financial services practices," Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010), and vested it with authority to enforce the Fair Debt Collection Practices Act (FDCPA or the Act), and to prescribe rules implementing the Act, 15 U.S.C. § 1692*l*(b)(6), (c), (d); 12 U.S.C. § 5512(b)(1), (4); *see also id.* § 5481(12), (14) (including the FDCPA in the list of "Federal consumer financial laws" that the Bureau administers). Pursuant to this authority, the Bureau last year issued a notice of proposed rulemaking to prescribe federal rules governing the activities of debt collectors, including rules requiring

itemization of debts in certain debt collection notices. 84 Fed. Reg. 23274 (May 21, 2019); *see also* 85 Fed. Reg. 12672 (Mar. 3, 2020) (supplemental notice of proposed rulemaking). The Bureau therefore has a substantial interest in the interpretation and application of the FDCPA to debt collection notices that itemize a consumer's debt.

STATEMENT

A. Statutory and Regulatory Framework

1. Congress enacted the FDCPA in 1977 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." Pub. L. No. 95-109, § 802(e), 91 Stat. 874 (codified at 15 U.S.C. § 1692(e)). To achieve those ends, the FDCPA imposes various requirements on debt collectors' debt-collection activity.

Two sections of the FDCPA are relevant here: sections 1692e and 1692g. Section 1692e makes it unlawful for a debt collector to "use any false, deceptive, or misleading representation or means in connection with the collection of any debt," including by making a "false representation of … the character, amount, or legal status of any debt" or by using "any false

representation or deceptive means to collect or attempt to collect any debt." 15 U.S.C. §§ 1692e, 1692e(2)(A), 1692e(10).

Section 1692g generally requires a debt collector to send the consumer a written notice within five days after the collector's initial communication with the consumer about the debt. *Id.* § 1692g(a). Among other things, this notice must disclose "the amount of the debt" and alert the consumer to his right to dispute the debt. *Id.* This validation notice requirement was designed to "eliminate the recurring problem of debt collectors dunning the wrong person or attempting to collect debts which the consumer has already paid." S. Rep. No. 95-382, at 4 (1977), *reprinted in* 1977 U.S.C.C.A.N. 1695, 1699.

2. In 2010, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act, which created the Bureau and granted it authority to enforce compliance with the FDCPA. Pub. L. No. 111-203, § 1089, 124 Stat. 1376, 2092-93 (codified at 15 U.S.C. § 1692*l*(b)(6)). The Dodd-Frank Act also empowered the Bureau to "prescribe rules with respect to the collection of debts by debt collectors, as defined in the [FDCPA]." *Id.* (codified at § 1692*l*(d)). It appears that one reason Congress gave the Bureau this authority was to address issues in the validation process. *See* S. Rep. No. 111-176, at 19 ("In addition to concerns about debt

collection tactics, the Committee is concerned that consumers have little ability to dispute the validity of a debt that is being collected in error.").

Accordingly, the Bureau has issued a proposed debt collection rule that would, among many other things, establish detailed rules for the validation notices required by section 1692g.[1] *See* 84 Fed. Reg. at 23404-05. Under those proposed rules, validation notices would need to disclose the amount of the consumer's debt at two different times: the time when the validation notice is provided to the consumer and the time of a prior "itemization date." *Id.* at 23404 (proposed § 1006.34(c)(2)(viii), (x)). For credit card accounts, the charge-off date could be used as the itemization date. *Id.* (proposed § 1006.34(b)(3)(ii)). Collectors would also need to "itemize" the various amounts that might have caused the consumer's debt to change between the itemization date and the date the validation notice is provided to the consumer. So, under the proposal, validation notices would include a table showing the interest, fees, payments, and credits that have been applied since the itemization date. *Id.* (proposed § 1006.34(c)(2)(ix)).

[1] The Bureau's notice of proposed rulemaking identifies potential requirements that the Bureau might or might not adopt. In response to the proposal, the Bureau received over 14,000 comments, including many comments regarding its proposed validation notice requirements. The Bureau is analyzing these comments as part of its process for taking final action on the notice of proposed rulemaking.

To show that no interest, fees, payments, or credits were assessed, the proposal would allow collectors to use "0" or "N/A" for that component. *Id.* at 23415 (proposed comment 34(c)(2)(ix)-1).

The Bureau's proposed model validation notice illustrates what an itemization could look like under the Bureau's proposed rule:

As of January 2, 2017, you owed:		$	2,234.56
Between January 2, 2017 and today:			
You were charged this amount in interest:	+	$	75.00
You were charged this amount in fees:	+	$	25.00
You paid or were credited this amount toward the debt:	–	$	50.00
Total amount of the debt now:		**$**	**2,284.56**

See id. at 23409.

B. Facts and Procedural History

1. This appeal is about a letter that Client Services, Inc. sent to Joseph DeGroot.[2] DeGroot had allegedly incurred and then defaulted on a debt owed to Capital One Bank (USA), N.A. *See* Am. Compl. ¶¶ 26-27, 37, Dkt. No. 8. The letter, dated March 11, 2019, was Client Services' first written communication seeking to collect the debt from DeGroot. *Id.* ¶ 36.

[2] Appellant's last name was spelled "Degroot" in the district court. However, because Appellant's opening brief spells his name "DeGroot," we have adopted that spelling here.

The first page of Client Services' letter set forth in a table what DeGroot owed when his credit card was charged off and what he currently owed, along with the amount of interest, other charges, and payments that had been assessed to his account in the meantime:

Balance Due at Charge-Off:	$425.86
Interest:	$0.00
Other Charges:	$0.00
Payments Made:	$0.00
Current Balance:	**$425.86**

App. 16. The accuracy of these amounts is not in dispute. *See, e.g.*, DeGroot's Br. at 4-5.

The third page of Client Services' letter presented DeGroot with an "Account Resolution Offer": Client Services offered DeGroot "the ability to resolve" his $425.86 account balance for $213. App. 18. The letter first warned that the offer would be withdrawn if DeGroot did not pay within 40 days and that Client Services "was not obligated to renew this offer." *Id.* Then the letter disclosed that "no interest will be added to your account through the course of Client Services, Inc.['s] collection efforts concerning your account" and that the offer "does not affect your right to dispute the debt as described on the previous page." *Id.*

Client Services was not the first debt collector to contact DeGroot about the debt he allegedly owed to Capital One. The prior August,

AllianceOne Receivables Management, Inc. had sent DeGroot a letter seeking to collect the same debt. Am. Compl. ¶¶ 24-27, 34. The letter from AllianceOne identified DeGroot's charge-off balance ($425.86) and current balance (also $425.86). App. 15. AllianceOne advised DeGroot to "[p]lease keep in mind" that "interest and fees are no longer being added to your account. That means every dollar you pay goes towards paying off your balance." *Id.*

2. DeGroot filed a putative class action complaint against Client Services for violating the FDCPA. DeGroot's operative complaint alleges that Client Services' March 11 letter was deceptive in violation of 15 U.S.C. §§ 1692e, 1692e(2)(A), and 1692e(10) and failed to properly disclose the amount of the debt in violation of 15 U.S.C. § 1692g(a)(1).

DeGroot alleged that he understood Client Services' letter to indicate (falsely) that Capital One would start charging interest and fees if he did not pay to resolve his debt within 40 days. Am. Compl. ¶¶ 39-44. Client Services moved to dismiss the amended complaint for lack of standing and for failure to state a claim. App. 1.

The district court granted Client Services' motion to dismiss. The court concluded that DeGroot had standing to press the FDCPA claims in his amended complaint in light of *Casillas v. Madison Ave. Associates, Inc.*,

926 F.3d 329 (7th Cir. 2019). App. 5-6. DeGroot had alleged that Client Services substantively violated the FDCPA by "send[ing] him the type of false, deceptive, and misleading letter that Congress sought to prevent through the FDCPA" and that DeGroot himself "was personally confused and harmed by the letter." App. 6. "In short," the district court concluded, DeGroot had alleged that Client Services' actions "harmed or posed a real risk of harm to his interests under the FDCPA." App. 6-7.

Although DeGroot had standing, the district court found that his amended complaint failed to state a claim because Client Services' letter was not false, misleading, or deceptive. "The itemization showing $0.00 owed in interest and other charges does not imply that [Client Services] or Capital One will increase the interest if the 'Account Resolution Offer' is not paid." App. 9. And the letter's statement that interest would not be added to the account balance through the course of Client Services' collection efforts "made clear" that Client Services would not increase the interest DeGroot owed. App. 9. Because the letter said "nothing about whether interest or other charges could increase in the future," the court found that an unsophisticated consumer would not have been misled. App. 9. Indeed, the court observed that "it takes a fair amount of sophistication to even come

up with" DeGroot's contention that Client Services' letter indicated that interest or fees would be added to his account in the future. App. 11.[3]

At the same time, the court recognized that district courts had divided in their approach to complaints, like DeGroot's, that alleged a collector violated the FDCPA by specifying that a consumer's balance included $0.00 in interest or fees on a "static" debt whose amount would not increase. Some courts had dismissed such claims at the pleading stage. App. 10-11. Other courts had declined to do so. App. 12. To the district court, this disagreement meant there was "good reason to appeal in order to obtain clarification in this important area of law." App. 12.

SUMMARY OF ARGUMENT

DeGroot claims that Client Services violated the FDCPA by providing him with an accurate itemization of his debt. The district court disagreed and dismissed DeGroot's amended complaint. This Court should affirm.

DeGroot's theory is that the disclosure that his debt included "$0.00" in additional interest and other charges was misleading because it suggested that interest and other charges might be assessed in the future.

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[3] The court separately observed that even though DeGroot's account had been charged off, Wisconsin law would permit the imposition of additional interest and fees, including, for instance, statutory costs and postjudgment interest in the event the creditor obtained a judgment on the debt. App. 9-10 (citing Wis. Stat. §§ 814.01, 815.05(8)).

But an itemization of a debt—just like an itemized receipt from a store—records what has already happened, not what will or may happen in the future. So, when Client Services disclosed that DeGroot had incurred "$0.00" in interest and other charges, an unsophisticated consumer could not reasonably infer that Client Services was threatening the future assessment of interest or other charges. If anything, the disclosure that no interest and fees had been charged could make a consumer think that future interest and fees were *less* likely. The district court was right to dismiss DeGroot's claims. As this Court recently explained, "[a] lawyer's ability to identify a question that a dunning letter does not expressly answer ('Is it possible the balance might increase?') does not show the letter is misleading, even if a speculative guess to answer the question might be wrong." *Koehn v. Delta Outsource Grp., Inc.*, 939 F.3d 863, 865 (7th Cir. 2019).

Accepting DeGroot's argument that itemization of past charges associated with a debt implies that future charges may be assessed would conflict with the reasoning of this Court's decision in *Fields v. Wilber Law Firm, P.C.*, 383 F.3d 562 (7th Cir. 2004). *Fields* faulted a collector for *not* itemizing a debt. Because the amount of the debt disclosed to the consumer in *Fields* included fees the collector had added, the Court reasoned that the

failure to itemize could mislead an unsophisticated consumer. Such a consumer might not understand why her debt had increased or might assume that she had originally incurred the full amount the collector sought. To avoid this problem, *Fields* explained that collectors could simply itemize the debts they were collecting.

DeGroot's position, by contrast, is that whether a collector can itemize a debt depends on whether, at the time of the dunning letter, the debt is static (i.e., the amount of the debt *cannot* increase) as opposed to dynamic (i.e., the amount of the debt *can* increase). On DeGroot's view there is one rule for itemizing static debts (you can't) and another rule for itemizing dynamic debts (you must, if interest or fees have been added). But the basic premise of *Fields*—that consumers may be misled if collectors do not itemize how their debts have changed in the past—does not depend on whether the debt may increase further in the future (i.e., whether at the time of the dunning letter, the debt is static or dynamic).

Moreover, *Fields*' understanding that consumers can benefit when collectors provide more information regarding the components of a debt has also been recognized by federal and state regulators. The Bureau, for instance, has proposed *requiring* collectors to provide the kind of itemization that DeGroot claims is unlawful. This Court should reject

DeGroot's argument, which, if accepted, could discourage collectors from providing consumers with potentially beneficial information.

Finally, DeGroot cannot rescue his itemization claims by pointing to Client Services' disclosure that interest would not be added while Client Services collected the debt. In the context of a paragraph describing the terms of a settlement offer with an express deadline, this disclosure reassured that, notwithstanding any potential sense of urgency created by a time-limited settlement offer, interest was not accruing. It would therefore not lead an unsophisticated consumer to believe that Client Services was threatening that interest (or fees) would be assessed at some point in the future.

ARGUMENT

I. A debt collector does not violate the FDCPA by accurately itemizing the components of a debt.

When a debt collector's validation notice accurately discloses that a consumer's debt does not include interest or other charges added since the debt was charged-off, the debt collector does not violate either section 1692e or section 1692g. A contrary holding would be inconsistent with this Court's cases interpreting the FDCPA and would risk discouraging collectors from providing consumers with accurate and useful information about their debts.

1. To state a claim that Client Services violated either section 1692e or section 1692g by misrepresenting the amount or character of the debt, DeGroot "needed to plausibly allege" that the validation notice "would materially mislead or confuse an unsophisticated consumer." *Koehn*, 939 F.3d at 864 (quoting *Boucher v. Fin. Sys. of Green Bay, Inc.*, 880 F.3d 362, 366 (7th Cir. 2018)). This is an "objective test" that "disregards bizarre or idiosyncratic interpretations of collection letters." *Dunbar v. Kohn Law Firm*, 896 F.3d 762, 765 (7th Cir. 2018). That is because while "uninformed, naïve, or trusting," the hypothetical unsophisticated consumer "nonetheless possesses reasonable intelligence, basic knowledge about the financial world, and is wise enough to read collection notices with added care." *Koehn*, 939 F.3d at 864 (quotation marks and citations omitted).

DeGroot argues, at 16, that Client Services' itemization of his debt falsely implied that interest and other charges may be applied to his account in the future. But the accurate itemization of the elements of a debt conveys no such message. That is because such an itemization is a record of what has already happened. An itemization in a validation notice discloses the interest or other charges that have been assessed between a date in the past (in this case, the date the debt was charged-off) and the date of the

notice; it doesn't address whether or under what circumstances future amounts might be assessed. *See, e.g.*, App. 16; 84 Fed. Reg. at 23409.

Itemizations of this sort are a common feature of modern economic life. From store receipts to utility bills, the unsophisticated consumer is familiar with receiving an itemized accounting of charges that have been assessed to date. So too in the consumer financial marketplace. As required by law, credit card issuers, for instance, send consumers itemized periodic statements. *See, e.g.*, 12 C.F.R. § 1026.7(b); *id.* App. G-18(A), (F), (G). As part of these periodic statements, issuers are required to disclose and itemize the interest and fees that have been imposed both during the statement period and for the calendar year to date. *Id.* § 1026.7(b)(6).

Given this context, a debt collector's itemization of how a consumer's debt has changed in the past cannot be reasonably understood by the unsophisticated consumer as an implicit representation that interest or fees may be assessed in the future. *See Wahl v. Midland Credit Mgmt., Inc.*, 556 F.3d 643, 646 (7th Cir. 2009) ("see[ing] no way" an unsophisticated consumer could be confused where the collector "simply identified the total amount it sought and then explained how it arrived at that sum"); *Salinas v. R.A. Rogers, Inc.*, 952 F.3d 680, 685 (5th Cir. 2020) (characterizing as "absurd" the proposition that the "mere mention of 'Interest' and 'Fee[s]'—

even though currently pegged at '$0.00'—could suggest the possibility that interest or fees may accrue in the future").[4]

This result is confirmed by this Court's recent decision in *Koehn*. In that case, this Court considered a complaint alleging a collector violated sections 1692e and 1692g by sending a validation notice that disclosed the consumer's "current balance" even though the consumer's debt was "static" (i.e., interest and fees could no longer be added). 939 F.3d at 864. The consumer's theory was that by using the term "current balance" the notice would mislead the unsophisticated debtor into thinking that her balance might increase. *Id.* This Court disagreed and affirmed dismissal of the complaint. The Court found that the challenged letter did not include "any language implying that 'current balance' means anything other than the balance owed." *Id.*

In so doing, the Court observed that compliance with the FDCPA does not require a dunning letter to "answer[] all possible questions about the

[4] Likewise, in *Taylor v. Cavalry, Inv., LLC*, 365 F.3d 572, 575 (7th Cir. 2004), this Court held that a validation notice was not confusing in violation of section 1692g where it itemized the consumer's debt as including "$0.00" in accrued interest and other charges and stated that the consumer's balance "may be periodically increased due to the addition of accrued interest or other charges as provided in your agreement with your creditor," *Taylor v. Cavalry Inv., LLC*, 210 F. Supp. 2d 1001, 1003 (N.D. Ill. 2002).

future." *Id.* at 865. As the Court explained, "[a] lawyer's ability to identify a question that a dunning letter does not expressly answer ('Is it possible the balance might increase?') does not show the letter is misleading, even if a speculative guess to answer the question might be wrong." *Id.* The same conclusion follows here. The fact that the itemization in this case did not expressly answer the question whether interest or fees could be charged in the future and that therefore a consumer might guess the wrong answer doesn't make the itemization misleading.

To be sure, there is a division of authority among district judges about whether claims like DeGroot's should be dismissed at the pleading stage.[5]

[5] *Compare, e.g.*, *Knaak v. Optio Sols. LLC*, No. 19-CV-1036-JPS, 2019 WL 6895991 (E.D. Wis. Dec. 18, 2019) (denying motion to dismiss); *Virden v. Client Servs., Inc.*, No. 5:19-CV-00329, 2019 WL 4862066 (N.D. Ohio Oct. 2, 2019) (same); *Driver v. LJ Ross Assocs., Inc.*, No. 3:18-CV-00220, 2019 WL 4060098 (S.D. Ind. Aug. 28, 2019) (same); *Gaston v. Fin. Sys. of Toledo, Inc.*, No. 3:18-CV-2652, 2019 WL 2210769 (N.D. Ohio May 22, 2019) (same); *Duarte v. Client Servs.*, No. 18 C 1227, 2019 WL 1425734 (N.D. Ill. Mar. 29, 2019) (same); *Wood v. Allied Interstate, LLC*, No. 17 C 4921, 2018 WL 2967061 (N.D. Ill. June 13, 2018) (same), *with Qureshi v. Vital Recovery Servs., Inc.*, No. 18-CV-4522, 2019 WL 3842697 (E.D.N.Y. Aug. 15, 2019) (granting motion to dismiss); *Donaeva v. Client Servs., Inc.*, No. 18-CV-6595, 2019 WL 3067108 (E.D.N.Y. July 12, 2019) (same); *Hussain v. Alltran Fin., LP*, No. 17-CV-3571, 2018 WL 1640584 (E.D.N.Y. Apr. 4, 2018) (same); *Delgado v. Client Servs., Inc.*, No. 17 C 4364, 2018 WL 1193741 (N.D. Ill. Mar. 7, 2018) (same); *Jones v. Prof'l Fin. Co., Inc.*, No. 17-61435-CIV, 2017 WL 6033547 (S.D. Fla. Dec. 4, 2017) (same); *Dick v. Enhanced Recovery Co., LLC*, No. 15-CV-2631, 2016 WL 5678556 (E.D.N.Y. Sept. 28, 2016) (same).

But the courts that have declined to dismiss such claims have not identified a plausible basis to conclude that an unsophisticated consumer would understand an accurate itemization of charges to include an implicit representation that future charges may be assessed.[6] And in a recent unpublished opinion, the Second Circuit affirmed the dismissal of a section 1692e claim where the collector's notice included separate line items for the interest and charges or fees that had accrued on the balance of a "static" debt. *Dow v. Frontline Asset Strategies, LLC*, 783 F. App'x 75, 76-77 (2d Cir. 2019).

Some district courts have suggested that DeGroot's proposed reading is reasonable where the collector discloses that the consumer's debt includes "$0.00" in fees or interest, for why else would a collector include a column for such amounts "and insert a dollar figure ($0.00), if not to suggest that that such fees and costs might possibly accrue in the future." *Wood*, 2018 WL 2967061, at *2; *accord Driver*, 2019 WL 4060098, at *3; *but see Dow*, 783 F. App'x at 76-77 (affirming dismissal where notice disclosed $0 for interest and fees). This reasoning mistakenly ascribes to

[6] It does not appear that any plaintiff has prevailed, or even survived summary judgment, on the claim that an accurate itemization of a consumer's debt violates the FDCPA. *See, e.g.*, *Edwards v. BC Servs., Inc.*, No. 18-CV-03322, 2019 WL 6726232, at *11 n.14 (D. Colo. Dec. 10, 2019) (collecting cases).

the unsophisticated consumer the belief that debt collectors decide whether to include particular data fields in validation notices on an individualized basis as opposed to generating letters for many different consumers from a common template.

An unsophisticated consumer, who can be expected to read a collection letter with "added care," *Koehn*, 939 F.3d at 864, would surely notice that he has received a letter produced from a standard template that includes certain elements that he might not find to be directly relevant to his situation,[7] *cf. Campuzano-Burgos v. Midland Credit Mgmt., Inc.*, 550 F.3d 294, 300 (3d Cir. 2008) (rejecting argument that the least sophisticated debtor would view a letter offering to settle his debt as being an individualized letter from a corporate executive based on font, formatting, and content). In this case, for instance, Client Services' letter is addressed, "Dear Valued Customer" and includes a page of notices mandated by various states and localities "which might apply to your state of residence." App. 16; *see also* Am. Compl. ¶ 49 (alleging that the challenged validation notice is a form letter).

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[7] Of course, many consumers may find the disclosure that $0 in fees and interest have been added to their account to be highly relevant and useful. DeGroot's argument that this information was irrelevant to him appears to be based on his allegation that he already believed that fees and interest would not be added. *See* Am. Compl. ¶¶ 28-29.

And while a letter generated from a common template, like any other communication, can mislead, *see Boucher*, 880 F.3d at 371 (explaining that debt collectors who fail to tailor boilerplate language to avoid ambiguity "run the risk of liability"), an unsophisticated consumer cannot be expected to seek hidden meaning in the inclusion of data fields in such a letter absent a good reason, *see White v. Goodman*, 200 F.3d 1016, 1020 (7th Cir. 2000) (rejecting as "fantastic conjecture" argument that an unsophisticated consumer would read disclosures applicable to residents of a particular state as implying that nonresidents had lesser rights). Here, there is no such reason: An unsophisticated consumer would know from experience that interest and fees are common additions to unpaid balances. *See Salinas*, 952 F.3d at 685 (observing that "unsophisticated borrowers have collectively experienced for thousands of years[] that interest and other charges tend to accrue on some debts"); 12 C.F.R. § 1026.7(b) (requiring disclosure of interest and fees).

As a result, it would be unreasonable for such a consumer to interpret an itemization showing that no interest and fees had been assessed on her account since charge-off as raising the prospect that she would be charged

fees or interest in the future.[8] If anything, this disclosure could lead an unsophisticated consumer to believe that interest and fees were *less* likely to be charged in the future. *See Dow*, 783 F. App'x at 76-77 (finding that notice with "separate line items for the interest and charges or fees" would not mislead the least sophisticated consumer into thinking that debt was dynamic "given that these lines reflect $0 in interest or fees and charges had accrued").

Moreover, DeGroot's position cannot be confined to itemizations that reveal that no fees or interest have been added to the debt during a certain period. Indeed, one of the cases on which DeGroot relies, at 16, involved an itemization showing that "$249.00" in fees and "$271.24" in interest had previously been added. *See Knaak*, 2019 WL 6895991, at *2. The district

[8] This Court's decisions in *Boucher* and *Lox v. CDA, Ltd.*, 689 F.3d 818 (7th Cir. 2012), are not to the contrary. In those cases, the challenged letters, unlike the validation notice at issue here, affirmatively raised the possibility that certain fees might be charged to the consumer. The dunning letter in *Lox* said: "Our client may take legal steps against you and if the courts award judgment, the court could allow court costs and attorney fees." 689 F.3d at 824. The letter in *Boucher* said that "[b]ecause of interest, late charges and other charges that may vary from day to day, the amount due on the day you pay may be greater." 880 F.3d at 367. *Boucher* and *Lox* would be relevant here if Client Services had made similar representations. In that hypothetical scenario, DeGroot would have stated a claim to the extent he properly alleged that interest or fees could not, in fact, have been added to his account. *But see* App. 9-10 (suggesting that under Wisconsin law it was possible that additional fees and interest could be added to DeGroot's account).

court reasoned that because the debt was "static" at the time of the dunning letter (i.e., additional interest and fees could not be added), it was potentially misleading for the collector to itemize the interest and fees that had previously been added. *See id.* at *3; *see also Driver*, 2019 WL 4060098, at *4 (opining that itemization would have been permissible "[i]f the debt was dynamic or subject to further interest or other charges"). Indeed, DeGroot argues, at 6, that for "a static debt," there can be "no legitimate purpose for itemizing the debt with lines for 'Interest' and 'Other Charges' because there never could be any interest or other charges added to the debt."

DeGroot's position conflicts with the reasoning of this Court's decision in *Fields v. Wilber Law Firm, P.C.*, 383 F.3d 562 (7th Cir. 2004). In that case, the Court found that a consumer stated a claim under section 1692e where she received a validation notice that disclosed the total amount of the debt but did not disclose that this amount included not just the originally-incurred charges ($122.06) but also attorneys' fees ($250) and accumulating interest. *Id.* at 565-66. The problem with this disclosure was that an unsophisticated consumer might not "understand how a relatively modest fee for services rendered had tripled in size" or "might logically assume that she simply incurred nearly $400 in charges." *Id.* at

566. The Court found that collectors are obligated to communicate to consumers "how the total amount due was determined if the demand for payment includes add-on expenses like attorneys' fees or collection costs." *Id.* at 565. "One simple way to comply with" this obligation "would be to itemize the various charges that comprise the total amount of the debt." *Id.* at 566.

In DeGroot's view, the itemization prescribed in *Fields* cannot be provided for debts that are static at the time of the dunning letter, even where the itemization would reveal that substantial interest or fees have previously been incurred. This position makes no sense. *Fields*' central premise is that consumers may be misled about the character of their debt if a collector does not disclose "how the total amount due was determined." *Id.* at 565. Nothing in *Fields* remotely suggests that this is only an issue for dynamic debts.

2. Finding that a debt collector may violate the FDCPA by sending a validation notice that accurately itemizes the interest and fees incorporated into a debt would have the perverse effect of discouraging collectors from providing consumers with accurate and useful information. This Court should reject it. *See, e.g.*, *Hahn v. Triumph P'ships LLC*, 557 F.3d 755, 757 (7th Cir. 2009) ("Classifying obligations in a way that helps customers to

understand what has happened cannot be condemned as a false statement about a debt's character.").

As noted above, the Bureau has proposed requiring collectors to itemize debts in validation notices. The preamble to the Bureau's notice of proposed rulemaking explains that itemizing fees and interest could help consumers in a variety of ways. 84 Fed. Reg. at 23341-42. "[C]onsumers may be better positioned to recognize whether they owe a debt and to evaluate whether the current amount alleged due is accurate if they understand how the amount changed over time due, for example, to interest, fees, payments, and credits that have been assessed or applied to the debt." *Id.* at 23341; *see also id.* ("[T]he Bureau's qualitative consumer testing indicates that an itemization appears to improve consumer understanding about and recognition of the debt."). And by giving consumers sufficient information to evaluate a validation notice's claim of indebtedness, itemization may discourage unfair, deceptive, or abusive practices. *Id.* at 23342. For instance, itemization "may help a consumer identify erroneous or fabricated fees that a creditor or debt collector may have added that inflated the amount of an alleged debt." *Id.*

The Bureau is not alone in thinking that consumers may benefit from receiving itemized validation notices. Its proposal is consistent with

suggestions from the Federal Trade Commission, *see* Fed. Trade Comm'n, *Collecting Consumer Debts: The Challenges of Change*, at v (Feb. 2009)[9] (suggesting that Congress require itemization); state requirements, *see, e.g.*, Cal. Civ. Code § 1788.52(a)(2) (requiring itemization in validation notices); N.Y. Comp. Codes R. & Regs. tit. 23, § 1.2(b)(2) (same), and judicial decisions, including this Court's opinion in *Fields*, 383 F.3d at 565-66; *cf. also Haddad v. Alexander, Zelmanski, Danner & Fioritto, PLLC*, 758 F.3d 777, 785 (6th Cir. 2014) (opining that providing "an itemized accounting detailing the transactions in an account that have led to the debt" in response to a consumer dispute "is often the best means of" enabling the consumer to sufficiently dispute a payment obligation).

If DeGroot's position carried the day, collectors would be discouraged from adopting the potentially beneficial practice of itemizing debts in validation notices.[10] The impact of this approach would not be confined to so-called "static" debts. Before itemizing any debt in a validation notice, a debt collector would need to determine whether the amount of the debt

[9] https://www.ftc.gov/sites/default/files/documents/reports/collecting-consumer-debts-challenges-change-federal-trade-commission-workshop-report/dcwr.pdf.

[10] To be clear, the Bureau does not believe that accepting DeGroot's argument in this appeal would affect the Bureau's rulemaking authority to require that validation notices itemize consumer's debts.

could increase. As the opinion below indicates, determining whether a debt is truly "static" may not always be straightforward: Even where interest or other fees are no longer accruing, a future judgment may entitle a debt collector to post-judgment interest or fees. See App. 9-10 (discussing that possibility in this case). And a debt may be "static" in one way but not another (for instance if additional fees cannot be added but interest is still accruing). *Cf. Fields*, 383 F.3d at 563 (noting that collector's dunning letters revealed that additional interest was being added to the consumer's debt, but that attorneys' fees were not). In the event of uncertainty, DeGroot's proposed approach would discourage itemization (at least where fees and interest had not already been added).

* * *

This Court has repeatedly cautioned that the FDCPA "is not violated by a dunning letter that is susceptible of an ingenious misreading, for then every dunning letter would violate it." *Koehn*, 939 F.3d at 865 (quoting *White*, 200 F.3d at 1020, and *Chuway v. National Action Financial Servs., Inc.*, 362 F.3d 944, 948 (7th Cir. 2004)). The district court rightly rejected DeGroot's itemization claim as depending on just this sort of ingenious misreading. *See* App. 11 ("In this court's view, it takes a fair amount of sophistication to come up with Degroot's argument.").

II. A debt collector does not violate the FDCPA by accurately disclosing as part of a time-limited settlement offer that interest will not be assessed while the debt collector services the consumer's account.

DeGroot fares no better when he claims that Client Services violated the FDCPA by truthfully advising him that "no interest will be added to your account balance through the course of Client Services, Inc.['s] collection efforts concerning your account." App. 18. DeGroot claims, at 13-14, that this accurate assurance that interest would not be added while Client Services collected the debt implicitly conveyed the false impression that interest might be added at some future point. While "[a] literally true statement may be misleading if it gives a false impression," *Dunbar*, 896 F.3d at 765, DeGroot's argument misses the mark because Client Services' disclosure cannot reasonably be understood to make any representations about whether interest would or would not be charged in the future.

To see why Client Services' disclosure does not give a false impression, it is critical to read the disclosure in context. *See Dennis v. Niagara Credit Sols., Inc.*, 946 F.3d 368, 370 (7th Cir. 2019) (affirming judgment on the pleadings on section 1692g claim where "an unsophisticated consumer would understand" allegedly confusing terms "in the context in which they were used"); *Gruber v. Creditors' Prot. Serv., Inc.*, 742 F.3d 271, 275 (7th Cir. 2014) (affirming dismissal of section 1692g

claim after "[c]onsider[ing]" a challenged phrase "in the context of the notices in this record").

Client Services' statement about future interest came in the middle of a paragraph describing the terms of a time-limited settlement offer and underneath the heading "ACCOUNT RESOLUTION OFFER." App. 18. The first part of the paragraph describes the deal that Client Services was offering (resolution of the debt at just above 50% of its stated value) and the deadline for accepting the deal (40 days from the notice). Next, the paragraph describes what will happen if the offer is not accepted (it will be withdrawn with no obligation for Client Services to renew it). Then in the last two sentences, the paragraph asks the reader to "[p]lease note" that interest will not be added while Client Services is collecting on the account and clarifies that the offer would not affect the dispute rights outlined on the prior page. *Id.*

Given this context, an unsophisticated consumer would understand the statement that interest would not be added while Client Services was collecting on the debt as reassurance that, notwithstanding any potential

sense of urgency created by a time-limited settlement offer, interest was not accruing.[11]

DeGroot attempts to derive the opposite meaning from this disclosure by contrasting it, at 4, 6, 12, to a prior dunning letter he received from a different collector, AllianceOne. But AllianceOne's letter is susceptible of the same (creative) misreading that DeGroot proposes for Client Services' letter. AllianceOne advised DeGroot to "[p]lease keep in mind" that "interest and fees are no longer being added to your account. That means every dollar you pay goes towards paying off your balance." App. 15. According to DeGroot, AllianceOne told him one thing (his debt was static and would not increase) and then Client Services implicitly told him another (that interest and fees could be added once Client Services stopped collecting on the debt).

The trouble with DeGroot's argument is that AllianceOne never said that interest and fees would never be added, only that they "are no longer being added." Saying that something is no longer happening does not necessarily mean that it won't happen again in the future. For instance,

[11] The same contextual approach resolves DeGroot's claim, at 6, 12-13, that the use of the header "NEW INFORMATION ON YOUR ACCOUNT" must have implicitly referred to the prospect that interest would be charged in the future. The new information conveyed by the letter was that Client Services was collecting on the account and had made a settlement offer.

when a restaurant tells a lunch-time patron that breakfast "is no longer being served," it probably doesn't mean that the restaurant will never serve breakfast again. So, just like Client Services' letter, AllianceOne's letter did not explicitly rule out the possibility that interest and fees might be added in the future. That doesn't make AllianceOne's letter misleading, but it does confirm that DeGroot's proposed understanding of Client Services' letter is unreasonable. *See Koehn*, 939 F.3d at 865. ("It takes an ingenious misreading of [a letter's use of the term current balance] to find it misleading. And that same ingenuity would call into question the even simpler phrase that 'the balance is $_____.' After all, the simple present-tense verb 'is' also implies 'current,' doesn't it?").

CONCLUSION

The district court's judgment should be affirmed.

Respectfully submitted,

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/s/ Christopher Deal

Mary McLeod
General Counsel
John R. Coleman
Deputy General Counsel
Steven Y. Bressler
Assistant General Counsel
Christopher Deal
Senior Counsel
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, D.C. 20552
(202) 435-9582 (telephone)
(202) 435-7024 (facsimile)
christopher.deal@cfpb.gov

Counsel for Amicus Curiae
Consumer Financial Protection Bureau

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the requirements of Fed. R. App. P. 32(a)(5) and (6) because it has been prepared in 14-point Georgia, a proportionally spaced font.

I further certify that this brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and Circuit Rule 29 because it contains 6,435 words, excluding exempt material, according to the count of Microsoft Word.

/s/ Christopher Deal
Christopher Deal
Counsel for Amicus Curiae
Consumer Financial Protection Bureau

CERTIFICATE OF SERVICE

I hereby certify that on May 15, 2020, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the appellate CM/ECF system. The participants in this case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

/s/ Christopher Deal
Christopher Deal
Counsel for Amicus Curiae
Consumer Financial Protection Bureau