No. 14-15672

In the United States Court of Appeals
for the Ninth Circuit

MARIA HERNANDEZ,
Plaintiff-Appellant,

v.

WILLIAMS, ZINMAN & PARHAM, P.C.,
Defendant-Appellee.

On Appeal from the
United States District Court for the District of Arizona
Hon. Stephen M. McNamee
Case No. 2:12-cv-00731

BRIEF OF *AMICI CURIAE* CONSUMER FINANCIAL PROTECTION BUREAU AND FEDERAL TRADE COMMISSION IN SUPPORT OF APPELLANT AND REVERSAL

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Bureau or CFPB	Consumer Financial Protection Bureau
Commission or FTC	Federal Trade Commission
FDCPA	Fair Debt Collection Practices Act
WZP	Williams, Zinman & Parham, P.C. (Appellee)

INTEREST OF AMICI CURIAE

The Consumer Financial Protection Bureau (CFPB or Bureau) and the Federal Trade Commission (FTC or Commission), agencies of the United States, file this brief pursuant to Federal Rule of Appellate Procedure 29(a).

The CFPB is charged with "regulat[ing] the offering and provision of consumer financial products and services under the Federal consumer financial laws," which include the Fair Debt Collection Practices Act (FDCPA or the Act). 12 U.S.C. §§ 5491(a), 5481(12)(H), 5481(14). The FDCPA authorizes the Bureau to enforce the Act and to "prescribe rules with respect to the collection of debts by debt collectors." 15 U.S.C. §§ 1692*l*(b), (d). This case concerns a provision of the FDCPA, 15 U.S.C. § 1692g(a), that requires debt collectors to provide consumers certain information about their alleged debts and their rights either in the debt collector's initial communication with the consumer or within five days thereafter. This provision is critical in protecting consumers from improper attempts to collect debts that consumers do not actually owe. *See* S. Rep. No. 95-382, at 4 (1977). The Bureau therefore has a substantial interest in this Court's interpretation of that provision.

The FTC joins the Bureau in this brief. The FTC is the federal agency with primary responsibility for protecting consumers from unfair and deceptive trade practices, including through enforcement of the FDCPA, 15 U.S.C. § 1692*l*(a).

The FTC has had the authority to enforce the FDCPA since the statute's enactment in 1977, *see* Pub. L. No. 95-109, § 814, 91 Stat. 874, 881-82 (1977), and has studied, and issued numerous reports on, the debt collection industry over the past several decades. The Commission thus also has an interest in the issue presented in this case.

STATEMENT

A. Statutory Background

1. Congress enacted the FDCPA in 1977 to "eliminate abusive debt collection practices by debt collectors." 15 U.S.C. § 1692(e); *see also Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. 573, 577 (2010). The Act was Congress's response to "abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors," which Congress found to have contributed "to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy." 15 U.S.C. § 1692(a).

Harmful debt collection practices remain a significant concern today. The Bureau receives more consumer complaints about debt collection practices than about any other issue. Consumer Financial Protection Bureau, *Fair Debt Collection Practices Act—CFPB Annual Report 2014* 9, 10 (2014) ("*CFPB 2014 Report*"), http://files.consumerfinance.gov/f/201403_cfpb_fair-debt-collection-

practices-act.pdf. The FTC for many years has likewise received more complaints about the debt collection industry than any other. *See, e.g.*, Federal Trade Commission, *Annual Report 2011: Fair Debt Collection Practices Act* 4 (2011), http://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-annual-report-2011-fair-debt-collection-practices-act/110321fairdebtcollect report.pdf; Federal Trade Commission, *Annual Report 2010: Fair Debt Collection Practices Act* 4 (2010), http://www.ftc.gov/os/2010/04/P104802fdcpa2010 annrpt.pdf; *Debt Collection (Regulation F)*, 78 Fed. Reg. 67,848, 67,851 (Nov. 12, 2013) (advance notice of proposed rulemaking). Last year, over one-third of the complaints that the Bureau received involved debt collectors' attempts to collect debts that consumers claimed they did not owe. *CFPB 2014 Report* at 12, 13. Debt collectors' practices affect millions of Americans: Over 77 million Americans have had debts in collections. Urban Institute, *Delinquent Debt in America* 7 (2014), http://www.urban.org/UploadedPDF/413191-Delinquent-Debt-in-America.pdf.

The FDCPA is the key federal statute protecting these consumers. The Act regulates a broad range of debt collection activities by third-party debt collectors that collect debts from individual consumers. The Act does not apply to commercial debts or to creditors who collect their own debts in their own names. 15 U.S.C. §§ 1692a(5), (6). Among other things, the Act forbids debt collectors

from employing harassing, oppressive, or abusive practices; making misleading or deceptive representations; and using unfair or unconscionable means to collect debts. *See id.* §§ 1692d–1692f.

2. As relevant here, the Act also requires debt collectors to send consumers "validation notices" containing certain information about their alleged debts and consumers' rights. *Id.* § 1692g(a). A debt collector must send this notice "[w]ithin five days after the initial communication with a consumer in connection with the collection of any debt," unless the required information was "contained in the initial communication or the consumer has paid the debt." *Id.* § 1692g(a). The validation notice must disclose "the amount of the debt" and "the name of the creditor to whom the debt is owed," and must advise the consumer of her rights to dispute the debt and to request "the name and address of the original creditor, if different from the current creditor." *Id.* If the consumer disputes the debt in writing within thirty days of receiving such a notice, the debt collector must "cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt" and mails the consumer a copy of that verification. *Id.* § 1692g(b). By the same token, if the consumer makes a written request for the name and address of the original creditor within that thirty-day period, the collector must cease collection efforts until it sends the consumer that information. *Id.* Congress explained that this validation requirement was a "significant feature" of

the law that aimed 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).

3. To ensure compliance, the FDCPA gives consumers a private right of action to sue for violations of the law and to recover actual and statutory damages as well as attorneys' fees. 15 U.S.C. § 1692k(a). The Act also authorizes the Bureau, the Commission, and several other agencies to enforce its requirements. *Id.* §§ 1692*l*(a), (b).

The Bureau also has significant additional authorities in implementing the Act: The Bureau may issue advisory opinions interpreting the law and may prescribe rules under the Act "with respect to the collection of debts by debt collectors." *Id.* 1692k(e), 1692*l*(d). The Bureau is the first agency to have general rulemaking authority under the FDCPA. Pursuant to that authority, the Bureau issued an advance notice of proposed rulemaking on debt collection in November 2013. *See Debt Collection (Regulation F)*, 78 Fed. Reg. 67,848 (Nov. 12, 2013).

B. The Debt Collection Process

The typical debt collection process begins when a company to whom a consumer owes a debt—such as a credit card issuer, telecommunications company, or medical provider—determines that an account is past due. Fed. Trade Comm'n, *Collecting Consumer Debts: The Challenges of Change* 2 (2009) ("*FTC 2009*

Report"), http://www.ftc.gov/sites/default/files/documents/reports/collecting-consumer-debts-challenges-change-federal-trade-commission-workshop-report/dcwr.pdf. At that point, creditors will usually first attempt to collect the debt on their own. *Id.* The FDCPA has limited application at this stage because, as noted above, the statute does not apply to creditors who collect their own debts in their own names. 15 U.S.C. § 1692a(6).

If the creditor's in-house collection efforts are unsuccessful, the creditor may then enlist the help of a third-party debt collector—usually six months to a year after it started its own collection attempts. *FTC 2009 Report* at 3. In particular, the creditor may place the account with a third-party collector that will attempt to collect the debt on the creditor's behalf. *See id.* Alternatively, instead of—or after—placing a debt with a third-party collector to recover on the creditor's behalf, a creditor may sell the debt to a debt buyer, typically as part of a portfolio of debts that are sold for a percentage of the combined debts' face value. *Id.* When a creditor sells a portfolio of debts, it may transfer only an electronic spreadsheet showing basic account information. *See id.* at 22. The debt buyer may then collect the debts itself, hire third-party collectors to collect for it, resell some or all of the debts to another buyer, or some combination of these things. *Id.* at 3. It is common for a debt to be sold a number of times—or to be placed for collection with multiple collectors—over a period of years. *Id.* at 4; *Debt*

Collection (Regulation F), 78 Fed. Reg. 67,848, 67,856 (Nov. 12, 2013). By the time collection efforts end, three, four, or even more collectors may have attempted to collect any given debt.[1]

C. Facts and Procedural History

In December 2011, defendant debt collector Williams, Zinman & Parham (WZP) sent a letter to the plaintiff in this case, Maria Hernandez, seeking to collect a debt she had incurred with A-L Financial Corp. Dist. Ct. ECF No. 48 ¶¶ 2, 4; Dist. Ct. ECF No. 58 ¶¶ 2, 4. That letter generally included the information listed in § 1692g(a) but failed to indicate that any request for verification or for original creditor information must be made in writing. *See* Dist. Ct. ECF No. 46-1. This was WZP's first and only communication with Hernandez. *See* Dist. Ct. ECF No. 58 ¶¶ 5, 7; Dist. Ct. ECF No. 48 ¶ 7. These facts are not in dispute.

Hernandez filed suit against WZP in the U.S. District Court for the District of Arizona. Appellant's Excerpts of Record (ER) 19. Hernandez alleged that WZP violated § 1692g by failing to advise in its December 2011 letter, or within five days thereafter, that any request for verification or for original creditor information must be made in writing. Dist. Ct. ECF No. 1 ¶¶ 36-44.

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[1] *See* Gov't Accountability Office, *Credit Cards—Fair Debt Collection Practices Act Could Better Reflect the Evolving Debt Collection Marketplace and Use of Technology* 29 (2009) ("*GAO 2009 Report*"), http://www.gao.gov/new.items/d09748.pdf.

Hernandez and WZP filed cross-motions for summary judgment. ER 23-24. In its briefing on those motions, WZP did not argue that the December 2011 letter contained the information required by § 1692g, but rather argued that it had no obligation to comply with § 1692g because its December 2011 letter was not "the initial communication" that Hernandez had received about the debt. Dist. Ct. ECF Nos. 45, 55, 57. In particular, WZP contended, the "initial communication" that triggered § 1692g's notice requirement had come from a different debt collector, Thunderbird Collection Specialists, that had previously contacted Hernandez about the same debt. Dist. Ct. ECF No. 45 at 2. WZP claimed that because Thunderbird had sent Hernandez a notice that complied with § 1692g (an allegation that Hernandez disputes), and because WZP was "a subsequent debt collector," WZP had "no further notice obligation under the FDCPA." *Id.* at 5.

The district court granted summary judgment for WZP, concluding that § 1692g(a)'s notice requirements "do not apply to WZP's letter because it was not the initial communication that Hernandez had received on the alleged debt." Order at 6, 14 (ER 9, 17). According to the district court, the statute's plain text "contemplated only one *initial* communication with a debtor on a given debt"—namely, the initial communication from the initial debt collector. Order at 6 (ER 9). In the district court's view, regardless of whether the initial debt collector sent a notice that complied with § 1692g(a), a subsequent debt collector like WZP had

no obligation to send a notice under that provision. Order at 7-8, 12 (ER 10-11, 15).

SUMMARY OF ARGUMENT

Section 1692g(a) requires "a debt collector" to "send the consumer a written notice containing" certain specified information either in "the initial communication" or "[w]ithin five days after the initial communication with a consumer in connection with the collection of any debt." By imposing this requirement on "a debt collector," Congress indicated that each debt collector that attempts to collect a debt from a consumer must provide the required notice. The district court, however, impermissibly narrowed § 1692(a)'s reach to only the first of what is often many debt collectors that handle a particular debt. That narrow interpretation has no basis in the statute's text or purposes.

A. Section 1692g(a) unambiguously imposes its notice requirement on "a debt collector," a term that encompasses all debt collectors, whether the first, second, or umpteenth to attempt to collect a particular debt. The district court nonetheless held that § 1692g(a) does not apply to subsequent debt collectors because only an initial debt collector sends "the initial communication" that triggers the provision's notice requirement. That was error. The phrase "the initial communication" is most naturally read—and has been read by this Court and Congress—to refer to each debt collector's initial communication with a consumer.

In rejecting this interpretation, the district court cited its "obligation … to apply the statute as Congress wrote it." Order at 6 (ER 9). But the district court's interpretation in fact requires multiple revisions to the text that Congress wrote. The district court reasoned that § 1692g(a)'s phrase "the initial communication with a consumer in connection with the collection of any debt" plainly referred to the first communication ever made to a consumer about a particular debt. But the first communication ever made about a debt typically comes from the creditor—an entity that generally is not subject to the FDCPA's requirements. The district court's conclusion thus requires reading "the initial communication" as the first communication about a debt ever made *by a debt collector subject to the FDCPA*. Its conclusion also requires reading the generic term "a debt collector" in § 1692g(a) to mean "the specific debt collector that first contacted the consumer about a particular debt." Revising the statutory text in these ways is wholly unwarranted, particularly given that § 1692g(a) can naturally be read to apply to "the initial communication" of any debt collector—initial or subsequent—that contacts a consumer about a debt.

B. The purposes of § 1692g make abundantly clear that Congress intended for every debt collector that contacts a consumer to provide the required notice. Congress enacted § 1692g to eliminate the problem of debt collectors attempting to collect the wrong amounts from the wrong consumers. To that end, the provision

requires debt collectors, upon initially contacting a consumer, to provide the consumer a validation notice containing key information about her debt and her rights, and gives the consumer thirty days after receiving that notice to dispute the debt and to obtain the identity of the original creditor. If the consumer exercises that right, the collector must halt collection efforts until it verifies the debt or provides the requested information. For these requirements to serve their purpose, they must apply to initial and subsequent debt collectors alike.

When a new debt collector takes over collecting a debt, § 1692g's protections are just as important as when the first debt collector began collection efforts. The consumer may have paid, or successfully disputed the debt with, a previous debt collector. Or the new collector may have obtained inaccurate information. If § 1692g did not obligate subsequent debt collectors to allow consumers to dispute the debt, consumers could not raise and resolve these sorts of issues. By the same token, if subsequent debt collectors were exempt from § 1692g, they would have no obligation to disclose the original or current creditor to the consumer—information that consumers need to be able to recognize a debt and assess whether they in fact owe it.

Exempting subsequent debt collectors from § 1692g would also create a loophole that could nullify § 1692g's debt-validation protection altogether. When a consumer disputes a debt with an initial debt collector, nothing in the FDCPA

prevents the creditor from simply passing the debt to a second debt collector to collect, even where no one has verified the debt. If the second debt collector had no independent obligation to send consumers a validation notice, consumers would be unable to stop attempts to collect disputed, unverified debts—the precise problem that Congress designed § 1692g to prevent.

C. Section 1692g's text and purposes leave no doubt that the provision requires each debt collector, not just the initial debt collector, to send a validation notice in or after its "initial communication" with a consumer. To the extent there remains any ambiguity, however, the Court should defer to the longstanding views of the principal federal agencies charged with implementing and enforcing the FDCPA—that each debt collector that contacts a consumer about a debt must comply with § 1692g.

ARGUMENT

SECTION 1692g(a) APPLIES TO EACH DEBT COLLECTOR'S INITIAL COMMUNICATION WITH A CONSUMER ABOUT A DEBT, NOT JUST THE FIRST DEBT COLLECTOR'S INITIAL COMMUNICATION.

Section 1692g(a) requires "a debt collector" to "send the consumer a written notice containing" certain specified information "[w]ithin five days after the initial communication with a consumer in connection with the collection of any debt, … unless the [required] information is contained in the initial communication or the consumer has paid the debt." 15 U.S.C. § 1692g(a). By its terms, § 1692g(a)'s

notice requirements apply equally to each debt collector—whether the first, the last, or anywhere in between—that contacts the consumer about a debt. Yet the district court held that only the very first communication that a consumer ever receives about a debt qualifies as an "initial communication" that triggers § 1692g(a)'s notice requirement—and therefore that only the first debt collector that contacts the consumer need comply with the provision. That conclusion finds no support in the statute's text or structure, is wholly incompatible with the provision's legislative history and purposes, and fails to account for the deference owed to agency interpretations of the provision.

A. There Is No Textual Basis for Interpreting § 1692g(a) to Apply Only to the First Debt Collector's Initial Communication with a Consumer.

Section 1692g(a) applies to "a debt collector," not "the initial debt collector" or "the first debt collector." Contrary to the district court's conclusion, the provision's reference to "the initial communication" does not limit the provision's reach to only the first debt collector that attempts to collect a particular debt.

1. Section 1692g(a) applies to "a debt collector," not "the initial debt collector."

By its terms, § 1692g(a) imposes its notice obligation on "*a* debt collector." 15 U.S.C. § 1692g(a) (emphasis added). This language is broad. As this Court has explained, the indefinite article "a" has "generalizing force." *Gale v. First Franklin Loan Servs.*, 701 F.3d 1240, 1246 (9th Cir. 2012). It "means … 'any.'"

Black's Law Dictionary 1 (5th ed. 1979). Thus, the term "a debt collector" in § 1692g(a) is properly read to mean any debt collector.

Indeed, throughout the FDCPA, Congress used the phrase "a debt collector" to impose obligations and prohibitions on all debt collectors, regardless of their place in the life cycle of a debt. *See, e.g.*, 15 U.S.C. § 1692c(b) (barring "a debt collector" from contacting third parties about a consumer's debt); *id.* § 1692d (barring "a debt collector" from engaging in harassing, oppressive, or abusive conduct); *id.* § 1692e (barring "a debt collector" from using deceptive means to collect a debt); *id.* § 1692f (barring "a debt collector" from using unfair or unconscionable means to collect a debt). Although the statute distinguishes between debt collectors' initial and subsequent *communications*, *see* 15 U.S.C. § 1692e(11), it nowhere distinguishes between initial and subsequent *debt collectors*. If Congress had intended to make such a distinction—and to limit § 1692g(a)'s notice requirements to "the initial debt collector"—it would have said so explicitly. *Cf. I.C.C. v. Railway Labor Executives Ass'n*, 315 U.S. 373, 380 (1942) ("It is reasonable to suppose that if Congress had intended to make such a distinction, it would have said so more explicitly."); *UMG Recordings, Inc. v. Shelter Capital Partners LLC*, 718 F.3d 1006, 1020 (9th Cir. 2013) ("Had Congress intended to include such a limitation, it would have said so expressly and unambiguously, as it did [elsewhere in the statute].").

2. *"The initial communication" under § 1692g(a) refers to each debt collector's initial communication, not just the first debt collector's initial communication.*

In limiting § 1692g(a)'s reach to initial debt collectors, the district court did not address the breadth of the term "a debt collector," but instead focused on the term "the initial communication." According to the district court, "the initial communication" under § 1692g(a) refers not to the initial communication between a given debt collector and a consumer (as the CFPB and FTC, like Hernandez, maintain), but rather only to the initial communication that a consumer ever receives about a particular debt. *See* Order at 6 (ER 9) (concluding that § 1692g(a)'s requirements "do not apply to WZP's letter because it was not the initial communication that Hernandez received on the alleged debt"). Thus, the district court reasoned, because only the initial debt collector will send *that* initial communication, only the initial debt collector need comply with the provision. *See id.* This reasoning cannot withstand scrutiny.

a. First, the district court was wrong to suggest that the provision's use of the singular "the" when referring to "the initial communication" implies that there is "only one initial communication with a debtor on a given debt." Order at 6 (ER 9) (emphasis omitted). It is undisputed that there can be only one communication that is "the initial communication." But that does not answer the question presented here: Is that one "initial communication" (i) the (single) initial

communication that a consumer ever receives about a debt or (ii) the (single) initial communication that "a debt collector" subject to the provision sends about a debt? The provision's use of the singular is entirely consistent with understanding "the initial communication" to refer to the first communication that a particular debt collector sends about a given debt.

b. The district court made a similar error in seeking support for its interpretation in another FDCPA provision, § 1692e(11). Section 1692e(11) requires debt collectors to make certain disclosures in "the initial written communication" with a consumer, and certain other disclosures in "subsequent communications." 15 U.S.C. § 1692e(11). According to the district court, this provision indicates that Congress expressly mentioned subsequent communications when it intended for the statute to cover them. *See* Order at 6 (ER 9). This misses the point. Hernandez, like the Bureau and the Commission, does not maintain that § 1692g(a) covers "subsequent communications," but that it covers *initial* communications, whether they be from an initial debt collector or a subsequent one. Section 1692e(11) addresses subsequent communications from the same debt collector and in no way suggests that a subsequent debt collector's initial communication does not constitute an "initial communication" within the meaning of the Act. On the contrary, Congress's decision to distinguish between initial and subsequent *communications* in § 1692e(11) suggests that its failure to distinguish

between initial and subsequent *debt collectors* in § 1692g (or in any other provision) reflected its intent to treat those collectors the same.

c. Finally, although the district court purported to base its interpretation on the statute's unambiguous language, its interpretation in fact inappropriately engrafts onto the provision entire phrases that appear nowhere in its text. *Cf. Pac. Coast Fed'n of Fishermen's Ass'ns v. Blank*, 693 F.3d 1084, 1095 (9th Cir. 2012) (explaining that court could not "read into the statute words not explicitly inserted by Congress" (quoting *Stanton Rd. Assocs. v. Lohrey Enters.*, 984 F.2d 1015, 1020 (9th Cir. 1993))).

At the outset, as noted above, the district court would read "a debt collector" as "the first debt collector to contact the consumer about a debt."

Moreover, the district court's interpretation requires "the initial communication" to be read as "the initial communication *from the initial debt collector*." The district court implies that that textual revision is unnecessary because the phrase "the initial communication with a consumer in connection with the collection of any debt" plainly refers only to the first communication ever made about a given debt. That logic misses the mark. If the provision referred only to *that* initial communication, it would not cover even the initial communications from initial debt collectors like Thunderbird. In almost all cases, the very first communication about a given debt does not come from a debt collector at all but

from the creditor to whom the consumer owes the debt.[2] *See FTC 2009 Report* at 2. Creditors, however, generally are not "debt collectors" under the FDCPA. *Rowe v. Educ. Credit Mgmt. Corp.*, 559 F.3d 1028, 1031 (9th Cir. 2009). Thus, if the provision applied only to the very first communication ever made about a given debt as the district court suggested, it would apply only to *creditors'* initial communications. But creditors have no obligation to comply with § 1692g(a). Thus, interpreting "the initial communication" to refer to the first communication ever made about a debt would deprive § 1692g of virtually all practical effect—a result that Congress could not possibly have intended. *Cf. Clark v. Capital Credit & Collection Servs., Inc.*, 460 F.3d 1162, 1175 (9th Cir. 2006) ("[W]e have consistently rejected interpretations that would render a statutory provision … a nullity." (internal quotations and alterations omitted)). To avoid that result, the district court's conclusion requires "the initial communication" to be read as "the initial communication *from the initial debt collector*" or "the initial communication *ever made by a debt collector*."

d. Interpreting "the initial communication" to refer to each debt collector's initial communication with a consumer about a given debt does not require these

[2] A "communication" under the FDCPA is not limited to communications from debt collectors. *See* 15 U.S.C. § 1692a(2) (defining "communication" as "the conveying of information regarding a debt directly or indirectly to any person through any medium").

sorts of textual distortions. Although the provision does not expressly specify *whose* initial communication triggers the notice requirement, the most natural reading is that it refers to the initial communication from the entity to which the second half of the sentence refers—"a debt collector." Indeed, that interpretation is consistent with how this Court and other courts of appeals, as well as the enacting Congress, have described the provision. *See, e.g.*, *Riggs v. Prober & Raphael*, 681 F.3d 1097, 1099 (9th Cir. 2012) (describing § 1692g(a) as requiring "a debt collector" to send a written notice "within five days of *the debt collector's* initial attempt to collect any debt" (emphasis added)); *Jacobson v. Healthcare Fin. Servs., Inc.*, 516 F.3d 85, 90 (2d Cir. 2008) (explaining that provision requires debt collector to send notice "within five days of *its* initial communication with the consumer" (emphasis added)); *Durkin v. Equifax Check Servs., Inc.*, 406 F.3d 410, 417 (7th Cir. 2005) ("[P]ursuant to § 1692g(a), a debt collector must include a validation notice in *its* initial communication to the debtor or must send a validation notice within five days of *its* initial communication." (emphasis added)); S. Rep. No. 95-382, at 8 (1977) ("Within 5 days after contacting a consumer, the debt collector must [send the required notice]."); *id.* at 4 ("[A]fter initially contacting a consumer, a debt collector must sen[d] him or her written notice stating the name of the creditor and the amount owed."). Moreover, only that interpretation accords with the statute's remedial purposes, which requires it to "be

construed liberally in favor of the consumer," *Tourgeman v. Collins Fin. Servs., Inc.*, -- F.3d --, 2014 WL 2870174, at *6 (9th Cir. June 25, 2014); *accord Clark*, 460 F.3d at 1176.

B. Section 1692g's Legislative History and Purposes Make Clear that the Provision Applies to Each Debt Collector's Initial Communication with a Consumer.

Interpreting § 1692g(a) to apply to each debt collector's initial communication is not only more faithful to the provision's text, it also far better comports with the provision's purposes. This Court has explained that it will "construe the details of an act in conformity with its dominating general purpose, will read text in the light of context and will interpret the text so far as the meaning of the words fairly permits so as to carry out in particular cases the generally expressed legislative policy." *Clark*, 460 F.3d at 1169 (internal quotations omitted). Examining the "general purpose" and "expressed legislative policy" of the FDCPA leaves no doubt that § 1692g applies to the initial communications of initial and subsequent debt collectors alike.

Congress enacted § 1692g 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); *see also, e.g.*, *Terran v. Kaplan*, 109 F.3d 1428, 1431 (9th Cir. 1997). Section 1692g promotes that purpose by requiring debt collectors, upon first contacting a consumer, to send the

consumer a notice with key information about her debt and her rights, and by giving consumers the right to dispute the debt and to request the identity of the original creditor within thirty days after receiving that notice. *See* 15 U.S.C. § 1692g(a), (b). If a consumer exercises that right, the debt collector must halt all collection efforts until it responds to the consumer with verification of the debt or the identity of the original creditor, as requested. *Id.* § 1692g(b).

Exempting subsequent debt collectors from these requirements would undercut § 1692g's purpose in at least three ways, while at the same time doing nothing to protect debt collectors' legitimate collection efforts. Furthermore, WZP's proposed interpretation—under which a subsequent debt collector would be excused from sending a validation notice only if the prior debt collector had complied with § 1692g(a)—would present these same problems and also create administrative difficulties for debt collectors as well as courts.

1. First, interpreting § 1692g to apply only to initial debt collectors would preclude consumers from obtaining verification of a debt at a critical time in the debt collection process. Such an interpretation would exempt subsequent debt collectors not only from § 1692g(a)'s notice requirement, but also from § 1692g(b)'s requirement to verify disputed debts before trying to collect them. Section 1692g(b) gives consumers the right to dispute and obtain verification of a debt from the debt collector only during the thirty days after they receive a notice

under § 1692g(a). *See* 15 U.S.C. § 1692g(b) (giving consumers right to dispute and obtain verification "within the thirty-day period described in [§ 1692g(a)]"); *id.* § 1692g(a)(3) (referring to "thirty days after receipt of the notice"). Thus, if subsequent debt collectors need not send a notice under § 1692g(a), they would likewise have no obligation under § 1692g(b) to verify a debt that the consumer disputes.

This would seriously undermine the effectiveness of the validation right in protecting consumers from attempts to collect debts that they do not owe. When a subsequent debt collector begins to collect a debt, the need for validation can be just as great as when the first debt collector began to collect the debt. Facts may have changed since the first debt collector began its collection efforts: The consumer may have paid, or settled the account with, an earlier debt collector. Or she may have successfully disputed the debt. New fees and interest charges may have been added to the claimed amount due. In addition, transferring the debt may have introduced inaccuracies in the data, or the new collector may simply contact the wrong consumer. If consumers could not dispute the debt with the subsequent debt collector, they would have no way to raise and resolve these sorts of issues, short of defending a lawsuit.

These concerns are not hypothetical. It is common for multiple debt collectors to attempt to collect a single debt over several years.[3] When a new debt collector takes over collecting a debt, there is a real risk that the new collector will have inaccurate information. A recent GAO report found that when a debt is transferred, "there are numerous areas in which account integrity could be compromised …. For example, important account information—such as the result of disputed account investigations, consumer complaints about billing errors, and information on settlement agreements and identity theft—may not always be transferred." *GAO 2009 Report* at 44. Market experts, too, have acknowledged the risk of inaccuracies in the data that subsequent debt collectors obtain. *Kaulkin Ginsburg 2006 Report* at 31-32. Those risks increase the more times a debt is transferred. *Id.*

Moreover, consumers dispute debts frequently. A recent FTC report estimated that consumers disputed more than one million debts a year. *See FTC 2013 Report* at 38 (explaining that the one million estimate likely understated the number of disputes). The basis of consumers' disputes runs the gamut:

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[3] *See* Fed. Trade Comm'n, *The Structure and Practices of the Debt Buying Industry* 1 (2013) ("*FTC 2013 Report*"), http://www.ftc.gov/sites/default/files/documents/reports/structure-and-practices-debt-buying-industry/debtbuyingreport.pdf; *FTC 2009 Report* at 4; *GAO 2009 Report* at 26, 29 (2009); Kaulkin Ginsburg, *Global Debt Buying Report—Experts Analyze the Worldwide Debt Buying Market* 29 (2006) ("*Kaulkin Ginsburg 2006 Report*"), http://www.kaulkin.com/expertise/pdfs/reports/global_debt_buying_report_2006.pdf.

Consumers may have previously paid, disputed, or settled the debt; the debt may have resulted from identity theft or may belong to the consumer's family member or someone with a similar name; or the creditor or a debt collector may have miscalculated interest, misapplied past payments, or charged inappropriate fees. *Debt Collection (Regulation F)*, 78 Fed. Reg. 67,848, 67,860 (Nov. 12, 2013); National Consumer Law Ctr., *Fair Debt Collection* 11 (7th ed. 2011).

Despite the prevalence of disputes and these numerous possibilities for error, subsequent debt collectors often do not know about the disputes that consumers lodged with earlier collectors, or the results of those disputes. When debts are transferred to a subsequent debt collector, transferors rarely provide that new collector with the dispute history information. *FTC 2013 Report* at 37; *see also GAO 2009 Report* at 44. This, of course, can result in attempts to collect the wrong amount from the wrong consumer—the precise problem that Congress designed § 1692g to prevent. To serve its purposes, that provision thus must apply with full force when a debt is transferred to a new debt collector.

2. Second, applying § 1692g only to initial debt collectors would create a loophole that could strip consumers of their ability to stop attempts to collect debts they do not owe. The FDCPA bars a debt collector that receives a dispute under § 1692g(b) from continuing to attempt to collect the disputed debt until the debt is verified. 15 U.S.C. § 1692g(b). But courts have held that a debt collector has no

affirmative obligation to verify the debt in response to the consumer's dispute so long as it halts its collection efforts. *See, e.g.*, *Shimek v. Weissman, Nowack, Curry & Wilco, P.C.*, 374 F.3d 1011, 1014 (11th Cir. 2004); *Smith v. Transworld Sys., Inc.*, 953 F.2d 1025, 1031-32 (6th Cir. 1992). And nothing in the FDCPA prevents a creditor from enlisting a second debt collector to collect a disputed debt without verifying it first. If § 1692g did not apply to subsequent debt collectors, the new debt collector would have no obligation to verify the debt under § 1692g(b) and could pursue collection unhindered—even though *no one* ever responded to the consumer's dispute.

3. Third, in addition to eroding consumers' dispute rights in these ways, applying § 1692g only to initial debt collectors would deprive consumers of information they need to manage their debts. In particular, § 1692g gives consumers the right to request, in the thirty days after receiving a notice under § 1692g(a), the name and address of the "original creditor," *i.e.*, the creditor from whom they incurred the alleged debt. 15 U.S.C. §§ 1692g(a)(5), (b). Because debts are frequently sold even before they become delinquent, the entity seeking payment at any given time may not be the original creditor, but rather someone that the consumer does not recognize. Consumers therefore need information about the original creditor to be able to identify a debt and assess whether they in fact owe it. Similarly, consumers also need to know the name of the *current* creditor—another

important fact that § 1692g(a) requires debt collectors to disclose—to track whom they have paid off when they remit payment to a debt collector. If subsequent debt collectors were not subject to § 1692g, they would have no obligation to provide consumers this crucial information.

4. Limiting § 1692g to apply only to the initial communications of initial debt collectors not only would undermine the provision's effectiveness in all these ways, it would also do nothing to protect debt collectors' legitimate collection efforts. Requiring subsequent debt collectors to comply with § 1692g puts them on the same footing as initial debt collectors: They must send consumers a notice and respond to requests for verification or original creditor information before continuing to collect on a debt. Complying with these requirements does not preclude initial *or* subsequent debt collectors from collecting valid debts or otherwise place undue burdens on those collectors' legitimate collection activities.

5. In short, the district court's interpretation exempting subsequent debt collectors from § 1692g would undermine the provision's effectiveness while alleviating no undue burdens on debt collectors. Below, WZP advanced a slightly different interpretation, under which a subsequent debt collector would be excused from § 1692g's requirements only if the initial collector had sent a proper validation notice. Dist. Ct. ECF No. 45 at 5. This interpretation would do nothing to preserve § 1692g's effectiveness and would add yet another problem on top: It

would be difficult for debt collectors—and courts—to administer.[4] Under this interpretation, to determine whether it had to follow § 1692g, a subsequent debt collector—and a court reviewing its actions after the fact—would have to assess whether the first collector sent a notice, whether that notice conveyed all the required information in the appropriate form, and whether the notice otherwise complied with the statute. *See, e.g. Camacho v. Bridgeport Fin., Inc.*, 430 F.3d 1078, 1080-82 (9th Cir. 2005) (assessing whether notice violated § 1692g by stating that debt would be assumed valid unless dispute was made "in writing"); *Swanson v. S. Or. Credit Serv., Inc.*, 869 F.2d 1222, 1225 (9th Cir. 1989) (holding that validation notice "must be large enough to be easily read and sufficiently prominent to be noticed"); *Terran*, 109 F.3d at 1432-34 (assessing whether other statements in validation notice unlawfully overshadowed § 1692g disclosures).

[4] In addition to creating practical difficulties, this proposed interpretation is also wholly divorced from the statute's text. Although WZP's district court briefing did not parse how the statutory text supported its reading, WZP perhaps meant to rely on the fact that a debt collector need not send a notice under § 1692g(a) where "the [required] information [was] contained in the initial communication." But this exception could at most excuse a subsequent debt collector from sending a § 1692g notice if the initial collector had included the required information *in* its initial communication. There would be no textual basis to excuse the subsequent debt collector from sending the notice if the first collector had satisfied § 1692g by sending a notice within five days *after* its initial communication. And, of course, there is no plausible reason why Congress would have made subsequent debt collectors' obligations turn on whether the initial collector had sent its notice in its initial communication or five days later.

Interpreting § 1692g in accordance with its overriding purposes to apply to all debt collectors avoids these difficulties of administration.

C. The CFPB's and FTC's Interpretation of the Act Warrants Deference.

For the reasons set forth above, the text, legislative history, and purpose of § 1692g make clear that the provision requires all debt collectors, not just initial debt collectors, to send a validation notice in or soon after their "initial communication" with a consumer. To the extent that the Court is left with any doubt, however, it should defer to the views of the federal agencies charged with implementing and enforcing the statute.

This Court "give[s] 'great weight' to any reasonable construction of a regulatory statute adopted by the agency charged with its enforcement," including where that interpretation is conveyed in an amicus brief. *Bank of Am. v. City & Cnty. of San Francisco*, 309 F.3d 551, 563 (9th Cir. 2002); *accord Balvage v. Ryderwood Improvement & Serv. Ass'n, Inc.*, 642 F.3d 765, 776 (9th Cir. 2011) ("[A]n agency's litigation position in an amicus brief is entitled to deference if there is no reason to suspect that the interpretation does not reflect the agency's fair and considered judgment on the matter." (internal quotations omitted)). Congress vested authority for administering the FDCPA in the CFPB, which is empowered not only to enforce the Act, but also to promulgate regulations and to issue advisory opinions. 15 U.S.C. §§ 1692k(e), 1692*l*(b)(6), (d); *see also* 12

U.S.C. § 5512(b)(4)(B) (addressing deference due to CFPB interpretations of federal consumer financial law). Its interpretation of the Act is therefore entitled to deference.

Moreover, the views expressed in this brief are consistent with the longstanding interpretation by the FTC, which has had authority to enforce the FDCPA since the statute's enactment, and which now shares concurrent enforcement authority with the CFPB. *See* Fair Debt Collection Practices Act, Pub. L. No. 95-109, § 814, 91 Stat. 874, 881-82 (1977); 15 U.S.C. § 1692*l*. In Staff Commentary promulgated after notice and comment in 1988, the FTC indicated that subsequent debt collectors, like initial debt collectors, had to comply with § 1692g: "An attorney who [qualifies as a debt collector] must provide the required notice [under § 1692g], even if a previous debt collector (or creditor) has given such a notice." *Statements of General Policy or Interpretation—Staff Commentary On the Fair Debt Collection Practices Act*, 53 Fed. Reg. 50,097, 50,100 (Dec. 13, 1988). Deference is particularly warranted here in light of this longstanding, consistent interpretation. *Cf. Zenith Radio Corp. v. United States*, 437 U.S. 443, 450 (1978) (deferring to "longstanding and consistent administrative interpretation").

CONCLUSION

For the above reasons, the district court erred in concluding that WZP had no obligation to comply with § 1692g(a) because it was not the first debt collector to attempt to collect Hernandez's debt. The order granting summary judgment to WZP and denying summary judgment to Hernandez on that basis should be reversed.

Respectfully submitted,

Dated: August 20, 2014 /s/ Kristin Bateman

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STATUTORY APPENDIX

15 U.S.C. § 1692g. Validation of debts

(a) Notice of debt; contents

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

(1) the amount of the debt;

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

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

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

(5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

(b) Disputed debts

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

consumer's right to dispute the debt or request the name and address of the original creditor.

(c) Admission of liability

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

(d) Legal pleadings

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

(e) Notice provisions

The sending or delivery of any form or notice which does not relate to the collection of a debt and is expressly required by Title 26, title V of Gramm-Leach-Bliley Act [15 U.S.C.A. § 6801 *et seq.*], or any provision of Federal or State law relating to notice of data security breach or privacy, or any regulation prescribed under any such provision of law, shall not be treated as an initial communication in connection with debt collection for purposes of this section.

CERTIFICATE OF COMPLIANCE WITH RULE 32(a)(7)

This brief complies with the type-volume limitation of Federal Rules of Appellate Procedure 29(d) and 32(a)(7)(B) in that it contains 6,961 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Times New Roman.

Dated: August 20, 2014

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on August 20, 2014.

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I further certify that one of the participants in the case is not a registered CM/ECF user. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third-party commercial carrier for delivery within three calendar days to the following non-CM/ECF participant:

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