RECORD NO. 13-1151

In The
United States Court of Appeals
For The Fourth Circuit

DANA CLARK, on behalf of herself and all others similarly situated; DAVID CLARK, on behalf of himself and all others similarly situated,

Plaintiffs – Appellants,

v.

ABSOLUTE COLLECTION SERVICE, INCORPORATED,

Defendant – Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA AT RALEIGH

BRIEF OF APPELLEE

Sean T. Partrick
Jennifer D. Maldonado
William T. Kesler, Jr.
YATES, MCLAMB & WEYHER, LLP
Post Office Box 2889
Raleigh, North Carolina 27602
(919) 835-0900

Counsel for Appellee

THE LEX GROUP ♦ 1108 East Main Street ♦ Suite 1400 ♦ Richmond, VA 23219
(804) 644-4419 ♦ (800) 856-4419 ♦ Fax: (804) 644-3660 ♦ www.thelexgroup.com

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 13-1151 Caption: Dana Clark, on behalf of herself and other similarly situated, et al

Pursuant to FRAP 26.1 and Local Rule 26.1,

Absolute Collection Service, Incorporated who amended its name to FKAACS, Inc.
(name of party/amicus)

who is appellee, makes the following disclosure:
(appellant/appellee/amicus)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including grandparent and great-grandparent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))? ☐YES ☑NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐ YES ☑NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐ YES ☑NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: /s/ Sean T. Partrick Date: 2/7/2013

Counsel for: Appellee

CERTIFICATE OF SERVICE

****

I certify that on 2/7/2013 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

/s/ Sean T. Partrick (signature) 2/7/2013 (date)

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iii

INTRODUCTION 1

STATEMENT OF THE CASE AND OF THE FACTS 3

SUMMARY OF ARGUMENT 6

ARGUMENT 8

I. THE INITIAL COMMUNICATION LETTER TO A CONSUMER DOES NOT VIOLATE § 1692g IF IT STATES THAT THE DEBT WILL BE ASSUMED VALID UNLESS IT IS DISPUTED IN WRITING 8

A. There is No Precedent That Binds the Fourth Circuit as to the Interpretation of § 1692g(a)(3) 10

B. This Court Should Adopt the Holding in *Graziano* Which Provides that § 1692g(a)(3) Must Be Read to Require that a Dispute Must Be in Writing in Order to Be Effective 11

C. The *Camacho* Reasoning and Holding Fails To Serve The Consumer Public Because It Allows Them the Option Of Waiving Their Statutory Rights 14

II. POLICY CONSIDERATIONS SHOULD FAVOR THE CONSUMERS: INSTRUCTING CONSUMERS TO OBTAIN THE FULL PROTECTION OF THE ACT IS NOT A FRAUDULENT OR OPPRESSIVE DEBT COLLECTION TACTIC 19

III. DISTRICT COURTS WITHIN THE FOURTH CIRCUIT HAVE ALREADY ADOPTED THE REASONING OF *GRAZIANO* 22

A. Maryland – *Wallace v. Capital One Bank* 22

B. Virginia – *Withers v. H.R. Eveland* 24

C. Virginia – *Turner and Bicking* 25

(i) *Turner v. Shenandoah Legal Group* 25

(ii) *Bicking v. Law Offices of Rubenstein and Cogan* 26

IV. THE *GUERRERO* CASE IS IRRELEVANT TO ACS AND THIS COURT 28

CONCLUSION 31

CERTIFICATE OF COMPLIANCE

CERTIFICATE OF FILING AND SERVICE

TABLE OF AUTHORITIES

Page(s)

CASES

Bicking v. Law Offices of Rubenstein and Cogan,
783 F. Supp. 2d 841 (E.D. Va. 2011) 25, 26, 27

Brady v. Credit Recovery Co.,
160 F.3d 64 (1st Cir. 1998).....16, 17, 18

Camacho v. Bridgeport Financial, Inc.,
430 F.3d 1078 (9th Cir. 2005) .....*passim*

Castillo v. Carter,
2001 WL 238121 (S.D.Ind. Feb. 28, 2001).....30

Clomon v. Jackson,
988 F.2d 1314 (2d Cir.1993) 20, 29

Davis v. R&R Professional Recovery, Inc.,
2009 WL 400627 (D. Md. Feb 17, 2009).....23

Edwards v. Powell, Rogers & Speaks, Inc.,
2007 WL 2119214 (2007) 30

Garcia-Contreras v. Brock & Scott, PLLC,
775 F. Supp. 2d 808 (M.D.N.C. 2011) 20, 26

Glen v. Law Office of W.C. French,
2012 WL 181496 (D. Md. Jan. 19, 2012),
report and recommendation adopted,
2012 WL 425870 (D. Md. Feb. 8, 2012).....23

Graziano v. Harrison,
950 F.2d 107 (3d Cir. 1991) .....*passim*

Guerrero v. Absolute Collection Service, Inc.,
2011 WL 8183860 (N.D. Ga. 2011).....28, 30

Hooks v. Forman Holt Eliades & Ravin LLC,
2012 WL 3322637 (S.D.N.Y. Aug. 13, 2012) 29

Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrigh LPA,
130 S. Ct. 1605 (2010).....10

Shapiro v. Riddle & Assocs., P.C.,
240 F. Supp. 2d 287 (S.D.N.Y. 2003) 29

Turner v. Shenandoah Legal Group,
2006 WL 16856698 (2006) 25

United States v. National Financial Services, Inc.,
98 F.3d 131 (4th Cir. 1996) 20

Wallace v. Capital One Bank,
168 F. Supp. 2d 526 (Md. 2001).....22, 23

Wilson v. Quadramed Corp.,
225 F.3d 350 (3d Cir. 2000) 30

Withers v. H.R. Eveland,
988 F. Supp. 942 (E.D. Va. 1997) .....*passim*

STATUTES

15 U.S.C. §§ 1692 *et seq*.....1

15 U.S.C. § 1692c(a)(1) 15, 16

15 U.S.C. § 1692c(c).....21

15 U.S.C. § 1692e 5

15 U.S.C. § 1692e(8) 15, 16, 17

15 U.S.C. § 1692e(10) 5

15 U.S.C. § 1692g .....*passim*

15 U.S.C. § 1692g(a)(3) ..... *passim*

15 U.S.C. § 1692g(a)(4) ..... *passim*

15 U.S.C. § 1692g(a)(5) ..... *passim*

15 U.S.C. § 1692g(a)-(b) 9

15 U.S.C. § 1692g(b) ..... *passim*

15 U.S.C. § 1692g(4) 6

15 U.S.C. § 1692g(5) 6

15 U.S.C. § 1692h 15, 16

RULES

Fed. R. Civ. P. 12(b)(6) 5

Fed. R. Civ. P. 72(b) 25

OTHER AUTHORITY

WakeMed Health & Hospitals, located in Raleigh, N.C. (http://www.wakemed.org/) 1

INTRODUCTION

Absolute Collection Services, Inc. ("ACS") was retained by WakeMed Health & Hospitals ("WakeMed")[1] to collect unpaid debts for medical services rendered to the above-captioned plaintiffs, (the "Clarks"). ACS sent a letter to the Clarks stating that "all portions of this claim shall be assumed valid unless disputed in writing within thirty (30) days." JA-11-12. The Clarks contend that by implying that the dispute must be in writing, ACS made false, deceptive, or misleading representations in violation of § 1692g(a)(3) of the Federal Debt Collection Practices Act (the "FDCPA"), 15 U.S.C. §§ 1692 *et seq*. However, ACS's letter complies with 15 U.S.C. § 1692g(a)(3) because that statute, consistent with the rest of § 1692g, contains an inherent writing requirement as defined by *Graziano v. Harrison*, 950 F.2d 107 (3d Cir. 1991) regarding a consumer's dispute of a debt under the FDCPA. As such, the United States District Court for the Eastern District of North Carolina (the "District Court") correctly found that the Clarks' complaint (the "Complaint") failed to allege a violation of the FDCPA. Moreover, the Clarks do not allege that they *ever* disputed the debts *at all*, either orally or in writing—they merely claim that the letter they received from ACS advising them of their rights under the statute was false, deceptive, or misleading. It is disingenuous for

[1] WakeMed Health & Hospitals, located in Raleigh, N.C. (http://www.wakemed.org/)

the Clarks to pursue a claim for violations of the debt verification portion of the FDCPA when they never utilized or intended to utilize this part of the FDCPA.

The core protections provided in § 1692g regarding validation of a debt are acquired only through a written dispute from the consumer to the debt collector: § 1692g(a)(4) allows a debtor to obtain a copy of a debt verification or judgment, but only if the debtor makes a request "in writing" to the debt collector; § 1692g(a)(5) allows a debtor to obtain the name and address of the original creditor, but only if the debtor makes a request in writing;[2] and § 1692g(b) allows for a temporary or permanent cessation of debt collection communications by the debt collector only if the debtor makes the written requests outlined in 1692g(a)(4) and (5). Analyzing § 1692g(a)(3) so as to allow for oral disputes serves only to confuse consumers, especially the least sophisticated, because it will lead them to believe that oral disputes trigger the protections of § 1692g(a)(4) and (5) and § 1692g(b) when it can actually lead to a waiver of those valuable statutory rights. On the other hand, no rights and protections under any provision of FDCPA are waived by a written dispute from the debtor. Therefore, § 1692g(a)(3) must be read as having an inherent writing requirement.

The issue of whether there is an inherent writing requirement within § 1692g(a)(3) is a matter of first impression for the Fourth Circuit. As explained in

[2] Both § 1692g(a)(4) and (5) require the written notice within a 30 day period after receiving notice of the debt.

detail below, the District Court's interpretation of § 1692g(a)(3), following the *Graziano* rationale, directs consumers to take steps that trigger the maximum protections afforded by the FDCPA; the Clarks' interpretation simply causes confusion and may potentially cause a consumer to inadvertently waive many core remedies under the statute.

STATEMENT OF THE CASE AND OF THE FACTS

Because ACS does not agree with the characterization of the facts provided by the Clarks in their opening brief (the "Opening Brief"), ACS provides the following statement for clarification purposes.

Dana Clark received medical services at WakeMed and was later unable to pay her account. JA-6. Thereafter, David Clark incurred a separate debt at WakeMed as he was the responsible party to pay for medical treatment provided to his daughter, Shannon Clark. JA-6. After the debts from WakeMed were placed with ACS for collection, ACS sent its initial written communication to Dana Clark regarding her debt on July 1, 2011. JA-6; 12. ACS sent its initial written communication to David Clark regarding his debt on August 16, 2011. JA-6; 12. Neither Dana nor David Clark disputed their respective debts after receiving these letters—there are no allegations that the Clarks ever planned or attempted to

dispute the validity of the WakeMed debts *in any way*. In fact, *no dispute*, oral or written, *was ever made* by the Clarks to ACS prior to the Complaint being filed.[3]

Both initial communication letters contain the following respective language:

> This is an attempt to collect a debt. Any information obtained will be used for that purpose only.
>
> WakeMed turned your account over to our office for collection.
>
> Our records indicate that your account balance is $150.00 for services rendered to you on (date).
>
> If this is your first notification concerning this account and you need additional information before payment is submitted, please call our office.
>
> **ALL PORTIONS OF THIS CLAIM SHALL BE ASSUMED VALID UNLESS DISPUTED IN WRITING WITHIN THIRTY (30) DAYS; IN WHICH CASE, VERIFICATION OF THE DEBT OR A COPY OF THE JUDGMENT WILL BE PROVIDED TO YOU**. IF THE ORIGINAL CREDITOR IS DIFFERENT FROM THE ABOVE NAMED CREDITOR, THE NAME OF THE ORIGINAL CREDITOR WILL BE PROVIDED UPON REQUEST.

JA-11 & 12.

Focusing on the language in bold, the Complaint alleged that each letter sent by ACS "eliminates the consumer's statutory right to dispute the debt orally by unilaterally imposing a written dispute requirement to prevent the assumption of validity." JA-7. Based solely on the above allegations, the Clarks claimed, in their

[3] The Complaint was filed after the 30 day period to dispute the debt under § 1692g expired.

only cause of action, that ACS had violated the FDCPA by "falsely representing that a consumer's dispute of the alleged debt must be 'in writing' to avoid the assumption of validity in violation of 15 U.S.C. § 1692g(a)(3)" and therefore used "false, deceptive, or misleading representation or means in connection with the collection of any debt in violation of 15 U.S.C. §§ 1692e and e(10)." JA-8. Importantly, the Clarks did not allege that because of the written requirement language in the ACS letter, the Clarks' somehow lost their right to dispute the debt, nor did they allege that an oral dispute was ignored by ACS. Indeed, the Clarks *never made any dispute*, either oral or written, of the debts in question.

ACS answered the Complaint denying that a violation of the FDCPA occurred. Thereafter, ACS moved to dismiss (the "Motion to Dismiss") the Clarks' Complaint pursuant to Rule 12(b)(6), on the basis that the Clarks had failed to allege any collection activity on the part of ACS that was prohibited by the FDCPA. The crux of ACS's argument was that the respective letters sent to the Clarks by ACS did not violate the FDCPA because § 1692g(a)(3) contained an inherent writing requirement.

The District Court granted ACS's Motion to Dismiss. JA-23. Focusing on § 1692g, the *only* subsection at issue, the District Court ruled that "given the structure of section 1692g, subsection (a)(3) must be read to require that a dispute,

to be effective, must be in writing." JA-25 (citing *Graziano v. Harrison*, 950 F.2d 107 (3d Cir. 1991)). In support of its ruling, the District Court explained:

> "Graziano's reading of § 1692g(a)(3) does not impose an additional burden on consumers, but rather furthers the FDCPA's purpose to protect consumers by ensuring that once the validity of a debt is contested under subsection (a)(3), additional protections also may be triggered, including that all collection activities must cease unless and until the debt collector obtains some verification of the debt. 15 U.S.C. § 1692g(4), (5); 1692g(b). Indeed, to permit an oral dispute of a debt leaves the consumer with fewer protections and in a potentially far more confusing station than if a writing is required as they navigate the interplay between the provision of § 1692g."

JA-25-26.

Thus, the Clarks' Complaint failed to allege a violation of the FDCPA and was therefore properly dismissed.

SUMMARY OF ARGUMENT

To maximize consumer protection under the FDCPA, this Court should adopt the holding and reasoning set forth in the District Court's order and the holding in *Graziano v. Harrison*, 950 F.2d 107 (3d Cir. 1991). Specifically, given the structure of § 1692g(a)(3), a dispute must be in writing in order to be effective. Adopting this approach benefits both consumers and debt collectors alike. Consumers are benefitted because they will receive clear instructions as to how to obtain the maximum protections under the FDCPA upon first receiving a debt collection letter. In addition, requiring a written dispute for the purposes of § 1692g(a)(3) does not lead the consumer to waive *any* rights under any section of

the FDCPA. Debt collectors are benefitted because upon receiving a written dispute, debt validation practices are clearly defined for the industry, and written disputes provide for a record between the consumer and debt collector. Both public policy and the spirit of the FDCPA are served by the inherent writing requirement.

On the other hand, the interpretation advocated by the Clarks presents a confusing choice with additional and unnecessary burdens. Even if consumers are told that they may dispute debts orally and in writing, the fact that there is a choice presents two issues for the least sophisticated consumer. First, the consumer may be led to believe that an oral dispute triggers the further validation protections of §§ 1692g(a)(4) and (a)(5), when it clearly does not. Based on this mistaken belief, consumers may choose to dispute the debt only orally, thus inevitably waive these core protections under § 1692g(a)(4) and (a)(5). Unless the consumer realizes the mistake within the thirty day time frame, they will have lost the right to dispute the debt in writing and trigger the debt collector's duty to validate the debt. Despite numerous provisions outlining required disclosures by debt collectors, the FDCPA contains no provision requiring a debt collector to inform consumers as to the limits of an oral dispute in an initial collection letter. The best opportunity to educate the least sophisticated consumer is in the initial written communication, where he can be instructed to preserve *all* of his remedies under § 1692g by simply disputing the debt in writing the first time.

Thus, because § 1692g(a)(3) logically contains an inherent written requirement, the letters sent by ACS do not violate the FDCPA and the Clarks' Complaint was properly dismissed.

ARGUMENT

I. THE INITIAL COMMUNICATION LETTER TO A CONSUMER DOES NOT VIOLATE § 1692g IF IT STATES THAT THE DEBT WILL BE ASSUMED VALID UNLESS IT IS DISPUTED IN WRITING.

The sole statute at issue, 15 U.S.C. § 1692g, entitled "Validation of Debts," is provided below:

(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.

15 U.S.C. § 1692g(a)-(b) (emphasis added).

Even the Clarks would agree that the only way to secure the benefits of §§ 1692g(a)(4),(a)(5) and (b) is to dispute the debt in writing. These rights include: (1) verifying the debt with the creditor; (2) obtaining the name and address of the original creditor; and, most importantly for the consumer (3) ceasing debt collection efforts during the dispute and verification process. *Id*. However, if the consumer disputes the debt orally as the Clarks propose, there is *no benefit* to the consumer—without a written dispute, the FDCPA imposes *no duty* on the part of

the debt collector to provide further verification to the consumer. Further, if only an oral dispute is made, the rights and protections in § 1692g(a)(4), (a)(5) and (b) are all waived after thirty days.

The statute clearly places a high value on a written dispute from the consumer. Because the goal of the FDCPA and § 1692g is protecting consumers and providing them with protections against debt collectors, a debt collector should not be sued for pointing the consumer in the direction that allows for more protection to the consumer.

A. There is No Precedent That Binds the Fourth Circuit as to the Interpretation of § 1692g(a)(3).

Neither the United States Supreme Court nor the United States Court of Appeals for the Fourth Circuit (the "Fourth Circuit") have addressed the issue of whether a debt collector violates § 1692g(a)(3) by stating that a consumer's dispute of a debt must be in writing.[4] Therefore, by resolving this matter, the Fourth Circuit will join only two other federal circuit courts that have definitively ruled on this issue. Of course, those two decisions present two completely different rationales.

[4] *See Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrigh LPA*, 130 S. Ct. 1605, 1610 (2010) (noting the split of authority represented by *Graziano* and *Camacho* but specifically staying out of the fray, stating that it expresses no view about whether inclusion of an "in writing" requirement in a notice to a consumer violates § 1692g.)

On one side of the writing requirement debate is the case of *Graziano v. Harrison*, 950 F.2d 107 (3d Cir. 1991), which held that a consumer's dispute of a debt must be in writing to prevent a debt collector from presuming the validity of that debt. The other is *Camacho v. Bridgeport Financial, Inc.*, 430 F.3d 1078 (9th Cir. 2005), cited by the Clarks' in their Complaint, which held that the plain language of § 1692g does not impose an "in writing" requirement on consumers to dispute the validity of a debt. While courts in the Third Circuit follow *Graziano*'s holding and courts in the Ninth Circuit follow *Camacho*'s holding, district courts in the other circuits across the country are split as to whether the writing requirement violates that Act. In fact, district courts *within* many circuits are split as to which interpretation to follow. As discussed below, most district courts within the Fourth Circuit that have addressed this issue, including the District Court below, have followed *Graziano*.

B. This Court Should Adopt the Holding in *Graziano* Which Provides that § 1692g(a)(3) Must Be Read to Require that a Dispute Must Be in Writing in Order to Be Effective.

The case of *Graziano v. Harrison*, 950 F.2d 107 (3d Cir. 1991) involved a consumer who received a letter from a debt collector which included a statement that unless the consumer disputed the debt in writing within 30 days, the debt would be assumed valid. *Id. at* 109. The district court granted summary judgment on this issue in favor of the debt collector. On appeal, the consumer argued that

because the letter from the debt collector stated that any dispute of the debt had to be in writing, the letter failed to comply with § 1692g(a)(3). *Id*. at 112. The debt collector argued that while § 1692g(a)(3) does not itself require that a dispute be in writing, the following two provisions, §§ 1692g(a)(4) and (5), *expressly* provided that the debtor communicate with the debt collector in writing and revealed a congressional intent that disputes be in writing. *Id*.

The consumer in *Graziano* argued that because § 1692g(a)(3) did not expressly require a written dispute while (a)(4) and (a)(5) did was "strong evidence" that Congress purposefully "omitted an analogous requirement in subsection (3)." *Id*. at 112. However, the Third Circuit disagreed with the argument proposed by the plaintiff, and held that "given the structure of § 1692g, subsection (a)(3) *must be read to require that a dispute, to be effective, must be in writing*." *Id*. (emphasis added)

The *Graziano* court explained that sections (a)(4), (a)(5) and (b) all provided benefits to the debtor *only if* the dispute was made in writing. However, these benefits are intertwined with the notification requirement of (a)(3). Per § 1692g(a)(3), a debt collector is required to notify the consumer that they have thirty days to dispute the debt, or it will be assumed to be valid. As the *Graziano* court noted, allowing such a dispute to be made orally benefits no one. Upon receipt of an *oral* dispute, the debt collector could not assume the debt is valid per

the statute, but at the same time it would not be required to verify the debt for the consumer or itself, nor would the debt collector be required be to advise the consumer of the identity of the original creditor. The plain language of the statute indicates that such duties are only triggered upon receipt of a *written* dispute. § 1692g(a)(4)-(5). In fact, a debt collector could even continue debt collection efforts, as § 1692g(b) states that collection activities must only cease after receipt of a *written* dispute. § 1692g(b). Based on the absurdity of such a process, the Third Circuit concluded in *Graziano* that 1692g(a)(3) "contemplates that any dispute, to be effective, must be in writing." *Id*.

The intent of the statute is clear from its operation. It is also clear how the operation of the statute completely fails that intent when the consumer orally disputes a debt. An oral dispute provides the consumer no protection under § 1692g at all, requires no debt verification action by the debt collector, and allows debt collectors to resume unfettered debt collection activity. If the goal of the validation statute, § 1692g, is to encourage verification of the debt with the original creditor, then an oral dispute simply does not effectuate the purpose of § 1692g. Like the *Graziano* court, we see "no reason to attribute to Congress an intent to create so incoherent a system." *Id*.

C. The *Camacho* Reasoning and Holding Fails To Serve The Consumer Public Because It Allows Them the Option Of Waiving Their Statutory Rights.

In contrast to *Graziano*, the holding and policy in *Camacho v. Bridgeport Financial, Inc.*, 430 F.3d 1078 (9th Cir. 2005) fails to bolster the protections set forth in § 1692g. Using the subsections from *outside* of § 1692g to justify its acceptance of oral disputes, *Camacho* undermines the purpose of § 1692g. Unfortunately for consumers, the effectiveness of oral disputes in other sections of the FDCPA does nothing to change the fact that oral disputes provide no protection at all under § 1692g. Conversely, requiring a written dispute for the purposes of § 1692g alone would not waive any of the rights listed by *Camacho*.

In *Camacho*, the consumer brought an action under the FDCPA against the debt collector for including in its initial collection notice a statement that disputes of the debt had to be in writing. *Id.* at 1078-79. The debt collector responded that § 1692g(a)(3) implicitly required disputes to be in writing because only written disputes could invoke the other protections afforded by the FDCPA. *Id.*

This was an issue of first impression for the Ninth Circuit and at the time it was decided the only other circuit to address this issue was the Third Circuit in *Graziano*. The Ninth Circuit disagreed with rationale in *Graziano*, holding that the plain meaning of § 1692g(a)(3), when read specifically and plainly to not include a writing requirement, does not lead to absurd results. *Id.* at 1080. In doing so, the

Camacho opinion determined that *Graziano* was incorrect when it concluded that an oral dispute would render the debt verification process incoherent. *Id*. The *Camacho* court then reached beyond the validation/verification provisions of § 1692g to find rights that *are* triggered by an oral communication including: (1) precluding the debt collector from communicating the debtor's credit information to others without including the fact that the debt is in dispute under § 1692e(8); (2) prohibiting the debt collector from applying any payments to a disputed debt under § 1692h; (3) and barring communication with a debtor at a known inconvenient time or place under § 1692c(a)(1). However, *none* of these subsections were at issue in *Camacho* or in the present case. *Camacho* found that because an oral dispute triggered these other independent rights, oral disputes should not be prevented under § 1692g. *Id*. at 1082. Based on this finding, the Ninth Circuit held that the "plain language of subsection (a)(3) indicates that disputes need not be made in writing, and the plain meaning is neither absurd in its results nor contrary to legislative intent. Thus, there is no writing requirement implicit in § 1692g(a)(3)." *Id*.

The *Camacho* rationale unnecessarily sacrifices the protection of § 1692g by equating disputes in subsection 1692g with oral communications in subsections that have nothing to do with debt validation or verification. The validation process functions by requiring written disputes. There is no justification for referring to the

outside sections[5] because doing so does not provide more protection to consumers. As discussed above, consumers will waive the protections of subsections (a)(4), (a)(5), and (b) if not instructed to dispute debts in writing within thirty days under § 1692g. In contrast, when consumers dispute debts in writing in the thirty day period, they retain the protections under (a)(4), (a)(5), and (b) *in addition to* those under outside sections. The protections under § 1692h (preventing debt collectors from applying payments to a disputed debt) and § 1692c(a)(1) (barring communication at inconvenient times) are unrelated to the validation process. Consumers are allowed to access these protections via oral communication and long after the initial thirty day period has expired.

Similarly, § 1692e(8) also has nothing to do with debt validation but prevents debt collectors from reporting inaccurate information to credit bureaus. *See Brady v. Credit Recovery Co.*, 160 F.3d 64 (1st Cir. 1998). The *Brady* case stands for the proposition that § 1692g is separate and distinct from other provisions of the FDCPA and requires a written dispute for the validation process while § 1692e(8) does not. *Brady* involved a debt collector which notified a credit agency of a debt but did not report the debt as disputed, even though the consumer had called to dispute the debt.

[5] §§ 1692e(8), 1692h and 1692c(a)(1).

The *Brady* court observed that § 1692(e)(8) did not deal with debt collection practices, and while § 1692e(8) may allow for an oral dispute, § 1692g required written notice. It further noted that these were separate sections of the FDCPA that had different purposes and effects, which reveal the reason why Congress intended to require a writing under § 1692g(b), but not under § 1692e(8):

> Under section 1692g(b) a consumer must dispute a debt *in writing*, within an initial thirty-day period, in order to trigger a debt validation process. Once a consumer exercises this right, a debt collector must cease all further debt collection activity until it complies with various verification obligations. **Section 1692g(b) thus confers on consumers the ultimate power vis-a-vis debt collectors: the power to demand the cessation of all collection activities.** Recognizing the broad consumer power granted by this provision, Congress expressly conditioned its exercise on the submission of written notification within a limited thirty-day window.
>
> In contrast, § 1692e(8) does not affect debt collection practices at all. Instead, § 1692e(8) merely requires a debt collector who knows or should know that a given debt is disputed to disclose its disputed status to persons inquiring about a consumer's credit history.

Brady, 160 F.3d at 66-67 (internal citations omitted) (emphasis added). *Brady* concluded that § 1692g does not define "disputed debt" for the entire FDCPA. *Id*. Thus, the *Brady* Court reasoned that it was inappropriate to apply the procedures set forth in § 1692e(8) to § 1692g. *Id*. Similarly, it is inappropriate for the Clarks to claim that because oral disputes are permitted in other sections of the FDCPA, they must also be permitted under § 1692g.

The *Brady* analysis provides a common sense approach to the FDCPA's statutory scheme: Requiring a written dispute under § 1692g(a)(3) does not adversely affect the rights of consumers under any other sections of the FDCPA. Each section is a separate mechanism providing distinct protections; co-mingling these separate sections only leads to confusing results for a consumer. Under the *Graziano* analysis, the validation process requires a written notification. This analysis is a concise evaluation of § 1692g as a unit, while *Camacho* draws from unrelated provisions of the FDCPA that have nothing to do with debt validation.

To illustrate the absurdity of the result of allowing of an oral dispute under § 1692g, consider what occurs in practice. A debt collector sends an initial debt verification letter to a consumer that does not specify that the dispute must be in writing. After receiving this letter, the consumer chooses to call the debt collector to dispute the debt in some way. The debt collector could simply end the call at that point—nothing in the FDCPA requires that the debt collector further advise the consumer about his rights over the phone. While the consumer now believes he has disputed the debt, he is actually well on his way to waiving the core protections of § 1692g. Because the consumer made his dispute orally, § 1692g provides no validation or verification benefit to the consumer whatsoever, as those provisions clearly require that validation or verification of the debt are only necessary upon receipt of a written dispute. Nothing prevents that debt collector from simply

waiting until the thirty day period for a written dispute under § 1692g(a)(4) & (a)(5) expires. During that time, the debt collector is not required to verify the debt or any other information about it under § 1692g. Similarly, the debt collector could continue to attempt to call and/or send letters to the consumer trying to collect the debt, as under § 1692g(b), debt collection activities are only required to cease after receipt of a *written* dispute. If the consumer wanted to exercise his rights under § 1692g(a)(4)-(5) and (b), he would have to independently realize that debt collectors are only required to validate, verify, and cease collection activity upon receipt of a written dispute. The consumer would then have to take the *additional step* of disputing the debt in writing within the thirty day period. In contrast, the ACS letter told the Clarks that they needed to dispute the debt in writing at the outset, thus allowing them to preserve *all* of their rights under § 1692g as a whole.

II. POLICY CONSIDERATIONS SHOULD FAVOR THE CONSUMERS: INSTRUCTING CONSUMERS TO OBTAIN THE FULL PROTECTION OF THE ACT IS NOT A FRAUDULENT OR OPPRESSIVE DEBT COLLECTION TACTIC.

When applied to actual practice, the rationale of *Camacho* creates more confusion for consumers and provides fewer constraints on debt collectors. The *Camacho* holding hurts consumers as under its holding debt collectors are allowed to be less direct and clear when informing consumers as to how to obtain their maximum rights under the FDCPA.

Better protection for the consumer is attained by adopting the *Graziano* rationale. Instructing a consumer that a dispute of a debt be in writing secures the core protections of § 1692g while preserving all other rights the consumer may have under other sections of the FDCPA. Consumers, especially the least sophisticated, are more directly and clearly informed of how to attain these protections.

Specifically,

> [i]n analyzing the initial collection letters, the court must apply the "least sophisticated consumer" standard. The purpose of this standard is "to ensure that the FDCPA protects all consumers, the gullible as well as the shrewd." The least sophisticated consumer "isn't a dimwit," or "tied to the very last rung on the [intelligence or] sophistication ladder."

Garcia-Contreras v. Brock & Scott, PLLC, 775 F. Supp. 2d 808, 817-18 (M.D.N.C. 2011) (internal citations omitted). This standard is applied to insure that consumers, without legal or business experience, can understand their rights under the FDCPA as conveyed by that letter. *See United States v. National Financial Services, Inc.*, 98 F.3d 131, 135-36 (4th Cir. 1996). A letter advising such a consumer to dispute the debt in writing, which would preserve *all* of their rights under § 1692g, certainly has the goal of protecting the least sophisticated consumer in mind. The *least sophisticated* consumer should not receive instructions on how to get the *least protection* from the FDCPA. The Clarks twist the least sophisticated consumer standard by claiming that such a consumer by definition

cannot read or write. However, several sections of the FDCPA require that in order to receive protection, a consumer must dispute the debt in writing.[6] Thus, the FDCPA clearly and explicitly contemplates that even the least sophisticated consumer is capable of reading and writing a letter.

As discussed in detail above, without indicating that a dispute should be in writing, consumers may be led to believe that an oral dispute triggers the further protections of §§ 1692g(a)(4), (5), and (b). Congress certainly did not intend for the least sophisticated debtor to be misled into believing that all of the protections of § 1692g would apply if they merely picked up the phone and called the debt collector. *See Withers v. Eveland*, 988 F. Supp. 942 (E.D. Va. 1997)[7]. To hold otherwise works against the goal of the FDCPA itself: To provide consumers rights in the debt collection process. It is "incoherent," to use *Graziano*'s term, to determine that a debt collector violates the FDCPA when it informs consumers of the most efficient manner to obtain the most statutory rights. It is counterintuitive as well as inconsistent with the FDCPA to argue that the least sophisticated consumer is unable to craft a written response to the debt collector. The least sophisticated debtor must be assumed to have the ability to read the letter notifying him of his rights. Further, the least sophisticated consumer must also be able to

[6] 15 U.S.C. §§ 1692c(c); 1692g(a)(4)-(5).
[7] Discussed in Section III.B.

write, otherwise, the core debt verification protections of the statute, which expressly require a written dispute, would simply be lost on him.

In this case, the Clarks received a letter from ACS informing them of how best to avail themselves of the protections provided under the FDCPA. A debt collector should not be liable under the statute for pointing a consumer in the direction of more statutory protection. Thus, the circumstances in which ACS finds itself are unusual: It is accused of violating a statute designed to protect consumers because it informed the consumers of how to best protect themselves under the same statute. If the goal here is consumer protection and certainty under § 1692g as a whole, the Court should adopt the holding in *Graziano* in order to resolve this contradiction. The debt validation section of the FDCPA was created to prevent abusive practices—it is simply not an abusive practice to point consumers in the direction of the most protection.

III. DISTRICT COURTS WITHIN THE FOURTH CIRCUIT HAVE ALREADY ADOPTED THE REASONING OF *GRAZIANO*

A. Maryland – *Wallace v. Capital One Bank*

Federal district courts in Maryland have uniformly adopted the *Graziano* approach. In 2001, the United States District Court of Maryland, in *Wallace v. Capital One Bank*, 168 F. Supp. 2d 526 (Md. 2001), *specifically adopted* the *Graziano* holding. In *Wallace*, the consumer alleged that the debt collector's initial written communication violated the FDCPA as it required the consumer to dispute

the debt in writing. *Id*. at 529. The court stated that it was "persuaded by the reasoning in [*Graziano*] which holds that not requiring a debtor's dispute under § 1692g(a)(3) to be in writing would make the statutory scheme incoherent. Indeed, if [a debt collector] invited an oral communication to dispute the debt from the debtor, it might induce the debtor to waive her rights under § 1692(a)(4) and (5) which require a writing to invoke the rights conferred by those sections." *Id*. The *Wallace* case cited the *Withers* opinion, discussed below, as analogous.

The *Wallace* matter has been reaffirmed by other Maryland decisions recently as 2012. *See Davis v. R&R Professional Recovery, Inc*., 2009 WL 400627, (D. Md. Feb 17, 2009) (holding that there was no FDCPA violation when plaintiff was told over the phone that she could not orally dispute the debt and that she was required to put the dispute in writing as § 1692(a)(3) contains an inherent writing requirement); *Glen v. Law Office of W.C. French*, 2012 WL 181496 (D. Md. Jan. 19, 2012) *report and recommendation adopted*, 2012 WL 425870 (D. Md. Feb. 8, 2012) (holding that debt collector did not violate FDCPA when it sent a letter stating it would not accept an oral dispute and that consumer needed to dispute the debt in writing because the Court had previously held the § 1692g(a)(3) does, in fact, contain an inherent writing requirement).

B. Virginia – *Withers v. H.R. Eveland*

The federal district court case of *Withers v. H.R. Eveland*, 988 F. Supp. 942 (E.D. Va. 1997) went further and held that an initial communication letter to the consumer violated § 1692g because it did *not* instruct the consumer to contact the debt collector in writing. *Id. at* 947. In doing so, the *Withers* court stated:

> [T]he collection letter instructed [the consumer] to either "contact" the debt collection agency or make payment in full. There is no indication anywhere in the letter whether such "contact" must be in writing or by telephone. Pursuant to § 1692g, however, if a consumer contests a debt by telephone rather than in writing, the consumer will inadvertently lose the protections for debtors set forth in the FDCPA; the obligation to verify the debt and cease all collection efforts as required by § 1692g(b).
>
> Given such contradictory and ambiguous language, an unsophisticated debtor could be easily confused about the response time and forego the protections afforded by the statute. On these facts, the Court will find that the collection letter sent by [defendant] failed to effectively convey the validation notice to Withers.

Id.

The *Withers* Court applied the "least sophisticated consumer" standard and determined that the least sophisticated consumer is at risk of losing the protections offered by the FDCPA if allowed to believe that the dispute can be made simply by picking up the telephone. This is precisely the reasoning at work in *Graziano* and what this Court should follow in the present matter.

C. Virginia – *Turner* and *Bicking*

While the above case law is a strong indication of where the district courts within the Fourth Circuit stand, there are two cases from Virginia that appear to stray from the policy set forth in *Withers*. However, these cases fail to adequately distinguish *Withers* and should not be considered as instructive.

(i) *Turner v. Shenandoah Legal Group*

In the matter of *Turner v. Shenandoah Legal Group*, 2006 WL 16856698 (2006),[8] a magistrate judge in Virginia's Eastern District addressed a summary judgment motion regarding a complaint based upon a letter from a debt collector to a consumer requiring the dispute to be in writing. *Id. at* 9.

In the unpublished report and recommendation, the magistrate judge noted that the Fourth Circuit had yet to rule on the issue and proceeded to compare the cases of *Graziano* and *Camacho*. In doing so, the magistrate attempted to distinguish *Withers* in a footnote "because the issue in [*Withers*] involved the language demanding payment as opposed to the validity of the [letter]." *Id. at* 4.

[8] Ultimately, *Turner* is an unpublished report that was never adopted by the district court. Based on the docket for the case, the action was dismissed with prejudice after the defendants filed Rule 72(b) objections to the magistrate's report and recommendation but prior to action by the district court. However, there are so many inconsistencies in *Turner*, both regarding treatment of prior precedent and internal determinations that the FDCPA cannot help the least sophisticated consumer, doubts must be cast as to whether the district court would have adopted the report in toto and whether any consideration should be given to the decision to choose *Camacho* over *Graziano*.

This attempt to distinguish *Withers* is not persuasive at all. First, the issue of the validity of the initial written communication was directly addressed in *Withers* as discussed above. While a demand for payment was the issue in the case, the *Withers* court's discussion above clearly addressed the issue of a written dispute under § 1692g and set forth binding precedent that the magistrate chose to ignore.

Lastly, the magistrate stated that *Camacho* contains the proper application of the least sophisticated consumer standard "where an unsophisticated consumer, or one with minimal English literacy skill, might only be able to invoke their rights via oral communication." *Id. at* 5. This misapplies the standard of the last sophisticated consumer. If the "least sophisticated consumer" can only invoke their rights via oral communication, then he is completely without the means and ability to invoke the protections under §§ 1692g(a)(4) & (a)(5) that only come with written notification. The standard of the least sophisticated consumer is purposefully low as explained in the excerpt from *Garcia-Contreras*, but it cannot be so low as to contemplate the complete inability to comply with the written dispute requirement under § 1692g.

(ii) *Bicking v. Law Offices of Rubenstein and Cogan*

The case of *Bicking v. Law Offices of Rubenstein and Cogan*, 783 F. Supp. 2d 841 (E.D. Va. 2011) highlights the problem with not instructing consumers to dispute in writing. The consumer alleged that the initial communication letter

failed to inform him that a written dispute was required in order to obtain the validation and name and address of original creditor under § 1692g(a)(4) & (5). *Id.* at 843. The letter stated that the consumer needed to "notify" or "contact" the office to dispute the debt and the debt collector will perform the acts required in § 1692g(a)(4) and (5). In holding that the letter failed to communicate to comply with § 1692g, the *Bicking* Court utilized the *Withers* opinion and quote from above to highlight the potential for consumers to inadvertently lose rights when contesting a debt by telephone is an option. *Id. at* 845. As such, while the issue in *Bicking* did not pertain directly to a violation of § 1692g(a)(3), the holding in the case reinforces the need for initial communication letters to inform consumers to dispute the debt in writing under § 1692g.

Bicking is further discussed here because of its use of the following quote from *Camacho*: "The plain meaning of § 1692g is that debtors can trigger the rights under subsection (a)(3) by either an oral or written 'dispute,' while debtors can trigger the rights under subsections (a)(4) and (a)(5) *only* through written dispute." *Bicking*, 783 F. Supp. 2d at 845 (quoting *Camacho*, 430 F.3d at 1081). This quote was clearly used by the *Bicking* opinion solely to establish the written requirement for (a)(4) and (a)(5). It did not analyze the *Camacho* holding regarding (a)(3) and as such the *Bicking* case should not be looked upon as following

Camacho for this proposition. As discussed previously, there are no validation rights under § 1692g when only an oral dispute is made.

IV. THE *GUERRERO* CASE IS IRRELEVANT TO ACS AND THIS COURT

The case of *Guerrero v. Absolute Collection Service, Inc.*, 2011 WL 8183860 (N.D. Ga. 2011) is discussed here to address the assertion by the Clarks that ACS should have adopted *Camacho* type language in its initial written communication letters. Opening Brief p. 33. Despite this suggestion, *Guerrero* does not establish the proper form for ACS's initial written communication letters. To claim that a debt collector should rely on a magistrate's ruling from Georgia when there are multiple jurisdictions, including higher courts, which have held the opposite ignores jurisdictional boundaries. What is cited by the Clarks is a report and recommendation of the magistrate on the consumer's motion for entry of default judgment. Apparently, ACS did not answer the complaint nor did ACS respond to the consumer's motion for default judgment. In fact, there is no indication that ACS ever knew about the suit or the ruling.

In their brief, the Clarks attempt to use the *Guerrero* report and recommendation as somehow providing notice to ACS that, if ACS wanted to avoid liability in the future, it had to adopt the *Camacho* approach in every one of its initial communication letters. In other words, the Clarks argue that because ACS was a party to one ruling in one jurisdiction, ACS should treat that ruling as

law in every jurisdiction. However, it would be more logical for ACS to follow *Graziano* as it was an older decision from a higher court and favored in most district courts of the Fourth Circuit.

Other than the Third and the Ninth Circuits, the rest of the federal courts are far from uniform—as discussed above, the interpretation of this law can be different even district to district within a circuit. Several district courts recently presented with this issue, including the District Court below, have indeed followed the *Graziano* rationale. *See e.g.*, *Hooks v. Forman Holt Eliades & Ravin LLC*, 2012 WL 3322637 (S.D.N.Y. Aug. 13, 2012) (holding that "while it is true that the words "in writing" do not appear within § 1692g(a)(3) itself, Plaintiffs' proposed reading of this section would produce an absurd result in light of the language that immediately follows in § 1692g(a)(4): "if the consumer notifies the debt collector in writing within the thirty-day period ... the debt collector will obtain a verification of the debt ...." *See* 25 U.S.C. § 1692g(a)(4). A validation notice's required language should be "read as a whole," *Shapiro v. Riddle & Assocs., P.C.*, 240 F. Supp. 2d 287, 290–S1 (S.D.N.Y.2003), and is "not deceptive simply because certain essential information is conveyed implicitly rather than explicitly," *Clomon v. Jackson*, 988 F.2d 1314, 1319 (2d Cir. 1993)).

In fact, if a consumer lives in a *Graziano* jurisdiction, he would be able to argue that a debt collector had an obligation to state expressly that his dispute

should be writing in order to give fair notice of what action is required to dispute the debt. *See e.g.*, *Edwards v. Powell, Rogers & Speaks, Inc.*, 2007 WL 2119214 (2007); *Wilson v. Quadramed Corp.*, 225 F.3d 350 (3d Cir. 2000). An Indiana district court addressed this particular quandary, stating:

> In fear of such a claim [failing to require written dispute], a debt collector who is aware of *Graziano* might reasonably decide to include the writing requirement . . . The court doubts that Congress meant to impose liability on debt collectors who do not correctly anticipate the ultimate resolution of such issues that have divided the federal courts in ways that could trigger strict liability in either direction.

Castillo v. Carter, 2001 WL 238121 (S.D.Ind. Feb. 28, 2001). When faced with such uncertainty, ACS erred on the side of notifying the consumer of the manner in which he could gain the most protection under the FDCPA—this should not be grounds for liability under the statute.

In addition to misstating the relevance of *Guerrero*, the Clarks suggest that "ACS's continued use of the same form letter indicates that ACS has determined that the benefit it receives from imposing a writing requirement—in discouraging consumers from exercising their rights under the statute—outweighs the known risk of liability under the FDCPA." Opening Brief p. 34. There has been no evidence whatsoever developed in the underlying matter to support this statement. This is merely an attempt to put ACS in a poor light. On multiple occasions, the Clarks call ACS's motives into question because it is a debt collector advocating

for consumer rights. At one point, ACS is compared to a fox guarding the hen house. If the interpretation of the law and policy are correct, however, the source of the argument should not matter. Indeed, it is ironic that a group that purports to want to form a class on behalf of consumers would take such a staunch anti-consumer stance.

CONCLUSION

The Clarks *never* disputed their debts to ACS either orally or in writing. Still, the Clarks claim that the letter sent by ACS violates the FDCPA. If the true focus of the FDCPA is consumer protection, then ACS did not violate § 1692g by pointing the Clarks in the direction that would give them the most protection under the statute, particularly when the requirement of a written dispute does not cause consumers to lose any other rights under the FDCPA. ACS, for the reasons above, contends that the analysis in *Graziano*—which focuses solely the process required for the validation and verification of a debt § 1692g—provides the best result for the consumers in this jurisdiction. Respectfully, ACS requests that this Court affirm the District Court's order dismissing the Clarks' Complaint.

This the 5th day of June, 2013.

YATES, MCLAMB & WEYHER, LLP

/s/ SEAN T. PARTRICK
Sean T. Partrick
North Carolina State Bar No.: 25176
Email: spartrick@ymwlaw.com
Jennifer D. Maldonado
North Carolina State Bar No.: 25708
Email: jmaldonado@ymwlaw.com
William T. Kesler, Jr.
North Carolina State Bar No.: 27922
Email: bkesler@ymwlaw.com
Attorneys for Defendant Absolute Collection Service, Inc.
Post Office Box 2889
Raleigh, North Carolina 27602
Tel: 919-835-0900; Fax: 919-835-0910

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 28.1(e)(2) or 32(a)(7)(B) because:

   [X] this brief contains [*7,774*] words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), *or*

   [ ] this brief uses a monospaced typeface and contains [*state the number of*] lines of text, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because:

   [X] this brief has been prepared in a proportionally spaced typeface using [*Microsoft Word 2007*] in [*14pt Times New Roman*]; *or*

   [ ] this brief has been prepared in a monospaced typeface using [*state name and version of word processing program*] with [*state number of characters per inch and name of type style*].

Dated: June 5, 2013

/s/ Sean T. Partrick
Counsel for Appellee

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this 5th day of June, 2013, I caused this Brief of Appellee to be filed electronically with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to the following registered CM/ECF users:

Joseph A. Bledsoe, III
Bledsow Law Firm, PC
3217 Friendly Road
Fayetteville, North Carolina 28304
(910) 223-3277

Deepak Gupta
Gupta Beck, PLLC
1625 Massachusetts Avenue, NW, Suite 500
Washington, DC 20036
(202) 470-3826

Craig M. Shapiro
Keogh Law, Ltd.
101 North Wacker Drive, Suite 605
Chicago, Illinois 60606
(312) 726-1092

Counsel for Appellants

I further certify that on this 5th day of June, 2013, I caused the required copies of the Brief of Appellee to be hand filed with the Clerk of the Court.

/s/ Sean T. Partrick
Counsel for Appellee