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STATEMENT OF INTEREST

The National Association of Consumer Advocates (hereinafter “NACA”) is a non-profit corporation whose members are private and public sector attorneys, legal services attorneys, law professors, and law students whose primary focus involves the protection and representation of consumers. NACA promotes justice by serving as a voice for its members as well as consumers in the ongoing effort to curb unfair and abusive business practices.

Preserving and strengthening federal consumer protection laws in general, and the Fair Debt Collection Practices Act (hereinafter “FDCPA”) in particular, has been a priority of NACA since its inception. NACA supports action that would improve the consumer protections provided by the FDCPA for consumers abused and harassed by debt collectors, and opposes any attempts to weaken or diminish the effect of this important law. NACA has a strong interest and expertise in the proper application of the federal statutes protecting consumers from overreaching by debt collectors.

CONSENT OF THE PARTIES

Both Royal Financial, LLC and Margaret George have consented to the filing of this brief by amicus curiae, the National Association of Consumer Advocates, in compliance with Missouri Rule of Civil Procedure 84.05(f)(2).

STATEMENT OF FACTS

Royal Financial Services, LLC (hereinafter “Royal”), a debt collector, sued Margaret George (hereinafter “George”) in Associate Circuit Court on July 30, 2008, for breach of contract, to collect principal, interest and attorney’s fees on a consumer credit card account. George filed a counterclaim against Royal on September 26, 2008, alleging several violations of the FDCPA, including that Royal had either sued the wrong consumer or had filed suit on a time-barred debt. George’s counsel sent a letter to Royal’s counsel informing him that the debt appeared to be time barred. Royal did not file any affirmative defenses to George’s Counterclaim. Royal failed to respond to George’s discovery requests, including requests for any documentation indicating that the account was within the statute of limitations. Royal dismissed its collection action a few days prior to trial, and on April 29th, 2009, trial proceeded on George’s counterclaim.

At trial, George testified that she had only ever had one credit card in her lifetime and that she had not used the card or made a payment on it in the past nine years since she had lived in a retirement home. George further testified that she had never had any business dealings with Royal. The trial court granted Royal’s motion for verdict at the close of George’s evidence, finding insufficient evidence of an FDCPA violation. The Court of Appeals reversed, holding that Royal filed a collection lawsuit against George in order to collect a debt for which it knew or should have known she was not liable and that such conduct violates §1692e(2)(A) of the FDCPA.

ARGUMENT

The FDCPA Generally

Royal contends that “the issue of what conduct is sufficient to constitute violations of the sections of the FDCPA cited in Ms. George's counterclaim - specifically, sections 1692e(2)(A), 1692e(10) and 1692f(1) - is an issue of first impression in Missouri. As such, this case concerns questions that are of general interest and importance in the field of creditors' and debtors' rights.” *Royal Application for Transfer*, ED92972, filed May 17th, 2010.

Amicus respectfully submits that Missouri standards are no different from the nationwide standards of conduct sufficient to constitute violation of the federal FDCPA, discussed below. The FDCPA was enacted, in part, “to promote consistent State action to protect consumers against debt collection abuses.” §1692e. It preempts inconsistent state law. “[A] State law is not inconsistent with this title if the protection such law affords any consumer is greater than the protection provided by this title.” §1692n.

The FDCPA was also enacted to combat "abusive, deceptive, and unfair debt collection practices by many debt collectors." 15 U.S.C. §1692(a)¹. “[T]he FDCPA is a remedial statute aimed at curbing what Congress considered to be an industry-wide pattern of and propensity towards abusing debtors...” *Clark v. Capital Credit &*

¹ For brevity, subsections of the FDCPA, 15 U.S.C., §1692 *et seq.* will be referred to by subsection number only. For example, 15 U.S.C. §1692e(2)(A) will be referred to as §1692e(2)(A).

Collection Serv., 460 F.3d 1162, 1177 (9th Cir. 2006). The FDCPA is, for the most part, a strict liability statute in which a single violation is sufficient to establish liability, without regard to the violator's intent. *Russell v. Equifax A.R.S.*, 74 F.3d 30 (2nd Cir. 1996); *Frey v. Gangwish*, 970 F.2d 1516, 1521 (6th Cir. 1992); *Bentley v. Great Lakes Collection Bureau*, 6 F.3d 60, 62 (2^d Cir. 1993); *Clark*, 460 F.3d at 1177 (9th Cir. 2006). As a remedial statute, the FDCPA is liberally construed in favor of the consumer. *Brown v. Card Serv. Ctr.*, 464 F.3d 450, 453 (3^d Cir. 2006); *Johnson v. Riddle*, 305 F.3d 1107, 1117 (10th Cir. 2002). Violations of the FDCPA are analyzed from the viewpoint of the "unsophisticated consumer." *Duffy v. Landberg*, 215 F.3d 871, 873 (8th Cir. 2000).

Elements of an FDCPA Claim

In order to prove her claim under the FDCPA, a plaintiff must prove (1) that the plaintiff is a natural person who was harmed by an FDCPA violation or who is a "consumer" as defined by the FDCPA; (2) that the defendant is a "debt collector" as defined by §1692a(6); (3) that the "debt" arose out of a transaction used for primarily personal, family, or household purposes, §1692a(5); and (4) that the defendant has violated some provision of the FDCPA through action or omission, §1692k. *McCorriston v. L.W.T., Inc.*, 536 F. Supp. 2d 1268, 1273 (M.D. Fla. 2008); *Riveria v. MAB Collections, Inc.*, 682 F. Supp. 174, 175-76 (W.D.N.Y. 1988).

George's Allegations

Here, George alleges that she (a natural person) was harmed when Royal (a debt collector) violated various subsections of the FDCPA while attempting to collect a debt arising from a consumer credit card account. There is no issue as to whether George is a natural person, as to whether Royal is a debt collector, or as to whether the debt arose from personal (as opposed to business) use. The only element under consideration is whether Royal violated some provision of the FDCPA through act or omission. While George alleged several violations, the particular allegations at issue on appeal are that Royal either sued the wrong consumer entirely or that Royal filed suit on a time-barred debt in violation of §1692e and §1692f.

That Royal withdrew its suit and refused to answer discovery is telling as to the claim that it sued the wrong consumer. However, Amicus addresses here only George's allegation that Royal violated §1692e and §1692f by filing suit on a time-barred debt. The Court of Appeals was correct in ruling that "a debt collector violates the FDCPA when it actually files suit to collect a debt for which it knows, or reasonably should know, the defendant is not liable" insofar as its statement applies to suit beyond the expiration of the statute of limitations. Pursuing the wrong consumer, however, does not require scienter, because it is a strict liability violation.

§1692e states in pertinent part:

"A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(2) The false representation of—

(A) the character, amount, or legal status of any debt. . . .

(5) The threat to take any action that cannot legally be taken or that is not intended to be taken. . . .

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.”

§1692f states in pertinent part:

“A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.”

George alleges that Royal made false representations of the character or legal status of the alleged debt in violation of §1692e(2)(A) in that, by filing suit, Royal falsely represented that the legal status of George’s account was that it was not time-barred; that the filing of the lawsuit by Royal was an action that could not legally be taken in violation of §1692e(5) in that the suit was time-barred; that the Petition filed by Royal was a false representation or deceptive means to attempt to collect the alleged debt in violation of §1692e(10) in that, by filing suit, Royal falsely represented that it had a legal right to pursue litigious means to attempt to collect the alleged debt when it did not or that the filing of a time-barred debt is a deceptive means to attempt to collect an alleged debt; and that the lawsuit filed by Royal was an unfair or unconscionable means to

attempt to collect amounts not legally collectible, in violation of §1692f(1), in that its attempted collection of principal, interest and attorney's fees was not authorized by the agreement creating the debt or permitted by law, because the law does not permit litigious collection of a time-barred debt.

Debt Collectors Are Held Strictly Liable For Most Violations of §1692e and §1692f

In the case at bar the Appellate Court focused on the debt collector's scienter:

The aforementioned cases support the proposition that a debt collector violates the FDCPA when it actually files suit to collect a debt for which it knows, or reasonably should know, the defendant is not liable. . . . Royal Financial presented no evidence at the hearing that it exercised reasonable care in assessing the facts that led it to connect Ms. George with the alleged debt. As such, we find that Ms. George presented sufficient evidence that Royal Financial falsely represented the character or legal status of a debt, in violation of section 1692e(2)(A). *Royal Financial Group, LLC v. George*, No. ED 92972 (Mo. App. 3/30/2010).

This focus on what the debt collector knew or should have known is appropriate when the factual basis of the consumer's claim is that the debt collector sued on a time-barred debt. However, it is important for the Court to note that this scienter requirement is the exception, not the rule, when proving §1692e and §1692f violations. Debt collectors are routinely held strictly liable for other violations of §1692e and §1692f. In those cases courts refrain from a consideration of what the debt collector knew or should

have known, as it unnecessarily saddles the consumer with the added burden of proving a scienter element in what should otherwise be a strict liability violation. The debt collector's scienter is taken into account in awarding damages under §1692k(b). Scienter is also considered if the debt collector raises a bona fide error defense under §1692k(c), which Royal waived (see discussion below).

Under the plain language of the FDCPA, a few subsections specifically require intent (*e.g.*, § 1692d(5) prohibits a debt collector from “[c]ausing a telephone to ring ... continuously with intent to annoy, abuse, or harass”). However, debt collectors are held strictly liable for violations of §1692e and §1692f that do not involve suing on a time-barred debt. See *e.g.* *Randolph v. IMBS, Inc.*, 368 F.3d 726, 730 (C.A.7 (Ill.), 2004) (“§ 1692e(2)(A) creates a strict-liability rule. Debt collectors may not make false claims, period”); *Clark*, 460 F.3d at 1176 (“Requiring a violation of § 1692e to be knowing or intentional needlessly renders superfluous § 1692k(c)"); *Gearing v. Check Brokerage Corp.*, 233 F.3d 469, 472 (7th Cir.2000) (holding unintentional misrepresentation of debt collector's legal status violated FDCPA); *Turner v. J.V.D.B. & Associates, Inc.*, 330 F.3d 991, 995 (7th Cir.2003) (holding unintentional misrepresentation that debtor was obligated to pay a debt discharged in bankruptcy violated FDCPA); *Russell v. Equifax A.R.S.*, 74 F.3d 30, 33 (2d Cir.1996), (holding that sending contradictory notices violated FDCPA even though plaintiff did not offer proof of intent); *Cacace v. Lucas*, 775 F.Supp. 502, 505-06 (D.Conn.1990) (holding that an overstatement of debt "that was a mistake" violated FDCPA).

The Ninth Circuit earlier this year succinctly summarized this Rule:

Seeking somewhat to level the playing field between debtors and debt collectors, the FDCPA prohibits debt collectors from making false or misleading representations and from engaging in various abusive and unfair practices. The FDCPA is a strict liability statute that makes debt collectors liable for violations that are not knowing or intentional.

Donohue v. Quick Collect, Inc., 592 F.3d 1027, 1030 (9th Cir. 2010).

Aside from the fact that requiring a violation to be knowing or intentional needlessly renders §1692k(c) superfluous, “[a]dherence to the strict liability approach is important to maintain some modicum of accuracy in the information conveyed from creditor to debt collector. Debt collectors who are responsible for the accuracy of the creditor’s information will take steps to ensure accuracy. Those who are not held responsible for their ignorance will devise methods to maintain an empty head.” *Fair Debt Collection, National Consumer Law Center, 6th Edition, 2008.*

"[W]here the statute's language is plain, the sole function of the courts is to enforce it according to its terms ... for courts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Clark*, 460 F.3d at 1168, (internal citations omitted). Here, the plain language of the statute prohibits debt collectors from engaging in certain conduct, and that prohibition applies regardless of the debt collector’s intent or knowledge. “[I]ntent is only relevant to the determination of damages. We are convinced that this reading of the FDCPA is more in harmony with the remedial nature of the statute, which requires us to interpret it liberally.” *id.*

It is important to maintain the statutory distinction that debt collectors are held strictly liable for most violations of §1692e and §1692f, regardless of what they knew or should have known. To hold otherwise would unjustly burden the consumers of Missouri by injecting a burden to prove the debt collector knew or should have known that for which it would elsewhere be held strictly liable. This scienter requirement is contravened by the plain language of the FDCPA, and by uniform court interpretations. To artificially inject it would run contrary to the Court's duty to construe this remedial statute in the consumer's favor.

Filing Suit On a Debt the Collector Should Have Known Was Time-Barred Violates the FDCPA

Because §1692e and §1692f are written broadly, it falls to the courts to determine what specific conduct rises to the level of violating these sections of the FDCPA. Courts routinely hold that filing, or even threatening to file, a lawsuit on a time-barred debt is a violation of §1692e and §1692f. The seminal case on this issue is *Kimber v. Fed. Fin. Corp.*, 668 F.Supp. 1480, 1488 (M.D. Ala. 1987):

The court agrees with Kimber that a debt collector's filing of a lawsuit on a debt that appears to be time-barred, without the debt collector having first determined after a reasonable inquiry that that limitations period has been or should be tolled, is an unfair and unconscionable means of collecting the debt. As previously demonstrated, time-barred lawsuits are, absent tolling, unjust and unfair as a matter of public policy, and this is no less true in the

consumer context. As with any defendant sued on a stale claim, the passage of time not only dulls the consumer's memory of the circumstances and validity of the debt, but heightens the probability that she will no longer have personal records detailing the status of the debt. Indeed, the unfairness of such conduct is particularly clear in the consumer context where courts have imposed a heightened standard of care - that sufficient to protect the least sophisticated consumer. Because few unsophisticated consumers would be aware that a statute of limitations could be used to defend against lawsuits based on stale debts, such consumers would unwittingly acquiesce to such lawsuits. And, even if the consumer realizes that she can use time as a defense, she will more than likely still give in rather than fight the lawsuit because she must still expend energy and resources and subject herself to the embarrassment of going into court to present the defense; this is particularly true in light of the costs of attorneys today. *Id.*

The *Kimber* Court found that suing on a time-barred debt violated §1692e(2)(A), §1692e(10) and §1692f. *Id.* The *Kimber* Court injected consideration of the debt collector's scienter as an element of the consumer's cause of action. That is, in order for the filing of a time-barred suit to rise to the level of a §1692e or §1692f violation, the consumer must show that the debt collector knew or should have known that the account was beyond the statute of limitations. This judge-made rule is a departure from the burden consumers carry when alleging the per se §1692e and §1692f violations enumerated by Congress pursuant to which debt collectors are strictly liable for their

actions.

For the past twenty-three years since *Kimber*, a strong, unbroken line of cases from across the nation has held that a debt collector that sues, or even threatens to sue, on a time-barred debt that it knew or should have known was time-barred, does so in violation of the FDCPA. E.g., *Freyermuth v. Credit Bureau Servs., Inc.*, 248 F.3d 767 (8th Cir. 2001), noting that whether an attempt to collect a time-barred debt is a violation of the FDCPA "turn[s] on the threat, or actual filing, of litigation."; *McCullough v. Johnson, Rodenberg & Lauinger*, 610 F.Supp.2d 1247, 1257 (D. Mont. 2009); *Ramirez v. Palisades Collection, L.L.C.*, 2008 U.S. Dist. LEXIS 48722 (N.D. Ill. 2008); *Larsen v. JBC Legal Group, P.C.*, 553 F. Supp. 2d 290 (E.D.N.Y. 2008); *Martsolf v. JBC Legal Group, P.C.*, 2008 U.S. Dist. LEXIS 6876 (M.D. Pa. 2008); *Rawson v. Credigy Receivables, Inc.*, 2006 U.S. Dist. LEXIS 6450 (N.D. Ill. 2006); *Thinesen v. JBC Legal Group, P.C.*, 2005 U.S. Dist. LEXIS 21637 (D. Minn. 2005); *Dunaway v. JBC & Assocs., Inc.*, 2005 U.S. Dist. LEXIS 37885 (E.D. Mich. 2005); *Spencer v. Hendersen-Webb*, 81 F. Supp. 2d 582 (D. Md. 1999); *Stepney v. Outsourcing Solutions, Inc.*, 1997 U.S. Dist. LEXIS 18264 (N.D. Ill. 1997); *Martinez v. Albuquerque Collection Servs.*, 867 F. Supp. 1495 (D.N.M. 1994); *Beattie v. D.M. Collections, Inc.*, 754 F. Supp. 383 (D. Del. 1991); see also *Picht v. Hawks*, 236 F.3d 446 (8th Cir. 2000), stating "The FDCPA prohibits, inter alia, the use of debt collection practices that violate state law. See 15 U.S.C. 1692e(5) (prohibiting debt collectors from using "false, deceptive, or misleading representation or means in connection with the collection of any debt," which specifically includes "[t]he threat to take any action that cannot legally be taken")."

The Evidence That George's Account Was Time-Barred

“A claim for breach of contract evidenced by act or implied by law is governed by the five-year statute, § 516.120.” *Capital One Bank v. Creed*, 220 S.W.3d 874 (Mo. App. 2007), citing *Collins v. Narup*, 57 S.W.3d 872, 874 (Mo. App.2001). George's uncontested testimony was that she had had only one credit card in her lifetime and that she had not used her credit card or made a payment on it in nine years.

The case was tried on April 29, 2009. Counting back from the date of George's testimony, the uncontested evidence shows that the statute of limitations ran on George's one and only credit card account some time in 2005, three years prior to the filing of Royal's petition on July 30th, 2008. So even if the account Royal sued George on was in fact George's actual one and only credit card account, the uncontested evidence was that the suit was long-since time-barred.

Royal Should Have Known George's Account Was Time-Barred

Likewise, Royal certainly knew or should have known that George's account was time-barred. Royal was put on notice that the statute of limitations was at issue when George filed her affirmative defenses and counterclaim. George's counsel sent Royal's counsel a letter informing him that the debt was time-barred and asking him to forward any information he had to the contrary. There was no response (the letter was admitted into evidence at trial). Royal was unwilling to produce any discovery responses at all during the seven months George spent futilely attempting to glean any discovery from

Royal. Royal's silence on the issue of the stale nature of its claim persisted, even in the face of the trial court's order compelling it to produce discovery. Royal's failure to provide documents evidencing the alleged debt "authorized a strong presumption that they would not be favorable to defendants had they been produced" *Morris v. Holland*, 529 S.W.2d 948, 953 (Mo. App. S.D. 1975) (internal citations omitted). The evidence at least supports the inference that Royal "knew or should have known" that George's account was time-barred. This evidence satisfies the scienter requirement under *Kimber* and its progeny, and so there was sufficient evidence that Royal had violated §1692e(2)(A), §1692e(5), §1692e(10), and §1692f(1) by pursuing litigation on an alleged debt that it knew or should have known was time-barred. As the Court of Appeals ruled, the trial court therefore erred in granting Royal's motion for judgment at the close of George's evidence.

The Bona Fide Error Defense

The FDCPA provides a safe harbor from its otherwise strict liability in the form of a "bona fide error defense," codified in §1692k(c): "A debt collector may not be held liable in any action brought under this title if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error."

"To establish the bona fide error defense, a debt collector must prove by a preponderance of the evidence that its FDCPA violation was unintentional, and was

caused by an objectively bona fide error (i.e., one that is plausible and reasonable), made despite the use of procedures reasonably adapted to prevent that specific error.” *Wilhelm v. Credico, Inc.*, 519 F.3d 416 (8th Cir. 2008).

The U.S. Supreme Court recently held that the bona fide error defense does not apply to a violation resulting from a debt collector’s mistakes of law. *Jerman v. Carlisle, McNellie, Rini, Ulrich LPA*, 559 U.S. ____, 130 S.Ct. 1605 (2010). Furthermore, §1692k(c) does not afford debt collectors protection from all FDCPA violations. In addition to not protecting debt collectors from mistakes of law, the bona fide error defense is also unavailable to debt collectors who have committed violations of the FDCPA that require the consumer to prove the debt collector’s scienter. “Requiring a violation of § 1692e to be knowing or intentional needlessly renders superfluous § 1692k(c).” *Clark*, 460 F.3d at 1176. This fact was recently addressed by the U.S. Supreme Court as well:

Carlisle is also concerned that under our reading, §1692k(c) would be unavailable to a debt collector who violates a provision of the FDCPA applying to acts taken with particular intent because in such instances the relevant act would not be unintentional. See, e.g., §1692d(5) (prohibiting a debt collector from “[c]ausing a telephone to ring . . . continuously with intent to annoy, abuse, or harass”). Including mistakes as to the scope of such a prohibition, Carlisle urges, would ensure that §1692k(c) applied throughout the FDCPA. We see no reason, however, why the bona fide

error defense must cover every provision of the Act. *Jerman v. Carlisle, McNellie, Rini, Ulrich LPA*, 130 S.Ct. at 1619.

The bona fide error defense thus applies only to clerical errors on those violations for which a debt collector would otherwise be held strictly liable.

Royal Is Not Protected By The Bona Fide Error Defense

That the bona fide error defense applies only to clerical errors, and applies only to strict liability violations are two of the many reasons why the defense would be unavailable to Royal in the instant case.

The FDCPA's bona fide error defense is an affirmative defense. This was most recently reaffirmed by the U.S. Supreme Court, which referred to the bona fide error defense as "the affirmative defense in §1692k(c)." *Id.* Affirmative defenses must be pled if they are to be considered by the Court. *Becker Glove International v. Jack Dublinsky & Sons*, 41 S.W.3d 885, 887 (Mo. banc 2001). This is equally true of cases filed in associate circuit court. *KMS, Inc. v. Wilson*, 857 S.W.2d 525 (Mo.App. W.D., 1993). Royal did not plead the bona fide error defense as an affirmative defense in response to George's Counterclaim. Therefore, Royal waived the bona fide error defense and could not prevail on this unpled affirmative defense, even if Royal were afforded the opportunity to present evidence.

Additionally, even if the bona fide error defense had been properly pled as an affirmative defense, and even if the bona fide error defense was available for violations that require a scienter requirement, and even if the bona fide error defense were available

for mistakes of law, Royal would still be unable to prevail on it. Royal had refused to respond to George's discovery requests and had refused to comply with the trial court's order compelling Royal to do so. By persisting in its conduct even after this lawsuit, the initial "error" became intentional misconduct. *Edwards v. Niagara Credit Solutions, Inc.*, 584 F.3d 1350 (11th Cir., 2009) at 1353-54. Once apprised of the situation, defendant's persistent refusal to change its ways eliminates the availability of the bona fide error defense as a matter of law. Specifically, such ratifying conduct renders what may have been a mistake into an intentional act outside of 1692k(c): "the bona fide error defense is not available where there is actual notice of an FDCPA violation and the FDCPA violation continues." *McCullough v. Johnson, Rodenberg & Lauinger*, 610 F. Supp. 2d 1247 (D. Mont. 2009); accord, *Cacace v. Lucas*, 775 F.Supp. 502 (D.Conn. 1991)_at 507 (practice continued after notice); *Thompson v. D.A.N. Joint Venture III, L.P.*, 2007 WL 1625926, *2 (M.D. Ala.) (by failing to rectify the putative error once put on notice, "what may have begun as an unintentional act converted into a willful act ... [which therefore was] not the result of bona fide error.")

Lastly, Royal had not produced any documents prior to trial and had not brought any witnesses to trial. Therefore, even if Royal had been in possession of some evidence demonstrating that its suit on a time-barred debt was unintentional, was caused by an objectively bona fide error, and was made despite the use of procedures reasonably adapted to prevent that specific error, Royal would be barred from offering that evidence at trial. In short, any chance Royal may have had to contravert George's assertion that George's account was time-barred was forfeited through Royal's own inaction and

steadfast refusal to comply with both the Missouri Rules of Civil Procedure and the trial court's Order compelling Royal to do so.

Damages Under the FDCPA

The FDCPA does not require actual damages. *Russell*, 74 F.3d at 33. The FDCPA provides that a consumer prevailing under its protections is entitled to actual damages, statutory damages of up to \$1,000.00, reasonable attorney fees, and costs. §1692k(a). §1692k(b) provides, "In determining the amount of liability in any action under subsection (a), the court shall consider, among other relevant factors (1) in any individual action under subsection (a)(2)(A), the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, and the extent to which such noncompliance was intentional." *Taylor v. Perrin, Landry, deLaunay & Durand*, 103 F.3d 1232, 1238-39 (5th Cir.1997) (holding intent is only relevant to the determination of damages.); *Bentley* 6 F.3d at 63 ("the degree of a [debt collector's] culpability may only be considered in computing damages.") While intent is one consideration when awarding damages, "[t]o recover damages under the FDCPA, a consumer does not need to show intentional conduct on the part of the debt collector." *Ellis v. Solomon and Solomon, P.C.*, 591 F.3d 130, page (2d^d Cir. 2010). Furthermore, a plaintiff need not establish actual damages to recover statutory damages. *Beandry v. TeleCheck Services, Inc.*, 579 F.3d 702 (6th Cir. 2009).

CONCLUSION

Because filing (or threatening to file) a lawsuit on a debt that the debt collector knew or should have known is time-barred is a well-recognized violation of §1692e and §1692f, the judgment of the trial court was properly reversed.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF COMPLIANCE

I certify that:

1. This brief includes the information required by Rule 55.03;
2. This brief complies with the limitations contained in Rule 84.06(b);
3. According to the word count function of counsel's word processing software (Microsoft® Word 2008), the brief contains 4,734 words; and
4. The CD-Rom submitted herewith containing a copy of this brief has been scanned for viruses and is virus-free.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that that a true and correct copy of the foregoing was affixed with proper First Class postage, deposited in the US Mail on July 31st, 2010, and addressed to the following attorney(s) of record:

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