No. 16-1668

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

KEVIN ROTKISKE,
Plaintiff-Appellant,

v.

PAUL KLEMM; NUDELMAN, KLEMM & GOLUB, P.C.; NUDELMAN, NUDELMAN & ZIERING, P.C.; and KLEMM & ASSOCIATES,
Defendants-Appellees.

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
Civ. No. 15-3638
Hon. Gene E.K. Pratter, U.S.D.J.

Appellant's Supplemental Brief

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INTRODUCTION AND SUMMARY OF ARGUMENT

This appeal presents the question whether victims of abusive debt collection practices are barred from filing claims under the Fair Debt Collection Practices Act (FDCPA) if they do not discover their injuries within a year of the debt collectors' abusive, deceptive, or unfair conduct.

In 2009, defendants initiated a lawsuit against plaintiff Kevin Rotkiske, served the complaint on a stranger at an address where Mr. Rotkiske no longer lived, and obtained a default judgment against him. Because he had never been served, Mr. Rotkiske did not learn of the lawsuit or judgment until 2014, when he applied for a mortgage and was rejected because of the outstanding judgment.

Less than a year later, Mr. Rotkiske filed this case, alleging that the defendants violated the FDCPA by serving the complaint at an address they knew he did not occupy. Although Mr. Rotkiske filed his suit within one year of learning of the lawsuit and judgment against him, the district court held that his claim was barred by the FDCPA's statute of limitations, which provides that actions must be brought "within one year from the date on which the violation occurs," 15 U.S.C. § 1692k(d). According to the district court, that statute of limitations required Mr. Rotkiske to have brought his claim by 2010—more than four years before he learned of his injury.

The district court erred in not applying the discovery rule to Mr. Rotkiske's claim. The discovery rule is a generally applicable doctrine that provides that a limitations period does not begin to run until the plaintiff learns or reasonably should have learned of his injury. The rule acts as a background principle: This Court applies it to federal claims unless Congress has directed otherwise.

The FDCPA contains no congressional directive not to apply the discovery rule. The Act's text does not explicitly speak to whether the discovery rule applies. And neither the text nor structure of the statute implicitly demonstrates congressional intent to displace the discovery rule. To the contrary, Congress's goals of ending abusive debt collection practices and ensuring that non-abusive debt collectors are not disadvantaged counsel in favor of applying the discovery rule in FDCPA cases.

As this case demonstrates, injuries caused by abusive debt collection practices may be difficult to detect, particularly where, as here, debt collectors engage in conduct that is by its nature self-concealing. As the Fourth Circuit recognized in applying the discovery rule to an FDCPA claim, defendants "should not be allowed to profit from the statute of limitations when [their] wrongful acts have been concealed." *Lembach v. Bierman*, 528 F. App'x 297, 302 (4th Cir. 2013). This Court should join the Fourth and Ninth Circuits—the only circuits to have squarely addressed the issue—and hold that the discovery rule applies to

FDCPA claims. At the very least, the rule should apply to claims, such as Mr. Rotkiske's, that are based on false or misleading misrepresentations or other self-concealing conduct.

ARGUMENT

I. Absent a Contrary Directive from Congress, the Discovery Rule Applies to Federal Claims.

The federal discovery rule provides that a "statute of limitations begins to run when a plaintiff discovers or should have discovered the injury that forms the basis of his claim." *Miller v. Fortis Benefits Ins. Co.*, 475 F.3d 516, 520 (3d Cir. 2007). This Court has long recognized that the rule applies to federal statutes of limitations unless Congress has specifically directed otherwise. As the Court has repeatedly explained, in "the absence of a contrary directive from Congress, we apply the federal discovery rule." *William A. Graham Co. v. Haughey*, 568 F.3d 425, 434 (3d Cir. 2009) (*Graham I*) (internal quotation marks and citation omitted); *see also*, *e.g.*, *Stephens v. Clash*, 796 F.3d 281, 284 (3d Cir. 2015) ("In general, the discovery rule 'tolls the limitations period until the plaintiff learns of his cause of action or with reasonable diligence could have done so.'" (citation omitted)); *Forbes v. Eagleson*, 228 F.3d 471, 484 (3d Cir. 2000) (noting "the general notion that a discovery rule applies whenever a federal statute of limitation is silent on the issue"); *Oshiver v. Levin, Fishbein, Sedran & Berman*, 38 F.3d

1380, 1385 (3d Cir. 1994) ("As a general rule, the statute of limitations begins to run when … the plaintiff *discovers* that he or she has been injured.").

Thus, for example, this Court has applied the discovery rule to claims arising under Title VII of the Civil Rights Act of 1964, *see Oshiver*, 38 F.3d at 1385-86; the Racketeer Influenced and Corrupt Organizations Act (RICO), *see Forbes*, 228 F.3d at 484; and the Copyright Act, *see Graham I*, 568 F.3d at 437. Other courts of appeals have likewise recognized the presumptive applicability of the discovery rule to federal claims. *See*, *e.g*., *Cooper v. NCS Pearson, Inc.*, 733 F.3d 1013, 1015 (10th Cir. 2013) ("[T]he statute of limitations for a federal cause of action generally begins to run when the plaintiff knows or has reason to know of the existence and cause of the injury which is the basis of his action." (internal quotation marks and citation omitted)); *Cada v. Baxter Healthcare Corp.*, 920 F.2d 446, 450 (7th Cir. 1990) ("[T]he 'discovery rule' of federal common law … is read into statutes of limitations in federal-question cases … in the absence of a contrary directive from Congress."); *see generally Rotella v. Wood*, 528 U.S. 549, 555 (2000) (noting the "traditional federal accrual rule of injury discovery" and that federal courts "generally apply a discovery accrual rule when a statute is silent on the issue").

The discovery rule is "grounded in the notion that it is unfair to deny relief to someone who has suffered an injury but who has not learned of it and cannot reasonably be expected to have done so." *William A. Graham Co. v. Haughey*, 646 F.3d 138, 150 (3d Cir. 2011) (*Graham II*); *see Urie v. Thompson*, 337 U.S. 163, 169 (1949) (determining that suit should not be barred based on "blameless ignorance"). "That [a plaintiff] has been injured in fact may be unknown or unknowable until the injury manifests itself." *United States v. Kubrick*, 444 U.S. 111, 122 (1979). Moreover, "[m]ost of us do not live in a state of constant investigation; absent any reason to think we have been injured we do not typically spend our days looking for evidence that we were lied to or defrauded. And the law does not require that we do so." *Gabelli v. S.E.C.*, 568 U.S. 442, 450-51 (2013). The discovery rule recognizes that an injured person "cannot make a claim until he has or should have had notice that he had an action to bring," *Zeleznik v. United States*, 770 F.2d 20, 22 (3d Cir. 1985), and that the remedy provided by a federal statute would be meaningless if the statute of limitations ran before the plaintiff even knew he was injured. As the Supreme Court noted in applying the discovery rule to a Federal Employers' Liability Act claim, if the statute of limitations ran before the injured worker discovered his injury, "it would be clear that the federal legislation afforded [the worker] only a delusive remedy." *Urie*, 337 U.S. at 169.

II. Because the FDCPA Does Not Contain a Congressional Directive to the Contrary, the Discovery Rule Applies to FDCPA Cases.

The FDCPA contains no "contrary directive from Congress," to displace the otherwise applicable "federal discovery rule." *Stephens*, 796 F.3d at 284-85 (citation omitted). A contrary directive can be evidenced "by explicit command or by implication from the structure and text of the statute." *Id.* at 284 (citation omitted). Here, the FDCPA's text is silent on the discovery rule's applicability, and the FDPCA does not implicitly evince an intent that the statute of limitations begin to run before individuals subject to abusive debt collection practices learn of their injuries. To the contrary, the purpose and structure of the FDCPA favor application of the discovery rule to the FDCPA. Thus, as the two circuits to have squarely addressed the issue have held, the federal discovery rule applies to FDCPA claims. *See Lembach*, 528 F. App'x at 301 ("We see no reason not to apply the discovery rule to this [FDCPA] case."); *Mangum v. Action Collection Serv., Inc.*, 575 F.3d 935, 939 (9th Cir. 2009) (holding that the "usual discovery rule jurisprudence" applies to the FDCPA's statute of limitations).

A. The FDCPA's Text Is Silent on the Discovery Rule.

The FDCPA's text does not preclude the discovery rule's application. The FDCPA provides that an "action to enforce any liability created" by its provisions may be brought "within one year from the date on which the violation occurs." 15 U.S.C. § 1692k(d). "Missing from this text is an explicit command not to apply a discovery rule." *Stephens*, 796 F.3d at 285 (holding that the discovery rule applied to a statute providing that a complaint had to be filed "within six years after the right of action first accrues"). To be sure, the FDCPA does not expressly contain a discovery rule. But "[t]he simple fact that Congress, in drafting the statute, did not include express language of discovery is not equivalent to an explicit command that the discovery rule does not apply." *Id*. Accordingly, both this Court and the Supreme Court have applied a discovery rule in cases in which the statute at issue did not contain express language about discovery. *See*, *e.g.*, *Urie*, 337 U.S. at 169-70; *Graham I*, 568 F.3d at 437.

Appellees contend that the FDCPA's language stating that a claim must be brought "within one year from the date on which the violation occurs" expressly forecloses the discovery rule's application. That language, however, does not address whether the discovery rule applies. When the rule applies, it postpones the beginning of the statute of limitations until the plaintiff learns, or reasonably should have learned, of his injury. *See Graham II*, 646 F.3d at 141. Just as language providing that a complaint must be filed within a set time "after the right of action first accrues" does not speak to whether the discovery rule delays the start of the statute of limitations, *see Stephens*, 796 F.3d at 285—and therefore does not displace the general rule that the statute of limitations is postponed until the plaintiff discovers his injury—language providing that the complaint must be filed "within one year from the date on which the violation occurs" does not speak to that issue and therefore does not preclude the discovery rule.

Although Appellees focus on the word "occurs" in the statute of limitations, this Court has recognized the discovery rule's applicability to statutes of limitations that, like the FDCPA's, date from the occurrence of a statutory violation. In *Oshiver*, for example, this Court applied the discovery rule to a provision of Title VII of the Civil Rights Act requiring employment discrimination charges to be filed with the Equal Employment Opportunity Commission (EEOC) within a set period of time "after the alleged unlawful employment practice occurred." 38 F.3d at 1385 & n.3. The Court explained that, when the aggrieved person learns of the unlawful employment practice at the moment it occurs, the statute will begin to run at that time. *Id.* at 1386. "However," it continued, "there will also be occasions when an aggrieved person does not discover the occurrence of the alleged unlawful employment practice until some time after it occurred. The discovery rule functions in this latter scenario to postpone the beginning of the statutory limitations period from the date when the alleged unlawful employment practice occurred, to the date when the plaintiff actually discovered he or she had been injured." *Id*.

Thus, language in Title VII requiring a charge to begin within a set time "after the alleged unlawful employment practice occurred" does not displace the "general rule [that a] statute of limitations begins to run when … the plaintiff *discovers* that he or she has been injured." *Id*. at 1385; *accord Maverick Transp.,* *LLC v. U.S. Dep't of Labor, Admin. Review Bd.*, 739 F.3d 1149, 1154 (8th Cir. 2014) (explaining that nothing in a law requiring charge to be filed within 180 days after an "alleged violation occurred" indicated that "Congress intended to exclude a version of the general discovery accrual rule"). This Court has likewise recognized that the "discovery rule delays the initial running of the statute of limitations" for claims under the Age Discrimination in Employment Act (ADEA), which requires an intent to sue letter to be filed within a set number of days "of the date when the alleged unlawful practice occurred." *Podobnik v. U.S. Postal Serv.*, 409 F.3d 584, 590 (3d Cir. 2005); *accord Cada*, 920 F.3d at 450 (recognizing discovery rule's applicability to filing of ADEA complaints with EEOC).[1]

For purposes of the issue before the Court, the statutory language in Title VII (within a set number of days "after the alleged unlawful employment practice occurred") is not meaningfully distinguishable from that of the FDCPA ("within one year from the date on which the violation occurs"). In both instances, the

[1] In *Cunningham v. M&T Bank Corp.*, 814 F.3d 156 (3d Cir. 2016), which presented the question whether claims under the Real Estate Settlement Procedures Act (RESPA) were equitably tolled, the Court stated in dicta that because RESPA's statute of limitations begins to run on the "date of the occurrence of the violation," the discovery rule "is not apt for RESPA claims." *Id*. at 162. The discovery rule was not at issue in that case, however, and the Court did not explain how its statement could be reconciled with *Oshiver*. Moreover, although *Cunningham* stated that the discovery rule "relates to claim accrual," *id.*, this Court held in *Graham II*, 646 F.3d at 150, that the discovery rule is a tolling rule, not a claim accrual rule, and *Cunningham* recognized that RESPA's statute of limitations can be subject to tolling, 814 F.3d at 160-61.

limitations period is triggered by the occurrence of the statutory violation. Accordingly, the discovery rule should apply to the FDCPA, as to Title VII, and the statute of limitations should begin to run on the date Mr. Rotkiske learned of his injury.

B. The FDCPA's Purpose and Structure Support the Discovery Rule.

Just as the FDCPA's text does not expressly foreclose the discovery rule's application, its text and structure do not implicitly "evince Congress' intent to preclude" application of the rule. *TRW, Inc. v. Andrews*, 534 U.S. 19, 28 (2001); *see Lembach*, 528 F. App'x at 301 (seeing "no reason" not to apply the discovery rule in an FDCPA action). For example, the statute does not contain a provision expressly applying the discovery rule in limited circumstances, thus "implicitly exclud[ing]" a more general discovery rule that would effectively make that provision superfluous. *TRW*, 534 U.S. at 28; *see*, *e.g.*, *Johnson-Morris v. Santander Consumer USA, Inc.*, 194 F. Supp. 3d 757, 763 (N.D. Ill. 2016) (in holding that the discovery rule applies to FDCPA claims, noting that "the FDCPA contains no such provision signaling congressional intent to preclude application of the discovery rule to that Act").

Instead, the FDCPA's statutory scheme supports the rule's applicability. Congress enacted the FDCPA in 1977 in response to "abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors," 15 U.S.C. § 1692(a), which had become "a widespread and serious national problem." S. Rep. No. 95-382, at 2 (1977). Congress determined that these practices "contribute 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), and that "[e]xisting laws and procedures for redressing these injuries [we]re inadequate to protect consumers," *id*. § 1692(b). In enacting the statute, Congress sought both to "eliminate abusive debt collection practices by debt collectors" and "to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged." *Id*. § 1692(e).

These goals "would be thwarted without the discovery rule." *Stephens*, 796 F.3d at 286 (addressing rule in context of 18 U.S.C. § 2255). Abusive debt collectors would be able to engage in the deceptive and unfair activities forbidden by the statute without fear of being held liable to the consumers they injured so long as the harm they caused remained hidden for a year, leaving injured consumers without a means of redressing their injuries and honest debt collectors at a competitive disadvantage.

Application of the discovery rule to the FDCPA is particularly appropriate because the Act's goals include eliminating deceptive debt collection practices, and many of the behaviors it prohibits involve fraudulent or otherwise deceptive behavior. The discovery rule originally arose in fraud cases based on the recognition that, without such a rule "a defendant's deceptive conduct may prevent a plaintiff from even *knowing* that he or she has been defrauded." *Merck & Co. v. Reynolds*, 559 U.S. 633, 644 (2010). As the Supreme Court has noted, "when the injury is self-concealing, private parties may not know that they have been injured." *Gabelli*, 568 U.S. at 450. Accordingly, "courts have developed the discovery rule, providing that the statute of limitations in fraud cases should typically begin to run only when the injury is or reasonably could have been discovered." *Id*. at 451. "[W]here a plaintiff has been injured by fraud and remains in ignorance of it without any fault or want of diligence or care on his part, the bar of the statute does not begin to run until the fraud is discovered." *Holmberg v. Armbrecht*, 327 U.S. 392, 397 (1946) (quoting *Bailey v. Glover*, 88 U.S. (21 Wall.) 342, 348 (1874)).

As with the fraud cases in which the discovery rule arose, the FDCPA's prohibitions include conduct that is by its nature self-concealing. This case provides a perfect example: Defendant Klemm & Associates filed a collection lawsuit against Mr. Rotkiske, served a stranger who did not match Mr. Rotkiske's racial or physical description at an address where Mr. Rotkiske no longer lived, and then withdrew the complaint. App. 8a. Defendants then refiled the lawsuit, again served an unknown person at the address Mr. Rotkiske did not occupy, and obtained a default judgment. *Id*. The defendants' failure to serve Mr. Rotkiske virtually ensured that their conduct would remain hidden; because he was not served, Mr. Rotkiske did not learn about that lawsuit or default judgment until he applied for a mortgage over five years later. *Id*.

As the Fourth Circuit noted in applying the discovery rule to the FDCPA, defendants "should not be allowed to profit from the statute of limitations when [their] wrongful acts have been concealed." *Lembach*, 528 F. App'x at 302. Given that the FDCPA's objectives include protecting consumers from deceptive and misleading debt collection practices, the discovery rule should apply to ensure that debt collectors are not immunized from liability by the self-concealing nature of their conduct. At the very least, this Court should hold that the discovery rule applies to claims based on false or misleading misrepresentations or other self-concealing conduct. *See Bailey*, 88 U.S. (21 Wall.) at 350 ("When the fraud has been concealed, or is of such character as to conceal itself, the statute does not begin to run until the fraud is discovered by, or becomes known to, the party suing[.]").

Appellees emphasize that over six years passed between the conduct underlying the FDCPA violation and Mr. Rotkiske's complaint. Appellee Br. 25. They argue that the six-year time period makes application of the discovery rule particularly inappropriate and distinguishes this case from *Mangum*, 575 F.3d 935—the Ninth Circuit case holding that the discovery rule applies to FDCPA cases, in which the plaintiff learned of the debt collectors' conduct seven days after it took place. Rather than counseling against the application of the discovery rule, however, the length of time between the underlying conduct and Mr. Rotkiske's discovery of his injury emphasizes the need for the discovery rule to apply: It highlights that injuries from abusive, deceptive, or unfair debt collector conduct can remain hidden for years, through no fault of the individual.

Citing *Mattson v. U.S. West Communications, Inc.*, 967 F.2d 259 (8th Cir. 1992), and *Maloy v. Phillips*, 64 F.3d 607 (11th Cir. 1995), Appellees contend that "[c]ircuit courts have split when determining whether the discovery rule applies to the FDCPA's statute of limitations." Appellee Br. 16. However, neither *Mattson* nor *Maloy* addresses the issue presented here. Both held that, in an FDCPA case based on a collection letter, the statute of limitations begins to run when the letter is mailed, rather than when it is received. Neither case mentions the discovery rule.

Appellees also highlight that *Mattson* "concluded that the overall point of the FDCPA was to regulate debt collectors," and thus held that the statute of limitations was triggered by the debt collectors' "'last opportunity to comply with the FDCPA.'" Appellee Br. 17 (quoting *Mattson*, 967 F.2d at 261); *see Mattson*, 967 F.2d at 261 ("While we understand that Congress' ultimate objective was to protect consumers from harassment by debt collectors, Congress intended to achieve this purpose by regulating the conduct of debt collectors.”).[2] In *Stephens*, however, this Court indicated that the fact that a statute focuses on the defendants' conduct *supports* the application of the discovery rule.

Stephens held that the discovery rule applies to 18 U.S.C. § 2255, which creates a civil remedy for victims of child exploitation, including child pornography. The Court explained that, with respect to child pornography, the statute's “focus is on the distributor's conduct” and “child pornography is most often distributed in secret and without the victim's immediate knowledge,” but that because “each act of distribution injures the child pornography victim[,] … ‘an omniscient plaintiff’ would have a provable cause of action upon the completion of the act” of distribution. 796 F.3d at 286 (quoting *Graham II*, 646 F.3d at 146). The Court recognized that, in this circumstance, “without the discovery rule, civil redress would be unavailable to those victims of child pornography who are

[2] Quoting *Naas v. Stolman*, 130 F.3d 892, 893 (9th Cir. 1997), which in turn quoted *Mattson*, 967 F.2d at 261, and citing *Maloy*, 64 F.3d at 608, this Court stated in *Peterson v. Portfolio Recovery Assocs., LLC*, 430 F. App'x 112, 115 (3d Cir. 2011), that “[o]ther circuits have held, entirely reasonably, that the FDCPA statute of limitations should begin to run on the date of ‘the debt collector's last opportunity to comply with’ the Act.” *Peterson*, however, did not involve the discovery rule; the question in that case was whether claims were subject to a continuing-violations rule that reset the statute of limitations with each new communication. *Naas* likewise did not address the discovery rule, and when the Ninth Circuit was “confronted for the first time in *Mangum* with the question of whether the discovery rule should apply to [the FDCPA's] statute of limitations provision, [the court] answered in the affirmative.” *Lyons v. Michael & Assocs.*, 824 F.3d 1169, 1173 (9th Cir. 2016).

unaware during the statutory period of the distribution of visual depictions of their sexual abuse." *Id.* "Given that Congress intended § 2255 to create a remedy for these very victims," the Court determined that "the structure and text of § 2255 supports recognition of the discovery rule for § 2255 claims." *Id.*

Likewise, here, "without the discovery rule, civil redress would be unavailable" to those consumers "who are unaware during the statutory period" of the abusive debt collectors' practices that caused them injury. *Id.* Given that Congress intended "to create a remedy for these very victims, the structure and text" of the FDCPA "supports recognition of the discovery rule" for FDCPA claims. *Id.*

This Court has repeatedly recognized that, as "remedial legislation, the FDCPA must be broadly construed in order to give full effect to [its] purposes." *Kaymark v. Bank of Am., N.A.*, 783 F.3d 168, 174 (3d Cir. 2015) (citation omitted). Absent the discovery rule, vulnerable consumers will be left without redress if the harm caused by debt collectors' abusive or deceptive acts remains concealed for over a year, and Congress's goals in enacting the statute will be undermined. This Court should join the Fourth and Ninth Circuits and hold that the discovery rule applies to FDCPA claims.

III. The FDCPA's Statute of Limitations Is Not Jurisdictional.

Appellees suggest (although they do not explicitly argue) that the FDCPA's statute of limitations might be jurisdictional and therefore not subject to tolling. Appellee Br. 26-27. Absent a "clear statement" that a statute of limitations is jurisdictional, however, courts should treat the limitations period as nonjurisdictional. *Sebelius v. Auburn Med. Ctr.*, 568 U.S. 145, 153 (2013). In applying the clear statement rule, the Supreme Court has "repeatedly held that filing deadlines ordinarily are not jurisdictional." *Id*. at 154; *see also Ramadan v. Chase Manhattan Corp.*, 156 F.3d 499, 503 (3d Cir. 1998) ("[P]eriods of limitations in federal statutes … are universally regarded as nonjurisdictional." (citation omitted)). The FDCPA is no different: It contains no clear statement that its statute of limitations is jurisdictional in nature. Rather, its time limit "reads like an everyday, run-of-the-mill statute of limitations." *Clark v. Bonded Adjustment Co*., 176 F. Supp. 2d 1062, 1068 (E.D. Wash. 2001) (internal quotation marks and citation omitted).

To be sure, Section 1692k(d) contains the heading "Jurisdiction." But as the Ninth Circuit explained in *Mangum*, "the statute itself does not have that heading, and the mere fact that the Office of the Law Revision Counsel chose to create the heading when it codified the provision … cannot change the meaning or intent of a statutory provision." 575 F.3d at 939-40; *see United States v. Welden*, 377 U.S. 95, 98 n.4 (1964) (explaining that changes "by a codifier without the approval of Congress … should be given no weight"). Likewise insignificant is "the fact that this statute of limitations appears in the same sentence in which the jurisdiction provision appears." *Mangum*, 575 F.3d at 940. "[T]he time limit language itself does not speak in jurisdictional terms or refer in any way to the jurisdiction of the federal courts." *Clark*, 176 F. Supp. 2d at 1068 (internal quotation marks and citation omitted). And a "requirement we would otherwise classify as nonjurisdictional … does not become jurisdictional simply because it is placed in a section of a statute that also contains jurisdictional provisions." *Sebelius*, 568 U.S. at 155. Further, the Senate Report on the FDCPA indicates that Congress viewed the statute of limitations as distinct from jurisdiction. In discussing the FDCPA's provision on civil liability, the Report states: "Jurisdication for actions is conferred on U.S. district and state courts; there is a 1 year statute of limitations." S. Rep. No. 95-382, at 8.

Moreover, in *Ramadan*, this Court held that a statute of limitations that similarly appeared in a sentence that also contained a jurisdictional provision was not jurisdictional. *Ramadan* concerned the statute of limitations in the Truth in Lending Act (TILA), which provides that "any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation." 15

U.S.C. § 1640(e). Looking at TILA's "structure and purpose," the Court determined that the statute of limitations was not jurisdictional. 156 F.3d at 505. The FDCPA's structure and text give no more reason than TILA's to think that Congress intended its statute of limitation to be jurisdictional. And like TILA's purpose of "guard[ing] against the danger of unscrupulous lenders," the FDCPA's purpose of guarding against the dangers of abusive debt collection practices is consistent with "allowing tolling of the statute of limitations." *Id*. at 502.

In short, "the presumption that statutory time limits are not jurisdictional has not been rebutted by anything in the language or legislative history of the FDCPA." *Mangum*, 575 F.3d at 940 (citation omitted). "This case is scarcely the exceptional one … in which a time limit [is] jurisdictional." *Sebelius*, 568 U.S. at 155.

CONCLUSION

The Court should reverse the district court decision.

Respectfully submitted,

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CERTIFICATE OF BAR MEMBERSHIP, WORD COUNT, IDENTICAL COMPLIANCE OF BRIEFS, AND VIRUS CHECK

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