

No. 13–2523

In The United States Court of Appeals For The Sixth Circuit

Esther Buchanan,
individually and on behalf of a class,
Plaintiff-Appellant,

v.

Northland Group Inc.,
Defendant-Appellee.

On Appeal from the United States District Court
for the Western District of Michigan
Hon. Janet P. Neff

Case No. 1:12-cv-1011

Brief of Amici Curiae Federal Trade Commission
and Consumer Financial Protection Bureau Supporting Reversal

Meredith Fuchs
General Counsel
To-Quyen Truong
Deputy General Counsel
David Gossett
*Assistant General Counsel for
Litigation*
Nandan M. Joshi
Counsel
Consumer Financial Protection Bureau
Washington, DC 20552

*Counsel for Amicus Curiae
Consumer Financial Protection Bureau*

Jonathan E. Nuechterlein
General Counsel
John F. Daly
*Deputy General Counsel for
Litigation*
*Theodore (Jack) Metzler
Attorney
Office of the General Counsel
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580
(202) 326-3502 (telephone)
(202) 326-2477 (facsimile)
tmetzler@ftc.gov

*Counsel for Amicus Curiae
Federal Trade Commission*

* Counsel of Record

Table of Authorities	ii
Interest of Amici Curiae	1
Introduction	4
Statement	5
Argument	8
I. The FDCPA And Time-Barred Debt	9
A. The Legal Standard	10
B. In a Range of Circumstances, Collecting or Attempting to Collect Time-Barred Debts Violates the FDCPA.	13
1. Suing or threatening to sue on a time-barred debt violates the FDCPA.	15
2. Attempts to collect time-barred debt may also violate the FDCPA or trigger an obligation to disclose in circumstances other than actual or threatened litigation.	16
II.	

<i>Basile v. Blatt, Hasenmiller, Liebsker & Moore LLC</i> , 632 F. Supp. 2d 842 (N.D. Ill. 2009).....	15
<i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544 (2007)).....	20, 21
<i>Bridge v. Ocwen Fed. Bank</i> , 681 F.3d 355 (6th Cir. 2012)	2
<i>Dunham v. Portfolio Recovery Assocs.</i> , 663 F.3d 997 (8th Cir. 2011)	2
<i>Evory v. RJM Acquisitions</i> , 505 F.3d 769 (7th Cir. 2007)	21
<i>Fed. Home Loan Mortgage Corp. v. Lamar</i> , 503 F.3d 504 (6th Cir. 2007)	10
<i>Forest v. Parmalee</i> , 262 N.W.2d 653 (Mich. 1978)	14
<i>Frey v. Gangwish</i> , 970 F.2d 1516 (6th Cir. 1992)	10
<i>Freyermuth v. Credit Bureau Services</i> , 248 F.3d 767 (8th Cir. 2001)	16, 17
<i>FTC v. Cher Plavista F. d. 9</i>	

Kistner v. Law Offices of Michael P. Margelefsky, LLC,
518 F.3d 433 (6th Cir. 2008)..... 11

Lewis v. ACB Servs., Inc., 135 F.3d F.3d 389 (6th Cir. 1998) 22

McMillan v. Collection Professionals, Inc.,
455 F.3d 754 (7th Cir. 2006)..... 20

Rawson v. Source Receivables Mgmt., 2012 U.S. Dist.
LEXIS 125205 (N.D. Ill. 2012) 15

R.R. Telegraphers v. Ry. Express Agency, 321 U.S. 342 (1944)..... 13

Simeon Mgmt. Corp. v. FTC, 579 F.2d 1137
(9th Cir. 1978) 2, 12

Stepney v. Outsourcing Solutions, Inc., 1997 U.S. Dist.
LEXIS 18264 (N.D. Ill. 1997) 16, 18

Trans World Accounts, Inc. v. FTC, 594 F.2d 212
(9th Cir. 1979) 11

United States v. Kubrick, 444 U.S. 111 (1979)..... 13

Walker v. Cash Flow Consultants, Inc.,
200 F.R.D. 613 (N.D. Ill. 2001)..... 17

Walker v. Nat’l Recovery, Inc., 200 F.3d 500 (7th Cir. 1999)..... 10

Wallace v. Capital One Bank, 168 F. Supp. 2d 526 (D. Md. 2001)... 14, 15

12 U.S.C. § 5481..... 2

15 U.S.C. § 45 1

15 U.S.C. § 53 1

15 U.S.C. § 57b..... 1

15 U.S.C. § 1692e..... 4, 6, 7, 9, 18

15 U.S.C. § 1692f 6, 7

15 U.S.C. § 1692g..... 7

15 U.S.C. § 1692i/ 1, 2

Miss. Code Ann. § 15-1-3..... 14

Wis. Stat. Ann. § 893.05 14

FTC, *Staff Commentary on the Fair Debt Collection Practices Act*, 53 Fed. Reg. 50097 (Dec. 13, 1988) 9, 10

78 Fed. Reg. 67848 (Nov. 12, 2013)..... 3

Fed. R. Civ. P. 12 6

FTC, *Collecting Consumer Debts: The Challenges of Change* (Feb. 2009) 2, 13

FTC, *Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration* (July 2010) 2, 13, 14, 18, 19

FTC, *The Structure and Practices of the Debt Buying Industry* (Jan. 2013)..... 2, 14, 18

The Federal Trade Commission and the Consumer Financial Protection Bureau, agencies of the United States, file this brief pursuant to Federal Rule of Appellate Procedure 29(a) to aid the Court in its interpretation of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.*

The Commission is the federal agency with principal responsibility for protecting consumers from deceptive or unfair trade practices, which include violations of the FDCPA. 15 U.S.C. § 1692/(a). A violation of the FDCPA is “deemed an unfair or deceptive act or practice in violation of the [FTC] Act,” and the Commission may enforce FDCPA violations as if they were violations “of a Federal Trade Commission trade regulation rule.” *Id.* The Commission enforces the FDCPA through original suits for injunctive and equitable monetary relief under Section 13(b) and 19 of the FTC Act. 15 U.S.C. §§ 53(b), 57b. The Commission may also address deceptive debt collection practices under Section 5(b) of the FTC Act, 15 U.S.C. § 45(b).

The Bureau is similarly charged with “regulat[ing] the offering and provision of consumer financial products and services under

Federal consumer financial law," which includes the FDCPA. 12 U.S.C.

Recovery Assocs., 663 F.3d 997, 1002 (8th Cir. 2011) (“[W]e have found [the FTC’s] Staff Commentary [on the FDCPA] persuasive in the past.”).

In 2013, the Bureau issued an Advance Notice of Proposed Rulemaking, seeking data and comments on numerous aspects of the debt-collection industry, including issues relating to the collection of time-barred debts. *See* 78 Fed. Reg. 67848, 67875–76 (Nov. 12, 2013). The Commission and the Bureau have also jointly submitted amicus briefs in cases addressing the interpretation of the FDCPA. *See Sykes v. Mel S. Harris and Associates*, No. 13–2742 (2d Cir.); *Delgado v. Capital Management Services*, No. 13–8009 (7th Cir.) (regarding the collection of time-barred debts).

Amici thus have an interest in the Court’s resolution of the issue presented in this case.

The debt collector in this case sent Esther Buchanan a dunning letter with an offer to settle a debt upon which the statute of limitations had expired. Ms. Buchanan filed a class-action complaint, contending that the letter violated, *inter alia*, the FDCPA's prohibition on the use of "any false, deceptive, or misleading representation or means in connection with the collection of any debt." 15 U.S.C. § 1692e. On the debt collector's motion, the district court dismissed the complaint, holding that, as a matter of law, the letter could not have violated the FDCPA.

Several courts have held that a collector who sues or threatens suit on a time-barred debt violates the FDCPA. The Commission and the Bureau agree. But actual or threatened litigation is not a *necessary* predicate for an FDCPA violation in the context of time-barred debt. Rather, a debt collector violates the statute whenever its communications tend to deceive or mislead "the least sophisticated consumer," whom the FDCPA was enacted to protect. Depending on the circumstances, a settlement offer can erroneously lead unsophisticated consumers to believe a debt is enforceable in court even if the offer is unaccompanied by any clearly implied threat of litigation.

Here, the settlement offer represented that the consumer's balance would continue to accrue "interest" and included a warning that the company was "not obligated to renew" the settlement offer. Even if those statements are not deemed an implicit threat of litigation—an issue this brief does not address—they could plausibly mislead an unsophisticated consumer into believing that she could be sued for the debt. The district court thus erred in holding that, as a matter of law, the letter could not mislead the least sophisticated consumer, and the court's dismissal of the complaint should be reversed. Given the posture of this case, however, the Commission and the Bureau take no position on the ultimate merits of plaintiff's claims.

Your past due account balance: \$4,768.43

Your settlement offer: \$1,668.96

Id. The letter stated, "As of the date of this letter, you owe \$4,768.43. Because of interest that may vary from day to day, the amount due on the day you pay may be greater." *Id.* The letter said that the "current creditor is willing to reduce your balance by offering you a settlement." *Id.* "Upon receipt and clearance of \$1,668.96, your account will be satisfied and closed and a settlement letter will be issued." *Id.* The letter also represented that "[w]e are not obligated to renew this offer." *Id.* The letter did not tell Ms. Buchanan that the statute of limitations for filing an action to collect the debt had run and that Northland could not therefore compel her to pay. *Id.*

Ms. Buchanan filed a putative class-action complaint, alleging that the last payment on the debt was made more than six years before Northland's letter,² and that an action to enforce the debt would therefore be barred by Michigan's six-year statute of limitations for contract actions. Complaint, Dist. Ct. Docket No. 1, at 2. The complaint alleges that the letter violates the FDCPA, 15 U.S.C. §§ 1692e & 1692f,

² Because this appeal arises from the grant of a motion to dismiss, amici take the complaint's factual allegations as true. *See* Fed. R. Civ. P. 12.

because the failure to disclose that the debt was time-barred, together with the offer to settle, amounted to a misleading representation that the debt could be legally enforced. *Id.* at 3–4.

The district court granted Northland’s motion to dismiss the complaint for failure to state a claim upon which relief may be granted. Opinion & Order at 1. The court observed that, although the FDCPA

dismissing the complaint, because the debt collector's letter could plausibly mislead the least-sophisticated consumer as to the legal status of the debt.

The FDCPA prohibits, among other things, the use of "any false, deceptive, or misleading representation or means in connection with the collection of any debt." 15 U.S.C. § 1692e.³ Section 1692e contains a nonexclusive list of prohibited practices. These include making a false representation of "the character, amount, or legal status of any debt," threatening "to take any action that cannot legally be taken or that is

the consumer as to the legal consequences of the consumer's actions."

Id. at 50106.

As this Court has held, "[t]he Fair Debt Collection Practices Act is an extraordinarily broad statute. Congress addressed itself to what it considered to be a widespread problem, and to remedy that problem it crafted a broad statute." *Frey v. Gangwish*, 970 F.2d 1516, 1521 (6th Cir. 1992). In assessing whether a debt collector's communications are misleading or deceptive under the FDCPA, this Court applies "an objective test" based on whether the "least sophisticated consumer" would be misled or deceived. *Harvey v. Great Seneca Financial Corp.*,

A debt collector's communication need not contain overtly false statements to be misleading or deceptive; omissions may also deceive. *Kimber v. Federal Fin. Corp.*, 668 F. Supp. 1480, 1489 (M.D. Ala. 1987) (“[T]o be deceptive a representation need not be expressed and it need not be obvious to everyone.”); *see also Harvey*, 453 F.3d at 332–333 (6th Cir. 2006) (quoting *Kimber*). Moreover, a dunning letter that has “more than one reasonable interpretation” may be deceptive to the least sophisticated consumer. *Kistner v. Law Offices of Michael P. Margelefsky, LLC*, 518 F.3d 433, 441 (6th Cir. 2008).

The Commission has explained (in the FTC Act context⁵) that “it can be deceptive to tell only half the truth, and to omit the rest,” or “to simply remain silent . . . under circumstances that constitute an implied but false representation.” *In re Int'l Harvester Co.*, 104 F.T.C. 949, 1984 FTC LEXIS 2, at *240–241 (1984). For example, as this Court has agreed, a “failure to disclose” facts can be “false and misleading” where an “advertisement creates [a] false impression.” *J.B. Williams Co. v.*

⁵ In determining whether conduct is deceptive under the FDCPA, the Commission's interpretation of deception under Section 5 of the FTC Act is instructive. *See, e.g., FTC v. Check Investors, Inc.*, 502 F.3d 159, 174 (3d Cir. 2007); *Trans World Accounts, Inc. v. FTC*, 594 F.2d 212, 214 (9th Cir. 1979) (“The deceptive acts or practices forbidden by the [FTC] Act include those used in the collection of debts.”).

FTC, 321 F.2d 884, 889 (6th Cir. 1967). Whether a statement is false or misleading in that respect often depends "on ordinary consumer expectations." *Int'l Harvester*, 1984 FTC LEXIS 2, at *240.

To avoid misleading consumers, sellers and debt collectors alike may be required to correct consumers' misimpressions even if they did not directly create, or only partially created, the misimpression. The Commission has thus held that advertisers may be held liable for deception where, by failing to correct misimpressions, their ads "capitalize on preexisting consumer beliefs." *In re Stouffer Foods Corp.*, 118 F.T.C. 746, 1994 FTC LEXIS 196, at *36 n.1 (1994); *see also Simeon Mgmt. Corp. v. FTC*, 579 F.2d 1137, 1145 (9th Cir. 1978) (affirming Commission holding that seller's "failure to disclose" certain details of its weight loss program, combined with consumers' preexisting misimpressions, "render[ed]the [seller's] advertisement deceptive"); *In re Peacock Buick*

disclose “renders it difficult for the typical consumer to know whether the product will in fact meet his needs”).

Statutes of limitation reflect a legislative judgment that failing to put a defendant on notice to defend against a suit within a specified period is “unjust.” *United States v. Kubrick*, 444 U.S. 111, 117 (1979). This is because “the right to be free of stale claims in time comes to prevail over the right to prosecute them.” *Id.* (quoting *R.R. Telegraphers v. Ry. Express Agency*, 321 U.S. 342, 349 (1944)). Statutes of limitation “protect defendants and the courts from having to deal with cases in which the search for truth may be seriously impaired by the loss of evidence.” *Id.* The limitations period also provides a bright line for debt holders and consumers, signifying a time when “no further legal action to collect on a debt is permitted.” *Challenges, supra* n.1 at 63. The running of the statute thus works to the benefit of consumers who owe debts that become stale. Yet the applicable state statutes of limitation can be “variable and complex, and [are] generally not understood by consumers.” *Broken System, supra* n.1 at 2, 26.

In most states, the expiration of the statute of limitations on a debt does not extinguish the debt.⁶ *Structure & Practices, supra* n.1 at 45. In other words, the running of the statute “does not prohibit the collector from using non-litigation means” to collect the debt, so long as those efforts do not violate the prohibitions in the FDCPA and other laws. *Broken System* at 22–23. Nor is it necessarily futile to issue an FDCPA-compliant request for payment after the statute of limitations has run. Consumers may choose for moral or other reasons to pay their debts even when they know those debts are time-barred. *Broken System* at 23 n.103.

Accordingly, in some circumstances “a debt collector may seek voluntary payment of a time-barred debt” without violating the FDCPA, even if the communication is silent as to the statute of limitations. *Wallace v. Capital One Bank*, 168 F. Supp. 2d 526, 528 (D. Md. 2001).

⁶ Two exceptions are Mississippi and Wisconsin, where the expiration of the statute of limitations does extinguish the debt. Miss. Code Ann. § 15-1-3; Wis. Stat. Ann. § 893.05. The district court here held that in Michigan the statute of limitations is a “procedural defense that does not alter the creditor’s substantive rights.” Opinion at 6, citing *Forest v. Parmalee*, 262 N.W.2d 653, 657 (Mich. 1978). But whatever substantive rights survive the running of the statute, they do not include suing to collect the debt or misleading a consumer to believe she could be sued.

However, the “contact between a debt collector and a debtor” will violate the FDCPA if it explicitly or implicitly “represent[s] that the debt collector can sue on the debt” or otherwise violates the FDCPA’s prohibitions. *See id.; Kimber*, 668 F. Supp. at 1489.

It is well-established that threatening to sue on a time-barred debt violates the FDCPA. *E.g., Kimber*, 668 F. Supp. at 1480; *Basile v. Blatt, Hasenmiller, Liebsker & Moore LLC*, 632 F. Supp. 2d 842, 845 (N.D. Ill. 2009) (collecting cases). Threats to sue (and actual lawsuits) misrepresent the legal status of time-barred debt—violating 15 U.S.C. § 1692e(2)(A)—by implying that the collector “can legally prevail” in a lawsuit. *E.g., Kimber*, 668 F. Supp. at 1488. For similar reasons, filing or threatening suit also violates both Section 1692e(5) as an improper

U.S. Dist. LEXIS 125205, at *5 (N.D. Ill. 2012) (threatening “further collection efforts” sufficient); *Stepney v. Outsourcing Solutions, Inc.*, 1997 U.S. Dist. LEXIS 18264, at *1, *5 (N.D. Ill. 1997) (threatening “further collection action”).

Although an implicit threat of litigation is a *sufficient* condition of a statutory violation in this context, it is not also a *necessary* condition.⁷ That point is the subject of some confusion in the case law. Though there is wide agreement that actual or threatened lawsuits on stale debts violate the FDCPA, a number of courts have inartfully described this principle as if it sets the outer limit on FDCPA liability in time-barred debt cases. For example, in *Freyermuth v. Credit Bureau Services*, the Eighth Circuit stated that “in the absence of a threat of litigation or actual litigation, no violation of the FDCPA has occurred when a debt collector attempts to collect on a potentially time-barred

⁷ It is plausible that the dunning letter in this case qualifies as an implied threat of litigation, but this brief takes no position on that issue, and the discussion in this section addresses the separate issue whether collection efforts may violate the Act even in the absence of such threats.

debt that is otherwise valid." 248 F.3d 767 (8th Cir. 2001). The Third Circuit has similarly stated that a plaintiff's "FDCPA claim hinges on whether [the debt collector's] letter threatened litigation." *Huertas*, 641 F.3d at 28. Other courts have used comparable language. *E.g.*, *Walker v. Cash Flow Consultants, Inc.*, 200 F.R.D. 613, 616 (N.D. Ill. 2001) ("[I]n order to survive a motion to dismiss, a defendant's attempt to collect on a time-barred debt must be accompanied by actual litigation or a threat, either explicit or implicit, of future litigation.").

But most of these cases involved plaintiffs' claims that *any* attempt to collect a stale debt without telling the consumer it is time-barred violates the FDCPA. *E.g.*, *Huertas*, 641 F.3d at 32–33; *Walker*, 200 F.R.D. at 616 ("[I]t is [not] a violation of the FDCPA to merely attempt to collect a time-barred debt."). In rejecting that broad claim, these courts did not consider that some attempts to collect stale debts—unaccompanied by any threat of suit—may be misleading in other ways.

In fact, some such attempts clearly are unlawful. Under its plain terms, a debt collector violates the Act by (among other things) misrepresenting the "character, amount, or legal status" of a debt; or by using any other "false representation or deceptive means" to collect the

debt. 15 U.S.C. §§ 1692e(2)(A), 1692e(10). The “critical issue” is not simply whether there has been an actual or threatened lawsuit, but whether the least sophisticated consumer would be misled or deceived by the debt collector’s conduct. *Stepney*, 1997 U.S. Dist. LEXIS 18264, at *13; see *Structure & Practices*, *supra* n.1 at 46–47 (Efforts to collect time-barred debt that “convey or imply to consumers that the collectors could sue them if they do not pay” are “false or misleading.”); *Broken System*, *supra* n.1 at 26. Suing and threatening to sue on a time-barred debt are two specific examples of conduct that qualify. But they are not the only ones.

For example, the Commission has concluded in a related context that consumers can be misled or deceived when debt collectors seek partial payments on stale debt. *Broken System* at 27–28; *Structure & Practices* at 47. In most states, a partial payment restarts the statute of limitations for the entire amount of the debt. *Structure & Practices* at 47 & n.195 (collecting cases). The Commission observed that “consumers do not expect” that a partial payment “will have the serious, adverse consequence of starting a new statute of limitations.” *Broken System* at 28.

Accordingly, the Commission concluded that a debt collector's solicitation of a partial payment on a time barred debt can "create a misleading impression as to the consequences of making [a] payment," thereby violating the FDCPA, if it inaccurately implies that the payment will *reduce* the consumer's legal obligation. *Id.* at 28. The Commission stated that "[t]o avoid creating a misleading impression, collectors would need to disclose clearly and prominently to consumers prior to requesting or accepting such payments that (1) the collector cannot sue to collect the debt and (2) providing a partial payment would revive the collector's ability to sue to collect the balance." *Id.*

In sum, the debt collector need not make an overt threat of litigation to violate the FDCPA. Rather, the court must consider a practice's effect on unsophisticated consumers from their perspective; for example, it will often be relevant that most consumers do not know or understand their legal rights with respect to time-barred debt. *See Broken System* at 2, 26; *Kimber*, 668 F. Supp. 1480, 1486–88 ("[F]ew unsophisticated consumers would be aware that a statute of limitations could be used to defend against lawsuits based on stale debts," and "would unwittingly acquiesce to such lawsuits."). In some

circumstances, a debt collector may be required to make affirmative disclosures in order to avoid misleading consumers.

To survive a motion to dismiss, Ms. Buchanan's complaint must "allege[] facts that 'state a claim to relief that is plausible on its face' and that, if accepted as true, are sufficient to 'raise a right to relief above the speculative level.'" *Handy-Clay v. City of Memphis*, 695 F.3d 531, 538 (6th Cir. 2012) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A court construes the complaint in the light most favorable to the plaintiff, and draws all reasonable inferences in her favor. *Id.*

Whether a debt collector's letter is false, deceptive, or misleading requires "a fact-bound determination of how an unsophisticated consumer would perceive the letter." *McMillan v. Collection Professionals, Inc.*, 455 F.3d 754, 759 (7th Cir. 2006). Accordingly, district courts should "act with great restraint" when ruling on a motion to dismiss a complaint brought under Sections 1692e and 1692f of the FDCPA. *Id.* at 759.

Here, the question before the district court was whether

lawsuit. *Cf. Stouffer Foods*, 118 F.T.C. 746, 1994 FTC LEXIS 196, at *36 n.1. Indeed, in dismissing this very possibility, the district court relied on cases contrasting a settlement offer with litigation. Opinion & Order at 8–9 (quoting, *e.g.*, *Lewis v. ACB Servs., Inc.*, 135 F.3d 389, 399 (6th Cir. 1998) (prohibiting settlement offers “would force honest debt collectors seeking peaceful resolution of the debt to file suit”; settlement offers “may result in resolution of the debt without resorting to litigation”).)

Moreover, Northland’s additional representations may have contributed to the impression that litigation could follow rejection of the settlement offer. For example, the admonition that “[w]e are not obligated” to renew the settlement offer could suggest that something worse than a settlement offer—like a lawsuit—would result from turning down the settlement. And the representation that interest would continue to accrue on the account could reinforce that suggestion by implying that that the consumer would eventually have to pay (through litigation or otherwise) even more than the “past due account balance” listed in the letter. For a consumer who does not know that the statute of limitations bars suit, these representations could influence

how she views and responds to an offer for “settlement.” In short, Northland’s failure to include “qualifying information necessary to prevent [the settlement offer] from creating a misleading impression” could therefore be deceptive. *Cf.*

Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580
(202) 326-3502 (telephone)
(202) 326-2477 (facsimile)
tmetzler@ftc.gov

*Counsel for Amicus Curiae
Federal Trade Commission*

Meredith Fuchs
General Counsel

To-Quyen Truong
Deputy General Counsel

David Gossett
Assistant General Counsel for
Litigation

Nandan M. Joshi
Counsel
Consumer Financial Protection
Bureau
Washington, DC 20552

*Counsel for Amicus Curiae
Consumer Financial Protection
Bureau*

CERTIFICATE OF COMPLIANCE

This brief complies with Federal Rules of Appellate Procedure 29(d) and 32(a)(7) in that it contains 4,589 words, excluding the parts of the brief exempted by Rule 32(a)(7)(B)(iii).

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

Dated: March 5, 2014

/s/ Theodore (Jack) Metzler

Theodore (Jack) Metzler

Attorney

Office of the General Counsel

Federal Trade Commission

600 Pennsylvania Avenue NW

Washington, DC 20580

(202) 326-3502 (telephone)

(202) 326-2477 (facsimile)

tmetzler@ftc.gov

CERTIFICATE OF SERVICE

I hereby certify that on March 5, 2014 I filed and served the foregoing with the Court's appellate CM-ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: March 5, 2014

/s/ Theodore (Jack) Metzler

Theodore (Jack) Metzler
Attorney

Office of the General Counsel
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580
(202) 326-3502 (telephone)
(202) 326-2477 (facsimile)
tmetzler@ftc.gov