IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit
FILED
April 29, 2020
Lyle W. Cayce
Clerk

No. 19-50814

SILVIA MANUEL,

Plaintiff - Appellee

v.

MERCHANTS AND PROFESSIONAL BUREAU, INCORPORATED,

Defendant - Appellant

Appeals from the United States District Court
for the Western District of Texas

Before OWEN, Chief Judge, and HIGGINBOTHAM and WILLETT, Circuit Judges.

PATRICK E. HIGGINBOTHAM, Circuit Judge:

This Fair Debt Collection Practices Act ("FDCPA") appeal concerns the collection of debt too old to be legally enforced under the applicable statute of limitations. In 2016, we held in *Daugherty v. Convergent Outsourcing, Inc.*, that "a collection letter seeking payment on a time-barred debt (without disclosing its unenforceability) but offering a 'settlement' and inviting partial payment (without disclosing the possible pitfalls) could constitute a violation of the FDCPA."[1] Here, the collection letters did not expressly threaten

[1] 836 F.3d 507, 513 (5th Cir. 2016).

litigation or offer a settlement. Still, the district court, leaning on *Daugherty* and the out-of-circuit cases it endorsed, held that letters seeking collection of time-barred debt that do not flag the existence and operation of statutes of limitations are misleading as a matter of law. On that basis, it granted Appellee Silvia Manuel partial summary judgment on one of her FDCPA claims. Appellant Merchants and Professional Bureau, Inc. ("Merchants") timely appealed this order. As the letters in question were misleading for more than their mere silence as to the age and time-barred nature of the debt, we leave for another day whether such silence on its own is misleading as a matter of law. We affirm summary judgment on alternate grounds.

I.

A.

Manuel owes Texas Orthopedics, Sports and Rehabilitation Associates ("Texas Orthopedics") a $250 debt for services from December 2010 and January 2011. No payments have been made on the debt, which was transferred to Merchants for collection. Merchants sent Manuel six collection letters in 2011 and, after six years with seemingly no collection effort, it sent four more in 2017. When Merchants sent the 2017 letters, it is undisputed that the four-year Texas statute of limitations barred any lawsuit to collect the debt. At issue here, these letters did not disclose (1) that a lawsuit seeking payment of the debt was time-barred or (2) that any partial payment might defeat a statute-of-limitations defense.

The first letter at issue, dated October 2, 2017, stated in relevant part:

YOU OWE: TX ORTHOPEDICS, SPORTS, & REHAB

AMOUNT DUE: $250.00

Urgent! Payment has not been received!

> In reviewing your account today, we show you still have an unpaid balance due. Please remit your balance due immediately in order to prevent any additional collection efforts, such as personal phone calls.
>
> Payment may be made over the phone, by mail or through our secure website shown above. We report unpaid collection accounts to the three national credit reporting repositories. Check by phone and major credit cards accepted by phone, with no service fees added.

The second, dated October 10, 2017, was written in Spanish and stated in relevant part:

> YOU OWE: TX ORTHOPEDICS, SPORTS, & REHAB
>
> AMOUNT DUE: $250.00
>
> IMPORTANT NOTICE:
>
> Your account is being reevaluated. We must notify you of additional collection efforts, such as phone calls, can be anticipated if you don't pay your account immediately.
>
> Pay this debt now to suspend these efforts. We report statements in collection to the national credit repositories.[2]

The third, dated October 17, 2017, was also written in Spanish and stated in relevant part:

> YOU OWE: TX ORTHOPEDICS, SPORTS, & REHAB
>
> AMOUNT DUE: $250.00
>
> Important Warning
>
> You have only one more opportunity to stop all collection efforts. Make payment arrangements immediately.

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[2] The quoted text is from the district court's reproduction and translation. The parties do not object to the translated text as analyzed by the district court.

> Please call our office today to make a complete payment or to make payment arrangements on the balance due. We report to the three national repositories.

Finally, the fourth, dated October 25, 2017, again written in Spanish, stated:

> YOU OWE: TX ORTHOPEDICS, SPORTS, & REHAB
>
> AMOUNT DUE: $250.00
>
> **Account eliminated when it is paid.**
>
> Our client has authorized the elimination of this element of your credit history, but we need to receive your complete payment immediately! In most cases this should improve your credit points since this will be eliminated completely from your credit history. As you know, a good credit score is more essential than ever. We will notify all the credit reporting agencies when the bill is paid.
>
> This is a very special offer. Please take advantage of this now.

B.

In March 2018, Manuel sued Merchants and Merchants's surety, Travelers Casualty and Surety Company of America ("Travelers"). Manuel brought claims under the FDCPA, alleging the 2017 letters were false or misleading (15 U.S.C. § 1692e) and unfair or unconscionable (15 U.S.C. § 1692f) for failing to disclose the time-barred nature of the debt. Manuel also brought a claim under the Texas Debt Collection Act based on the same conduct. Manuel argued that the 2017 letters violated the Texas and federal statutes by failing to inform her that the debt was time-barred and thus judicially unenforceable, and that any partial payment could reinstate the statute of limitations. Manuel also contended that the threat to use "additional

collection efforts" could induce an unsophisticated consumer to anticipate litigation.

In December 2018, Manuel moved for partial summary judgment on her § 1692e claim. Merchants then filed its own summary judgment motion. With these motions pending, the parties filed a joint stipulation narrowing the case. They stipulated that Manuel dismissed all claims against Travelers, leaving Merchants as the only defendant, and that Manuel dismissed without prejudice her TDCA claim. Finally, they stipulated that Manuel did not seek actual damages, and if she won summary judgment she would receive the maximum $1,000 statutory damages rather than proceed to trial on that issue.

The district court granted summary judgment for Manuel on her § 1692e claim, concluding

> that a debt collection letter that does not inform the consumer that judicial enforcement of the debt is time-barred or that any partial payment on the debt could defeat the otherwise absolute defense of the statute of limitations is a 'false representation of the character, amount, or legal status of any debt' under 15 U.S.C. § 1692e(2)(A) and the use of a 'false representation or deceptive means to collect or attempt to collect any debt' under 15 U.S.C. § 1692e(10).

Since the letters were misleading under § 1692e, and "there is a growing consensus" that a claim under § 1692f is a "backstop" to catch conduct outside that barred by § 1692e and other provisions, the court granted summary judgment to Merchants on Manuel's § 1692f claim. Merchants timely appealed.

II.

This Court reviews a grant of summary judgment de novo, applying the same standard as the district court.[3] Summary judgment is warranted "if the movant shows that there is no genuine dispute as to any material fact and the

[3] *Cuadra v. Hous. Indep. Sch. Dist.*, 626 F.3d 808, 812 (5th Cir. 2010).

movant is entitled to judgment as a matter of law."[4] "This court may affirm the district court's grant of summary judgment on any ground supported by the record and presented to the district court."[5]

III.

A.

The FDCPA's purpose is to "eliminate abusive debt collection practices by debt collectors[.]"[6] Because "Congress . . . clearly intended the FDCPA to have a broad remedial scope[,]" it should "be construed broadly and in favor of the consumer."[7] The provisions of § 1692e relied on by Manuel are as follows:

> 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.[8]

The parties do not dispute that Merchants is a debt collector as understood by the FDCPA or that Manuel was the object of debt-collection activity arising from a consumer debt. This leaves the sole issue of whether

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[4] FED. R. CIV. P. 56(a).

[5] *Salinas v. R.A. Rogers, Inc.*, 952 F.3d 680, 682 (5th Cir. 2020).

[6] 15 U.S.C. § 1692(e).

[7] *Daugherty*, 836 F.3d at 511 (5th Cir. 2016) (quoting *Serna v. Law Office of Joseph Onwuteaka, P.C.*, 732 F.3d 440, 445 (5th Cir. 2013) (emphasis omitted)).

[8] 15 U.S.C. § 1692e.

Merchants's letters "use[d] any false, deceptive, or misleading representation or means in connection with the collection of any debt."[9]

"When evaluating whether a collection letter violates § 1692e or § 1692f, a court must view the letter from the perspective of an 'unsophisticated or least sophisticated consumer.'"[10] The unsophisticated consumer is "neither shrewd nor experienced in dealing with creditors[,]" but neither is that consumer "tied to the very last rung on the intelligence or sophistication ladder."[11] While "[w]e have not formally picked sides" in the circuit debate over whether application of the unsophisticated-consumer standard is a question of law or fact, we "generally treat the issue as a question of law, as we do again here."[12]

B.

Our decision in *Daugherty* is central to this appeal. There, a debt collector offered to "settle" the plaintiff's old credit card debt of roughly $32,000 for a payment of roughly $3,000.[13] We held that "a collection letter that is silent as to litigation, but which offers to 'settle' a timebarred debt without acknowledging that such debt is judicially unenforceable, can be sufficiently deceptive or misleading to violate the FDCPA."[14] In doing so we "agree[d] with the Seventh Circuit's interpretation of the FDCPA in [*McMahon v. LVNV*

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[9] 15 U.S.C. § 1692e.

[10] *Daugherty*, 836 F.3d at 511 (quoting *McMurray v. ProCollect, Inc.*, 687 F.3d 665, 669 (5th Cir. 2012)). We generally refer to the "unsophisticated consumer" and "least sophisticated consumer" standards interchangeably as "unsophisticated consumers." *Id.* at 511 n.2. (citing *Peter v. G.C. Servs. L.P.*, 310 F.3d 344, 349 n.1 (5th Cir. 2002) (opting not to decide which of the two standards governs because "the difference between the standards is de minimis at most")).

[11] *Id.* (quoting *Goswami v. Am. Collections Enter.*, 377 F.3d 488, 495 (5th Cir. 2004) (cleaned up)).

[12] *Salinas*, 952 F.3d at 683 n.2 (citing *Gonzalez v. Kay*, 577 F.3d 600, 610 (5th Cir. 2009) (Jolly, J., dissenting)) (citation omitted).

[13] *Daugherty*, 836 F.3d at 509.

[14] *Id.* at 511.

Funding, LLC,[15]] and with the Sixth Circuit's opinion in [*Buchanan v. Northland Group, Inc*,[16]] insofar as it is consistent with *McMahon*."[17]

In *McMahon*, the Seventh Circuit noted it is not "automatically improper" to seek payment of old debts, as "some people might consider full debt re-payment a moral obligation, even though the legal remedy for the debt has been extinguished."[18] But the letters at issue, which offered to "settle" time-barred debt that did not state when the debt was incurred and otherwise "contained no hint" that the debt was time-barred, misrepresented the legal status of the debts.[19] The silence as to the debt's age was worsened by the offers of settlement, "since a gullible consumer who made a partial payment would inadvertently have reset the limitations period and made herself vulnerable to a suit on the full amount."[20] The settlement offers thus "reinforced the misleading impression that the debt was legally enforceable."[21] As support, the court pointed to the view of the FTC and CFPB that most consumers do not

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[15] 744 F.3d 1010 (7th Cir. 2014).

[16] 776 F.3d 393 (6th Cir. 2015).

[17] *Daugherty*, 836 F.3d at 513. This required a choice between an "apparent conflict" between these circuits and the Third and Eighth Circuits, which had concluded that "[i]n 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 debt that is otherwise valid." *Huertas v. Galaxy Asset Mgmt.*, 641 F.3d 28, 33 (3d Cir. 2011) (quoting *Freyermuth v. Credit Bureau Servs., Inc.*, 248 F.3d 767, 771 (8th Cir. 2001)).

Since then, the Eleventh Circuit has joined the approach of *Daugherty*, *McMahon*, and *Buchanan*. *See Holzman v. Malcolm S. Gerald & Assocs., Inc.*, 920 F.3d 1264, 1267 (11th Cir. 2019) (extending the reasoning of these cases to an offer to "resolve" an account with a "balance reduction"). So has the Third Circuit, cabining its *Huertas* decision to the specific provision it discussed, § 1692e(2)(A), and holding that a letter regarding time-barred debt can mislead even without threatening suit. *See Tatis v. Allied Interstate, LLC*, 882 F.3d 422, 427–30 (3d Cir. 2018); *see also id.* at 429 (endorsing the "considered view" of *Daugherty*, *McMahon,* and *Buchanan* as "the best interpretation of the FDCPA" and concluding that a "threat of litigation" requirement overly restricts the terms "deceptive" and "misleading").

[18] *McMahon*, 744 F.3d at 1020.

[19] *Id.* at 1013, 1014–15, 1021.

[20] *Id.*

[21] *Id.*

understand their legal rights regarding time-barred debt.[22] "If unsophisticated consumers believe either that the settlement offer is their chance to avoid court proceedings where they would be defenseless, or if they believe that the debt is legally enforceable at all, they have been misled[.]"[23]

Finally, *McMahon* sought to dispel the idea that its decision requires additional research by debt collectors. While *McMahon* expected most collectors would know the age and legal enforceability of a debt, it noted that a collector who does not know whether a debt is time-barred could easily "include general language about that possibility."[24]

Our court's most recent FDCPA case regarding old debt is *Mahmoud v. De Moss Owners Association*.[25] In *Mahmoud*, which concerned a foreclosure sale on a condominium unit, the plaintiffs brought FDCPA claims, alleging in part that the attorneys who acted as debt collectors misrepresented the character or legal status of the debt in their collection letters because about 25 percent of the debt was allegedly time-barred.[26] Even assuming that this part of the debt was time-barred, however, we concluded that "[n]o Fifth Circuit

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[22] *Id.* (citing Fed. Trade Comm'n, *Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration* 26–27 (2010)). In February 2020, the CFPB issued a proposed rule that would require a debt collector "who knows or should know that a debt is time barred when the debt collector makes the initial communication" to clearly and conspicuously disclose (1) "[t]hat the law limits how long the consumer can be sued for a debt and that, because of the age of the debt, the debt collector will not sue the consumer to collect it" and (2) "[i]f, under applicable law, the debt collector's right to bring a legal action against the consumer can be revived, the fact that revival can occur and the circumstances in which it can occur." *See* Debt Collection Practices (Regulation F) Supplemental Proposal on Time-Barred Debt, 85 FED. REG. 12672 (proposed Feb. 21, 2020).

[23] *McMahon*, 744 F.3d at 1022.

[24] *Id. McMahon* surmised that an original creditor would know the dates, a third-party collector would be able to get that information from the original creditor for whom it was collecting, and a debt purchaser pays different amounts depending on the age of debts and so should know whether debts are time-barred. *Id.*

[25] 865 F.3d 322 (5th Cir. 2017). In March 2020, this Court issued *Salinas v. R.A. Rogers, Inc.*, 952 F.3d 680 (5th Cir. 2020), which cited *Mahmoud* and *Daugherty* but concerned unrelated legal theories under § 1692e.

[26] *Mahmoud*, 865 F.3d at 331.

authority compels the holding that a nonjudicial foreclosure on a partially time-barred debt can violate FDCPA Sections 1692e or f."[27]

Mahmoud noted *Daugherty* held that collection of old debt "can be" violative, not that it always is, and distinguished *Daugherty* on its facts because: (1) all of the *Daugherty* debt was old while less than 25 percent, at most, of the *Mahmoud* debt was; (2) the application of limitations was unclear as a bar to nonjudicial foreclosure but was undisputed as to the *Daugherty* credit-card debt; and (3) the course of events showed the *Mahmoud* plaintiffs were not misled about what they owed or about the consequence (foreclosure) of nonpayment.[28] *Mahmoud* distinguished *McMahon* and *Buchanan* along the same lines—as cases concerning "dubious exercises of collection activity on indisputably and wholly time-barred debt."[29]

Another Seventh Circuit case relying on *McMahon* warrants mention. In *Pantoja v. Portfolio Recovery Associates, LLC*, the collection letter had a settlement offer similar to those in the cases described above.[30] It also stated, "Because of the age of your debt, we will not sue you for it and we will not report it to any credit reporting agency."[31] Even with this warning, the *Pantoja* court affirmed summary judgment granted to the plaintiff because (1) the letter did not warn that partial payment would forfeit any limitations defense and (2) it "deceptively said that [the collector] had chosen not to sue [the plaintiff], rather than saying that the debt was so old that [the collector] could not sue him for the alleged debt."[32] As to the first reason, the court concluded that a collector cannot "lur[e] debtors away from the statute of limitations

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[27] *Id.* at 332–33.
[28] *Id.* at 333.
[29] *Id.*
[30] 852 F.3d 679, 682 (7th Cir. 2017).
[31] *Id.*
[32] *Id.* at 682–83.

without providing an unambiguous warning" but declined to prescribe exact language for debt collectors to use.[33] As to the second, the court found the chosen language to be a "careful and deliberate ambiguity[.]"[34]

The Ninth Circuit, on the other hand, reversed a grant of summary judgment to plaintiffs for a letter with the following warning: "The law limits how long you can be sued on a debt and how long a debt can appear on your credit report. Due to the age of this debt, we will not sue you for it or report payment or non-payment of it to a credit bureau."[35] The second sentence matches the vague warning in *Pantoja*, but the first sentence informs the debtor that there is a statute of limitations. Indeed, *Pantoja* quoted this longer warning, which comes from a 2012 consent decree between the Federal Trade Commission and another debt collector.[36] The *Pantoja* court noted that the

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[33] *Id.* at 685–86.

[34] *Id.* at 687.

[35] *Stimpson v. Midland Credit Mgmt., Inc.*, 944 F.3d 1190, 1196 (9th Cir. 2019). *Stimpson* also concluded that "nothing in the FDCPA requires debt collectors to make disclosures that partial payments on debts may revive the statute of limitations in certain states." *Id.* at 1198.

[36] *Pantoja*, 852 F.3d at 686. Similar language crops up repeatedly, including in state laws requiring limitations-period disclosures. Effective September 2019, for debt buyers in Texas, all first collection letters sent on debt for which the limitations period has run must contain one of three variations of the following notice: "THE LAW LIMITS HOW LONG YOU CAN BE SUED ON A DEBT. BECAUSE OF THE AGE OF YOUR DEBT, WE WILL NOT SUE YOU FOR IT. THIS NOTICE IS REQUIRED BY LAW." TEX. FIN. CODE § 392.307 (2019). The precise formulation depends on whether the reporting period for including the debt in a consumer report prepared has expired under the Fair Credit Reporting Act. *See id.* (e)(1)–(3). Texas joins several other jurisdictions in requiring statute-of-limitations disclosures. *See, e.g.,* CAL. CIV. CODE 1788.14(d); CONN. GEN. STAT. 36a-805(a)(14); MASS. CODE REGS., tit. 940, 7.07(24); N.M. ADMIN. CODE 12.2.12.9; N.Y. COMP. CODES R. & REGS., tit. 23, 1.3; N.C. GEN. STAT. 58-70-115(1); 6 VT. CODE R. 031-004-Rule-CF 104.05; W. Va. Code 46a-2-128(f). And almost this exact language has survived legal challenges like Manuel's. *See Stimpson*, 944 F.3d at 1194.

Note, however, that the model forms included in the proposed CFPB disclosure rule would impose even stricter language. *See* Debt Collection Practices (Regulation F) Supplemental Proposal on Time-Barred Debt, 85 FED. REG. 12672 (proposed Feb. 21, 2020). For example, where, like in Texas, an acknowledgement is required to revive old debt, the rule would provide: "The law limits how long you can be sued for a debt. If you do nothing or speak to us about this debt, we will not sue you to collect it. This is because the debt is too

effect of omitting the first sentence is that "[t]he reader is left to wonder whether [the collector] has chosen to go easy on this old debt out of the goodness of its heart, or perhaps because it might be difficult to prove the debt, or perhaps for some other reason."[37]

IV.

In assessing the letters at hand, we begin with the following proposition from *McMahon*: "Whether a debt is legally enforceable is a central fact about the character and legal status of that debt. A misrepresentation about that fact thus violates the FDCPA."[38] Collectors do not automatically violate the FDCPA when seeking collection of time-barred debt.[39] Still, we cannot conclude, as Merchants presses us to, that settlement offers and litigation threats are the only ways debt collectors can mislead unsophisticated consumers regarding old debt. This would place artificial constraints on broad terms—like "deceptive" and "misleading"—under a statute we should construe broadly.[40]

In *Daugherty*, we did not purport to catalogue all the ways collection of time-barred debt can be misleading. Instead, deciding only what was necessary on the facts then before us, we concluded that collectors can misrepresent a debt's legal enforceability by offering to settle the debt at a discount. That is not to say that all settlement offers violate the statute, nor that such offers are the only way to misrepresent the character of old debt. While Merchants's

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old. BUT if you acknowledge in writing that you owe this debt, then we can sue you to collect it." *Id.* at 12682, B-7 Model Form for Time-Barred Debt and Revival Disclosure (Written Acknowledgement).

[37] *Pantoja*, 852 F.3d at 686.

[38] *McMahon*, 744 F.3d at 1020; *see also Daugherty*, 836 F.3d at 513 ("We agree with the Seventh Circuit's interpretation of the FDCPA in *McMahon*[.]").

[39] *See id.* at 509 (noting that "it is not automatically unlawful for a debt collector to seek payment of a time-barred debt"); *see also Holzman v. Malcolm S. Gerald & Assocs., Inc.*, 920 F.3d 1264, 1273–74 (11th Cir. 2019) ("[C]ourts generally have recognized that the FDCPA does not impose a bright-line rule prohibiting debt collectors from attempting to collect on time-barred debt.") (collecting cases).

[40] *See Tatis*, 882 F.3d at 429.

letters do not contain settlement offers, we agree with the district court: Confining *Daugherty* and *McMahon* "to the specifics of the letters involved in those cases does not comport with the broad language of *McMahon*—expressly agreed with by the Fifth Circuit in *Daugherty*—and the edict that the FDCPA 'should therefore be construed broadly and in favor of the consumer.'"

Further, *McMahon* made its basic premise clear: "[A] debt collector violates the FDCPA when it misleads an unsophisticated consumer to believe a time-barred debt is legally enforceable[.]"[41] The *McMahon* letters did so because they did not "g[i]ve a hint" that the debts were time-barred.[42] "Matters may be even worse if the debt collector adds a threat of litigation," and the settlement offer in that case also "[made] things worse," since consumers may unwittingly reset the limitations period, which is "why those offers only reinforced the misleading impression that the debt was legally enforceable."[43]

The question, then, is not whether the letters include a settlement offer or litigation threat but whether, read as a whole, they misrepresent the legal enforceability and character of the debt in violation of 15 U.S.C. § 1692e(2) and (10). In answering this question, the district court went further than was necessary. It concluded that a letter is misleading as a matter of law if it lacks warnings "that judicial enforcement of the debt is time-barred or that any partial payment on the debt could defeat the otherwise absolute defense of the statute of limitations."

We and other circuits have framed our holdings in this area with moderation.[44] So we leave for another day the question of whether a letter seeking collection on time-barred debt is misleading as a matter of law by its

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[41] *McMahon*, 744 F.3d at 1020.

[42] *Id.*

[43] *Id.* at 1020–21.

[44] *See Mahmoud*, 865 F.3d at 333 (noting that *Daugherty*, *McMahon*, and *Buchanan* "qualified their holdings").

mere silence as to the age and legal unenforceability. We do not need to draw that line because the letters at issue do not toe it. Instead, the sum effect of the 2017 letters is at least as misleading as any settlement offer from prior cases.[45]

Read "as a whole,"[46] several aspects of the 2017 letters from Merchants lead us to this conclusion. First, the letters do not just fail to warn that Texas has a statute of limitations or how that statute may affect the collection methods available to Merchants—the letters do not even state when the debt was incurred. If they had, as the district court noted, they "might give a consumer at least some inkling that the debt might be too old to be legally enforceable." Although we need not hold that all letters without statute-of-limitations warnings are misleading as a matter of law, the complete silence in these letters works in conjunction with their vague language to mislead the unsophisticated consumer that the debt is enforceable.[47]

As for the language itself, although there is no specific settlement offer that would discount Manuel's debt, the letters are rife with characterization of a soon-to-expire special deal or offer:

- "Important Warning."
- "You have only one more opportunity to stop all collection efforts."
- "This is a very special offer. Please take advantage of this now."

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[45] Despite Merchants's claim to the contrary, Manuel's summary judgment motion argued that the specific language of the letters would mislead an unsophisticated consumer that the debt is enforceable. There is no reason we may not affirm on this alternate ground. *See Tig Specialty Ins. Co. v. Pinkmonkey.com*, 375 F.3d 365, 369 (5th Cir. 2004).

[46] *Gonzalez v. Kay*, 577 F.3d 600, 607 (5th Cir. 2009).

[47] *See McMahon*, 744 F.3d at 1021 (concluding that the silence as to limitations was worsened by an offer of settlement that reinforced the misleading nature of the letters). In the Seventh Circuit, one circuit and at least two district-court cases have relied on *McMahon* at the summary-judgment stage in finding that debt collection efforts that failed to disclose the time-barred nature of a debt violated the FDCPA as a matter of law. *See Pantoja*, 852 F.3d at 687; *Rawson v. Source Receivables Mgmt., LLC*, 215 F. Supp. 3d 684, 685–86 (N.D. Ill. 2016); *Slick v. Portfolio Recovery Assocs., LLC*, 111 F. Supp. 3d 900, 906 (N.D. Ill. 2015) ("[A] letter that is completely silent on the subject [of the time-barred nature of the debt] is . . . misleading.").

- "Our client has authorized the elimination of this element of your credit history but we need to receive your complete payment immediately!"
- "Urgent!"

There is nothing urgent about this old debt, nor are there any details offered to explain the "very special offer," nor are these permissible attempts at "moral suasion."[48]

Further, the letters hint at "additional collection efforts" should Manuel not pay the debt:

- "Please remit your balance due immediately in order to prevent any additional collection efforts, such as personal phone calls."
- "We must notify you of additional collection efforts, such as phone calls, can be anticipated if you don't pay your account immediately. Pay this debt now to suspend these efforts."

The unexplained urgent language and the vague threats of additional but unspecified collection efforts perform a similar role to the settlement offers in *Daugherty* and *McMahon*. The combined effect of the letters' vague language and their silence as to the debt's time-barred nature leaves an unsophisticated consumer with the impression that the debt is enforceable, and that if payment is not levied quickly then adverse collection efforts will follow.[49]

That consumer does not know the terms of the special offer or why payment is "urgent" after years have passed. And that consumer does not know what collection efforts will follow if payment is withheld. "Where the FDCPA

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[48] *Mahmoud*, 865 F.3d at 333 n.3.

[49] *See Holzman*, 920 F.3d at 1272 ("[B]y urging the debtor to 'take advantage' of the offer, the letter might have caused an unsophisticated consumer to mistakenly believe that the debt was legally enforceable and that he had something to gain by accepting the offer, or to lose by declining it. . . . [A]n unsophisticated reader might conclude from this language that he is being presented with an ultimatum, and that failure to make payment within the required time frame would result in negative consequences, such as legal action.").

requires clarity, . . . ambiguity itself can prove a violation."[50] For the reasons discussed above, we agree with the district court that Merchants's letters are "example[s] of careful and crafted ambiguity."[51] "The only reason to use such carefully ambiguous language is the expectation that at least some unsophisticated debtors will misunderstand and will choose to pay on the ancient, time-barred debts because they fear the consequences of not doing so."[52]

Courts have recognized that the risk of partial payment reviving old debt amplifies the effect of the want of limitations-period warnings. *Daugherty* observed that an "unsophisticated debtor who could not afford the settlement might assume from the letter that at least a partial payment would be advisable" without knowing the risk of restarting the limitations clock.[53] That danger is perhaps reduced but not absent with letters like these. A debtor confronted with an "urgent" letter seeking full payment might also think it advisable to pay some of it.

Thus, these letters seeking collection of time-barred debt, filled with ambiguous offers and threats with no indication that the debt is old, much less that the limitations period has run, misrepresent the legal enforceability of the underlying debt in violation of 15 U.S.C. § 1692e(2) and (10).[54]

V.

The grant of summary judgment to Plaintiff Silvia Manuel is affirmed.

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[50] *Pantoja*, 852 F.3d at 687.
[51] *Id.*
[52] *Id.*
[53] *Daugherty*, 836 F.3d at 512.
[54] *Mahmoud* is no barrier to our holding. This case is factually distinct from *Mahmoud* for the same reasons *Mahmoud* distinguished *Daugherty* and its like cases: the letters in this case "exhibit dubious exercises of collection activity on indisputably and wholly time-barred debt." *See Mahmoud*, 865 F.3d at 333.