IV. Conclusion

For the foregoing reasons, the Court **GRANTS** in part Plaintiff's Motion for Conditional Certification. (Doc. 13). Additionally, the Court **DENIES** Plaintiff's Motion for Equitable Tolling of Statutes of Limitation on Claims of Putative Collective Action Members. (Doc. 22).

It is hereby **ORDERED** that the Parties shall comply with the following deadlines and directives:

It is **ORDERED** that Defendants shall, within **ten (10) days** of this Order, provide Plaintiff's counsel with the names, last known addresses, e-mail addresses, and telephone numbers of the potential opt-in plaintiffs (Court-Ordered Information), in Excel format.

It is further **ORDERED** that Plaintiff shall, within **twenty-one (21) days** of Plaintiff's receipt of the Court-Ordered Information, be permitted to send Notice of this action in the form set forth in Plaintiff's proposed Notice and the Consent Forms, by mail, e-mail, social media, text message, and website posting for a period of **sixty (60) days** from the date Plaintiff receives the Court-Ordered Information from Plaintiff.

It is further **ORDERED** that within **three (3) days** of the initial mailing of the Notice, Plaintiff's counsel shall file an Advisory with the Court indicating the date of mailing of the Notice.

It is further **ORDERED** that within **three (3) days** of Plaintiff's filing of the Advisory with the Court, Defendants shall post a copy of the Notice and Consent Form in a conspicuous and accessible location at each of its places of work where it currently employs one or more putative class members. The copy of the Notice and Consent Form shall remain posted continuously until the expiration of the 60-day Notice Period.

It is further **ORDERED** that Defendants shall, within **three (3) days** of posting the notices at their places of work, certify to the Court in writing that the Notices have been posted and the locations of the postings.

It is further **ORDERED** that the notice shall inform all potential opt-in plaintiffs that they shall have until **sixty (60) days** from the date Plaintiff sends the Notice and Consent Forms to deposit in the mail or email their Notices of Consent to Join to counsel for Plaintiff.

It is finally **ORDERED** that Plaintiff shall, no later than **fifteen (15) days** after the expiration of the 60-day notice period (which ends sixty (60) days from the date Plaintiff sends the Notice and Consent Forms to the putative plaintiffs) file with the Court the Notices of Consent to Join for all opt-in plaintiffs they receive.

It is so **ORDERED**.

Silvia MANUEL, Plaintiff,

v.

MERCHANTS AND PROFESSIONAL CREDIT BUREAU, INC., Defendant.

No. 1:18-CV-226-DAE

United States District Court,
W.D. Texas, Austin Division.

Signed August 5, 2019

Background: Debtor brought action against debt collector for violation of the Fair Debt Collection Practices Act (

FDCPA). Both parties moved for summary judgment.

Holdings: The District Court, David A. Ezra, Senior District Judge, held that:

(1) four-year Texas statute of limitations on consumer debt owed by debtor to creditor for orthopedic and rehabilitation services began to run when debt for services rendered by creditor became due;

(2) collection letter that failed to clearly indicate the debt was time-barred under Texas law, or that any partial payment might have defeated the otherwise conclusive statute of limitations defense was false, misleading, or deceptive under the FDCPA as a matter of law;

(3) debtor failed to allege any conduct other than that which formed the basis of her false or misleading representations claim, as required to support an unfair practices claim under the Act's backstop provision; and

(4) debtor was entitled to the maximum statutory amount of $1,000 for debt collector's violation of the Act, as well as costs and attorney fees.

Motions granted in part and denied in part.

1. Finance, Banking, and Credit ⚷1471

Because Congress clearly intended the Fair Debt Collection Practices Act (FDCPA) to have a broad remedial scope, the FDCPA should therefore be construed broadly and in favor of the consumer. Consumer Credit Protection Act § 802, 15 U.S.C.A. § 1692, et seq.

2. Finance, Banking, and Credit ⚷1471

To state a Fair Debt Collection Practices Act (FDCPA) claim, a plaintiff must show: (1) that he was the object of a collection activity arising from a consumer debt; (2) that defendant is a debt collector as defined by the FDCPA; and (3) that defendant engaged in an act or omission prohibited by the FDCPA. Consumer Credit Protection Act § 802, 15 U.S.C.A. § 1692, et seq.

3. Finance, Banking, and Credit ⚷1534

The Fair Debt Collection Practices Act (FDCPA) is a strict liability statute that makes debt collectors liable for violations that are not knowing or intentional. Consumer Credit Protection Act § 802, 15 U.S.C.A. § 1692, et seq.

4. Finance, Banking, and Credit ⚷1483

When evaluating whether a collection letter violates the Fair Debt Collection Practices Act (FDCPA), a court must view the letter from the perspective of an unsophisticated or least sophisticated consumer, one who is neither shrewd not experienced in dealing with creditors but is not tied to the very last rung on the intelligence or sophistication ladder. Consumer Credit Protection Act § 807, 15 U.S.C.A. § 1692e.

5. Finance, Banking, and Credit ⚷1483

The unsophisticated consumer is not illiterate and can be expected to read the entire collection letter with some care, and thus, debt collection letters must be considered as a whole when determining if they violate the Fair Debt Collection Practices Act (FDCPA). Consumer Credit Protection Act § 807, 15 U.S.C.A. § 1692e.

6. Finance, Banking, and Credit ⚷1612

Whether a collection letter is deceptive, misleading, or unfair to an unsophisticated consumer for purposes of the Fair Debt Collection Practices Act (FDCPA) is generally a fact question, however, there are some letters that are so deceptive and misleading as to violate the FDCPA as a matter of law. Consumer Credit Protection Act § 807, 15 U.S.C.A. § 1692e.

7. Finance, Banking, and Credit ⚷1612

For purpose of the Fair Debt Collection Practices Act (FDCPA), a court may decide a collection letter is deceptive, misleading, or unfair as a matter of law only when reasonable minds cannot differ as to whether a letter would be deceptive, misleading, or unfair to the unsophisticated consumer. Consumer Credit Protection Act § 807, 15 U.S.C.A. § 1692e.

8. Finance, Banking, and Credit ⚷1483

The unsophisticated consumer test is objective, meaning that it is unimportant whether the individual who actually received a collection letter allegedly violative of the Fair Debt Collection Practices Act (FDCPA) was misled or deceived; this standard serves the dual purpose of protecting all consumers, including the inexperienced, the untrained, and the credulous, from deceptive debt collection practices and protecting debt collectors against liability for bizarre or idiosyncratic consumer interpretations of collection materials. Consumer Credit Protection Act § 807, 15 U.S.C.A. § 1692e.

9. Finance, Banking, and Credit ⚷1483

For purposes of determining whether a debt collection letter is false, deceptive, or misleading for purposes of the Fair Debt Collection Practices Act (FDCPA), the ultimate question in each case is whether the unsophisticated or least sophisticated consumer would have been led by the debt collection letter into believing something untrue that would have influenced their decision-making. Consumer Credit Protection Act § 807, 15 U.S.C.A. § 1692e.

10. Limitation of Actions ⚷46(6)

Four-year Texas statute of limitations on consumer debt owed by debtor to creditor for orthopedic and rehabilitation services began to run when debt for services rendered by creditor became due. Tex. Civ. Prac. & Rem. Code Ann. § 16.004(3).

11. Finance, Banking, and Credit ⚷1484, 1612

Collection letter sent to debtor that failed to clearly indicate the debt was time-barred under Texas law, or that any partial payment might have defeated the otherwise conclusive statute of limitations defense was false, misleading, or deceptive under the Fair Debt Collection Practices Act (FDCPA) as a matter of law; the letters at issue were an example of careful and crafted ambiguity by not informing the debtor that the debt was time-barred, that any partial payment might have revived the judicial enforceability of the debt, and by their vague references to additional collection efforts. Consumer Credit Protection Act § 807, 15 U.S.C.A. § 1692e; Tex. Civ. Prac. & Rem. Code Ann. § 16.004(3).

12. Finance, Banking, and Credit ⚷1576

In applying the Fair Debt Collection Practices Act (FDCPA), the Court considers that the rulings, interpretations, and opinions of the Administrator under the Act, while not controlling upon the courts by reason of their authority, do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance. Consumer Credit Protection Act § 807, 15 U.S.C.A. § 1692, et seq.

13. Administrative Law and Procedure ⚷2209

Even where an agency's interpretation is not entitled to *Chevron* deference as a rule carrying the force of law pursuant to authority delegated by Congress, the agency's resolution of a particular question certainly may influence courts facing questions the agencies have already answered.

14. Administrative Law and Procedure ⚷2206, 2207

Because the well-reasoned views of the agencies implementing a statute constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance, considerable weight should be accorded to an executive department's construction of a statutory scheme it is entrusted to administer.

15. Finance, Banking, and Credit ⚷1482

Where the Fair Debt Collection Practices Act (FDCPA) requires clarity, ambiguity itself can prove a violation. Consumer Credit Protection Act § 802, 15 U.S.C.A. § 1692, et seq.

16. Finance, Banking, and Credit ⚷1484

Carefully crafted language, chosen to obscure from the debtor that the law prohibits the collector from suing to collect this debt or even from threatening to do so, is the sort of misleading tactic the Fair Debt Collection Practices Act (FDCPA) prohibits; 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 ancient, time-barred debts because they fear the consequences of not doing so. Consumer Credit Protection Act § 807, 15 U.S.C.A. § 1692, et seq.

17. Finance, Banking, and Credit ⚷1484

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 the Fair Debt Collection Practices Act (FDCPA), and the "use of a false representation or deceptive means to collect or attempt to collect any debt" under the Act. Consumer Credit Protection Act § 807, 15 U.S.C.A. §§ 1692e(2)(A), 1692e(10).

18. Finance, Banking, and Credit ⚷103

Limitation of Actions ⚷165

Under Texas law time-barred debts are not extinguished, and creditors are free to pursue collection of the debt.

19. Finance, Banking, and Credit ⚷1480

It is not an automatic violation of the Fair Debt Collection Practices Act (FDCPA) to collect on a time-barred debt; what matters is how a collector attempts to collect a debt. Consumer Credit Protection Act § 807, 15 U.S.C.A. § 1692, et seq.

20. Finance, Banking, and Credit ⚷1482

No threat of litigation needs to be made for a debt collection letter to violate the Fair Debt Collection Practices Act (FDCPA). Consumer Credit Protection Act § 807, 15 U.S.C.A. § 1692e.

21. Finance, Banking, and Credit ⚷1484

Debtor failed to allege any conduct other than that which formed the basis of her false or misleading representations claim, as required to support an unfair practices claim under the Fair Debt Collection Practices Act's (FDCPA) backstop provision; debtor's sole claim was that debt collector's collection letters were false or misleading and unfair or unconscionable under the Act. Consumer Credit Protection Act §§ 807, 808, 15 U.S.C.A. §§ 1692e, 1692f.

22. Finance, Banking, and Credit ⚷1649, 1685

Debtor was entitled to the maximum statutory amount of $1,000 for debt collector's violation of the Fair Debt Collection Practices Act (FDCPA), as well as costs and attorney fees. Consumer Credit Protection Act §§ 807, 813, 15 U.S.C.A. §§ 1692e, 1692k(a)(3).

Brent A. Devere, Austin, TX, for Plaintiff.

David C. Sander, Scanlan, Buckle & Young, P.C., Austin, TX, for Defendant.

ORDER: (1) GRANTING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT (DKT. # 20); AND (2) GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION FOR SUMMARY JUDGMENT (DKT. # 21)

David Alan Ezra, Senior United States Distict Judge

Before the Court are two pending motions: (1) Plaintiff Silvia Manuel's ("Manuel" or "Plaintiff") Motion for Summary Judgment (Dkt. # 20); and (2) Defendant Merchants and Professional Credit Bureau, Inc.'s ("Merchants" of "Defendant") Motion for Summary Judgment (Dkt. # 21). Pursuant to Local Rule CV-7(h), the Court finds this matter suitable for disposition without a hearing. After careful consideration of the memoranda and exhibits filed in support of and opposition to the motions, the Court—for the reasons that follow—(1) **GRANTS** Plaintiff's Motion to for Summary Judgement (Dkt. # 20); and (2) **GRANTS IN PART AND DENIES IN PART** Defendant's Motion for Summary Judgment (Dkt. # 21).

BACKGROUND

This case concerns a $250 consumer debt owed by Plaintiff to Texas Orthopedics, Sports and Rehabilitation Associates for services rendered on December 27, 2010 and January 18, 2011.[1] (Dkt. # 20-1, Ex. 1 at 10–11.) By Plaintiff's own admission, she has not made any payments on this debt. (Id. at 3.) Due to Plaintiff's nonpayment, this debt was turned over to Merchants, who sent Plaintiff six debt collection notices between July 22 and October 21, 2011. (Dkt. # 20-2, Ex. 2 at 5–10.) The record indicates that no further efforts were made by Merchants to recover this debt for almost six years.

Then, on October 2, 2017, Merchants sent another debt collection letter to Plaintiff, stating the following:

> 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.

(Id. at 12.)

On October 10, 2017, Merchants sent a second debt collection letter to Plaintiff,

1. This case is in federal court under this Court's federal question jurisdiction because Plaintiff has stated two claims for violations of the Fair Debt Collection Practices Act.

this one written mostly in Spanish[2], substantively stating the following:

> 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.
>
> Check the boxes below (send by mail or fax immediately) (Fax: 512-343-4864)
>
> ___Payment of the total amount by mail
>
> ___In the process of obtaining a loan. I need a 3-day extension
>
> ___Postdated check for the total amount included. (We honor postdated bank checks and we will send a reminder five days before the check is deposited
>
> ___Credit card information given to pay the total
>
> Checks by phone and major credit cards accepted by phone without added service charge.

(Id. at 13.)

On October 17, 2017, Merchants sent a third debt collection letter to Plaintiff, again written mostly in Spanish, substantively stating the following:

> 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.
>
> 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.
>
> Checks by telephone or debit or credit cards are accepted by telephone with[out] an added charge.

(Id. at 14.)

Finally, on October 25, 2017, Merchants sent a fourth debt collection letter to Plaintiff, again written mostly in Spanish, substantively stating the following:

> 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.
>
> *** * * We accept major credit cards and checks by phone with no added charges. * * ***

(Id. at 15.)

Plaintiff filed the instant suit on March 14, 2018, originally against Merchants and Travelers Casualty and Surety Company of America[3] ("Travelers"). (Dkt. # 1.) Plaintiff's complaint asserts that these letters were false or misleading and unfair or

2. The record does not indicate whether or not Plaintiff speaks Spanish.

3. Travelers relationship to the instant allegations is as the surety of Merchants. (See Dkt. 7 at 1.)

unconscionable, in violation of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §§ 1692e and 1692f, and fraudulent, deceptive, or misleading representations under the Texas Debt Collection Act ("TDCA").[4] (Dkt. # 1 at 4–7.) These assertions are premised on the fact that the October 2017 debt collection letters did not inform Plaintiff that: (1) the debt was time-barred under Texas's applicable statute of limitations; (2) the debt was thus judicially unenforceable; and (3) any payment could reinstate the statute of limitations. (Id.) Plaintiff also asserts that the threat to use "additional collection efforts" could mislead an unsophisticated consumer to anticipate litigation to enforce a time-barred debt. (Id.)

Plaintiff filed a motion for partial summary judgment as to her claim under 15 U.S.C. § 1692e. (Dkt. # 20.) Merchants and Travelers filed a response in opposition to Plaintiff's motion. (Dkt. # 22.) Plaintiff filed a reply in support of her motion. (Dkt. # 23.)

Merchants and Travelers also filed their own motion for summary judgment as to all of Plaintiff's remaining claims. (Dkt. # 21.) Plaintiff filed a response in opposition to Defendant's motion. (Dkt. # 24.) Plaintiff filed a supplement to her response. (Dkt. # 25.) Merchants and Travelers filed a reply in support of its motion. (Dkt. # 26.)

On March 29, 2019, the parties filed a joint stipulation. (Dkt. # 33.) The stipulation states that: (1) Plaintiff was dismissing without prejudice her claim under the TDCA; (2) Plaintiff was dismissing without prejudice all of her claims against Travelers; (3) Plaintiff was not seeking actual damages; and (4) if Plaintiff were to prevail on her motion for partial summary judgment, the maximum statutory additional damages of $1,000 may be awarded to her in lieu of a jury trial. (Dkt. # 33.) Accordingly, the only issues before the Court as it pertains to these motions are Plaintiff's claims against Merchants under 15 U.S.C. §§ 1692e and 1692f.

The issues raised in the motions for summary judgment so limited, the parties' cross-motions for summary judgment are currently before the Court and are fully briefed and ripe for review.[5]

LEGAL STANDARD

Summary judgment is proper if "there is no genuine dispute as to any material fact" and the moving party "is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); see also Meadaa v. K.A.P. Enters., L.L.C., 756 F.3d 875, 880 (5th Cir. 2014). A dispute is genuine only "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

The moving party bears the initial burden of demonstrating the absence of any genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). If the moving party meets this burden, the nonmoving party must come forward with specific facts that establish the existence of a genuine issue for trial. Distribuidora Mari Jose, S.A. de C.V. v. Transmaritime, Inc., 738 F.3d 703, 706 (5th Cir. 2013) (quoting

4. On January 1, 2019, Plaintiffs claim under 15 U.S.C. § 1692e(5) was dismissed on a motion to dismiss. (Dkt. # 27 at 7 n.3.) Plaintiff's remaining claims, including claims under 15 U.S.C. §§ 1692e(2)(A) and 1692(10) were not dismissed. (See id. at 8.)

5. On February 15, 2019, this case was transferred to this Court from the Honorable Lee Yeakel, United States District Judge for the Western District of Texas. (Dkt. # 29.)

Allen v. Rapides Parish Sch. Bd., 204 F.3d 619, 621 (5th Cir. 2000)). "Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.' " Hillman v. Loga, 697 F.3d 299, 302 (5th Cir. 2012) (quoting Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986)).

In deciding whether a fact issue has been created, the court must draw all reasonable inferences in favor of the nonmoving party, and it "may not make credibility determinations or weigh the evidence." Tiblier v. Dlabal, 743 F.3d 1004, 1007 (5th Cir. 2014) (quoting Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 150, 120 S.Ct. 2097, 147 L.Ed.2d 105 (2000)). At the summary judgment stage, evidence need not be authenticated or otherwise presented in an admissible form. See Fed. R. Civ. P. 56(c); Lee v. Offshore Logistical & Transp., LLC, 859 F.3d 353, 355 (5th Cir. 2017). However, "[u]nsubstantiated assertions, improbable inferences, and unsupported speculation are not sufficient to defeat a motion for summary judgment." United States v. Renda Marine, Inc., 667 F.3d 651, 655 (5th Cir. 2012) (quoting Brown v. City of Hous., 337 F.3d 539, 541 (5th Cir. 2003)).

Finally, when, as here, "parties file cross-motions for summary judgment, [the Court] review[s] each party's motion independently, viewing the evidence and inferences in the light most favorable to the nonmoving party." Green v. Life Ins. Co. of N. Am., 754 F.3d 324, 329 (5th Cir. 2014) (internal quotation marks omitted) (quoting Duval v. N. Assur. Co. of Am., 722 F.3d 300, 303 (5th Cir. 2013)).

DISCUSSION

As discussed, currently pending before the Court are: Plaintiff's motion for partial summary judgment (Dkt. # 20); and (2) Merchants' motion for summary judgment (Dkt. # 21.) As required when cross-motions for summary judgment are pending, the Court will review each parties motion separately, starting with Plaintiff's motion. See Green, 754 F.3d at 329.

I. Plaintiff's Motion for Summary Judgment

A. FDCPA Standards

[1–3] The purpose of the FDCPA is to "eliminate abusive debt collection practices by debt collectors." 15 U.S.C. § 1692(e). Because "Congress clearly intended the FDCPA to have a broad remedial scope," the FDCPA "should therefore be construed broadly and in favor of the consumer." Daugherty v. Convergent Outsourcing, Inc., 836 F.3d 507, 511 (5th Cir. 2016) (internal citations and quotations omitted). To state an FDCPA claim, a plaintiff must show: "(1) that he was the object of a collection activity arising from a consumer debt; (2) that Defendant is a debt collector as defined by the FDCPA; and (3) that defendant engaged in an act or omission prohibited by the FDCPA." Reynolds v. Medicredit, Inc., No. 5:18-CV-99-XR, 2019 WL 266974, at *3 (W.D. Tex. Jan. 18, 2019) (quoting Douglas v. Select Portfolio Servicing, Inc., No. 4:14-1329, 2015 WL 1064623, at *4 (S.D. Tex. Mar. 11, 2015)). "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) (internal quotation marks omitted); see also Ellis v. Solomon and Solomon, P.C., 591 F.3d 130, 135 (2d Cir. 2010) ("To recover damages under the FDCPA, a consumer does not need to show intentional conduct on the part of the debt collector. The Act is a strict liability statute, and the degree of a defendant's culpability may only be considered in com-

puting damages.") (internal quotation marks omitted); Lee v. Credit Mgmt., LP, 846 F. Supp. 2d 716, 722 (S.D. Tex. 2012) (collecting cases).

In this case, the parties do not dispute that Defendant is a debt collector or that Plaintiff was the object of collection activity arising from a consumer debt under the meaning of the FDCPA. (Dkt. # 20-3, Ex. 3 at 3–4.) Thus the only issue before the Court is whether the letters sent to Plaintiff violated the FDCPA.

Plaintiff has stated claims for violations of the FDCPA under 15 U.S.C. §§ 1692e and 1692f. However, in her motion, Plaintiff only moves for partial summary judgment as to her claim under § 1692e. (Dkt. # 20 at 2.) The FDCPA provisions relied on by Plaintiff in stating her claim under § 1692e prohibit: (1) "[t]he false representation of the character, amount, or legal status of any debt[,] 15 U.S.C. § 1692e(2)(A); and "[t]he use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer[,]" 15 U.S.C. § 1692e(10).

The Court will first address the various standards applicable to claims under 28 U.S.C. §§ 1692e and 1692f.

1. The Least Sophisticated or Unsophisticated Consumer

[4, 5] "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.' "[6] Daugherty, 836 F.3d at 511. The unsophisticated consumer is "neither shrewd not experienced in dealing with creditors" but is not "tied to the very last rung on the [intelligence or] sophistication ladder." Goswami v. Am. Collections Enter., 377 F.3d 488, 495 (5th Cir. 2004) (alteration in original). The unsophisticated consumer is "not illiterate and can be expected to read the entire collection letter with some care." Osborn v. Ekpsz, L.L.C., 821 F. Supp. 2d 859, 867 (S.D. Tex. 2011) (citing Greco v. Trauner, Cohen & Thomas, L.L.P., 412 F.3d 360, 363 (2d Cir. 2005)). Thus, "debt collection letters must be considered as a whole when determining if they violate the FDCPA." Gomez v. Niemann & Heyer, L.L.P., No. 1:16-CV-119 RP, 2016 WL 3562148, at *3 (W.D. Tex. June 24, 2016) (citing Gonzalez v. Kay, 577 F.3d 600, 607 (5th Cir. 2009) and Peter v. GC Servs. L.P., 310 F.3d 344, 349 (5th Cir. 2002)).

[6] Whether a letter is deceptive, misleading, or unfair to an unsophisticated consumer is generally a fact question. Carter v. First Nat. Collection Bureau, Inc., 135 F. Supp. 3d 565, 569 (S.D. Tex. 2015) (citing Gonzalez, 577 F.3d at 605–06); see also Daugherty, 836 F.3d at 512. However, "there are some letters that are so deceptive and misleading as to violate the FDCPA as a matter of law . . . ." Gonzalez, 577 F.3d at 606.

[7, 8] A court may decide a letter is deceptive, misleading or unfair as a matter of law "only when 'reasonable minds' cannot differ as to whether a letter would be deceptive, misleading, or unfair to the unsophisticated consumer." Gomez, 2016 WL 3562148, at *4 (citing Gonzalez, 577 F.3d at 606–07). The unsophisticated consumer test is objective, "meaning that it is

6. In theory, "unsophisticated consumers" and "least sophisticated consumers" represent different objective legal standards. See Daugherty, 836 F.3d 507, 511 n.2. However, as the Fifth Circuit did in Daugherty, the Court will refer to both these standards as "unsophisticated consumers" for ease of reference because "the difference between the standards is de minimis at most." Id. (citing Peter v. G.C. Servs. L.P., 310 F.3d 344, 349 n.1 (5th Cir. 2002))

unimportant whether the individual who actually received an allegedly violative letter was misled or deceived." Id. (citing Taylor v. Perrin, Landry, deLaunay & Durand, 103 F.3d 1232, 1236 (5th Cir. 1997)). "This standard serves the dual purpose of protecting all consumers, including the inexperienced, the untrained and the credulous, from deceptive debt collection practices and protecting debt collectors against liability for bizarre or idiosyncratic consumer interpretations of collection materials." Taylor, 103 F.3d at 1236 (citing Clomon v. Jackson, 988 F.2d 1314, 1318-19 (2d Cir. 1993)).

2. False, Deceptive, or Misleading Under Section 1692e

[9] "The Fifth Circuit does not appear to have explicitly given definition to what it means for a debt collection letter to be false, deceptive, or misleading under the FDCPA," but a "review of circuit court decisions nationwide supports the conclusion that 'false,' 'deceptive,' and 'misleading' function substantially identically, especially since the advent of the 'materiality standard.' " Gomez, 2016 WL 3562148, at *4. The Second Circuit has stated that a debt collection letter is deceptive "when it can be reasonably read to have two or more different meanings, one of which is inaccurate," Russell v. Equifax A.R.S., 74 F.3d 30, 35 (2nd Cir. 1996), and this definition is "widely accepted," Gomez, 2016 WL 3562148, at *5 (collecting cases). Some courts have stated that this provision prohibits collection letters that "confuse," which "seems to simply be an extension of the underlying principle" underlying the FDCPA. Id. (citing, among others, Gonzales v. Arrow Financial Services, LLC, 660 F.3d 1055, 1062 (9th Cir. 2011)). At bottom, though, the "ultimate question in each [case] is whether the unsophisticated or least sophisticated consumer would have been led by the debt collection letter into believing something untrue that would have influenced their decision-making." Id.

B. Analysis

[10] The essence of Plaintiff's motion is that the debt collection letters sent to her by Defendant were false, misleading, or deceptive as a matter of law under the FCPA because they failed to advise her that judicial enforcement of her debt was time-barred under the relevant Texas statute of limitations or that any partial payment could revive the debt. (Dkt. # 20 at 8.) Defendant, for its part, argues that compliance with the FCDPA requires no such disclosure where a debt collection letter does not offer to settle the debt for less than the total amount due and where no threat of litigation is made. (Dkt. # 22 at 2, 7.) Defendant appears to additionally argue that the "crux of Plaintiff's argument" and thus the conclusion that the Court would have to reach to find in favor of Plaintiff is that the "collection of time barred debt in Texas violates the FDCPA in and of itself." (Id. at 3.)

As a threshold matter, it is beyond dispute, and Defendant does not appear to contest, that judicial enforcement of Plaintiff's debt in this case was conclusively time-barred. The undisputed evidence demonstrates that Plaintiffs debt was for services rendered in December 2010 and January 2011. (Dkt. # 20-1, Ex. 1 at 10–11.) And even if the debt was not due and owing at the time the services were rendered, the debt clearly became due, at the latest, prior to July 22, 2011, when Defendant sent its first collections letter. (Dkt. # 20-2, Ex. 2.) Texas's statute of limitations on debt is "not later than four years after the day the cause of action accrues ...." Tex. Civ. Prac. & Rem Code § 16.004(3). Thus, when Defendant sent collection letters sent in October 2017, the four-year limitations period had lapsed.

See id. Further, under Texas law "[a]n acknowledgment of the justness of a claim that appears to be barred by limitations" is admissible in evidence "to defeat the law of limitations" if it is "in writing and signed by the party to be charged." Tex. Civ. Prac. & Rem. Code. § 16.065.

[11] The question for this motion, then, is whether a debt collection letter that fails to clearly indicate that the debt is time-barred or that any partial payment might defeat the otherwise conclusive statute of limitations defense is false, misleading, or deceptive under the FDCPA as a matter of law. This Court concludes that it is.

In Daugherty v. Convergent Outsourcing, Inc., the Fifth Circuit expressly "agree[d] with the Seventh Circuit's interpretation of the FDCPA in McMahon [v. LVNV Funding, LLC, 744 F.3d 1010 (7th Cir. 2014)], and with the Sixth Circuit's opinion in Buchanan [v. Northland Group, Inc., 776 F.3d 393 (6th Cir. 2015)] insofar as it is consistent with McMahon." 836 F.3d at 513. In reaching this conclusion—and its holding in the case—the Fifth Circuit quoted from and relied on both cases at length. See id. at 512–513.

[12–14] In McMahon, the Seventh Circuit held that "if the debt collector uses language in its [debt collection] letter that would mislead an unsophisticated consumer into believing that the debt is legally enforceable ... the collector has violated the FDCPA." 744 F.3d at 1020. Further,

> The proposition that a debt collector violates the FDCPA when it misleads an unsophisticated consumer to believe a time-barred debt is legally enforceable, regardless of whether litigation is threatened, is straightforward under the statute. Section 1692e(2)(A) specifically prohibits the false representation of the character or legal status of any debt. 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.*

Id. (emphasis added); see also Buchanan, 776 F.3d at 399 ("Whether a debt is legally enforceable is a central fact about the character and legal status of that debt. A misrepresentation about the limitations period amounts to a 'straightforward' violation of § 1692e(2)(A).") (citing McMahon, 744 F.3d at 1020). The Seventh Circuit also noted that:

> the FTC has found that nondisclosure of the fact that a debt is time-barred might deceive a consumer in at least two ways: first, because most consumers do not know or understand their legal rights with respect to the collection of time-barred debt, attempts to collect on such debt may create a misleading impression that the consumer has no defense to a lawsuit; and second, consumers often do not know that in many states the making of a partial payment on a stale debt actually revives the entire debt even if it was otherwise time-barred. Given the potential for confusion, and to avoid creating a misleading impression, the FTC recommended that if a collector knows or should know that it is collecting on a time-barred debt, it must inform the consumer that (1) the collector cannot sue to collect the debt, and (2) providing partial payment would revive the collector's ability to sue to collect the remaining balance.[7]

7. As instructed by the Supreme Court in Skidmore v. Swift & Co., the Court "consider[s] that the rulings, interpretations and opinions of the Administrator under this Act, while not controlling upon the courts by reason of their authority, do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance."

Id. at 1015 (citing Fed. Trade Comm'n, The Structure and Practice of the Debt Buying Industry 47 (2013) (FTC Report 2013)).

It is true that the particular letters at issue in Daugherty and McMahon contained offers to settle the debt for less than the total amount owed, while the letters in this case do not. See Daugherty, 836 F.3d at 509; McMahon, 744 F.3d at 1013. However, limiting the reach of both the logic and holding of these cases 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." See Daugherty, 836 F.3d at 511; see also Rawson v. Source Receivables Mgmt., LLC, 215 F. Supp. 3d 684, 685–86 (N.D. Ill. 2016) (relying on McMahon and granting summary judgment in favor of the plaintiff where the debt collection letter was silent as to the time-barred nature of the debt but did not offer a settlement of less than the full balance due).

In McMahon, the fact that the debt collection letters at issue included offers of settlement only "ma[de] things worse 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" and "reinforced the misleading impression that the debt was legally enforceable." 744 F.3d at 1021. The fundamental flaw that made the letters misleading was that they misrepresented the legal status of the debts because they did not disclose the time-barred nature of the debt.[8] The McMahon Court made this clear in stating, "[a]n unsophisticated consumer who read the [debt collection] letter [Plaintiffs] received could have been led to believe that her debt was legally enforceable. In other words, *the letters misrepresented the legal status of the debts, in violation of the FDCPA.*" Id. The Court further noted that the FTC and CFPB "have found . . . that most consumers do not understand their legal rights with respect to time-barred debts." Id. (citing Fed. Trade Comm'n, Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration 26–27 (2010)).

At least one district court in the Seventh Circuit, relying on McMahon, has concluded that a debt collection letter that was silent as to the time-barred nature of the debt, but did not include an offer of settlement for less than the full balance due, violated the FDCPA. Rawson, 215 F.Supp.3d. at 685–86, 689. And another district court in the Seventh Circuit, again relying on McMahon, stated that "a letter

323 U.S. 134, 140, 65 S.Ct. 161, 89 L.Ed. 124 (1944). Even where an agency's interpretation is not entitled to Chevron deference as a rule carrying the force of law pursuant to authority delegated by Congress, the agency's resolution of a particular question "certainly may influence courts facing questions the agencies have already answered." United States v. Mead Corp., 533 U.S. 218, 227, 121 S.Ct. 2164, 150 L.Ed.2d 292 (2001). Because "the well-reasoned views of the agencies implementing a statute 'constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance,'" Bragdon v. Abbott, 524 U.S. 624, 642, 118 S.Ct. 2196, 141 L.Ed.2d 540 (1998) (quoting Skidmore, 323 U.S. at 139–140, 65 S.Ct. 161), "considerable weight should be accorded to an executive department's construction of a statutory scheme it is entrusted to administer," Chevron, 467 U.S. at 844, 104 S.Ct. 2778.

8. The Court also notes that the collection letters in this case did not even inform the debtor of when the debts were incurred, which, if included, might give a consumer at least some inkling that the debt might be too old to be legally enforceable.

that is completely silent on the subject [of the time-barred nature of the debt] is ... misleading." Slick v. Portfolio Recovery Associates, LLC, 111 F. Supp. 3d 900, 906 (N.D. Ill. 2015).

[15, 16] Additionally, "[w]here the FDCPA requires clarity, ... ambiguity itself can prove a violation." Pantoja v. Portfolio, 852 F.3d 679, 687 (7th Cir. 2017). Like the letter at issue in Pantoja, the letters at issue in this case are "example[s] of careful and crafted ambiguity[,]" id., by not informing the debtor that the debt is time-barred, that any partial payment might revive the judicial enforceability of the debt, and by their vague references to "additional collection efforts." (See, e.g., Dkt. # 20-2, Ex. 2 at 12.) As explained by the Seventh Circuit in Pantoja,

> [t]he carefully crafted language, chosen to obscure from the debtor that the law prohibits the collector from suing to collect this debt or even from threatening to do so, is the sort of misleading tactic the FDCPA prohibits. 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.

Id.

The Court is aware, first and foremost, that McMahon is not binding precedent. However, its persuasive authority is significantly heightened by the fact that the Fifth Circuit has expressly stated that it "agree[d] with the Seventh Circuit's interpretation of the FDCPA in McMahon." Daugherty, 836 F.3d at 513. The Court is also aware that both McMahon and Daugherty were decided in a different procedural posture, at the motion to dismiss stage, rather than at the motion for summary judgment stage, and thus do not expressly dictate that a debt collection letter that is silent as to the time-barred nature of the debt or the fact that a partial payment might revive the debt violates the FDCPA as a matter of law. Nevertheless, the Court concludes that McMahon, expressly agreed with by the Fifth Circuit in Daugherty, as well as subsequent case law, support this conclusion.

As previously noted, McMahon expressly stated that "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.*" 744 F.3d at 1020. A debt collection letter that fails to "give a hint that the debts ... to [be] collect[ed] were vulnerable to an ironclad limitations defense ... misrepresented the legal status of the debts, in violation of the FDCPA" because "[a]n unsophisticated consumer who read the ... letter ... could have been led to believe that her debt was legally enforceable." 744 F.3d at 1021. And "[i]f unsophisticated consumers ... believe that the debt is legally enforceable at all, they have been misled, and the debt collector has violated the FDCPA." Id. at 1022.

With regard to the procedural posture of this case, several district courts in the Seventh Circuit have relied on McMahon and granted summary judgment in favor of Plaintiffs, 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, e.g., Rawson, 215 F. Supp. 3d at 685–86; Slick, 111 F. Supp. 3d at 906–07, 09. Finally, in Pantoja v. Portfolio Recovery Assocs., LLC, the Seventh Circuit affirmed a grant of summary judgment in favor of the plaintiffs based on a debt collection letter being:

> deceptive or misleading because (a) it did not tell the consumer that the defendant could not sue on this time-barred debt and (b) it did not tell the consumer

> that if he made, or even just agreed to make, a partial payment on the debt, he could restart the clock on the long-expired statute of limitations, in effect bringing a long-dead debt back to life.

Pantoja, 852 F.3d at 681.

The Court also reiterates, in support of its conclusion, the FTC's recommendation that debt collectors must inform consumers with time-barred debt that the debt collector cannot sue to collect the debt and that providing partial payment might revive the debt collectors ability to sue. See McMahon, 744 F.3d at 1015. The FTC has recognized that failure to disclose such facts might deceive consumers by creating a false impression that the debt is judicially enforceable and that consumers do not know that partial payment might revive a debt that is otherwise time-barred. See id.

[17] Based on Daugherty, McMahon, the weight of authority in the Seventh Circuit, and the FTC's guidance, the Court concludes 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). The Court believes that this determination is the one most consistent with the Fifth Circuit's edict to construe the FDCPA broadly in favor of the consumer. Further, this determination is necessary and appropriate to vindicate the broad remedial scope of the FDCPA, which was designed to eliminate abusive debt collection practices by debt collectors.

[18, 19] Defendant's arguments to the contrary are unpersuasive. First, Defendant's assertion that granting summary judgment for the Plaintiff requires this Court to conclude that attempts to collect time-barred debt in Texas violates the FDCPA in and of itself is misplaced. (Dkt. # 22 at 3.) The Court recognizes that under Texas law time-barred debts are not extinguished, and creditors are free to pursue collection of the debt. See, e.g., Corpus Christi People's Baptist Church, Inc. v. Nueces County Appraisal Dist., 904 S.W.2d 621, 625 (Tex. 1995) ("[L]imitations statutes do not release or extinguish a debt but merely affect the remedy when enforcement is sought."); Johnson v. Capital One Bank, No. CIV. A SA00CA315RP, 2000 WL 1279661, at *2 (W.D. Tex. May 19, 2000)("A statute of limitations bar applies only to *judicial* remedies; it does not eliminate the debt. Creditors are entitled to attempt to pursue even time-barred debts, so long as they comply with the rules of the FDCPA." (emphasis in original)). As Defendant itself rightly recognizes, "it is not an automatic violation of the FDCPA to collect on a time-barred debt. What matters is how a collector attempts to collect a debt." (Dkt. # 22 at 5.) But "how a collector attempts to collect a debt" is exactly the issue in this case. The question is not whether the mere fact that Defendant attempted to collect the debt was a violation of the FDCPA (it is not a violation). The question is rather whether the methods employed by Defendant—the allegedly misleading substance of their letters—violate the FDCPA.

[20] Defendant also appears to argue that there is no FDCPA violation where no litigation has been threatened. (Dkt. # 22 at 7–9.) However, Fifth Circuit law is clear that no threat of litigation needs to be made for a debt collection letter to violate the FDCPA. See Daugherty, 836 F.3d at 511 ("[A] collection letter that is silent as to litigation, but which offers to 'settle' a

time-barred debt without acknowledging that such debt is judicially unenforceable, can be sufficiently deceptive or misleading to violate the FDCPA."); see also McMahon, 744 F.3d at 1020 ("Matters may be even worse if the debt collector adds a threat of litigation, . . . but such a threat is not a necessary element of a claim [under the FDCPA].").

Finally, Defendant's third argument is that "unless a collector offers a settlement of the debt, offers a payment plan, offers a discount, or makes an offer the result of which would reduce the debt owed, then there is no requirement that the disclosures asserted by the Plaintiff be made in the letter." (Dkt. # 22.) Defendant's argument primarily on relies the Fifth Circuit's recent decision in Mahmoud v. De Moss Owners Ass'n, 865 F.3d 322 (5th Cir. 2017). The Court in Mahmoud stated that Fifth Circuit precedent "holds merely that seeking collection 'can be' violative [of the FDCPA], which is far cry from implying, especially in the face of the summary judgment materials before us, that every attempt to collect such a debt infringes FDCPA-created rights." 865 F.3d at 332. This Court wholeheartedly agrees. As previously stated, it not the mere fact that Defendant attempted to collect on a time-barred debt that violates the FDCPA, it is the manner in which it did so.

Further, Mahmoud is distinguishable from the instant case for exactly the same reasons the Fifth Circuit found the facts in Mahmoud distinguishable from those in Daugherty. First, in Mahmoud, "less than 25% of the debt [was] allegedly time-barred." 865 F.3d at 333. In this case, the entirety of the debt is time-barred.

Second, in Mahmoud, "the application of limitations as a bar . . . [was] uncertain." Id. In this case, that Texas's statute of limitations on judicial enforcement of a debt applies to Plaintiff's debt is clear and not genuinely contested.

Third, in Mahmoud, the Fifth Circuit found that the plaintiffs "were not misled about the amounts they owed, three quarters of which were not time-barred, nor were they misled about the potential consequences of nonpayment: judicial foreclosure on their condo." Id. In this case, as discussed previously, Defendant's failure to disclose that the debt at issue was time-barred or that any partial payment might revive the judicial enforceability of the debt is misleading to an unsophisticated consumer, who might thereby believe the debt is legally enforceable and might believe that even some payment is better than no payment. See, e.g., Pantoja, 852 F.3d at 686 ("Upon receipt of the letter, the only reasonable conclusion that an unsophisticated consumer (or any consumer) could reach is that defendant was seeking to collect on a legally enforceable debt . . . ."); Buchanan, 776 F.3d at 399 ("The other problem with the letter is that an unsophisticated debtor . . . might nevertheless assume from the letter that some payment is better than no payment. Not true: Some payment is worse than no payment.").

Finally, Mahmoud dealt with the nonjudicial foreclosure of real estate, and the Fifth Circuit was in part driven by "federalism concerns" about "interfer[ing] with Texas's carefully articulated arrangements for conducting nonjudicial real property foreclosures[,]" a field "which the states have traditionally occupied." 865 F.3d at 334. The Fifth Circuit was thus reticent to "creat[e] causes of action where state law finds no wrongful foreclosure." Id. In contrast, no such federalism concerns are present in this case, as it involves a straightforward consumer debt for commercial services, the very field in which

the FDCPA was designed to eliminate abusive practices. See 15 U.S.C. § 1692.

In sum, the Court finds no support for Defendant's conclusion that a settlement offer that is silent as to the time-barred nature of the debt or as to the fact that any partial payment might revive the judicial enforceability of the debt cannot be misleading under the FDCPA unless it includes an explicit offer to settle the debt for less than the amount owed. And for the reasons elucidated earlier, the Court is persuaded by the opposite conclusion.

Therefore, Plaintiff's Motion for Partial Summary Judgment on her claim under 15 U.S.C. §§ 1692e(2)(A) and 1692e(10) is **GRANTED**. (Dkt. # 20.)

II. Defendant's Motion for Summary Judgment

[21] As previously stated, Defendant moves for summary judgment on both of Plaintiff's claims under 15 U.S.C. §§ 1692e and 1692f. (Dkt. # 21 at 1.) The arguments raised by Defendant in its motion, and by Plaintiff in her response, are largely identical to those raised respectively by the parties related to Plaintiff's motion for partial summary judgment. (Compare Dkt. # 21, with Dkt. # 22, and Dkt. # 24, with Dkt. # 20.) Accordingly, for the reasons already explained by the Court in connection with Plaintiff's motion for partial summary judgment, Defendant's motion for summary judgment as it relates to Plaintiff's claim under 15 U.S.C. § 1692e is **DENIED**.

However, as to Plaintiff's claim under § 1692f,

> Section 1692f "serves a backstop function, catching those 'unfair practices' which somehow manage to slip by §§ 1692d & 1692e." Although a violation of § 1692f is not limited to conduct that falls within the statute's specific prohibitions, there is "a growing consensus, at least among district courts, that a claim under § 1692f must be based on conduct either within the listed provisions, or be based on conduct which falls outside of those provisions, but which does not violate another provision of the FDCPA."

Osborn, 821 F. Supp. 2d at 878 (internal citations omitted) (collecting cases). Because Plaintiff's § 1692f claim is based on the same conduct that forms the basis of her § 1692e claim, is not based on any of the listed provisions of § 1692f, and the Court has found that the letter was misleading under § 1692e, Defendant is entitled to summary judgment as to Plaintiff's § 1692f claim. See id.; Hordge v. First Nat'l Collection Bureau, Inc., No. 4:15-CV-1695, 2018 WL 3741979, at *4 (S.D. Tex. Aug. 7, 2018). Accordingly, Defendant's motion for summary judgment as it relates to Plaintiff's claim under 15 U.S.C. § 1692f is **GRANTED.**

Defendant's Motion for Summary Judgment is thus **GRANTED IN PART AND DENIED IN PART**. (Dkt. # 21.)

III. Damages

[22] As previously noted, the parties have stipulated that "Plaintiff is not seeking actual damages" and "[i]f the Plaintiff prevails in her Motion for Summary Judgment and the sole remaining fact issue is the amount of statutory additional damages available under 15 U.S.C. § 1692k, then the parties stipulate that the maximum statutory additional damages of $1,000 may be awarded in lieu of a Jury Trial on this issue." (Dkt. # 33 at 2.)

Accordingly, having found that Plaintiff's motion for partial summary judgment should be granted, the Court further **ORDERS** that Plaintiff shall be awarded as damages the maximum statutory additional **damages of $1,000**. Such award is this Court's **FINAL JUDGMENT** in this case.

CONCLUSION

For the reasons stated, the Court **GRANTS** Plaintiff's Motion for Partial Summary Judgment on her claim under 15 U.S.C. § 1692e. (Dkt. # 20.) The Court, further, **GRANTS IN PART AND DENIES IN PART** Defendant's Motion for Summary Judgment. (Dkt. # 21.) Defendant's motion is **DENIED** as to Plaintiff's claim under 15 U.S.C. § 1692e but **GRANTED** as to Plaintiff's claim under 15 U.S.C. § 1692f.

As stipulated by the parties, Plaintiff is awarded the maximum additional statutory amount of **$1,000 as damages**. Additionally, under 15 U.S.C. § 1692k(a)(3), Plaintiff is awarded her **costs and attorney's fees** against Defendant. Plaintiff shall file a Bill of Costs and a Motion for Attorney's fees in accordance with the Federal Rules of Civil Procedure and the Local Rule of The United States District Court for the Western District of Texas.

This Order is **FINAL AND APPEALABLE**, and the Clerk's office is **INSTRUCTED to ENTER JUDGMENT AND CLOSE THIS CASE.**

IT IS SO ORDERED.

IN RE: Ajay KUMAR

EP-19-MC-00205-FM

United States District Court,
W.D. Texas, El Paso Division.

Signed September 12, 2019

Background: Government moved for continuation of order authorizing it to force feed an immigration detainee in its custody who was on the 61st day of hunger strike.

Holdings: The District Court, Frank Montalvo, J., held that order authorizing the non-consensual hydration and forced feeding, by nasogastric intubation, of immigration detainee who was on 61st day of hunger strike protesting his detention would be continued.

Motion granted.

1. Aliens, Immigration, and Citizenship ⚷462

Correct standard to apply in evaluating whether a civil immigration detainee on hunger strike could be subjected to intubation and forced feeding was not the four-part *Turner* test, 107 S.Ct. 2254, for analyzing a prison regulation's reasonableness, but the *Youngberg* balancing test, 102 S.Ct. 2452, pursuant to which courts evaluate claims by individuals who have been involuntarily committed by balancing the State's interests against the individual's liberty interests; civil immigration detainees are entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish.

2. Mental Health ⚷31

Prisons ⚷120, 190, 352

State must provide adequate food, shelter, clothing, and medical care to individuals in its custody.

3. Aliens, Immigration, and Citizenship ⚷462

Allowing immigration detainee on a hunger strike to starve himself to death while in government's custody would violate obligations that the United States owed as custodian; government interest in preventing death of individual in its custody is paramount.