No. _____

In The
Supreme Court of the United States

SANDRA PLETOS and MITCHELL PLETOS,

Petitioners,

v.

MAKOWER ABBATE GUERRA WEGNER VOLLMER, PLLC, JOHN FINKELMANN, ROGER PAPA, GIOVAN AGAZZI, DANNY LANDA, KATIA AZIZ, and MIKE DESJARDINE,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

Pro Se

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QUESTIONS PRESENTED

An "estimated 69 million Americans – 21.3 percent of the U.S. population in 2016 – lived in common interest communities, including homeowners associations, condominium communities and cooperatives."[1] "Under Michigan law, a covenant constitutes a contract, created by the parties with the intent to enhance the value of property." *Hickory Pointe Homeowners Ass'n v. Smyk*, 262 Mich. App. 512, 515, 686 N.W.2d 506 (2004) (citations omitted). Additionally, bylaws can constitute the terms of a contract. *Conlin v. Upton*, 313 Mich. App. 243, 255, 881 N.W.2d 511 (2015).

This case raises an important issue regarding the relief available to homeowners when individuals fraudulently hold themselves out to be directors and officers of an association, fraudulently and abusively assess and collect dues, and engage in litigation without authority. Moreover, it raises an issue regarding the relief available when these individuals actively conceal newly discovered evidence which suggests that an earlier state court judgment was procured by fraud.

Thus, the specific questions presented are:

> Whether *Rooker-Feldman* can be used to prevent parties from asserting their contractual rights, and new independent claims for relief based on statutes, when there are new and distinct acts of fraud, concealment, and abuse in the years following a state court judgment.

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[1] The Community Association fact book, National and State statistical review for 2016, Community Association Data, caionline.org.

QUESTIONS PRESENTED – Continued

Whether *Rooker-Feldman* takes precedence over the clear language of the Federal Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §§ 1692 *et seq.*, and the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961-1968, thus undermining the very purpose of these statutes.

PARTIES TO THE PROCEEDING

All parties are listed in the caption.

The parties of Caterina Interdonati and Kimberly Gualdoni, listed as Defendants or Appellees below, have been omitted herein, as they were never served in the earlier proceedings.

The cover caption on this filing has corrected a typographical error in the lower courts. Defendant and Appellee Katia Azia, has been correctly restated to Respondent Katia Aziz.

RULE 29.6 STATEMENT

None of the petitioners is a nongovernmental corporation. None of the petitioners has a parent corporation or shares held by a publicly traded company.

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PETITION FOR WRIT OF CERTIORARI

Sandra Pletos and Mitchell Pletos respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The decision of the Court of Appeals for the Sixth Circuit is unpublished and is reprinted in the Appendix at App. 1-14. The decision of the Eastern District of Michigan Southern Division is unpublished and is reprinted at App. 15-40.

JURISDICTION

Petitioners seek review of the decision of the United States Court of Appeals for the Sixth Circuit entered on April 19, 2018. Timely petitions for rehearing and rehearing en banc were denied on June 26, 2018. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

18 U.S.C. §§ 1961-1968 Racketeer Influenced and Corrupt Organizations Act

18 U.S.C. § 1961 – Definitions

As used in this chapter –

(1) "racketeering activity" means. . . . (B) any act which is indictable under any of the following provisions of title 18, United States Code:. . . . section 1341 (relating to mail fraud), section 1343 (relating to wire fraud) . . .

(4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

18 U.S.C. § 1962 – Prohibited activities

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has

participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. . . .

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

15 U.S.C. §§ 1692, et seq. Fair Debt Collection Practices Act

15 U.S.C. § 1692 Congressional findings and declarations of purpose

(e) Purposes

It is the purpose of this subchapter to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.

15 U.S.C. § 1692a Definitions

(5) The term "debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

15 U.S.C. § 1692e False or misleading representations

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; or

(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.

INTRODUCTION

This case raises important and unresolved issues relative to the application of *Rooker-Feldman* to independent claims for relief, particularly the Federal Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §§ 1692 et seq., and the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968.

By applying *Rooker-Feldman* to the entirety of the Pletoses' claims (App. 13), the courts below ignored the unambiguous directives of the United States Supreme Court in *Exxon Mobil v. Saudi Basic Indus Corp.*, 544 U.S. 280 (2005). A claim is barred by *Rooker-Feldman* only when brought by " . . . state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon.* App. 6. But the Pletoses did not complain of any state court judgment, nor ask that it be reviewed. In fact, there no longer is a judgment against Pletoses. Pletoses filed this action in early September 2016. Several months prior, the

Respondents sought judgment against CNA Surety. That judgment was granted in late September 2016, shortly after this case commenced. App. 4-5.

This Court should review this case because the Sixth Circuit's opinion is in conflict with some of its own opinions, suggesting the need for guidance, and with the opinions of other circuits. For example, in *Hageman v. Barton* 817 F.3d 611, 615 (8th Cir. 2016), a state court judgment was assigned to a collection firm that authorized its attorney to proceed in securing payment. Plaintiff alleged FDCPA violations in federal court, related to both the process of obtaining the order, and collecting the judgment, based on misrepresentations associated with the relationships between the attorney and the creditor, a situation similar to Pletoses. The court found that, although the actions which occurred prior to entry of the state judgment were barred by the Statute of Limitations, those actions did not invoke the *Rooker-Feldman* doctrine. *Id.* at 615. Allegations of statutory violations and related requests for damages are not challenges to a state court judgment nor are those claims considered requests for subsequent federal review. *Id.* at 616. Post-judgment FDCPA violations that occurred within the limitations period were allowed to proceed on the grounds that a federal claim is not barred by *Rooker-Feldman* simply because " . . . a prior collection-related judgment" exists. Consideration by this Court is necessary to secure and maintain uniformity.

The Sixth Circuit's decision raises questions of exceptional importance in that it relates, in part, to

interpretations of the FDCPA and debt collection, highly litigated issues in the state and federal courts. The highest percentage of consumer reports, a whopping 22.74%, or 608,535 consumer reports related to debt collection, were filed with the Federal Trade Commission in 2017.[2] Despite the clear language of the FDCPA and RICO, the decisions below grant an unduly narrow reading of these statutes, and decline to acknowledge the fundamental purpose of them. This cannot be what this Court had in mind when it expressly invoked the *Rooker-Feldman* doctrine. There is no practical reason for the Sixth Circuit to adopt a categorical rule applying *Rooker-Feldman* in such a way to exclude new and distinct acts of fraud, active concealment, and abusive post-judgment collections, from the reaches of the FDCPA and RICO statutes. The Sixth Circuit adopted an inflexible rule that has huge impacts on the future protections of debtors. These flaws lead to an extreme result not contemplated by Congress in enacting the FDCPA and RICO.

Judge Guy's Sixth Circuit concurring opinion in this case, expressed marked skepticism at the idea that *Rooker-Feldman* is applicable to any of Pletoses claims. Judge Guy correctly recognized that the Pletoses asserted independent violations based on the collection *methods* employed by the Respondents, and points out that the majority acknowledged this as well, writing that "In fact, plaintiffs' injury stems not from the state-court judgment, but from the attempts to

[2] Stats & Data 2017, Federal Trade Commission, www.ftc.gov/reports/annual-highlights-2017/stats-and-data.

collect on it." App. 13-14. Judge Guy also writes, "I am concerned that the majority's analysis could be used to insulate any judgment-collection activity – however brazenly unlawful – from the FDCPA or other laws, whenever *Rooker-Feldman* prevents us from reviewing the underlying state-court judgment and injuries caused by that judgment." App. 14.

As it relates specifically to the FDCPA, the lower courts disregarded the majority of Pletoses claims, failed to provide any meaningful scrutiny of the claim, and ignored all arguments in this regard contained in the Appeal Brief. This Court should review, and reverse, the lower court's decision so that meaningful scrutiny can be conducted on the merits of the FDCPA claims, in context with various interpretations that exist in and across circuits.[3]

In addition, the decision below strips Pletoses of their fundamental right to contract, and essentially condones fraudulent and deceptive behavior. Likewise, it denies rights to a full and fair litigation. This Court should reverse, so that the claims for an Accounting

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[3] The FDCPA carries a one year statute of limitations. Although the chronologically numbered allegations contained in the Pletoses' complaint span multiple years, these further abusive debt collection practices, and instances of fraud, have been included for three reasons. 1) In support of Pletoses' claims arising under the Michigan Collections Practices Act, which has a three year statute of limitations, 2) In support of claims arising under RICO, which requires that a party allege a pattern of racketeering, spanning up to a ten year period, and 3) to provide background information to assist in understanding FDCPA allegations that fall within the one year statute of limitations.

and Injunctive Relief can serve to accomplish its main purposes: 1) To comply with contractual rights for corporate reviews; 2) To determine who had legal authority to act on behalf of LWA; 3) To obtain verification of debt; 4) To aid in determining if the FDCPA, RICO, and Fraud cases should proceed; 5) To prevent fraud.

Finally, this case provides the Court with an ideal opportunity to revisit and provide guidance as to whether *Rooker-Feldman* can prevent parties from asserting their contractual rights, and new independent claims for relief based on statutes, when there are new and distinct acts of fraud, concealment, and abuse in the years following a state court judgment. Moreover, it raises an issue regarding the relief available when these individuals actively conceal newly discovered evidence which suggests that an earlier state court judgment was procured by fraud.

The questions presented by this petition are well suited to cover these issues and should be reviewed by this Court.

STATEMENT OF THE CASE

As a preliminary matter, it should be noted that the lower courts have omitted the majority of the factual allegations made in the complaint from their opinions and review, denying Pletoses due process. The facts stated below, that cannot be cited to the courts decisions, can be found in the verified complaint in the lower court record. Each is supported by factual evidence.

By virtue of their ownership of a subdivision lot, Pletoses are members of Lake in the Woods Association ("LWA"), a Michigan Nonprofit Corporation, and therefore, have both a contractual and statutory relationship with LWA. App. 2. Under the terms of the LWA governing documents, and the Michigan Nonprofit Corporation Act (MCL 450.2101, et seq.), the Association may only act, assess, or collect, through a validly elected Board of Directors. The members of the Board of Directors must be lot owners in the subdivision, must be "active" members of LWA, in that they have timely paid all of their own assessments, and must be elected by the majority of members present at annual meetings each January, wherein 60% of the members are required to be present, in person or by proxy, to constitute a quorum. The elections are to be conducted by ballot. Only when a position becomes vacant mid-year, may the remaining board members appoint another member of the association to the Board of Directors, until an election is held at the next annual meeting. Moreover, members have a right to demand a review of all records of the Association, make extracts therefrom, and may file an action for damages, including injunctive relief, as appropriate.

Between 2013 and 2016, Pletoses were not receiving the required meeting notices from LWA, and were unaware of any valid meetings or elections of members to the Board of Directors, as required each January. Repeatedly, Pletoses sought to discover the identity of the Board of Directors, determine how and when they were elected, obtain verification of any alleged debts, and review the corporate records, among other things, in

accordance with their contractual rights. App. 19, 20, 23, 24. (Refer to the lower court record in support of the 2013-2016 demands). However, every written communication sent by Pletoses to the mailing address or registered office of LWA, between 2013 and 2016, went unanswered. Those sent by certified mail were often returned.

This was critical. Without a validly elected Board of Directors, there was no one with the authority to properly assess, collect, and otherwise act on behalf of LWA, and no one to retain counsel or engage in litigation on LWA's behalf.

Nonetheless, Pletoses discovered that, each year, shortly before its October deadline, an annual report was filed on behalf of LWA, naming the individual Respondents Papa, Agazzi, Desjardine, Landa, and Aziz, as directors and officers of LWA, at various times between 2013 and 2017. Although no one responded to any of Pletoses correspondence, an alleged invoice was sent to Pletoses on February 25, 2016, demanding payment of an unsubstantiated amount of nearly $35K, and demanding that payment be made within four days. App. 20. (See lower record for 2015 invoice sent to Attorney Bowlin and the Pletoses).

As a preliminary matter, in November 2012, Pletoses brought a lawsuit against LWA in state court, alleging breach of contract, for actions of the LWA between 2004 and 2012. App. 17-18. The Pletoses' case was dismissed before discovery was complete. LWA retained John Finkelmann and his law firm, Makower

Abbate Guerra Wegner Vollmer, PLLC ("Makower") to file a counterclaim seeking unpaid assessments. App. 18. Although LWA was successful in its counterclaim as to liability, the court ordered an evidentiary hearing because LWA was unable to substantiate the alleged assessments. Ultimately, the court did not award the full gamut of assessments and fees demanded by LWA, but did award a final judgment of $20,553.64 against Pletoses, which included attorney fees. In addition, the judgment awarded statutory interest and *reasonable* attorney fees incurred in attempting to further collect the debt. The Pletoses appealed, and the court granted a stay conditioned on posting of a $25,000 bond, thereby ceasing all collection activity, and freezing the judgment, with the exception of statutory interest, at $20,553.64 until the appeal was complete and the stay was lifted. App. 18.

With a judgment of $20,553.64 against them, no valid Board of Directors to assess any additional unrelated fees, and no ability to collect while the stay order was in place, it stands to reason that the only amount one would expect on an invoice from LWA was the judgment amount of $20,553.64. Yet, an invoice received by Pletoses in 2016, demanded payment of nearly $35K, due within four days. App. 20. Pletoses disputed this to LWA, but received no response. App. 20. The lower court wrongfully held that these "complaints are identical to those addressed and resolved by the Macomb County Circuit Court and affirmed by the Michigan Court of Appeals." App. 20. This 2016 invoice is wholly unsubstantiated, presumably includes unsubstantiated charges for 2016 and years prior (3 years after the

state court entered its judgment), and includes charges in excess of the $20,553.64 judgment. Nothing outside of the $20,553.64 has ever been adjudicated. The invoice starts out with an unsubstantiated beginning balance. Given the demand for payment by February 29, 2016, if this invoice relates to the state court judgment, as the district court indicates, then the demand for payment is in violation of the stay order. In addition, it wrongfully demands payment for legal fees that have never been adjudicated and deemed *reasonable* by a court. It includes late fees that were likewise not ordered in the 2013 judgment. And most importantly, it was fraudulently sent, as there were no legal directors or authorized agents of LWA at any time between 2013 and 2016. Since one cannot predict future events, it is wholly impossible for Pletoses complaints in their letter dated February 26, 2016, which then became part of this suit, to be *identical* to any complaints lodged in the 2012 state court action.

While the state action was on appeal, Pletoses continued to seek information as to the alleged Board of Directors. Again, this was critical. No one from LWA replied to Pletoses correspondence, and they were unable to determine who had authority to communicate and engage Makower's services on appeal. Pletoses were stuck between a rock and a hard place. There did not appear to be any association in existence, yet Makower was filing documents, albeit fraudulently, in the state court appeal. When the Michigan Supreme Court denied leave, Makower began making demands for payment to Attorney Bowlin, who no longer represented Pletoses once the state case closed. Shortly after

receiving notice of the denial from Makower, Attorney Bowlin stopped responding to his demands due to non-representation. Makower did not have authority from Pletoses, nor from the court, to communicate with Attorney Bowlin, or CNA Surety, for post-judgment collections. Nonetheless Makower continued to make collection demands from these third parties, and engage in post-judgment court proceedings without ever communicating with Pletoses. App. 21, 22.

At times, Pletoses had no alternative but to retain Attorney Bowlin for the sole purpose of forwarding some of the rejected and unanswered demand letters to LWAs alleged counsel, Makower, and later, to respond to post-judgment motions. Otherwise, Attorney Bowlin did not represent Pletoses on any matters outside of the appeal and earlier judgment, which covered the years 2012 and prior.

At times, when forwarding Pletoses demands to Makower, Attorney Bowlin sought information as to the alleged directors and officers, for purposes of the appeal. Makower's limited response to Bowlin indicated that there were no annual meeting minutes for any years beginning with 2013, and that, at a minimum, he knew that there was no quorum at an alleged 2015 meeting. Although he did provide some names of alleged board members, they did not match the annual reports that Pletoses discovered had been filed with the State of Michigan each year. (See lower court record for factual allegations and evidence).

Attorney Bowlin repeatedly told Makower that she did not represent Pletoses in any ongoing association matters outside of the appeal, and that all communications from LWA or Makower should go directly to Pletoses. App. 19, 32. (See lower court record for additional evidence). Even still, neither Makower nor LWA responded to any of Pletoses' disputes, nor complied with Pletoses' demands for the verification of debt, identification of directors and officers, and production of the corporate records, all of which Pletoses had contractual rights to receive under the LWA governing documents. Instead, Makower repeatedly abused and harassed Attorney Bowlin, and indirectly abused and harassed the Pletoses, by making demands for payment of unsubstantiated amounts of money App. 21, 22, communicating with Attorney Bowlin without the express approval of Pletoses, denying Pletoses their contractual and statutory rights to the documents and verification of debt, refusing to communicate directly with Pletoses, and actively concealing the pertinent records of discovery from Pletoses, among other things.

On or about March 29, 2016, Pletoses discovered that Giovan Agazzi, the alleged LWA president between 2012 and 2016, as stated on the annual reports filed with the State of Michigan, did not own a lot in the subdivision, a key element for membership and directorship in LWA. (See the lower court records for factual allegations and evidence). Even if meetings had been properly noticed or held (which they were not), Agazzi had no authority to preside over any meeting

(the sole responsibility of the president pursuant to the governing documents), and would not have been authorized to conduct an election, nor appoint any other directors and officers at any time. Importantly, it demonstrated a fraud in procuring the 2013 state court judgment, as it proved Pletoses' breach of contract and slander of title claims in the 2012 state court action. Agazzi was the individual who had personally placed a lien on Pletoses' property in 2012. App. 17.

Just days after Pletoses challenged the Respondents as to Agazzi's lot ownership, the Respondents, including the Makower attorneys, took actions to conceal this fact and tampered with the evidence Pletoses had discovered, by filing a fraudulent quit claim deed in Agazzi's name, retroactively dated nearly four years prior. (See lower court record for factual allegations and evidence).

As the Appeal Opinion properly states, Pletoses repeatedly alleged that, between 2013 and 2016, "the election of the LWA Directors was illegal, and that the Directors and Officers of the LWA have committed fraud and other purported abuses." App. 20, 23, 24. The Respondents do not dispute this. The only thing that can be drawn from the record below, is that Papa, Agazzi, Aziz, Landa, and Desjardine reside in Shelby Township, and that Makower practiced law in two cities. Otherwise, there is no admitted legal affiliation between the Respondents, and the LWA Board of Directors. If any of the Respondents assert in the response to this petition that they are, or were, legal agents of LWA at any time between 2013 and the

present, based upon valid meetings, quorums, proxies, and elections, it would be nothing short of a fraud on this court.

Thus the gravamen of Pletoses entire federal action centers upon this one key issue. . . . the Respondents repeatedly used mail and wire services to fraudulently hold themselves out as directors and officers of LWA between 2012 and 2016 (and 2017, as stated in a Motion to Supplement that was later filed but denied), when, undisputedly, the Respondents were not directors or officers. As stated above, the lower courts omitted the majority of the factual allegations made in the complaint from their opinions and review, denying Pletoses due process. It is pertinent that this Court review the lower court record when reviewing this petition.

A correct ruling on this key issue has the power to resolve many of the other claims Pletoses make, while holding others moot. For example, if this Court determines that the Sixth Circuit incorrectly applied the *Rooker-Feldman* doctrine to dismiss the FDCPA claims, then this Court must now recognize violations of the FDCPA under 15 U.S.C. § 1692e(2)(A), 15 U.S.C. § 1692e(5), 15 U.S.C. § 1692e(10), among others, as to Respondent's fraudulent misrepresentation as directors and officers, and their legal right to collect. Even though Pletoses alleged that all of the Respondents, not just the Makower attorneys, are debt collectors, neither the district court, nor the Sixth Circuit, gave any thought or commentary on this issue. No known case law exists, and it is prime for review by this Court. If this Court determines that 15 U.S.C. § 1692

violations existed for all parties, the remaining FDCPA claims need not be addressed. The enterprise and pattern of racketeering that support the RICO claims become evident, and the Court should properly rule in this regard on the RICO claim.

Although the Sixth Circuit recognized the allegations of fraud, it held that any claims occurring between 2013 and 2016 "flowed" from the "very same conduct," and were attacks "identical to those lodged in state court." App. 7. This mis-characterization is a grave error. Nothing is "identical." For the most part, Pletoses claims are for entirely distinct years and actions. If anything, there is only a slight "nexus" with the state court judgment, based upon newly discovered evidence that suggests fraud in procuring the 2013 judgment. Again, when Pletoses discovered new evidence that Agazzi did not own a lot in the subdivision, the Respondents tampered with evidence by filing a fraudulent and retroactive quit claim deed. This new fraud occurred in 2016. His name on the annual reports each year between 2012 and 2017, as filed by wire or mail with the State of Michigan, supports Pletoses FDCPA and RICO claims. Again, based upon the omission of the majority of claims and arguments Pletoses made, from the lower courts' opinions, Pletoses direct this court to the full record. The Sixth Circuit's opinion, holding that the attacks in later years are "identical", fails to take into account meaningful differences that exist in associations, such as annual meeting and election requirements, annual quorum and proxy requirements, annual ballot requirements, annual assessments,

changes in membership, different budgets, different expenses, and the like. It is unfathomable that any year can be *identical* to the past.

In early 2016, Makower finally began communicating with Pletoses directly, but again, would not provide verification of the alleged debt, would not identify the directors of the association, and would not produce the corporate records, choosing instead to play a continuous game of hide and seek. The district court acknowledges that Plaintiffs were seeking verification of the alleged debt, and were demanding corporate records in accordance with their contractual rights. App. 19, 20, 23, 24.

In September 2016, after the Michigan Supreme Court denied review of the 2013 judgment, and after the Respondents began abusive post-judgment collections without ever communicating with Pletoses, the Pletoses filed this action in federal court, asserting various claims under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. ("FDCPA"), the Michigan Regulation of Collection Practices Act, Mich.Comp. Laws 45.251 et seq. ("MRCPA") and the Racketeer Influenced Corrupt Practices Act, 18 U.S.C § 1961 et seq. ("RICO"). They also brought claims for an Accounting, and Injunctive Relief, as well as state law claims for abuse of process, and constructive fraud. App. 15-16.

Shortly thereafter, the Makower attorneys produced a box of documents for Pletoses, allegedly from LWA. As expected, it did not contain any information supporting valid meetings, quorums, proxies, or

elections between 2012 and 2016. In fact, it did not contain many documents at all.

As the lower court properly states, Pletoses federal action was filed *prior* to the state court's entry of judgment against Western Surety. App. 22, 23. This point is important in the application of *Rooker-Feldman*. Since the state court judgment had not been issued before the federal action was filed, fraud during post-judgment litigation is exempt from the reaches of *Rooker-Feldman*. As of September 20, 2016, there no longer was a judgment against Pletoses. Yet, the lower courts continue to hold that "this action represents their latest attempt to evade payment" (App. 1) and " . . . the Pletoses' claim seeks to invalidate both the right to assess, and the manner in which LWA assessed and collected fees." "Pletoses' arguments otherwise were attempts to relitigate issues already decided by the state courts." App. 7. This is wholly impossible.

In July 2017, Pletoses filed a Motion to Supplement, asserting newly discovered evidence that the Respondents fraudulently represented themselves as LWA directors in 2017, and fraudulently collected from the bond company in excess of the judgment against CNA and without legal authority. They added new claims of abuse and harassment, including profane language, and threats of physical harm to Pletoses' son, as well as the fraudulent filing of the 2017 annual report, just four days prior to the filing of the Motion to Supplement. App. 11.

On August 30, 2017, the district court summarily dismissed Pletoses' Federal claims, and denied supplemental review of the state law claims. The motion to supplement was denied. App. 15-40.

The Pletoses timely appealed to the Sixth Circuit, which issued an opinion on April 19, 2018, App. 1-14, affirming the district court, and incorrectly concluding that *Rooker-Feldman* applied, "The district court correctly found that *Rooker-Feldman* applied to the entirety of the Pletoses' claims. While purportedly brought under partially different statutes, against arguably different parties, in a different forum, the gravamen of the Pletoses' claims is the same: an attempt to avoid paying homeowners association fees. The state court already determined that they must, and we cannot and do not revisit that ruling." App. 13.

The inaccuracies are clear. First, there is no judgment against Pletoses. There was nothing to avoid paying. Previously, the Respondents sought judgment against CNA Surety, which was granted on September 20, 2016, shortly after this lawsuit was filed. Second, there are many conflicts within the Sixth Circuit's opinion. To begin with, for *Rooker-Feldman* to apply, the parties in both actions must be the same. LWA was the party in the state court action. It is not a party here. The court correctly recognizes that the parties in this federal action are "arguably different." App. 13. But, instead of reversing the district court's holding of *Rooker-Feldman* for this reason, and reviewing the case on its merits, the court attempted to rationalize the "same parties" element of *Rooker-Feldman* by

trying to fit a square peg into a round whole. The court referred to the "new parties" as "simply LWA members for their conduct in that capacity and relate to the assessment of LWA debts." App. 7. But there is simply no relationship between LWA, the party in the state action, and the Respondents here. They are not one and the same, and there is not any admitted relationship in the record below.

Even if there was evidence supporting membership in LWA, which there is not, the governing documents of LWA do not grant *members* a right to assess and collect. That right is only afforded to validly elected officers and directors. At a minimum, the evidence does show, and the Respondents do not dispute it, that the alleged president between 2012 and 2017, Giovan Agazzi, was *not* a member of LWA, and could *not* have held and presided over meetings, or conducted elections, as chief executive officer, pursuant to the governing documents. The court should have reversed the district court's *Rooker-Feldman* holding, and reviewed the case on its merits, including a thoughtful analysis of the points in Pletoses' complaint and briefs.

Finally, it is clear that neither court truly believed its own ruling. *Rooker-Feldman* is a jurisdictional doctrine. If all of Pletoses claims truly fell under *Rooker-Feldman*, and there was no jurisdiction, the courts should have stopped there, but neither court did. Instead, they overreachingly began to apply other statutes, rules, or claim preclusion principles, trying once again to fit a square peg into a round hole. Again,

without any thoughtful analysis of the arguments in Pletoses complaint and briefs, and without considering a majority of the claims at all, the Sixth Circuit adopted the district court's opinion where jurisdiction may have been found, App. 13.

On June 26, 2018, a motion for a rehearing and rehearing en banc was denied. App. 41.

REASONS FOR GRANTING THE WRIT

I. THIS COURT SHOULD GRANT REVIEW OF THE SIXTH CIRCUIT'S DECISION BECAUSE IT IS INCONSISTENT WITH SUPREME COURT PRECEDENT, CONFLICTS WITH OTHER DECISIONS OF THE SIXTH CIRCUIT, AND CONFLICTS WITH OTHER CIRCUITS

A. This Court Should Grant Certiorari To Resolve The Conflict Between The Sixth Circuit's Decision And The Decision Of This Court In *Exxon Mobil v. Saudi*, 544 U.S. 280 (2005) Emphasizing That *Rooker-Feldman* Only Applies If A Party Asks For A Review or Rejection Of A State Court Judgment.

By applying *Rooker-Feldman* to the entirety of the Pletoses' claims, the courts below ignored the unambiguous directives of the United States Supreme Court in *Exxon Mobil v. Saudi Basic Indus Corp.*, 544 U.S. 280 (2005). A claim is barred by *Rooker-Feldman* when

brought by " . . . state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." App. 6.

The point was more recently summarized by the Sixth Circuit itself in *Durham v. Haslam*, Unpublished Opinion 12-5965 (6th Cir. 2013), "the pertinent inquiry . . . is whether the 'source of the injury' upon which plaintiff bases [her] federal claim is the state court judgment, not simply whether the injury complained of is 'inextricably intertwined' with the state-court judgment." *Kovacic v. Cuyahoga County Dep't of Children and Family Services*, 606 F.3d 309 (6th Cir. 2010) (citing *McCormick v. Braverman*, 451 F.3d 382, 393-95 (6th Cir. 2006)). To determine whether the plaintiff's complaint seeks appellate review of a state court decision or instead asserts an independent claim for relief, the federal court must examine "the source of the injury the plaintiff alleges in the federal complaint." *McCormick*, 451 F.3d at 393. "*Rooker-Feldman* focuses on whether the state court decision caused the injury," and the "court cannot determine the source of the injury without reference to the plaintiff's request for relief." *Berry v. Schmitt*, 688 F.3d 290, 299 (6th Cir. 2012) (quotation marks and alterations omitted).

The Pletoses' *requests for relief* are contained in the prayer at the close of each count, are strictly financial demands, and are allowed pursuant to the statutes in which they relate. The Amended Complaint also contains two *independent claims*, one for an Accounting,

the second for an Injunction. The courts misconstrued these *independent claims* as demands to set aside the state court judgment, which they were not. App. 9.

A party may assert claims in a federal court, after previous litigation in a state court, if it makes *independent claims*. *McCormick,* 451 F.3d at 382, 392. An *independent claim* is one where a losing party is injured by a third party, and the losing party is not challenging the judgment itself. *Id.*

An injunction is "a writ granted by a court of equity whereby one is required to do or to refrain from doing a specified act." (Merriam Webster Dictionary, online version at www.merriam-webster.com/dictionary.) Pletoses are entitled to an *independent claim*, to assert their contractual and statutory rights as members of LWA, such as the right to review corporate records, participate in meetings and elections, seek relief for damages, and obtain injunctions, among others. To wrongfully interpret and dismiss these injunctions as being demands for a reversal of the state court judgment, strips Pletoses of their fundamental right to contract.

Nothing in these *independent claims* asks for review or rejection of any state court judgment. Pletoses do not complain of the state court judgment, nor does it stand to reason that they would. As the Sixth Circuit acknowledges, Respondents sought, and obtained, a transfer of the state court judgment, albeit fraudulently, to CNA Surety. No judgment exists any longer. App. 4.

Pletoses injunction sought instead to prevent further fraud, and obtain verification of alleged debts and corporate records, as contractually required. "The purpose of an injunction is not to remedy past wrongs, but rather to prevent the occurrence of threatened future wrongs." *United States v. W.T. Grant Co* 345 U.S. 629, 633 (1953) citing *Swift & Co. v. United States*, 276 U.S. 311,326 (1928).

B. This Court Should Grant Certiorari To Resolve Conflicts Within The Sixth Circuit And To Resolve A Split With Other Circuits

The Sixth Circuit is crying out for guidance on the application of *Rooker-Feldman*. That cry can best be heard in the marked skepticism expressed by Judge Guy at the idea that *Rooker-Feldman* would be applicable to any of Pletoses' claims. Judge Guy correctly recognized that the Pletoses asserted *independent* violations based on the collection *methods* employed by the Respondents, and points out that the majority acknowledged this as well, further writing that "In fact, plaintiffs' injury stems not from the state-court judgment, but from the attempts to collect on it." App. 13-14. Judge Guy also writes, "I am concerned that the majority's analysis could be used to insulate any judgment-collection activity – however brazenly unlawful – from the FDCPA or other laws, whenever *Rooker-Feldman* prevents us from reviewing the underlying state-court judgment and injuries caused by that judgment." App. 14.

This conflict apparently exists across panels, and in the interpretation of other Sixth Circuit cases. While the summary of *Rooker-Feldman* in *Durham*, citing to *Kovacic* and *McCormick*, seems clear, the Sixth Circuit in the instant case would not have arrived at the result it did if the interpretation of these Sixth Circuit cases were consistent across panels.

The Pletoses are not alleging injury from the state court judgment, instead the source of the injuries are acts violative of the FDCPA and RICO, by different parties – the Makower Respondents and the individual Respondents, none of whom had any authority to act on behalf of LWA. This Court's findings are inconsistent with *Powers v. Hamilton County Pub. Defender Comm'n*, 501 F.3d 592, 606 (6th Cir. 2007), that held " . . . assertions of injury that do not implicate state court judgments are beyond the purview of the *Rooker-Feldman* doctrine." *Id.* So here again, there are inconsistencies within the Sixth Circuit.

In yet another Sixth Circuit case, *Todd v. Weltman, Weinberg & Reis Co., L.P.A.*, 434 F.3d 432, 437 (6th Cir. 2006), the Sixth Circuit held that violations of the FDCPA alleged in federal court, following a state court judgment, are considered independent federal claims and are not barred by *Rooker-Feldman*. The Court reached its holding stating that Appellants' allegations did not challenge the state court judgment. *Id.* Rather, the bases for the claims arose out of unlawful acts of defendant, a debt collector, in attempts to collect the state court judgment. *Id.* Relying on the affidavit, the state court froze Plaintiff's bank account, which

included exempt assets. *Id.* at 435. Plaintiff filed suit in federal court claiming FDCPA violations. The Sixth Circuit held that these claims were not barred by *Rooker-Feldman*, as these constituted independent federal claims. *Id.*

Similarly, the Makower and individual Respondents unlawful debt collection activities occurred after the state court judgment was entered. The Complaint did not challenge or request review of the state court judgment. Instead, Appellants' claims are centered on the means used to collect the debt post-judgment. While this Court acknowledges the holding in *Todd*, it incorrectly applied this standard. App. 7-8. This Court should have applied the *Todd* court's reasoning. It is clear that the Pletoses' allegations are independent claims. However, the finding in Pletoses case is contrary to this Court's established precedent.

The holdings of the Second, Third, Fifth, Seventh, Eighth, and Ninth Circuits have consistently held that allegations of FDCPA violations, pertaining to collection-related activities occurring after the entry of a state court judgment are beyond the reach of the *Rooker-Feldman* doctrine. Likewise, the Fourth, Seventh, and Ninth Circuits have held that a RICO claim is not barred by the *Rooker-Feldman* doctrine when the moving party is not challenging a state court judgment. Note the circuit split for both the FDCPA and RICO.

The *Rooker-Feldman* doctrine does not bar allegations of FDCPA violations, when the moving party is

challenging the methods used to collect on a state court judgment rather than the judgment itself. *McCrobie v. Palisades Acquisition XVI, LLC*, 664 Fed. Appx. 81, 83 (2nd Cir. 2016).

In *McCrobie*, a judgment was entered in state court against Plaintiff McCrobie for the collection of credit card debt. *McCrobie v. Palisades Acquisition, XVI, LLC*, No. 15-CV-18-JTC, 2016 U.S. Dist. LEXIS 39435, *1 (W.D.N.Y. March 24, 2016). Plaintiff claimed he was not aware of a state court judgment against him until a collections agent arrived at his place of employment seeking satisfaction of the judgment. *Id.* Subsequently, Plaintiff filed suit in district court claiming Defendant Palisades had committed various FDCPA violations. The district court held that Plaintiff's claims were barred by the *Rooker-Feldman* doctrine. *McCrobie*, supra at 82.

The Second Circuit overturned and held that, generally, a district court is not required to review a state court judgment when a party is asserting a violation of FDCPA rights. *Id.* The court found the doctrine was inapplicable since Appellants were not challenging the debt, but rather Defendants' conduct in attempting to collect on that judgment. *Id.*

The *Rooker-Feldman* doctrine does not bar a claim when the moving party " . . . did not have a reasonable opportunity to raise the issue in state court proceedings." *Long v. Shorebank Dev. Corp.*, 182 F.3d 548, 560 (7th Cir. 1999). A party can be denied a reasonable opportunity to bring a claim in state court if the court's

actions or procedures prevent it from doing so. *Id.* at 558. A court may have jurisdiction over an action, even if the federal claims show that the state court judgment was erroneous. *Id.* at 555.

Like in *Long*, Pletoses' claims regarding FDCPA violations and post-judgment actions could not have been heard by the state court, not because of germaneness, but because of impossibility in timing and chronology. Simply put, independent claims made in federal court for the years 2013-2017, had not occurred at the time the state court action was filed in 2012. If this Court were to uphold the lower court opinion, it would illogically be inferring that Pletoses lacked the foresight to predict future potential violations pertaining to post-judgment collection practices. Even if adjudicating such issues before the state court were an option, it would be futile since the events had not yet occurred, meaning Pletoses would have lacked standing. Without the reasonable opportunity to present their claims to the state court, the *Rooker-Feldman* doctrine was applied incorrectly, and this Court should reverse.

A federal claim is not automatically barred by the *Rooker-Feldman* doctrine simply because " . . . a prior collection-related judgment" exists. *Hageman v. Barton*, 817 F.3d 611, 615 (8th Cir. 2016). In *Hageman*, a state court judgment was entered. *Id.* The debt was later assigned to a collection firm that authorized its attorney to proceed in securing payment. *Id.* at 613. Plaintiff filed suit in federal court alleging conduct in violation of the FDCPA, since Defendant

misrepresented his status throughout the debt-collection process. *Id.* at 614.

The court found that many FDCPA allegations are based on unlawful conduct resulting from the underlying state court matter, however, this relationship alone did not invoke the *Rooker-Feldman* doctrine. *Id.* at 615. Allegations of statutory violations and related requests for damages were not challenges to a state court judgment nor are those claims considered requests for subsequent federal review. *Id.* at 616. Like in *Hageman*, Pletoses assert violations of the FDCPA pertaining to collections on a judgment, and unsubstantiated costs in excess of that judgment, which also included misrepresentation of the legal status of the Respondents as valid agents of LWA. As a result, Pletoses filed suit in federal court against Makower et al. for damages from the parties' misconduct. The Sixth Circuit erred in holding that the redress sought in federal court by Pletoses was simply a challenge to a state court judgment. As in *Hageman*, Pletoses are claiming post-judgment statutory violations and are seeking related statutory penalties. As such, these allegations should not be barred by the *Rooker-Feldman* doctrine.

Recent case law has recognized that there are subsequent consequences to state court judgments that are not barred by *Rooker-Feldman*. *Thomas v. Halsam*, No. 3:17cv5, 2018 U.S. Dist. LEXIS 60969, *30 (M.D. Tenn. Mar. 26, 2018). (Exhibit B.) The court held:

> The reality of our legally complex, multi-jurisdictional system is that the judgment of

> a court may be the catalyst of a complex and far-reaching array of events and consequences that go well beyond what the court itself decided.

Id. The court reiterated this point stating " . . . a judgment may echo throughout the life of a litigant, in ways foreseeable and unforeseeable, far beyond the facial terms of the judgment itself." *Id.* This holding was then applied to claims involving disputes over the methods used to collect state court judgments. *Id.* at *32. Citing several similar decisions in other districts and circuits, the court found that the *Rooker-Feldman* doctrine does *not* bar claims alleging violations regarding debt collection practices used to secure post-judgment payment because they are independent claims. *Id.* The court went on to state that the *Rooker-Feldman* doctrine operates to " . . . insulate actual state court judgments, not hypothetical ones." *Id.* at *35.

A RICO claim is not barred by the *Rooker-Feldman* doctrine when the moving party is not requesting reconsideration of a state court's findings on that claim. *Burrell v. Virginia*, 395 F.3d 508, 511 (4th Cir. 2005). In *Burrell*, a Virginia traffic court convicted Appellant of obstruction of justice and failure to maintain insurance. *Id.* Appellant filed suit in district court claiming several violations, including that of RICO, relating to his traffic court conviction. *Id.* The district court held that all of Appellant's claims were barred by the *Rooker-Feldman* doctrine. *Id.* at 512.

On appeal, the court held that the claims were not barred by *Rooker-Feldman* because Appellant "obviously" did not ask the court to reconsider the state court's findings. *Id.*

Similarly, the Ninth Circuit Court of Appeals held that *Rooker-Feldman* does not bar a RICO action that is not directly challenging or requesting relief from a state court ruling. *Greenlaw v. County of Santa Clara*, 125 Fed. Appx. 809 (9th Cir. 2005). Here, Pletoses are very clearly not seeking review of the state court judgment to which Respondents were not even parties. Instead, Pletoses asserted RICO violations based on the independent actions of the Makower and Individual Respondents. Pletoses are not challenging the state court judgment, nor are they seeking further review of the state court's holding, so their RICO claim is not barred by *Rooker-Feldman.*

Rooker-Feldman does not bar federal suits alleging RICO violations where a party is seeking damages for, " . . . a fraud that resulted in an adverse judgment to Plaintiff." *In Re JGWPT Holdings, Inc.*, No. 15-8005, 2015 U.S. App. Lexis 23203, *4 (7th Cir. April 9, 2015) (Exhibit D.) A federal court has jurisdiction over a claim where a plaintiff " . . . contends . . . out-of-court events have caused injury that the state judiciary failed to detect and repair . . . " *Id.* (quoting *Iqbal v. Patel*, 780 F.3d 728, 730 (7th Cir. 2015)). However, that jurisdiction is limited to a review of that injury only. *Id. Rooker-Feldman* does not bar allegations of extrajudicial injury. *Id.* (quoting *Johnson v. Pushpin Holdings, LLC*, 748 F.3d 769, 773 (7th Cir. 2014)). The newly

discovered evidence regarding Agazzi's lot ownership and the subsequent filing of a fraudulent deed applies here.

II. THIS COURT SHOULD GRANT CERTIORARI BECAUSE THE SIXTH CIRCUIT'S DECISION UNDERMINES THE FUNDAMENTAL PURPOSE OF THE FDCPA AND RICO STATUTES.

This Court's decision raises questions of exceptional importance in that it relates, in part, to interpretations of the FDCPA and debt collection, highly litigated issues in the state and federal courts. The highest percentage of consumer reports, a whopping 22.74%, or 608,535 consumer reports related to debt collection, were filed with the Federal Trade Commission in 2017.[4] The purpose of the FDCPA is clear, "to eliminate abusive debt collection practices by debt collectors . . . and to promote consistent State action to protect consumers against debt collection abuses." 15 U.S.C. § 1692(e). It is further clear that the term "debt" refers to any obligation, "*whether or not such obligation has been reduced to judgment.*" (emphasis added). 15 U.S.C. § 1692a(5). Furthermore, 15 U.S.C. § 1692e(2)(A), (5) and (10), at a minimum, make it unlawful to make false representations as to "the character, amount, or legal status of any debt", to "threaten to take any action that cannot legally be taken or that is not intended

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[4] Stats & Data 2017, Federal Trade Commission, www.ftc.gov/reports/annual-highlights-2017/stats-and-data.

to be taken", and to "use any false representation or deceptive means to collect or attempt to collect any debt . . . "

Similarly, RICO, 18 U.S.C. § 1961-1968 was intended to provide criminal penalties and civil causes when acts are performed as part of an ongoing criminal enterprise. *Ouwinga v. Benistar 419 Plan Services, Inc.*, No. 10-2531 (6th Cir. 2012) further explains, citing *Hofstetter v. Fletcher*, 905 F.2d 897 (6th Cir. 1988), and Supreme Court directive, that liberal construction of the RICO statute is necessary to effectuate its remedial purpose. *Hofstetter* directly addresses the issue:

> "RICO applies both to legitimate enterprises conducted through racketeering operations as well as illegitimate enterprises." *United States v. Qaoud*, 777 F.2d 1105, 1115 (6th Cir. 1985) (citing *United States v. Turkette*, 452 U.S. 576 (1981)). In *Qaoud*, we held that although "enterprise" and "pattern of racketeering activity" are separate elements, they may be proved by the same evidence.

905 F.2d at 903.

The Respondents' fraudulent acts and active concealment between 2012 and 2017 established a "pattern" of racketeering that cannot be barred by *Rooker-Feldman*, as other circuits have found (*Burrell, Greenlaw)*. Nor can *Rooker-Feldman* be used to shield fraud that resulted in an adverse judgment, from a RICO claim. (*In Re JGWPT Holdings*). The Sixth Circuit's opinion conflicts with these other circuits and requires

review by this Court. It is clear that year over year, the Respondents were using the Lake in the Woods Association to conduct an enterprise. An enterprise is either the "prize," "instrument," "victim," or "perpetrator" of the racketeers, as explained in the authoritative holding of this court in *National Organization for Women, Inc. v. Scheidler*, 510 U.S. 249, 259 n.5 (1994),[5] In the instant case, the LWA was the means or "instrument" that formed the enterprise, through which the Makower and individual Respondents engaged in a pattern of racketeering.

Despite the clear language of the FDCPA and RICO, the decisions below grant an unduly narrow reading of these statutes, and decline to acknowledge the fundamental purpose for which they were created. There is no practical reason for the Sixth Circuit to adopt a categorical rule excluding new and distinct acts of fraud, and abusive post-judgment collections, from the FDCPA or RICO statutes.

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[5] "As the Supreme Court noted in *National Organization for Women, Inc. v. Scheidler*, 510 U.S. 249, 259 n.5 (1994), one commentator has used "the terms 'prize,' 'instrument,' 'victim,' and 'perpetrator' to describe the four separate roles the enterprise may play in § 1962." (citing *G. Robert Blakey*, The RICO Civil Fraud Action in Context: Reflections on Bennett v. Berg, 58 Notre Dame L. Rev. 237, 307-25 (1982)). See page 32 of RICO State by State: A Guide to Litigation under the State Racketeering Statutes, John E. Floyd, Section of Antitrust Law, American Bar Association, Library of Congress Catalog Card Number 97-70903, *ISBN 1-57073-396-1.*

III. THIS COURT SHOULD GRANT CERTIORARI BECAUSE THE SIXTH CIRCUIT'S DECISION DENIES PLETOSES THEIR FUNDAMENTAL RIGHT TO CONTRACT AND TO RECEIVE A FULL AND FAIR LITIGATION.

The decision below stripped Pletoses of their fundamental right to contract. First, it dismissed the Accounting and Injunctive Relief claims, specific relief allowed pursuant to the governing documents and the Michigan Nonprofit Corporation Act. These claims were dismissed without any discussion on the merits. Yet, they were key to establishing and proving the fraudulent misrepresentations of the Respondents. The court acknowledges that Pletoses repeatedly attempted to obtain the corporate records, identification of the directors and officers, and verification of the debt. App. 19, 20, 23, 24. But these demands were not met by either LWA or the Respondents. Even though Pletoses have contractual rights to receive this information, the lower courts disregarded their requests for an Accounting and Injunctive Relief, which were intended to exercise this right, and be a first step toward full and fair litigation.

The Accounting was crucial to verifying any alleged debt owed. Demands for payment of nearly $35K (App. 20), were being made to Pletoses, Attorney Bowlin, and CNA Surety at various times, yet, no one could, or did, verify the debt. App. 20, 21, 22. With a stay of proceedings in place on appeal, and no collection activity allowed prior to the lifting of the stay, it is

difficult to understand how a judgment can grow from $20,553.64, to nearly $35K. Indeed, it is difficult to understand why payment is being demanded in February 2016, when the case was still on appeal, and the stay had not been lifted. App. 20. Again, members of LWA have contractual rights to receive corporate records on their own accounts, and have this debt verified.

Importantly, these injunctions were key to ensuring that no additional misrepresentations could occur, and that only authorized individuals had the ability to assess, collect, and spend corporate funds. The district court got it wrong. Pletoses' injunction, asking that the Respondents "immediately cease and desist from any collection activity until the rights and responsibilities of the parties can be ascertained," had nothing to do with trying to stop the collection of a judgment. App. 23. There was no longer a judgment against Pletoses. Its purpose was to prevent all homeowners from being subjected to fraud and collection efforts by parties who had no authority to collect. It is inconceivable that the lower court's ruling continues to allow Agazzi access to corporate funds when he does not own a lot in the subdivision. The ruling condones the very fraud Pletoses sought to prevent. In fact, it appears to retroactively grandfather in the Respondents, as agents of LWA since 2012, without any proof or admission in this regard. "The purpose of an injunction is not to remedy past wrongs, but rather to prevent the occurrence of threatened future wrongs." *United States v. W.T. Grant Co* 345 U.S. 629, 633 (1953) citing *Swift & Co. v. United States*, 276 U.S. 311, 326 (1928).

IV. THIS COURT SHOULD GRANT CERTIORARI BECAUSE THE SIXTH CIRCUIT'S INTERPRETATION OF "IDENTICAL" CLAIMS IS OVERREACHING.

Although there have been countless Supreme Court decisions concerning *Rooker-Feldman*, there is no known case that addressed the issues here in quite the same context. Here, the lower courts categorically lumped all claims together, calling them "identical", to the 2012 state court action, despite them being distinct, and for later years. This case warrants drawing a distinction based on the unique parties, years, communications, and instances of fraud and active concealment. If anything, there is only a slight "nexus" with the state court judgment, based upon newly discovered evidence that suggests fraud in procuring the 2013 judgment. This case provides the Court with an ideal opportunity to further explain whether and when newly discovered evidence suggesting fraud in procuring a judgment affords a party additional claims.

The panel's opinion holding that the claims in later years are "identical", fails to take into account meaningful differences. Black's Law Dictionary Free Online Legal Dictionary 2nd Ed. defines "identical" as "the word used to describe a thing that is the same as something else in *all* respects." (emphasis added). LWA is governed by statutes and contracts. There can be changes in lot ownership, membership, directors, officers, expenditures, budgets, meetings, assessments, and the like, on a continuing basis. Every year, every day and every action is unique. Merely because there was

a 2012 action, it does not follow that fraudulent actions in any year following must be deemed "identical."

None of these claims could have been predictable and should not have been dismissed without a fair trial. "A question cannot be held to have been adjudged before an issue on the subject could possibly have arisen." *Third Nat. Bank of Louisville v. Stone* 174 U.S. 432, 434 (1899). *Whole Woman's Health v. Hetterstedt*, 136 S. Ct. 2292 (2016).

As one example, the 2013 judgment awarded LWA $20,553.64, as well as "additional legal fees that [the LWA] *reasonably* incurs in attempting to collect the aforementioned sums due and owing . . . " (emphasis added). App. 18. The *reasonableness* of future attorney fees cannot be "identical" or predicted, and must be adjudicated. Without a fair trial, any post-judgment demands for attorney fees contained in statements sent to Pletoses, Attorney Bowlin, or CNA Surety before adjudication are violations of the FDCPA. App. 20, 21, 22, 23. (See *Stolicker v. Muller, Muller, Richmond*, 387 F. Supp. 2d 752 (W.D. Mich. 2005); citing *Zeeland Farm Services v. JBL*, 555 N.W.2d 733 (Mich. App. 1996); see also *Wise v. Zwicker & Associates*, No. 14-3278 (6th Cir. 2015); *Durham v. Makower Abbate*, 2:16-cv-12785 (E.D. Mich. 2016); *Ditty v. Checkrite Ltd., Inc.*, 973 F. Supp. 1320 (D. Utah 1997); *Veach v. Sheeks*, 316 F.3d 690 (7th Cir. 2003)). In *Durham v. Makower Abbate*, FDCPA claims were allowed to proceed against Makower, a Respondent herein, because "Makower was not a party to the first suit" as is the case with Pletoses. Notably, when the state court granted judgment against CNA

Surety on September 20, 2016, after this action began, it found all of the legal fees demanded by the Respondents were unreasonable, a sure confirmation that the demands were volatile of the FDCPA.

CONCLUSION

The petition for a writ of certiorari should be granted.

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