APPENDIX A

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MARTHA A. MCNAIR, an individual, *Plaintiff-Appellant*, v. MAXWELL & MORGAN PC, an Arizona professional corporation; CHARLES E. MAXWELL, husband; W. WILLIAM NIKOLAUS, husband; LISA MAXWELL, wife; LESLIE NIKOLAUS, wife, *Defendants-Appellees.*	No. 15-17383 D.C. No. 2:14-cv-00869-DGC OPINION

Appeal from the United States District Court
for the District of Arizona
David G. Campbell, District Judge, Presiding

Argued and Submitted September 14, 2017
San Francisco, California

Filed June 25, 2018.

Before: Jay S. Bybee* and Michelle T. Friedland, Circuit Judges, and Janet Bond Arterton,** District Judge.

Opinion by Judge Arterton

COUNSEL

Douglas C. Wigley (argued) and Jonathan A. Dessaules, Dessaules Law Group, Phoenix, Arizona, for Plaintiff-Appellant.

Robert Travis Campbell (argued), Jeffrey A. Topor, and Tomio B. Narita, Simmonds & Narita LLP, San Francisco, California, for Defendants-Appellees.

OPINION

ARTERTON, District Judge:

Plaintiff Martha McNair appeals the district court's grant of Defendant's summary judgment motion in her action under the Fair Debt Collection Practices Act ("FDCPA" or the "Act") and its denial of McNair's motion for partial summary judgment. McNair's complaint alleged that Defendants, including the law firm Maxwell & Morgan P.C., violated the FDCPA in their

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* Following the retirement of Judge Kozinski, Judge Bybee was randomly drawn to replace Judge Kozinski on the panel. Judge Bybee has read the briefs, reviewed the record, and watched a video recording of the oral argument held on September 14, 2017.

** The Honorable Janet Bond Arterton, United States District Judge for the District of Connecticut, sitting by designation.

efforts to collect unpaid homeowner association assessments and other charges that she allegedly owed their client, the Neely Commons Community Association ("Association"). In the Memorandum Disposition filed together with this Opinion, we affirm the district court's conclusion that all but two of Plaintiff's FDCPA claims were untimely and the grant of summary judgment to Defendants on Plaintiff's timely claim that Defendant violated the FDCPA by not responding expeditiously to Plaintiff's requests for a statement of the amount she owed.

The district court also granted summary judgment to Defendants on Plaintiff's sole other timely claim, which alleged that in judicial proceedings in 2013 and 2014, Defendants misrepresented the amount of Plaintiff's debt and sought attorneys' fees to which they were not entitled. With respect to this claim, we reverse the district court's grant of summary judgment against Plaintiff and denial of Plaintiff's motion for partial summary judgment, as explained herein.

Because most of the facts in this decade-long saga bear little or no relevance to the basis for this Opinion, we do not recite the entire history of the case, which was ably summarized in the district court's decision. As relevant here, Plaintiff bought a home in Gilbert, Arizona in 2004 that was part of the Neely Commons Community Association. Plaintiff was required, under a declaration of covenants, conditions, and restrictions, to pay an annual assessment to the Association in monthly installments. When an owner fails to pay an installment, after the Association makes a written

demand, the Association can record a notice of lien on the owner's property. The Association has the right to collect the debt, including late fees, costs, and attorneys' fees, by suing the owner or by bringing an action to foreclose the lien.

Defendants first notified Plaintiff in 2009 of her failure to pay a debt arising out of her homeowner association assessment. Defendants represented the Association in suing Plaintiff, after which the parties entered into a payment agreement. After Plaintiff defaulted on the agreement, Defendants revived the lawsuit and obtained a default judgment in 2010. As the district court noted, the record is silent as to what occurred in 2011. In 2012, Defendants represented the Association in suing Plaintiff again, and the parties agreed to a new payment plan and to execute a stipulated judgment against Plaintiff that recognized the Association's right to collect the debt by selling Plaintiff's home. Plaintiff failed to make all of the required monthly payments. In November 2013, Defendants requested via praecipe, and the Maricopa Superior Court granted, a writ of special execution for foreclosure on Plaintiff's house. The property was sold for $75,000 at a foreclosure sale, and Defendants and their client received a total of $11,600.13 in satisfaction of the debt, including attorneys' fees and costs.

The district court rejected Plaintiff's claim that Defendants violated the FDCPA in judicial proceedings in 2013 and 2014 by misrepresenting the amount of Plaintiff's debt and seeking attorneys' fees to which they were not entitled, on two separate and apparently

independent grounds. First, the district court held that Defendants were not engaged in "debt collection" as defined under the FDCPA. Second, the district court held that Defendants' filing of the writ did not violate the FDCPA because the Maricopa County Superior Court later approved the attorneys' fees claimed in the writ. We disagree with both grounds and therefore reverse.

Writing without the benefit of our subsequent published opinions, discussed *infra*, the district court concluded that Defendants were not engaged in "debt collection" as defined under the FDCPA because the writ was filed in order to foreclose on a lien. We now clarify that Defendants' effort to collect homeowner association fees through judicial foreclosure constitutes "debt collection" under the Act.

Under the FDCPA, a "debt" is "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. § 1692a(5). The Act "defin[es] the term 'debt collector' to embrace anyone who 'regularly collects or attempts to collect . . . debts owed or due . . . another.'" *Henson v. Santander Consumer USA Inc.*, 137 S.Ct. 1718, 1721 (2017) (citing 15 U.S.C. § 1692a(6)) (alterations in original).

This statutory language notwithstanding, the district court concluded that "Defendants' filing of the

writ did not constitute a violation" of the Act, relying in part on *Hulse v. Ocwen Fed. Bank, FSB*, 195 F.Supp.2d 1188, 1204 (D. Or. 2002), for the proposition that foreclosure proceedings are not the collection of a debt for purposes of the Act.

The district court's holding cannot be reconciled with the language of the FDCPA. The record makes clear that Defendants were in fact "debt collectors" collecting "debt." The debt here accrued as a result of Plaintiff's failure to pay homeowner association fees. Accordingly, Plaintiff's "obligation . . . to pay money ar[ose] 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[.]" 15 U.S.C. § 1692a(5) (defining "debt" under the Act); *see also Mashiri v. Epsten Grinnell & Howell*, 845 F.3d 984, 989-90 (9th Cir. 2017) (concluding that attorneys' collection letter regarding failure to pay homeowner's assessment fee constituted debt collection under the FDCPA). And "attorneys who 'regularly' engage in consumer-debt-collection activity" are debt collectors under the Act, "even when that activity consists of litigation." *Heintz v. Jenkins*, 514 U.S. 291, 299 (1995).

Nonetheless, Defendants contend that under our recent decision in *Ho v. ReconTrust Co., NA*, 858 F.3d 568 (9th Cir.), *cert. denied*, 138 S.Ct. 504 (2017), they "are not debt collectors when pursuing a foreclosure to enforce a security interest." In *Ho*, we held that a trustee in a non-judicial foreclosure scheme that does not allow for deficiency judgments was not engaged in

"debt collection" under the FDCPA. *See id.* at 572 ("[A]ctions taken to facilitate a non-judicial foreclosure . . . are not attempts to collect 'debt' as that term is defined by the FDCPA.").

Our decision in *Ho* does not, however, preclude FDCPA liability for an entity that seeks to collect a debt through a *judicial* foreclosure scheme that allows for deficiency judgments. In *Ho*, we noted that because "[t]he object of a non-judicial foreclosure is to retake and resell the security, not to collect money from the borrower[,]" and because "California law does not allow for a deficiency judgment following non-judicial foreclosure[,]" "the foreclosure extinguishes the entire debt even if it results in a recovery of less than the amount of the debt." *Id.* at 571-72 (citing Cal. Civ. Code § 580d(a); *Burnett v. Mortg. Elec. Registration Sys., Inc.*, 706 F.3d 1231, 1239 (10th Cir. 2013); *Alaska Tr., LLC v. Ambridge*, 372 P.3d 207, 228 (Alaska 2016) (Winfree, J., dissenting)). Accordingly, we held that "actions taken to facilitate a non-judicial foreclosure, such as sending the notice of default and notice of sale, are not attempts to collect 'debt' as that term is defined by the FDCPA." *Id.* at 572. Here, by contrast, Defendants filed the Praecipe and Writ in order to collect a debt arising from Plaintiff's failure to pay homeowner association fees as part of a judicial foreclosure scheme that in many cases allows for deficiency judgments. *See* Ariz. Rev. Stat. §§ 33-727(A), 33-729(B)-(C). Therefore, and

for the reasons discussed above, this action constitutes debt collection under the FDCPA.[1]

As an independent basis for summary judgment, the district court also concluded that the Maricopa County Superior Court implicitly approved the attorneys' fees claimed, first by issuing the writ and later by rejecting Plaintiff's subsequent challenges to the amount of fees made in Plaintiff's motion to cancel the sheriff's sale and in Plaintiff's motion for relief from judgment. In so doing, however, the district court failed to examine whether Defendants were legally entitled to claim the attorneys' fees owed at the time Defendants made the writ application.

In Arizona, a party that has obtained a judgment "may have a writ of execution or other process issued for its enforcement." Ariz. Rev. Stat. § 12-1551(A). And in Maricopa County, in order to request issuance of a post-judgment writ of special execution, a party must file a praecipe or an application in writing with the Clerk of the Superior Court. 17C Ariz. Rev. Stat. Super. Ct. Local Prac., Maricopa Cty., R. 3.5.

The Praecipe filed by Defendants on November 5, 2013 requested that the Clerk of the Maricopa County

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[1] The district court relied on *Hulse*, 195 F.Supp.2d at 1204, as described *supra*, for the broad proposition that foreclosure proceedings are categorically not debt collection for purposes of the FDCPA. *Ho* subsequently endorsed *Hulse* for the more limited proposition that " 'foreclosing on a *trust deed* is an entirely different path' than 'collecting funds from a debtor.' " 858 F.3d at 572 (emphasis added) (quoting *Hulse*, 195 F.Supp.2d at 1204). *Hulse*, like *Ho*, involved a non-judicial foreclosure, unlike here.

Superior Court issue the attached Writ of Special Execution against McNair. The Writ states that "attorney fees of $1,687.50, plus accruing attorney fees of $1,597.50 . . . are now at the date of this Writ due" under the stipulated judgment executed by both parties on June 27, 2012 and adopted by order of the Superior Court on July 12, 2012.

Under the FDCPA, debt collectors "may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt." 15 U.S.C. § 1692e. This includes "[t]he false representation of the character, amount, or legal status of any debt[.]" *Id.* § 1692e(2)(A). In Arizona, requests for post-judgment attorneys' fees must be made in a motion to the court. *See* Ariz. R. Civ. P. 54(g). The record reflects that at the time the Writ was filed, no court had yet approved the quantification of the "accruing" attorneys' fees claimed in the Writ.[2] Accordingly, Defendants falsely represented the legal status of this debt, by implicitly claiming that the accruing attorneys' fees of $1,597.50 already had been approved by a court. *See Woliansky v. Miller*, 704 P.2d 811, 813 (Ariz. Ct. App. 1985) ("The determination of the reasonable amount of attorney fees was peculiarly within the discretion of the trial court."); *Costa v. Maxwell & Morgan PC*, No. CV-15-00315-PHX-NVW, 2015 WL 3490115, at *6 (D. Ariz. June 3, 2015) (plaintiff stated claim that Maxwell

[2] The stipulated judgment provided only that Plaintiff owed "attorney fees . . . in an amount of $1,687.50, plus accruing attorney fees incurred hereafter[.]"

& Morgan PC violated § 1692e(2) by "demanding attorneys' fees not [yet] approved by a court").

Because the district court granted summary judgment to Defendants on this claim, it did not assess what actual damages, if any, Plaintiff may have suffered as a result of this violation. While Plaintiff may not have suffered any actual damages in light of the Superior Court's later approval of these attorneys' fees, the district court should determine the statutory (and, if applicable, actual) damages to which Plaintiff is entitled. *See* 15 U.S.C. § 1692k. Accordingly, we remand to the district court for a determination on damages.

REVERSED AND REMANDED IN PART.

Each party shall bear their own costs.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

Martha A. McNair,

Plaintiff,

v.

MAXWELL & MORGAN PC, et al.,

Defendants.

No. CV-14-00869-PHX-DGC.

AMENDED ORDER

(Filed Nov. 4, 2015)

This case involves Defendants' efforts to collect debts owed by Plaintiff Martha McNair. She claims that Defendants' actions violated numerous provisions of the Fair Debt Collection Practices Act ("FDCPA"). The parties have filed cross motions for summary judgment (Docs. 80, 100) and the Court heard oral arguments on September 18, 2015 (Doc. 123). Upon the parties' separate requests for reconsideration,[1] the Court will deny Plaintiff's motion and grant Defendants' motion.[2]

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[1] On September 22, 2015, the Court issued an order denying Plaintiff's motion for summary judgment and granting in part Defendants' motion for summary judgment. Doc. 124. Both parties moved for reconsideration of Section III(B)(2)(a) of the order. Docs. 126, 130. By separate order, the Court granted both motions for reconsideration. This amended order reflects the Court's ruling on reconsideration and replaces the Court's September 22, 2015 order.

[2] Defendants move to strike Plaintiff's motion for summary judgment. Doc. 99. They argue that Plaintiff violated the Court's

I. Background.

In August 2004, Plaintiff acquired a home in Gilbert, Arizona. Doc. 81-1 at 2. The home was part of the Neely Commons Association ("Association") and was subject to a declaration of covenants, conditions, and restrictions. *Id.* at 8-42. Under this declaration, owners are required to pay an annual assessment to the Association. *Id.* at 16. The Association can require an owner to pay the assessment in monthly installments. *Id.* at 16-20. If the owner fails to pay an installment, the Association can impose a late charge of fifteen dollars and make a written demand for payment of the debt and additional costs. *Id.* at 20. If the owner fails to pay the amount within ten days, the Association can record a notice of lien on the owner's property. *Id.* at 21. The Association has the right to collect the debt, along with late charges, costs, and attorneys' fees, by suing the owner or bringing an action to foreclose the lien. *Id.*

Plaintiff became delinquent in paying her annual assessment. On November 4, 2009, Charles Maxwell of the firm Maxwell & Morgan P.C. sent a letter to Plaintiff notifying her of the debt and stating that he may take legal action if she failed to pay. *Id.* at 61. On December 21, 2009, Maxwell filed suit against Plaintiff in

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case management order and the local rules by placing their legal citations in footnotes, filing a statement of facts that is more than ten pages long, and not double-spacing the motion text. Plaintiff apologizes for these violations, but argues that she did double-space the text in her motion. Striking Plaintiff's motion is too harsh a remedy for these violations, but Plaintiff's counsel is admonished to follow the case management order and local rules in the future.

the Highland Justice Court, alleging that she owed $697. *Id.* at 64-65. In January 2010, Plaintiff and Maxwell entered into a payment agreement, under which Plaintiff was to pay $500 immediately and $100 a month until her debt was paid off. *Id.* at 75. Plaintiff paid the $500 and three of the monthly $100 payments before defaulting. Doc. 81, ¶ 22. In June and September of 2010, Plaintiff made additional payments totaling $500. Doc. 81-1 at 88, 104. On July 19, 2010, Maxwell revived the justice court lawsuit and sought a default judgment. *Id.* at 92-93. The court entered judgment on "November 22, 2010, for $1,466.80. *Id.* at 96-97. Maxwell subsequently sent Plaintiff a letter demanding payment of the judgment. *Id.* at 114.

The record is silent as to what occurred in 2011. On April 30, 2012, Maxwell filed a new lawsuit in Maricopa County Superior Court. *Id.* at 121. He alleged that Plaintiff's debt had grown to $4,027.24. *Id.* at 122. William Nikolaus, who also worked at Maxwell & Morgan, notified Plaintiff of the lawsuit and stated that the total amount due was $6,307.24, which included $2,280 in attorneys' fees and costs. *Id.* at 128. Plaintiff offered to enter a payment plan, which Nikolaus accepted on the condition that Plaintiff sign a stipulated judgment. Doc. 101-1 at 36. On June 29, 2012, Plaintiff and Maxwell signed a stipulated judgment that recognized the Association's right to collect the debt by selling Plaintiff's home. Doc. 81-1 at 130-33. In the stipulated judgment, the Association agreed not to execute on the judgment if Plaintiff made an initial

payment of $2,500 and additional payments of $250 a month until the debt was satisfied. *Id.* at 132.

Plaintiff paid the initial $2,500 and ten monthly payments of $250 through May of 2013. Doc. 81, ¶ 57. On May 5, 2013, she sent a letter to Nikolaus asking how much she still owed. Doc. 81-2 at 27. On August 21, 2013, Nikolaus notified Plaintiff that she had failed to make the required payments, including payments for her 2013 annual assessment. *Id.* at 31. Nikolaus told her to review the stipulated judgment and warned that the Association might take legal action. *Id.* On September 23, 2013, Plaintiff paid $275.74 and asked Nikolaus to inform her if she owed anything else. *Id.* at 45.

In November 2013, Maxwell requested, and the Superior Court granted, a writ of special execution for foreclosure on Plaintiff's house. *Id.* at 49-53. The writ stated that Plaintiff owed $4,791.58. *Id.* at 53. The sheriff held a foreclosure sale on January 9, 2014, the property was sold for $75,000, and Defendants received $5,559.74. Doc. 81, ¶¶ 75-76. On May 14, 2014, the Superior Court awarded the Association an additional $6,040.39 from the proceeds of the sale for attorneys' fees and costs. Doc. 81-2 at 70-71.

Plaintiff filed this lawsuit on April 24, 2014, naming as Defendants Maxwell & Morgan, Charles Maxwell, William Nikolaus, and their spouses. Doc. 1. She claims that Defendants violated the FDCPA by misrepresenting the amount and character of her debt, failing to account for the payments she made,

misrepresenting the amount of her debt to the justice court, taking actions that Arizona law prohibits, initiating multiple lawsuits over the same debt, and refusing to explain the amount she owed. Doc. 80.

II. Legal Standards.

Summary judgment is appropriate if the evidence, viewed in the light most favorable to the nonmoving party, shows "that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Summary judgment is also appropriate against a party who "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Only disputes over facts that might affect the outcome of the suit will preclude the entry of summary judgment, and the disputed evidence must be "such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

"The FDCPA was enacted to eliminate abusive debt collection practices, to ensure that debt collectors who abstain from those practices are not competitively disadvantaged, and to promote consistent state action to protect consumers. 15 U.S.C. § 1692(e); *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. 573, 577 (2010). The FDCPA regulates interactions between consumer debtors and "debt collector[s]," defined to include any person who "regularly

collects . . . debts owed or due or asserted to be owed or due another." 15 U.S.C. § 1692a(6). A lawyer regularly engaged in debt collection activity, even litigation, is considered a debt collector. *See Heintz v. Jenkins*, 514 U.S. 291, 299 (1995). A debt collector "who fails to comply with any provision of [the FDCPA] with respect to any person is liable to such person" for actual damages and additional damages not to exceed $1,000. 15 U.S.C. § 1692k(a).

The FDCPA is a strict liability statute. *Clark v. Capital Credit & Collection Servs., Inc.*, 460 F.3d 1162, 1175 (9th Cir. 2006). It prohibits a wide array of abusive and unfair practices. *See Heintz*, 514 U.S. at 292-93. In deciding whether a debt collector has violated the FDCPA, courts assess the debt collector's conduct from the perspective of a hypothetical "least sophisticated debtor." *See Guerrero v. RJM Acquisitions LLC*, 499 F.3d 926, 934 (9th Cir. 2007) (citing *Clark*, 460 F.3d at 1171; *Wade v. Reg'l Credit Ass'n*, 87 F.3d 1098, 1099-1100 (9th Cir. 1996)). The "least sophisticated debtor" standard protects the "naïve and trusting" debtor while shielding debt collectors "against liability for bizarre or idiosyncratic interpretations of collection notices." *Isham v. Gurstel, Staloch & Chargo, P.A.*, 738 F. Supp. 2d 986, 995 (D. Ariz. 2010) (quotation marks and citation omitted). The FDCPA is a remedial statute and should be interpreted liberally to protect debtors from abusive debt collection practices. *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015, 1025 (9th Cir. 2012).

III. Analysis.

In their cross motion for summary judgment, Defendants argue that (1) the FDCPA's statute of limitations bars most of Plaintiff's claims, (2) the FDCPA does not apply to those claims that arise out of Defendants' foreclosure action, (3) the stipulated judgment authorized the amounts the Defendants sought in the foreclosure action, and (4) res judicata and collateral estoppel bar many of Plaintiff's claims.[3] In "response to Plaintiff's motion, Defendants argue that their 2013 communications with Plaintiff were neither false nor misleading, and did not constitute unfair or

[3] During oral argument, Defendants made several arguments not found in their cross motion for summary judgment. These include that Defendants are not debt collectors, that the amounts they sought to recover in this case were not debts, that the misstatements in their communications or filings were not material, and that they cannot be lumped together as a single group of defendants. Defendants argued that Plaintiff was required to come forward with evidence on each of these issues because she will bear the burden of proof at trial. The Court does not agree. In describing proper summary judgment procedure, the Supreme Court has explained that "a party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion." *Celotex*, 477 U.S. at 323. If a defendant asserts that a plaintiff lacks evidence on a particular element of her claim, the plaintiff must come forward with evidence on that element to avoid summary judgment. *Id.* at 322. But when a defendant does not identify an alleged deficiency in the plaintiff's proof, the plaintiff is not required to come forward with evidence to disprove the deficiency at the summary judgment stage. True, the plaintiff will be required to prove all elements of her claim at trial, but she need only respond at the summary judgment stage to arguments made in the motion for summary judgment.

unconscionable means of collecting a debt. The Court finds Defendants' arguments dispositive.

A. Statute of Limitations.

Under the FDCPA, a plaintiff must bring suit "within one year from the date on which the violation occurs." 15 U.S.C. § 1692k(d). Plaintiff filed her complaint on April 24, 2014, but many of the alleged FDCPA violation occurred before April of 2013. Plaintiff urges the Court to adopt the continuing-violation doctrine. Plaintiff also argues that her claims are timely because the discovery of her injury – the foreclosure of her house – occurred less than a year before she filed suit.

The continuing-violation doctrine has roots in the common law. Kyle Graham, *The Continuing Violations Doctrine*, 43 Gonz. L. Rev. 271, 308 (2008) (discussing early versions of the doctrine in trespass and nuisance suits from the 1500s). Broadly speaking, the doctrine permits a plaintiff to recover "for actions that take place outside the limitations period if these actions are sufficiently linked to unlawful conduct within the limitations period." *Sosa v. Utah Loan Servicing, LLC*, No. 13-CV-364-W(KSC), 2014 WL 173522, at *4 (S.D. Cal. Jan. 10, 2014) (quotation marks and citation omitted). Some courts have described this as a tolling doctrine, but most treat it as a doctrine governing accrual. *Heard v. Sheahan*, 253 F.3d 316, 319 (7th Cir. 2001) (collecting cases); *see also Pisciotta v. Teledyne Indus., Inc.*, 91 F.3d 1326, 1332 (9th Cir. 1996) ("Under [the

continuing-violation] theory, the statute of limitations does not begin to run until the last breach occurs."). In the context of statutorily-created causes of action, the applicability of the doctrine is a question of statutory interpretation. *See, e.g.*, *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 109-10 (2002); *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 380 (1982).

The FDCPA states that "[a]n action to enforce any liability created by this subchapter may be brought . . . within one year from the date on which the violation occurs." 15 U.S.C. § 1692k(d). By referring to "the violation," the statute could be read as referring to a single act, but courts could also consider an ongoing violation of the FDCPA to be one violation that consisted of several parts. Some courts have adopted this view, holding that when "the conduct complained of [under the FDCPA] constitutes a continuing pattern and course of conduct as opposed to unrelated discrete acts," then the entirety of that conduct is a single violation of the FDCPA. *See Joseph v. J.J. Mac Intyre Cos., LLC*, 281 F. Supp. 2d 1156, 1161-62 (N.D. Cal. 2003) (applying the doctrine when the defendant had made hundreds of repeated, automated collection calls to Plaintiff over an 18 month period).[4] Under this approach, a plaintiff's claim regarding a continuing pattern of FDCPA violations could accrue on the date of

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[4] *See also Sosa*, 2014 WL 173522, at *4; *Bennett v. Portfolio Recovery Assocs., LLC*, No. CV-12-9827-DSF, 2013 WL 6320851, at *2 (C.D. Cal. Nov. 22, 2013); *Guillen v. Bank of Am. Corp.*, No. 5:10-CV-05825 EJD, 2011 WL 4071996, at *5 n.3 (N.D. Cal. Aug. 31, 2011).

the most recent violation and a defendant could be liable for conduct that otherwise falls outside of the limitations period.

The Supreme Court has provided guidance on the distinction between a continuing violation and a series of individual violations. *See Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007); *Morgan*, 536 U.S. at 109-11. Title VII requires a claimant to file a claim within 180 days "after the alleged unlawful employment practice occurred." 42 U.S.C. § 2000e-5(e)(1). Interpreting this language, the Supreme Court found that "[t]here is simply no indication that the term 'practice' converts related discrete acts into a single unlawful practice for the purposes of timely filing." *Morgan*, 536 U.S. at 111. For that reason, "[d]iscrete acts such as termination, failure to promote, denial of transfer, or refusal to hire" do not call for application of the continuing-violation doctrine, even when a time-barred discriminatory act is related to more recent acts. *Id.* at 114.

The Supreme Court has adopted a different approach, however, for hostile work environment claims under Title VII. It has explained that such claims:

> are different in kind from discrete acts. Their very nature involves repeated conduct. The 'unlawful employment practice' therefore cannot be said to occur on any particular day. It occurs over a series of days or perhaps years and, in direct contrast to discrete acts, a single act of harassment may not be actionable on its own. . . . Such claims are based on the

> cumulative effect of individual acts. . . . A hostile work environment claim is composed of a series of separate acts that collectively constitute one 'unlawful employment practice.' . . . [Thus, p]rovided that an act contributing to the claim occurs within the filing period, the entire time period of the hostile environment may be considered by a court for the purposes of determining liability.

Id. at 115-17 (quotation marks and citations omitted).

The Court finds that "the violation" in the FDCPA is similar to "the alleged unlawful employment practice" in Title VII and that the Supreme Court's guidance is relevant to this case. The Court finds that Defendants' alleged FDCPA violations are more akin to discrete acts than a continuing course of conduct. The following alleged FDCPA violations are identified in the parties' briefing:

- November 2009: Maxwell's letter to Plaintiff misrepresented the amount of Plaintiff's debt.
- February 2010: Defendants drafted a payment agreement with Plaintiff which violated the FDCPA by failing to state the amount owed, failing to promise that Plaintiff's payments would be applied first to the principal of the debt, and misrepresenting the amount of the debt.
- July 2010: Defendants misrepresented to the justice court the amount Plaintiff owed and the amount Plaintiff had paid.

They also sought recovery for fees to which they were not entitled.

- November 2010: Maxwell sent a letter to Plaintiff that misrepresented the amount of the debt and ignored Plaintiff's right to certain property exemptions.
- December 2010: Defendants again misrepresented the amount of the debt in paperwork they filed with the justice court.
- April 2012: Defendants misrepresented the amount of Plaintiff's debt in the complaint for their foreclosure suit. The filing of the lawsuit also violated the FDCPA because it sought recovery for amounts that had been previously awarded in the justice court lawsuit.
- June 2012: Nikolaus's email misrepresented the amount of Plaintiff's debt. Defendants also drafted a stipulated judgment that was unclear "about the number of payments Plaintiff would be required to make.
- May-September 2013: Having made several payments, Plaintiff repeatedly asked Nikolaus how much she still owed. Nikolaus failed to give her a clear answer.
- November 2013: Defendants' request for a writ of execution misrepresented the amount of Plaintiff's debt. Defendants also requested an unreasonable amount in attorneys' fees.

All of these alleged wrongs involved Defendants' attempts to collect the debt Plaintiff owed to the Association, and almost all involved alleged misrepresentations, such as inflating Plaintiff's debt, failing to account for payments, or charging fees to which the Association was not entitled. These violations are interrelated, but they are not sufficiently linked to be considered an ongoing violation of the FDCPA.

For instance, Maxwell sent a letter to Plaintiff on November 23, 2010. Doc. 81-1 at 114. Plaintiff claims that the letter violated the FDCPA by falsely stating she owed $1,466.80 and ignoring her right to certain property exemptions under Arizona law. Doc. 80 at 10. Three years later, on November 6, 2013, Maxwell requested a writ of execution for foreclosure. Doc. 81-2 at 52-53. Plaintiff claims that the request violated the FDCPA by falsely stating she owed $4,791.58, including $1,597.50 in attorneys' fees. Doc. 80 at 6. Although the 2010 letter and the 2013 request for a writ involve similar facts, they represent discrete actions. One is a letter, the other a court filing; they occurred three years apart; they involved different amounts; and they involved different alleged violations of the FDCPA.

Similar distinctions could be made regarding each of Plaintiff's claims. The alleged wrongs occurred over a span of four years and involved, respectively, a letter, a draft agreement, a filing in justice court, another letter, paperwork filed in justice court, a complaint for foreclosure in superior court, an email, a failure to respond to Plaintiff, and a request for a writ of execution. Each involved different claimed amounts and many

included additional, unrelated alleged violations of the FDCPA.

Plaintiff's case is not like *Joseph*, where the defendant made hundreds of automated collection calls to the plaintiff over a period of 18 months. *See* 281 F. Supp. 2d at 1161-62. Nor is it similar to a hostile work environment claim which "cannot be said to occur on any particular day," "is composed of a series of separate acts that collectively constitute one 'unlawful employment practice,'" and may not even rise to the level of an actionable hostile work environment until the cumulative effect of the many wrongs is understood. *Morgan*, 536 U.S. at 115, 117. Defendants' actions are each alleged to have violated specific provisions of the FDCPA, occurred on definite days, involved different conduct and different debt amounts, and extended over four years. Defendants' actions are more like "[d]iscrete acts such as termination, failure to promote, denial of transfer, or refusal to hire," which may be related but nevertheless do not implicate the continuing-violation doctrine. *Id.* at 114.

The Court also finds the breaks in time between the alleged violations to be significant. Plaintiff does not allege any violation in the year of 2011. Sixteen months elapsed between the fifth and sixth violations recounted above, and almost a year between the seventh and eighth.

Furthermore, the Court finds troubling the notion that every communication regarding a debt starts the limitations period anew. As another court explained,

"[i]f plaintiff's theory were correct, . . . his cause of action could be kept alive indefinitely because each new communication would start a fresh statute of limitations." *Sierra v. Foster & Garbus*, 48 F. Supp. 2d 393, 395 (S.D.N.Y. 1999); *see also Nutter v. Messerli & Kramer, P.A.*, 500 F. Supp. 2d 1219, 1223 (D. Minn. 2007) (finding that "'[n]ew communications . . . concerning an old claim . . . [do] not start a new period of limitations'") (quoting *Campos v. Brooksbank*, 120 F. Supp. 2d 1271, 1274 (D.N.M. 2000)). In sum, the Court concludes that the continuing-violation doctrine does not save Plaintiff's claims for violations that occurred before April of 2013.[5]

Plaintiff also seeks to apply the discovery rule, arguing that she did not discover her injury until her home was foreclosed in January of 2014. The Court is not persuaded, however, that the discovery rule should apply to this case. In *Naas v. Stolman*, 130 F.3d 892, 893 (9th Cir. 1997), the Ninth Circuit held that when the alleged violation of the FDCPA is the filing of a lawsuit, "the statute of limitations beg[ins] to run on

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[5] Earlier in this case, the Court denied a motion to dismiss because the continuing-violation doctrine might apply. Doc. 37. That decision does not control here. As the Court noted in its earlier decision, a motion to dismiss based on the statute of limitations may be granted only if it appears beyond doubt that the plaintiff can prove no set of facts that would establish the timeliness of the claim. *Supermail Cargo, Inc. v. United States*, 68 F.3d 1204, 1207 (9th Cir. 1995); Doc. 37 at 6-7. Focusing solely on Plaintiff's allegations, the Court could not conclude that this test had been satisfied. Doc. 37 at 7. This conclusion does not control a ruling on summary judgment, which focuses on evidence, not allegations.

the filing of the complaint."[6] Plaintiff's complaint makes clear that every alleged FDCPA violation that occurred more than one year before this case either preceded or occurred as part of a court action. These include Defendants initial filing of the justice court action in 2009 (Doc. 1, ¶ 12) and their later filing of the superior court action in 2012 (*id.*, ¶ 15). The alleged violations either preceded those lawsuits, in which event the filing of the lawsuits would have triggered the limitations period, or occurred as part of the lawsuits (*id.*, ¶¶ 14, 17, 19). Thus, Plaintiff's discovery rule argument does not save her older claims from the FDCPA's one-year statute of limitations.[7]

B. Plaintiff's Timely FDCPA Claims.

Plaintiff asserts two claims based on conduct occurring less than one year before this case was filed: (1) in judicial proceedings in 2013 and 2014, Defendants allegedly misrepresented the amount of Plaintiff's debt and sought attorneys' fees to which they were not entitled; and (2) in May through September

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[6] Later cases have recognized that this rule "only applies to cases where there is no question that the defendant was properly named and served in the underlying collection action." *Huy Thanh Vo v. Nelson & Kennard*, 931 F. Supp. 2d 1080, 1086 (E.D. Cal. 2013). Plaintiff does not claim that she was not served in the underlying cases.

[7] The Ninth Circuit has applied the discovery rule to FDCPA claims that did not involve the filing of a lawsuit, *Mangum v. Action Collection Service, Inc.*, 575 F.3d 935, 940 (9th Cir. 2009), but the Court concludes that *Naas* controls this largely litigation-based series of alleged violations.

of 2013, Defendants did not respond to Plaintiff's requests for a statement of the amount she owed. The Court finds that neither claim survives Defendants' cross motion for summary judgment.

1. The Writ's Misrepresentation of Attorneys' Fees and Debt.

Plaintiff claims that Defendants violated the FDCPA by "falsely stating in the Writ that the balance due was $4,791.58 and including unadjudicated attorneys' fees of $1,597.50." Doc. 80 at 6. As for the attorneys' fees, Plaintiff emphasizes that,

> "Defendants never sought judicial approval for any of these amounts, never had any court determine they were reaso[n]able, and simply decided for themselves the reasonableness of the attorneys' fees and costs that they incurred. . . . Defendants collected these unilaterally awarded fees even though Arizona law does not provide for post-judgment attorneys' fees except where expressly permitted by statute or other basis for such fees.

Id. at 12.

Although not clearly stated, Plaintiff appears to claim that this conduct violates 15 U.S.C. § 1692e, which prohibits the misrepresentation of "the character, amount, or legal status of any debt." Among other points, Defendants argue that because the stipulated judgment that Plaintiff signed authorized the amounts that were included in the writ of execution, the Court

should grant Defendants summary judgment on Plaintiff's claims regarding these amounts.

The stipulated judgment signed on June 29, 2012, stated that the "principal sum" owed was "$4,027.24 . . . with additional assessments and charges accruing effective January 1, 2013 . . . plus monthly late charges." Doc. 81-1 at 131. The judgment also stated that Plaintiff owed "attorney fees herein in an amount of $1,687.50, plus accruing attorney fees incurred hereafter." *Id.* When Defendants sought a writ of special execution to foreclose on Plaintiff's house in 2013, they stated that the total amount owed was $4,791.58, which included "attorney fees of $1,687.50, plus accruing attorney fees of $1,597.50." Doc. 81-2 at 52-53. The Maricopa County Superior Court approved these amounts and issued the writ. *Id.* at 53.

Plaintiff has not explained how this conduct amounts to a misrepresentation of "the character, amount, or legal status of any debt." As Defendants note, the stipulated judgment authorized the fees that were included in the writ of execution. Plaintiff argues that Arizona law generally does not allow a party to collect post-judgment attorneys' fees, but "[i]t is well-settled in Arizona that [c]ontracts for payment of attorneys' fees are enforced in accordance with the terms of the contract." *Bennett Blum, M.D., Inc. v. Cowan*, 235 Ariz. 204, 330 P.3d 961, 963 (App. 2014) (quotation marks and citations omitted). What is more, "[w]hen the 'broad language' of a contractual attorneys' fees provision gives no indication of an intent to exclude fees for work done after entry of judgment, those fees

are generally recoverable." *Costa v. Maxwell & Morgan PC*, No. CV-15-00315-PHX-NVW, 2015 WL 3490115, at *5 (D. Ariz. June 3, 2015).

Plaintiff also argues that Defendants could not "unilaterally" decide whether the requested attorneys' fees were reasonable. This is true. "Arizona law is clear that even when fees are awarded pursuant to an express contractual agreement, rather than statute, the prevailing party is not entitled to its fees unless a court has already determined that the specific amount that party seeks is reasonable." *Id.* at *6. But Defendants in this case did not unilaterally determine the amount of fees they were to receive – the Maricopa County Superior Court approved the fees Defendants requested. The court signed the writ of execution and *twice* rejected Plaintiff's opposition to the requested attorneys' fees. *See* Doc. 101-2 at 43 (denying Plaintiff's motion to cancel the sheriff's sale, in which Plaintiff had argued that the amount of owed attorneys' fees was ambiguous (*id.* at 39)); *id.* at 74 (denying Plaintiff's motion for relief from judgment, in which Plaintiff had argued that Defendants could not "award unadjudicated future assessments, attorneys' fees, and costs" (*id.* at 53)). By so ruling, the state court implicitly found that the requested attorneys' fees were reasonable. *See, e.g.*, *Costa*, 2015 WL 3490115, at *6. The Court cannot conclude that Defendants violated the FDCPA by seeking attorneys' fees in a filing they made with a court,

particularly when it was clear that the fees would be paid only if the court found them to be reasonable.[8]

Plaintiff argues that Defendants misrepresented the amount of Plaintiff's debt in the writ of execution. But again, the stipulated judgment authorized these amounts. Plaintiff has not shown that there is a genuine dispute of material fact as to whether the stipulated judgment authorized the amounts Defendants collected. The Court therefore grants Defendants' motion for summary judgment on this claim.[9]

2. Defendants' Communications with Plaintiff in 2013.

Plaintiff claims that Defendants' failure to respond to her repeated requests for a statement of the amount she owed violated 15 U.S.C. §§ 1692e and 1692f. Specifically, Plaintiff sent a $250 check to Defendants on May 5, 2013, and requested a statement of the amount owed. Doc. 81-2 at 27. Defendants did not respond until August 21, when Nikolaus sent Plaintiff an email stating that she had not paid off her debt and

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[8] *Costa* found a possible section 1692e violation when unadjudicated attorneys' fees were demanded in a letter to the debtor. 2015 WL 3490115, at *6. This differs from a request for fees in a court filing the court must approve.

[9] At oral argument, Plaintiff's counsel argued that the writ carried forward the FDCPA wrongs from the earlier lawsuits and judgments, but those earlier wrongs are barred by the statute of limitations, and the Court cannot conclude that they are revived simply because the judgments they produced were used in securing the writ.

attaching a copy of the stipulated judgment. *Id.* at 31. On September 19, 2013, Plaintiff called and emailed Defendant Nikolaus requesting information about her debt. *Id.* at 30-31, 33. On September 23, Plaintiff sent Defendants a $275.74 check and a letter explaining why she thought this settled her debt. *Id.* at 45. Nikolaus did not respond until November 6, when he informed her that she had not paid off her debt and again asked her to review the stipulated judgment. *Id.* at 30. Plaintiff claims that Defendants' late and vague responses misrepresented the amount of Plaintiff's debt and constituted "unfair or unconscionable means to collect" the debt. *See* 15 U.S.C. §§ 1692e, 1692f.

a. Applicability of the FDCPA to Foreclosure Activities.

Defendants seek summary judgment because the FDCPA does not apply to efforts to enforce a security interest or foreclose on a lien. "[T]he FDCPA applies only to a debt collector who engages in practices prohibited by the Act in an attempt to collect a consumer debt." *Mansour v. Cal-W. Reconveyance Corp.*, 618 F. Supp. 2d 1178, 1182 (D. Ariz. 2009) (citation omitted). Some courts have held that foreclosure proceedings are not the collection of a debt for purposes of the FDCPA. *See Hulse v. Ocwen Fed. Bank, FSB*, 195 F. Supp. 2d 1188, 1204 (D. Or. 2002) (distinguishing foreclosure of interest in property from efforts to collect funds from debtor); *Gray v. Four Oak Ct. Ass'n, Inc.*, 580 F. Supp. 2d 883 (D. Minn. 2008) (finding that homeowners association lien foreclosure proceeding to

recover assessment fees was effort to enforce a security interest rather than debt collection under the FDCPA). Other courts have held that community housing associations and their agents are not debt collectors when they are "'actively engaged in an attempt to dispossess the [debtor] of secured property.'" *See, e.g., Calvert v. Alessi & Koenig, LLC*, No. 2:11-CV-00333-LRH-PAL, 2013 WL 592906, at *4 (D. Nev. Feb. 12, 2013) (quoting *Owens v. Hellmuth & Johnson, PLLC*, 550 F. Supp. 2d 1060, 1066 (D. Minn. 2008)).

Under these holdings, Defendants' filing of the writ did not constitute a violation of the FDCPA, but the holdings do not immunize Defendants other actions during 2013. When Defendants communicated (or failed to communicate) with Plaintiff regarding her debt in 2013, they were not yet actively engaged in an attempt to dispossess her of her home. Rather, they were still trying to collect a monetary sum. Defendants designed the stipulated judgment so that Plaintiff could pay off her debt instead of losing her home. Starting in May of 2013, Plaintiff contacted Defendants regarding the amount she still owed under the judgment. Defendant Nikolaus responded twice, both times encouraging her to review the terms of the judgment without disclosing the amount she still owed. He did not threaten to foreclose on her home. As other courts have found in similar situations, Defendants were not enforcing a security interest during these communications. *See, e.g., Calvert*, 2013 WL 592906, at *5 (finding that "pre-notice of default" letters were not efforts to enforce a security interest).

Defendants make a broad argument – that all of their 2013 actions related to foreclosure of a lien and therefore could not have violated the FDCPA. For the reasons explained above, the Court cannot agree. On the basis of the cases cited above, the Court will grant summary judgment in favor of Defendants with respect to their actual foreclosure actions – the filing of the writ and the actual foreclosure. But the Court will address Defendants' other 2013 communications separately.

b. FDCPA Violations Based on Remaining Communications.

Defendants seek summary judgment because a "least sophisticated debtor" would not have found Defendants' 2013 communications to be false or misleading or to constitute unfair or unconscionable debt collection practices. In the Ninth Circuit, a debt collector's liability under §§ 1692e and 1692f is a question of law. *Gonzales v. Arrow Fin. Servs., LLC*, 660 F.3d 1055, 1061 n.3 (9th Cir. 2011); *see Donohue v. Quick Collect, Inc.*, 592 F.3d 1027, 1030 (9th Cir. 2010) ("Whether conduct violates §§ 1692e or 1692f requires an objective analysis that takes into account whether 'the least sophisticated debtor would likely be misled by a communication.'" (quoting *Guerrero*, 499 F.3d at 934)). The least sophisticated debtor standard "presumes a basic level of understanding and willingness to read with care." *Gonzales*, 660 F.3d at 1062 (quotation and citation omitted). The least sophisticated debtor is charged with a reasonable knowledge of both communications

between the debtor and the debt collector, *Guerrero*, 499 F.3d at 934, and the account's history, *Wahl v. Midland Credit Management, Inc.*, 556 F.3d 643, 645-46 (7th Cir. 2009).

In June of 2012, the parties negotiated a settlement of Plaintiff's then-out-standing debt. On June 15, 2012, Nikolaus provided Plaintiff with an updated account balance "regarding the pending lien foreclosure lawsuit." Doc. 101-1 at 33-34. The total balance was $6,307.24, which included the principal, the Association's 2012 assessment, and the accrued attorneys' fees and costs to date. *Id.* Several days later, Plaintiff "propose[d] the following arrangement: $2500.00 upfront payment with 12 monthly payments of $250.00 for a total of $5500.00," which she characterized as "a fair and reasonable compromise." *Id.* at 33. The Association accepted Plaintiff's proposal on the condition that she sign a stipulated judgment, which the parties executed on June 27, 2012. *Id.* at 36, 48.

"The stipulated judgment stated that Plaintiff owed $4,027.24 in principal, $800.50 in accrued costs, and $1,687.50 in accrued attorneys' fees, for a total of $6,515.24. *Id.* at 46. This amount did not include the Association's upcoming assessment for 2013. The stipulated judgment provided that "[i]f and only if all payments required hereunder are timely made and payment in full has otherwise been received by [the Association], [the Association] agrees to waive $1,015.24." *Id.* at 47. Thus, if Plaintiff made all the required payments, she would pay a total of $5,500.00 – the agreed upon settlement amount. As Plaintiff had

proposed, the stipulated judgment required an initial "$2,500 payment on or before July 5, 2012, and continuing in the minimum amount of $250.00 per month, to be received no later than the 15th of each month, and until the Judgment is paid in full, or within a period of twelve (12) months, whichever comes earlier." *Id.* The stipulated judgment stated that "there shall be no grace period or right to additional notice of intent to execute upon this Judgment if any payment is not received on or before the 15th of each month." *Id.*

Plaintiff made the initial $2,500 payment and the first ten monthly payments, but she failed to make the required payments in June and July of 2013. *Id.* at 53-73, 92. On May 5, 2013, she sent Nikolaus a letter asking how much she still owed. Doc. 81-2 at 27. Nikolaus wrote Plaintiff on August 21, 2013, noted her failure "to make $250 [payments] consecutively for 12 months," inquired about her "intentions," and reserved the right to "proceed with all available legal remedies to collect the full balance owing." Doc. 101-1 at 92. On September 19, 2013, Plaintiff acknowledged that she had made only the initial payment and ten monthly payments for a total of $5,000. *Id.* at 94. Plaintiff tendered an additional $275.74 payment, claiming that it satisfied the remaining account balance. *Id.* Nikolaus replied on November 6, 2013 by directing Plaintiff's attention back to the stipulated judgment and once again inquiring as to her intentions. *Id.* The same day, Defendants sought a writ of special execution to satisfy the judgment. Doc. 101-2 at 4-8.

Against this backdrop, the Court must determine whether Defendants' 2013 communications, including Defendants' failure to respond to Plaintiff's request for an updated account balance, would have misled the least sophisticated debtor. As noted above, such a debtor is presumed to have a basic level of understanding and a willingness to read with care, *Gonzales*, 660 F.3d at 1062, a reasonable knowledge of communications with the debt collector, *Guerrero*, 499 F.3d at 934, and a reasonable knowledge of the account's history, *Wahl*, 556 F.3d at 645-46. Given these presumptions, the Court concludes that Defendants' communications or lack thereof would not have misled a least sophisticated debtor or constituted an unfair debt collection practice.

Plaintiff proposed the compromise that resulted in her obligation to pay $5,500 through a $2,500 initial payment and twelve monthly payments of $250. A least sophisticated debtor who proposed such a plan surely would understand it. The stipulated judgment stated that Plaintiff owed this amount (significantly less than her $6,515.24 outstanding obligation) only if she strictly complied with the payment schedule she had proposed. Under no scenario could Plaintiff owe less than $5,500. Based on a presumed careful reading of the stipulated judgment, and with a reasonable knowledge of the parties' past communications and account history, a least sophisticated debtor would know that she owed the $250 payments that were due in June and July of 2013. Further, based on a careful reading of the stipulated judgment and with

knowledge of the parties' past communications and her account history, a least sophisticated debtor would know that she was obligated to pay the full $6,515.24 once she failed to comply with the agreed-upon payment schedule.

Defendants surely could have responded with a statement of Plaintiff's account balance when she inquired, but the Court cannot conclude that Defendants' failure to do so misled Plaintiff as to the amount she owed or constituted an unfair collection practice. Plaintiff herself had proposed the payment schedule, and it was memorialized in the stipulated judgment. Even a least sophisticated debtor would know that more was owed after the May payment. The Court therefore finds that the Defendants are entitled to summary judgment on Plaintiff's claims based on Defendants' 2013 communications.

IT IS ORDERED:

1. Plaintiff's motion for partial summary judgment (Doc. 80) is **denied**.

2. Defendants' cross motion for summary judgment (Doc. 100) is **granted**.

3. Plaintiff's motions in limine (Docs. 82, 83) are **denied as moot**.

4. Plaintiff's motion to strike Defendants' supplemental expert report (Doc. 85) is **granted** for reasons stated on the record at oral argument.

5. Defendants' motion to strike (Doc. 99) is **denied**.

6. The Clerk is directed to enter judgment for Defendants and terminate the action.

Dated this 4th day of November, 2015.

/s/ David G. Campbell
David G. Campbell
United States District Judge

APPENDIX C

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARTHA A. MCNAIR, an individual, *Plaintiff-Appellant*, v. MAXWELL & MORGAN PC, an Arizona professional corporation; CHARLES E. MAXWELL, husband; W. WILLIAM NIKOLAUS, husband; LISA MAXWELL, wife; LESLIE NIKOLAUS, wife, *Defendants-Appellees.*	No. 15-17383 D.C. No. 2:14-cv-00869-DGC District of Arizona, Phoenix OPINION

Before: BYBEE and FRIEDLAND, Circuit Judges, and ARTERTON,* District Judge.

The panel judges have voted to grant Appellees' motion to take judicial notice. Appellee's motion to take judicial notice, filed July 30th, 2018, is GRANTED.

The panel judges have voted to deny Appellant's petition for panel rehearing. Appellant's petition for panel rehearing, filed July 9th, 2018, is DENIED.

The panel judges have voted to deny Appellees' petition for rehearing. Judges Bybee and Friedland voted

* The Honorable Janet Bond Arterton, United States District Judge for the District of Connecticut, sitting by designation.

to deny the petition for rehearing en banc, and Judge Arterton recommended denying the petition for rehearing en banc.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

Appellees' petition for rehearing and petition for rehearing en banc, filed July 30th, 2018, is DENIED.

APPENDIX D

MAXWELL & MORGAN, P.C.
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FILE NO.: 4087.031

CHARLES E. MAXWELL – STATE BAR NO. 009763
Attorneys for Plaintiff

IN THE SUPERIOR COURT
OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

NEELY COMMONS COMMUNITY ASSOCIATION, an Arizona nonprofit corporation, Plaintiff, vs. MARTHA A. MCNAIR, an unmarried woman; JPMORGAN CHASE BANK, NATIONAL ASSOCIATION fka WASHINGTON MUTUAL BANK, a national banking association; THE UNKNOWN HEIRS AND DEVISEES OF ABOVE NAMED DEFENDANTS, IF DECEASED, Defendants.	No. CV2012-093147 PRAECIPE

TO THE CLERK OF THE SUPERIOR COURT OF THIS COUNTY:
PLEASE ISSUE IN THIS ACTION THE FOLLOWING:

Number of originals

[ ] Alias Summons..... ___
[ ] Subpoena ..... ___
[ ] Subpoena in Blank..... ___
[ ] Subpoena Duces Tecum ..... ___
[ ] Writ of Possession ..... ___
[ ] Writ of Restitution ..... ___
[ ] Writ of Assistance ..... ___
[x] Writ of Special Execution 1
[ ] Writ of General Execution ..... ___
[ ] Transcript of Judgment ..... ___
[ ] Exemplified Transcript of Judgment..... ___

PLEASE PERFORM THE FOLLOWING SERVICES:

[ ] Enter partial Satisfaction of Judgment in this action in the amount of $___
[ ] Dismiss the above action with/without prejudice
[ ] Show default against the following parties in the above action:

DATED this 5th day of November, 2013.

MAXWELL & MORGAN, P.C.

By /s/ Charles E. Maxwell

Charles E. Maxwell, Esq.
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CHARLES E. MAXWELL – STATE BAR NO. 009763
Attorneys for Plaintiff

IN THE SUPERIOR COURT
OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

NEELY COMMONS COMMUNITY ASSOCIATION, an Arizona nonprofit corporation, Plaintiff, vs. MARTHA A. MCNAIR, an unmarried woman; JPMORGAN CHASE BANK, NATIONAL ASSOCIATION fka WASHINGTON MUTUAL BANK, a national banking association; THE UNKNOWN HEIRS AND DEVISEES OF ABOVE NAMED DEFENDANTS, IF DECEASED, Defendants.	No. CV2012-093147 WRIT OF SPECIAL EXECUTION (After Judgment; Non Wages) (Filed Jan. 24, 2014)

TO THE STATE OF ARIZONA AND TO THE SHERIFF OF MARICOPA COUNTY, GREETINGS:

WHEREAS, on the 27th day of June, 2012, the Parties Stipulated To Judgment On Foreclosure in favor of Plaintiff and the Stipulation was formalized by order of the Superior Court of the State of Arizona in and for the County of Maricopa on July 12, 2012, in the principal amount of $4,027.24, prejudgment interest from April 27, 2012 at the rate of $1.10 per diem, attorney fees in the amount of $1,687.50, costs taxed and allowed in the amount of $800.50, including the cost of a title search, plus 10% interest, accruing costs, and accruing assessments and monthly late charges.

The sum of $4,027.24, plus 2013 assessments and late charges of $640.00, prejudgment interest in the amount of $83.60, postjudgment interest of $609.88, costs taxed and allowed in the amount of $800.50, plus accruing costs of $345.36, attorney fees of $1,687.50, plus accruing attorney fees of $1,597.50, less payments of $5,000.00, for a current total of $4,791.58, are now at the date of this Writ due on such judgment, including interest, plus any sheriff's fees. The statutory redemption period is 30 days pursuant to paragraph 7 of the Stipulation. Interest will continue to accrue at the rate of $1.32 per diem from November 6, 2013. Moreover, if the Sheriff's Sale does not take place before January 1, 2014, additional assessments in an amount not less than $460.00 will come due on January 1, 2014, plus late charges of $15.00 per month. Accordingly, and by way of example, if the Sheriff's Sale takes place in January, 2014, the amount due will be $5,226.58, plus

interest from November 5, 2013, plus $15.00 monthly late charges, plus any sheriff's fees..

NOW, YOU, THE SAID SHERIFF, are hereby required to satisfy said Judgment out of the real property belonging to Defendant by seizing and selling the property located at:

> Lot 65, NEELY COMMONS PHASE 1, according to Book 492 of Maps, Page 14, records of Maricopa County, Arizona,
>
> aka 1144 E. Temple Court, Gilbert, Arizona 85296.

GIVEN UNDER MY HAND AND SEAL OF THIS OFFICE this ___ day of ___, 2013.

MICHAEL K. JEANES, CLERK

[SEAL] /s/ s[illegible] Ponicki
Deputy Clerk

APPENDIX E

15 U.S.C. 1692-1692p provides:

§ 1692. Congressional findings and declaration of purpose

(a) Abusive practices

There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.

(b) Inadequacy of laws

Existing laws and procedures for redressing these injuries are inadequate to protect consumers.

(c) Available non-abusive collection methods

Means other than misrepresentation or other abusive debt collection practices are available for the effective collection of debts.

(d) Interstate commerce

Abusive debt collection practices are carried on to a substantial extent in interstate commerce and through means and instrumentalities of such commerce. Even where abusive debt collection practices are purely intrastate in character, they nevertheless directly affect interstate commerce.

(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.

§ 1692a. Definitions

As used in this subchapter—

(1) The term "Bureau" means the Bureau of Consumer Financial Protection.

(2) The term "communication" means the conveying of information regarding a debt directly or indirectly to any person through any medium.

(3) The term "consumer" means any natural person obligated or allegedly obligated to pay any debt.

(4) The term "creditor" means any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.

(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.

(6) The term "debt collector" means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Notwithstanding the exclusion provided by clause (F) of the last sentence of this paragraph, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. For the purpose of section 1692f(6) of this title, such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests. The term does not include—

(A) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;

(B) any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of such person is not the collection of debts;

(C) any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties;

(D) any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;

(E) any nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors; and

(F) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; (ii) concerns a debt which was originated by such person; (iii) concerns a debt which was not in default at the time it was obtained by such person; or (iv) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.

(7) The term "location information" means a consumer's place of abode and his telephone number at such place, or his place of employment.

(8) The term "State" means any State, territory, or possession of the United States, the District of

Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing.

§ 1692b. Acquisition of location information

Any debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall—

(1) identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;

(2) not state that such consumer owes any debt;

(3) not communicate with any such person more than once unless requested to do so by such person or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information;

(4) not communicate by post card;

(5) not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the debt collector is in the debt collection business or that the communication relates to the collection of a debt; and

(6) after the debt collector knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, such attorney's name and

address, not communicate with any person other than that attorney, unless the attorney fails to respond within a reasonable period of time to communication from the debt collector.

§ 1692c. Communication in connection with debt collection

(a) Communication with the consumer generally

Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt—

(1) at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8 o'clock antemeridian and before 9 o'clock postmeridian, local time at the consumer's location;

(2) if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney

consents to direct communication with the consumer; or

(3) at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.

(b) Communication with third parties

Except as provided in section 1692b of this title, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.

(c) Ceasing communication

If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt, except—

(1) to advise the consumer that the debt collector's further efforts are being terminated;

(2) to notify the consumer that the debt collector or creditor may invoke specified remedies

which are ordinarily invoked by such debt collector or creditor; or

(3) where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy.

If such notice from the consumer is made by mail, notification shall be complete upon receipt.

(d) "Consumer" defined

For the purpose of this section, the term "consumer" includes the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator.

§ 1692d. Harassment or abuse

A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person.

(2) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.

(3) The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of section 1681a(f) or 1681b(3) of this title.

(4) The advertisement for sale of any debt to coerce payment of the debt.

(5) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.

(6) Except as provided in section 1692b of this title, the placement of telephone calls without meaningful disclosure of the caller's identity.

§ 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:

(1) The false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform, or facsimile thereof.

(2) The false representation of—

(A) the character, amount, or legal status of any debt; or

(B) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.

(3) The false representation or implication that any individual is an attorney or that any communication is from an attorney.

(4) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action.

(5) The threat to take any action that cannot legally be taken or that is not intended to be taken.

(6) The false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to—

(A) lose any claim or defense to payment of the debt; or

(B) become subject to any practice prohibited by this subchapter.

(7) The false representation or implication that the consumer committed any crime or other conduct in order to disgrace the consumer.

(8) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.

(9) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval.

(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.

(11) The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action.

(12) The false representation or implication that accounts have been turned over to innocent purchasers for value.

(13) The false representation or implication that documents are legal process.

(14) The use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization.

(15) The false representation or implication that documents are not legal process forms or do not require action by the consumer.

(16) The false representation or implication that a debt collector operates or is employed by a consumer reporting agency as defined by section 1681a(f) of this title.

§ 1692f. Unfair practices

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

(2) The acceptance by a debt collector from any person of a check or other payment instrument postdated by more than five days unless such person is notified in writing of the debt collector's intent to deposit such check or instrument not more than ten nor less than three business days prior to such deposit.

(3) The solicitation by a debt collector of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution.

(4) Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument.

(5) Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.

(6) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if—

(A) there is no present right to possession of the property claimed as collateral through an enforceable security interest;

(B) there is no present intention to take possession of the property; or

(C) the property is exempt by law from such dispossession or disablement.

(7) Communicating with a consumer regarding a debt by post card.

(8) Using any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his business name if such name does not indicate that he is in the debt collection business.

§ 1692g. Validation of debts

(a) Notice of debt; contents

Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing—

(1) the amount of the debt;

(2) the name of the creditor to whom the debt is owed;

(3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;

(4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and

(5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

(b) Disputed debts

If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such

verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector. Collection activities and communications that do not otherwise violate this subchapter may continue during the 30-day period referred to in subsection (a) unless the consumer has notified the debt collector in writing that the debt, or any portion of the debt, is disputed or that the consumer requests the name and address of the original creditor. Any collection activities and communication during the 30-day period may not overshadow or be inconsistent with the disclosure of the consumer's right to dispute the debt or request the name and address of the original creditor.

(c) Admission of liability

The failure of a consumer to dispute the validity of a debt under this section may not be construed by any court as an admission of liability by the consumer.

(d) Legal pleadings

A communication in the form of a formal pleading in a civil action shall not be treated as an initial communication for purposes of subsection (a).

(e) Notice provisions

The sending or delivery of any form or notice which does not relate to the collection of a debt and is expressly required by Title 26, title V of Gramm-Leach-Bliley Act, or any provision of Federal or State law relating to notice of data security breach or privacy, or any regulation prescribed under any such provision of

law, shall not be treated as an initial communication in connection with debt collection for purposes of this section.

§ 1692h. Multiple debts

If any consumer owes multiple debts and makes any single payment to any debt collector with respect to such debts, such debt collector may not apply such payment to any debt which is disputed by the consumer and, where applicable, shall apply such payment in accordance with the consumer's directions.

§ 1692i. Legal actions by debt collectors

(a) Venue

Any debt collector who brings any legal action on a debt against any consumer shall—

(1) in the case of an action to enforce an interest in real property securing the consumer's obligation, bring such action only in a judicial district or similar legal entity in which such real property is located; or

(2) in the case of an action not described in paragraph (1), bring such action only in the judicial district or similar legal entity—

(A) in which such consumer signed the contract sued upon; or

(B) in which such consumer resides at the commencement of the action.

(b) Authorization of actions

Nothing in this subchapter shall be construed to authorize the bringing of legal actions by debt collectors.

§ 1692j. Furnishing certain deceptive forms

(a) It is unlawful to design, compile, and furnish any form knowing that such form would be used to create the false belief in a consumer that a person other than the creditor of such consumer is participating in the collection of or in an attempt to collect a debt such consumer allegedly owes such creditor, when in fact such person is not so participating.

(b) Any person who violates this section shall be liable to the same extent and in the same manner as a debt collector is liable under section 1692k of this title for failure to comply with a provision of this subchapter.

§ 1692k. Civil liability

(a) Amount of damages

Except as otherwise provided by this section, any debt collector who fails to comply with any provision of this subchapter with respect to any person is liable to such person in an amount equal to the sum of—

(1) any actual damage sustained by such person as a result of such failure;

(2)

(A) in the case of any action by an individual, such additional damages as the court may allow, but not exceeding $1,000; or

(B) in the case of a class action, (i) such amount for each named plaintiff as could be recovered under subparagraph (A), and (ii) such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of $500,000 or 1 per centum of the net worth of the debt collector; and

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court. On a finding by the court that an action under this section was brought in bad faith and for the purpose of harassment, the court may award to the defendant attorney's fees reasonable in relation to the work expended and costs.

(b) Factors considered by court

In determining the amount of liability in any action under subsection (a), the court shall consider, among other relevant factors—

(1) in any individual action under subsection (a)(2)(A), the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, and the extent to which such noncompliance was intentional; or

(2) in any class action under subsection (a)(2)(B), the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, the resources of the debt collector, the number of persons adversely affected, and the extent to which the debt collector's noncompliance was intentional.

(c) Intent

A debt collector may not be held liable in any action brought under this subchapter if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(d) Jurisdiction

An action to enforce any liability created by this subchapter may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within one year from the date on which the violation occurs.

(e) Advisory opinions of Bureau

No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any advisory opinion of the Bureau, notwithstanding that after such act or omission has occurred, such opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

§ 1692*l*. Administrative enforcement

(a) Federal Trade Commission

The Federal Trade Commission shall be authorized to enforce compliance with this subchapter, except to the extent that enforcement of the requirements imposed under this subchapter is specifically committed to another Government agency under any of paragraphs (1) through (5) of subsection (b), subject to subtitle B of the Consumer Financial Protection Act of 2010. For purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act (15 U.S.C. 41 et seq.), a violation of this subchapter shall be deemed an unfair or deceptive act or practice in violation of that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Federal Trade Commission to enforce compliance by any person with this subchapter, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act, including the power to enforce the provisions of this subchapter, in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.

(b) Applicable provisions of law

Subject to subtitle B of the Consumer Financial Protection Act of 2010, compliance with any requirements imposed under this subchapter shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act, by the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), with respect to—

(A) national banks, Federal savings associations, and Federal branches and Federal agencies of foreign banks;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act; and

(C) banks and State savings associations insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), and insured State branches of foreign banks;

(2) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal credit union;

(3) subtitle IV of Title 49, by the Secretary of Transportation, with respect to all carriers subject to the jurisdiction of the Surface Transportation Board;

(4) part A of subtitle VII of Title 49, by the Secretary of Transportation with respect to any air

carrier or any foreign air carrier subject to that part;

(5) the Packers and Stockyards Act, 1921 (except as provided in section 406 of that Act), by the Secretary of Agriculture with respect to any activities subject to that Act; and

(6) subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau, with respect to any person subject to this subchapter.

The terms used in paragraph (1) that are not defined in this subchapter or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

(c) Agency powers

For the purpose of the exercise by any agency referred to in subsection (b) of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this subchapter shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (b), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this subchapter any other authority conferred on it by law, except as provided in subsection (d).

(d) Rules and regulations

Except as provided in section 1029(a) of the Consumer Financial Protection Act of 2010, the Bureau may prescribe rules with respect to the collection of debts by debt collectors, as defined in this subchapter.

§ 1692m. Reports to Congress by the Bureau; views of other Federal agencies

(a) Not later than one year after the effective date of this subchapter and at one-year intervals thereafter, the Bureau shall make reports to the Congress concerning the administration of its functions under this subchapter, including such recommendations as the Bureau deems necessary or appropriate. In addition, each report of the Bureau shall include its assessment of the extent to which compliance with this subchapter is being achieved and a summary of the enforcement actions taken by the Bureau under section 1692*l* of this title.

(b) In the exercise of its functions under this subchapter, the Bureau may obtain upon request the views of any other Federal agency which exercises enforcement functions under section 1692*l* of this title.

§ 1692n. Relation to State laws

This subchapter does not annul, alter, or affect, or exempt any person subject to the provisions of this subchapter from complying with the laws of any State with respect to debt collection practices, except to the

extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency. For purposes of this section, a State law is not inconsistent with this subchapter if the protection such law affords any consumer is greater than the protection provided by this subchapter.

§ 1692o. Exemption for State regulation

The Bureau shall by regulation exempt from the requirements of this subchapter any class of debt collection practices within any State if the Bureau determines that under the law of that State that class of debt collection practices is subject to requirements substantially similar to those imposed by this subchapter, and that there is adequate provision for enforcement.

§ 1692p. Exception for certain bad check enforcement programs operated by private entities

(a) In general

(1) Treatment of certain private entities

Subject to paragraph (2), a private entity shall be excluded from the definition of a debt collector, pursuant to the exception provided in section 1692a(6) of this title, with respect to the operation by the entity of a program described in paragraph (2)(A) under a contract described in paragraph (2)(B).

(2) Conditions of applicability

Paragraph (1) shall apply if—

(A) a State or district attorney establishes, within the jurisdiction of such State or district attorney and with respect to alleged bad check violations that do not involve a check described in subsection (b), a pretrial diversion program for alleged bad check offenders who agree to participate voluntarily in such program to avoid criminal prosecution;

(B) a private entity, that is subject to an administrative support services contract with a State or district attorney and operates under the direction, supervision, and control of such State or district attorney, operates the pretrial diversion program described in subparagraph (A); and

(C) in the course of performing duties delegated to it by a State or district attorney under the contract, the private entity referred to in subparagraph (B)—

(i) complies with the penal laws of the State;

(ii) conforms with the terms of the contract and directives of the State or district attorney;

(iii) does not exercise independent prosecutorial discretion;

(iv) contacts any alleged offender referred to in subparagraph (A) for purposes

of participating in a program referred to in such paragraph—

(I) only as a result of any determination by the State or district attorney that probable cause of a bad check violation under State penal law exists, and that contact with the alleged offender for purposes of participation in the program is appropriate; and

(II) the alleged offender has failed to pay the bad check after demand for payment, pursuant to State law, is made for payment of the check amount;

(v) includes as part of an initial written communication with an alleged offender a clear and conspicuous statement that—

(I) the alleged offender may dispute the validity of any alleged bad check violation;

(II) where the alleged offender knows, or has reasonable cause to believe, that the alleged bad check violation is the result of theft or forgery of the check, identity theft, or other fraud that is not the result of the conduct of the alleged offender, the alleged offender may file a crime report

with the appropriate law enforcement agency; and

(III) if the alleged offender notifies the private entity or the district attorney in writing, not later than 30 days after being contacted for the first time pursuant to clause (iv), that there is a dispute pursuant to this subsection, before further restitution efforts are pursued, the district attorney or an employee of the district attorney authorized to make such a determination makes a determination that there is probable cause to believe that a crime has been committed; and

(vi) charges only fees in connection with services under the contract that have been authorized by the contract with the State or district attorney.

(b) Certain checks excluded

A check is described in this subsection if the check involves, or is subsequently found to involve—

(1) a postdated check presented in connection with a payday loan, or other similar transaction, where the payee of the check knew that the issuer had insufficient funds at the time the check was made, drawn, or delivered;

(2) a stop payment order where the issuer acted in good faith and with reasonable cause in stopping payment on the check;

(3) a check dishonored because of an adjustment to the issuer's account by the financial institution holding such account without providing notice to the person at the time the check was made, drawn, or delivered;

(4) a check for partial payment of a debt where the payee had previously accepted partial payment for such debt;

(5) a check issued by a person who was not competent, or was not of legal age, to enter into a legal contractual obligation at the time the check was made, drawn, or delivered; or

(6) a check issued to pay an obligation arising from a transaction that was illegal in the jurisdiction of the State or district attorney at the time the check was made, drawn, or delivered.

(c) Definitions

For purposes of this section, the following definitions shall apply:

(1) State or district attorney

The term "State or district attorney" means the chief elected or appointed prosecuting attorney in a district, county (as defined in section 2 of title 1), municipality, or comparable jurisdiction, including State attorneys general who act as chief elected or appointed

prosecuting attorneys in a district, county (as so defined), municipality or comparable jurisdiction, who may be referred to by a variety of titles such as district attorneys, prosecuting attorneys, commonwealth's attorneys, solicitors, county attorneys, and state's attorneys, and who are responsible for the prosecution of State crimes and violations of jurisdiction-specific local ordinances.

(2) Check

The term "check" has the same meaning as in section 5002(6) of title 12.

(3) Bad check violation

The term "bad check violation" means a violation of the applicable State criminal law relating to the writing of dishonored checks.