No. 18-729

In The
Supreme Court of the United States

MAXWELL & MORGAN, P.C., ET AL.,

Petitioners,

v.

MARTHA A. MCNAIR,

Respondent.

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

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the FDCPA applies to *judicial* foreclosure activity that includes the potential for a deficiency judgment.

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INTRODUCTION

In this case, the Ninth Circuit held that the Fair Debt Collection Practices Act (15 U.S.C. § 1692 *et seq.*, the "FDCPA") applies to debt collectors' activities relating to a *judicial* foreclosure. The court explained that the availability of a deficiency judgment distinguished the judicial foreclosure at issue from non-judicial foreclosures where the only remedy available is the recovery of the underlying property.

Petitioners seek review of the question whether the FDCPA applies to foreclosure activity that does not seek payment of money, claiming that the circuits are divided over this issue. Petitioners' question presented, however, ignores the important distinction between judicial and non-judicial foreclosures that the Ninth Circuit identified.

There is no circuit split over whether the FDCPA applies to judicial foreclosure activity. Although the Ninth and Tenth Circuits hold that non-judicial foreclosure activity is not subject to the FDCPA because it is limited to the recovery of property. They both exclude judicial foreclosure activity from their holdings because judicial foreclosure carries the potential for a deficiency judgment with it. The Third, Fourth, Fifth, Sixth, and Seventh Circuits broadly apply the FDCPA to both judicial and non-judicial foreclosure activity. Accordingly, there is no split among the circuits for this Court to resolve.

There is also no conflict between the decision below and the states' interests in judicial foreclosures. All

states, including Arizona, prohibit foreclosure judgments and writs that overstate the amount owed. The FDCPA requires the same. Accordingly, there are no federalism concerns for the Court to address.

The Ninth Circuit correctly held that the FDCPA applies to debt collectors' activities relating to judicial foreclosure and that Petitioners violated the FDCPA and falsely represented the legal status of the debt by including unawarded "accruing" attorneys' fees in a writ of special execution. The court's decision was unremarkable, does not create any circuit split, and the Petition for a Writ of Certiorari should be denied.

STATEMENT OF THE CASE

Factual Background

In 2004, Respondent Martha McNair acquired her house and, at all relevant times, lived in it with her family. Ownership of the house was subject to a declaration of covenants, conditions, and restrictions that required Ms. McNair to pay homeowner association assessments to the Neely Commons Community Association (the "Association"). The declaration and Arizona law gave the Association a lien against the house for unpaid assessments.

In November 2009, Petitioners sent Ms. McNair a demand letter seeking a total of $779.50 for unpaid assessments and various collection charges. The following month they sued Ms. McNair on behalf of the

Association in the Maricopa County Highland Justice Court (the "Justice Court Action"). The parties attempted to resolve the Justice Court Action with a payment plan. Although Ms. McNair paid $1,300.00 under this plan, Petitioners claimed she was in breach and obtained a $1,466.80 default money judgment against her.

In April 2012, Petitioners sued Ms. McNair again for alleged unpaid assessments and other charges, including the amounts already reduced to the judgment entered in the Justice Court Action. This second lawsuit, filed in the Superior Court of Arizona, sought $4,027.24 plus attorneys' fees and costs and the foreclosure of Ms. McNair's home (the "Superior Court Action").

The parties again tried to resolve the dispute with a payment plan. In June 2012, they filed a "Stipulation for Judgment on Foreclosure as to Defendant McNair" in the Superior Court Action, which the state court approved. The Stipulation called for Ms. McNair to make various payments, the exact number of which was not clear, in order to avoid the foreclosure of her home. Ms. McNair made various payments over a year totaling $5,275.74. With her last two payments, Ms. McNair asked Petitioners what else, if anything, was owed. Petitioners refused to tell her.

On November 6, 2013, Petitioners filed a praecipe with the Superior Court requesting the clerk to issue a writ of special execution ordering the sheriff to sell Ms. McNair's house (the "Writ"). Although Ms. McNair had

paid Petitioners over $5,000.00, they claimed in the Writ that she still owed $4,791.58. Included in this amount was $1,597.50 in "accruing attorney fees," which had not been submitted to or approved by any court. The clerk of the Superior Court issued the Writ, Petitioners had it served on the sheriff, who then sold Ms. McNair's home to a third-party on January 9, 2014 for $75,000.00. Petitioners received $11,600.13 of these sale proceeds.

Proceedings Below.

In April 2014, Ms. McNair filed her FDCPA complaint against Petitioners in the District Court of Arizona, claiming that Petitioners' actions over the nearly five-year debt collection period violated §§ 1692e and 1692f of the FDCPA.

The district court granted summary judgment to Petitioners ruling, as relevant here, that, (i) the Writ, and its inclusion of "accruing" attorneys' fees that were not approved by any court, did not misrepresent the nature or amount of debt or otherwise violate the FDCPA; and (ii) Petitioners' activities relating to the judicial foreclosure of Ms. McNair's home were exempt from the FDCPA.

The Ninth Circuit reversed the district court on these points. It recognized that it previously 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." Petitioners' Appendix ("App.") 6-7 (citing *Ho v. ReconTrust Co., NA*, 858

F.3d 568, 572 (9th Cir.2017)). It went on to state the following: "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." App. 7. It then concluded that Petitioners' filing of the praecipe and Writ "constitutes debt collection under the FDCPA." App. 7-8. Specifically, Petitioners' inclusion of unawarded, "accruing" attorneys' fees in the Writ violated § 1692e because it "falsely represented the legal status of this debt." App. 9.

Petitioners moved for a rehearing *en banc*, which was denied without any judge requesting a vote. App. 40. Petitioners then filed their Petition for a Writ of Certiorari with this Court on December 5, 2018.

REASONS FOR DENYING THE PETITION

I. THERE IS NO CIRCUIT SPLIT OVER WHETHER JUDICIAL FORECLOSURE ACTIVITY IS "DEBT COLLECTION" UNDER THE FDCPA.

Every circuit that has considered the question has determined that debt collectors' activities relating to *judicial* foreclosure constitute "debt collection" under the FDCPA. There is no circuit split on this issue.

Petitioners attempt to paint a circuit split between the Fourth, Fifth, Sixth, and Seventh Circuits, on one hand, and the Ninth and Tenth Circuits, on the other hand. While these circuits may disagree over the

applicability of the FDCPA to *non-judicial* foreclosure activities—a question this Court is currently considering in *Obduskey v. Wells Fargo*, No. 17-1307—this case does not involve non-judicial foreclosures, and there is no disagreement between the circuits over whether the FDCPA applies to judicial foreclosure activity.

A. The Ninth And Tenth Circuits Recognize That Judicial Foreclosure Activity Is Subject To The FDCPA.

The Ninth and Tenth Circuits hold that activity relating to non-judicial foreclosures is not "debt collection" under the FDCPA. These courts reason that because the return of collateral is the sole remedy being pursued, and there is no potential for a deficiency judgment and the collection of money, there is no collection or attempted collection of a "debt." Both of these circuits, however, have expressly stated that judicial foreclosure *is* debt collection under the FDCPA because it carries the potential of a deficiency judgment.

The Ninth Circuit held in *Ho* that actions taken to facilitate a non-judicial foreclosure, including sending out a notice of default and the subsequent notice of sale, are not "debt collection" under the FDCPA. 858 F.3d at 570-73. An important factor in this holding was that "California law does not allow for a deficiency judgment following non-judicial foreclosure." *Id.* at 571. The court explained that because "[non-judicial] foreclosure extinguishes the entire debt even if it results in a recovery of less than the amount of the debt

. . . actions taken to facilitate a non-judicial foreclosure . . . are not attempts to collect 'debt' as that term is defined by the FDCPA." *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)).

In the decision below, the Ninth Circuit distinguished judicial and non-judicial foreclosures and explained that, "[o]ur decision in *Ho* does not [] preclude FDCPA liability for an entity that seeks to collect a debt through a *judicial* foreclosure scheme that allows for deficiency judgments." App. 7 (emphasis in original). Here, "[Petitioners] filed the Praecipe and Writ in order to collect a debt arising from [Ms. McNair's] failure to pay homeowner association fees as part of a judicial foreclosure scheme that in many cases allows for deficiency judgments." *Id.* (citing Ariz. Rev. Stat. §§ 33-727(A), 33-729(B)–(C)). Therefore, the court concluded that "this action constitutes debt collection under the FDCPA." *Id.* at 8.

The Tenth Circuit also distinguishes judicial foreclosures from non-judicial ones. In *Obduskey*, it held that "[e]ntities engaged in non-judicial foreclosure actions in Colorado are not debt collectors under the FDCPA." 879 F.3d 1216, 1221 (10th Cir.2018). The court recognized, however, that "[t]here was an obvious and critical difference between judicial and non-judicial foreclosures." *Id.* It explained that "[a] *non-judicial* foreclosure differs from a judicial foreclosure in that the sale does not preserve to the trustee the right to

collect any deficiency in the loan amount personally against the mortgagor." *Id.* at 1221 (citing *Burnett v. Mortg. Elec. Registration Sys., Inc.*, 706 F.3d 1231, 1239 (10th Cir.2013) (quoting *Maynard v. Cannon*, 401 Fed.Appx. 389, 391-92 (10th Cir.2010) (emphasis in original)). The court then noted that "*judicial* mortgage foreclosures may be covered under the FDCPA because of the underlying deficiency judgment." *Id*. (citing *Maynard*, 401 Fed.Appx. at 394).

The Ninth and Tenth Circuits distinguish judicial and non-judicial foreclosures and recognize that the former allow deficiency judgments, and therefore, are subject to the FDCPA.

B. The Third, Fourth, Fifth, Sixth, and Seventh Circuits Broadly Hold that Activity Relating to Foreclosure, Judicial or Non-Judicial, is "Debt Collection" Under the FDCPA.

The Third, Fourth, Fifth, Sixth, and Seventh Circuits consider both judicial and non-judicial foreclosure activity by a debt collector to be debt collection under the FDCPA. Accordingly, in these circuits, as in the Ninth and Tenth, Petitioners' judicial foreclosure activities would be subject to the FDCPA.

In *Wilson v. Draper & Goldberg, P.L.L.C.*, the Fourth Circuit held that a law firm and one of its lawyers were "debt collectors" and that their actions initiating foreclosure proceedings based on a deed of trust were attempts to collect a "debt" under the FDCPA.

443 F.3d 373, 376-79 (4th Cir.2006). Noting that a "'debt' remained a 'debt' even after foreclosure proceedings commenced," *id.* at 376 (citing *Piper v. Portnoff Law Assocs.*, 396 F.3d 227, 234 (3d Cir.2005)), and that the "actions surrounding the foreclosure proceeding were attempts to collect that debt," the court expressed concern that to hold otherwise "would create an enormous loophole in the Act immunizing any debt from coverage if that debt happened to be secured by a real property interest and foreclosure proceedings were used to collect the debt." *Id.*

Similarly, the Fifth Circuit "hold[s] that a party who satisfies § 1692a(6)'s general definition of a 'debt collector' is a debt collector for the purposes of the entire FDCPA even when enforcing security interests." *Kaltenbach v. Richards*, 464 F.3d 524, 529 (5th Cir.2006).

The Sixth Circuit also holds that mortgage foreclosure is "debt collection" under the FDCPA. *Glazer v. Chase Home Finance LLC*, 704 F.3d 453, 459-65 (6th Cir.2013). The court relied upon the definition that "[t]o collect a debt or claim is to obtain payment or liquidation of it, either by personal solicitation or legal proceedings." *Id.* at 461 (quoting Black's Law Dictionary 263 (6th ed.1990)); *see also Heintz v. Jenkins*, 514 U.S. 291, 294, 115 S.Ct. 1489, 1489, 131 L.E.2d 395 (1995) (relying on the same definition in concluding that the FDCPA applies to lawyers regularly engaged in debt collection activity, even when that activity consists of litigation).

Notably, the Sixth Circuit also recognized that "the existence of redemption rights and the potential for deficiency judgments demonstrate that the purpose of foreclosure is to obtain payment on the underlying home loan" and that "[s]uch remedies would not exist if foreclosure were not undertaken for the purpose of obtaining payment." *Id.* (citing Eric M. Marshall, Note, The Protective Scope of the Fair Debt Collection Practices Act: Providing Mortgagors the Protection They Deserve From Abusive Foreclosure Practices, 94 Minn. L.Rev. 1269, 1297–98 (2010)).

The Seventh Circuit has also held that communications in an effort to avoid foreclosure constitutes "debt collection" under the FDCPA. *Gburek v. Litton Loan Servicing LP*, 614 F.3d 380, 381-82 (7th Cir.2010). There was no express foreclosure activity in *Gburek*, just a communication advising of the possibility of such. *Id.* at 382-83.

While not cited by Petitioners, the Third Circuit also holds that activity relating to judicial foreclosure over unpaid water and sewer assessments is debt collection under the FDCPA. *See Piper*, 396 F.3d at 234 ("We have already noted that, if a communication meets the Act's definition of an effort by a "debt collector" to collect a "debt" from a "consumer," it is not relevant that it came in the context of litigation. The same is true where the communication comes in the context of in rem litigation.") (citing *Heintz*, 514 U.S. 291, 115 S.Ct. 1489, 131 L.Ed.2d 395 (1995)).

If any of these circuits analyzed the facts and issues in this case, they would reach the same result that the Ninth Circuit reached. This, combined with the Tenth Circuit's express acknowledgment that its holding does not apply to judicial foreclosures, illustrates that there is no circuit split for this Court to resolve.

II. THE DECISION BELOW DOES NOT CONFLICT WITH STATE LAW.

Petitioners contend that the decision below runs afoul of the federalism concerns raised in *Sheriff v. Gillie*, 136 S.Ct. 1594 (2016). The Ninth Circuit's determination that Petitioners violated the FDCPA during the judicial foreclosure proceedings, however, does not conflict or interfere with state law. In fact, the Ninth Circuit found that it was Petitioners' failure to follow state law that led to their FDCPA violation.

As the Ninth Circuit recognized below, under Arizona state law, "requests for post-judgment attorneys' fees must be made in a motion to the [state] court." App. 9 (citing Ariz. R. Civ. P. 54(g)). When Petitioners sought the Writ, however, they had not sought nor had any state court "approved the quantification of the 'accruing' attorneys' fees claimed in the Writ." App. 9. This violation of state law led to the Writ "implicitly claiming that the accruing attorneys' fees of $1,597.50 already had been approved by a court," when they had not. App. 9 (citing *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 & Morgan PC violated § 1692e(2) by "demanding attorneys' fees not [yet] approved by a court")).

The Ninth Circuit held that this violation of state law and false representation in the Writ violated § 1692e of the FDCPA. App. 9. This holding does not conflict with state law and does not raise any federalism concerns.

In contrast, the cases cited by Petitioners involved conflicts between federal and state law that potentially interfered with state sovereignty.

Gillie involved the state of Ohio and its efforts to collect debts owed to it, including "past-due tuition owed to public universities and unpaid medical bills from state-run hospitals." 136 S.Ct. at 1599. The Court recognized that the collection of these debts was a "core sovereign function" of the state of Ohio, and refused to "construe [the FDCPA] in a manner that interferes with 'States' arrangements for conducting their own governments.'" *Id.* (citations omitted). Here, the state of Arizona had no fiscal interest in the outcome of the judicial foreclosure of Ms. McNair's house. Although states have an interest in judicial foreclosure sales being conducted properly, there is no conflict between that interest of the FDCPA's prohibition on deceptive and other abusive practices relating to judicial foreclosure proceedings.

Petitioners' concerns about potential conflicts between various state foreclosure laws regarding publication, notice, and communication, and § 1692c of the FDCPA, which is not at issue here, are not concerning in any way. Regarding publication and notice requirements for foreclosures, the FDCPA expressly allows communications that are "reasonably necessary to effectuate a postjudgment judicial remedy." 15 U.S.C. § 1692c(b). Regarding communications with a represented party, debt collectors are not prohibited from communicating with the consumer's counsel and are even allowed to contact the represented consumer directly if "the attorney fails to respond within a reasonable period of time to a communication from the debt collector." 15 U.S.C. § 1692c(a)(2).

In *Heintz v. Jenkins*, this Court addressed similar "anomalies" between the FDCPA's restrictions on certain communications and an attorney's obligations and duties in state courts. 514 U.S. 291, 292 (1995). The Court explained that the purported "anomalies" were "not particularly anomalous" and did not require it to ignore the plain language of the FDCPA. *Id.* at 295. The same is true here. Applying the FDCPA's requirement that debt collectors avoid "us[ing] any false, deceptive, or misleading representation or means in connection with the collection of any debt," even in judicial foreclosures, is similar, or even identical, to state law requirements. 15 U.S.C. § 1692e.

Petitioners' reliance on *BFP v. Resolution Trust Corp.* is also misplaced. 511 U.S. 531 (1994). There, the Court analyzed whether lawful, regularly conducted

non-judicial foreclosure sales could be set aside under the Bankruptcy Code's fraudulent transfer provision. *Id.* at 533-34. Specifically, the petitioners in that case argued that foreclosure sales should recoup the real property's fair market value or be subject to a possible fraudulent transfer claim under the Bankruptcy Code. *Id.* at 536-40. The argument essentially subjected *all* foreclosure sales to potential fraudulent transfer claims. The Court recognized that this argument "would have a profound effect upon" the state's interest in there being clean titles to real estate after non-judicial foreclosure sales. *See id.* at 544 ("[t]he title of every piece of realty purchased at foreclosure would be under a federally created cloud."). The decision below has no such broad implications.

III. THE DECISION BELOW IS CORRECT.

The decision below is correct because *judicial* foreclosure inherently involves the collection of money and Petitioners expressly pursued, collected, and preserved the right to collect actual money.

A. Judicial Foreclosures Involve The Collection of Money.

In *Ho*, the Ninth Circuit recognized that "[b]ecause California law does not permit deficiency judgments in cases where there has been a nonjudicial foreclosure, no money will be collected directly from [the consumer]." 858 F.3d at 580. Similarly, in the decision below, the Ninth Circuit recognized that "[Petitioners]

filed the Praecipe and Writ in order to collect a debt arising from [Ms. McNair's] failure to pay homeowner association fees as part of a judicial foreclosure scheme that in many cases allows for deficiency judgments." App. 7 (citing Ariz. Rev. Stat. §§ 33-727(A), 33-729(B)-(C)). Arizona, like California, could result in money being collected from a consumer after a judicial foreclosure pursuant to a deficiency judgment. Specifically, Ariz. Rev. Stat. § 33-727(A) states that "if the mortgaged property does not sell for an amount sufficient to satisfy the judgment, an execution may be issued for the balance against the mortgagor where there has been personal service, or the defendant has appeared in the action."[1]

The Ninth Circuit is far from alone in recognizing the implication of money collection in judicial foreclosures. *See Cohen v. Rosicki, Rosicki & Associates, P.C.*, 897 F.3d 75, 83 (2d Cir.2018) ("New York law gives mortgagors redemption rights and allows mortgagees to obtain deficiency judgments if the proceeds from the foreclosure sale are less than the outstanding debt. These provisions indicate that the purpose of foreclosure is to obtain payment on the underlying loan, rather than mere possession of the subject property.") (citations omitted); *Obduskey*, 879 F.3d at 1221 ("There is an obvious and critical difference between judicial and non-judicial foreclosures—a non-judicial foreclosure differs from a judicial foreclosure in that the sale

[1] The exceptions provided in Ariz. Rev. Stat. §§ 33-729 (purchase money mortgages) and 33-730 (purchase money combined for real property and consumer goods) are not applicable here.

does not preserve to the trustee the right to collect any deficiency in the loan amount personally against the mortgagor.") (internal quotes and citation omitted); *Glazer*, 704 F.3d at 461 ("the existence of redemption rights and the potential for deficiency judgments demonstrate that the purpose of foreclosure is to obtain payment on the underlying home loan" and that "[s]uch remedies would not exist if foreclosure were not undertaken for the purpose of obtaining payment.") (citing Eric M. Marshall, Note, The Protective Scope of the Fair Debt Collection Practices Act: Providing Mortgagors the Protection They Deserve From Abusive Foreclosure Practices, 94 Minn. L.Rev. 1269, 1297–98 (2010)).

Judicial foreclosures, and the potential for deficiency judgments, implicate the collection of money, and the Ninth Circuit was correct to hold such in the decision below.

B. Ms. McNair's Right of Redemption Further Supports The Ninth Circuit's Holding.

Under Arizona law and the express terms of the Stipulation, Ms. McNair held a right of redemption, which, like the potential for a deficiency judgment, implicates a claim for money.

In Arizona, owners of real property have the right to redeem either before a foreclosure sale of the property or within six months after the sale. Ariz. Rev. Stat. § 33-726 ("If payment is made to the officer directed to

sell mortgaged property under a foreclosure judgment, before the foreclosure sale takes place, the officer shall make a certificate of payment and acknowledge it, and the certificate shall be recorded in the office in which the mortgage or deed of trust is recorded."); Ariz. Rev. Stat. § 12-1282(B) ("The judgment debtor or his successor in interest may redeem at any time within six months after the date of the sale" except that period is reduced to 30 days "if the court determined as part of the judgment under which the sale was made that the property was both abandoned and not used primarily for agricultural or grazing purposes.").

The Stipulation expressly included the shortened 30-day redemption period for Ms. McNair. ER-157.[2] The Writ itself referenced and repeated this redemption period: "The statutory redemption period is 30 days pursuant to paragraph 7 of the Stipulation." ER-200.

To exercise her right of redemption, Ms. McNair would have had to make a payment of money. Ariz. Rev. Stat. §§ 12-1285 and 33-726. Thus, the Writ expressly provided for the possibility that Petitioners would receive a money payment, including the overstated amount for "accruing" attorneys' fees from Ms. McNair. *See Glazer*, 704 F.3d at 461 ("[T]he existence of redemption rights and the potential for deficiency judgments demonstrate that the purpose of foreclosure is

[2] "ER" refers to the Excerpt of Record, Volume 2 in *McNair*, at docket entry 14-2. The specific page numbers follow the ER designation.

to obtain payment on the underlying home loan. Such remedies would not exist if foreclosure were not undertaken for the purpose of obtaining payment.") (citation omitted). Ms. McNair's rights of redemption further support the Ninth Circuit's holding that judicial foreclosure activities implicate the FDCPA.

C. Petitioners Expressly Sought, Collected, And Preserved The Right To Collect Money From Ms. McNair.

The panel in *McNair* expressly recognized that Petitioners "were in fact 'debt collectors' collecting 'debt.'" App. 6. The panel acknowledged that Respondent's homeowner association assessment obligations were a "debt" under the FDCPA and Petitioners were acting as a "debt collector" collecting that debt. App. 6 (citing 15 U.S.C. § 1692a(5); *Mashiri v. Epstein Grinnell & Howell*, 845 F.3d 984, 989-90 (9th Cir.2017); *Heintz*, 514 U.S. at 299).

In the Superior Court Action, Petitioners did not only seek the foreclosure of Ms. McNair's home. They also sought a money judgment on a breach of contract claim. ER-148-53. After filing the complaint in the Superior Court Action, Petitioners collected over $5,000.00 through the Stipulation's payment plan. The Stipulation also formed Petitioners' basis for filing the Writ. At section 3, the Stipulation even preserved the right to directly collect money owed, stating, in pertinent part, "if [the Association] desires to proceed directly to collect upon the monetary portions of this Stipulation,

the Association shall be entitled to a money judgment against [Ms. McNair] for the amounts set forth above or any lesser amounts to the extent of offsetting excess proceeds." ER-156.

As late as November 6, 2013, the same day Petitioners sought the issuance of the Writ (ER-199-200), they wrote Ms. McNair, attempting to collect money from her:

> I have received your correspondence dated September 23 with the enclosed payment of $275.74. You need to review the enclosed stipulation again to my previous email. The stipulation also included $1,687.50 in attorney fees and costs, which you don't even account for in your calculations. Thus, $275.74 is not your current payoff to resolve the matter. After you review the stipulation again, let me know your intention with resolution.

ER-183.

Finally, as the court below noted, "Petitioners and their client received a total of $11,600.13 in satisfaction of the debt" from the proceeds of the sheriff's sale. App. 4. Petitioners never recovered the collateral. Instead, through the Writ, a sheriff's deputy sold the house to a third party and Petitioners collected $11,600.13. Combined with the $6,575.74 Petitioners' collected from the two payment plans prior to the sheriff's sale, they collected more than $18,000.00 on Ms. McNair's debt. The court was correct to hold that Petitioners were debt collectors collecting a debt and that they did so in violation of the FDCPA.

D. The Direct Collection Or Attempted Collection Of Actual Money Is Not Necessary For The FDCPA To Apply.

Petitioners' argument is premised on a false position that "debt collection" under the FDCPA requires an effort to obtain actual money from a consumer. Their position is directly conflicted by the express language in the FDCPA.

"Debt collector" is defined to include "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." 15 U.S.C. § 1692a(6). There is no language in this definition requiring that a "debt collector" collect or attempt to collect money.

Congress obviously intended this definition to be broad by utilizing the phrase "directly or indirectly" in relation to the collection or attempted collection of a debt. If Congress intended to require debt collection to be limited to the collection of money, it could have stated such. Instead, it used the broad phrase "directly or indirectly" to describe the collection of debts. A letter demanding payment of money is a direct way of collecting a debt. The forced sale of property and receipt of those sale proceeds is an indirect way to collect a debt.

While the term "debt" is defined to include "any obligation or alleged obligation of a consumer to pay money," the collection of that debt, as defined by "debt

collector," is not limited to the collection of money. To be a "debt" the consumer must have an obligation to pay money, but a "debt collector" can collect that debt in other, indirect ways, such as judicial foreclosure or other judgment execution on property, including non-exempt personal property. Petitioners' requirement for direct collection of money is not supported by the language of the FDCPA or common sense.

CONCLUSION

For the foregoing reasons, this Court should deny the Petition for a Writ of Certiorari.

Dated: February 6, 2019.

Respectfully submitted,

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