

## INDEX TO APPENDICES

APPENDIX A:	Unpublished Opinion of the Fourth Circuit Fourth Circuit Order denying rehearing en banc (4 pages)
APPENDIX B:	U.S. District Court for the District of South Carolina Text Order (2 pages)
APPENDIX C:	U.S. District Court for the District of South Carolina Text Order (1 page)
APPENDIX D:	Magistrate Report and Recommendation (9 pages)
APPENDIX E:	U.S. District Court for the District of South Carolina Opinion and Judgment (9 pages)
APPENDIX F:	Copy of Private Law 114-31 referencing Private Bill No.: S -112 (14 pages)

## **APPENDIX A**

FILED: May 22, 2020

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 20-1183  
(2:17-cv-02170-BHH)

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NELSON L. BRUCE

Plaintiff - Appellant

v.

PENTAGON FEDERAL CREDIT UNION, a/k/a PenFed Credit Union

Defendant - Appellee

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J U D G M E N T

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In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

**UNPUBLISHED**

**UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

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**No. 20-1183**

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NELSON L. BRUCE,

Plaintiff - Appellant,

v.

PENTAGON FEDERAL CREDIT UNION, a/k/a PenFed Credit Union,

Defendant - Appellee.

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Appeal from the United States District Court for the District of South Carolina, at Charleston. Bruce H. Hendricks, District Judge. (2:17-cv-02170-BHH)

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Submitted: May 19, 2020

Decided: May 22, 2020

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Before NIEMEYER, HARRIS, and RICHARDSON, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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Nelson L. Bruce, Appellant Pro Se. Michael A. Graziano, ECKERT SEAMANS CHERIN & MELLOTT, LLC, Washington, D.C., for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Nelson L. Bruce appeals the district court's text order denying his Fed. R. Civ. P. 60(b) motion seeking relief from the court's prior order denying both his motion to compel arbitration and a separate Rule 60(b) motion. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Bruce v. Pentagon Fed. Credit Union*, No. 2:17-cv-02170-BHH (D.S.C. Jan. 29, 2020). We deny Bruce's motion to transfer this appeal to the United States Court of Appeals for the Federal Circuit. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

*AFFIRMED*

FILED: June 23, 2020

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 20-1183  
(2:17-cv-02170-BHH)

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NELSON L. BRUCE

Plaintiff - Appellant

v.

PENTAGON FEDERAL CREDIT UNION, a/k/a PenFed Credit Union

Defendant - Appellee

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ORDER

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The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Patricia S. Connor, Clerk

## **APPENDIX B**

MIME-Version:1.0

From:SCDEfilingstat@scd.uscourts.gov

To:scd\_ecf\_nef@localhost.localdomain

Bcc:

--Case Participants: Sarah B Nielsen (kim.smith@nelsonmullins.com, sarah.nielsen@nelsonmullins.com), Matthew Adams Abee (kim.smith@nelsonmullins.com, matt.abee@nelsonmullins.com), Benjamin Rush Smith, III (jessica.trautman@nelsonmullins.com, rush.smith@nelsonmullins.com), Nicholas T Moraites (nmoraites@eckertseamans.com), Honorable Bruce Howe Hendricks (hendricks\_ecf@scd.uscourts.gov)

--Non Case Participants:

--No Notice Sent:

Message-Id:<9467270@scd.uscourts.gov>

Subject:Activity in Case 2:17-cv-02170-BHH Bruce v. Pentagon Federal Credit Union Order on Motion to Vacate

Content-Type: text/html

This is an automatic e-mail message generated by the CM/ECF system. Please **DO NOT RESPOND** to this e-mail because the mail box is unattended.

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U.S. District Court

District of South Carolina

### Notice of Electronic Filing

The following transaction was entered on 1/29/2020 at 3:11 PM EST and filed on 1/29/2020

Case Name: Bruce v. Pentagon Federal Credit Union

Case Number: 2:17-cv-02170-BHH

Filer:

WARNING: CASE CLOSED on 09/19/2018

Document Number: 95(No document attached)

Docket Text:

**TEXT ORDER denying [89] Motion to Vacate. After review, the Court finds no merit to Plaintiff Nelson Bruce's arguments in his most recent motion to vacate, and the Court finds that Plaintiff is not entitled to relief pursuant to Fed. R. Civ. P. 60(b). Accordingly, the Court hereby denies Plaintiff's motion. Entered at the direction of The Honorable Bruce Howe Hendricks on 1/29/20.(nsw)**

2:17-cv-02170-BHH Notice has been electronically mailed to:

Benjamin Rush Smith, III rush.smith@nelsonmullins.com, jessica.trautman@nelsonmullins.com



Sarah B Nielsen (Terminated) sarah.nielsen@nelsonmullins.com, kim.smith@nelsonmullins.com

Nicholas T Moraites nmoraites@eckertseamans.com

Matthew Adams Abee matt.abee@nelsonmullins.com, kim.smith@nelsonmullins.com

**2:17-cv-02170-BHH Notice will not be electronically mailed to:**

Nelson L Bruce  
144 Pavilion St  
Summerville, SC 29483

## APPENDIX C

## Orders on Motions

2:17-cv-02170-BHH Bruce v.  
Pentagon Federal Credit Union  
CASE CLOSED on 09/19/2018

APPEAL,CLOSED,JURY,PROSE

U.S. District Court

District of South Carolina

### Notice of Electronic Filing

The following transaction was entered on 5/3/2019 at 1:56 PM EDT and filed on 5/3/2019

Case Name: Bruce v. Pentagon Federal Credit Union

Case Number: 2:17-cv-02170-BHH

Filer:

WARNING: CASE CLOSED on 09/19/2018

Document Number: 76(No document attached)

#### Docket Text:

**TEXT ORDER denying Plaintiff's [74] Motion to Vacate/Set Aside Judgment/Order and [75] Motion to Compel Arbitration and to Stay Proceedings. This matter is before the Court on Plaintiff's motion, putatively brought pursuant to Federal Rule of Civil Procedure 60, for relief from the [66] Judgment entered in this case on September 19, 2018, and the Court's [65] Order dated September 19, 2018. The stated ground for the motion is that the parties have recently entered into a new binding agreement/contract and addendum during the appeal, which supposedly binds the parties to dispose of the case via arbitration. (See ECF No. 74 at 1-2.) Plaintiff's motion was filed eight (8) days after the entry, by the Fourth Circuit Court of Appeals, of an unpublished opinion affirming this Court's disposition of the case pursuant to Defendant's motion to dismiss. (See ECF No. 73.) The Rule 60 motion is rambling and incoherent, and has no basis in fact. (See ECF No. 74.) The parties have not entered into the agreement/contract and addendum that Plaintiff represents, and there is no applicable arbitration clause. Accordingly, both the Rule 60 motion (ECF No. 74) and the motion to compel arbitration (ECF No. 75) are denied. Entered at the direction of Honorable Bruce Howe Hendricks on 05/03/2019.(hada, )**

2:17-cv-02170-BHH Notice has been electronically mailed to:

Benjamin Rush Smith, III rush.smith@nelsonmullins.com, jessica.trautman@nelsonmullins.com

Sarah B Nielsen (Terminated) sarah.nielsen@nelsonmullins.com, kim.smith@nelsonmullins.com

Nicholas T Moraites nmoraites@eckertseamans.com

Matthew Adams Abee matt.abee@nelsonmullins.com, kim.smith@nelsonmullins.com

2:17-cv-02170-BHH Notice will not be electronically mailed to:

Nelson L Bruce  
144 Pavilion St  
Summerville, SC 29483

## APPENDIX D

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
BEAUFORT DIVISION**

Nelson L. Bruce,	)	C/A No. 2:17-CV-2170-BHH-MGB
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	
	)	
	)	<b>Report and Recommendation</b>
Pentagon Federal Credit Union (A.K.A	)	
PenFed Credit Union) ect. [sic] all,	)	
	)	
DEFENDANT.	)	
_____	)	

The Plaintiff, appearing *pro se*, filed the instant action on August 15, 2017. (Dkt. No. 1.) The Plaintiff filed an Amended Complaint on September 25, 2017. (Dkt. No. 15.) Before the court is Pentagon Federal Credit Union's Motion to Dismiss ("Motion"). (Dkt. No. 37.) Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1) and Local Rule 73.02(B)(2)(e), D.S.C., all pretrial matters in cases involving *pro se* litigants are referred to a United States Magistrate Judge for consideration. For the reasons stated herein, this court recommends that Pentagon Federal Credit Union's Motion to Dismiss (Dkt. No. 37) be granted.

**Amended Complaint**

The Amended Complaint is difficult to follow but contains the following allegations. All of the events contained in the Amended Complaint occurred in Dorchester County, South Carolina. (Dkt. No. 14 at 2.) The Defendant is a bank that advertised loans. (*Id.*) The Plaintiff applied for a loan, but was refused. (*Id.*) The Defendant cannot produce an original promissory note, but has produced a copy, which "purports to obligate" Plaintiff to pay \$33,478.00 plus interest for a current value of \$37,222.71. (*Id.*) The Defendant "misrepresented" the "elements of

the alleged agreement.” (*Id.*) There “is no bona fide signature on the alleged promissory note” and the “copy of the promissory note is a forgery that has been altered.” (*Id.*)

The Plaintiff alleges that the Defendant used the forged promissory note to fund “the alleged bank loan cheque” to the Plaintiff. (Dkt. No. 14.) The Plaintiff alleges that the Defendant “at no time loaned plaintiff legal tender or other ‘depositors’ money in the amount of (\$33, 478.00). . . .” (*Id.* at 3.) The Plaintiff, in an apparent contradiction, alleges that the Defendant changed the cost and “the risk” of the loan, “refused to disclose whether the cheque was the consideration loaned for the alleged promissory note,” and refused to disclose material facts of the alleged agreement. . . .” (*Id.*) The Plaintiff alleges that he told the Defendant not to contact him by telephone, but the Defendant continued to call him at least six times. (*Id.*)

The Plaintiff alleges that the contract with the bank to loan him money was void because the lending officer “did not have the power under the Bank Charter to loan. . . the plaintiff credit.” (*Id.* at 4.) The Plaintiff alleges that the Defendant has deprived him of his property for three months through repossession. (*Id.*) The Plaintiff alleges that he made “good faith” payments on the promissory note in the amount of \$601.64 per month “until about June 12, 2016-July 12, 2017. . . .” (*Id.*) On or about September 17, 2016, the Plaintiff requested “verification and validation” of the alleged debt. (*Id.*)

The Amended Complaint states that it is brought under the Truth in Lending Act of 1968 (“TILA”), the Fair Debt Collection Practices Act (“FDCPA”), and South Carolina Code Sections 16-13-10, 32-3-10, and 32-3-20.<sup>1</sup> (Dkt. No. 14 at 1.) The Plaintiff seeks injunctive relief,

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<sup>1</sup> In the Plaintiff’s Opposition to Defendant’s Motion to Dismiss and Plaintiff’s Counter Claims, the Plaintiff states that the Amended Complaint contains claims that “not only arise under TILA, but also every law including constitutional laws which are the supreme laws of the land. . . , acts of congress that are law and everything incorporated in [the] Amended Complaint by reference, statute or code.” (Dkt. No. 40 at 12.) The Plaintiff additionally lists two “counter claims.” (*Id.* at

declaratory judgment, and monetary damages including punitive, compensatory, and statutory damages. (*Id.* at 5.)

### **Standard of Review**

On a motion to dismiss pursuant to Rule 12(b)(6), a “complaint must be dismissed if it does not allege ‘enough facts to state a claim to relief that is plausible on its face.’” *Giarratano v. Johnson*, 521 F.3d 298, 302 (4th Cir. 2008) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “In reviewing a motion to dismiss an action pursuant to Rule 12(b)(6) . . . [a court] must determine whether it is plausible that the factual allegations in the complaint are ‘enough to raise a right to relief above the speculative level.’” *Andrew v. Clark*, 561 F.3d 261, 266 (4th Cir. 2009) (quoting *Twombly*, 550 U.S. at 555). “A plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. 555 (quoting *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). A court may consider attachments to the complaint as well. *Philips v. Pitt Cty. Mem’l Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009) (citing Fed.R.Civ.P. 10(c)).

For purposes of a motion to dismiss, the district court must “take all of the factual allegations in the complaint as true.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “In considering a motion to dismiss, [the court] accept[s] the complainant’s well-pleaded allegations as true and view[s] the complaint in the light most favorable to the non-moving party.” *Stansbury v. McDonald’s Corp.*, 36 F. App’x 98, 98-99 (4th Cir. 2002) (citing *Mylan Labs., Inc. v. Matkari*, 7 F.3d 1130, 1134 (4th Cir.1993)). However, while the court must draw all reasonable inferences

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12-16.) The court limits its analysis to the Amended Complaint and any claims that may be broadly construed within it. The Plaintiff has not filed a motion to amend or supplement his complaint to add any additional claims in accordance with Rule 15 of the Federal Rules of Civil Procedure. “[I]t is axiomatic that the complaint may not be amended by briefs in opposition to a motion to dismiss.” *Myland Labs., Inc. v. Akzo, N.V.*, 770 F. Supp. 1053, 1068 (D. Md. 1991) (citing *Car Carriers, Inc. v. Ford Motor Co.*, 745 F.2d 1101 (7th Cir. 1984)).

in favor of the plaintiff, it need not accept the “legal conclusions drawn from the facts, ... unwarranted inferences, unreasonable conclusions or arguments.” *Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*, 591 F.3d 250, 253 (4th Cir. 2009) (citing *Edwards v. City of Goldsboro*, 178 F.3d 231, 244 (4th Cir. 1999); *Giarratano*, 521 F.3d at 298). “[P]*ro se* complaints...are held to a less stringent standard than those drafted by attorneys, ... and a federal district court is charged with liberally construing a complaint or petition filed by a *pro se* litigant to allow the development of a potentially meritorious case.” *Stout v. Robnett*, 107 F. Supp. 2d 699, 702 (D.S.C. 2000) (internal quotations and citations omitted).

### **Analysis**

#### **1. TILA Claim**

The Plaintiff has failed to state a claim under TILA and any attempt to amend the Amended Complaint would be futile because of the statute of limitations. The purpose of TILA is “to assure a meaningful disclosure of credit terms so that the consumers will be able to compare more readily the various credit terms available ... and avoid the uninformed use of credit....” 15 U.S.C. § 1601(a). “TILA requires that a creditor make certain material disclosures at the time the loan is made.” *Gilbert v. Residential Funding LLC*, 678 F.3d 271, 276 (4th Cir. 2012). Claims seeking civil damages under TILA are governed by a one year statute of limitations, and must be brought within one year of the date of the occurrence of the violation. 15 U.S.C. § 1640(e). “[A] claim for damages under [the] TILA ... is subject to a one-year limitations period that begins to run from the date the loan closed.” *In re Cmty Bank of N. Va.*, 622 F.3d 275, 303 (3rd Cir. 2010).

The Plaintiff simultaneously alleges in the Amended Complaint that he did not have a loan with the Defendant—“the defendants at no time loaned the plaintiff legal tender...”—and that he did have a loan with the Defendant but the Defendants hid material facts—“the defendant bank



refused to disclose material facts of the alleged agreement....” (Dkt. No. 14 at 3.) The Plaintiff alleges that he “in good faith...continued to make payments in the amount of \$601.64 to the Defendant up until about June 17, 2016...” and that he requested verification of the debt on September 17, 2016. (Dkt. No. 14. at 4.)

Assuming that the Plaintiff did have some sort of lending agreement with the Defendant, such an agreement existed prior to June 17, 2016 by the Plaintiff’s own allegations. The Plaintiff did not file this suit until August 15, 2017. (Dkt. No. 1.) Therefore, the Plaintiff did not file his claims under TILA within the one year statute of limitations. The one year statute of limitations under TILA runs from the time the loan closed. *In re Cmty Bank of N. Va.*, 622 F.3d 275, 303 (3rd Cir.2010). Therefore, the Plaintiff has failed to state a claim under TILA and any amendment by the Plaintiff would be futile.<sup>2</sup>

## **2. FDCPA Claim**

The Plaintiff has failed to state a claim under the FDCPA and any attempt to amend the Amended Complaint would be futile because FDCPA claims may not be brought against the Defendant in this case. The FDCPA, 15 U.S.C. § 1692 *et seq.*, was passed by Congress “to eliminate abusive debt collection practices by debt collectors, [and] to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged,” *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. 573, 602 (2010) (quoting 15 U.S.C. § 1692(e)). “[T]he FDCPA purports to regulate only the conduct of debt collectors, not creditors, generally distinguishing between the two based on whether the person acts in an agency relationship with the person to whom the borrower is indebted.” *Henson v. Santander Consumer USA, Inc.*, 817 F.3d 131, 135 (4th Cir. 2016), *cert. granted*, 137 S. Ct.

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<sup>2</sup> To the extent the Plaintiff alleges that he did not have any loan with the Defendant, he could not allege any claim under TILA.

810, 196 L. Ed. 2d 595 (2017), *and aff'd*, 137 S. Ct. 1718, 198 L. Ed. 2d 177 (2017). Dismissal is proper under Rule 12(b)(6) where a complaint fails “to allege facts demonstrating that [the defendant] was acting as a ‘debt collector, as defined by [the FDCPA], when it was collecting on debts owed by the plaintiff[.]” *Id.* at 140.

As noted *supra*, the Plaintiff simultaneously alleges that the Defendant did and did not provide him a loan. The Plaintiff alleges that he paid monthly payments to the Defendant through June of 2016. (Dkt. No. 14. at 4.) To the extent the Plaintiff alleges any loan was made, the loan was made by the Defendants to the Plaintiff. The FDCPA “distinguishes a ‘debt collector,’ which collects the debts due to another, from a ‘creditor,’ which seeks to collect on its own debts. *Hardnett v. M&T Bank*, 204 F. Supp. 3d 851, 859–60 (E.D. Va. 2016), *motion for relief from judgment denied*, No. 3:15-cv-622, 2017 WL 5639918 (E.D. Va. Apr. 13, 2017), *and aff'd sub nom. Hardnett v. M & T Bank*, 699 F. App'x 242 (4th Cir. 2017), *and aff'd sub nom. Hardnett v. M & T Bank*, 699 F. App'x 242 (4th Cir. 2017). Therefore, as a creditor, the Defendant is not subject to liability under the FDCPA. *Davis v. Dillard Nat'l Bank*, No. 1:02-cv-546, 2003 WL 21297331, at \* 4 (M.D.N.C. June 4, 2003) (“Crediting institutions, such as banks, are not debt collectors under [the FDCPA] because they collect their own debts and are in the business of lending money to consumers”). The Plaintiff has failed to state a claim under the FDCPA. Any amendment by the Plaintiff would be futile as the Plaintiff has alleged that the Defendant was the Plaintiff’s creditor for any loan he may have had.

### **3. Remaining State Law Claims**

The Amended Complaint fails to allege a claim which falls within this court’s original jurisdiction. The court must now determine whether it should exercise supplemental jurisdiction over Plaintiff’s state law claims under 28 U.S.C. § 1367(a). “The district courts may decline to

exercise supplemental jurisdiction over a claim under subsection (a) if...(3) the district court has dismissed all claims over which it has original jurisdiction; or (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.” 28 U.S.C § 1367(c)(3)-(4). As noted by the Fourth Circuit, “once a district court has dismissed the federal claims in an action, it maintains ‘wide discretion’ to dismiss the supplemental state law claims over which it properly has supplemental jurisdiction.” *Yashenko v. Harrah's NC Casino Co.*, 446 F.3d 541, 553 n. 4 (4th Cir. 2006) (quoting *Carnegie–Mellon Univ. v. Cohill*, 484 U.S. 343, 353-54 (1988)). When determining whether to exercise supplemental jurisdiction over state law claims, a district court must consider “convenience and fairness to the parties, the existence of any underlying issues of federal policy, comity, and considerations of judicial economy.” *Shanaghan v. Cahill*, 58 F.3d 106, 110 (4th Cir. 1995) (citing *Cohill*, 484 U.S. at 350 n. 7).

The Plaintiff’s remaining claims, to the extent any are alleged, are brought exclusively under state law.<sup>3</sup> The Plaintiff has not alleged or argued any federal interest or right that these claims would implicate. There is no harm to the parties if the court declines to exercise jurisdiction over these claims. The undersigned recommends that the Plaintiff’s state law claims, to the extent he alleges any, be dismissed without prejudice.

### **Conclusion**

Wherefore, it is **RECOMMENDED** that Pentagon Federal Credit Union’s Motion to Dismiss (Dkt. No. 37) be **GRANTED with prejudice** as to the Plaintiff’s TILA and FDCPA claims and **without prejudice** as to the Plaintiff’s state law claims.

Signature page attached.


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<sup>3</sup> The Plaintiff alleges he brings claims pursuant to South Carolina Code Section 16-13-10, a criminal forgery statute, and Sections 32-3-10 and 32-3-20, which relate to agreements that must be in writing under the statute of frauds. (Dkt. No. 14 at 1.)

IT IS SO RECOMMENDED.

July 24, 2018

Charleston, South Carolina

  
\_\_\_\_\_  
MARY GORDON BAKER  
UNITED STATES MAGISTRATE JUDGE

### **Notice of Right to File Objections to Report and Recommendation**

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. **Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections.** “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4<sup>th</sup> Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

**Robin L. Blume, Clerk  
United States District Court  
Post Office Box 835  
Charleston, South Carolina 29402**

**Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation.** 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

## **APPENDIX E**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
BEAUFORT DIVISION

Nelson L. Bruce,	)	
	)	
Plaintiff,	)	
	)	Civil Action No. 2:17-cv-2170-BHH
v.	)	
	)	
Pentagon Federal Credit Union (A.K.A.	)	
PenFed Credit Union) ect. [sic], all,	)	<b><u>ORDER</u></b>
	)	
Defendants.	)	
_____	)	

This matter is before the Court upon Defendant Pentagon Federal Credit Unions's ("Pentagon" or "Defendant") motion to dismiss Plaintiff Nelson L. Bruce's ("Bruce" or "Plaintiff") pro se amended complaint. In accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2)(d) (D.S.C.), the matter was referred to a United States Magistrate Judge for preliminary determinations.

On July 24, 2018, Magistrate Judge Mary Gordon Baker issued a Report and Recommendation ("Report") outlining the issues and recommending that the Court grant Defendant's motion to dismiss. Attached to the Report was a notice advising the parties of their right to file written objections to the Report within fourteen days of being served with a copy. Following the Magistrate Judge's order, Plaintiff filed objections and a motion for summary judgment on August 9, 2018. In addition, on August 13, 2018, Plaintiff filed a motion for preliminary injunction. Defendant filed responses to Plaintiff's filings, and on August 29, 2018, Plaintiff filed an amended motion for preliminary injunction. Defendant again filed a response in opposition to Plaintiff's motion, and Plaintiff filed two replies. The matters are ripe for review, and for the reasons set forth below, the Court adopts and

incorporates the Magistrate Judge's Report; overrules Plaintiff's objections; and denies Plaintiff's motions for summary judgment and for preliminary injunction.

### **BACKGROUND**

As the Magistrate Judge explained in her Report, Plaintiff's amended complaint is difficult to follow, but it includes the following allegations. Plaintiff asserts that he is the owner of a BMW and that Defendant does "business in banking." (ECF No. 14 at 2.) According to Plaintiff, "Defendant bank advertised they loan money," and "Plaintiff applied for a loan of money." (*Id.*) Plaintiff then contends that "Defendant refused to loan Plaintiff legal tender or other depositors' money" and that "Defendant misrepresented [ ] the elements of the alleged agreement." (*Id.*) Plaintiff states that there is not a "bona fide signature on the alleged promissory note," and that the copy of the note is a forgery that "purports to obligate Plaintiff to pay [\$33,478.00] plus interest." (*Id.*) Plaintiff states that "Defendant is referencing the altered forged promissory note as a loan from Plaintiff to the bank," but that "Defendant used this loan to fund the alleged bank loan cheque, back to Plaintiff." (*Id.*) Plaintiff further states that "Defendant at no time loaned Plaintiff legal tender or other 'depositors' money" in the amount of \$33,478.00 and that Defendant "changed the cost and the risk of the alleged loan." (*Id.* at 3.) Plaintiff contends that Defendant "refused to disclose material facts of the alleged agreement, refusing to tell Plaintiff if the agreement was for Plaintiff to fund the alleged bank loan cheque or if the Defendant was to use the bank's legal tender or other "depositors" [sic] money to fund the bank loan cheque." (*Id.*)

Next, Plaintiff asserts that Defendant has violated the Fair Debt Collection Practices Act ("FDCPA") and that Defendant was asked to cease communication via telephone with



Plaintiff but ignored that request. (*Id.*) Plaintiff also alleges that Defendant created a void contract because “the lending officer did not have the power under the Bank Charter” to loan credit to Plaintiff, and Plaintiff asserts that Defendant violated the usury laws and defrauded him in violation of federal banking laws. (*Id.* at 4.) In contrast to his prior assertion that Defendant refused to loan Plaintiff money, Plaintiff then asserts that he “in good faith continued to make payments in the amount of \$601.64 to the Defendant up until about June 17, 2016–July 12, 2017.” (*Id.*) Plaintiff claims he requested verification and validation of the alleged debt around September 17, 2016, to prove that Defendant has already been paid, but Defendant refuses to respond properly. (*Id.* at 4-5.) Plaintiff seeks injunctive and declaratory relief as well as monetary damages. (*Id.* at 5-6.)

### **STANDARD OF REVIEW**

#### **I. The Magistrate Judge’s Report**

The Magistrate Judge makes only a recommendation to the Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261 (1976). The Court is charged with making a *de novo* determination only of those portions of the Report to which specific objections are made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of specific objections, the Court reviews the matter only for clear error. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the

recommendation.’”) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

## **II. Federal Rule of Civil Procedure 12(b)(6)**

Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain a “short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). As the Supreme Court held in *Bell Atl. Corp. v. Twombly*, the pleading standard set forth in Rule 8 “does not require ‘detailed factual allegations,’ but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. 544, 555 (2007)). Thus, “[a] pleading that offers ‘labels and conclusions’ or ‘a formulaic recitation of the elements of a cause of action will not do.’” *Id.* “Nor does a complaint suffice if it tenders ‘naked assertion[s]’ devoid of ‘further factual enhancement.’” *Id.* (quoting *Twombly*, 550 U.S. at 557).

A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) examines the legal sufficiency of the facts alleged on the face of a plaintiff’s complaint. *Edwards v. City of Goldsboro*, 178 F.3d 231, 243 (4th Cir. 1999). To survive a Rule 12(b)(6) motion, “[f]actual allegations must be enough to raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 555. The “complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). A claim is facially plausible when the factual content allows the court to reasonably infer that the defendant is liable for the misconduct alleged. *Id.* When considering a motion to dismiss, the court must accept as true all of the factual allegations contained in the complaint. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

## **DISCUSSION**

In her Report, the Magistrate Judge first analyzed Plaintiff's claim pursuant to the Truth in Lending Act ("TILA") and determined that Plaintiff's complaint fails to state a plausible TILA claim. First, as the Magistrate Judge noted, Plaintiff's amended complaint simultaneously alleges that he did not have a loan with Defendant and that he did have a loan with Defendant. To the extent Plaintiff did not have a loan with Defendant, he could not have a plausible TILA claim. On the other hand, assuming Plaintiff did have a loan with Defendant, he specifically alleges that he "in good faith continued to make payments in the amount of \$601.64 to the Defendant up until about June 17, 2016–July 12, 2017." (ECF No. 14 at 4.) As the Magistrate Judge properly noted, it is clear from Plaintiff's own allegations that some sort of lending agreement necessarily existed prior to June 17 of 2016. Importantly, because claims for damages under TILA are governed by a one-year statute of limitations that begins to run from the date the loan closed, and Plaintiff did not file this lawsuit until August of 2017, the Court agrees with the Magistrate Judge that Plaintiff's TILA claim fails and any amendment would be futile.

Plaintiff objects to this conclusion by the Magistrate Judge and asserts that he did not receive certain disclosures until August 19, 2016, rendering this action timely. In addition, he argues that he is entitled to equitable tolling pursuant to the doctrine of fraudulent concealment. As Defendant points out in response to Plaintiff's objections, however, Plaintiff himself asserts that he received a letter concerning the loan on July 17, 2016; indeed, Plaintiff apparently filed a copy of this letter along with his objections. (See ECF No. 49-1 at 4-5.) Thus, Plaintiff's argument that the statute of limitations should began to run on August 19, 2016, is without merit. Moreover, the Court agrees with Defendant that Plaintiff has not shown that he is entitled to equitable tolling under the circumstances;

the Court also notes that TILA provides a clear limitations period and the discovery rule does not apply. Overall, the Court finds Plaintiff's objections unavailing, and the Court agrees with the Magistrate Judge that Defendant is entitled to dismissal with prejudice of Plaintiff's TILA claim.

Next, the Magistrate Judge evaluated Plaintiff's FDCPA claim and likewise determined that Plaintiff failed to state a claim and that any amendment would be futile because FDCPA claims may not be brought against this Defendant, which by Plaintiff's own allegations was acting as a "creditor" and not a "debt collector." *Henson v. Santander Consumer USA, Inc.*, 817 F.3d 131, 135 (4th Cir. 2016), cert. granted, 137 S. Ct. 810, 196 L. Ed. 2d 595 (2017), and aff'd, 137 S. Ct. 1718, 198 L. Ed. 2d 177 (2017) ("[T]he FDCPA purports to regulate only the conduct of debt collectors, not creditors, generally distinguishing between the two based on whether the person acts in an agency relationship with the person to whom the borrower is indebted."); see also *Hardnett v. M&T Bank*, 204 F. Supp. 3d 851, 859-60 (E.D. Va. 2016), motion for relief from judgment denied, No. 3:15-cv-622, 2017 WL 5639918 (E.D. Va. Apr. 13, 2017), and aff'd sub nom. *Hardnett v. M & T Bank*, 699 F. App'x 242 (4th Cir. 2017), and aff'd sub nom. *Hardnett v. M & T Bank*, 699 F. App'x 242 (4th Cir. 2017) (providing that the FDCPA "distinguishes a 'debt collector,' which collects the debts due to another, from a 'creditor,' which seeks to collect on its own debts).

Here again, Plaintiff objects to the Magistrate Judge's conclusion and although it is difficult to discern his arguments, he appears to acknowledge that Defendant is a creditor but asserts that Defendant's use of the mails renders it a debt collector regulated by the FDCPA. The Court finds this argument wholly unavailing as there is no allegation that

Defendant ever used another name while collecting a debt, and the portion of the Federal Trade Commission's website, which Plaintiff cites in support of his argument, provides an exemption for creditors only when the creditor uses another name in the process of collecting its debts, which may indicate that a third party is collecting such debt. That is not the case here, and the Court ultimately agrees with the Magistrate Judge that Defendant is entitled to dismissal with prejudice of Plaintiff's FDCPA claim.

In her Report, the Magistrate Judge next recommended that the Court decline to exercise supplemental jurisdiction over Plaintiff's remaining state law claims, noting that those claims do not implicate any federal right or interest, and that there would be no harm to the parties if the Court declines to hear those claims. Plaintiff objects and asserts that this case involves alleged violations of his constitutional rights and federal banking law. After a thorough review of the matter, however, the Court finds Plaintiff's objections wholly without merit. In all, the Court agrees with the Magistrate Judge that to the extent Plaintiff alleges other claims, they arise under state law, and the Court declines to exercise supplemental jurisdiction over those claims and dismisses them without prejudice.

Lastly, in light of the Court's conclusions, the Court finds that Plaintiff is not entitled to summary judgment and his motions for preliminary and permanent injunctions are without merit. Accordingly, the Court denies those motions.

### **CONCLUSION**

For the foregoing reasons, the Court adopts and incorporates the Magistrate Judge's Report (ECF No. 46) and grants Defendant's motion to dismiss (ECF No. 37) with prejudice as to Plaintiff's TILA and FDCPA claims and without prejudice as to Plaintiff's state law claims. Therefore, the Court overrules Plaintiff's objections (ECF No. 49), and the Court

denies Plaintiff's motions for summary judgment and preliminary and permanent injunctions (ECF Nos. 48, 50, and 58).

**IT IS SO ORDERED.**

/s/Bruce H. Hendricks  
The Honorable Bruce Howe Hendricks  
United States District Judge

September 18, 2018  
Charleston, South Carolina

UNITED STATES DISTRICT COURT

for the

District of South Carolina

Nelson L Bruce,

*Plaintiff*

v.

Pentagon Federal Credit Union (A.K.A PenFed Credit  
Union) ect. [sic] all,

*Defendant*

)  
)  
)  
)  
)

Civil Action No. 2:17-cv-02170-BHH

**JUDGMENT IN A CIVIL ACTION**

The court has ordered that *(check one)*:

■ other: Having adopted the Report and Recommendation of Magistrate Judge Mary Gordon Baker, the Court dismisses all claims of Plaintiff Nelson L. Bruce. Plaintiff's TILA and FDCPA claims are dismissed with prejudice and Plaintiff's state law claims are dismissed without prejudice.

This action was:

■ decided by the Honorable Bruce Howe Hendricks, United States District Judge, ruling on the Report and Recommendation of the Magistrate Judge.

Date: September 19, 2018

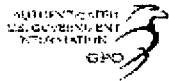
CLERK OF COURT

s/ V. Druce

*Signature of Clerk or Deputy Clerk*

## **APPENDIX F**





PRIVATE LAW 114-31—DEC. 3, 2016

JUSTICE RELIEF FOR BRADLEY CHRISTOPHER  
STARK, SHAWN MICHAEL RIDEOUT, AND  
CERTAIN NAMED BEFECIARIES  
ACT

Private Law 114-31  
114th Congress

An Act

For the Relief of Bradley Christopher Stark, Shawn Michael Rideout,  
and Certain Named Beneficiaries

Dec. 3, 2016

[S. 112]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.*

**SECTION 1. DEFINITIONS.**

(a) **Definitions.** For the purposes of this Act—

(1) The term "Agreement" means—

- (A) the Stipulation and Settlement Agreement of May 22, 2015;
- (B) the Addendum to the Agreement dated August 7, 2015;
- (C) the Addendum to the Agreement dated October 8, 2016; and
- (D) the Addendum to the Agreement dated December 21, 2015, between Bradley Christopher Stark; Shawn Michael Rideout; and the United States of America.

(2) The term "Attorney General" means the office of the Attorney General of the United States.

(3) The terms "Award," "Interim Awards," and "Final Award" mean, with respect to the Agreement, the final binding and non-appealable decisions and remedies of the arbitrator awarded pursuant to the Agreement.

(4) The term "Beneficiaries" means any one of the following beneficiaries either individually or in any combination thereof or both—

- (A) Jason Carl Thomas;
  - (i) Karen Andrea Burke-Haynes;
  - (ii) Janice Laurore;
  - (iii) Carlo Laurore;
  - (iv) Sharon Burke;
  - (v) Peter Burke;
  - (vi) Kisha Nicole Thomas;
- (B) Demetrius Jermaine Hawkins;
- (C) Katrina Glenn Hawkins;
- (D) Baldev Naidu Ragavan;
- (E) Hendrick Ezell Tunstall;
- (F) Charles Elliot Hill, II;
- (G) William Scott Hames;
- (H) John Scot Snuggs;
  - (i) Nichola Dawn (Rose) Snuggs;
  - (ii) Timothy J. Snuggs;
  - (iii) Melissa M. Snuggs;
  - (iv) Elizabeth R. Snuggs;
  - (v) Robert D. Snuggs;
- (I) Charles David Johnson, Jr.;
  - (i) Jeremy Johnson;
  - (ii) Scott Johnson;
  - (iii) Jonathan Fultz;
  - (iv) Jessica Reynolds-Toms;
  - (v) Herbert Walker;
- (J) Bryan Samuel Coffman;

Justice Relief for Bradley  
Christopher Stark, Shawn  
Michael Rideout, and  
Certain Named  
Beneficiaries.

- (i) Megan A. Coffman;
- (ii) Daniel P. Coffman;
- (iii) Corbin A. Coffman;
- (iv) Tabitha C. Coffman;
- (v) Erin Jacobs;
- (K) Meagan Eleanor (Russell) Kemp;
  - (i) Eleanor Joye Kemp;
  - (ii) Patrick Sebastian Kemp;
- (L) Lulummba Clay Travis;
- (M) Michael Tsalickis;
- (N) William Michael Cain;
- (O) Jerry Garwood Mitchell;
- (P) Shane Reed Wilson;
- (Q) Jason Wesley Tate;
- (R) Viola Cheney;
- (S) Madison Elizabeth (Stark) Liebel;
- (T) Barbara Jean Stark;
- (U) John William Stark, Jr.;
- (V) Jeffrey Marc Schonsky;
- (W) Nino Spagnuolo;
- (X) Dominik Maier;
- (Y) Curtis Colwell;
- (Z) Douglas Colwell;
- (AA) Kathleen DeWeese;
- (BB) Daniel DeWeese;
- (CC) Richard Rideout;
- (DD) Brian Rideout; and
- (EE) Nicole Rideout.

(5) The term "Corporate Beneficiaries" means any one of the following beneficiaries individually or in any combination thereof or both-

- (A) JPMorgan Chase Bank, N.A.;
- (B) Morgan Stanley;
- (C) Royal Bank of Scotland;
- (D) CreditSuisse;
- (E) Bank of America, N.A.;
- (F) Wells Fargo;
- (G) Citigroup/Citibank, N.A.;
- (H) HSBC;
- (I) Barclays, PLC;
- (J) Goldman Sachs;
- (K) BNP Paribas;
- (L) Deutsche Bank, AG;
- (M) Union Bank of Switzerland (UBS)
- (N) British Petroleum;
- (O) Transocean;
- (P) GlaxoSmithKline; and
- (Q) VolksWagon.

(6) The term "FAA" means the Federal Arbitration Act as described in title 9 of the United States Code [9 U.S.C. 1-16].

(7) The term "immediate family" shall mean the living natural mother or father, or both; or the adoptive mother or father, or both; the natural maternal grandmother or grandfather, or both; the natural paternal grandmother or grandfather, or both; any natural, half, step, or adopted brothers or sisters, or both; spouses; all natural and legally adopted children; and all natural and legally adopted grandchildren of the parties and the beneficiaries that are natural persons named in this Act; except

that the term "immediate family" shall not apply to the maternal or paternal grandparents of any adoptive parents of the parties or beneficiaries that are natural persons named in this Act.

(8) The term "parties" means either of the following parties of the first part of the Agreement either individually or in conjunction with one another or both-

- (A) Bradley Christopher Stark; and
- (B) Shawn Michael Rideout.

(9) The term "person" shall mean any individual, partnership, association, joint stock company, trust, or corporation named in this Act, including any immediate family member or relevant employee to which this Act relates and may affect, except that the term "natural person" shall only refer to any living human being that is a party, beneficiary, or immediate family member as described in this Act and shall not mean any partnership, association, joint stock company, trust, or corporation.

(10) The term "records" shall mean all records, system of records, library catalogs, lists, files, optical, electronic and physically stored information that relates to the named parties and beneficiaries in this Act.

(11) The term "Trust" as used in this Act means the Superfund and any designated Justice Relief Fund or account established by section 6 of this Act.

(12) The term "United States" as used in this Act means-

- (A) the United States of America;
- (B) the government of the United States, or
- (C) in the geographic sense, all fifty States, Territories, and Possessions of the United States.

The United States of America is the party of the second part of the Agreement.

## **SECTION 2. FINDINGS OF CONGRESS.**

(a) The Congress finds the following:

(1) That the United States by and through the Attorney General entered into an Agreement with the Parties.

(2) The Agreement is a valid and binding settlement agreement between the Parties and the United States that operates in the nature of a release-dismissal agreement.

(3) The Agreement contained an alternative dispute resolution clause that provided for arbitration as the exclusive remedy for relief to the Parties and the United States.

(4) The United States consented to the arbitration and the awards made thereunder for the equitable relief of the Parties and the United States are binding.

(5) Congress hereby expressly waives any defenses to the equitable relief awarded to the Parties, Beneficiaries, and Corporate Beneficiaries by the arbitrator.

(6) The parties, beneficiaries and their immediate family members, and the corporate beneficiaries are entitled to the relief established by the Agreement, the Awards, and the provisions of this Act notwithstanding any other law to the contrary. *Provided that*, Joey Brandon Kemp shall not be entitled to any relief or benefits established by the Agreement, the Awards, and this Act.

## **SECTION 3. PURPOSE.**

(a) The purpose of this Act is to provide the effective relief and enforcement of the obligation of promises, terms, and conditions of the Agreement between the parties and the United States of America.

#### **SECTION 4. AFFIRMATIVE RELIEF.**

(a) All parties and beneficiaries that are natural persons and their immediate family that are confined in any jail, prison, penal institution, correctional institution, or any other form of official or unofficial detention under the authority of any State, Territory, Possession, or Federal Agency of the United States, shall be unconditionally released from any such detention and set at liberty immediately and without further delay.

(b) All pending legal actions and adjudicated cases by the United States of America, any State, Territory, or Possession of the United States against the parties, beneficiaries, and their immediate family whether criminal, civil, administrative, sounding in tort, or otherwise, are vacated and dismissed with prejudice, being void ab initio and are of no further force and effect as of the date of this Act and retroactively applied to the day preceding the initial filing of any such suit or action.

(c) All real and personal property, and funds that were seized, forfeited, or taken by legal process or otherwise, by the United States of America, any State, Territory, or Possession of the United States is to be immediately returned to the appropriate parties, beneficiaries, and immediate family members to which the property relates, including, but in no way limited to the property specifically named in the Agreement and Awards. Any property that is not able to be returned in as close to its original form shall be redressed by compensation in an amount of money to the party, beneficiary, or immediate family member that is equal to the highest reasonable value of said property; and specifically, but not in any way limited to-

(1) Charles Elliott Hill, II, shall have the right to select 1500 acres of land from the Chattahoochee National Forest as compensation for the loss of his prime riverfront estates, farm, and real property with fixtures;

(2) Brian Samuel Coffman, shall be compensated in the amount of \$13,987,000 payable from the accounts of the Department of Justice by the Secretary of the Treasury for the seizure of his financial accounts, automobiles, and vessel;

(3) John Scot Snuggs, shall be compensated in the amount of \$11,321 payable from the accounts of the Department of Justice by the Secretary of the Treasury for the seizure of monetary instruments;

(d) All records and system of records in the possession of the United States of America, any State, Territory, or Possession of the United States that relate to or name the parties, beneficiaries that are natural persons, and their immediate family shall be expunged and destroyed; and from the date of this Act, no such records or system of records shall be maintained on any individuals named in this Act without the permission by the express voluntary signature after full disclosure and notice of the contents and purpose of said record or system of records being provided to the individual to whom the record relates.

(e) The parties and beneficiaries that are natural persons shall have the absolute right to the issuance of a land patent by the United States with title held in fee simply absolute in possession for any real property purchased, ceded, or quitclaimed so as to transfer ownership and title to any party or beneficiary to which this subsection relates.

(f) The United States Patent Office shall issue a full process patent to Charles Elliott Hill, II, for the "Red Muds Environmental Cleanup Process" having been formerly issued the provisional patent number 112956 U.S. PTO 60/919621.

(g) The Secretary of the Treasury is authorized to credit the sum of \$1,000,000 to the appropriate trust funds established by this Act for the benefit of the parties and beneficiaries named in accordance with the terms of the Agreement and Awards.

#### **SECTION 5. PROHIBITORY RELIEF.**

(a) The parties and beneficiaries that are natural persons, along with their immediate family, are extended absolute immunity from all criminal, civil, and administrative laws of the United States of America, any State, Territory, or Possession of the United States, and no court or tribunal of the United States shall have authority to exercise jurisdiction over the prosecution or litigation against the parties and beneficiaries, along with their immediate family, for offenses and violations of said laws; provided, that such immunity shall be subject to the remedial conditions established by this Act.

(b) The United States shall not prosecute a criminal or civil offense against any beneficiary named herein that is not a natural person for any violations or offenses against the laws of the United States that were committed prior to the date of this Act.

#### **SECTION 6. TRUST FUNDS AND MONETARY RELIEF.**

(a) **CREATION OF TRUST FUND.** There is established in the Treasury of the United States a trust fund to be known as the 'Justice Relief Superfund' (hereinafter in this section referred to as the 'Superfund'), consisting of such amounts as may be-

- (1) appropriated to the Superfund as provided in this section,
- (2) appropriated to the Superfund pursuant to section 7(c) of this Act, or
- (3) credited to the Superfund as provided in section 2.

(b) **TRANSFERS TO SUPERFUND.** There are hereby appropriated to the Superfund amounts equivalent to-

- (1) the total monetary relief calculated and established in the Agreement received by the Department of Justice in the accounts from monetary penalties, asset forfeitures, seizures, and settlements during the fiscal year period beginning October 1, 2008 and ending through October 1, 2016,
- (2) all attributable moneys recovered from the corporate beneficiaries pursuant to section 7(b) of this Act, and
- (3) all moneys gifted by the Bradley Christopher Stark Justice Relief Fund for the benefit of the States and Congressional Districts within the States as set forth in this section.

(c) **EXPENDITURES FROM SUPERFUND.**

(1) **IN GENERAL.** Amounts in the Superfund shall be available, as provided in this section, only for the purposes of making expenditures-

(A) to carry out the purposes of-

- (i) funding the individual trust funds established under this section for the benefit of the parties, beneficiaries, and immediate family members of the Agreement as defined in this Act,
- (ii) funding community and public works projects in all 50 States and the individual electoral districts therein as set forth in this section, and
- (iii) funding the Presidential Library of the incumbent President signing this Act into law, or

(B) hereafter authorized by law which does not authorize the expenditure out of the Superfund for a general purpose not covered by subparagraph (A) (as so in effect).

(d) **LIABILITY OF THE UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.**

(1) **GENERAL RULE.** Any claim filed against the Superfund may be paid only out of the Superfund.

(2) **COORDINATION WITH OTHER PROVISIONS.** Nothing in this Act (or in any amendment made by later Acts) shall authorize the payment by the United States Government of any amount with respect to any such claim out of any source other than the Superfund.

(3) **ORDER IN WHICH UNPAID CLAIMS ARE TO BE PAID.** If at any time the Superfund has insufficient funds to pay all the claims payable out of the Superfund as such time, such claims shall, to the extent permitted under paragraph (1), be paid in full in the order in which they were finally determined.

(e) **CREATION OF SUB-TRUST FUNDS.** There is established in the Treasury of the United States certain sub-trust funds under the Superfund to be known as-

(1) Bradley Christopher Stark Justice Relief Fund.

(A) Barbara Jean Stark Justice Relief Fund.

(B) John William Stark Justice Relief Fund.

(C) Madison Elizabeth Stark Justice Relief Fund.

(D) Jeffrey Marc Schonsky Justice Relief Fund.

(E) Nino Spagnuolo Justice Relief Fund.

(F) Dominik Maier Justice Relief Fund.

(2) Shawn Michael Rideout Justice Relief Fund.

(A) Kathleen DeWeese Justice Relief Fund.

(B) Daniel DeWeese Justice Relief Fund.

(C) Richard Rideout Justice Relief Fund.

(D) Brian Rideout Justice Relief Fund.

(E) Nicole Rideout Justice Relief Fund.

(3) Jason Carl Thomas Justice Relief Fund.

(A) Karen Andrea Burke-Haynes Justice Relief Fund.

(B) Janice Laurore Justice Relief Fund.

(C) Carlo Laurore Justice Relief Fund.

(D) Sharon Burke Justice Relief Fund.

(E) Peter Burke Justice Relief Fund.

(F) Kisha Nicole Thomas Justice Relief Fund.

(4) Demetrius Jermaine Hawkins Justice Relief Fund.

(5) Katrina Glenn Hawkins Justice Relief Fund.

(6) Baldev Naidu Ragavan Justice Relief Fund.

(7) Hendrick Ezell Tunstall Justice Relief Fund.

(8) Charles Elliot Hill, II Justice Relief Fund.

(9) William Scott Hames Justice Relief Fund.

(10) John Scot Snuggs Justice Relief Fund.

(A) Nichola Dawn (Rose) Snuggs Justice Relief Fund.

(B) Timothy J. Snuggs Justice Relief Fund.

(C) Melissa M. Snuggs Justice Relief Fund.

(D) Elizabeth R. Snuggs Justice Relief Fund.

(E) Robert D. Snuggs Justice Relief Fund.

(11) Charles David Johnson, Jr. Justice Relief Fund.

(A) Jeremy Johnson Justice Relief Fund.

(B) Scott Johnson Justice Relief Fund.

(C) Jonathan Fultz Justice Relief Fund.

(D) Jessica Reynolds-Toms Justice Relief Fund.

(E) Herbert Walker Justice Relief Fund.

(12) Bryan Samuel Coffman Justice Relief Fund.

(A) Megan A. Coffman Justice Relief Fund.

(B) Daniel P. Coffman Justice Relief Fund.

(C) Corbin A. Coffman Justice Relief Fund.

(D) Tabitha C. Coffman Justice Relief Fund.

- (E) Erin Jacobs Justice Relief Fund.
- (13) Meagan Eleanor (Russell) Kemp Justice Relief Fund.
  - (A) Eleanor Joye Kemp Justice Relief Fund.
  - (B) Patrick Sebastian Kemp Justice Relief Fund.
- (14) Lulumba Clay Travis Justice Relief Fund.
- (15) Michael Tsalickis Justice Relief Fund.
- (16) William Michael Cain Justice Relief Fund.
- (17) Jerry Garwood Mitchell Justice Relief Fund.
- (18) Shane Reed Wilson Justice Relief Fund.
- (19) Jason Wesley Tate Justice Relief Fund.
- (20) Viola Cheney Justice Relief Fund.
- (21) Curtis Colwell Justice Relief Fund.
- (22) Douglas Colwell Justice Relief Fund.
- (23) Community Projects and Public Works Fund of the United States Senate.
- (24) Congressional Districts Community Projects and Public Works Fund of the United States House of Representatives.

Said sub-trust funds shall consist of such amounts as may be appropriated or credited to such sub-trust fund as provided in this section or in the Agreement.

(f) **TRANSFERS TO SUB-TRUST FUNDS.** There are hereby appropriated from the Superfund amounts equivalent to-

- (1) on the date this enactment takes effect, \$1,000,000, per sub-trust fund and account listed under subsection 5(e)(1)--(22),
- (2) one month after the date this enactment takes effect-
  - (A) 4,811,478,257, for the Bradley Christopher Stark Justice Relief Fund,
    - (i) \$200,000,000, shall be set off from the Bradley Christopher Stark Justice Relief Fund and credited to the Community Projects and Public Works Fund of the United States Senate established by this section. Each United States Senator shall be allocated \$2,000,000, per Senator for the purposes of community and public works projects within Senator's respective States,
    - (ii) \$870,000,000, shall be set off from the Bradley Christopher Stark Justice Relief Fund and credited to the Congressional Districts Community Projects and Public Works Fund of the United States House of Representatives established by this section. Each United States Representative shall be allocated \$2,000,000, per Representative for the purposes of community and public works projects within their respective State Congressional Districts,
  - (B) \$813,913,043, for the Shawn Michael Rideout Justice Relief Fund,
  - (C) \$7,999,826,080, for the Jason Carl Thomas Justice Relief Fund,
  - (D) \$6,298,434,777, for the Demetriues Jermaine Hawkins Justice Relief Fund,
  - (E) \$812,347,826, for the Bryan Samuel Coffman Justice Relief Fund,
  - (F) \$812,347,826, for the John Scot Snuggs Justice Relief Fund,
  - (G) \$812,347,826, for the Charles David Johnson, Jr. Justice Relief Fund,
  - (H) \$812,347,826, for the Lulumba Clay Travis Justice Relief Fund,



(I) \$14,291,457,392, for the Charles Elliott Hill, II Justice Relief Fund,

(J) \$20,347,827, for the William Scott Hames Justice Relief Fund, and

(K) \$17,120,000, for the Michael Tsalickis Justice Relief Fund.

(3) Amounts that are analogous to the funds named in subsection (e) of this section and are received by the United States Government as trustee shall be deposited in the Superfund for credit to the appropriate sub-trust fund or account in the Treasury. *Except* as provided in subsection (j), amounts accruing to these funds are appropriated to be disbursed in compliance with the terms of the trust.

**(g) EXPENDITURES.**

(1) **IN GENERAL.** The amounts in the Superfund and sub-trust funds shall be available for the purposes of making expenditures or transfers as directed by the beneficiaries of the named sub-trust funds to the Managing Trustee and Trustees as appropriate.

(2) **RECORDS.** Notwithstanding any other provision of this Act, the Managing Trustee shall keep a transactional record of expenditures, appropriations, and credits of the Superfund and sub-trust funds for the purposes of accurate accounting and shall further close the appropriate sub-trust funds or Superfund once all amounts are exhausted and no further appropriations or credits are pending.

**(h) MANAGEMENT OF TRUST FUNDS.**

(1) **REPORT.** It shall be the duty of the Secretary of the Treasury to hold the Superfund and each sub-trust fund established under this section, and (after consultation with any other trustees of the sub-trust funds) to report to the Congress each year on the financial condition and the results of the operations of the Superfund and each such sub-trust fund during the preceding fiscal year and on its expected condition and operations during the next 3 fiscal years. Such report shall be printed as a House document of the session of the Congress to which the report is made.

(2) **TRUSTEES.** The Secretary of the Treasury shall be the Managing Trustee of the Superfund and each such sub-trust fund established under this Act. Each sub-trust fund that contains other sub-trust fund accounts shall have the main beneficiary of the controlling sub-trust fund designated as a co-Trustee along with the Secretary of the Treasury for the management of the individual sub-trust fund accounts thereunder.

**(3) INVESTMENT.**

(A) **IN GENERAL.** It shall be the duty of the Secretary of the Treasury to invest such portions of the Superfund or any sub-trust fund established by this Act as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States. For such purpose, such obligations may be acquired-

(i) in original issue at the issue price, or

(ii) by purchase of outstanding obligations at the market price.

(B) **SALE OF OBLIGATIONS.** Any obligation acquired by the Superfund or a sub-trust fund established by this Act may be sold by the Secretary of the Treasury at the market price.

(C) **INTEREST ON CERTAIN PROCEEDS.** The interest on, and the proceeds from the sale or redemption of, any obligations held in the Superfund or any sub-trust fund established by this Act shall be credited to and form a part of the Superfund or related sub-trust fund.

(i) The amounts appropriated by this Act to the Superfund or any sub-trust fund established by this Act shall be transferred at the request of the beneficiaries to the trustees at least monthly from the Superfund to such sub-trust fund on the basis of estimates made by the Secretary of the Treasury of the amounts referred to in such section. Proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

(j) **LIMITATIONS ON USE OF FUNDS.** The Superfund and any individual sub-trust fund or account established by this Act, and the appropriations in said funds, are hereby prohibited from being used to influence any legislation and shall not be made directly available for campaign financing or personal use by any United States Senator or Member of the United States House of Representatives; nor any officer, employee, or agent of any federal agency in the Executive Branch; nor any Judicial Officer or Clerk of any federal court of the United States within the Judicial Branch.

(1) None of the activities of the Superfund or sub-trust fund or account established by this Act shall be conducted in a manner inconsistent with any law that prohibits attempting to influence legislation.

(2) The Superfund or any such sub-trust fund or account established by this Act may not participate in or intervene in any political campaign on behalf of (or in opposition to) any candidate for public office, including by publication or distribution of statements.

(k) **UNCLAIMED MONEYS.** On September 30 of each year, the Secretary of the Treasury shall transfer to the Treasury trust fund receipt account "Unclaimed Moneys of Individuals Whose Whereabouts are Unknown" that part of the balance of a sub-trust fund or account established by this Act that has been in the fund for more than one year and represents money belonging to individuals whose whereabouts are unknown. Subsequent claims to the transferred funds shall be paid from the account "Unclaimed Moneys of Individuals Whose Whereabouts are Unknown".

(l) **CLOSING OF ACCOUNTS.** Any sub-trust fund or account established by this Act that is available for an indefinite period shall be closed, and any remaining balance (whether obligated or unobligated) in that account shall be canceled and thereafter shall not be available for obligation or expenditure for any purpose, if-

(1) no disbursement has been made against the appropriation for two consecutive fiscal years.

(m) **REGULATIONS.** Not later than 90 days after the date of enactment of this Act, the Secretary of the Treasury shall prescribe regulations to carry out this section.

## **SECTION 7. TAX RELIEF.**

(a) The parties, beneficiaries, and their immediate family members, are permanently exempt from all federal, state, and local taxes for the rest of their natural lifespan. Provided that, Joey Brandon Kemp shall not be exempted from any federal, state, or local taxes.

(b) The corporate beneficiaries named in this Act are exempt from federal income tax for a period of three consecutive years from the effective date of the enactment of this Act. *Provided that,-*

- (1) the Bradley Christopher Stark Justice Relief Fund,
- (2) the Shawn Michael Rideout Justice Relief Fund, and
- (3) the Bryan Samuel Coffman Justice Relief Fund

shall recover a total amount of ten percentum of the projected federal income tax liability benefits under this subsection attributable to the corporate beneficiaries named in this Act, to be divided coequally among the sub-trust funds listed in this subsection during the three consecutive year time period this subsection remains in effect. Such amounts shall be due by no later than April 15 of the taxable year immediately following the effective date of the enactment of this Act and shall be deposited in the Superfund at the United States Treasury established by this Act as an appropriation for further credit to the sub-trust funds named in this subsection.

#### **SECTION 8. REMEDIES.**

(a) Any party or beneficiary entitled to and granted immunity by this Act, having been found guilty, by clear and convincing evidence, to have committed a Class A felony offense as defined under title 18 of the United States Code, shall be subject to permanent removal from the United States of America, its territories, and possessions, and such guilty party or beneficiary shall have their citizenship permanently revoked.

(b) Nothing in this section shall be construed to authorize any accused party or beneficiary entitled to or granted immunity by this Act to be placed in the custody of any law enforcement officer for the purpose of confinement in any jail, prison, or other form of official or unofficial detention.

(c) The Supreme Court of the United States shall have original jurisdiction pursuant to Article III, section 2, clause 2 of the Constitution, to conduct a criminal trial or other appropriate proceedings of any party or beneficiary entitled to or granted immunity by this Act, to determine the guilt or innocence of such party or beneficiary in accordance with subsection (a) of this section. Any trial or proceedings shall be conducted in the Supreme Court of the United States, and any orders or judgments entered thereon, *in absentia* if the accused party or beneficiary shall be found to have fled the jurisdiction of the Supreme Court.

(d) The Federal Rules of Evidence along with the appropriate Federal Rules of Criminal Procedure shall be used in the conduct of any trial and proceedings in the Supreme Court in accordance with subsection (a) of this section. The Supreme Court may, in its discretion, apply any rules of the Federal Rules of Civil Procedure it deems necessary to the conduct of proceedings under this section.

(e) Alternative dispute resolution procedures are not authorized to be used to conduct any proceedings under this section.

(f) A judgment of the Supreme Court finding that any party or beneficiary entitled to or granted immunity by this Act, that is guilty of committing a Class A felony offense as defined in title 18 of the United States Code, shall sentence the party or beneficiary to the sole and exclusive punishment established by this section, and shall in no way terminate any other affirmative, prohibitive, or monetary relief established by this Act, nor any other right or privilege established by the Constitution, any laws, or treaties of the United States.

#### **SECTION 9. ENFORCEMENT.**

(a) The Congress shall have power to enforce the provisions of this Act by appropriate legislation.

#### **SECTION 10. EFFECTIVE DATE.**

(a) This Act shall take effect sixty days after enactment.

Mac Thornberry

*Speaker of the House of Representatives pro tempore.*

John Cornyn

*Acting President of the Senate pro tempore.*

IN THE HOUSE OF REPRESENTATIVES, U.S.

*September 28, 2016.*

The House of Representatives having proceeded to reconsider the bill (S. 112) en-titled “An Act for the Relief of Bradley Christopher Stark, Shawn Michael Rideout, and Certain Named Beneficiaries.”, returned by the President of the United States with his objections, to the Senate, in which it originated, and passed by the Senate on reconsideration of the same, it was

*Resolved*, That the said bill do pass, two-thirds of the House of Representatives agreeing to pass the same.

Karen L. Haas

*Clerk.*

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LEGISLATIVE HISTORY—S. 112:

CONGRESSIONAL RECORD, Vol. 162 (2016):

Aug. 17, considered and passed Senate.

Sept. 9, considered and passed House.

DAILY COMPILATION OF PRESIDENTIAL DOCUMENTS (2016):

Sept. 9, Presidential veto message.

CONGRESSIONAL RECORD, Vol. 162 (2016):

Sept. 28, Senate and House overrode veto.

CONGRESSIONAL RECORD, Vol. 162 (2016):

Oct. 18, amended and re-introduced in the Senate.

Nov. 17, considered and passed Senate.

Nov. 22, considered and passed House.

DAILY COMPILATION OF PRESIDENTIAL DOCUMENTS (2016):

Dec. 3, Presidential signature message.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing will be  
electronically mailed to all parties on the service list **via the: UNITED STATES  
POSTAL SERVICE by the UNITED STATES POST OFFICE via Postage Prepaid  
PRIORITY Mail.**

**SENT TO:**

ECKERT SEAMANS  
CHERIN & MELLOTT, LLC  
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(202) 659-6671  
*Counsel of Record Attorney for Appellee(s)*

“Without Prejudice”

*Nelson L. Bruce 9-17-2020*

Nelson L. Bruce, Propria Persona, Sui Juris  
All Natural Rights Explicitly Reserved and Retained  
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