No. 23-7330

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Jessica Graulau, Petitioner-Appellant,

v.

Credit One Bank, N.A., a foreign corporation, Respondent-Appellee.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeal for the Eleventh Circuit

Presented by: Jessica Graulau, Petitioner-Appellant
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QUESTIONS PRESENTED

Respectfully Mrs. Graulau is addressing the following questions over each of two issues heard and decided by lower tribunals as a single whole case for two separated filed motion to vacate and motion to correct.

Issue I-Questions Presented Over Motion to Correct

- Whether for respondent's counterclaim arbitrator has awarded upon a matter not submitted to him by petitioner or referred by the court not bind to arbitration agreement?
- Whether there is not a valid arbitration agreement for respondent's counterclaim which is a matter only for the court to decide?
- Whether obligations under arbitration agreement ended upon termination of the contract from which it was annexed/derived?

Issue II-Questions Presented Over Motion to Vacate

- Whether the courts below has interpreted important precedential case *Hall St. Assocs., L.L.C. v. Mattel, Inc.,* 552 U.S. 576, 584 (2008) and the *Federal Arbitration Act*, in a way that is in direct conflict with other relevant controlling precedent of this Court, Florida Supreme Court and Circuits opinions that is contrary to provision under U.S. Federal Code?
- Whether "manifest disregard" of law is a basis for *vacatur* re-conceptualized within the exclusive grounds under 9 U.S.C. § 10?
- Whether there is "complete diversity" jurisdiction on the face of motion to vacate?

– Whether petitioner's claims are not time bared; time statutes limitations are nonjurisdictional subject to federal-state toll laws and equitable tolling doctrine?

– Whether for petitioner's claims arbitrator engage in partiality, misconduct, and/or exceeded his power?

– Whether petitioner's claims are not longer suitable for arbitration?

LIST OF PARTIES

Appellant, Jessica Graulau (hereinafter Mrs. Graulau), is a natural U.S. citizen with permanent resident in the State of Florida since 2010 who is not a corporate entity and is filing this petition as pro se party seeking to proceed in forma pauperis. Appellee, Credit One Bank, N.A. (hereinafter Credit One) is a foreign corporation only authorize to engage in revolving unsecured credit cards who operate from the State of Nevada where they has its principal place of business and does continuously business without having corporate agent registered in the State of Florida. All parties whose judgment is sought to be reviewed appear in the style-caption of this petition cover page.

RELATED CASES

- *A.D. v. Credit One Bank, N.A.*, No. 14 C-10106 (N.D. Ill. Aug. 19, 2016) is a related class action over which was invoked supplemental jurisdiction [USDC Dkt. 8]. Opinion published on April 13, 2018. On June 27, 2018 was entered docket entry no. 175 for dismissal Order issued without prejudice as to the claims of the class members.
- *A.D. v. Credit One Bank, N.A.*, No. 17-1486 (7th Cir. 2018) is an appeal for related class action over which was invoked supplemental jurisdiction [USDC Dkt. 8]. Opinion published on August 19, 2016. Judgment entered on Apr. 13, 2018 as docket shows.

- *Jessica Graulau v. Credit One Bank, N.A.*, No. 6:18-cv-106-Orl-22DCI, (M.D. Fla. Apr. 10, 2018) is a related case filed through attorney over which was invoked supplemental jurisdiction [USDC Dkt. 8]. On April 10, 2018 was entered without prejudice voluntary dismissal Order [App. G, p. 36a].
- *Jessica Graulau v. Credit One Bank, N.A.*, No. 6:19-cv-1723-Orl-78GJK, (M.D. Fla. May 28, 2020) is a second lawsuit filed by Mrs. Graulau as pro se. On May 28, 2020 was entered Final Order [USDC Dkt. 27] referring the case to arbitration.
- *Jessica Graulau v. Credit One Bank, N.A.*, No. 20-12037 (11th Cir. 2021). On May 6, 2021 was entered Final Judgment [USDC Dkt. 36] affirming referring case to arbitration.
- *Jessica Graulau v. Credit One Bank, N.A.*, U.S.S.C. Case No. 21-5372 (2021). On Nov. 15, 2021 U.S. Supreme Court denied petition for certiorari over Circuit Court of Appeal affirming referring the case to arbitration [USDC Dkt. 38].
- *Jessica Graulau v. Credit One Bank, N.A.*, Case No. 01-21-0017-8217 filed at American Arbitration Association (AAA) on Dec. 9, 2021. On Oct. 21, 2022 was entered Arbitrator Final Award [USDC Dkt. 45, Att. 1] over claimant's claims over *Telephone Consumer Protection Act* (TCPA) and *Florida Consumer Collection Practices Act* (FCCPA) without making any award upon the claim for violation of constitutional right of privacy. No rehearing allowed. For Credit One's Counterclaim on Nov. 17, 2022 was entered Arbitrator's Interim Award

[USDC Dkt. 46, Att. 3] and Final Award of Arbitrator [USDC Dkt. 50, Att. 1] entered on Dec. 21, 2022.

- *Jessica Graulau v. Credit One Bank, N.A.*, No. 6:19-cv-1723-Orl-78GJK, (M.D. Fla. May 28, 2020)[1]. On March 27, 2023 was entered Magistrate Judge's Report and Recommendation (R&R) [App. D, p. 12a] integrated to District's Court's Final Order [App. C, p. 8a] entered without prejudice on Sept. 18, 2023 denying both, motion to vacate [USDC Dkt. 45] and motion to correct [USDC Dkt. 46].
- *Jessica Graulau v. Credit One Bank, N.A.*, No. 23-13168 (11th Cir. 2024). Final judgment entered on March 19, 2024 with unpublished per curiam opinion [App. B, p. 3a]. Mandate entered on April 18, 2024 [App. A, 1a].

[1] This case is repeated to reflect independent jurisdictional basis for arbitrational issues brought under same case at District Court for motion to vacate and correct subject to this petition.

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TABLE OF AUTHORITIES

STATUTES AND RULES

OTHER AUTHORITIES

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully request this Court grant this petition for a writ of certiorari presented as follow.

OPINIONS BELOW

Final Judgment Mandate [App. A, 1a] and Unpublished per curiam opinion of the U.S. Circuit Court of Appeal for the Eleventh Circuit [App. B, p. 3a]. Final Order of the U.S. District Court [App. C, 8a]. Magistrate Judge's Report and Recommendations [App. D, p. 12a].

JURISDICTION STATEMENT

The date on which the U.S. Eleventh Circuit Court of Appeal entered judgment was March 19, 2024. No petition for rehearing was filed. The certiorari jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and the appellate jurisdiction is invoked under U.S. Const. Art. III for this is a civil matter seeking federal statutory damages exceeding $150,000 with complete diversity and supplemental jurisdiction involving constitutional right of privacy secured by U.S. Congress *Telephone Consumer Protection* Act 47 U.S.C. § 227 . Congress also granted appellate jurisdiction under the FAA, 9 U.S.C. § 16(a)(1)(E) which is found incorporated in parties' contract subject to this case.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- 9 U.S.C. § 10 § 11
- 28 U.S.C. § 654
- 28 U.S.C. § 1332
- 28 U.S.C. § 1367
- 28 U.S.C. § 1658
- Fla. Stat. § 90.802
- Fla. Stat. § 95.051
- Fla. Stat. § 95.11
- Fla. Stat. § 682.02
- NRS 11.190
- NRS 104.2725

STATEMENT OF THE CASE

I. Relevant Material Facts

Undisputed on May 7, 2013 Mrs. Graulau signed a cardholder arbitration agreement [App. H, p. 37a] for an unsecure credit card account that on or about Jan. 17, 2017 Credit One charged-off due non-payment then sold the account to a debt collector agency [App. I, p. 43a; App. J, p. 44a]. In dispute the cardholder arbitration agreement terminated when Credit One sold the account to a debt collector agency; the termination of contract ended-expired the arbitration agreement.

II. Nature of the Case and Relevant Procedural History

The controversy derived in part from previous related class action about violations of U.S. Congress *Telephone Consumer Protection Act* (TCPA) 47 U.S.C. § 227; violation of constitutional right of privacy under U.S. Const. Amend. XIV § 1 and Fla. Const. Art. I § 23; and violation of *Florida Consumer Collection Practices Act* (FCCPA) Fla. Stat. § 559.72. For related lawsuit filed on Jan. 22, 2018 by attorney, Credit One requested to counsel arbitrates the issues of the case; no answer, counterclaim or motion was filed by Credit One. Mrs. Graulau's counsel signed a joint stipulation [USDC Dkt. 45, Att. 3] agreed referring arbitration the issues of the case to be governed by the provisions of the expired cardholder arbitration agreement. Base on counsels' joint stipulation, the Court entered a voluntary dismissal order [App. G, p. 36a] referring the case to arbitration as an

alternative resolution. Fifty days later, Mrs. Graulau's attorney ended their contingency agreement. After consultation with many attorneys without been able to find new legal representation, Mrs. Graulau as pro se filed another lawsuit [USDC Dkt. 1] that Credit One neither filed a counterclaim but this time filed a motion to dismiss [USDC Dkt. 9] requesting again arbitration based only on previous case order [App. G, p. 36a]. Mrs. Graulau opposed and objected arbitration but the Court granted Credit One's motion entering an order [USDC Dkt. 27] referring the case to arbitration base on previous related case order and joint stipulation. On appeal Eleventh Circuit affirmed [USDC Dkt. 36] and petition of certiorari was denied [USDC Dkt. 38]. Then Mrs. Graulau filed arbitration and Credit One filed an answer asserting 13 affirmative defenses with a counterclaim integrated [USDC Dkt. 46, Att. 6]. Mrs. Graulau filed a motion to strike affirmative defenses and also filed a separate motion to dismiss counterclaim, both such motions were nulled/voided by arbitrator in his scheduling order provided for this case [USDC Dkt. 82, Att. 1, p. 2, par. 5]. Subsequent request for refilling was denied. Credit One filed a motion for summary judgment [USDC Dkt. 45, Att. 6] requesting dismiss only Mrs. Graulau's TCPA and FCCPA (not including invasion of privacy) mainly claiming the claims were time barred including only an affidavit of Credit One's Vice President Michael Wiese. Mrs. Graulau file a motion in opposition [USDC Dkt. 45, Att. 7] supported by 21 evidences attached admitted by arbitrator mainly claiming her claims are not barred due governing applicable tolls

laws, objecting Credit One's affidavit for lack of personal knowledge inadmissible hearsay and summary judgment cannot be granted due the existence of genuine dispute over material facts. Arbitrator entered an award [USDC Dkt. 45, Att. 1] dismissing Mrs. Graulau's claims without addressing within the award her claim for invasion of privacy, allowing Credit One's counterclaim proceeds to final hearing. Mrs. Graulau filed motion to vacate[2] [USDC Dkt. 45] under FAA grounds § 10(a)(2-4) on the basis: 1) exceeded power after arbitrator; 2) misconduct; 3) partiality and corruption.

For arbitration final evidentiary hearing over Credit One's counterclaim, a transcription for this appeal appears on record as statement of the proceedings [USDC Dkt. 82]. Arbitrator entered Interim Award for counterclaim in favor of Credit One [USDC Dkt. 46, Att. 3]. Mrs. Graulau filed motion to correct arbitrator's Interim Award [USDC Dkt. 46] under FAA ground § 11(b) for arbitrator has awarded over Credit One's counterclaim which is an issue Mrs. Graulau has not agreed neither it was referred by the Court and arbitration agreement expired. Days later, arbitrator entered Final Award reaffirming in favor of Credit One [USDC Dkt. 50, Att. 1]. District Court entered Final Order [USDC Dkt. 77] overruling Mrs. Graulau's objections adopting entirely the Magistrate Judge's Report and Recommendation (R&R) [USDC Dkt. 62] mainly base on Mrs. Graulau did not asserted basis for vacate or modification and manifest disregard is not a

[2] Not to be confused with previous motion to vacate [USDC Dkt. 43] denied per endorsed order.

basis for vacatur under the FAA in light of this Court's precedent *Hall St. Assocs., L.L.C. v. Mattel, Inc.* 552 U.S. 576 (2008) (hereinafter *Hall Street*). On appeal Eleventh Circuit affirmed. This petition follows.

REASONS FOR GRANTING CERTIORARI

ISSUE I-QUESTIONS PRESENTED OVER MOTION TO CORRECT

A. Whether Arbitration Agreement Exist Only For Court to Decide

The FAA requires for the court, not the arbitrator, decide whether there is valid arbitration agreement, 9 U.S.C. § 4. "Julius Henry Cohen, one of the primary drafters of--proposed FAA-- in a contemporaneous campaign for the promulgation of a uniform state arbitration law, Cohen contrasted the New York Act with the Illinois Arbitration and Awards Act of 1917, which *required an arbitrator, at the request of either party, to submit any question of law arising during arbitration to judicial determination.* See Handbook of the National Conference of Commissioners on Uniform State Laws and Proceedings 97–98 (1924); 1917 Ill. Laws p. 203", citing *Hall Street* Footnote 7 (internal quotation marks omitted)(emphasis added). In Florida "the court shall decide whether an agreement to arbitrate exist or a controversy is subject to an agreement to arbitrate", Fla. Sta. § 682.02(2). "The laws of the several states---shall be regarded as rules of decision in civil actions in the courts of the United States", 28 U.S.C. § 1652. "When deciding whether the parties agreed to arbitrate a certain matter courts generally should apply ordinary state-law principles that govern the formation of contracts", citing *Bazemore v. Jefferson*

Capital Sys, LLC, 827 F.3d 1325 (11th Cir. 2016). Mrs. Graulau has the right to dispute the validity of the cardholder arbitration agreement, *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.,* 473 U.S. 614 (1985)("*A party resisting arbitration of course may attack directly the validity of the agreement to arbitrate. See Prima Paint Corp. v. Flood Conklin Mfg. Co., 388 U.S. 395 (1967)*"). For another similar case against Credit One a district court held that in determine whether there is a genuine issue of fact concerning formation of an agreement, the party opposing arbitration shall receive the benefit of all reasonable doubt and inferences and the court, not the arbitrator, shall determine whether plaintiff agreed to the arbitrate an issue, *Anderson v. Credit One Bank,* Case No.: 16cv3125-MMA (AGS)(S.D. Cal. May 17, 2018). This Court has provided two tests steps inquiry for district court determine if a claim is subject to arbitration under FAA: 1st) whether the parties has agreed to arbitration (jurisdictional matter); and 2nd) whether a valid written agreement exist or if legal constraints external to the agreement foreclosed arbitration (matter of contract law). *Mitsubishi Id.* See also *Klay v. All Defendants*, 389 F.3d 1191 (11th Cir. 2004). At the beginning of the final evidentiary hearing, Mrs. Graulau presented a verbal motion asking arbitrator refer to the court who should decide she has not agreed to arbitrate Credit One's counterclaim and arbitration agreement expired after Credit One sold the account to debt collector. Despite arbitrator denied the motion and made determination on these two issues [USDC Dkt. 46, Att. 3, p. 2].

B. Mrs. Graulau has Not Agreed to Arbitrate Counterclaim

The District Court denied motion to correct only based on that Mrs. Graulau did not provided any basis for modification under FAA § 11(b) "*Where arbitrators have awarded upon a matter not submitted to them*", finding that Mrs. Graulau only attacked the merits of the arbitrator's award and determined within the motion wasn't asserted Mrs. Graulau did not agreed to submit counterclaim to arbitration [App. C, p. 8a]. As argued on appeal and the record shows, Mrs. Graulau did not attack the merits of the arbitrator's decision rather she sufficiently provided basis to modify claiming arbitrator awarded over counterclaim which is an issue she did not agreed to arbitrate [USDC Dkt. 46, p. 7, par. 7 "*As plaintiff argued at final hearing, she has not agreed to arbitrate defendant's counterclaim and a party cannot be required to submit any dispute which has not agreed to submit*"]; Eleventh Circuit confirms in motion to correct Mrs. Graulau asserted this claim [App. B, 3a "*Graulau's argument that the arbitrator awarded upon a matter not submitted to him is untenable because Credit One's counterclaim was expressly submitted to him*"]. We respectfully disagree with the Circuit reasoning that Mrs. Graulau provided "expressly consented" to arbitrate counterclaim. Although within motion to oppose motion to correct [USDC Dkt. 52] Credit One did not argued "express consent", the Circuit *motu proprio* determined Mrs. Graulau "expressly consented" to arbitrate counterclaim. But the Circuit reasoning is contrary the FAA

that provides applicable legal definition of the term "express consent" as given permission to specific controversy in writing under § 2 "A writing provision in any--contract--to settle by arbitration". Be in writing is also mandatory under arbitration agreement [App. H, p. 37a "***Enforcement, Finality, Appeals:*** *---Any additional or different agreement between you and us regarding arbitration must be in writing*"]. Hereby is reasserted Mrs. Graulau has not "expressly consented" to arbitrate Credit One's counterclaim. Neither counterclaim was stipulated [USDC Dkt. 46, Att. 5] or ordered by the Court [USDC Dkt. 27; App. G, p. 36a] and arbitration agreement expired as is discussed in next paragraph. *"A party cannot be required to submit any dispute which has not agreed to submit",* citing *Steelworkers v. Warrior & Gulf Co.*, 363 U.S. 574 (1960). There is no evidence on records below proving Mrs. Graulau "expressly consented" arbitrate counterclaim; the entire contrary. In this case related class action the Seventh Circuit held "a creditor relying on the prior express consent—has the burden of showing that it obtained the necessary prior express consent", citing *A.D. v. Credit One Bank*, 885 F.3d 1054 (7th Cir. 2018).

C. There's Not a Valid Arbitration Agreement for Counterclaim

As argued in motion to correct, arbitration agreement is not legally valid enforceable due expired after the cardholder agreement (contract) was terminated-ended by Credit One under the termination provision [App. H, p. 37a, par. **21. TERMINATION OF ACCOUNT**] when sold the account to debt collector no later

than Feb. 19, 2017 confirmed by Credit One in their Notice of Sale Your Credit Card Account [App. I, p. 43a] sent to Mrs. Graulau as prescribed in *Federal Uniform Commerce Code* (UCC) U.C.C. § 2-309(3) codified within Florida statute Fla. Stat. § 672.309. Also confirmed by debt collector' Notice of Account Assignment [App. J, p. 44a].[3] The FAA § 2 recognized a valid revocation of contract under the law. During evidentiary hearing, Credit One's Vice President testified the selling of the account terminated the cardholder agreement as transcribed in the statement of the proceedings for appeal [USDC Dkt. 82, par. 4, p. 3-4]. Here is reargued the contract terminated when account was sold before Feb. 15, 2017 that also ended/expired annexed arbitration agreement. Although the specific date is not established, the alleged repurchase of the debt occurred on or about Jan. 29, 2018 almost a year after the expiration of the contract. This Court and the Circuit has held arbitration cannot be compel over claims that arose after a contract with arbitration agreement has been breached and that arbitration obligations end upon expiration of a contract, *Litton Fin. Printing Div. v. NLRB*, 501 U.S. 190 (1991); *Klay Id.* ("*we refused to compel arbitration of claims that arose after a contract with a valid arbitration agreement had been breached—Moreover, the Supreme Court has since found in the collective bargaining context that arbitration cannot be mandate for a grievance which arose after the expiration of an arbitration agreement*"). This ruling appears on the face of the FAA §10(b) when in reverse context prevent a

[3] At evidentiary hearing Credit One's Vice President testified that debt collector FNBM, LLC is not affiliate to Credit One Bank as transcribed for appeal [USDC Dkt. 82].

court order rehearing in arbitration if the arbitration agreement as expired. The very counterclaim's cause of action confirms cardholder agreement has been breached (breach of contract). Despite testimonies and evidences, arbitrator found the sale of the account did not terminate the cardholder arbitration agreement [USDC Dkt. 46, Att. 3, p. 3]. Not only arbitrator has awarded upon a matter not submitted to him, but also his award is in contempt to this Court's controlling precedent. Nevertheless, Credit One repurchase of a debt from a debt collector is not bind to the arbitration agreement due is not an interstate commerce transaction entailing Mrs. Graulau who had no dealing in such business. The Congress is very clear that the FAA will apply only to commerce transactions, *Klay Id.* ("*The FAA applies to any contract "affecting" interstate commerce--see 9 U.S.C. § 2*"). This Court has long settled that interstate commerce is regulated by Congress under *Federal Uniform Commerce Code* (UCC), *Allied-Bruce Terminix Cos. v. Dobson,*513 U.S. 265 (1995). Also under the arbitration agreement it is mandatory that will only apply to interstate commerce transaction requiring that any other controversy has to be consented in writing:

> [App. H, p. 37a "ARBITRATION--"***Arbitration Agreement***: --This arbitration provision is made pursuant to a transaction involving interstate commerce—***Enforcement, Finality, Appeals***:--Any additional or different agreement between you and us regarding arbitration must be in writing—An award in arbitration shall determine the rights and obligations between the named parties only, and only in respect of the Claims in arbitration, and shall not have any bearing—on the resolution of any other dispute or controversy"].

Although the cardholder agreement expired, even still there is no contractual legal right to pursue counterclaim due Credit One does not retain any security for an unsecured credit card [App. H, p. 37a, par. "**22. SECURITY**: This is an unsecure account, and Credit One Bank retains no security interest in real or personal property to secure payment of Card Account"]; and derived from its language arbitration is not mandatory rather optional up to the parties. The important key-words are "can", *may*" "*if*" instead of "*must*" "*where*" or "*required*":

> [App. H, p. 37a "ARBITRATION –**EITHER YOU OR WE CAN REQUIRE THAT ANY CONTROVERSY OR DISPUTE BE RESOLVE BY BINDING ARBITRRATION.**—***Agreement to Arbitration:*** You and we agree that either you or we may—require that any controversy or dispute—be submitted to—arbitration—***Claims Covered:*** --If you or we require arbitration—***Initiation of Arbitration:***--If you initiate the arbitration---If we initiate arbitration—***Costs:*** If we file arbitration—If you file the arbitration"].

The FAA provide applicability for some of these key-words when Congress amended the Act's language for other words implying the mandatory context, see Congressional Editorial Notes under § 10 "***Editorial Notes.*** *--Subsec. (a)(5). Pub. L. 107–169, § 1(5), substituted "If an award" for "Where an award"*]. Also confirmed by Credit One's assertions about have no obligation to file arbitration [USDC Dkt. 45, Att. 6, p. 7 "*Claimant---argue Credit One should have filed arbitration. But Credit One had absolutely no obligation or interest in doing so*"]. In the absence of an agreement to arbitrate, a court cannot compel the parties to settle their dispute in an arbitral forum, *AT&T Technologies,, Inc. v. CWA,* 475 U.S. 643 (1986). In the Interim Award [USDC Dkt. 46, Att. 3] arbitrator state Mrs. Graulau did not

provided persuasive legal authority supporting that the contract ended, but how could she if he denied for Mrs. Graulau to file an answer to counterclaim and pertinent legal authorities cited in the answer to counterclaim filed at arbitration was nulled/voided by arbitrator then he prohibited she re-file the same.

D. Credit One's Counterclaim Is Time Barred

Hereby is reasserted counterclaim's cause of action arose under "breach of contract" as identified in related arbitrator's scheduling order [USDC Dkt. 82, Att. 1, p. 1, par. 2]. As argued in motion to correct, for "breach of contract" the statute limitation is 4 years under *Federal Uniform Commerce Code* (UCC), Nevada and Florida statutes. This Court's broadly has held that intrastate commerce activity is regulated by constitutional commerce clause U.S. Const. Article I § 8 that Congress under this commerce clause enacted the UCC which provides for claims under "breach of contract" 4 years statute limitation codified within Nevada statute NRS 104.2725 *"An action for breach of* ***any*** *contract for sale must be commenced within 4 years after the cause of action has accrued*—**the period of limitation--may not extended***"*, beginning to run from the date of defaulted/charge-off account on Jan. 17, 2017. This Nevada statute limitation is jurisdictional and does not allow for extension not subject to equitable doctrine. Likewise the UCC's 4 years statute limitation is also codified within Florida statutes Fla. Stat. § 95.11(3)(j). The Supreme Court of Florida has held that "florida's statutes of limitation applies to arbitration proceedings", citing *Raymond James Financial Services, Inc. v. Barbara*

J. Phillips, etc., 126 So. 3d 186, 193 (Fla. 2013). Pursuant Fla. Stat. § 48.193, Credit One is subject to Florida jurisdiction as informed at evidentiary hearing without any objection transcribed in the statement of the proceedings [USDC Dkt. 82]. Both States apply Restatement (Second) of Conflict of Laws, *Izquierdo v. Easy Loans Corp.*, Case No. 2:13-cv-1032-MMD-VCF, 7 (D. Nev. Jun. 18, 2014). The arbitration agreement states its provisions are governed by and enforceable under the governing State law making mandatory for arbitrator must apply them:

> [App. H, 37a "***Agreement to Arbitrate:*** arbitration—shall be governed by, and enforceable under—the FAA—and—State law applicable—the State law governing this Agreement--***Procedural and Law Applicable in Arbitration:*** --The arbitrator will apply applicable substantive law consistent with the FAA and applicable statute of limitation—The arbitrator will have power to award—under applicable law"].

In clear partiality, arbitrator applied Florida and Federal law to bar Mrs. Graulau's claims but for Credit One's counterclaim applied inapplicable Nevada statute NRS 11.190(1)(b) for obligation founded upon an instrument in writing in order to favor Credit One providing 6 year time limitation instead the applicable 4 years limitation for "breach of contract" prescribed in NRS 104.2725. Hereby is reargued the cardholder agreement was for an open account which means future use/purchase/charges on the credit card were uncertain not found in writing in the contract; thus NRS 11.190(1)(b) does not apply. Nevada is very clear that the time limitation for claims over credit card account is also 4 years pursuant:

> NRS 11.190(2)-"Within 4 years... (a) on an open account for goods, wares and merchandise sold and delivered....(b) An action for any article charged on an account in a store";

NRS 97A.060-"Credit card account means an open line of credit offered by an issuer to a cardholder which is accessed by obtaining money, property, goods, services or anything of value by the use of a credit card".

Arbitrator relied on a legal authority provided post hearing by Credit One citing case *Stimpson v. Midland Credit Management, Inc.* 944 F.3d 1190 (9th Cir. 2019), but this case does not apply for being about a complete different issue for violation of the "*Fair Debt Collection Practices Act*" about whether a collection letter was deceptive. This presents the question for this Court to resolve whether if statutory time limitations are a jurisdictional question of aribitrability only for the court to decide; and if Credit One's counterclaim is time barred. In addition, Credit One has no legal standing to sue over counterclaim due failure to met their burden of proof to prove is the current owner of the debt required for *prima facie*. "Florida is a fact pleading jurisdiction, not a notice jurisdiction", citing *Deloitte & Touche v. Gencor Indus., Inc.,* 929 So. 2d 678, 681 (Fla. 5th DCA 2006). In counterclaim was not even asserted Credit One sold the account or any repurchase of the debt [USDC Dkt. 46, Att. 6, p. 7]. There is not admissible evidence on record to prove the alleged transaction of Credit One buying back the debt and during his testimony Credit One's Vice President testified has no record about the alleged repurchase transaction or information about the amount paid by the debt collector to Credit One when purchased the account or how much Credit One paid to debt collector when alleged buy it back as transcribed for appeal [USDC Dkt. 82]. Neither Credit One ever sent to Mrs. Graulau any notice of assignment nor notice about they are

the new owner of the debt as required by U.C.C. § 2-309(3) & Fla. Stat. § 559.715 § 672.309.

FOR REASONS ABOVE, motion to correct suffices show basis for modification under FAA § 11(b) due there is not a legal valid enforceable arbitration agreement; counterclaim is barred per statute of limitation and arbitrator awarded over an issue not referred to arbitration nor agreed by Mrs. Graulau.

ISSUE II-QUESTIONS PRESENTED OVER MOTION TO VACATE

All relevant preceding paragraphs are hereby integrated as fully part of the following arguments.

A. Jurisdictions On the Face of Motion to Vacate

Pursuant 28 U.S.C. § 1332 there is complete diversity on this case due parties are from different states and amount in controversy is greater than $150,000 that appears on the face of motion to vacate [USDC Dkt. 45 "par. 2 *claiming damages exceed $150,000*; par. 3 *plaintiff filed arbitration-- claiming damages in the amount of $3 million dollars*; par. 5 *remotely from the State of Nevada Credit One Bank's vice president*"]; also confirmed by endorsed Order [USDC Dkt. 63] granting Unopposed Time Sensitive Plaintiff's Motion for Waive Service by US Marshals [USDC Dkt. 61] filed as required by the FAA § 12 because Credit One resides in a different State from which District Court is located. Diversity was also carried forward on appeal [USCA Dkt. 12, p. 10, 11, 12, 16, 22]. Therefore, there is complete diversity contrary to the R&R [App. D, p. 12a, par. III "*Nowhere does it*

appear in that Motion that the parties are diverse, and the arbitration award in question would not satisfy § 1332's amount in controversy requirement in any event"] objected [USDC Dkt. 66] but adopted without District Court adjudge about this issue [App. C, p. 8a]. The record suffices shows diversity appears on the face of motion to vacate in addition to federal question jurisdiction exercised by District Court to hear this matter. Supplemental jurisdiction over relate class action and prior lawsuit was invoked at arbitration and in this case [USDC Dkt. 8] that appear on the face of motion to vacate [USDC Dkt. 45, p. 10, par. 7] relevant in this case for applicable statutory tolling provisions under 28 U.S.C. § 1367(a).

B. Standard of Review for Arbitration

As asserted in the arbitration demand/complaint and also asserted in motion to vacate [USDC Dkt. 45, p. 4, par. 3] without objection, arbitration was referred only by Court's Orders [USDC Dkt. 27; App. G, p. 36a] base only on counsel's joint stipulation [USDC Dkt. 45, Att. 3] only for the issues presented in the lawsuit [USDC Dkt. 1]. The Court referred arbitration as alternative resolution as provided by U.S. Middle District Court of Florida Local Rule 8.01 later repealed on Feb. 1, 2021. Pursuant 28 U.S.C. § 654 Congress granted authority for arbitration proceedings be referred by the court as alternative resolution; section 654 is not intended to affect or delimited the FAA rather to add arbitration provisions concluded since Congress codified Title 28 within the FAA § 4 "***Editorial Notes-References in Text-Federal Rules of Civil Procedure, referred to in text, are set out***

in Appendix to Title 28, Judiciary and Judicial Procedure"; § 16(b) *"Except as otherwise provided in section 1292(b) of title 28"*. In the joint stipulation was not "bargained for the arbitrator's construction of their agreement", rather it was stipulated arbitration only for the issues of the lawsuit requiring arbitrator must award in the form prescribed within arbitration agreement, *Restatement (Second) of Contracts §204 (1979).* The issues found in the lawsuit redress violations of an act of Congress (TCPA), Invasion of Privacy (U.S. Const. Amend. XIV § 1; Fla. Const. Art. I § 23), and violations of FCCPA (Florida Law) none of which are bind to the arbitration agreement due they are not an interstate commerce transaction. Any cardholder clause in conflict is override by a contrary clause found in the arbitration agreement confirmed by arbitrator's Final Award on Credit One's counterclaim [USDC Dkt. 50, Att. 1, p. 3 "*section of the arbitration agreement override paragraph 20 of the Cardholder Agreement*"]. The arbitration agreement imposed a duty over arbitrator requiring he must apply governing law consistent with the FAA including statutes of limitation laws which encompass applicable toll laws [App. H, p. 37a "***Procedures and Law Applicable in Arbitration:*** The arbitrator will apply applicable substantive law consistent with the FAA and applicable statutes of limitations"]. Congress put in equal footing this contractual clause when provides in the FAA § 4 for the governing of applicable federal-state law and Federal Rules of Civil Procedure prescribed by this Court that governs arbitration proceeding pursuant Fed. R. Civ. P. 81(a)(6)(B).

C. Mrs. Graulau's Claims Statutes of Limitation are Nonjurisdictional; Toll Laws Apply; Claims Not Barred

Certiorari should be granted to resolve whether petitioner's claims statute limitations are nonjurisdictional; and whether these claims are not barred in accordance with toll laws as sustained herein now. TCPA's silence concludes Congress intended to provide for this Act the 4 years statute limitation they enacted in 28 U.S.C. § 1658(a) that uniformly federal-state courts broadly has apply not in dispute. Same statute limitation also applies for Mrs. Graulau's claim for violation of constitutional right of privacy protected by the TCPA. Congress intention to expand this statute limitation is explicit without any ambiguity in the TCPA when promulgated a provision for state law not preempted allowing states add additional laws also found in the FAA that identify governing applicable federal-state laws, Federal Rules of Civil Procedures and Title 28 of U.S. Code:

47 U.S.C. § 227 "***EFFECT ON STATE LAW (f) STATE LAW NOT PREEMPTED***";
28 U.S.C. § 1658(a) "*Except as otherwise provided by law*";
28 U.S.C. § 1367(d) "**Supplemental Jurisdiction –(d)** *The period of limitation—shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period*";
28 U.S.C. § 1332(d)(11)(A & D) "**Diversity—(D)** *The limitations periods on any claims asserted in a mass action --shall be deemed tolled during the period that the action is pending in Federal court*"--**(A)** *mass action shall be deemed to be a class action*".

"To determine whether the statutory text plainly shows that Congress imbued a procedural bar with jurisdictional consequences, courts apply traditional tools of

statutory construction", citing *Wilkins v. United States,* U.S. Case No. 21-1164 (March 28, 2023). In addition Florida law provides *"the running of the time under any statute of limitations—is tolled by: --(f) The payment of any part of the principal or interest of any obligation or liability founded on a written instrument-- (g) The pendency of any arbitral proceeding pertaining to a dispute that is subject of the action*", Fla. Stat. § 95.051(1)(f & g). Undisputed for Mrs. Graulau FCCPA claim the statute limitation is 2 years. Thus, Mrs. Graulau's claims time statute limitation are nonjurisdictional because Florida State laws and Congress does not conditioned the court or arbitration to hear the claims at certain specific times rather allows expansion under Title 28 and State law as defined by this Court in *Henderson v. Shinseki,* 562 U.S. 428 (2011); *Arbaugh v. Y & H Corp.*, 546 U. S. 500 (2006); see also *Boechler, P.C. v. Commissioner of Internal Revenue,* 596 U.S. ___ (2022).

Although the specific date of first call is not fully established, Mrs. Graulau's claims statute limitations should be tolled from the first harassment Robocall made in year 2014 until June 11, 2016 when she made last payment of the account pursuant Fla. Stat. § 95.051(1)(f), *Cadle Co. v. Paula McCartha,* 920 So. 2d 144 (Fla. 5DCA 2006)("under section 95.051(1)(f), Florida Statutes--statute of limitations applicable to actions--is tolled through the date of any partial payment"). Continued to be tolled while she was a member of related class action until attorney filed an independent lawsuit on Jan. 22, 2018 pursuant 28 U.S.C. § 1332(d)(11)(D);

American Pipe & Construction Co. v. Utah, 414 U.S. 538 (1974); arbitration agreement allows claims made as part of a class action [App. H, 37a "***Claims Covered:*** --Claims subject to arbitration include Claims made as part of a class action"]. The action continue to be tolled while lawsuit filed by attorney was pending in court and 30 days after voluntary dismissal due on May 10, 2018 pursuant 28 U.S.C. § 1367(d), *Artis v. District of Columbia,* 138 S. Ct. 594 (2018). Then should be equitable tolled while Mrs. Graulau remained under legal representation until attorney voluntary ended their contingency agreement on May 31, 2018; during the time she was under consultation with other attorneys seeking new legal representation without result; and during the time Credit One inexcusable delay to file arbitration that they originally first requested then required to compel as district court found in this case related class action, *A.D. v. Credit One Bank, N.A.*, Case No. 14 C 10106 (N.D. Ill. Aug. 19, 2016)("*lengthy delay itself can lead to an implicit waiver of arbitration--This is especially true where the delay was due purely to the defendant's lack of diligence*"); also confirmed by Credit One's statement admitting lack of diligence [USDC Dkt. 45, Att. 6, p. 7 "*Credit One had absolutely no—interest in doing so*"]. These circumstances sufficiently warrant equitable tolling in this case, *Machules v. Dep't of Admin.,* 523 So.2d 1132, 1133-34 (Fla. 1988)("*In Florida...equitable tolling available where the circumstances of a civil action so warranted*"); *Starling v. R.J. Reynolds Tobacco Co.,* 845 F. Supp. 2d 1215 (M.D. Fla. 2011)(same citation); see also *Boechler Id.* Mrs. Graulau's claims

should be equitable tolled from May 10, 2018 until Sept. 5, 2019 when she filed her pro se lawsuit [USDC Dkt. 1] then continue be toll while her case was pending in court and during appeals until Dec. 15, 2021 which is 30 days after this Court denied petition of certiorari [USDC Dkt. 38]. Mrs. Graulau filed arbitration on Dec. 9, 2021 and pursuant Fla. Stat. § 95.051(1)(g) statute limitations are toll during the pendency of arbitration proceedings; and continue to be tolled during the pendency of motion to vacate and motion to correct in this case pursuant 28 U.S.C. § 1367(d). Even without considering any equitable tolling and only applying the statutory tolling provisions, still Mrs. Graulau's claims are not barred due statute limitations would have only run for 1 year 3 months and 26 days. To the extent, the statutory requirement is *to commence* an action not to obtain final disposition reason why Congress provide tolling provisions during the pendency of actions in courts. In accordance petitioner's claims are not time barred.

D. Arbitrator's Exceeded Power, Misconduct, Partiality & Corruption

ARBITRATOR EXCEEDED POWER. Arbitrator exceeded his power as FAA defined in the exclusive ground under § 10(a)(4) sustained as follow. *FIRST* is reargued arbitrator exceeded his power when awarded upon an issue not submitted to him because it was not stipulated or referred by the Court for arbitrator decide whether Mrs. Graulau's claims are barred or not. The parties' "intentions control", *Mitsubishi Id.* This is a question of arbitrability only for the Court to decide, *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 84 (2002). When the Court's

based its referral on the stipulation to use the expired arbitration agreement to govern arbitration proceedings, parties did not enter again in the expired contract (cardholder agreement). Arbitrator acted inconsistent with the FAA when make a determination about an issue not stipulated or referred by the Court which fall into same definition of exceed power set by this Court in *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662 (2010). This is a stray departing far away from arbitrator's function defined in the contract due the question about if Mrs. Graulau's claims are time barred is a jurisdictional matter question of arbitrability that the FAA § 4 specific it's only for the court to decide also pursuant Fla. Sta. § 682.02(2). *Green Tree Financial Corp.* v. *Bazzle*, 539 U.S. 444, 452 (2003)("*whether a concededly binding arbitration clause applies to a certain type of controversy"—are presumptively for courts to decide*"). Just like "the jurisdiction of the federal courts and their power to adjudicate, is beyond the scope of the litigants to confer", it is also beyond the scope of arbitrators citing *Bethlehem Shipbuilding Corp.*, 308 U.S. 165, 167-68 (1939). Truer considering the District Court is required to raise *sua ponte* the issue whether if any claim is barred, *Boechler Id.* ("*Jurisdictional requirements--must be raised by courts "sua sponte*"). *SECOND* is reargued that arbitrator exceeded his power by imposing his own policy choice instead of apply the identified governing toll laws consistent with the FAA, Congress and Florida laws applicable to statute limitations (disregard of law discussed further below). By doing so, arbitrator acted out of the scope of his authority limited by the arbitration

agreement. Despite notice given by Mrs. Graulau about all governing toll laws in arbitration initial complaint/demand reaffirmed in her motion to oppose summary judgment [USDC Dkt. 45, Att. 7] arbitrator willfully with knowledge refused to applied governing toll laws for Mrs. Graulau's claims which is a similar offense reversed in *Stolt-Nielsen* due arbitrator does not sit to dispense his own brand of industrial justice. By willfully refused to apply the controlling tolling provisions under 28 U.S.C. § 1332 § 1367 and Fla. Stat. § 95.051, arbitrator acted against what Congress instructed in the FAA and the award suffices show he undermined his contractual obligations imposed by the arbitration agreement that required for him to apply those laws, *Oxford Health Plans LLC v. Sutter*, 569 U.S. 564 (2013). *LASTLY* arbitrator exceeded his power after did not make any determination of any of the issue the Court ordered to and parties asked to award over Mrs. Graulau's TCPA, Invasion of Privacy and FCCPA. "When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award". *Sutter Id.* Besides his others "infidelities", arbitrator so imperfectly executed his power that when he could not determine the specific date of when cause of action accrued (harassment Robocalls) based his ruling in his own inference [USDC Dkt. 45, Att. 1, p. "*although the specific date of the last call is not fully established—the date of the last call to the 6063 number that date could be no later than January 31, 2017—Thus the Demand for arbitration was filed more than 4 years after any calls were allegedly made*"]. But more important, arbitrator did

not included Mrs. Graulau's claim for invasion of privacy in the award even confirmed Credit One did not requested summary judgment for this issue [USDC Dkt. 46, Att. 3, p. 1-2 "*The order granting Respondent's Motion for Summary Disposition did not address the Invasion of Privacy as it was not specifically addressed in Respondent's motion.*"]. Here *vacatur* was not optional under the FAA because Congress instruct the Court to do so; and now urge this Court grant certiorari in aid to assure compliance with congressional promulgations.

ARBITRATOR'S MISCONDUCT. Among basis sustained in motion to vacate the award under FAA § 10(a)(3) was arbitrator misconduct. Hereby is reargued after received knowledge arbitrator willfully engaged in misconduct when bypassed Rule 56 of Federal Rule of Civil Procedures that the FAA requires he must abide and also surpass this Court's controlling precedent which prevent arbitrator dismiss Mrs. Graulau's claims by summary judgment in the existence of genuine dispute of material facts about how Credit One obtained cellular no. 6065 & 6063 not provided in the credit card application; all phone numbers used by Credit One to made the Robocalls; additional harassment Robocalls besides the **2,446** Credit One already admitted which is material to determine total statutory damages; date when first and last Robocall was made, etc. in pursuant Fed. R. Civ. P. 56(c)(2), *Celotex Corp. v. Catrett,* 477 U.S. 317 (1986). This Court's in Rule 56 prohibit arbitrator from grant summary judgment if there's *any* genuine dispute as to *any* relevant material fact and requires for arbitrator "*seek to reassure itself by some examination of the*

record before granting summary judgment against a pro se litigant", Fed. R. Civ. P. Rule 56-Committee Notes 2010 Amendment. In other non related case for similar Credit One's offenses a District Court held that in determine summary disposition the arbitrator "*only task is to decide whether, based on the evidence of record, there is any material dispute of fact that requires a trial*", citing *Baemmert v. Credit One Bank, N.A.*, 271 F. Supp. 3d 1043 (W.D. Wis. 2017). The FAA § 13 require the arbitrator's summary judgment "be subject to all the provisions of law relating to a judgment in an action as if it had been rendered in an action in the court in which it is entered". Another arbitrator's misconduct occurred when he bypassed subsection of same Rule 56(c)(4) and Fla. Stat. § 90.604 which requires Affidavit of Credit One's Vice President Michael Wiese should be made with personal knowledge. During his testimony Mr. Wiese admitted has lack of personal knowledge [USDC Dkt. 82, p. 3, par. 4]; also proved by conflicting evidence introduced by Mrs. Graulau of a different affidavit previously submitted for related lawsuit by Credit Ones' Vice President Gary Hardwood provided among the evidences submitted to oppose summary judgment [USDC Dkt. 45, Att. 7, p. 5] that arbitrator took into evidence. Pursuant Fla. Stat. § 90.802 Mr. Wiese's affidavit is not admissible due inadmissible hearsay after he provided testimony about information heard from third parties vendors that for other non related case District Court found be inadmissible hearsay, *Baemmert Id.* ("*What Credit One's vendors told Harwood is inadmissible hearsay... What iEnergizer's vendor reported is again inadmissible*

hearsay"). As asserted at arbitration and in motion to vacate, Fla. Stat. § 90.604 prevent arbitrator from allows a witness testify about inadmissible hearsay and provide testimony when admissible evidence support has lack of personal knowledge about the matter. The FAA § 7 requires arbitrator applies applicable laws-rules for witness governing arbitration.

ARBITRATOR'S PARTIALITY & CORRUPTION. Another basis sustained in motion to vacate under FAA § 10(a)(2) was arbitrator's partiality with bias against Mrs. Graulau after he denied for Mrs. Graulau to respond Credit One's 13 affirmative defenses when undisputed he null/voided her motion to strike then denied her request for re-filing. Arbitrator denied Mrs. Graulau from redress her claims for statutory damages granted by Congress (TCPA) and deprived her from due process provided in Fed. R. Civ. P. 12 (respond to affirmative defenses) a right granted by our Constitution incorporated in this Court's Doctrine of Incorporation; arbitrator deprived Mrs. Graulau from due process after also nulled/voided her motion to dismiss denying for her to answer Credit One's counterclaim then denied her request for re-filing [USDC Dkt. 82, Att. 1, p. 2, par. 5]. By doing so, arbitrator ripped-off the most basic procedural right (answer a claim). Also deprived Mrs. Graulau from procedural rights when denied for her engage in discovery after denied issuance of subpoenas to depose Credit One and obtain material pertained information about its vendors. Arbitrator's corruption is derived from the U.S. Const. Amend. XIV § 1 protecting Mrs. Graulau from be deprived from due process

and guarantee equal protection under the law. Immunity exempt arbitrator from being sued by Mrs. Graulau for his unlawful actions, but he is not protected from the punisher named by Congress to impose sanctions/fines, etc. for arbitrator deprivation of constitutional rights (due process, equal protection of laws, privacy, etc.) under 18 U.S.C. § 242. Thus, Congress have manifested their intention that arbitrator cannot disobey the law, that is to say, "manifest disregard of law" as discussed next.

E. Circuit's Interpretation of *Hall Street;* "Manifest Disregard Of Law" is a Basis for Vacatur Under FAA § 10 Grounds

There is a substantial disagreement among circuits as to the proper application of this Court's decision in *Hall Street* that is important to resolve in order to achieve a uniform interpretation of statutory language of the FAA and correct serious erroneous interpretations that would undermine congressional policy expressed and other laws incorporated by extension in the FAA. In this case the lower tribunals denied Mrs. Graulau's motion to vacate only based on their interpretation that in *Hall Street* this Court set a controlling precedent about that "manifest disregard of law" is not a basis for vacatur under the exclusive grounds under FAA for being judicial-created. We respectfully disagree sustaining that in *Hall Street* was hold FAA § 10 § 11 respectively grounds for vacate/modify arbitrator award are exclusive that cannot be expanded by additional judicial-created grounds not found within those sections but without precluding other legal

permissible reviews outside the FAA. As argued in courts below, *Hall Street* does not set a precedent that "manifest disregard of law" is not a basis for vacatur under FAA §10 §11. In *Hall Street* this Court state there was a vagueness found within the language in the case *Wilko v. Swan*, U.S. 427 (1953) (hereinafter *Wilko*) about "the interpretations of the law by arbitrator in contrast to manifest disregard of the law are not subject to judicial error in interpretation". By "contrast" does means, manifest disregard is subject to judicial error in interpretation. The opinion reads: "maybe the term manifest disregard was meant to name a new ground for review but maybe it merely referred to the § 10 grounds collectively rather than adding to them". This language does not bar "disregard"; the Court leaved open the issue about its classification and standard context definition. In *Wilko* even dissenting Justices Frankfurter and Minton confirms that unanimously all Justices agreed arbitrators may not disregard the law, *Wilko Id.* ("*Arbitrators may not disregard the law. Specifically, they are, as Chief Judge Swan pointed out, "bound to decide in accordance with the provisions of section 12(2)." On this we are all agreed. It is suggested, however, that there is no effective way of assuring obedience by the arbitrators to the governing law. But, since their failure to observe this law "would . . . constitute grounds for vacating the award pursuant to section 10 of the Federal Arbitration Act*"). See also *I/S Stavborg* v. *National Metal Converters, Inc.*, 500 F. 2d 424, 431 (CA2 1974)("*this court, citing simultaneously both the Wilko majority and dissenting opinions on the point, embraced the "manifest disregard" test*"). To

the extent *Wilko* case was overruled by *Rodriguez de Quijas v. Shearson/American Express, Inc.,* 490 U.S. 477 (1989), this does not have contrary effect toward disregard of law neither provides any ruling about this matter. In *Hall Street* Justice Souter integrated as part of his delivered opinion portion of Justice Stevens, J. opinion about "arbitration awards are only reviewable for manifest disregard of the law, 9 U. S. C. §10". Although neither subsequent case *Stolt-Nielsen* does not set a precedent over this matter, this Court reversed Circuit Court of Appeal to affirm vacating an arbitrator's award due "manifest disregard of law" exceed of power occur when arbitrator dispense his own brand of justice making public policy citing case *I/S Stavborg*; and explicitly Justice Alito in Footnote 3 remarks that "manifest disregard" indeed survived *Hall Street* but what did not survived was the question whether if it is an independent ground or a judicial gloss for the FAA § 10, *Hall Street Id.* (*"Footnote 3 We do not decide whether " 'manifest disregard' " survives our decision in* Hall Street Associates, L. L. C. *v.* Mattel, Inc., *552 U. S. 576, 585 (2008), as an independent ground for review or as a judicial gloss on the enumerated grounds for vacatur set forth at 9 U. S. C. §10*'). Again is reargued that "manifest disregard of law" as ground for vacatur has not been rejected by this Court, the entire contrary. However is pending for this Court to resolve whether Congress meant for it to be an independent ground or if they codified it under the grounds set forth in FAA §10. This case is an opportunity for break this Court's

silence over this issue that if not resolved will provide for some circuits continue to grow out with cuffed-hands to intervene when arbitrator disobey the law.

In aim for this determination is sustained the standard definition for "manifest disregard of law" that satisfied this Court in *Stolt Nielsen*-Footnote 3 about arbitrator is found to disregard law when knew the controlled governing law but willfully refused to apply such law that several States has created statutes imposing this standard (e.g. New York-CPLR § 7511(b)(3)). As the Sixth Circuit noted in *Coffee Beanery, Ltd. v. WW, L.L.C.*, 300 F. App'x 415 (6th Cir. 2008), before *Hall Street* all Circuits have used this same standard also found on prior *Hall Street* Eleventh Circuit's precedents *Brown v. Rauscher Pierce Refsnes, Inc.*, 994 F.2d 775, 781 (11th Cir. 1993); and *B.L. Harbert International, LLC v. Hercules Steel Co.*, 441 F.3d 905 (11th Cir. 2006). However after doubts of their legitimacy due *Hall Street* the Eleventh Circuit departure separate way by overruling those in *Frazier v. Citifinancial Corp.*, 604 F.3d 1313, 1322 n.7 (11th Cir. 2010) and *S. Commc'ns Servs., Inc. v. Thomas*, 720 F.3d 1352, 1360 (11th Cir. 2013) which based its decision appealed herein. First and Fifth Circuits aligned with the Eleventh Circuit in the split, see *Ramos-Santiago v. United Parcel Service*, 524 F.3d 120, 124 n. 3 (1st Cir. 2008); and *Citigroup Global Markets Inc. v. Bacon*, 562 F.3d 349, 350, 355 (5th Cir. 2009). But plurality of Circuits among such are 2Cir., 4Cir., 6Cir. and 9Cir. they reject the Eleventh Circuit's approach, see: *Comedy Club, Inc. v. Improv West Associtates,* 553 F.3d 1277, 1281 (9tho Cir. 2009)(*"addressing the*

issue raised by Supreme Court's remand, we conclude that Hall Street Associates did not undermine that manifest disregard of law ground for vacatur, as understood in this circuit to be a violation of § 10(a)(4) of the Federal Arbitration Act, and that the arbitrator manifestly disregarded the law"); *Coffee Beanery Id.* (same citation).

If is taken the Eleventh Circuit interpretation of *Hall Street* as if this Court held that "manifest disregard of law" is not a basis for vacatur under FAA, that grant arbitrator a free-law pass which is a power that not even the courts have. The merely reasoning of the Eleventh Circuit is contradicted by the language found within the FAA stating is subject to other governing applicable laws and provision under Title 28 of Congress Code. In the FAA is explicit Congress did not intended overruled their own laws promulgated in Title 28 or other relevant laws; neither to preempt governing state law which enforceability arose from territorial jurisdiction authority. Derived from the UCC, Congress enacted the FAA to harmonize federal with state laws that regulate interstate commerce. Is legally concluded if the FAA provides for additional applicable laws and statutes to govern in arbitration proceedings, that Congress instructed arbitrators they must apply those governing laws under a contract. No citizen may violate federal-state laws only because consented to do so by stipulation on a contract nor may arbitrator grant exceptions to comply with the law through their awards. Ruling otherwise or not prevent it is a matter of public interest. If Eleventh Circuit's interpretation is upheld, it would also mean that in the FAA Congress intended to provide for an arbitrator not to be

subject to the Rules enacted by this Court, that is to say Federal Rules of Civil Procedure, which not even Congress have such power since the authority for adjudication over federal laws-rules is only for the judicial branch. Hereby is re-argued Congress intended codified "manifest disregard of law" within the exclusive grounds for arbitrator's abuse of power, misconduct, partiality, corruption. The Eleventh Circuit reasoning that "manifest disregard of law" is a judicial-created *vacatur* is inconsistent with the FAA. Neither *Hall Street* nor *Stolt-Nielsen* should be deemed as this Court created a judicial-created for disregard of law. Rather following same line of *Stolt-Nielsen,* "manifest disregard of law" is conceptualized within the exclusive grounds under FAA § 10.

FOR REASONS ABOVE, motion to vacate suffices shows basis for vacatur under FAA §10 due arbitrator exceeded his power by willfully disregarding the law; he is guilty of misconduct, partiality and corruption; Mrs. Graulau's claims statute of limitations are nonjurisdictional subject to toll laws and are not time barred. "When vacate arbitrator's award pursuant to Section 10(b) of the FAA, district court either directs a rehearing by the arbitrator or decides the question that was originally referred to him", *Stolt–Nielsen*, 130 S.Ct. at 1770. Since arbitration is not suitable in this case as discussed next, there's no other option but for the Court decide the questions that was originally referred to arbitrator.

F. Arbitration Not Suitable

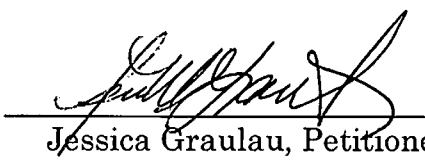
FINALLY is argued after Mrs. Graulau already complied with counsels' joint stipulation and Court's orders after attended arbitration with no rehearing allowed, pursuant 28 U.S.C. § 654 Mrs. Graulau cannot be required arbitration because her action is based on violation of constitutional right of privacy secured by the TCPA [USDC Dkt. 1, p. 4, par. 14 "28 U.S.C. § 1343] seeking recover statutory damages under this Act of Congress in amount greater than $150,000; Mrs. Graulau oppose to attend arbitration again and she cannot be prejudice for refuse to participate in another arbitration. If Congress enacted § 654 to direct the Court that cannot refer to arbitration under certain circumstances even if parties consented, there is a presumption Congress intended for the TCPA be address only at judicial forums as Seventh Circuit held in this case related class action, *A.D. v. Credit One Bank*, 885 F.3d 1054 (7th Cir. 2018)("*In—TCPA action—no right under the cardholder agreement. Her action is under completely separate statute protecting her from harassing phone calls. This is the "core" of the case*"). This is true considering violation of TCPA and Constitutional Right of Privacy are not interstate commerce transactions; therefore they are not bind to arbitration agreement expired in this case. Truer considering that harassment is also found in criminal codes under both, federal and state law, that precisely Congress seek to protect citizens from be harassed by companies like Credit One. To protect the fairness of procedures arbitration is not suitable given the wrongdoings suffered at arbitration and Mrs.

Graulau disadvantage limited resources as unrepresented indigent litigant in contrast with big legal firm who it's the only party paying the arbitrator.

CONCLUSION

IN CONCLUSION this petition of writ of certiorari should be granted. The opinion of Circuit below should be reversed to remand vacatur for arbitrator award on Mrs. Graulau's claims ordering the case be reinstalled on the District Court's docket for jury trial on the issues; and reversed to remand modification for arbitrator award on Credit One's counterclaim for either strike to invalid/void the award or enter an order correcting the award denying counterclaim for lack of subject matter jurisdiction. The intervention of this court is necessary to prevent injustice that cannot be fixed otherwise for this Court being the last resort for appeal.

RESPECTFULLY submitted on April 23, 2024 by:

Signature: 

Jessica Graulau, Petitioner-Appellant