

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

**TODD BEESLEY and
JENNIFER BEESLEY**
On Behalf of Themselves
and All Others Similarly Situated

Plaintiff,

Hon.
Mag.
Case No. 16-cv-

v.

PROPOSED CLASS ACTION

**ASSOCIATION DUES ASSURANCE
CORPORATION**

Defendant.

COMPLAINT AND JURY DEMAND

NOW COMES Plaintiff, **TODD BEESLEY AND JENNIFER BEESLEY** (hereinafter referred to as “Beesley” or “Plaintiff”) by and through counsel, The Law Offices of Brian P. Parker, PC, and brings this action against the above listed Defendant, **ASSOCIATION DUES ASSURANCE CORPORATION** (“ADAC” or “Defendant”) on the grounds set forth herein:

**I. PRELIMINARY STATEMENT OF THE WRONGFUL SCHEME AND PLAN OF
DEFENDANT ADAC**

1.

Plaintiff brings this action for damages and injunctive relief based upon the Defendant’s violations of the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692 *et seq* and The Regulation of Collection Practices Act (RCPA), codified at MCL 445.251 *et seq*. demanding a trial by jury, brings this action for the illegal practices of the Defendants who, *inter alia*, used false, deceptive, misleading, unconscionable, and other illegal practices, in connection with their

attempts to collect a debt from the Plaintiff and other Michigan Resident Condo Owners and all without meaningful attorney involvement.

2.

Defendants are publicizing private, **Condo Lien debt** information as an announced debt collector beyond the requirements of the Michigan Condominium and Foreclosure Statute in violation of Federal regulations under the FDCPA. Every computer template “Notice of Lien Foreclosure Sale” (“Foreclosure Notice” and “Lien Foreclosure Sale Notice”) that Defendant ADAC publicizes:

1. that a debt collector is pursuing a Michigan homeowner whose debt is in default; and
2. shows and states the homeowner’s address and that their home is for sale; and
3. states the amount claimed to be due on the date the information is publicized in a Public Notice; and
4. goes beyond the Foreclosure Statute and violates the FDCPA communicating the debt collection by exposing private, protected debt information; and
5. ignores the homeowners’ right to privacy and also the regulations and protections against harassment and abusive debt collection under the FDCPA and RCPA. **See Exhibit 1 and the Notice ADAC sends out to newspapers, the internet, Detroit Legal News and county offices regarding the Plaintiff’s defaulted debt and the Defendant’s attempt to collect on the debt.**

II. PARTIES

3.

The Plaintiffs are natural persons and consumers and residents of Belleville, Macomb County, State of Michigan, and a “consumer” as defined by the FDCPA and RCPA.

4.

The Defendant ADAC is a debt collector organized as a Michigan Corporation in Saint Clair Shores, St. Clair County, State of Michigan and is a debt collector of defaulted Condominium Association debts and liens and uses newspapers, internet, county buildings and mail to communicate to the world the collection of consumer debts originally owed to others. Defendant is a debt collector under the FDCPA and regulated as a collection agency under the RCPA.

III. STATUTES AND CASE LAW

5.

In *Glazer v. Chase Home Finance, LLC*, 704 F.3d 453, 464 (6th Cir. 2013), the Sixth Circuit made clear that all foreclosure action is considered debt collection under the FDCPA. The court stated that “if a purpose of an activity taken in relation to a debt is to ‘obtain payment’ of the debt, the activity is properly considered debt collection.” Id. at 460. *Phillip Himmelein v Federal Home Loan Mortgage Corporation, ADAC Law P.C. FKA ADAC & ADAC, P.C. and Roger A. Smith*, File No. 1:15-cv-00813 (December 31, 2015).

6.

Neither *Himmelein* or *Glazer* in the Sixth Circuit creates a carve out or exception for the Notice of Mortgage Foreclosure Sale or Lien Foreclosure Sale Notice being anything but debt collection and part of the foreclosure process.

7.

In fact, on November 10, 2016, a Court in the Western District of Michigan denied a Defendant’s Motion to dismiss in the same facts as here and found that “Defendant published the notice of sale for the very purpose of obtaining payment on the underlying debt through Michigan’s foreclosure by advertisement statute, so it was a communication made in connection with the collection of a debt.” *Gray v Trott & Trott, PC, Case #16-cv-00237*.

8.

“First, the Court relied upon *Glazer v. Chase Home Finance LLC*, 704 F. 3d 453 (6th Cir. 2013) to reach the conclusion that the notice of sale was a communication made for the purpose of obtaining payment on the underlying debt.” *Gray v Trott & Trott, P.C. Case Number #16-00237 W.D.Mich. (January 19, 2016)*.

9.

“Compliance with state law is not a complete defense to FDCPA liability in the context of foreclosure sales. Even if the Notices were intended to comply with Michigan’s law regarding foreclosure by advertisement, the ultimate utility of the Notices was as a means to obtain payment on the underlying mortgage debt.” *Salewske v Trott & Trott, PC, Case #16-cv-13326*.

THE FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)

10.

The FDCPA is a strict liability statute, which provides for actual or statutory damages upon the showing of one violation. Whether a debt collector’s actions are false, deceptive, or misleading under § 1692(a)-g is based on whether the “least sophisticated consumer” would be misled by a defendant’s actions. *Harvey v. Great Seneca Fin. Corp.*, 453 F.3d 324, 329 (6th Cir. 2006).). This standard ensures “that the FDCPA protects all consumers, the gullible as well as the shrewd.” *Kistner v. Law Offices of Michael P. Margelefsky, LLC.*, 518 F.3d 433, 438 (6th Cir).

11.

“In fact, every mortgage foreclosure, judicial or otherwise, is undertaken for the very purpose of obtaining payment on the underlying debt, either by persuasion (i.e, forcing a settlement) or compulsion (i.e., obtaining a judgment of foreclosure, selling the home at auction, and applying the proceeds from the sale to pay down the outstanding debt).” *Glazer v. Chase*

Home Finance LLC, 704 F. 3d 453. See *Goodrow v. Friedman & MacFadyen, P.A.*, 788 F. Supp. 2d 464, 471 (E.D.Va. 2011) (“[A] debt collector must comply with the FDCPA while complying with a state foreclosure law.”); *Romea v. Heiberger & Assocs.*, 163 F.3d 111, 118 (2d Cir. 1998). “It is the provisions of the FDCPA that by and of themselves determine what debt collection activities are improper under federal law.” *Romea* at 119.

12.

Under Michigan’s Condominium Foreclosure Statute at MCL 559.208 mirroring MCL 600.3212 by reference in the Condominium Act, every notice of foreclosure by advertisement shall include all the following:

(3) A foreclosure proceeding may not be commenced without recordation and service of notice of lien in accordance with the following:

(a) Notice of lien shall set forth all of the following:

(i) The legal description of the condominium unit or condominium units to which the lien attaches.

(ii) The name of the co-owner of record.

(iii) The amounts due the association of co-owners at the date of the notice, exclusive of interest, costs, attorney fees, and future assessments.

(b) The notice of lien shall be in recordable form, executed by an authorized representative of the association of co-owners and may contain other information that the association of co-owners considers appropriate.

(c) The notice of lien shall be recorded in the office of register of deeds in the county in which the condominium project is located and shall be served upon the delinquent co-owner by first-class mail, postage prepaid, addressed to the last known address of the co-owner at least 10 days in advance of commencement of the foreclosure proceeding.

(a) The names of the mortgagor, the original mortgagee, and the foreclosing assignee, if any.

(b) The date of the mortgage and the date the mortgage was recorded.

(c) The amount claimed to be due on the mortgage on the date of the notice.

(d) A description of the mortgaged premises that substantially conforms with the description contained in the mortgage.

(e) For a mortgage executed on or after January 1, 1965, the length of the redemption period as determined under section 3240.

(f) A statement that if the property is sold at a foreclosure sale under this chapter, under section 3278 the borrower will be held responsible to the person who buys the property at the mortgage foreclosure sale or to the mortgage holder for damaging the property during the redemption period.

13.

The FDCPA is a strict liability statute, which provides for actual or statutory damages upon the showing of one violation. The Sixth Circuit has held that whether a debt collector's conduct violates the FDCPA should be judged from the standpoint of the "least sophisticated consumer." *Harvey v. Great Seneca Fin. Corp.*, 453 F.3d 324, 329 (6th Cir. 2006). This standard ensures "that the FDCPA protects all consumers, the gullible as well as the shrewd." *Kistner v. Law Offices of Michael P. Margelefsky, LLC.*, 518 F.3d 433, 438 (6th Cir. 2008).

14.

The FDCPA applies to lawyers like ADAC regularly engage in consumer debt-collection litigation. *Heintz v. Jenkins*, 514 U.S. 291 (1995); *Schroyer v. Frankel*, 197 F.3d 1170, 1173-74 (6th Cir. 1999); *See also Kistner*, 518 F.3d 433 (the law firm's owner may also be individually liable).

15.

In *Heintz v. Jenkins*, the Supreme Court refused to defer to the FTC commentaries. *Heintz* addressed the FTC's purported exclusion from FDCPA coverage of attorneys engaged in "legal activities" as opposed to those engaged in "debt collection activities." Rejecting this exclusion, the Supreme Court noted that the commentaries themselves state that they are "not binding on the Commission or the public." *Heintz v. Jenkins*, 514 U.S. 291, 298 (1995).

16.

Under the FDCPA, a “consumer” is any natural person obligated or allegedly obligated to pay any debt. 15 U.S.C. § 1692a (3). Plaintiff is a consumer.

17.

Under the FDCPA, “debt” means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes. 15 U.S.C. § 1692a (5). The condo lien debt here is a “debt” under the FDCPA.

18.

Under the FDCPA, a “debt collector” is any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose for which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due to another. 15 U.S.C. § 1692a (6). Defendant is a debt collector under the law and by its own admission in its Foreclosure Notice of Mortgagee Sale at **Exhibit 1**.

19.

Under 15 U.S.C. § 1692a (2), the term “communication” means the conveying of information regarding a debt directly or indirectly to any person through any medium. Defendant ADAC are communicating the Plaintiffs’ debt information to the general public through the Notices at **Exhibit 1 and 5**. See *Glazer v. Chase Home Finance LLC*, 704 F. 3d 453. *Phillip Himmelein v Federal Home Loan Mortgage Corporation, ADAC Law P.C. FKA ADAC & ADAC, P.C. and Roger A. Smith*, File No. 1:15-cv-00813 (December 31, 2015).

20.

The Defendants are debt collectors of defaulted condo liens engaged in the business of collecting of consumer debts originally owed to others. See *Glazer v. Chase Home Finance LLC*,

704 F. 3d 453.

21.

Among the *per se* violations prohibited by the FDCPA is 15 U.S.C. § 1692c(b):

(b) COMMUNICATION WITH THIRD PARTIES. Except as provided in section 804, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a post judgment judicial remedy, *a debt collector may not communicate, in connection with the collection of any debt, with any person other than a consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.*

22.

The FDCPA states at 15 U.S.C. § 1692d that:

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

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

23.

It is a violation of 15 U.S.C. § 1692d (4) for a debt collectors like ADAC to advertise the sale of any debt to coerce payment of the debt. In violation of the FDCPA and as a debt collector, ADAC is communicating to the world and the State of Michigan, the private names and defaulted, debt information in every Notice of Foreclosure Sale it publicizes in the Notice information not required by the Michigan Condominium or Mortgage Foreclosure Statute.

24.

By its express terms, § 1692d provides that "[a] debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse *any person* in connection with the collection of a debt." (Emphasis added). We have interpreted this to mean that "any person who has been harmed by a proscribed debt collection practice under § 1692d ... [may] sue for damages under § 1692k(a)(2)(A)." *Montgomery v. Huntington Bank*, 346 F.3d 693,

697 (Court of Appeals, 6th Cir. 2003).

25.

Under 15 U.S.C. § 1692e, “[a] debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt.” 15 U.S.C. § 1692e. “A debt collector violates § 1692e, put simply, if the collection practice that he uses has the tendency to confuse the least sophisticated consumer.” *Gillie v. Law Office of Eric A. Jones, LLC*, 785 F.3d 1091, 1106 (6th Cir. 2015) (citing *Harvey v. Great Seneca Fin. Corp.*, 453 F.3d 324, 329 (6th Cir. 2006)), rev’d on other grounds sub nom. *Sheriff v. Gillie*, 136 S. Ct. 1594 (2016).

26.

When there is a conflict in the protections offered to a consumer in a Michigan Statute and the Federal Statute, the FDCPA states that the debt collector must follow the Federal Statute when it offers greater protections than the conflicting State Statute:

§ 816. Relation to State laws [15 USC 1692n]

This title does not annul, alter, or affect, or exempt any person subject to the provisions of this title from complying with the laws of any State with respect to debt collection practices, except to the extent that those laws are inconsistent with any provision of this title, and then only to the extent of the inconsistency. For purposes of this section, *a State law is not inconsistent with this title if the protection such law affords any consumer is greater than the protection provided by this title.*

27.

Article VI of the Constitution of the United States provides:

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding. U.S. Const. art. VI, cl. 2.

28.

Under 15 U.S.C. § 1692n, the FDCPA does not preempt state laws unless and only to the extent "those laws are inconsistent with any provisions of this subchapter." Importantly, a state law is not "inconsistent" with the FDCPA "if the protection such law affords any consumer is greater than the protection provided by this subchapter." Accordingly, only state laws which make it impossible to comply with both state and federal law (*Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142-43, 83 S.Ct. 1210, 10 L.Ed.2d 248 (1963)), such as where state law requires conduct prohibited by federal law, are preempted.

29.

Where there is "conflict preemption," which is "where state law `stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress'" embodied by the federal law, (*Gade v. National Solid Wastes*, 505 U.S. 88, 98, 112 S.Ct. 2374, 120 L.Ed.2d 73 (1992)), "[t]he purpose of Congress is the ultimate touchstone." *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 105 S.Ct. 2380, 85 L.Ed.2d 728 (1985).

30.

The FDCPA preempts state law only when those laws are "inconsistent with any provisions of this subchapter." "A State law is not inconsistent with [the FDCPA] if the protection such law affords any consumer is greater than the protection provided by this subchapter." See *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 63-64 (1987).

REGULATION OF MICHIGAN COLLECTION PRACTICES ACT (RCPA)

31.

The Michigan Consumer Protection Act (RCPA), MCL 445.251 et seq. is an act to regulate the collection practices of certain persons; to provide for the powers and duties of certain state agencies; and to provide penalties and civil fines.

32.

“Claim” or “debt” means an obligation or alleged obligation for the payment of money or thing of value arising out of an expressed or implied agreement or contract for a purchase made primarily for personal, family, or household purposes. Defendants are third party debt collectors/agencies and attorneys seeking the payment of money for a creditor client based on original obligations between Plaintiff class members and the original obligors in the County of Genesee and the State of Michigan.

33.

“Collection agency” means a person directly or indirectly engaged in soliciting a claim for collection or collecting or attempting to collect a claim owed or due or asserted to be owed or due another, or repossessing or attempting to repossess a thing of value owed or due or asserted to be owed or due another person, arising out of an expressed or implied agreement. Collection agency includes a person representing himself or herself as a collection or repossession agency or a person performing the activities of a collection agency, on behalf of another, which activities are regulated by Act No. 299 of the Public Acts of 1980, as amended, being sections 339.101 to 339.2601 of the Michigan Compiled Laws. Collection agency includes a person who furnishes or attempts to furnish a form or a written demand service represented to be a collection or repossession technique, device, or system to be used to collect or repossess claims, if the form contains the name of a person other than the creditor in a manner indicating that a request or demand for payment is being made by a person other than the creditor even though the form directs the debtor to make payment directly to the creditor rather than to the other person whose name appears on the form. Collection agency includes a person who uses a fictitious name or the name of another in the collection or repossession of claims to convey to the debtor that a third person is collecting or repossessing or has been

employed to collect or repossess the claim. Defendant ADAC is operating in Macomb County and throughout the State of Michigan as “collection agencies” under the RCPA.

34.

“Communicate” means the conveying of information regarding a debt directly or indirectly to a person through any medium. Defendants are communicating with Michigan consumers through letters and Public Mortgage Lien Foreclosure Sale Notices.

35.

“Consumer” or “debtor” means a natural person obligated or allegedly obligated to pay a debt. Plaintiff is a consumer under the RCPA.

36.

“Creditor” or “principal” means a person who offers or extends credit creating a debt or a person to whom a debt is owed or due or asserted to be owed or due. Creditor or principal does not include a person who receives an assignment or transfer of a debt solely for the purpose of facilitating collection of the debt for the assignor or transferor. In those instances, the assignor or transferor of the debt shall continue to be considered the creditor or the principal for purposes of this act.

37.

“Person” means an individual, sole proprietorship, partnership, association, or corporation. Defendant ADAC is a regulated person under § 445.251(g)(xi),

38.

The MCPA's reference to "[a]n attorney handling claims and collections on behalf of a client and in the attorney's own name," Mich. Comp. Laws § 445.251(g)(xi), is better understood as encompassing *both* attorneys who handle claims and collections on behalf of a client *and* attorneys who seek to collect a debt owed to themselves or their firms. *Misleh v.*

Timothy E. Baxter & Associates, 786 F. Supp. 2d 1330 - Dist. Court, ED Michigan 2011.

39.

The RCPA, like the FDCPA, prohibits debt collectors from using deceptive, coercive, threatening, abusive, and other repugnant practices for collecting a consumer debt. *McKeown v. Mary Jane M. Beesley P.C., No. 07-12016-BC, 2007 WL 4326825, at *5 (E.D. Mich. Dec. 10, 2007* (citing *Hubbard v. Nat'l Bond and Collection Assocs., Inc.*, 126 B.R. 422, 426 (D.Del.1991)) held that “§ 445.252(e) applies to Defendant, its analysis is similar to that under § 1692e of the FDCPA, both of which bar misleading and deceptive communications... In light of the similarity between 15 U.S.C. § 1692e and these causes of action, it appears appropriate to view Plaintiff’s claims under the same “least sophisticated consumer” standard.

40.

The Plaintiff, on behalf of himself and all others similarly situated, seeks ACTUAL DAMAGES, attorney fees, costs, and all other relief, equitable or legal in nature, as deemed appropriate by this Court in a Class Action context, pursuant to the FDCPA and the RCPA and all other common law or statutory regimes. The Plaintiff, on behalf of himself and all others similarly situated requests that he and the class members be awarded:

- a. Their Actual Damages suffered by the wrongful foreclosure notices and breach of privacy collecting and publicizing his lien foreclosure debt using **Exhibit 1**,
- b. Injunctive Relief stopping Defendants from continuing their plan and scheme through Notices such as **Exhibit 1**,
- c. Statutory damages and their attorney fees and costs under the FDCPA and RCPA.

IV. JURISDICTION AND VENUE

41.

This court has jurisdiction over this Complaint pursuant to the FDCPA, 15 U.S.C. §

1692k(d), 28 U.S.C. § 1331 and 28 U.S.C. § 1367. Supplemental jurisdiction for Plaintiff's state law claims arise under 28 U.S.C. § 1367. *Baltierra v. Orleans Associates PC*, No. 15-cv-10008 (E.D. Mich. Oct. 7, 2015).

42.

The factual basis of the RCPA claim is the same as the factual basis of the FDCPA claim and this district court has "supplemental jurisdiction over all other claims that are so related to the claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. 28 U.S.C. § 1367(a).

43.

Declaratory relief is available pursuant to under 28 U.S.C. §§ 2201, 2202. Venue is appropriate in this federal district pursuant to 28 U.S.C. §1391(b) because a substantial part of the events giving rise to Plaintiff's claims occurred within this federal judicial district, and because each of the Defendants are subject to personal jurisdiction in the State of Michigan at the time this action is commenced. There is nothing unique or novel about Plaintiff's state claims.

V. FACTUAL ALLEGATIONS

44.

Defendant ADAC advertises its firm as being legal experts in all aspects of condominium and association law and as a Collection Agency:

Association Dues Assurance Corporation (ADAC)

ADAC is the Nation's leading Collection Agency specifically created to handle Condominium and Home Owners delinquent Association Dues Collections. We are the smart choice because...

WE DON'T COLLECT OUR FEES UNTIL YOU ARE BEING PAID!*

Please see Exhibit 3.

45.

On May 24, 2017, Plaintiffs received a collection letter from ADAC advising Mr. and Mrs. Beesley that they had 30 days to pay \$2,944.04 or ADAC and Belle Pointe Estates Condominium Association Inc. would go forward with a foreclosure of the lien on the condo Plaintiff's resided in. **Please see Exhibit 4.**

46.

In the *pre-publication* stage of foreclosure, the notice at **Exhibit 4** provides Plaintiff information that ADAC is a debt collector, attempting to collect on a debt. The letter was accompanied by a Pending Condominium Lien Pursuant to MCLA 559.208. The letter provided an attached breakdown of the costs and fees ADAC was charging Plaintiffs "pre-foreclosure."

47.

Defendant ADAC sent dunning letters at **Exhibit 4** as a debt collector as defined by 15 U.S.C. § 1692a (6). The Letter at **Exhibit 4** was sent to Plaintiff in connection with the collection of a "debt" as defined by 15 U.S.C. § 1692a (5).

48.

The next part of the foreclosure process after ADAC sends out the initial dunning letters is the *publication* stage where ADAC advertises the Notice of Lien Foreclosure Sale at **Exhibit 5**. This communication and Notice is placed in local newspapers, the internet, county buildings and the Detroit Legal News and made after the initial communication at **Exhibit 1** under Section 1692e (11) of the 'FDCPA.

49.

The public is informed that the Beesley family, owes a debt to a debt collector, *the amount is publicized and with a due date*, the address of the home is publicized and the fact that the Plaintiffs have "defaulted on the payments of certain assessments" as evidenced by a lien on the

property is publicized in violation of the FDCPA and beyond any requirements of the Michigan Foreclosure Statute. The Notice is placed in local newspapers, county buildings and the Detroit Legal News for publication from March 31, 2017 to April 28, 2017. **See Notices at Exhibit 1 that a Sheriff Sale of the Condo is to occur on August 31, 2017 and that a Public Lien has been place in the Register of Deeds Office with the debt collection information at Exhibit 5.**

50.

Further and in violation of Plaintiff and the Class Members right to privacy and rights under the FDCPA and RCPA, the Notice of Mortgage Foreclosure Sale and Plaintiffs' private debt information was placed in newspapers across the county of Macomb, in the Detroit Legal News, the internet and county buildings from July 25, 2017 through August 15, 2017. **Please see Exhibit 1 and Plaintiffs' Affidavit at Exhibit 6.**

51.

In the Lien Foreclosure Notice publicized in the press, county buildings and the Detroit Legal News, the Defendants publicize in large letters that, "THIS FRIM IS A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE ONLY. PLEASE CONTACT THIS OFFICE AT THE NUMBER BELOW IF YOU ARE IN ACTIVE MILITARY DUTY. LIEN FORECLOSURE SALE" Please see **Exhibit 1 and 5.**

52.

Further, the Defendants' written communications in the form attached as **Exhibit 1 and Exhibit 5** are false, deceptive, and misleading in that the publicize private debt information of consumers generally and these Plaintiffs specifically beyond anything that is required under the Michigan Foreclosure Statutes in violation of 15 U.S.C. §§1692e and 1692e (10).

53.

There is no requirement under Michigan's Foreclosure Statute at MCLA 600.3212 or MCL 559.208 that the Foreclosure Notice must contain information that the debt is being collected by a debt collector or that any information obtained will be used for debt collection.

54.

In breach of the Beesley Family's right to privacy specifically and the class members right to privacy in general, the Notice at **Exhibit 1 and 5** provides information to the anyone reading it that Plaintiffs or any other class member is in Default of their Condo Association financial responsibilities and owe money to a debt collector (WRITTEN IN BOLD LETTERS).

55.

There is no requirement under Michigan's Foreclosure Statute at MCLA 600.3212 or MCL 559.208 that the notice must contain information about the homeowner or debtor being in default on their obligations.

56.

Contrary to the strict prohibitions of the FDCPA at 15 U.S.C. § 1692d, the Foreclosure Notice at **Exhibit 1 and 5** provides information to the public of the address of the homeowner that is in default of payments of certain assessments that are not required by Michigan Statute.

57.

Contrary to the strict prohibitions of the FDCPA at 15 U.S.C. § 1692e (6) and 15 USC 1692(a), the Foreclosure Notice at **Exhibit 2** breaches the Michigan homeowners' right to privacy and provides private defaulted debt information to the public in violation of 15 U.S.C. § 1692c(b), that Plaintiff is being pursued by a debt collector and that she is in default on a debt even though that is not required to be stated by Michigan Statute.

58.

There is no compelling or legal reason or Michigan Statue justification that requires the

ADAC defendant to publicize that the Beesley family is in default on a condo debt and that they are being pursued by an Attorney debt collector collecting upon a debt or place the Beesleys' address in the Public Notice in violation of 15 U.S.C. § 1692e and 15 U.S.C. § 1692c(b). Please see **Exhibit 6** showing how the Plaintiffs are damaged.

59.

Further, the private information that ADAC is placing in public view is false, misleading and deceptive in that ADAC is falsely representing that it is only providing the debt information to conform with the Michigan Foreclosure or Condominium Statute.

60.

As the Michigan Foreclosure Statute under MCLA 600.3212 or MCL 559.208 directly conflicts with the regulations of federal law, it is preempted by the protections codified under the FDCPA. "Compliance with state law is not a complete defense to FDCPA liability in the context of foreclosure sales. Even if the Notices were intended to comply with Michigan's law regarding foreclosure by advertisement, the ultimate utility of the Notices was as a means to obtain payment on the underlying mortgage debt." *Salewske v Trott & Trott, PC, Case #16-cv-13326*. ("[A] debt collector must comply with the FDCPA while complying with a state foreclosure law."); *Romea v. Heiberger & Assocs.*, 163 F.3d 111, 118 (2d Cir. 1998). "It is the provisions of the FDCPA that by and of themselves determine what debt collection activities are improper under federal law." *Romea* at 119.

61.

Foreclosure activity under *Glazer* is considered debt collection for the purpose of obtaining payment through the advertised foreclosure sale. "Whether through reinstatement or less directly through foreclosure sale and recovery of the proceeds, "[t]here can be no serious doubt that the ultimate purpose of [this] foreclosure is the payment of money. *Glazer* at 463.

62.

Similar to the facts and law plead in this case, a Federal Court in Western Michigan has ruled on this issue stating that “Defendant published the notice of sale for the very purpose of obtaining payment on the underlying debt through Michigan’s foreclosure by advertisement statute, so it was a communication made in connection with the collection of a debt.” *Gray v Trott & Trott, P.C.* Case Number #16-00237 W.D. (November 10, 2016).

63.

Defendant ADAC knows it is collecting on a debt in **Exhibit 1**. Under 15 U.S.C. §§ 1692e (11), The mini Miranda is only required to be placed on “*subsequent communications that the communication is from a debt collector.*” ADAC was aware that the publicizing of the Foreclosure Notice at **Exhibit 1** was debt collection as it followed 15 U.S.C. §§ 1692e (11) by placing the mini Miranda on the Foreclosure Notice: THIS FIRM IS A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

64.

Plaintiffs are informed and believe, and on that basis allege that the Defendants have a policy and practice of publicizing to the world and the public in the State of Michigan, private debt collection information of homeowners in default of their condo lien debts without any regard to Applicable Federal law and the homeowner’s right not to have their debts published to third parties in violation of 15 U.S.C. §§ 1692e, 15 U.S.C. §§ 1692c(b), 15 U.S.C. §§ 1692d (4), and 15 U.S.C. §§ 1692e (6).

65.

Plaintiff is informed and believes based upon the information from **Exhibit 1 and Exhibit, 5** that Defendants operate a collection agency collecting Condo Lien Debt under the FDCPA and RCPA. In pursuing Condo Lien debts through the newspapers, Detroit legal news and posting in public places, Defendants are advertising communication of collection of debt through a sheriff sale for the sale of the homes of homeowners in Michigan to force payment on the underlying debt in violation of the RCPA and FDCPA. *Glazer v. Chase Home Finance LLC*, 704 F.3d 453.

66.

Defendants threaten homeowners with the fear of the Sherriff Sale in its letters (**Exhibit 4**) as a means to have the homeowners “pre-foreclosure” costs, charges and attorney fees that are not supported in law or by the Association agreement in violation of the FDCPA and RCPA. U.S.C. §§ 1692e(2)(A), (B), MCLA 445.252(e) and MCLA 445.252(n).

VI. CLASS ACTION ALLEGATIONS

67.

Plaintiff realleges the above pleadings. The FDCPA Class consists of all persons that have received collection letters and Public Foreclosure Notices at **Exhibit 1, 4, and 5** with their name and address, Condo debt and the amount of the Condo debt in default owed and DUE and published inside a Lien Foreclosure Notice of Sale and published in newspapers, county buildings and the internet in violation of 15 U.S.C. §§ 1692e, 15 U.S.C. §§ 1692c(b), 15 USC 1692e (6), 15 U.S.C. §§ 1692e(2)(A), (B) and 15 U.S.C. §§ 1692d (4) within a one year period prior to the filing of this lawsuit.

68.

With the FDCPA Class, there are questions of law and fact common to each class, which common issues predominate over any issues involving only individual class members. The principal and common issue is whether Defendant’s conduct in connection with the Publicizing

that a homeowner owes a Condo, the amount, their address and that a debt collector is involved in a Lien Foreclosure Sale violates the FDCPA.

69.

A FDCPA *sub class* would be all homeowners with a Michigan address that have paid a condo lien debt to Defendant ADAC for excessive and increased collection attorney fees and costs with the threat of the Sheriff Sale. **Please see Exhibit 4.**

70.

There are no individual questions here. All Michigan homeowners with defaulted debt are having their Condo Lien default placed out in the open for the world to see in violation of the FDCPA.

71.

Plaintiff will fairly and adequately protect the interests of the class. Plaintiff is committed to vigorously litigating this matter. He is greatly annoyed at being the victim of Defendants' illegal practices and wishes to see that the wrong is remedied. To that end, she has retained counsel experienced in litigating the FDCPA, consumer advocacy and class claims. Neither Plaintiff nor their counsel has any interests which might cause them to not vigorously pursue this claim.

72.

The RCPA Class consists of all persons with a Michigan address that were pursued for a Condo Lien debt by a collection agency and attorneys through collection attempts (**Exhibit 1, 4 and 5**) involvement and who publicize the Michigan class homeowners defaulted condo debt in newspapers, in county buildings, the internet and in the Detroit Legal News to sell the underlying debt in violation of MCLA 445.252(a), MCLA 445.252(e), MCLA 445.252(f), MCLA 445.252(d), MCLA 445.252(n), MCLA 445.252(m) and MCLA 445.252(q) during the six year period immediately preceding the filing of this complaint and the date of class certification.

73.

The RCPA *sub class* would be all homeowners with a Michigan address that have paid a condo lien debt to Defendant ADAC for excessive and increased collection costs requested with the threat of a Sheriff Sale. **Please see Exhibit 4.**

74.

There are questions of law and fact common to each class, which common issues predominate over any issues involving only individual class members. The principal and common issue is whether Defendants' conduct in collection attempts publicize the mortgage debt default of Michigan homeowners in violation of the RCPA

75.

There are no individual questions, other than whether the RCPA class members received one of the offending letters or Public Lien Foreclosure Sale Notices (**Exhibit 1 and 5**), which can be determined by a ministerial inspection of the records and collection notes of Defendants.

76.

Plaintiff will fairly and adequately protect the interests of the RCPA class. Plaintiff is committed to vigorously litigating this matter. She is greatly annoyed at being the victim of Defendants' illegal practices and wishes to see that the wrong is remedied. To that end, she has retained counsel experienced in litigating the RCPA, consumer advocacy and class claims. Neither Plaintiff nor their counsel has any interests, which might cause them to not vigorously pursue this claim.

77.

Plaintiff claims are typical of the claims of the classes, which all arise from the same operative facts and are based on the same legal theories.

78.

A class action is a superior method for the fair and efficient adjudication of this controversy. Most of the consumers who sued by Defendants undoubtedly have no knowledge that their rights are being violated by illegal collection practices. The interest of class members in individually controlling the prosecution of separate claims against Defendants is small because the maximum damages in an individual action are small but illegal percentages of fees and costs. Management of this class claim is likely to present significantly fewer difficulties than those presented in many class claims, e.g, for securities fraud.

79.

Certification of each class is appropriate because:

(a)the class is so numerous that joinder of all members is impracticable; (b) there are questions of law or fact common to the members of the class that predominate over questions affecting only individual members; (c) the claims or defenses of the representative parties are typical of the claims or defenses of the class; (d) the representative parties will fairly and adequately assert and protect the interests of the class; and (e) the maintenance of the action as a class action will be superior to other available methods of adjudication in promoting the convenient administration of justice.

80.

There are questions of law and fact common to the class members, which common questions predominate over any questions that affect only individual class members. The predominant questions are:

- a. Whether Defendants had a practice of publicizing the homeowner's private debt information while notifying the world the homeowners are in default and pursued by debt collectors.
- b. Whether Defendants wrote letters to Michigan homeowners

with demands for excessive fees and costs with the threat of a Sheriff Sale.

- c. Whether Defendants publicized the private debt information of Michigan class members in newspapers, county buildings and the internet.
- d. Whether doing the above violated the FDCPA and RCPA.

81.

Certification of each class also is appropriate because Defendants have acted on grounds generally applicable to each class, thereby making declaratory and injunctive relief appropriate with respect to each class.

82.

Certification of each class under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure is appropriate because:

- (a) The questions of law and fact common to the members of each class predominate over any questions affecting an individual member: and
- (b) A class action is superior to other available methods for the fair and efficient adjudication of the controversy.

83.

Certification of each class under Rule 23(b)(2) of the Federal Rules of Civil Procedure also is appropriate because Defendants have acted on grounds generally applicable to each class, thereby making declaratory and injunctive relief appropriate with respect to each class as a whole.

84.

Plaintiffs request certification of a hybrid class action, combining the elements of FRCP 23(b)(3) for monetary damages and FRCP 23(b)(2) for equitable relief.

85.

Plaintiffs seek specific Actual and Statutory damages each member suffered and Declaratory and Injunctive Relief from the Court Ordering that this practice above of Defendant be stopped and that the collection practice of Defendants be Regulated to prevent Michigan

residents being subject to illegal debt collection practices of Defendant ADAC.

VII. CLAIMS FOR RELIEF

RCPA CLASS ALLEGATIONS FOR ACTUAL DAMAGES AND INJUNCTIVE RELIEF

86.

Defendants have violated the RCPA. Defendant's violations of the RCPA include, but are not necessarily limited to, the following:

- a. Defendants violated MCLA 445.252(a) by communicating with Plaintiff and class members in a deceptive manner using the threat of a Sheriff Sale if a demand for excessive fees and costs pre-foreclosure is not paid by Plaintiff and class members with (*Exhibit 4*) as mentioned above; and
- b. Defendants violated MCLA 445.252(n) by using a harassing, oppressive, or abusive method to collect a debt, using (*Exhibit 1, 4 and 5*) as mentioned above; and
- c. Defendants violated MCLA 445.252(e) Making an inaccurate, misleading, untrue, or deceptive statement or claim in a communication to collect a debt or concealing or not revealing the purpose of a communication when it is made in connection with collecting a debt at ((*Exhibit 4*); and
- d. Defendant has violated MCLA 445.252(f) Misrepresenting in a communication with a debtor 1 or more of the following:
 - (i) The legal status of a legal action being taken or threatened.
 - (ii) The legal rights of the creditor or debtor; and
- e. Defendants violated MCLA 445.252(d) by using forms that may otherwise induce the belief that they have judicial or official sanction is involved such as (*Exhibit 1, 4 and 5*); and

f. Defendant violated MCLA 445.252(a) by communicating with a debtor in a misleading and deceptive manner with forms such as (*Exhibit 1 4 and 5*); and

g. Defendants violated MCLA 445.252(m) by bringing the private debt information of Michigan Residents into the public view through newspapers, county building and internet publication with *Exhibit 1 and 5*; and

h. Defendants violated MCLA 445.252(q) by failing to implement a procedure designed to prevent a violation by an employee with forms and practices involving (*Exhibit 1, 4 and 5*).

Wherefore, Plaintiff seeks judgment and INJUNCTIVE RELIEF against Defendants for:

a. Actual damages based on the illegal interests and costs Defendants charged of each Plaintiff, pursuant to M.C.L. 445.257 ((1). Triple Actual damages if the Court finds Defendants' scheme and plan alleged above as willful non-compliance. M.C.L. 445.257(2).

Please see Exhibit 6. and

b. Equitable, declaratory and injunctive relief pursuant to M.C.L. 445.257(1) to stop the plan and scheme of defendants as alleged above; and

c. INJUNCTIVE RELIEF to stop the practice of publicizing Michigan homeowners' private debt information being publicized by debt collectors; and

d. Reasonable attorney's fees and court cost pursuant to M.C.L.445.257(2) with judicial sanction and Injunctive Relief.

FDCPA RECOVERY CLAIMS FOR RELIEF AND DAMAGES (EXHIBIT 6)

87.

Defendants violated the FDCPA. Defendants' violations of the FDCPA include, but are not necessarily limited to, the following:

a. Defendants violated 15 U.S.C. 1692e by using false, deceptive and misleading

representations and means in connection with the collection or attempted collection of a Condo Lien debt using the communications at (*Exhibit 1, 4 and 5*) without meaningful attorney involvement as stated above; and

- b. Defendants collected on the debt and violated 15 U.S.C. 1692d with conduct described above that harasses and abuses a homeowner in connection with collecting the Condo Lien debt through (*Exhibit 1, 4 and 5*) in publicizing private debt information with a threat of foreclosure; and
- c. The Defendants communicated to third parties and the world in publishing foreclosure sale notices with the Condo Lien debt amount, the homeowner's name and address and that she is in default through (*Exhibit 1 and 5*) in violation of 15 U.S.C. §1692c(b); and
- d. Defendants violated 15 USC 1692e (6) with the false representation or implication that the Notice of Foreclosure Sale in (*Exhibit 1 and 5*) allows the debt collector to violate the FDCPA; and
- e. Defendants violated 15 U.S.C. 1692d (4) by publishing that the sale of the Condo Lien debt to the world and the State of Michigan using (*Exhibit 1 and 5*) as mentioned above to secure payment of the excessive attorney fees and costs amount charged by Defendant ADAC; and
- f. Defendants violated 15 U.S.C. 1692e(2)(A) and (B) through use of publishing that the sale of the Condo Lien debt to the world and the State of Michigan using **Exhibit 1 and Exhibit 5**; and
- g. Defendants violated 15 U.S.C. 1692e (10) as mentioned above and by publishing that the sale of the mortgage debt to the world and the State of Michigan using (*Exhibit 1 and 5*) as mentioned above to secure payment of the amount charged by Defendant ADAC.

Wherefore, Plaintiff seeks judgment against Defendant for:

- a. Statutory and Actual damages for Plaintiff pursuant to 15 U.S.C. 1692k(a)(2)(A) and (B);
- b. Statutory damages for the members of the FDCPA Class, *pro rata*, in the amount of the lesser of \$500,000.00 or one percent centum of the net worth of Defendants pursuant to 15 U.S.C. 1692k(a)(2)(B);
- c. Costs and reasonable attorney's fees pursuant to 15 U.S.C. 1692k(a)(3); and;
- d. Such further relief as the court deems just and proper.

VIII. JURY TRIAL DEMAND

Plaintiff demands a Trial by Jury on all issues.

Respectfully submitted,

August 3, 2017

s/Brian P. Parker
BRIAN P. PARKER (P48617)
Attorney for Plaintiff and Plaintiff Class Members

EXHIBIT #1

7114 Belle Pointe Dr Lot #67, Belleville, MI 48111-5357

ADAC P.O. Box 806044 St. Clair Shores, MI 48080 - LIEN FORECLOSURE SALE THIS FIRM IS A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE ONLY. PLEASE CONTACT THIS OFFICE AT THE NUMBER BELOW IF YOU ARE IN ACTIVE MILITARY DUTY. LIEN FORECLOSURE SALE (Default having been made in payment of Condominium assessments by Todd Beesley & Jennifer Beesley, at 7114 Belle Pointe Dr. Lot #67, Belleville, MI 48111, owners) of a Condominium unit of Belle Pointe Estates Condominium Association, Inc. of Wayne County MI. A Notice of Lien for Non-Payment of Assessments was recorded on June 10, 2016 at Liber 53054, Page 63, in the office of the Register of Deeds for Wayne County, MI, on which lien there is claimed to be due at the date of this notice \$4,605.54 exclusive of interest at 7% and costs of sale. No suit or proceeding at law or in equity has been instituted to recover the debt secured by the lien or any portion thereof. By virtue of the power of sale contained in the Liber 27582, Pages 855 - 902 of the Master Deed of Belle Pointe Estates Condominium Association, Inc., in such case made and provided, notice is hereby given that on the 31st day of August A.D. 2017 at 11 o'clock in the AM local time, the lien will be foreclosed by a sale at public auction, to the highest bidder immediately at the Jefferson Avenue entrance to the Coleman A. Young Municipal Center in Detroit, Wayne County, MI, of the premises described in the lien, to pay the amount due, on the lien, with interest at seven percent per annum and all legal costs, charges and expenses, including the attorney fees allowed by law, and also any sums which may be paid by the undersigned, necessary to protect its interest in the premises. If the Association or Sheriff cancels or rescinds the sale prior to final settlement due to a bankruptcy filing or other cause, the purchaser's sole remedy shall be the refund of the deposit, plus interest. The redemption period shall be six (6) months from the date of such sale unless the property is determined abandoned in accordance with MCL 600.3241a, in which event the redemption date shall be thirty (30) days after the aforementioned foreclosure sale or fifteen (15) days after the Association's compliance with the notice requirements of MCL 600.3241a(c), whichever is later. The premises are described as follows: All of a certain piece or parcel of land situated in Belleville, Wayne County, MI, and described as follows: Unit 67, Belle Pointe Estates Condominium, according to the Master Deed thereof as recorded in Liber 27582, Page 855, both inclusive, Wayne County Records, as amended, and designated as Wayne County Condominium Subdivision Plan No. 374, together with rights in common elements and limited common elements as set forth in the above Master Deed and as described in Act 59 of the Public Acts of 1978, as amended, c/ k/a: 7114 Belle Pointe Dr. Lot #67 Belleville, MI 48111 ID NO. 83-011-02-0067-000 Dated: July 14, 2017 Belle Pointe Estates Condominium Association, Inc. BY: Belle Pointe Estates Condominium Association, Inc. c/o ADAC P.O. Box 806044 St. Clair Shores, MI 48080 P: (586) 294-2322 File No.: BECA-A9998D7114 (7-25)(8-15)

NoticeId 1322022

FullNoticeText ADAC P.O. Box 806044 St. Clair Shores, MI 48080 LIEN FORECLOSURE SALE THIS FIRM IS A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE ONLY. PLEASE CONTACT THIS OFFICE AT THE NUMBER BELOW IF YOU ARE IN ACTIVE MILITARY DUTY. LIEN FORECLOSURE SALE - Default having been made in payment of Condominium assessments by Todd Beesley & Jennifer Beesley, at 7114 Belle Pointe Dr. Lot #67, Belleville, MI 48111, owner(s) of a Condominium unit of Belle Pointe Estates Condominium Association, Inc. of Wayne County MI. A Notice of Lien for Non-Payment of Assessments was recorded on June 10, 2016 at Liber 53054, Page 63, in the office of the Register of Deeds for Wayne County, MI, on which lien there is claimed to be due at the date of this notice \$4,605.54 exclusive of interest at 7% and costs of sale. No suit or proceeding at law or in equity has been instituted to recover the debt secured by the lien or any portion thereof. By virtue of the power of sale contained in the Liber 27582, Pages 855 - 902 of the Master Deed of Belle Pointe Estates Condominium Association, Inc., in such case made and provided, notice is hereby given that on the 31st day of August A.D. 2017 at 11 o'clock in the AM local time, the lien will be foreclosed by a sale at public auction, to the highest bidder immediately at the Jefferson Avenue entrance to the Coleman A. Young Municipal Center in Detroit, Wayne County, MI, of the premises described in the lien, to pay the amount due, on the lien, with interest at seven percent per annum and all legal costs, charges and expenses, including the attorney fees allowed by law, and also any sums which may be paid by the undersigned, necessary to protect its interest in the premises. If the Association or Sheriff cancels or rescinds the sale prior to final settlement due to a bankruptcy filing or other cause, the purchaser's sole remedy shall be the refund of the deposit, plus interest. The redemption period shall be six (6) months from the date of such sale unless the property is determined abandoned in accordance with MCL 600.3241a, in which event the redemption date shall be thirty (30) days after the aforementioned foreclosure sale or fifteen (15) days after the Association's compliance with the notice requirements of MCL 600.3241a(c), whichever is later. The premises are described as follows: All of a certain piece or parcel of land situated in Belleville, Wayne County, MI, and described as follows: Unit 67, Belle Pointe

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7114 Belle Pointe Dr Lot #67, Belleville, 48111-5357, Wayne County

Name: Todd Beesley

<http://legalnews.com/publicnotices/#detail>

ADAC P.O. Box 806044 St. Clair Shores, MI 48080 LIEN FORECLOSURE SALE THIS FIRM IS A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE ONLY. PLEASE CONTACT THIS OFFICE AT THE NUMBER BELOW IF YOU ARE IN ACTIVE MILITARY DUTY. LIEN FORECLOSURE SALE -- Default having been made in payment of Condominium assessments by Todd Beesley & Jennifer Beesley, at 7114 Belle Pointe Dr. Lot #67, Belleville, MI 48111, owner(s) of a Condominium unit of Belle Pointe Estates Condominium Association, Inc. of Wayne County MI. A Notice of Lien for Non-Payment of Assessments was recorded on June 10, 2016 at Liber 53054, Page 63, in the office of the Register of Deeds for Wayne County, MI, on which lien there is claimed to be due at the date of this notice \$4,605.54 exclusive of interest at 7% and costs of sale. No suit or proceeding at law or in equity has been instituted to recover the debt secured by the lien or any portion thereof. By virtue of the power of sale contained in the Liber 27582, Pages 855 - 902 of the Master Deed of Belle Pointe Estates Condominium Association, Inc., in such case made and provided, notice is hereby given that on the 31st day of August A.D. 2017 at 11 o'clock in the AM local time, the lien will be foreclosed by a sale at public auction, to the highest bidder immediately at the Jefferson Avenue entrance to the Coleman A. Young Municipal Center in Detroit, Wayne County, MI, of the premises described in the lien, to pay the amount due, on the lien, with interest at seven percent per annum and all legal costs, charges and expenses, including the attorney fees allowed by law, and also any sums which may be paid by the undersigned, necessary to protect its interest in the premises. If the Association or Sheriff cancels or rescinds the sale prior to final settlement due to a bankruptcy filing or other cause, the purchaser's sole remedy shall be the refund of the deposit, plus interest. The redemption period shall be six (6) months from the date of such sale unless the property is determined abandoned in accordance with MCL 600.3241a, in which event the redemption date shall be thirty (30) days after the aforementioned foreclosure sale or fifteen (15) days after the Association's compliance with the notice requirements of MCL 600.3241a(c), whichever is later. The premises are described as follows: All of a certain piece or parcel of land situated in Belleville, Wayne County, MI, and described as follows: Unit 67, Belle Pointe Estates Condominium, according to the Master Deed thereof as recorded in Liber 27582, Page 855, both inclusive, Wayne County Records, as amended, and designated as Wayne County Condominium Subdivision Plan No. 374, together with rights in common elements and limited common elements as set forth in the above Master Deed and as described in Act 59 of the Public Acts of 1978, as amended. c/ k/ a: 7114 Belle Pointe Dr. Lot #67 Belleville, MI 48111 ID NO. 83-011-02-0067-000 Dated: July 14, 2017 Belle Pointe Estates Condominium Association, Inc. BY: Belle Pointe Estates Condominium Association, Inc. c/o ADAC P.O. Box 806044 St. Clair Shores, MI 48080 P: (586) 294-2322 File No.: BECA-A9998D7114 (7-25)(8-15)

7114 Belle Pointe Dr Lot #67, Belleville ×
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EXHIBIT #2

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

DAVID SALEWSKE, et al.,

Plaintiffs,

Case No. 16-cv-13326

v.

Honorable Thomas L. Ludington

TROTT & TROTT P.C.,

Defendant.

**ORDER OVERRULING OBJECTIONS, ADOPTING IN PART
AND MODIFYING IN PART REPORT AND RECOMMENDATION,
AND DENYING DEFENDANT'S MOTION TO DISMISS**

On August 10, 2016, Plaintiffs David and Shari Salewske initiated the above-captioned action against Defendant Trott & Trott, P.C. (also known as Trott Law, P.C.) by filing their complaint in the Western District of Michigan. Plaintiffs allege generally that Defendant violated the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §§ 1692c(b), 1692d(4), and 1692e in the process of conducting a foreclosure by advertisement sale under Michigan law. Factually, Plaintiffs allege that Defendant violated the listed provisions of the FDCPA by placing Notices of Foreclosure Sales (the "Notices") in newspapers and other public places, which included the following information: (1) that Defendant was a debt collector attempting to collect a mortgage secured debt; (2) the mortgager's name; (3) the amount of the mortgage; (4) the fact that Plaintiffs were in default, authorizing the exercise of the power of sale in the mortgage; and (5) a provision notifying Plaintiffs that if they were in active military service they should contact Defendant. *See* Compl. ECF No. 1. To the extent Defendant's Notices complied with Michigan law, Plaintiffs allege that Michigan Compiled Law § 600.3212 is preempted by the FDCPA's preemption clause, 15 U.S.C. § 1692n, and the Supremacy clause of the United States

Constitution. The case was subsequently transferred to the Eastern District of Michigan on September 14, 2016, pursuant to the parties' stipulation. *See* ECF No. 2. Plaintiffs then filed a 17-page amended complaint on September 19, 2016, adding additional legal support for their claims. *See* Am. Compl. ECF No. 8.

The matter was referred to Magistrate Judge Patricia T. Morris for pretrial management. *See* ECF No. 9. On October 5, 2016, Defendant moved to dismiss Plaintiffs' amended complaint pursuant to Federal Rule of Civil Procedure 12(b)(6), arguing that Plaintiffs had failed to state a claim under the FDCPA. *See* Mot. Dismiss, ECF No. 11. Rule 12(b)(6) allows a party to move for dismissal of a complaint on the basis that it "fail[s] to state a claim upon which relief can be granted." The moving party bears the burden of showing that the opposing party has failed to adequately state a claim for relief. *DirecTV, Inc. v. Treesh*, 487 F.3d 471, 476 (6th Cir. 2007). Through its motion, Defendant argued that the Notices could not constitute communication in connection with the collection of a debt because they were required by Michigan law. *Id.* On March 16, 2017 the magistrate judge issued her report, recommending that Defendant's motion to dismiss be denied. *See* Rep. & Rec., ECF No. 16. The magistrate judge reasoned that, interpreting the facts in a light most favorable to Plaintiffs, a reasonable jury could find that the Notices were published in connection with Defendant's effort to collect a debt. Thus, the Notices could be governed by the FDCPA if, as addressed hereafter, Defendant's conduct in collecting the debt, the means they employed to collect the debt, or its communications violated the FDCPA. Defendant timely objected to that report. *See* ECF No. 17.

I.

Plaintiffs David and Shari Salewske are residents of Cheboygan, Michigan. *See* Am. Compl. ¶ 30. After Plaintiffs defaulted on certain mortgage payments, collection efforts were

referred to Defendant Trott & Trott, which is a foreclosure law firm located in Farmington Hills, Michigan. *Id.* at ¶ 31. Plaintiffs allege that Defendant is in the business of “using the newspapers, internet, county buildings and mail to communicate the collection of consumer debts originally owed to others to sell the underlying mortgage debt.” *Id.*

Defendant’s practice of foreclosing mortgages by advertisement is permitted under Michigan law.¹ Specifically, § 600.3201 provides that “[e]very mortgage of real estate, which contains a power of sale, upon default being made in any condition of such mortgage, may be foreclosed by advertisement, in the cases and in the manner specified in this chapter.” *Id.* The statute requires that “[n]otice that the mortgage will be foreclosed by a sale of the mortgaged premises ... shall be given by publishing the same for 4 successive weeks at least once in each week, in a newspaper published in the county where the premises included in the mortgage and intended to be sold ... are situated.” Mich. Comp. Laws § 600.3208. The statute also requires that, “within 15 days after the first publication of the notice, a true copy shall be posted in a conspicuous place upon any part of the premises described in the notice.” *Id.* Such notice must include the following:

- (a) The names of the mortgagor, the original mortgagee, and the foreclosing assignee, if any.
- (b) The date of the mortgage and the date the mortgage was recorded.
- (c) The amount claimed to be due on the mortgage on the date of the notice.
- (d) A description of the mortgaged premises that substantially conforms with the description contained in the mortgage.
- (e) For a mortgage executed on or after January 1, 1965, the length of the redemption period as determined under section 3240.1

¹ The process of foreclosure by advertisement is not unique to Michigan. The practice is also authorized by statute in Tennessee, which is within the Sixth Circuit, *See* Tenn. Code Ann. § 35-5-101, as well as in Minnesota, *See* Minn. Stat. Ann. § 580.01.

- (f) A statement that if the property is sold at a foreclosure sale under this chapter, under section 32782 the borrower will be held responsible to the person who buys the property at the mortgage foreclosure sale or to the mortgage holder for damaging the property during the redemption period.

Mich. Comp. Laws § 600.3212.

While Plaintiffs' complaint is thin on facts, it appears that on July 22, 2016, Defendant sent Plaintiffs a notice foreclosure sale. *See* Am. Compl. Ex. 1. The notice first disclaimed that "THIS FIRM IS A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION WE OBTAIN WILL BE USED FOR THAT PURPOSE." *Id.* The letter then informed Plaintiffs that they had defaulted on a mortgage to Mortgage Electronic Registration Systems, Inc., later assigned to Wilmington Trust National Association as successor trustee to Bear Stearns Alt-A Trust. *Id.* The mortgage was dated May 25, 2006 and recorded on June 9, 2006. *Id.* The letter then expressed that "notice is hereby given that said mortgage will be foreclosed by a sale of the mortgaged premises, or some part of them, at public venue, at the place of holding circuit court within Cheboygan County, at 11:00 AM, on August 19, 2016." *Id.* The notice contained a legal description of the mortgaged premise, the amount of default, and informed Plaintiffs that "[t]he redemption period shall be 6 months from the date of such sale, unless determined abandoned" *Id.* Plaintiffs do not allege that they responded to the initial notice letter.

In compliance with §§ 600.3208 and 600.3212, Defendants then published Notice of the foreclosure sale in the local Cheboygan paper and Detroit Legal News, and at Cheboygan county buildings from July 22 through August 5, 2016. *See* Am. Compl. ¶ 39. Defendant also published the Notice at Plaintiff's residence on July 22, 2016. *Id.* The published Notice is substantially similar to the notice letter sent to Plaintiffs. *See* Am. Compl. Ex. 2. It contains the same initial disclaimer that "THE FIRM IS A DEBT COLLECTOR ATTEMPTING TO COLLECT A

DEBT. ANY INFORMATION WE OBTAIN WILL BE USED FOR THAT PURPOSE.” The published Notice named the Salewskes as the mortgagors, stated the identity of the mortgagee, the amount of the debt, a legal description of the property, and the redemption period. In response to Defendant’s publications, Plaintiff initiated the present lawsuit on August 10, 2016, alleging that Defendant’s Notices violated the FDCPA. *See* ECF No. 1.

II.

By its express terms, the FDCPA was enacted “to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.” 15 U.S.C.A. § 1692(e). The FDCPA applies to means, conduct, and communications that are “in connection with the collection of any debt.” *See* 15 U.S.C. §§ 1692c(b), 1692d(4), & 1692e.

The FDCPA is “an extraordinarily broad statute and must be construed accordingly.” *Stratton v. Portfolio Recovery Assocs., LLC*, 770 F.3d 443, 448 (6th Cir. 2014) (quotation and citation omitted). To determine whether the FDCPA is implicated, the conduct at issue is viewed through the eyes of the “least sophisticated consumer.” *Currier v. First Resolution Inv. Corp.*, 762 F.3d 529, 533 (6th Cir. 2014). “This standard recognizes that the FDCPA protects the gullible and the shrewd alike while simultaneously presuming a basic level of reasonableness and understanding on the part of the debtor, thus preventing liability for bizarre or idiosyncratic interpretations of debt collection Notices.” *Id.* The FDCPA is also a strict liability statute, and therefore “[a] plaintiff does not need to prove knowledge or intent ... and does not have to have suffered actual damages.” *Stratton*, 770 F.3d. at 449.

Plaintiffs' allegations center around three provision of the FDCPA. *See* Am. Compl. ¶ 62. First, Plaintiffs allege that Defendant violated 15 U.S.C. § 1692e, which prohibit a debt collector from using any "false, deceptive, or misleading representations or means *in connection with the collection of any debt.*" *Id.* (Emphasis added). Specifically, Plaintiffs allege the publications violated §1692e(1), prohibiting "[t]he use of any false representation or deceptive means to collect or attempt to collect any debt or obtain information concerning a consumer," and § 1692e(6), prohibiting a debt collector from making any "false representation or implication that a sale ... shall cause the consumer to ... lose any claim or defense to payment of the debt; or ... become subject to any practice prohibited by [the Act]." Second, Plaintiffs allege that Defendant violated § 1692d(4), which prohibits a debt collector from engaging in "conduct the natural consequence of which is to harass, oppress, or abuse any person *in connection with the collection of a debt,*" including "[t]he advertisement for sale of any debt to coerce payment of the debt." *Id.* (Emphasis added). Third and finally, Plaintiffs allege that Defendant violated § 1692c(b), which provides as follows:

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

Id. (Emphasis added). The first provision, § 1692e, prohibits certain means, the second, § 1692d(4), prohibits certain conduct, and the third, § 1692c(b), prohibits certain communications. All three provisions require some "connection with the collection of any debt" to be actionable under the FDCPA.

III.

On October 5, 2016, Defendant moved to dismiss Plaintiffs' FDCPA claims for failure to state a claim upon which relief can be granted under Federal Rule of Civil Procedure 12(b)(6). A pleading fails to state a claim under Rule 12(b)(6) if it does not contain allegations that support recovery under any recognizable legal theory. *Ashcroft v. Iqbal*, 556 U.S. 662, 678, (2009). In considering a Rule 12(b)(6) motion, the Court construes the pleading in the non-movant's favor and accepts the allegations of facts therein as true. See *Lambert v. Hartman*, 517 F.3d 443, 439 (6th Cir. 2008). The pleader need not have provided "detailed factual allegations" to survive dismissal, but the "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." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). In essence, the pleading "must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face" and "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions." *Iqbal*, 556 U.S. at 678-79 (quotations and citation omitted).

Importantly, Defendant does not challenge any of the specific FDCPA claims raised by Plaintiffs in its motion to dismiss, or draw any distinction between the prohibitions against conduct, means, or communications. Instead, Defendant only broadly argues that its Notices were not communications in connection with the collection of any debt because the published Notices were related to a non-judicial foreclosure sale and in compliance with state law. Defendant contends that the Notices were not animated by the purpose of collecting a debt from Plaintiffs, but motivated by the necessity of complying with state law in order to enforce payment of the mortgage debt. See Mot. Dismiss 7, ECF No. 11. Defendant further argues that the mere fact that its Notices contained the standard FDCPA disclaimer language – noting that

Defendant was “a debt collector attempting to collect a debt” – did not transform the notice into debt collection activity because the inclusion of FDCPA notice language is legally irrelevant. *See Goodson v. Bank of Am., N.A.*, 600 F. App’x 422, 432 (6th Cir. 2015).

In support of these arguments, Defendant cites the Sixth Circuit’s opinion in *Grden v. Leikin Ingber & Winters PC*, 643 F.3d 169, 173 (6th Cir. 2011). There, the Sixth Circuit held that “for a communication to be in connection with the collection of a debt, an animating purpose of the communication must be to induce payment by the debtor.” *Id.* (citing *Gburek v. Litton Loan Serv. LP*, 614 F.3d 380, 385 (7th Cir. 2010)). In determining the “animating purpose” of a communication, courts generally apply the following seven factors:

(1) the nature of the relationship of the parties; (2) whether the communication expressly demanded payment or stated a balance due; (3) whether it was sent in response to an inquiry or request by the debtor; (4) whether the statements were part of a strategy to make payment more likely; (5) whether the communication was from a debt collector; (6) whether it stated that it was an attempt to collect a debt; and (7) whether it threatened consequences should the debtor fail to pay.

Goodson v. Bank of Am., N.A., 600 F. App’x 422, 431 (6th Cir. 2015) (holding that the FDCPA was not implicated where a law firm sent a plaintiff letters informing her of a change in her loan servicer). “The animating purpose of the communication is a question of fact that generally is committed to the discretion of the jurors, not the court.” *Estep v. Manley Deas Kochalski, LLC*, 552 F. App’x. 502, 505 (6th Cir. 2014). However, where “a reasonable jury could not find that an animating purpose of the statements was to induce payment,” summary judgment is appropriate. *Grden*, 643 F.3d at 173.

Recently, however, the Sixth Circuit has held that “mortgage foreclosure is debt collection under the FDCPA.” *Glazer v. Chase Home Fin. LLC*, 704 F.3d 453, 461 (6th Cir. 2013). Therefore, according to the circuit, “[l]awyers who meet the general definition of a ‘debt collector’ must comply with the FDCPA when engaged in mortgage foreclosure.” *Id.* at 464.

The court reasoned that “every mortgage foreclosure, judicial or otherwise, is undertaken for the very purpose of obtaining payment on the underlying debt, either by persuasion (*i.e.*, forcing a settlement) or compulsion (*i.e.*, obtaining a judgment of foreclosure, selling the home at auction, and applying the proceeds from the sale to pay down the outstanding debt).” *Id.* at 461. The court expressly overruled “a majority of district courts” that had found that mortgage foreclosure, as the enforcement of a security interest, did not constitute debt collection unless a money judgment was sought against the debtor in connection with that foreclosure, and specifically held that “foreclosure’s legal nature ... does not prevent it from being debt collection.” *Id.* at 461.²

As a district court within the Sixth Circuit, this Court is bound to apply this law.

The question therefore becomes how the Sixth Circuit’s opinion in *Glazer* interacts with prior law governing whether the animating purpose of a statement is to induce payment. A district court in the western district of Michigan has addressed this question in a case involving the same Defendant and almost identical facts, and determined that the FDCPA applied to Defendant’s actions. *See Gray v. Trott & Trott, P.C.*, 16-cv-00237 (W. D. Mi., Nov. 10, 2016) (Bell, J.). That court reasoned that the Notices were not purely informational, but were instead issued as part of an effort to obtain payment on the underlying debt, bringing the Notices within the ambit of the FDCPA under *Glazer*. The district court distinguished the Sixth Circuit’s

² The Sixth Circuit’s rationale in *Glazer* has been rejected by numerous other Circuits, including the Ninth Circuit in *Vien-Phuong Thi Ho v. ReconTrust Co., NA*, 858 F.3d 568 (9th Cir. 2016). Noting that “[f]oreclosure is a traditional area of state concern,” the Ninth Circuit explained that when Congress legislates in a field that states have traditionally occupied, federal courts must “start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.” *Id.* (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)). The Ninth Circuit found no such clear and manifest purpose to supersede state law in the FDCPA. *See also Burnett v. Mortgage Electronic Registration Systems, Inc.*, 706 F.3d 1231 1239 (10th Cir. 2013) (suggesting that non-judicial foreclosure is not debt collection for purposes of the FDCPA, but refusing to so hold); *Warren v. Countrywide Home Loans, Inc.*, 342 F. App’x. 458, 461 (11th Cir. 2009) (holding that “foreclosing on a home is not debt collection for purposes” of the FDCPA); and *Brown v. Morris*, 243 F. App’x. 31, 35 (5th Cir. 2007) (holding that “foreclosure is not per se FDCPA debt collection”). *But see Wilson v. Draper & Goldberg, P.L.L.C.*, 443 F.3d 373, 378–79 (4th Cir. 2006) (holding that trustees, including attorneys, acting in connection with foreclosure proceedings could be considered debt collectors acting in connection with the collection of a debt).

decision in *Goodson*, in which a law firm sent a plaintiff letters informing her of a change in her loan servicer. *Goodson v. Bank of Am., N.A.*, 600 F. App'x 422, 431 (6th Cir. 2015). Because the very purpose of publishing the notices of sale was to obtain payment on the underlying debt through Michigan's foreclosure by advertisement sale, the district court found that the plaintiff had adequately stated a claim for relief. The court also denied defendant's subsequent motion for reconsideration. *See Gray v. Trott & Trott, P.C.*, 16-cv-00237 (W. D. Mi., Jan. 19, 2017).

In the report and recommendation issued on March 16, 2017, the magistrate judge largely agreed with this reasoning. Given the Sixth Circuit's decision in *Glazer*, the magistrate judge found that compliance with Michigan state law alone was not a complete defense to liability under the FDCPA. In so finding, the magistrate judge rejected Defendant's reliance on a non-binding FTC Staff Commentary from 1988, which instructs that the term "communication" does not include "a notice that is required by law as a prerequisite to enforcing a contractual obligation between creditor and debtor, by judicial or nonjudicial legal process." *See* FCT Staff Commentary, 53 Fed. Reg. 50097-02, 50106 (Dec. 13, 1988). Finally, the magistrate judge determined that, for the purpose of the motion to dismiss stage, a reasonable jury could find that the animating purpose of the Notices was to induce payment of the debt. Defendant responded by filing three objections.

IV.

Pursuant to Federal Rule of Civil Procedure 72, a party may object to and seek review of a magistrate judge's report and recommendation. See Fed. R. Civ. P. 72(b)(2). Objections must be stated with specificity. *Thomas v. Arn*, 474 U.S. 140, 151 (1985) (citation omitted). If objections are made, "[t]he district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to." Fed. R. Civ. P. 72(b)(3). De novo review

requires at least a review of the evidence before the magistrate judge; the Court may not act solely on the basis of a magistrate judge's report and recommendation. *See Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981). After reviewing the evidence, the Court is free to accept, reject, or modify the findings or recommendations of the magistrate judge. *See Lardie v. Birkett*, 221 F. Supp. 2d 806, 807 (E.D. Mich. 2002).

A.

In its first objection, Defendant argues that the magistrate judge erred in concluding that the FDCPA, if implicated, would preempt Michigan law. Defendant argues that the magistrate judge's conclusion in this regard would disturb 200 years of Michigan law. Problematically, Defendant's objection raises numerous arguments and cites various cases that were not raised in their original motion to dismiss. Moreover, Defendant had the opportunity to file a reply to Plaintiff's response and chose not to do so. "[W]hile the Magistrate Judge Act, 28 U.S.C. § 631 *et seq.*, permits de novo review by the district court if timely objections are filed, absent compelling reasons, it does not allow parties to raise at the district court stage new arguments or issues that were not presented to the magistrate." *Murr v. United States*, 200 F.3d 895, 902 n.1 (6th Cir. 2000) (citing *Marshall v. Chater*, 75 F.3d 1421 (10th Cir. 1996) (stating that "[i]ssues raised for the first time in objections to the magistrate judge's recommendation are deemed waived").

Defendant's motion to dismiss was limited to an argument that its Notices were not published in connection with the collection of any debt. It did not explicitly raise preemption, but merely asserted that the Notices could not be considered communication "in connection with the collection of any debt" because they tracked with the provisions of M.C.L. § 600.3212. The magistrate judge rejected that argument, finding that compliance with state law was not sufficient

in itself to shield Defendant from the potential for liability at the 12(b)(6) stage under *Glazer*. This determination was not in error.

Contrary to Defendant's suggestion, the magistrate judge's report therefore did not definitively resolve the scope of federal preemption over state law. Instead, the magistrate judge simply found that the Plaintiff's claims were sufficient to survive the arguments raised in Defendant's motion to dismiss. However, in order to promote docket clarity, the report will be modified to the extent it appears to resolve the scope of preemption as a matter of law. Through proper filings before the magistrate judge, the parties are free to litigate the extent Congress intended specific provisions of the FDCPA (i.e. §§ 1692c(b), 1692d(4), and/or 1692e) to preempt specific provisions of Michigan state law. Any such filings must account for the Sixth Circuit's opinion in *Glazer*. Defendant's first objection will be overruled.

B.

Defendant next objects that the magistrate judge failed to meaningfully analyze the animating purpose of the Notices. Defendant restates its argument that the Notices were not intended to induce payment by the debtors, but were only intended to comply with Michigan law. These allegations contradict the allegations in Plaintiffs' complaint, as Plaintiffs alleged that Defendant published the notice in an attempt to collect a debt from Plaintiffs. For the purpose of the motion to dismiss stage, the magistrate judge agreed with Plaintiffs.

At the motion to dismiss stage the question before this Court is only whether, taking all of Plaintiffs' factual allegations as true, Plaintiffs have stated plausible claims demonstrating an entitlement to relief. *See Iqbal*, 556 U.S. at 678; *Twombly*, 550 U.S. at 555, 570. Through its motion to dismiss, Defendant does not argue that the Notices in compliance with state law could not, as a matter of law, be false, deceptive, or misleading under § 1692e. Defendant also does

not argue that the Notices could not, as a matter of law, be “conduct the natural consequence of which is to harass, oppress, or abuse” under § 1692d(4). The Court therefore will not reach those issues on its own initiative. Instead, the only issue raised by Defendant is whether Notices related to foreclosure proceedings can be considered communications “in connection with the collection of any debt” under the FDCPA. The Sixth Circuit has held that they can, and that “foreclosure’s legal nature ... does not prevent it from being debt collection.” *See Glazer*, 704 F.3d at 461. Therefore, compliance with state law is not a complete defense to FDCPA liability in the context of foreclosure sales. Even if the Notices were intended to comply with Michigan’s law regarding foreclosure by advertisement, the ultimate utility of the Notices was as a means to obtain payment on the underlying mortgage debt. As explained by the *Glazer* Court, “every mortgage foreclosure, judicial or otherwise, is undertaken for the very purpose of obtaining payment on the underlying debt, either by persuasion (*i.e.*, forcing a settlement) or compulsion (*i.e.*, obtaining a judgment of foreclosure, selling the home at auction, and applying the proceeds from the sale to pay down the outstanding debt).” *See Glazer*, 704 F.3d at 461 (emphasis in original). Defendant’s second objection will be overruled.

C.

Third and finally, Defendant objects that the magistrate judge erred in finding a 1988 FTC Commentary unpersuasive. *See* FTC Staff Commentary, 53 Fed.Reg 50097-02 (Dec. 13, 1988). That commentary holds that “communication” under the FTC does not include “a notice that is required by law as a prerequisite to enforcing a contractual obligation between creditor and debtor, by judicial or nonjudicial legal process.” *Id.* However, as explained in the introduction, the Staff Commentary “is not a formal trade regulation rule or advisory opinion of the Commission, and thus is not binding on the Commission or the public.” *Id.*

On the other hand, a published Sixth Circuit decision “remains controlling authority unless an inconsistent decision of the United States Supreme Court requires modification of the decision or [the Sixth Circuit] sitting en banc overrules the prior decision.” *Sykes v. Anderson*, 625 F.3d 294, 319 (6th Cir. 2010). In holding that foreclosure actions are debt collections under the FTCPA, the Sixth Circuit in part relied upon the Act’s use of broad words such as “communication.” *See Glazer*, 704 F.3d 453 at 461. The Sixth Circuit then observed that nothing in the Act cabined the terms’ “applicability to collection efforts not legal in nature.” *Id.* As a court within the Sixth Circuit, this Court is bound to apply this precedent, and thus must reject any non-binding FTC guidance to the contrary. This is particularly true where the commentary pre-dates the Sixth Circuit’s relevant opinion, and predates later amendments to the FDCPA. Defendant’s third objection will be overruled.

V.

In conclusion, it is noted that this opinion is relatively narrow in its import. It holds only that communications may be considered in connection with the collection of a debt even where a party attempting to collect a debt has complied with Michigan’s foreclosure by advertisement statute. It does not invalidate Michigan’s foreclosure by advertisement statute, nor does it hold that any provision of the FTCPA preempts the Michigan foreclosure by advertisement statute. This opinion does not even hold that Plaintiffs have stated claims upon which relief can be granted as a matter of law; only that Defendant’s current challenge to Plaintiff’s complaint is without merit under binding Sixth Circuit precedent.

Accordingly, it is **ORDERED** that Defendant’s objections, ECF No. 17, are **OVERRULED**.

It is further **ORDERED** that the Report and Recommendation, ECF No. 16, is **ADOPTED IN PART AND MODIFIED IN PART**. The report is **MODIFIED** only to the extent that it suggests that the issue of preemption has been resolved.

It is further **ORDERED** that Defendant's Motion to Dismiss, ECF No. 11, is **DENIED**.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: July 7, 2017

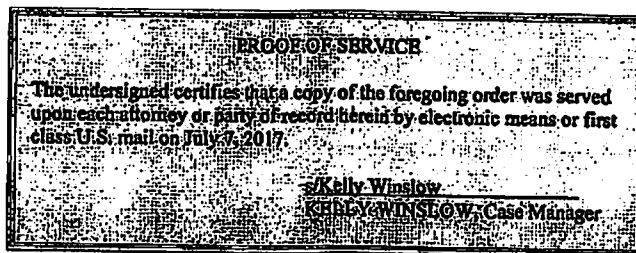


EXHIBIT #3

In a short amount of time, ADAC has done much more than our attorney's office has done. - Anique, GA



Association Dues Assurance Corporation (ADAC)

ADAC is the Nation's leading Collection Agency specifically created to handle Condominium and Home Owners delinquent Association Dues Collections. We are the smart choice because...


WE DON'T COLLECT OUR FEES UNTIL YOU ARE BEING PAID!*


Click Below to see how

Nationally ADAC is... 

Fast 


Friendly 

Economical 

Comprehensive 

Transparent 

Positively Affecting the Value of your Community

Does Association Delinquency have you in the RED?
Let ADAC Collections move you... back to black 

* ADAC has affordable pre-pay options for states/statutes that do not allow deferred collection fees to be charged back to the owner.

EXHIBIT #4



4

PO Box 806044
St. Clair Shores, MI 48080-6044
866.608.ADAC(2322)
586.294.ADAC(2322)
Fax: 586.415.8600
www.associationdues.net

May 24, 2017

RE: Belle Pointe Estates Condominium Association, Inc., 7114 Belle Pointe Dr. Lot #67, Belleville, MI 48111

Todd Beesley & Jennifer Beesley
7114 Belle Pointe Dr. Lot #67
Belleville, MI 48111

9998

Dear Todd Beesley & Jennifer Beesley:

Our office represents Belle Pointe Estates Condominium Association, Inc.. **We are required to inform you that this office is attempting to collect a debt, and any information we obtain will be used for that purpose.** This letter serves as notification that the Association has directed Association Dues Assurance Corporation (ADAC) to proceed with foreclosure of the Lien against the property listed at 7114 Belle Pointe Dr. Lot #67, Belleville, MI 48111. Many attempts have been made to reach you regarding the delinquent account, however both your Management Company and ADAC have been unsuccessful in contacting you to resolve this ongoing debt.

This is your notice that Belle Pointe Estates Condominium Association, Inc. has elected to proceed with the foreclosure of the lien by advertisement. You may request a judicial hearing by bringing suit against the Association. You have the right to contact an attorney for assistance in this matter at any time you choose. Should you need assistance with finding an attorney, the following agencies may be of some assistance: Southeast Michigan Lawyer Referral Service (313) 961-3545 or State Bar of Michigan Lawyer Referral and Information Service (800) 968-0738.

You now have thirty (30) days from the date of this letter to contact our office. You may speak to a representative of ADAC by calling our office at (586) 294-2322 or (866) 608-2322; or in writing at P.O. Box 806044, Saint Clair Shores, MI 48080-6044 as soon as possible. Belle Pointe Estates Condominium Association, Inc. may be reached at (734) 699-9270 or in writing at PO Box 63, Belleville, MI 48112. The amount owing on the account as of May 24, 2017 is **\$2,944.04**, and is exclusive of any Additional Assessments, Violation Fines, or Legal/Collection Fees that may have been added to your account after this letter was written.



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If the property does go to sale, you will have 6 months from the date of the sale in which to redeem the property by paying the debt in full (including added foreclosure expenses) reduced to 30 days if the property is abandoned and increased to 1 year if the property is an empty lot. If the property is damaged during the redemption period, you will be responsible to the person who purchases the property at the foreclosure sale for that damage.

Thank you,

Association Dues Assurance Corporation

**This communication is from a debt collector attempting to collect a debt.
Any information obtained by the debt collector will be used for that purpose.**

File No.: BECA-A9998D7114



PO Box 806044
St. Clair Shores, MI 48080-6044
866.608.ADAC(2322)
586.294.ADAC(2322)
Fax: 586.415.8600
www.associationdues.net

**NOTICE TO HOMEOWNER
REGARDING RIGHTS DURING PENDING FORECLOSURE OF ASSESSMENT LIEN**

Notice is hereby given to Todd Beesley & Jennifer Beesley of 7114 Belle Pointe Dr. Lot #67, Belleville, MI 48111 that Belle Pointe Estates Condominium Association, Inc. is prepared to foreclose on the Assessment Lien filed with the Wayne County Register of Deeds on 06/10/2016 in Liber 53054, Page 63.

Should an agreement be reached between Todd Beesley & Jennifer Beesley and Belle Pointe Estates Condominium Association, Inc. regarding the outstanding balance owed by Todd Beesley & Jennifer Beesley, the property will not be foreclosed on provided the terms of the negotiated agreement are followed.

Todd Beesley & Jennifer Beesley may choose to contact an attorney. Should you need assistance with finding an attorney, the following agencies may be of some assistance: SE Michigan Lawyer Referral Service (313) 961-3545 or State Bar of Michigan Lawyer Referral (800) 968-0738. The Association has elected to foreclose by advertisement. You may request a judicial hearing by bringing suit against the Association.

**PLEASE CONTACT ADAC AT (586) 294-2322 IF YOU ARE ACTIVE DUTY MILITARY
OR HAVE BEEN WITHIN THE PAST 9 MONTHS.**

**This communication is from a debt collector attempting to collect a debt.
Any information obtained by the debt collector will be used for that purpose.**

File No.: BECA-A9998D7114



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 St. Clair Shores, MI 48080-6044
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RE: Belle Pointe Estates Condominium Association, Inc., 7114 Belle Pointe Dr. Lot #67, Belleville, MI 48111

Todd Beesley & Jennifer Beesley 9998
 7114 Belle Pointe Dr. Lot #67
 Belleville, MI 48111

**THIS FIRM IS A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT.
 ANY INFORMATION WE OBTAIN WILL BE USED FOR THAT PURPOSE.**

Date: May 24, 2017

-1085

CUSTOMER ID: A9998D7114

INVOICE

No. 13.9998-170524

ASSOCIATION	MANAGEMENT CO.	PAYMENT TERMS	NEXT DUES
Belle Pointe Estates Condominium Association, Inc.	Self-Managed	Upon Receipt	1/1/2018

Date	Description	Charged	Paid	Balance
01/01/2014	Dues - Balance Forward (pro-rated 2014 Dues; July- December)	\$150.00		\$150.00
01/01/2015	Dues	\$300.00		\$450.00
12/31/2015	Late Fee - (Jan- Dec) \$25 x12	\$300.00		\$750.00
01/01/2016	Dues	\$300.00		\$1,050.00
02/01/2016	Late Fee	\$25.00		\$1,075.00
03/01/2016	Late Fee	\$25.00		\$1,100.00
04/01/2016	Late Fee	\$25.00		\$1,125.00
04/01/2016	Late Fee - Late Fee	\$25.00		\$1,150.00
04/25/2016	Collection Expense - Property Research Expense	\$5.00		\$1,155.00
04/25/2016	Collection Fee - Collection Placement and Initial Demand Fee	\$195.00		\$1,350.00
04/25/2016	Collection Expense - Postage to send CONDO_INITIAL_LETTER by Certified	\$7.00		\$1,357.00
04/25/2016	Collection Expense - Postage to send CONDO_INITIAL_LETTER by Mail	\$1.00		\$1,358.00
05/01/2016	Late Fee	\$25.00		\$1,383.00
05/04/2016	Collection Fee - Collection Administration Fee	\$20.00		\$1,403.00
05/20/2016	Collection Expense - document download charges Wayne County	\$8.71		\$1,411.71
05/20/2016	Collection Expense - document download charges Wayne County	\$8.71		\$1,420.42
05/25/2016	Collection Expense - postage to send dispute response by regular mail	\$2.62		\$1,423.04
06/01/2016	Late Fee - Late Fee	\$25.00		\$1,448.04
06/04/2016	Collection Fee - Collection Administration Fee	\$20.00		\$1,468.04
06/07/2016	Collection Fee - Lien Fee	\$465.00		\$1,933.04
06/07/2016	Collection Expense - Lien Recording Expenses	\$15.00		\$1,948.04
06/07/2016	Collection Fee - Lien Letter Fee	\$125.00		\$2,073.04
06/07/2016	Collection Expense - Postage to send CONDO_LIEN_LETTER by Certified	\$7.00		\$2,080.04
06/07/2016	Collection Expense - Postage to send CONDO LIEN LETTER by Mail	\$1.00		\$2,081.04
06/24/2016	Collection Expense - Postage to send PAYMENT PLAN by Mail	\$1.00		\$2,082.04
07/01/2016	Late Fee	\$25.00		\$2,107.04



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 586.294.ADAC(2322)
 Fax: 586.415.8600
 www.associationdues.net

07/04/2016	Collection Fee - Payment Plan Administration Fee	\$10.00		\$2,117.04
07/22/2016	Collection Expense - Postage to send PAYMENT PLAN REMINDER by Mail	\$1.00		\$2,118.04
08/01/2016	Late Fee	\$25.00		\$2,143.04
08/04/2016	Collection Fee - Collection Administration Fee	\$20.00		\$2,163.04
08/11/2016	Collection Expense - Postage to send PERIODIC REMINDER LETTER by Mail	\$1.00		\$2,164.04
08/12/2016	MONEY ORDER 17-425675510 Payment Pro-rata split: Association: \$70.01 Collector: \$79.99		\$150.00	\$2,014.04
09/01/2016	Late Fee	\$25.00		\$2,039.04
09/04/2016	Collection Fee - Collection Administration Fee	\$20.00		\$2,059.04
10/01/2016	Late Fee	\$25.00		\$2,084.04
10/04/2016	Collection Fee - Collection Administration Fee	\$20.00		\$2,104.04
10/19/2016	Collection Expense - Postage to send PERIODIC REMINDER LETTER by Mail	\$1.00		\$2,105.04
11/01/2016	Late Fee	\$25.00		\$2,130.04
11/04/2016	Collection Fee - Collection Administration Fee	\$20.00		\$2,150.04
12/01/2016	Late Fee	\$25.00		\$2,175.04
12/04/2016	Collection Fee - Collection Administration Fee	\$20.00		\$2,195.04
01/01/2017	Dues - Annual Assessment	\$385.00		\$2,580.04
01/01/2017	Late Fee	\$25.00		\$2,585.04
01/04/2017	Collection Fee - Collection Administration Fee	\$20.00		\$2,605.04
02/01/2017	Late Fee	\$25.00		\$2,630.04
02/04/2017	Collection Fee - Collection Administration Fee	\$20.00		\$2,650.04
03/01/2017	Late Fee	\$25.00		\$2,675.04
03/04/2017	Collection Fee - Collection Administration Fee	\$20.00		\$2,695.04
03/31/2017	Collection Expense - Postage to send PERIODIC REMINDER LETTER by Mail	\$1.00		\$2,696.04
04/01/2017	Late Fee - Late Fee	\$25.00		\$2,721.04
04/04/2017	Collection Fee - Collection Administration Fee	\$20.00		\$2,741.04
05/01/2017	Late Fee - Late Fee	\$25.00		\$2,766.04
05/04/2017	Collection Fee - Collection Administration Fee	\$20.00		\$2,786.04
05/24/2017	Collection Fee - Pre-Foreclosure Fee	\$150.00		\$2,936.04
05/24/2017	Collection Expense - Postage to send CONDO_PRE_FORE_NOTICE by Certified	\$7.00		\$2,943.04
05/24/2017	Collection Expense - Postage to send CONDO_PRE_FORE_NOTICE by Mail	\$1.00		\$2,944.04
05/24/2017	Collection Expense - ADAC - Research Title/Deed/Mortgage	\$12.50		\$2,956.54
			Total Balance Owed	\$2,956.54

To pay online with your credit card, go to www.associationdues.net/payment and use Credit Pass: 736822

Make all checks payable to ADAC

EXHIBIT #5

LIEN FORECLOSURE SALE

THIS FIRM IS A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE ONLY. PLEASE CONTACT THIS OFFICE AT THE NUMBER BELOW IF YOU ARE IN ACTIVE MILITARY DUTY.

LIEN FORECLOSURE SALE -- Default having been made in payment of Condominium assessments by Todd Beesley & Jennifer Beesley, at 7114 Belle Pointe Dr. Lot #67, Belleville, MI 48111, owner(s) of a Condominium unit of Belle Pointe Estates Condominium Association, Inc. of Wayne County MI. A Notice of Lien for Non-Payment of Assessments was recorded on June 10, 2016 at Liber 53054, Page 63, in the office of the Register of Deeds for Wayne County, MI, on which lien there is claimed to be due at the date of this notice **\$4,605.54** exclusive of interest at 7% and costs of sale.

No suit or proceeding at law or in equity has been instituted to recover the debt secured by the lien or any portion thereof. By virtue of the power of sale contained in the Liber 27582, Pages 855 - 902 of the Master Deed of Belle Pointe Estates Condominium Association, Inc., in such case made and provided, notice is hereby given that on the 31st day of August A.D. 2017 at 11 o'clock in the AM local time, the lien will be foreclosed by a sale at public auction, to the highest bidder immediately at the Jefferson Avenue entrance to the Coleman A. Young Municipal Center in Detroit, Wayne County, MI, of the premises described in the lien, to pay the amount due, on the lien, with interest at seven percent per annum and all legal costs, charges and expenses, including the attorney fees allowed by law, and also any sums which may be paid by the undersigned, necessary to protect its interest in the premises. If the Association or Sheriff cancels or rescinds the sale prior to final settlement due to a bankruptcy filing or other cause, the purchaser's sole remedy shall be the refund of the deposit, plus interest. The redemption period shall be six (6) months from the date of such sale unless the property is determined abandoned in accordance with MCL 600.3241a, in which event the redemption date shall be thirty (30) days after the aforementioned foreclosure sale or fifteen (15) days after the Association's compliance with the notice requirements of MCL 600.3241a(c), whichever is later. The premises are described as follows: All of a certain piece or parcel of land situated in Belleville, Wayne County, MI, and described as follows:

Unit 67, Belle Pointe Estates Condominium, according to the Master Deed thereof as recorded in Liber 27582, Page 855, both inclusive, Wayne County Records, as amended, and designated as Wayne County Condominium Subdivision Plan No. 374, together with rights in common elements and limited common elements as set forth in the above Master Deed and as described in Act 59 of the Public Acts of 1978, as amended.

c/ k/ a: 7114 Belle Pointe Dr. Lot #67
Belleville, MI 48111

ID NO. 83-011-02-0067-000

Dated: July 14, 2017

Belle Pointe Estates Condominium Association, Inc.

BY:

Belle Pointe Estates Condominium Association, Inc.
c/o ADAC
P.O. Box 806044
St. Clair Shores, MI 48080
P: (586) 294-2322
File No.: BECA-A9998D7114

2016250945 L: 53054 P: 63 LN
06/10/2016 02:41:26 PM Total Pages: 1
Bernard J. Youngblood, Register of Deeds - Wayne County, MI
ELECTRONICALLY RECORDED

NOTICE OF LIEN FOR NONPAYMENT OF ASSOCIATION ASSESSMENTS
(Pursuant to Act 59, Public Acts of the State of Michigan, 1978, as amended)

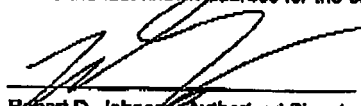
NOTICE IS HEREBY GIVEN that on June 7, 2016, Robert D. Johnson authorized signatory for Association Dues Assurance Corporation (ADAC), as disclosed Agent, represents Belle Pointe Estates Condominium Association, Inc. and the undersigned is authorized to make this affidavit on its behalf.

A lien for nonpayment of assessments exists on the condominium unit described in paragraph 3, pursuant to the Michigan Condominium Act, 1978 PA 59, as amended by 1980 PA 283, as amended by 1982 PA 583, as amended by 1998 Act 36, the Master Deed, and the Condominium Bylaws for the Association, or Homeowner's Association pursuant to its Declaration of Covenants.

As of the date hereof, there is outstanding and unpaid on account of unpaid dues and / or assessment(s) the sum of \$800.00 exclusive of interest, costs, attorney fees, and future assessments. There is also a balance of \$873.04 which includes interest, costs and attorney fees for which the association also has a lien. Foreclosure of said lien (which extends not only to the amount presently due, but to all future dues, assessments plus any additional late charges, fines, costs and attorney fees which remain unpaid) may result in the termination of the interest of the present owner in the real estate described below. Belle Pointe Estates Condominium Association, Inc. may without further demand invoke its Power of Sale and any other remedies permitted by Applicable Law, including Foreclosure by Publication, forthwith.

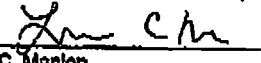
1. Belle Pointe Estates Condominium Association, Inc. is, as recorded on August 19, 1994, in Liber 27682, Page 855 through 902, inclusive, and any amendments thereto, all of the foregoing instruments being recorded in the records of Wayne County, MI.
2. Tax ID No. 83-011-02-0067-000, 03B 67 UNIT 67 WAYNE COUNTY COND SUB PLAN NO.374 AKA BELLE POINTE ESTATES T3S R8E L27582 OF DEEDS P855 TO 902 AMD 96-211873, Van Buren Township, County of Wayne, State of Michigan,
3. More commonly known as 7114 Belle Pointe Dr. Lot #67, Belleville, MI 48111
4. The owner(s) of record is/are Todd Beesley & Jennifer Beesley.
5. A copy of this lien was served on the co-owner, named in paragraph 4, via first class, postage prepaid, certified mail, addressed to the last known address for the co-owner of 7114 Belle Pointe Dr. Lot #67, Belleville, MI 48111.

Dated: June 7, 2016


Robert D. Johnson, Authorized Signatory for
Association Dues Assurance Corporation
under Power of Attorney for Belle Pointe Estates Condominium Association, Inc.
St. Clair Shores, MI 48080-6044

STATE OF MICHIGAN) SS
COUNTY OF MACOMB)

The foregoing instrument was acknowledged before me on June 7, 2016, by Robert D. Johnson, authorized signatory for Association Dues Assurance Corporation, under Power of Attorney for Belle Pointe Estates Condominium Association, Inc.,


Lynn C. Manion
Notary Public, Macomb County, MI
My Commission Expires: November 11, 2019
Acting in Macomb County, MI

Drafted By/Return To: Robert D. Johnson, ADAC, P.O. Box 806044, St. Clair Shores, MI 48080-6044, 586-294-2322
File No.: BECA-A998807114

EXHIBIT #6

AFFIDAVIT OF JENNIFER AND TODD BEESLEY

STATE OF MICHIGAN)

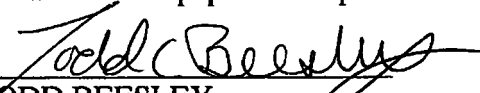
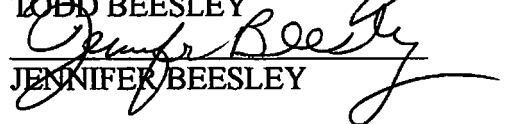
COUNTY OF WAYNE) *

Pursuant to 28 U.S.C § 1746, JENNIFER AND TODD BEESLEY , having been duly sworn and upon oath, verifies, certifies and declares as follows:

1. We are being pursued on a lien and a lien amount by ADAC for Condominium Association fees that we do not owe.
2. ADAC is pursuing us and threatening a Sheriff Sale if we do not pay them. We could lose our home for an amount we don't owe. This is very stressful to my wife and me.
3. The paperwork ADAC has sent shows that they have publicized the debt and debt amount that they claim we owe. It is in the paper and in county buildings. Our private debt information and that we owe a debt is in the Detroit Legal News.
4. ADAC is threatening us that we have to pay their fees and costs and association fees and costs or we will lose our home in a Sheriff Sale on August 31, 2017.
5. The public exposure of our private debt information is causing us harm, putting us through a lot of stress and our neighbors are asking us why we are losing out condo. A neighbor saw a lien notice on our front door. This is harmful to our reputation. This is all being made public even though we dispute we owe this debt.
6. We dispute we owe this debt amount or that the company ADAC or Detroit Legal News has the right to publicize our personal debt information in the paper and in public buildings.

Dated: 7-31-2017

Dated: 7-31-2017


TODD BEESLEY

JENNIFER BEESLEY

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit: Association Dues Assurance Corporation Publishes Private Debt Information](#)
