UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CHRISTINE BAKER; Plaintiff - Appellant, vs. MIDLAND FUNDING, LLC, MIDLAND CREDIT MANAGEMENT INCORPORATED, JOHN DOE, BURSEY & ASSOCIATES PC, BARRY BURSEY, JASON LEROY, MONICA DERRICK, GINA SCALESE, EQUIFAX INFORMATION SERVICES LLC, Defendants – Appellees.	9th Cir. Case No. 15-17020 D.C. No.: 3:13-cv-08169-SPL US District Court for Arizona, Prescott **APPELLANT'S INFORMAL OPENING BRIEF**

1. JURISDICTION

a) Timeliness of Appeal:

(i): Date of entry of judgment or order of originating court: 9/10/15

(ii): Date of service of any motion made after judgment: N/A

(iii) Date of entry of order deciding motion: N/A

(iv): Date notice of appeal filed: 10/8/15

2. FACTS OF THE CASE

Introduction

This case is about unscrupulous debt buyer Midland Funding engaging in illegal debt collection practices of charged off consumer debts purchased for literally a few pennies on the dollar and credit bureau Equifax actively supporting false credit reporting to get unjust dismissals. Debt collection attorneys and the defendants' attorneys ignore the truth, court rules, procedures and the law and the courts could not care less.

In 2008 I defaulted on several credit cards after the economy collapsed while I was in the middle of building my new home in the Arizona high desert. By the time I was ready to sell my old home, prices had dropped significantly. My stack of pre-approvals for an equity line on the new home was worthless as banks were no longer lending and my mortgage consulting business evaporated.

To date I live in my unfinished house with less than 640 sqft. of living area. I started a small organic permaculture farm, joined the Master Gardeners and I do whatever I can to help people grow and purchase affordable organic or at least non GMO food. Due to the seemingly constant litigation by debt buyers and my inability to retain an attorney due to my location over 200 miles from Phoenix and because I have no money for a retainer, I'm struggling to get by.

In 2012 Midland Funding sued me for a time-barred debt in Kingman justice court and while I ultimately prevailed, my roommate had moved out a few weeks

earlier because I was so incredibly stressed. I spent many nights researching and working on filings, often couldn't sleep and there was not much joy in our house when I was working on my response to Midland's motion for summary judgment Christmas 2012.

I'm 57 years old and one day I would like to be able to relax and not become anxious every time I check my email because another court filing might arrive in my inbox.

The State Court Lawsuit for a Time-barred debt

Debt buyer Midland Funding (hereafter "Midland") had purchased two of my charged off HSBC credit card accounts and it filed suit against me in Kingman justice court on 6/11/12. I was served on 6/18/12 and on 8/1/12 I filed my answer, affirmative defenses and FDCPA counterclaims regarding incorrect information about the account in the complaint.

On 9/25/12 I attended the state court ordered mediation hearing. The court's mediation order stated that "during the hearing, an attending attorney will not be permitted to question the other party and may only speak to their client." However, only Bursey & Associates attorney Monica Derrick attended the hearing (telephonically) for Midland. She denied that the statute of limitations had expired, she was rude and abusive and she made my blood boil.

On several occasions I notified Bursey & Associates and its attorneys in my filings and during discovery that the Midland claim was time-barred.

Midland filed a motion to dismiss my FDCPA counterclaims on 10/24/12. On 10/29/12 I emailed to attorney Derrick that I had just received their motion to dismiss because "I do not receive mail at my residence and I get my mail in Kingman (60 miles away) every few weeks. Could you please email of fax future filings to me?"

I did not receive a reply from attorney Derrick, but on 11/17/12 Bursey & Associates paralegal Gina Scalese emailed: "I saw somewhere in our notes that you prefer e-mail so that's the way I'll send you any documents that we file …" Despite this promise, subsequent filings were NOT emailed to me and sometimes I had only days to respond to motions. I had to make special 60 mile trips to the court in Kingman to pick up my mail and to timely file responses or motions for extensions as electronic filing was not available.

When I finally received documentation for the HSBC account I became aware that Midland was demanding interest from the date the account was charged off, including for time PRIOR to its purchase of the account. On 11/13/12 I asked for leave to amend my counterclaims and to join Midland Credit Management (hereafter "MCM"), the Midland servicer who reported incorrect information to the credit bureaus and had provided an affidavit for Midland. I also sought to join the

MCM collector who had called me to “have a word” with me about an Ameritech account even though I’ve never had an Ameritech account.

Midland moved for summary judgment on its claim on 11/23/12 and it waived all prejudgment interest:

> F. Plaintiff Waives it [sic] Right to Pre-Judgment Interest, Nullifying Defendant's Argument that Plaintiff is not Entitled to such Under the Contract or Law.
>
> In her Counterclaim and Response to Motion to Dismiss, Defendant argues that Plaintiff is not authorized to recover pre-judgment interest for the debt. To expedite matters and streamline the issues, Plaintiff waives its claim to prejudgment interest and seeks only the principal amount of $2,853.96 plus post-judgment interest at the rate of 4.25% from the date of Judgment, minus any payments made.

I did <u>not</u> argue that Midland was not entitled to pre-judgment interest, but that Midland was not entitled to interest prior to its purchase of the account.

On 12/10/12 the state court dismissed my counterclaims and it denied my motion for leave to amend and joinder:

> Plaintiff is asking for 10% interest and is waving prejudgment interest. Therefore defendant's counterclaim fails to state a claim against the plaintiff or Midland Credit Management, and its collector, John Doe for a violation of 15 U.S.C. sections1692(f)I, 1692(e)2, or 10, and the court **DISMISSES** defendant's counterclaim.

I filed my motion to strike, response and cross-motion for summary judgment on 12/31/12 and I diligently emailed it to paralegal Scalese at Bursey &

Associates, but apparently they hadn't checked their email because on 1/3/13 Midland mailed their motion for ruling on its motion for summary judgment.

On 1/14/13, instead of finally apologizing and dismissing the case, Midland filed its reply in support of its motion for summary judgment and a motion for an extension of time to respond to my cross-motion for summary judgment by 2/6/13, which the justice court granted. Midland failed to respond.

On 2/25/13 the state court granted my cross-motion for summary judgment, ruling that the statute of limitations had expired.

I appealed the denial of my motion for leave to amend and the dismissal of my counterclaims in state court, but could not find the time to write the brief as it was planting time, just as it is planting time now and I'm obviously NOT planting as I'm writing this brief.

My District Court FDCPA Lawsuit

On 6/18/13 I filed my complaint against Midland, MCM, Bursey & Associates P.C., its attorneys Barry Bursey, Jason LeRoy and Monica Derrick, paralegal Gina Scalese and MCM collector John Doe in Kingman justice court for violations of the FDCPA. Both Bursey & Associates and Midland/MCM removed the case to federal court, resulting in two cases in district court. Eventually the two cases were consolidated. [Docs. 10, 14, 19]

On 8/9/13 I filed my motion for permission to file electronically. The Arizona district court provides a form for this motion and I had properly completed it. The district court denied my motion on 8/13/13 without cause. I then requested that the attorneys email to me their filings, that my filings be deemed timely filed on the day of mailing as it took 5 days to get one of my filings to the district court by priority mail and that the electronic delivery of my filings through ECF constitute service to the defendants. The attorneys did not respond to these issues and I included them in the 8/30/13 case management plan. I requested that the district court ensure that I have "the same amount of time to respond to filings and orders and NO additional costs while seeking justice." On 9/13/13 the district court granted permission to file electronically. [Docs. 8, 9, 20]

On 10/10/13 Midland and MCM filed their joint motion for judgment on the pleadings [doc. 23], claiming that the 1-year statute of limitations had expired for all FDCPA claims because I had filed my complaint over one year after Midland had filed its complaint against me in state court. Bursey & Associates joined the motion on 10/18/13 [doc 26]. On 10/25/13 Midland/MCM filed a notice of non-opposition, falsely claiming that I had only until 10/24/13 to respond. [Doc. 29] I promptly filed my request for extension of time to respond to the motions on 10/25/13 [doc. 30] and wasted hours researching why I would not get three days

for mailing like everybody else. In my motion for extension I quoted from the Midland/MCM notice of non-opposition:

> CHRISTINE BAKER ("Plaintiff") had 14 days to respond to Midland' Motion for Judgment on the Pleadings which was October 24, 2013. No response to the motion was filed within said time period, and as of the date of this notice, the motion is still unopposed. Pursuant to L.R. 7.2(i), the failure of an opposing party to file answering memoranda in response to any motion shall be deemed a consent to the granting of the motion and the Court may dispose of the motion summarily. Accordingly, Defendant respectfully requests that its motion be granted.

I referenced FRCP 6(d) stating that 3 days for mailing are added to the time to respond and that my response was not due until the 10/28/13. On 10/31/13 the court approved my request for extension without any comment regarding the Midland/MCM and their attorney Campbell's deplorable misconduct. [Doc. 35] I asked attorney Campbell why I should not get three days for mailing and he responded [doc 47, footnote 1]:

> The fact that you feel the policies and procedures of the federal court are incorrect is an issue that you can raise if you feel it is appropriate. However, as you state electronic service is acceptable if the parties agree. One of the provisions of signing up for electronic filing is agreeing to accept electronic service. I am sorry that you cannot find what you are looking for; however, I would note that your acceptance of the terms and conditions of electronic filing is your acceptance to receive service electronically. Your issue is with the District Court and the electronic filing system that is in place, not with me."

I had started to write a motion for sanctions, but considering that the district court was actively aiding the defendants by first denying my motion to file

electronically without cause and then ignoring this misconduct, I felt that I would be wasting what little time I had.

I checked my credit reports and noticed that Midland/MCM were still reporting the pre-ownership interest (waived in state court), the "high credit" was lower than the current balances reported and they reported one account with an incorrect "date of first delinquency[1]." I disputed the accounts with credit bureau Equifax, resulting in an obviously incorrect high balance of $0 and verification of the other incorrect data.

On 10/20/13 I requested joinder of Equifax and leave to amend my complaint to add violations of the Fair Credit Reporting Act [hereafter "FCRA"] [Doc. 27]. On 11/4 Midland/MCM opposed the motion [doc. 37] and Bursey & Associates joined their motion [doc. 38]. I replied on 11/5/13 [doc. 43] and the district court finally granted my request on 1/30/14 [doc. 56]

Because the Bursey employees had refused to waive formal service of summons and I could not afford to pay a process server, I applied to waive costs of service for these defendants on 10/28/13 and my application for in forma pauperis was granted on 11/4/13. [Doc. 36]. On 11/21/13, the Bursey employees finally waived service as they faced being personally served by Marshalls. I had to

[1] Equifax also refers to the "date of first delinquency" as "date of last activity."

complete and mail multiple forms and I wasted a lot of time just to get the Bursey employees served.

In my 11/25/13 response to the Midland/MCM and Bursey & Associates motion for judgment on the pleadings [doc. 47] I explained that "[my] original Complaint alleges NUMEROUS violations of the FDCPA less than one year prior to my filing of this lawsuit on June 18, 2013." Most of my FDCPA claims arose AFTER I filed my state court complaint and therefore the very short 1-year statute of limitations for FDCPA claims had not expired. On 12/3/13 Midland/MCM filed the reply [doc. 52] and Bursey & Associates filed its reply on 12/9/13 [doc 53.] The district court granted the motion for judgment on the pleadings and my motion to amend my complaint and to join Equifax on 1/30/14 [doc. 56]. On 2/18/14 I filed my motion for reconsideration [doc. 64] regarding the motion for judgment on the pleadings, denied on 2/20/14 [doc. 65].

The individual Bursey employees filed their motion for judgment on the pleadings on 1/17/14 [doc. 55] and it was granted on 2/24/14 [doc. 69].

On 2/21/14, prior to the district court's dismissal of the Bursey employees, I had filed my amended complaint as proposed in my redlined version submitted with my motion, but Bursey attorney Orze sent me this email on 2/24/14 after their motion for judgment on the pleading was granted:

> I see that you have filed an Amended Complaint that still names the Bursey (and Midland) defendants and still purports to assert

> FDCPA claims against my clients. The Court has entered judgment on the pleadings on your FDCPA claims against all defendants. The Court has also denied your motion to amend your FDCPA claims with respect to any of the defendants.
>
> Because it still names my clients and still purports to assert FDCPA claims against them, I consider your Amended Complaint to be unauthorized and filed in violation of the Court' Orders. I ask that you withdraw the amended complaint at your earliest convenience, but no later than within five business days. If you do not do so we will seek attorneys' fees for having to file a motion to strike your amended complaint.

I complied with attorney Orze's absurd request, because I knew that I was in a hostile court and I could not endure dealing with more motions and anxiety over possible sanctions against me. I filed a new "corrected" amended complaint without any FDCPA claims on 2/27/14 [doc. 70].

On 3/10/14 Midland/MCM filed a 12(c) motion to dismiss [doc. 71], I responded on 4/14/14 [doc. 81], on 4/21/14 Midland/MCM replied [doc. 82] and the district court denied the motion on 5/28/14 [doc. 92].

The second case management conference was scheduled for 3/25/14 and then rescheduled to 4/23/14 due to a conflict in the court's calendar [doc. 77].

Equifax had ignored my request for waiver of service of summons and had to be served by a US Marshal. I submitted my motion to waive costs of service on 4/29/14 [doc. 85], granted on 4/30/14 [doc. 86] and Equifax was finally served on 6/26/14 by the US Marshal Services. [doc. 109].

Stupidly, I had agreed to attend a settlement conference in Phoenix and it was scheduled for 7/7/14 before a magistrate judge. According to the settlement conference order [doc. 87] all parties were to attend in person. Equifax and Midland/MCM requested telephonic appearance, I opposed, but their motion was granted. I had to file a motion to reschedule the conference as I had not received any discovery responses from Midland/MCM and Equifax had not provided its initial disclosures and I also requested telephonic appearance [doc. 106]. The conference was rescheduled to 8/19/14 and my motion to appear telephonically was denied on 7/3/14 [doc. 108]. At the hotel in Phoenix on 8/18/14 I finally received via email a few documents from Equifax and Midland's and MCM's discovery responses. Of course I had NO TIME to review the documents prior to the conference. I wasted an extraordinary amount of time on this doomed settlement conference and I wasted what little money I had on a car rental and hotel in Phoenix.

The case was reassigned from Judge Campbell to Judge Logan and he issued a new case management order on 7/11/14 [doc. 110]. He retained the existing discovery schedule and all discovery was due by 9/26/14. Equifax had yet to file its answer, filed on 7/17/14 [doc. 111].

I had served my discovery requests on Midland/MCM on 6/4/14 and Midland objected to all requests. I requested substantive responses and Midland

demanded that I sign a protective order. Pursuant to the district court's order, we prepared a joint discovery motion, but ended up not filing it because Midland/MCM insisted that I reduce my statement to half the size of their statement. Midland/MCM filed a motion for protective order and sanctions on 7/23/14 [doc. 112]. The motion included a demand for sanctions of $3,354.00 for 19.2 hours of attorney time to prepare the motion. The court denied the motion on 7/30/14. [Doc. 120]

Somehow I found the time to get my Trans Union credit report. I had to call and wait for snail mail after my online request was denied. Incredibly, Midland was still reporting to Trans Union the incorrect information I had disputed so many times. I disputed with Trans Union and Midland subsequently verified the incorrect information according to the 6/23/14 Trans Union investigation results.

On 9/21/14 I filed my 2nd motion to amend my complaint, for joinder of Trans Union and to extend the discovery deadlines [doc. 123]. While Equifax and Midland/MCM did not oppose the motion, the district court denied the motion on 10/17/14, claiming they would be prejudiced [doc. 124].

Equifax and Midland/MCM filed their motions for summary judgment by the 10/31/14 deadline for dispositive motions [docs. 125, 127]. After another flurry of motions and Midland/MCM's reply on 2/9/15, I spent the summer worrying that

I might have missed the district court's ruling. Several times I purchased the docket just to make sure.

The district court granted the motions for summary judgment on 9/10/15 [doc. 151] and I never even got to see Equifax's initial disclosures.

I filed my timely notice of appeal on 10/8/15 [doc. 153.]

3. RELIEF SOUGHT IN ORIGINATING COURT

Award of statutory, compensatory and punitive damages.

4. CLAIMS IN ORIGINATING COURT

a) Defendants Midland, Bursey & Associates, Barry Bursey, Jason LeRoy and Monica Derrick violated FDCPA §§ 1692e, 1692e(2)(A), 1692e(5), 1692e(10) and 1692f and 1692f (1).

b) Defendant Gina Scalese violated FDCPA §§ 1692e(10) and 1692f.

c) Defendant MCM violated §§ 1692f, 1692f(1), 1692e(2), 1692e(8), 1692e(11) and 1692g(a).

d) Defendant John Doe violated FDCPA §§ 1692e(11), 1692f and 1692g(a).

e) Defendant Equifax willfully and negligently failed to correct the reporting of both Midland accounts in violation of FCRA § 1681i.

f) Defendant Equifax willfully and negligently failed to maintain reasonable procedures to assure maximum accuracy of the information contained in my credit report in violation of FCRA § 1681e.

g) Defendant Equifax willfully and negligently failed to provide the free annual credit report in violation of FCRA § 1681j.

h) Defendant MCM willfully and negligently failed to correct the information furnished to Equifax in violation of FCRA § 1681s-2(b).

5. ISSUES RAISED ON APPEAL

a) Is the statute of limitations for FDCPA claims triggered when the complaint is filed or when the consumer is served?

b) Is the statute of limitations for FDCPA claims triggered by the first violation or by the last violation?

c) Will a time-barred violation of the FDCPA cause subsequent violations to be barred?

d) Will a time-barred FDCPA claim result in barring any and all subsequent FDCPA claims by anyone?

e) Should a plaintiff be granted leave to amend and to join another party due to new claims involving the same defendants, accounts and questions of law?

f) Should a plaintiff be granted leave to amend and to join another party when the defendants state in writing that they do not object?

g) Should the court extend discovery deadlines when no defendant objects to the extension?

h) Should the court extend discovery deadlines when the defendants answered the complaint only 10 weeks prior to close of discovery?

i) Should the court extend discovery deadlines when a defendant refused to provide its initial disclosures?

j) Does a credit bureau's change of a balance to $0 when the actual balance is not $0 violate the FCRA?

k) Does a collector's reporting of an incorrect "date of first delinquency" to a credit bureau violate the FCRA?

l) Does a collector violate the FDCPA by continuing to collect disputed charges after waiving those charges in state court to obtain a dismissal of counterclaims?

m) Is a furnisher's report to the credit bureaus of the "date of first delinquency" 7 months after the last payment was made accurate?

n) Does a credit bureau's claim that the "high credit" could be the "credit limit", the "charge off balance" or the "purchase balance" indicate that the

credit bureau has reasonable procedures to ensure maximum accuracy of information contained in consumer reports?

o) Does a credit bureau's changing the "high credit" to $0 constitute accurate credit reporting when $0 is obviously false?

p) Does a credit bureau's claim that a reporting of the "date of first delinquency" 7 months after the last payment is accurate indicate that the credit bureau has reasonable procedures to ensure maximum accuracy of information contained in consumer reports?

q) Does a credit bureau's refusal to disclose to a consumer which security question was incorrectly answered when she attempted but failed to obtain her free annual report online indicate that the consumer actually provided an incorrect answer?

6. WERE ALL ISSUES LISTED IN #5 PRESENTED TO THE ORIGINATING COURT?

Yes.

7. LAW SUPPORTING THE ISSUES ON APPEAL

I. MY FDCPA CLAIMS SHOULD NOT HAVE BEEN DISMISSED

The district court erred in holding that all FDCPA claims against Midland Funding, Midland Credit Management, Bursey & Associates, Barry Bursey, Jason LeRoy, Monica Derrick, Gina Scalese and MCM collector "John Doe" are time-barred because I filed my complaint in district court over one year after Midland filed its state court complaint.

On 10/10/13 Midland/MCM filed the joint motion for judgment on the pleadings [doc. 23], claiming that the 1-year statute of limitations had expired for all FDCPA claims because I had filed my complaint over one year after Midland

had filed its complaint against me in state court. Bursey & Associates joined the motion on 10/18/13 [doc 26]. I explained in my 11/25/13 response [doc. 47]:

> Throughout the justice court litigation the Defendants made misrepresentations to me and to the justice court and they engaged in extremely unfair practices on many occasions. For example, Bursey & Associates attorney Monica Derrick ignored my October 29, 2012 email requesting that they fax or email their filings to me because the post office does not deliver mail to my residence in the desert and my mailbox is 60 miles away in Kingman (Complaint ¶ 24). Bursey employee Gina Scalese promised on November 17, 2013 that she would email the filings to me, but in fact she did NOT email subsequent filings and I could not properly respond to their motions in a timely manner (Complaint ¶¶ 25 - 30). The Defendants failed to address these FDCPA violations in their Motion for Judgment on the Pleadings.
>
> The Defendants also failed to mention the incorrect credit reporting (Complaint ¶¶ 33-32) and the strange collection phone call and Midland's subsequent failure to validate the alleged debt. (Complaint ¶¶ 33 – 37).

I obviously had assumed that the statute of limitations began to run when I was served with the state court complaint on 6/19/12 and I therefore filed my FDCPA complaint on 6/18/13. I applied common sense.

Bursey & Associates and MCM/Midland argued in their motion for judgment on the pleadings that an FDCPA claim must be brought "within one year from the date on which the violation occurs" (15 U.S.C. § 1692k (d)) and that as per *Lyons v. Michael & Assocs.*, 2013 U.S. Dist. LEXIS 124898, 4, 2013 WL 4680179 (S.D. Cal. Aug. 28, 2013), the one-year statute of limitations for FDCPA claims begins to accrue on the date an offending lawsuit was filed.

I therefore focused my arguments on the many subsequent FDCPA claims that were distinct and separate. However, recent decisions held that the statute of limitations is triggered by the date of service as that is the date when the consumer suffered injury and had the right to sue.

1) The filing of the Midland suit for the time-barred account is a valid claim

In *Olson v. Midland Funding, L.L.C.*, ___ Fed. Appx. ___, 2014 WL 3411147 (4th Cir. July 15, 2014) the 4th Circuit court of appeals affirmed the statute of limitations dismissal of claims arising from Midland Funding's collection lawsuit because 1) the consumer participated in the litigation more than one year before filing the federal action and 2) the purported "continuing course of FDCPA violations, some of which occurred inside the one-year limitations period" was deficient since he "has not plausibly alleged ... any violations of the FDCPA that occurred within one year of the date he filed his claims."

Contrary to Olson, 1) I did NOT participate in the litigation more than a year before filing the FDCPA action. I was served with the state court summons and complaint on 6/19/12, I did not appear in court prior to service and I filed my FDCPA complaint on 6/18/13. Additionally, I plausibly alleged numerous subsequent violations of the FDCPA that occurred within one year prior to the filing of my complaint.

In *Benzemann v. Citibank*, 806 F.3d 98 (2d Cir. 2015) the court reversed the dismissal based upon the statute of limitations where the collection attorney allegedly violated § 1692e and § 1692f by wrongfully issuing a restraining notice against the wrong consumer's bank account for a second time. The FDCPA claim did not accrue when the notice was issued, but instead accrued later when the consumer's bank froze his account, since the plaintiff, at that point, suffered injury and had the right to sue. Similarly, my FDCPA claim did not accrue until I was served as I had no knowledge of Midland's lawsuit.

In *Serna v. Law Office of Joseph Onwuteaka, P.C.*, 732 F.3d 440 (5th Cir. 2013) the court determined that a violation of § 1692i(a)(2) does not occur until a debtor is provided notice of the debt-collection suit:

> Faced with two potential interpretations of the ambiguous phrase "bring such action," the FDCPA's remedial nature compels the conclusion that a violation includes both filing and notice. Through the FDCPA, Congress sought to eliminate "abusive debt collection practices by debt collectors." *See* § 1692(e). Importantly, "Congress ... has legislatively expressed a strong public policy disfavoring dishonest, abusive, and unfair consumer debt collection practices, and *clearly intended the FDCPA to have a broad remedial scope*." *Hamilton v. United Healthcare of La.*, 310 F.3d 385, 392 (5th Cir.2002) (emphasis added).[11] Here, the remedial nature of this statute is best served for purposes of § 1692k(d) by tying a violation of § 1692i(a)(2) to notice necessitating action because this approach: (1) most directly focuses on the harm Congress sought to remedy through the FDCPA, and (2) best preserves the availability of relief for consumers.
>
> First, when a debt collector files suit against an alleged debtor in contravention of § 1692i(a)(2), no harm immediately occurs

> because the debtor likely has no knowledge of the suit and has no need to act. Therefore, tying a violation to the mere filing of a complaint does not serve the statute's remedial purpose. Upon receiving notice, however, the harm is realized because the debtor must then respond in a distant forum or risk default. Because the harm of responding to a suit in a distant forum arises only after receiving notice of that suit, a "violation" does not arise under § 1692i(a)(2) until such time as the alleged debtor receives notice of the suit. …
>
> … Second, concluding that a violation of the "bring such action" provision occurs solely upon the filing of a complaint creates a perverse incentive for unscrupulous debt collectors to file debt-collection actions and purposefully delay service, thereby depriving a debtor of the benefit of the FDCPA's short, one-year limitations period. *See* *Johnson v. Riddle*, 305 F.3d 1107, 1114 (10th Cir.2002). ....
>
> … Therefore, to the extent that there are two reasonable interpretations of when a violation of the "bring such action" language occurs, the remedial nature of the FDCPA and the importance of protecting consumers by allowing them to sue under § 1692k(d) compel us to conclude that a violation of § 1692i(a)(2) is not complete until the alleged debtor becomes aware of the debt-collection suit.[12]

According to these recent rulings, my claim regarding the filing of the state court complaint is not time-barred.

2) My post-filing claims are distinct and separate claims and are therefore not time-barred.

The district court wrote in its 1/30/14 order [doc. 56]:

> Many of these post-filing allegations are simply that Defendants pursued the lawsuit against Plaintiff despite her assertion that the lawsuit was without merit – an assertion that proved to be true when the Justice Court granted her motion for summary judgment.
>
> *Id*. Plaintiff also alleges misconduct by Bursey & Associates for failure to serve filings by email despite agreement to do so, and failure to respond to a dispositive motion. *Id*. at 5. Finally, Plaintiff alleges

> that Defendant filed a motion for summary judgment in the underlying lawsuit "knowing that the collection of the debt was NOT based on a written agreement and that the statute of limitations had expired." *Id*. Plaintiff's complaint alleges that these actions violate 15 U.S.C. §§ 1692e; 1692e(2A); 1692e(5); 1692e(10); 1692f(1).

"[F]ailure to respond to a dispositive motion" is <u>not</u> one of my claims. However, claims NOT mentioned by the court are attorney Monica Derrick's violation of the justice court's mediation order [doc. 67, ¶21], MCM's reporting of incorrect information to Equifax [doc. 67, ¶¶ 44-52] and the MCM collector's phone call for a different "Ameritech" account [doc. 67, ¶¶ 53-57].

While one could argue that filings in the normal course of litigation when the consumer does not appear and does not dispute material facts are not new violations, <u>filings in violation of court rules and orders are hopefully **not** considered "normal course of litigation."</u> Bursey & Associates and Midland/MCM continued their efforts to obtain a judgment against me despite my repeated notices, including providing them with the applicable statute regarding the 3-year Arizona statute of limitations for open accounts, they had <u>no</u> written agreement and therefore these continuing collection efforts must be considered new violations.

There is a huge difference between a collector pursuing litigation when the consumer defendant does not appear (as in most collection suits) or when the consumer retains an attorney. As none of the Arizona NACA[2] attorneys were

[2] National Association of Consumer Attorneys

willing to represent me, I live 60 miles from the court, do not receive mail at my home and Bursey & Associates refused to email filings despite having promised to do so, my life was living hell because they continued to litigate their time-barred claim.

The district court continued in its order:

> The Court does not agree that these post-filing litigation actions by Defendants constitute separate violations of the FDCPA that extend the statute of limitations beyond the date of filing of the underlying lawsuit. Under Ninth Circuit law, "[f]iling a complaint is the debt collector's last opportunity to comply with the Act." *Naas*, 130 F.3d at 893. If the act of filing was Defendants' last opportunity to comply, it would be inequitable to simultaneously hold Defendants responsible under the FDCPA for conduct after that filing.

Naas does not involve multiple violations and it is clearly not applicable, as I explained in my 2/18/14 motion for reconsideration [doc. 64]:

> However, in *Naas* the filing of the lawsuit was the **ONLY** FDCPA violation alleged by the Naases and the *Naas* court wrote:
>
> > … We hold that the statute of limitations began to run on the filing of the complaint in the Municipal Court.
> >
> > This result is consistent with other circuit courts' interpretations of the Act in which they have held in **the analogous nonfiling situation that the Act's statute of limitations begins to run when a harassing collection letter is mailed**. *Maloy v. Phillips,* 64 F.3d 607, 608 (11th Cir.1995); *Mattson v. U.S. West Communications,* 967 F.2d 259, 261 (8th Cir.1992). These courts reasoned that the purpose of the Act is to regulate the actions of debt collectors; because **the mailing date was the debt collector's "last opportunity to comply with the [Act],**
> >
> > … the mailing of the letters, therefore, triggered section

> 1692k(d)." *Mattson,* 967 F.2d at 261; *see Maloy,* 64 F.3d at 608. In addition, "the date of mailing is a date which may be `fixed by objective and visible standards,' one which is easy to determine, ascertainable by both parties, and may be easily applied." *Mattson,* 967 F.2d at 261; *see Maloy,* 64 F.3d at 608.
>
> These considerations apply equally to this case. Filing a complaint is the debt collector's last opportunity to comply with the Act, and the filing date is easily ascertainable. [Emphasis added.]

Clearly, the references to the "last opportunity to comply with the Act" apply to the specific violations alleged, such as the filing of the lawsuit and the mailing of the collection letter.

The "last opportunity to comply with the Act" does NOT apply to FUTURE violations.

The district court denied my motion for reconsideration on 2/20/14 [doc. 65].

3) The district court erred when it dismissed all FDCPA claims against the individual Bursey defendants

Barry Bursey, Jason LeRoy, Monica Derrick and Gina Scalese filed their motion for judgment on the pleadings on 1/17/14 [doc. 55]. I responded on 2/18/14 [doc. 63]:

> I do **NOT** claim that the Bursey Employee Defendants violated the FDCPA by filing the time-barred lawsuit and taking action to prosecute the case. In fact, the Bursey Employee Defendants violated the FDCPA by completely SEPARATE actions, such as lying to me (Gina Scalese, First Amended Complaint ¶¶ 37- 41), violating the justice court's mediation order (Monica Derrick, id. ¶ 21), violating the Arizona Rules of Civil Procedures (Barry Bursey, id. ¶¶ 26 - 27) and maliciously misrepresenting the debt to the justice court AFTER they filed the time-barred lawsuit (Barry Bursey, Monica Derrick and Jason LeRoy, id. ¶¶ 17 – 19, 22-25, 28, 29).

Notably, the Bursey employees seem to agree that the statute of limitations begins when I knew or should have known of the injuries (violations) and they wrote in their motion:

> The Ninth Circuit has also said that the FDCPA limitations period begins to run when the plaintiff "knows or has reason to know of the injury which is the basis of the action." *See Mangum v. Action Collection Service, Inc.*, 575 F.3d 935 (9th Cir. 2009) (in which the court reversed summary judgment where the trial court held the discovery rule could not apply to the plaintiff's FDCPA claim). But Mangum did not criticize, reverse, or vacate *Naas* and the two decisions are not incongruent.

I asked in my response:

> Was I to discover the injuries the Bursey Employee Defendants would cause BEFORE they violated the FDCPA by ignoring court orders and rules, lying to me and misrepresenting the debt to the court?
>
> The *Magnum* court wrote:
>
> > All of the above being true, we are required to hold that Mangum did file in a timely fashion. By any account, the first time she discovered (or could have discovered) that her checks had been disclosed to the City was December 15, 2004, when she spoke with Captain Furu, and she filed her action on December 14, 2005—close, but good enough.[19] Therefore, the district court erred, and we must reverse the summary judgment as to Bonneville.

In *McCollough v. Johnson, Rodenberg & Lauinger, LLC,* 637 F.3d 939 (9th Cir. 2001) this Court provided an excellent analysis of similar FDCPA claims:

JRL argues that the district court erred in two respects. First, JRL characterizes the district court's decision as holding that it violated the FDCPA by requesting attorney's fees without having proof of its entitlement to those fees at the time it filed the complaint. In support, JRL cites the Sixth Circuit's opinion in *Harvey v. Great Seneca Fin. Corp.*, 453 F.3d 324, 333 (6th Cir.2006), which held that no FDCPA violation occurs when a creditor files a valid debt collection action in court without having in its possession adequate proof of its claim. However, in contrast to *Harvey*, JRL's collection action in this case was invalid because JRL presented no admissible evidence establishing its entitlement to collect the fees *at the time of the summary judgment motion* — not at the time it filed suit. …

… The Fourth Circuit has held that the FDCPA applies specifically to statements in written discovery documents. *See Sayyed v. Wolpoff & Abramson*, 485 F.3d 226, 228, 230-32 (4th Cir.2007) (holding that the FDCPA applies to allegedly erroneous statements made by the defendant law firm in interrogatories and a summary judgment motion during the course of a state court collection suit) (collecting cases).

JRL asserts that failure to exclude discovery procedures from FDCPA coverage would hinder attorneys' ability to litigate cases. Instead, JRL contends that remedies for improper discovery tactics lie in court rules for civil procedure, and asserts that if its requests for admission complied with the applicable state rules, they ought not subject it to liability under the FDCPA. However, Congress enacted the FDCPA expressly because prior laws for redressing "abusive, deceptive, and unfair debt collection practices" were "inadequate to protect consumers." 15 U.S.C. § 1692(a), (b). The statute preempts state laws "to the extent that those laws are inconsistent with any provision of [the FDCPA]." 15 U.S.C. § 1692n.

Moreover, policy reasoning provides no authority to override the clear statutory language of Congress. "[O]ur obligation is to apply the statute as Congress wrote it." *Hubbard v. United States*, 514 U.S. 695, 703, 115 S.Ct. 1754, 131 L.Ed.2d 779 (1995) (quotation omitted); *see Jerman,* 130 S.Ct. 952*952 at 1622 (finding it unremarkable that "the FDCPA imposes some constraints on a lawyer's advocacy on behalf of a client"); *Sayyed*, 485 F.3d at 234 (concluding that, by a simple

> reading of its text, the FDCPA covers litigation activities, including discovery); *Fox,* 15 F.3d at 1512 ("The plain language of the statute unambiguously precludes any continued doctrine of special treatment for attorneys under the FDCPA."); *see also Heintz,* 514 U.S. at 296-97, 115 S.Ct. 1489 (allowing for the possibility that the FDCPA may contain some "additional, implicit, exception[s]" to account for the potential conflicts that may arise in the application of the FDCPA to litigation activities). In short, the FDCPA does not exclude from its coverage the service of requests for admission.
>
> The district court correctly held that JRL's service of false requests for admission violated the FDCPA as a matter of law. The FDCPA prohibits a debt collector from using either "unfair or unconscionable means to collect ... any debt," 15 U.S.C. § 1692f, or "any false, deceptive, or misleading ... means in connection with the collection of any debt," *id.* § 1692e. The FDCPA measures a debt collector's behavior according to an objective "least sophisticated debtor" standard. *Clark,* 460 F.3d at 1171. This standard "`ensure[s] that the FDCPA protects all consumers, the gullible as well as the shrewd ... the ignorant, the unthinking, and the credulous.'" *Id.* (quoting *Clomon v. Jackson,* 988 F.2d 1314, 1318-19 (2d Cir.1993) (alteration and ellipsis in original)). The FDCPA imposes strict liability on creditors, including liability "for violations that are not knowing or intentional." *Reichert,* 531 F.3d at 1005.
>
> JRL's requests for admission asked McCollough to admit facts that were not true: that he had never disputed the debt, that he had no defense, that every statement in JRL's complaint was true, and that he had actually made a payment on or about June 30, 2004. JRL had information in its possession that demonstrated the untruthfulness of the requested admissions.

On 2/24/14 the district court dismissed the Bursey employees [doc. 69], referring to its dismissal of my FDCPA claims against Bursey & Associates, Midland and MCM.

The effects of dismissing all FDCPA claims after one year from the state court suit or service

If the state court litigation exceeds 1 year, debt collectors can then violate the FDCPA with impunity, submit false affidavits and present photoshopped evidence to the court, call the consumer 500 times a day, falsely report to the credit bureaus that the consumer owes millions of dollars with a new "date of first delinquency" and threaten to break the consumer's legs.

Is THAT the intent of the legislators?

The district court dismissed even the collection call by the MCM collector "John Doe" for a DIFFERENT account and FDCPA credit reporting claims against Midland and MCM for a DIFFERENT account. Notably, MCM and its collector were not even parties to the state court litigation.

II. MY 2ND MOTION FOR LEAVE TO AMEND MY COMPLAINT, TO JOIN TRANS UNION AND TO EXTEND DISCOVERY DEADLINES SHOULD HAVE BEEN GRANTED.

1) The district court should have granted my motion for leave to amend my complaint and join of Trans Union and to extend the discovery deadlines.

On 9/21/14 I filed my second motion for leave to amend my complaint, to join credit bureau Trans Union and I requested an extension of the discovery deadlines [doc. 123]. On 10/17/14 the district court denied my motion for leave to amend, to join Trans Union and to extend the discovery deadlines [doc. 124],

stating that "[t]he Court finds that permitting further amendment is not in the interests of justice in this case."

1) **The district court abused its discretion when it denied leave to amend my complaint and to join Trans Union.**

I sought leave to amend [doc. 123] pursuant to FRCP 19(a)(1) and in the alternative pursuant to FRCP 20(a)(2):

> **Rule 19. Required Joinder of Parties**
> (a) Persons Required to Be Joined if Feasible.
>
> (1) *Required Party.* A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if:
>
> (A) in that person's absence, the court cannot accord complete relief among existing parties; or
> …

I explained that "I previously amended my Complaint to join Defendant Equifax Information Services LLC ("Equifax") on 2/27/14 (doc. 70). I subsequently disputed the incorrect credit data reported for the Midland Funding accounts in June 2014 with credit bureau Trans Union. It notified me on 6/23/14 that its investigation was complete and Trans Union continued to report incorrect balances for both Midland Funding accounts and it also continued to report that Midland account 853025**** would not be removed until 12/15 [Exh. 1], about half a year late according to documentation provided by Midland Funding with its

discovery responses. Trans Union is therefore a required party and its joinder will not deprive the Court of subject matter jurisdiction pursuant to Rule 19(a)."

I requested that in the alternative, Trans Union should also be joined pursuant to FRCP Rule 20(a):

> **Rule 20. Permissive Joinder of Parties**
> (a) Persons Who May Join or Be Joined.
> …
> (2) *Defendants.* Persons—as well as a vessel, cargo, or other property subject to admiralty process in rem—may be joined in one action as defendants if:
>
> > (A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and
> >
> > (B) any question of law or fact common to all defendants will arise in the action.

I stated that "[m]y claims against Trans Union arise out of the same occurrences, my disputes and the subsequent verifications of incorrect data for the Midland accounts are common to Defendants Midland Funding, Midland Credit Management, Equifax and Trans Union as are the questions of law and fact."

I requested leave to amend my complaint pursuant to FRCP Rule 15(a):

> **Rule 15. Amended and Supplemental Pleadings**
>
> > (a) Amendments Before Trial.
> > …
> >
> > (2) *Other Amendments.* In all other cases, a party may amend its pleading only with the opposing party's written consent or the

> court's leave. The court should freely give leave when justice so requires.

I advised that the attorneys for Midland and Equifax did not object to the joinder of Trans Union and amendment of my complaint and I referenced Exhibit 3, my emails with the attorneys.

On 9/5/14 I had emailed to Equifax attorney Broussard [doc. 123-3]:

> Also, I still haven't received the Equifax initial disclosures and I want to make sure that you are aware that I only receive my snail mail every few weeks as I reside in the desert and don't enjoy the luxury of USPS mail delivery. So if you snail mail important documents to me, please let me know by email so that I can arrange to get my mail from Kingman, about 60 miles away.

Attorney Broussard responded:

> Also, Equifax has no objection to the amendment.

Also on 9/5/15 attorney Fife for Midland/MCM wrote:

> Midland doesn't have an objection to you adding another party to this litigation.

a) **The district court abused its discretion when it claimed that I unduly delayed my motion for leave.**

The district court wrote in its order:

> While Plaintiff alleges in her first amended complaint that Defendants provided false and misleading information "to the credit bureaus" (Doc. 70 at §§ 7-9), she does not explain why she did not dispute this information with TransUnion at an earlier juncture or include TransUnion as a defendant in her first amended complaint, as in the case of Equifax. *See Jackson v. Bank of Hawaii*, 902 F.2d 1385, 1388 (9th Cir. 1990) (relevant to evaluating undue delay is whether

> the moving party knew or should have previously known the facts and theories raised in the amended pleading).

I did not have to dispute with all credit bureaus. If MCM had corrected the information with Equifax, it was required to update its reporting with all credit bureaus to which the information had been furnished. Failing to do so violates § 1681s-2(b)(1):

> (D) if the investigation finds that the information is incomplete or inaccurate, report those results to all other consumer reporting agencies to which the person furnished the information and that compile and maintain files on consumers on a nationwide basis;

The district court cites *Jackson v. Bank of Hawaii:*

> Appellants informed the court of their intention to file an amended complaint in March 1987, in May 1987, and in February 1988, but they delayed offering their amended complaint until May 1988. Even accepting appellants' arguments that they did not have all of the requisite facts until August 1987, did not fully analyze them until October 1987, and added new attorneys to represent them, the delay in filing an amended complaint from October 1987 to May 1988 is otherwise inexplicable and unjustified.[4]

Clearly, my situation is completely different from *Jackson v. Bank of Hawaii*. I described the Midland/MCM incorrect credit reporting in great detail in the state court litigation, in my FDCPA complaint, in numerous subsequent filings, in discovery documents and finally, I amended my complaint to pursue the appellees for FCRA violations. I was stunned when Midland and MCM continued to report the incorrect information despite the litigation and especially in response to my Trans Union disputes.

If I'd had an attorney, I would have had the time and the money to pay for credit reports and to submit disputes sooner. However, as the district court docket shows, I wasted an extraordinary amount of time and money just trying to serve the Appellants who refused to waive formal service, I opposed numerous motions and I conducted discovery.

The process of trying to get my free annual credit reports is always frustrating and stressful as I am often denied when I request the free annual reports online (one of my FCRA claims against Equifax). Trans Union also declined to provide my free annual report online, but fortunately I could order the report by telephone and I did not have to snail mail identifying documents. I disputed and I finally got the verification of the incorrect information – <u>it all takes time</u>.

When I received the 6/23/14 Trans Union investigation results I was extremely stressed and busy dealing with the settlement conference – writing the settlement conference memorandum, trying to get the initial disclosures from Equifax, desperately trying to get meaningful discovery responses from Midland/MCM before the conference, rescheduling the settlement conference when I got NOTHING and dealing with the Appellees' unprofessional attorneys.

I finally received the Midland Funding supplemental discovery responses by email at the hotel the night before the 8/19/14 settlement conference and Midland had the nerve to DENY engaging in any credit reporting with regards to my

accounts! My Exhibit 1, the 6/23/14 Trans Union Investigation Results (in Midland's possession), clearly state that Midland Funding verified the incorrect information for both accounts. I concluded that since Midland denied verifying the incorrect information with Trans Union and denied reporting any data to the credit bureaus, Trans Union must have sent false information to me in its investigation results. While I had hoped for a successful settlement conference so that I could finally go on with my life, I had no choice but to seek leave to amend my complaint again and to join Trans Union because of Midland's denials.

From my Exhibit 3, my 8/29/14 email to the defendants' attorneys [doc. 123-3]:

> Dear Mr. Fife and Ms. Broussard,
>
> As we did not settle at last week's settlement conference and Midland continues to deny any incorrect credit reporting, I need to amend my complaint to add the verification of incorrect data with Trans Union to my claims and I need to join Trans Union.
>
> Please advise with your position,

As I received no response by 9/5/14, I emailed again [doc. 123-3]:

> Dear Mr. Fife and Ms. Broussard,
>
> Was this another email that doesn't require your responses?
> I'm also looking for your position regarding an extension of discovery deadlines.

The Appellees and their attorneys unduly delayed these proceedings on numerous occasions while I did the best I could with very limited time and money.

Additionally, I felt that it was not a good idea to amend my complaint prior to receiving meaningful responses (as opposed to frivolous objections) to my discovery requests from Midland/MCM and I did not want to have to amend my complaint again.

Even if I had unduly delayed, by itself, undue delay is insufficient to prevent the court from granting leave to amend pleadings. *Howey v. United States*, 481 F.2d 1187, 1191(9th Cir. 1973).

I did NOT unduly delay my motion for leave to amend and joinder of Trans Union.

b) The district court abused its discretion when it ruled that the Appellees were prejudiced.

The district court wrote in its order that "in light of the undue delay, Plaintiff's failure to explain the reason for the delay, and the resulting prejudice, the request for leave to amend will be denied."

Notably, the Appellees did NOT object to amending the complaint.

From *Jackson v. Bank of Hawaii:*

> Under Fed.R.Civ.P. 15(a), after twenty days from the date when the initial complaint was served, "a party may amend [its] pleading only by leave of court or **by written consent of the adverse party**; and leave shall be freely given when justice so requires." Although the rule should be interpreted with "extreme liberality," *United States v. Webb*, 655 F.2d 977, 979 (9th Cir.1981), leave to amend is not to be granted automatically. A trial court may deny such a motion if permitting an amendment would prejudice the opposing party, produce an undue delay in the litigation, or result in futility for lack of

> merit. *See* Foman v. Davis, 371 U.S. 178, 182, 83 S.Ct. 227, 230, 9 L.Ed.2d 222 (1962) (listing these factors among others to be considered). Prejudice to the opposing party is the most important factor. *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 401 U.S. 321, 330-31, 91 S.Ct. 795, 802-03, 28 L.Ed.2d 77 (1971) (trial court "required" to take potential prejudice into account in deciding Rule 15(a) motion); 6 C. Wright, A. Miller & M. Kane, *Federal Practice and Procedure: Civil 2d* § 1487 (1990).
>
> Appellees contend that permitting appellants to file an amended complaint will lead to three types of prejudice: the nullification of prior discovery, the burden of necessary future discovery, and the relitigation of a suit brought by its insurer regarding the liability of the two parties on appellants' claims.[1] [Emphasis added]

Midland/MCM and Equifax stated IN WRITING that they did not oppose the joinder of Trans Union and amendment of my complaint.

Leave to amend shall be freely given when justice so requires. Fed.R.Civ.P. 15(a); *see, e.g.*, *Gabrielson v. Montgomery Ward & Co.*, 785 F.2d 762, 765 (9th Cir.1986) (denial of motion to amend must be strictly reviewed in light of strong policy permitting amendment).

c) The district court abused its discretion when it denied my motion to extend the discovery deadlines.

I stated in my motion that I had "yet to receive the initial disclosures from Defendant Equifax [Exh. 2] and obviously I will need to conduct discovery with Trans Union. I therefore request that the Court extend all discovery deadlines by eight months." I advised that "Equifax did not object to the extensions and Midland attorney Fife stated that he had to confer with his clients. I did not receive any reply to my email regarding the proposed deadlines. [Exh. 2]"

The district court order fails to mention the fact that Equifax had yet to submit its initial disclosures and that the Appellees did not oppose the discovery extension.

MCM/Midland attorney Fife wrote in his 9/5/14 email [doc. 123-2]:

> Given your repeated failure to amend the discovery responses propounded to you, I will have to discuss with my client if they are willing to agree to an extension to the discovery deadlines.

As I did not receive a response (again) from attorney Fife, I wrote on 9/8/14 [doc. 123-2]:

> 9/8/14
> Dear Mr. Fife,
>
> Your clients' discovery responses were due on 7/7/14. Your clients didn't provide a single meaningful response or document until 8/18, the night before the doomed settlement conference.
>
> It is now clear that contrary to your claims when requesting telephonic appearance of clients for the settlement conference, you were NOT informed about the facts in this case at all. I'm amazed that you have filed all these motions knowing NOTHING about the account history and the fact that even according to your clients' own records they verified one account with the incorrect DLA with both Equifax and Trans Union and they charged interest from the date of charge-off, not from the date Midland acquired the account as allowed by state law.
>
> In contrast, my discovery responses were due on 7/17 and you received my meaningful and honest responses and the relevant documentation on 7/17. Now I have to analyze your clients' responses and I will update my responses accordingly.

> But first I'll need to amend my complaint, so hopefully I'll be able to provide my supplemental responses next week.

On 9/10/14 I wrote [doc. 123-2]:

> 9/10/14
> Dear Mr. Fife and Ms. Broussard:
>
> I'm proposing these new discovery deadlines:
>
> Discovery deadline: May 29, 2015
> Expert disclosure: April 17, 2015
> Rebuttal expert disclosures: May 8, 2015
> Completion of expert depositions: May 29, 2015
> Deadline for dispositive motions: June 26, 2015
>
> Please let me know whether that works for you, …

I did not receive any response and therefore filed my motion on 9/21/14. The Appellees did NOT file a response to my motion.

The district court stated in its order that "[t]he deadline to amend pleadings in this case passed on May 23, 2014, discovery closed on September 26, 2014 …"

Equifax wasn't even served until 6/26/14 because it refused to waive service of summons and the court had to arrange service with the US Marshal Services because I could not afford to hire a process server. Midland/MCM filed their answer on 6/11/14 and Equifax filed its answer on 7/17/14 – less than 10 weeks before close of discovery.

Equifax REFUSED to provide its initial disclosures and the district court was fully aware of it.

The district court abused its discretion when I denied my motion to extend the discovery deadlines.

III. THE DISTRICT COURT ERRED WHEN IT GRANTED THE MIDLAND/MCM AND EQUIFAX MOTIONS FOR SUMMARY JUDGMENT.

On 10/31/14 the appellees Equifax and Midland/MCM filed their motions for summary judgment [docs. 125, 127], I objected [docs. 136, 138], on 12/31/14 Midland/MCM moved to strike my separate statement of facts [doc. 144] and replied [doc. 145]. On 1/5/15 Equifax replied [doc. 146], I filed me response to the Midland/MCM motion to strike on 1/20/15 [doc. 147], Midland/MCM filed its motion to strike my unauthorized filing of my response to their objections (incorrectly titled "reply") [doc. 148] and I filed my opposition to the Midland/MCM motion to strike on 2/9/15. The district court denied the Midland/MCM motion to strike on 8/31/15 [doc. 150] and granted the Appellees' motions for summary judgment on 9/10/15 [doc. 151].

A. The district court erred when it granted the Midland/MCM motion for summary judgment.

The district court accepted the Appellees' arguments without any regard for the law, facts and my exhibits.

1) The "high credit" reporting by MCM and verified by Equifax was incorrect and Equifax's change to $0 was also incorrect

The district court wrote in its order:

> Here, Plaintiff disputed the "High Credit" amount, the current balance due, and the date of first delinquency. Equifax notified Midland of the disputes, but the information provided to Midland was minimal because the information provided by Plaintiff to Equifax was minimal (*See* Doc. 126-2.) Midland was then required to conduct an investigation and report the results to Equifax. Midland responded and verified the accuracy of the information on both occasions.5

The district court footnote 5:

> The record suggests that Midland did not respond within the 30-day period the FCRA allows for CRAs to resolve disputes in the first dispute, but did eventually respond.

Actually, according to Equifax, MCM (not Midland) failed to respond to my 1st dispute and responded only to my 2nd dispute. The 7/8/13 Equifax investigation results [doc. 137-3, Exhibit 6] state:

> "We have researched the credit account. The results are: The high credit/credit limit on this account has been updated. If you have additional questions about this item please contact: Midland Credit MGMT Inc, …."

An identical statement is provided for the second account and there is no indication that MCM failed to respond. That Equifax chose to change the "high credit" to $0 is a claim against Equifax as $0 for the "high credit" is obviously incorrect.

The district court continues:

> Plaintiff's CAC does not dispute whether the investigation was reasonable.6 Therefore, Midland can only be liable for a violation of § 1681s-2(b)(1)(D) or (E) if there was inaccurate or incomplete information provided to Equifax or the information could not be verified.

The reported information was FALSE. In my first amended complaint I alleged:

> 9) Despite service of this lawsuit in June 2013, MCM not only continued to report the incorrect data to the credit bureaus, but on September 13, 2013 it VERIFIED this incorrect information after I disputed with credit bureau Equifax directly.
>
> 10) On July 8, 2013 Defendant Equifax changed the "high credit" to $0 in response to my disputes of both Midland accounts.
>
> 11) On September 11, 2013 Defendant Equifax again reported the incorrect "high credit "of $2,854 and $3,707 for the two Midland accounts.
>
> 12) I disputed the incorrect "high credit" and balances for both Midland accounts and the incorrect date of first delinquency for Midland account 853025 with Equifax.
>
> 13) On September 13, 2013 Defendant Equifax advised that Defendant MCM verified the incorrect information and Equifax failed to correct my credit report.
>
> 21) Defendant MCM willfully and negligently failed to correct the information furnished to Equifax in violation of FCRA § 1681s-2(b).

I had no way of knowing that MCM failed to respond to the first dispute as Equifax alleges and obviously it failed to conduct a reasonable investigation if it did not respond to Equifax. Whether the MCM investigations were reasonable is to be determined by the jury.

The district court's footnote 6:

> The Court notes that even though Plaintiff does not challenge the reasonableness of the investigation, given the scant information provided to Midland, the bar to show a reasonable investigation would be low. The more detail and evidence the consumer provides, the more detailed the investigation should be. *See Gorman*, 584 F.3d at 1157.

In *Gorman* the plaintiff submitted numerous false/frivolous disputes prior to a factual dispute and Gorman did not sue MBNA:

> In contrast to *Johnson*, in Gorman's case MBNA did review all the pertinent records in its possession, which revealed that an *initial* investigation had taken place in which MBNA contacted both Gorman and the merchant. Thus, unlike in *Johnson*, MBNA had—albeit earlier— gone outside its own records to investigate the allegations contained in the CRA notice, and on reading the notice, did consult the relevant information in its possession. *Johnson* does not indicate that a furnisher has an obligation to repeat an earlier investigation, the record of which is in the furnisher's records.

I had used Equifax's online dispute form and checked the boxes next to fields such as "incorrect balance", etc. Unlike in *Gorman*, we were engaged in active litigation and I had provided extremely detailed information about the disputes directly to Midland and MCM in numerous filings, motions, disclosures, discovery responses and correspondence and calls with its attorneys PRIOR to my disputes.

In *Gorman* MBNA actually reviewed its correspondence with Gorman regarding the disputed charges. Did MCM ever review the filings and discuss my disputes with its attorneys?

The district court continues in its order:

> On June 11, 2013, the "High Credit" for Account 1 was listed as $2,845 and the "Current Balance" was listed as $3,707. (Doc. 139 at 12.) For Account 2, the "High Credit" was listed as $2,260 and the "Current Balance" was listed as $3,250. (Doc. 139 at 13.) Plaintiff argues that it "is mathematically impossible for the 'High Credit' to be less than the current amount owed." (Doc. 139 at 12.) However, as explained by Equifax, "High Credit" refers to the credit limit for the underlying account or the balance on the account at the time of purchase. The "High Credit" balance may be exceeded when interest and fees accumulate. There is no mathematical impossibility here. Midland bought Account 1 when the balance was $2,845, and Account 2 when the balance was $2,260. (Doc. 137-5 at 47, 59.) The "High Credit" reported by Midland is factually correct and cannot be the basis for an inaccuracy.

I discuss the Equifax attempt to protect its customers Midland and MCM by claiming that "credit limit" means something completely different below with my claims against Equifax.

The Equifax admission of false labeling in consumer disclosures, reports and investigation results gives rise to new claims against Equifax.

The district court continues in its order:

> Likewise, Plaintiff complains that Equifax, in response to her dispute, changed the "High Credit" to $0, which she alleges is also a mathematical impossibility. (Doc. 70 ¶ 10.) She suggests that Equifax "could have deleted the account when Midland failed to respond to its reinvestigation notice." (Doc. 139 at 13.) However, the FCRA does not require deletion of the entire entry at Plaintiff's request. Plaintiff did not dispute the entire entry and Equifax was not on notice that the entire entry was "inaccurate." Regarding "High Credit," Midland and Equifax reported factually correct information.

Equifax could have deleted the account or it could have deleted the incorrect "high credit". Changing the amount to the obviously incorrect $0 clearly violates FCRA §1681i:

> **§ 611. Procedure in case of disputed accuracy [15 U.S.C. § 1681i]**
>
> (a) Reinvestigations of Disputed Information
>
> (1) Reinvestigation Required
>
> (A) *In general*. Subject to subsection (f), if the completeness or accuracy of any item of information contained in a consumer's file at a consumer reporting agency is disputed by the consumer and the consumer notifies the agency directly, or indirectly through a reseller, of such dispute, the agency shall, free of charge, conduct a reasonable reinvestigation to determine whether the disputed information is inaccurate and record the current status of the disputed information**, or delete the item from the file in accordance with paragraph (5),** before the end of the 30-day period beginning on the date on which the agency receives the notice of the dispute from the consumer or reseller.
>
> (5) Treatment of Inaccurate or Unverifiable Information
>
> (A) *In general*. If, after any reinvestigation under paragraph (1) of any information disputed by a consumer, an item of the information is found to be inaccurate or incomplete or cannot be verified, the consumer reporting agency shall–
>
> (i) **promptly delete that item of information from the file of the consumer, or modify that item of information, as appropriate,** based on the results of the reinvestigation; [emphasis added]

The district court failed to offer any other explanation or case law for its conclusion that reporting $0 for the "high credit" is "factually correct information."

In my 1st amended complaint I stated:

> 10) On July 8, 2013 Defendant Equifax changed the "high credit" to $0 in response to my disputes of both Midland accounts.
>
> 18) Defendant Equifax willfully and negligently failed to correct the reporting of both Midland accounts in violation of FCRA § 1681i.
>
> 19) Defendant Equifax willfully and negligently failed to maintain reasonable procedures to assure maximum accuracy of the information contained in my credit report in violation of FCRA § 1681e.

Equifax never provided its initial disclosures and I had no way of knowing that Equifax changed the credit limit to $0 because MCM failed to respond to its notice of dispute.

In its reply in support of its motion for summary judgment Equifax wrote that "because the High Credit could not be verified, Equifax (as required by the FCRA) reduced the disputed High Credit to zero, effectively deleting it from Plaintiff's credit file." I agree that the FCRA requires deletion of the information, but $0 is definitely NOT the same as deleting information and absent any case law, this is a question for the jury.

Why did Equifax NOT change the disputed BALANCE to $0?

2) Current balance

From the district court order:

> On September 11, 2013, Plaintiff disputed the "Current Balance" for both accounts. (Doc. 126-1 ¶ 40.) Account 1 showed a balance of $3,707 and Account 2 showed a balance of $3,275. (Doc. 126-2.) Plaintiff did not explain to Equifax any reason for her dispute or why the information was wrong. (*See* Doc. 126-2.) However, Plaintiff appears to argue, in her response to Midland's motion for summary judgment, that Midland is not entitled to interest on either account prior to the time that Midland purchased the accounts. (Doc. 136 at 3, 13.) However, Plaintiff has not identified what portion she believes Midland is not entitled to. Plaintiff alleges that the balance is incorrect, but never provides any figure that she believes is the correct balance.

The district court contends that for a dispute to be valid, the consumer must offer the proposed correct information. However, I have NO idea how Midland calculates interest nor is it a requirement of the FCRA to provide this information.

The district court continues:

> Additionally, Plaintiff argues that Midland waived the interest on Account 1 in the justice court litigation and is, therefore, no longer entitled to the interest. (Doc. 70 ¶ 8.) As with Plaintiff's misunderstanding of the term "High Credit," it appears Plaintiff simply misunderstands the legal consequences of Midland's actions in the justice court litigation. Midland's act of waiving prejudgment interest was for purposes of that litigation only. Midland did not legally give up its right to seek interest outside of that litigation. Plaintiff's claim that her Equifax report is showing an incorrect balance cannot, therefore, be based upon Midland's waiving of the interest in a different lawsuit that was eventually dismissed. Plaintiff has failed to prove that Midland reported an inaccurate "Current Balance."

Apparently I wasn't the only person to "misunderstand" Midland's waiver of the prejudgment interest including the interest it charged for the time prior to its purchase of the account. On 12/10/12 the state court dismissed my counterclaim

and it denied my motion for leave to amend and joinder. From the justice court order [doc. 137, Exhibit 5]:

> Plaintiff is asking for 10% interest and is waving prejudgment interest. Therefore defendant's counterclaim fails to state a claim against the plaintiff or Midland Credit Management, and its collector, John Doe for a violation of 15 U.S.C. sections1692(f)I, 1692(e)2, or 10, and the court **DISMISSES** defendant's counterclaim.

I am fully aware that a debt can be reported to credit bureaus even though it is time-barred. HOWEVER, Midland "waived" the pre-judgment charges, including the interest assessed for the time prior to its ownership of the account. Notably, the Appellees and the district court cite several cases stating that consumers must go to court to resolve disputes. I did! And now they claim that they can continue to REPORT these charges waived in court.

Creditors routinely waive charges for over limit fees or late payment fees and I have never heard of a creditor later collecting these waived charges.

I also have never heard of any litigation involving a creditor reducing the amount demanded in its state court suit, obtaining a judgment or accepting a settlement and then collecting and reporting to credit bureaus the amount waived. What is the purpose of litigation and negotiations if creditors can continue to collect waived charges? I took my dispute to court, I disputed the illegal interest charges in court and if Midland hadn't "waived" the pre-judgment interest charges, I would have had a chance to litigate this issue in justice court.

The waived interest charges were one of my claims in my original district court complaint ¶ 31:

- Defendant MCM reports one alleged Midland debt to the credit bureaus with an incorrect balance, including interest charges abandoned by Defendant Midland in its motion for summary judgment.

As described in detail above, the district court erroneously dismissed all my FDCPA claims, including my claim regarding the waived and fraudulent pre-ownership interest charges. Midland has no right to charge interest for the time prior to its purchase of the account. While HSBC could have charged interest on the charged off amount of 2,853.96, it chose NOT to do so. Every HSBC demand was for $2,853.95 and it reported the $2,853.96 as the total balance owed to the credit bureaus until 2015.

In fact, as I was organizing documents for this brief I found the 8/31/10 Jefferson Capital Systems collection letter identifying Midland Credit Management as current creditor and stating that the balance was $2,853.96 – NO interest had added to the balance. The letter did not mention that any interest charges would be added to the balance if I didn't agree to one of several payment options offered.

Under A.R.S. §44-1201(a) Midland was entitled to charge 10% interest from the day it became the owner of the account, NOT from the date of the charge off – prior to its purchase of the account.

Presumably, Midland charges fraudulent pre-ownership interest on my other account as well as on many thousands of other consumers' accounts. Just like those thousands of other consumers, I had no way of knowing that Midland engages in this deplorable practice until I was provided with account information during justice court discovery. I will make an effort to publicize Midland's pre-ownership interest charges and to bring it to the attention of regulators and class action attorneys.

The district court erred when it dismissed my FCRA claim regarding the inaccurate balances.

3) The incorrect "date of first delinquency."

The district court wrote in its order:

> On September 11, 2013, Plaintiff disputed the "Date of First Delinquency" for Account 1. (Doc. 126-2 at 2.) Plaintiff alleges that she paid her last bill in May 2008 and, therefore, became delinquent in June 2008. (Doc. 137 at 10.) Midland, on the other hand, reports the delinquency as January 2009. However, this misunderstanding can also be cleared up rather quickly. The FCRA specifies that the seven-year period begins "upon the expiration of the 180-day period beginning on the date of the commencement of the delinquency which immediately preceded the collection activity, charge to profit or loss, or similar action." 15 U.S.C. § 1681c(c)(1). Taking Plaintiff's allegation as true, that she defaulted in June 2008, and adding 180 days, the seven-year period began to run in December 2008.

Equifax came to Midland/MCM's rescue in its reply, alleging that Midland ACCURATELY reported the "date of first delinquency."

The district court was eager to parrot Equifax's completely undocumented arguments. From 15 U.S.C. § 1681c:

> **§ 605. Requirements relating to information contained in consumer reports [15 U.S.C. § 1681c]**
>
> (a) *Information excluded from consumer reports.* Except as authorized under subsection (b) of this section**, no consumer reporting agency** may make any consumer report containing any of the following items of information: [emphasis added]
>
> (c) Running of Reporting Period
>
> (1) *In general.* The 7-year period referred to in paragraphs (4) and (6)6 of subsection (a) shall begin, with respect to any delinquent account that is placed for collection (internally or by referral to a third party, whichever is earlier), charged to profit and loss, or subjected to any similar action, upon the expiration of the 180-day period beginning on the date of the commencement of the delinquency which immediately preceded the collection activity, charge to profit and loss, or similar action.

Section 1681c applies only to consumer reporting agencies and it does not even mention the "date of first delinquency." If I had sued Equifax because it reported an account for more than 7 years, this might be a valid defense.

However, my claims are against MCM for verifying the incorrect "date of first delinquency" and against Equifax for lacking reasonable procedures to avoid producing reports with such false information.

Incredibly, Equifax not only failed to state that MCM reported an incorrect "date of first delinquency," but it even fabricated ridiculous arguments in its reply

to get my claims against Midland dismissed and it therefore actively encourages the reporting of false information by creditors and collectors.

The district court continues in its order:

> While there is a discrepancy between December 2008 and January 2009, it is a small discrepancy.7

The district court abused its discretion when I decided to dismiss this claim because it found it to be a "small discrepancy" – absent relevant case law, it is for the jury to decide whether this "small discrepancy" is a valid claim.

In footnote 7 the district court states that it does not know what the term "re-aged" means. For Equifax reports, it means that the "date of first delinquency" is more recent than it should be.

Not only does the "date of first delinquency" determine how long the account will be reported by Equifax, but credit reports with more RECENT "dates of first delinquency" for derogatory accounts result in lower credit scores. Logically, consumers who defaulted a year ago are a bigger credit risk than consumers who defaulted five years ago. Likewise, creditors who manually review credit reports are concerned with the time since the most recent default or late payment. On Equifax reports, everybody looks at the "date of first delinquency" to establish how long it's been since the consumer failed to pay as promised.

The district court continues in its order:

> The burden is on Plaintiff to prove the elements of her claim against Midland. Plaintiff has not produced any evidence to show when she first defaulted and, therefore, she cannot prove what the proper "Date of First Delinquency" should be. Plaintiff has failed to show that Midland reported an incorrect "Date of First Delinquency." Plaintiff relies solely on her own statements that Midland was inaccurate in reporting the current balance, the high credit amount, and the date of first delinquency. In particular, Plaintiff cites to her affidavit to support her allegations by stating that she "believe[s] that all statements in [her] Separate Controverting Statement of Facts … are true." (Doc. 139-1 ¶ 8.) At most, Plaintiff's proffered evidence shows that Equifax and Midland were aware that she disputed some or all of the interest charged, but that does not constitute violations of the FCRA. Plaintiff's allegations are consistent with Midland having reviewed her account and confirmed that the factual information, while disputed, was nonetheless accurate. *See Gorman*, 584 F.3d at 1159-60. Despite ample opportunity, Plaintiff did not produce any evidence inconsistent with this information being accurate. Also significant is that Midland received only cursory notices from Equifax, which were generalized and vague about the nature of Plaintiff's disputes. (Doc. 146 at 6.) To the extent that Plaintiff's argument is that any investigation that did not accept her allegations as accurate was by definition unreasonable, it fails. Because Plaintiff cannot meet her burden to show that Midland reported inaccurate information, Plaintiff's claims fail as a matter of law and the Court will grant summary judgment in favor of Midland.8

Adding insult to injury, the district court claims that I had "ample opportunity" to produce evidence. The district court was fully aware that I had less than 3 months from Equifax's and Midland/MCM's answers until the close of discovery. Equifax never provided its initial disclosures and the district court denied my unopposed motion to extend the discovery deadlines. The district court

parroted the Appellees' arguments instead of reading my filings and examining my exhibits.

Despite the lack of opportunity to conduct discovery, I provided evidence aside from my affidavit (properly authenticating my statement of controverting facts) – the documentation eventually received from Midland/MCM and from Equifax. From my statement of controverting facts:

> **Fact 1:**
>
> Midland claims to have purchased two charged off credit card accounts from HSBC and Midland identifies the accounts with Midland account # 8530254620 (hereafter "Account 1") and Midland account number 8533587350 (hereafter "Account 2") [Baker Declaration ¶ 9]
>
> **Fact 19:**
>
> Midland information provided for Account 1:
>
> > HSBC Bill of Sale executed on 2/25/2009.
> > **Last payment date (LPA): 5/15/2008.**
> > Sale Amount $2,853.96
> > Page 16: Purchase Balance: $2,853.96
> > Charge Off Balance: $2,853.96
> > Interest Status: Que prohibits interest charges.
> > Interest Method: "interest accrued from charge-off date."
> > **Issuer/Seller Last Pmt Date: 5/15/2008** [emphasis added]
>
> [Exh. 17]
>
> **Fact 22:**
>
> I made the **last payment for Account 1 on 5/15/08** and therefore the account was first delinquent in 6/08 – not 1/09, as reported and verified by Midland. [emphasis added]

[Exh. 6, 7, 9, 13, 17]

Exhibit 17 [doc. 137-4], the 8/18/14 Midland supplemental responses to my first set of requests for production contain the account information for both accounts. Page 14 is the information for Account 1 with the incorrect "date of first delinquency." Since Equifax does not display the Midland account numbers on credit reports, Account 1 is easily identified by the $2,853.96 "sale amount" on Midland's documentation and the "high credit" of $2,854 on the Equifax reports.

Exhibit 17, page 14, states: LPD (Last Payment Date) 20080515 (5/15/2008).

Page 16 states: Issuer/Seller Last Pmt Date: 5/15/2008

Since my last payment was made in 5/08, the 1/09 date of first delinquency must be incorrect.

According to the information provided by MCM, there is NO question that it knew at all times that it reported an incorrect "date of first delinquency."

B. The district court erred when it granted the Equifax motion for summary judgment.

a) Equifax willfully and negligently failed to maintain reasonable procedures to assure maximum accuracy of information contained in consumer reports.

The district court dismissed my Section 1681e **c**laim against Equifax:

> Here, Plaintiff alleges that "Equifax willfully and negligently failed to maintain reasonable procedures to assure maximum accuracy

> of the information contained in credit report." (Doc. 70 ¶ 19.) However, Plaintiff fails to support her allegations with any evidence in the record. Her cite to the record consists of her Affidavit generally stating that she "believe[s] that all statements in [her] Separate Controverting Statement of Facts … are true." (Doc. 140-1 ¶ 8.) This does not meet Rule 56(e)'s burden to "set forth specific facts showing that there is a genuine issue for trial."

I disagree with the district court's opinion regarding my affidavit. From *Gorman*:

> Gorman previously stated in his declaration that he had reviewed many of his personal credit reports, and that none of them included a notice that he disputed the delinquent charges. This statement is admissible evidence. Gorman has personal knowledge, having seen the reports. The evidence is not inadmissible hearsay, as Gorman does not rely on the credit reports for the truth of the matter asserted therein; in fact, as he notes, he disputes the truth of their contents. Instead, Gorman offers them to prove that no statement noticing the dispute was made. "If the significance of an offered statement lies solely in the fact that it was made ... the statement is not hearsay." *United States v. Dorsey, 418 F.3d 1038, 1044 (9th Cir.2005)* (quoting Fed.R.Evid. 801 advisory committee's note). He thus submitted sufficient evidence for a jury to conclude that his credit reports contained no notice of dispute.

Aside from my affidavit, I offered plenty of evidence. As described above, the record shows that my Equifax credit report contained inaccurate information.

It is undisputed that Equifax changed the "high credit" to $0. Equifax argues in its reply:

> "High Credit," however, represents the credit limit for the underlying credit card accounts, **or**, as in this case, the balance on the accounts at the time of purchase by Midland. (Supplemental

> Declaration of Mackenzie Cole [“Suppl. Cole Decl.”] ¶ 9.)” [emphasis added]

Actually, Equifax’s Makenzie Cole states in the 1/5/15 supplemental declaration “under penalty of perjury” in ¶ 9:

> The data field labeled "High Credit" in Equifax's consumer credit files is used to note the credit limit for credit card accounts or the amount charged off for a collection account.

Why is it so hard for Equifax to figure out what is supposed to be reported as “high credit”?

Is it the “credit limit”, the “purchase balance” or the “amount charged off?

1) If “high credit” is the “credit limit”, why is there a separate field next to “high credit” labeled “credit limit” on the Equifax investigation results? [doc. 137, Exhibit 6]

2) If “high credit” is the “credit limit”, why is there a separate field next to “high credit” labeled “credit limit” on the Equifax ACDV? [doc. 126-2] Exhibit 6]

3) If “high credit” is the “balance on the accounts at the time of purchase by Midland”, why isn’t the label “purchase balance?”

4) If “high credit” is the amount charged off for a collection account, why isn’t the label “charge off balance?”

5) Why did Equifax use incorrect labels in its investigation results?

6) How can consumers properly dispute incorrect data when the data is incorrectly labeled on the Equifax reports?

7) Why did Equifax not volunteer this information prior to its reply?

8) Why did Equifax not provide its initial disclosures?

Apparently the "high credit" is whatever was reported by Equifax's customers Midland/MCM so that consumer claims will be dismissed.

Midland's exhibits prove that the 1/09 "date of first delinquency" was incorrect, as discussed in detail above.

The district court order continues:

> Additionally, CRAs are entitled to rely on facially credible information prior to the information being disputed by the consumer. *Saenz,* 621 F.Supp.2d at 1080.

The record shows that I disputed the incorrect information.

b) Equifax failed to properly investigate my disputes

From the district court order:

> To state a claim under § 1681i, an actual inaccuracy must exist. *Carvalho v. Equifax Information Services, LLC,* 629 F.3d 876, 890 (9th Cir. 2010). Additionally, "credit reporting agencies are not tribunals. They simply collect and report information furnished by others. Because CRAs are ill equipped to adjudicate contract disputes, courts have been loath to allow consumers to mount collateral attacks on the legal validity of their debts in the guise of FCRA reinvestigation claims." *Id.* at 891

As described above, with regards to the waived and illegally charged pre-ownership interest ("current balances" and "high credit") I've already taken the issue to the courts.

The district court dismissed all § 1681i claims because "additionally, as noted above, the record does not support Plaintiff's allegation that her credit report contained inaccurate information."

The district court continues in its order:

> Here, Plaintiff disputed the information contained in Equifax's file. Equifax reinvestigated. Equifax viewed the limited information provided by Plaintiff and submitted the dispute to the furnisher. The furnisher verified the information. Given the information in its possession, Equifax conducted a reasonable reinvestigation. That is all that is required under § 1681i. Additionally, as noted above, the record does not support Plaintiff's allegation that her credit report contained inaccurate information.
>
> Because Plaintiff has failed to show that Equifax did not perform a reasonable reinvestigation under 15 U.S.C. § 1681i and because Plaintiff has failed to show that Equifax reported inaccurate information, Plaintiff's claim fails as a matter of law. The Court grants summary judgment in favor of Equifax.

The record shows that in response to my MCM disputes Equifax changed the disputed "high credit" to $0 [7/8/13 investigation results], which is obviously incorrect.

I also disputed the "current balance" and apparently Equifax did not investigate the balance as it made no changes, despite MCM's failure to respond to the investigation.

After Equifax changed the "high credit" to $0, the disputed amount of $2,854 was reinserted, leading to my second dispute. § 1681i states:

> **(a) Reinvestigations of Disputed Information**
>
> (A) *In general*. Subject to subsection (f), if the completeness or accuracy of any item of information contained in a consumer's file at a consumer reporting agency is disputed by the consumer and the consumer notifies the agency directly, or indirectly through a reseller, of such dispute, the

agency shall, free of charge, conduct a reasonable reinvestigation to determine whether the disputed information is inaccurate and record the current status of the disputed information, or delete the item from the file in accordance with paragraph (5), before the end of the 30-day period beginning on the date on which the agency receives the notice of the dispute from the consumer or reseller.

(5) Treatment of Inaccurate or Unverifiable Information

(A) *In general*. If, after any reinvestigation under paragraph (1) of any information disputed by a consumer, an item of the information is found to be inaccurate or incomplete or cannot be verified, the consumer reporting agency shall–

(i) promptly delete that item of information from the file of the consumer, or modify that item of information, as appropriate, based on the results of the reinvestigation; and

(ii) promptly notify the furnisher of that information that the information has been modified or deleted from the file of the consumer.|

(B) Requirements Relating to Reinsertion of Previously Deleted Material

(i) *Certification of accuracy of information.* If any information is deleted from a consumer's file pursuant to subparagraph (A), the information may not be reinserted in the file by the consumer reporting agency unless the person who furnishes the information certifies that the information is complete and accurate.

(ii) *Notice to consumer*. If any information that has been deleted from a consumer's file pursuant to subparagraph (A) is reinserted in the file, the consumer reporting agency shall notify the

consumer of the reinsertion in writing not later than 5 business days after the reinsertion or, if authorized by the consumer for that purpose, by any other means available to the agency.

(iii) *Additional information.* As part of, or in addition to, the notice under clause (ii), a consumer reporting agency shall provide to a consumer in writing not later than 5 business days after the date of the reinsertion

(I) a statement that the disputed information has been reinserted;

(II) the business name and address of any furnisher of information contacted and the telephone number of such furnisher, if reasonably available, or of any furnisher of information that contacted the consumer reporting agency, in connection with the reinsertion of such information; and

(III) a notice that the consumer has the right to add a statement to the consumer's file disputing the accuracy or completeness of the disputed information.

(C) *Procedures to prevent reappearance.* A consumer reporting agency shall maintain reasonable procedures designed to prevent the reappearance in a consumer's file, and in consumer reports on the consumer, of information that is deleted pursuant to this paragraph (other than information that is reinserted in accordance with subparagraph (B)(i)).

When Equifax reinserted the disputed "high credit", it failed to comply with the requirements relating to previously deleted or corrected material. Equifax did

not require Midland to provide the required certification, it did not send any notice to me and it did not provide me with information regarding the reinsertion and regarding my right to add a statement to my credit file.

The incorrect reporting of the "date of first delinquency."

With respect to the incorrect "date of first delinquency", did Equifax review the two HSBC accounts reported by HSBC directly and compare the data??

3) Equifax violated FCRA § 1681j when it refused to provide my free annual credit report after I CORRECTLY answered the security questions.

The district court wrote in its order:

> After Plaintiff's disputes of June 11, 2013 and September 11, 2013, Plaintiff twice tried to initiate another electronic dispute on November 23, 2013. (Doc. 139 at 14.) **However, Plaintiff was unable to correctly answer the verification questions.** (Doc. 139-2 at 26-27.) Plaintiff then tried to access her credit report online, but ran into the same problem—**she could not accurately answer the questions**. (Doc. 139 at 15.) CRAs are required to obtain "proper identification" prior to producing disclosures. Here, Equifax provided four security questions to identify Plaintiff. Each multiple-choice question had four answers and an option for "None of the Above." Plaintiff responded "None of the Above" to all of the questions. (Doc. 139 at 15.) This information did not track with the information in the credit file she was requesting.9 [emphasis added]

Again, the district court ignored the record and the facts and parroted Equifax's lies. From my separate controverting statement of facts:

> **Fact 29:**
> I answered all questions correctly "NONE OF THE ABOVE"
> [Baker Declaration # 8]

Fact 30:
Quite frustrated, I then attempted to get my Free Annual Report online and once again Equifax claimed that I answered the security questions incorrectly.
[Baker Declaration # 8]

Fact 31:
I do not have ANY mortgage, auto loan/lease, installment account or student loan.
[Baker Declaration # 8]

Fact 32:
I asked Equifax attorney Broussard for an explanation, but she failed to respond to my emails. [Exh. 7]

Fact 33
Equifax refused to provide its Initial Disclosures despite my request to its Attorney K. Ann Broussard. [Exh. 7]

Fact 34
Despite this litigation, Equifax has FAILED to provide me with my current credit report. [Baker Declaration # 8]

Fact 36:
Equifax responded to my complaint with the Consumer Financial Protection Bureau regarding its refusal to provide my free annual report:

> As required by the Fair Credit Reporting Act, Equifax must obtain proper identification from a consumer before disclosing any information regarding his/her credit file. This is a security measure to protect the confidentiality of the consumer's credit file information. The security questions presented to the consumer via the online system are in place to ensure the correct person is requesting the credit file. Each question is designed for the consumer to provide a response either verifying information or answering the appropriate response not applicable if the information does not pertain. If the questions are not answered appropriately the consumer will fail the authentication process and will not receive the credit file online.

> If you want a copy mailed to your home address please call 888-215-3859.
> [Baker Declaration # 8]
>
> **Fact 37:**
> In its response to the CFPB Equifax ignored the fact that I answered the security questions correctly. [Baker Declaration # 8]

I wrote in my opposition to Equifax's motion for summary judgment:

> Apparently the ONLY way for me to receive my Equifax credit report SECURE online is to PAY for it. Since Equifax Attorney Broussard failed to respond to my email regarding the security questions, I conclude that Equifax deliberately refuses the online Free Annual Reports to some consumers as it is a lot more profitable to SELL the reports than to make them available free of charge.

In its reply Equifax wrote:

> Plaintiff asserts that she accurately responded to Equifax's security questions. She has no evidence, however, of the precise reasons for Equifax's decision not to provide her with an online disclosure.

How could *** I *** possibly know the "precise reason" for Equifax's decision not to provide me with my free annual report? Isn't that for Equifax to tell?

Equifax also argued:

> Furthermore, Plaintiff admits that she was able to obtain an online disclosure from Equifax in June 2013 (Doc. 138 at 4), thereby demonstrating that the difficulty she experienced in November 2013 was not systemic.

First of all, the "difficulty" doesn't have to be "systemic." Equifax was to provide me with my free annual report as per the FCRA.

And for the record, I never admitted to receiving my free annual report at any time in 2013. On 6/11/13 I reviewed both Midland accounts online when I went to DISPUTE at Equifax.com and I noticed that Equifax reported the $2,845 "High Credit", lower than the current $3,707 balance. [PSOCF 17] As part of the dispute process Equifax shows the current information for the accounts. I did NOT receive my free annual report.

My Exhibit 7 is the email correspondence regarding the settlement conference and discovery disputes and it also includes my request for information about the allegedly incorrectly answered security questions from Equifax attorney Broussard on 8/7/14. I emailed her the screenshots of the security questions:

> I had to look for the screenshots of the Equifax decline of my online disputes. I'd really like to know why Equifax claimed that I failed to complete the security questions correctly. Could you be so kind and find out which question I answered incorrectly?

On 8/13/14 I wrote:

> Dear Ms. Broussard,
> Are you ok? I haven't received any responses to my email from you. Also, forgot to cc you with my settlement memorandum last night, so it is attached.
>
> I'll greatly appreciate the courtesy of a reply,

I never received a response.

Why did Equifax NOT disclose in its filings which questions I failed to answer correctly?

For reasons only known to Equifax, it refused to provide me with my free annual credit report. To date and despite this litigation, Equifax has not provided a copy of my consumer disclosure as required by FCRA 1681j.

Summary

The record shows that numerous genuine issues of material fact exist. I properly documented my claims in my separate statements of controverting facts in opposition to the Equifax and Midland/MCM motions for summary judgment and my exhibits and affidavit are admissible.

C. CONCLUSION

I respectfully ask that this Court actually read my brief and the referenced filings and exhibits instead of relying on the Appellees' arguments.

While writing this brief I have relived the abuse I suffered in justice court and district court and I ask myself why on earth would I want this case remanded so I can suffer more abuse? I would not have bothered to appeal if this case was just about me — it's about every consumer who is sued by a debt collector and/or has incorrect information on credit reports. It is appalling that Equifax actively assisted Midland and MCM with obtaining unjust dismissals instead of advising how the "date of first delinquency" should be reported and what the "high credit" really is.

With regards to the pre-ownership interest charged by Midland Funding, it should be determined whether such interest charges are prohibited and violate the FDCPA before ruling on the related FCRA claims.

I therefore ask the Court to reverse the district court's grant of summary judgment regarding my FDCPA and FCRA claims and to reverse the denials of my motion to amend and to join Trans Union and to extend my discovery deadlines. I also ask the Court to direct the district court to allow at least 8 months for discovery after Trans Union appeared.

8. OTHER CASES PENDING IN THIS COURT

None.

9. PREVIOUS CASES DECIDED IN THIS COURT

04-16885 Christine Baker v. Trans Union LLC, et al
06-16849 Christine Baker v. Equifax Info. Svc, et al
07-15657 Christine Baker v. Experian Information, et al
08-15687 Christine Baker v. TransUnion LLC, et al
14-15536 Christine Baker v. Midland Funding, LLC, et al

Christine Baker
3880 Stockton Hill 103-156
Kingman, AZ 86409
May 11, 2016

/s Christine Baker

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on 5/11/2016.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Christine Baker