UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

TALENA COLBERT, **MARTIN LITWIN,** and **LOUIS CANCELLIERE**, on behalf of themselves and all others similarly situated, Plaintiff, vs. **NEWREZ LLC d/b/a SHELLPOINT MORTGAGE SERVICING**, Defendants.	NO. 2:26-cv-00255-GAM

PLAINTIFF'S BRIEF IN OPPOSITION
TO DEFENDANT'S MOTION TO DISMISS SECOND AMENDED COMPLAINT

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I. INTRODUCTION

Plaintiffs Talena Colbert, Martin Litwin and Louis Cancelliere have brought this consumer class action seeking relief from a so-called "zombie second mortgage" collection scheme, involving a debt collector's attempts to collect on previously charged-off debt originally incurred shortly before the financial collapse of 2008. Now, having acquired the debt for collection in the wake of rising property values, Defendant NewRez, LLC d/b/a Shellpoint Mortgage Servicing, has added to the Plaintiffs' mortgage liens tens of thousands of dollars in interest charges that were previously waived and/or were never previously billed. Plaintiff's complaint alleges that this ongoing conduct by Defendant violates the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. §§ 1692 *et seq.*, and the Pennsylvania Fair Credit Extension and Uniformity Act (FCEUA), 73 P.S. §§ 2270.1 *et seq.*, which incorporates the FDCPA's provisions, 73 P.S. § 2270.4(a). Plaintiffs also seeks damages for Defendant's violations of the mortgage servicing provision of the Real Estate Sales Procedures Act (RESPA), 12 U.S.C. §§ 2605(d), (e).

Plaintiffs allege two substantive FDCPA violations in their Second Amended Complaint (SAC). In Count One, they allege that Defendant's scheme of seeking to collect years of interest charges never previously billed and that, in large part, were waived by prior mortgage servicers has been conducting "false and misleading" collection, in violation of 15 U.S.C. § 1692e(2)(a). In Count Two, they allege that Defendant is separately violating 15 U.S.C. § 1692f—which prohibits using "unfair or unconscionable means" to collect debt—by concealing its acquisition of these accounts, surreptitiously rewriting the account histories after years of abandonment by previous mortgage servicers, retroactively assessing past interest charges that had been waived, and then, often after years of silence, coming out of the shadows with foreclosure notices that seek to collect these never previously billed charges.

In its motion to dismiss, ECF 37, Defendant does not address the FDCPA theories that the SAC actually raises, choosing instead to assert what is essentially a broad claim of immunity from suit. According to Defendant, Plaintiffs' FDCPA claims are improperly "derivative" of a "non-viable" claim brought under the Truth in Lending Act (TILA) to enforce the legal duty of Defendant and its predecessor to provide periodic statements required by the TILA and Regulation Z. Deft. Br. (ECF 37-1) at 1-2. But Plaintiffs have not alleged a claim against Defendant under TILA, and the viability of that speculative claim is irrelevant to their independent entitlement to relief under the FDCPA. The SAC is not seeking damages for Defendant's failure to send periodic statements. Rather, this action is predicated on Defendant's unfair and unconscionable addition of interest charges *Plaintiffs do not owe* to the mortgage liens it holds on their homes and the false and misleading information about these debts contained in the periodic statements and foreclosure notices they have sent Plaintiffs.

At its core, the SAC alleges plausible facts that Defendant's motion ignores, choosing instead to rely almost entirely on the fallacious "derivative claim" argument. What Plaintiffs allege is that, for more than a decade, the *prior* mortgage servicers of these second mortgage debts *made* a business decision to charge off Plaintiffs' loans and stop assessing interest on them. This followed routine industry practice regarding loan charge-offs, where creditors reduce delinquent debts to defaults for accounting purposes and stop actively servicing them. The TILA regulatory scheme recognizes these practices and establishes standards regarding the suspension of the otherwise mandatory periodic statement requirement. Mortgage servicers are allowed to avoid the expense of sending periodic account statements on charged-off accounts, but conditional on the suspension of going-forward interest accruals during those periods of suspended communication. *See, e.g.*, Reg. Z, 12 C.F.R. §1026.41(e)(6). Plaintiffs' prior servicers took advantage of this industry practice

and regulatory benefit and froze interest assessments for class members for years. Defendant, having acquired those accounts, decided to rewrite that history, as if the TILA-sanctioned charge-offs never happened. Ignoring the years of abandoned communication and the resulting freeze on interest, Defendant is now seeking to foreclose unless these homeowners pay tens of thousands of dollars in interest charges that were, as a factual matter, waived.

Besides mischaracterizing the substance of Plaintiffs' FDCPA claims, Defendant also seeks dismissal of her parallel claim under the FCEUA, Pennsylvania's counterpart to the FDCPA, on the grounds that she has not plead an "ascertainable loss" or "justifiable reliance" sufficient to support relief under that statute. Those arguments, too, are wrong. There is nothing speculative about Plaintiffs' loss of home equity resulting from Defendants' wrongful addition of tens of thousands of dollars to their mortgage balances, particularly in the context of Defendant's ongoing foreclosure actions, nor is there any "justifiable reliance" issue regarding charges that have, in fact, been added to the mortgage liens on their homes as a result of Defendant's unconscionable conduct.[1]

Looking at the facts as alleged, and giving Plaintiffs the benefit of all reasonable inferences, they are presenting plausible claims for relief. Defendant's motion should be denied.

[1] Defendant also raises a conflict of law issue with respect to Plaintiff Litwin raising claims under both the Pennsylvania and Illinois consumer protection laws. ECF-37-1 at 23–26. In light of Defendants' concession that Plaintiff Litwin states a claim under the Illinois statutes, *id.* at 24, Plaintiff Litwin does not oppose dismissal of his individual claims brought specifically under Pennsylvania law, Counts Three and Four.

II. COUNTERSTATEMENT OF FACTS ALLEGED[2]

A. The Second-Mortgage Collection Scheme Being Challenged

It is best practice in the mortgage servicing industry for servicers to maintain regular contact with borrowers, and this obligation continues with regard to loans in default. SAC ¶¶ 16-22. When such communications are interrupted, particularly as mortgages get transfered among servicers, it can leave the borrower without materially significant information such as where to send payments or seek help or information; the extent of accumulated arrearages, including accrued and unpaid interest; whether foreclosure is imminent and what, if any, loss mitigation programs are available to help protect her homeownership. SAC ¶¶ 23-24. One important source of such information for borrowers is the monthly billing statement, which, under the Truth in Lending Act ("TILA") and its regulations, must be provided continuously to all mortgage borrowers. SAC ¶¶ 20-22 (citing 15 U.S.C. § 1638(f), Reg. Z, 12 C.F.R. § 1026.41(3) (rules for closed-end mortgage loans) and 15 U.S.C. § 1637(b) (open-ended loans)).

Mortgage servicers generally work as agents for securitized trusts that own the pool of loans being serviced and that are compensated through a servicing fee that is set as a fraction of a percent of the aggregate principal balance of all the loans in the pool being serviced. SAC ¶ 26. The fee, which is paid out of the stream of borrower monthly principal and interest payments, is designed to fund the cost of maintaining communications with borrowers, while also generating profit for the servicer. SAC ¶ 27.

The economics of the mortgage servicing business is different with regard to defaulted loans. Typically, after default, when loans cease to generate money flows to the investors, they are charged-off, resulting in the existing balances becoming "recovery," rather than interest-

[2] The listed facts are from the Second Amended Complaint ("SAC"), ECF 31.

generating, assets. Such accounts will then commonly be shifted to a debt collector, often the servicer itself playing this different role, with compensation now being based on a percentage commission from anything the debt collect can successfully recover to offset the booked loss. SAC ¶¶ 28-29. Thus, unlike the situation in standard mortgage servicing, a devious servicer functioning as a debt collector can increase the amount of its fee revenue by inflating the supposed amount of the debt owed.

The TILA periodic-statement regime offers relief to debt collectors seeking to avoid the expense of continuing to provide periodic statements to borrowers in default by essentially establishing a *quid pro quo* between continuing the furnishing of statements and the charging of going-forward interest: *i.e.,* you can stop sending statements as long as you also suspend the running of interest. For home equity loans and other opened-ended mortgages, this condition is built into the statutory requirement itself. SAC ¶ 21; 15 U.S.C. § 1638(b) (requiring periodic statements "for each billing cycle . . . with respect to which a finance charge is imposed"). With regards to closed-end loans, the relief comes via Reg. Z. SAC ¶ 20. *See* 12 C.F.R. § 1026.41(e) (allowing suspension of periodic statements when servicer ceases to be charging additional interest and fees during those periods).[3]

This action involves a group of second-mortgage obligations remaining from the pre-2008 predatory mortgage epidemic that defaulted years ago. More than a decade later, after no billing and no collection communication of any kind was occurring, SLS brought these obligations back

[3] "Open-end" refers to a credit plan "under which the creditor reasonably contemplates repeated transactions, which prescribes the terms of such transactions, and which provides for a finance charge which may be computed from time to time on the outstanding unpaid balance." 15 U.S.C. § 1602(j). Closed-end credit, in contrast, refers to a loan for a set amount of money that is given all at once and must be paid back by a fixed end date. Under TILA definitions, "closed end" is the residual category encompassing any credit "other than under an open end credit plan." 15 U.S.C. § 1638(a). *See* Reg. Z, 12 C.F.R. § 1026.2(a)(10).

to life, not only demanding interest for periods during which it ignored the periodic statement requirement, but also imposing charges *retroactively* covering periods during which previous servicers had *waived* those charges. SAC ¶¶ 1-6, 34.

After not communicating with homeowners about these debts for long periods of time—and, in violation of federal law, 12 U.S.C. § 2605(b), not even introducing itself as the new servicer in charge of collection, SAC ¶ 34—SLS also had a common practice of suddenly coming out of the shadows with foreclosure notices, including demands for payment of the accumulated interest charges for periods during which the borrower had never been previously billed. SAC ¶ 35. This return to life of long-dormant mortgage, underscored with foreclosure threats containing demands for never-before-billed periodic interest assessments, is what has become widely known as a "zombie second mortgage" collection scheme. SAC ¶¶ 1-6, 32. The money-making motive underlying such a scheme is obvious: by threatening foreclosure or following through on such threats, unscrupulous debt collectors can maximize recoveries through leveraged payment agreements or completed foreclosures. SAC ¶ 36.

Around October 2023, Rithm Capital Corp. agreed to purchase SLS, and, after extensive due diligence, completed the acquisition around April 2024. SAC ¶¶ 37-38. Rithm Capital merged SLS into its mortgage servicer subsidiary Defendant NewRez LLC, which placed the servicing of SLS's "zombie second mortgage" portfolio with its Shellpoint Mortgage Servicing division. *Id*. Defendant has continued to pursue collection of the wrongfully assessed interest charges notewithstanding federal and state law, contract waiver principles, and industry standards and guidelines that forge a connection between the maintenance of continuous communication with borrowers and the right to assess going-forward interest, as well as, in the face of multiple lawsuits. SAC ¶ 39.

B. How the Scheme Has Harmed the Named Plaintiffs

1. Talena Colbert

Plaintiff Colbert purchased her home in Philadelphia in February 2007 through financing provided by First Franklin Corp. SAC ¶¶ 40-43. First Franklin used a "piggyback" model, splitting the proceeds into two separate mortgages: a primary mortgage of $119,920.00 and a second mortgage of $29,980 that was essentially financing a phantom downpayment. *Id*. The second mortgage had all the features of the predatory loans of that era: it was "underwater" from the start, and contained both a high rate and a balloon payment. *Id*. and Exhibit A (copy of the second-mortgage note).

In 2009, Ms. Colbert worked with the lender to modify the first mortgage, but around that time, she stopped receiving any billing or other communications from any lender or servicer regarding the second mortgage, and that obligation disappeared from her credit report. SAC ¶¶ 44-47. After not hearing from anyone about the second mortgage for over a decade, out of the blue, around 2020, she received a collection call from SLS, a company she had never heard of before. SAC ¶ 48. She suspected the call was a scam after she confirmed that the second mortgage debt was still not appearing on her credit report. *Id*. SLS began sending sporadic monthly billing statements in 2022. These statements included around $50,000 in interest charges that had never been billed before. SAC at 12 (¶¶ 49, 50, 30).[4]

On April 2, 2023, SLS sent Plaintiff a "Notice of Default and Notice of Intent to Foreclose," which claimed that there were $51,712.48 in "arrears" currently due on the second mortgage

[4] Plaintiffs have just noticed that the paragraph numbering on page 12 of the Second Amended Complaint jumps from Paragraph 49 to 30, resulting in duplicative numbering of Paragraphs 30-49. In order to account for this mistake and clarify which paragraph is being referenced, Plaintiffs are including the page number with any citation to Paragraphs 30-49.

obligation and threatened to foreclose unless this amount was paid within 33 days. SAC, Ex. B. The notice provided no explanation for how the $51,712.48 was calculated, nor did it provide any breakdown between principal and interest. On December 11, 2023, SLS filed a foreclosure action against the second mortgage in the Philadelphia Court of Common Pleas. SAC at 13, ¶ 32. The foreclosure complaint alleged Ms. Colbert owed $29,611.56 in principal and $52,201.28 in interest at 12.3%, calculated from 07/01/09 to 10/31/23, for a total of $81,812.84. SAC at 13, ¶ 33.

On July 24, 2024, Ms. Colbert sent Defendant a written inquiry that requested, *inter alia*, specific information about her loan and requested that Defendant remove from her account the inflated interest charges that had never been previously billed. SAC at 14, ¶ 37 and Ex. C. Defendant sent a response letter on October 9, 2024, that, among other things, refused to remove the disputed interest charges. SAC at 14, ¶ 38 and Ex. D. Beginning in July 2024, Defendant began sending periodic mortgage statements to Ms. Colbert or her counsel, in each one stating that the principal loan balance is $29,611.56 and that interest at 12.3% has been accruing every month since August 1, 2009, producing a pay-off amount of more than $100,000 (*i.e.*, including more than $71,000 in interest has been added to the principal. SAC at 14, ¶ 38 and Ex. E (April 2026 statement). As a result of Defendant's predecessor assessing over $50,000 in interest never incurred, and of Defendant continuing to include those charges within the mortgage payoff amount, Plaintiff Colbert's home equity has been wrongfully depleted. SAC at 14, ¶¶ 39-41.

2. Martin Litwin

In December 2006, Countrywide Mortgage refinanced Plaintiff Litwin's mortgage on his Illinois home, using a predatory, two-mortgage, "80/20" structure, similar to Ms. Colbert's. SAC at 14, ¶ 42. *See also* SAC at 9, ¶ 32. The second mortgage in the transaction was labeled as a Home Equity Line of Credit (HELOC), even though the supposed credit line was fully drawn, with

a principal balance of $69,600. SAC at 15, ¶ 43, and Ex. F (copy of the HELOC agreement).[5] Under the express terms of the agreement, Plaintiff was entitled to a monthly statement for any month a finance charge would be assessed. SAC at 15, ¶ 44, Ex. F, Par. 4(B) ("you will send me a periodic statement at the end of each billing cycle . . . in which a finance charge has been imposed").

Mr. Litwin filed for Chapter 7 bankruptcy relief as a result of financial difficulties and was granted a discharge in July 2012, the result being a discharge of personal liability on the second mortgage loan. SAC at 15, ¶¶ 47-48. Sometime after the discharge, SLS acquired the collection rights to the mortgage, at which time the balance due was $69,336.62. SAC at 15, ¶¶ 47, 49. At no time did SLS ever send a monthly statement to Mr. Litwin. SAC at 15, ¶ 50. The first time any mortgage servicer surfaced following the bankruptcy was 12 years after his discharge, in May 2024, when Defendant started sending him monthly statements. SAC ¶ 52. For example, Defendant sent Mr. Litwin a mortgage statement dated July 31, 2024, stating that he owed more than $70,000 in interest charges and other fees that SLS had added to the mortgage debt covering the 12-year period during which neither SLS nor any other servicer was sending monthly statements. SAC ¶ 53.

In 2025, Plaintiff Litwin decided to sell his home and, as part of that transaction, Defendant sent a payoff statement to him and to the title company handling the sale. SAC ¶¶ 54-57. The payoff statement, dated June 23, 2025, listed $145,748.76 as the balance on the second mortgage, including $69,346.16 in principle, $75,834.60 in interest, and $515 in fees. SAC ¶ 56; Ex. G (copy of the payoff statement). This entire amount was paid to Defendant from the proceeds of the sale,

[5] An actual HELOC "is effectively a supersized credit card agreement which can be secured . . . by a mortgage on real property." *Linderman v. Newrez, LLC ("Linderman II")*, __ F. Supp. 3d __, 2026 WL 1266163, at *1 (N.D. Ill. May 8, 2026).

meaning that Plaintiff lost around $75,000 in home equity that he should have realized out of the sale. SAC ¶¶ 58-59.

3. Louis Cancelliere

In 2006 Plaintiff Cancelliere and his ex-wife took out a HELOC on their Pittsburgh home, borrowing $21,500. SAC ¶ 60-62. After a long period of nonpayment, the loan was charged off in 2010 and the then-servicer stopped sending periodic statements. SAC ¶¶ 63-64. In February 2017, he received a monthly mortgage statement from a company named Ditech Financial stating that the debt secured by the second mortgage was $22,374.05 and confirming that no interest was accruing. SAC ¶ 65. These statements continued until July 2017 when communications again ceased. SAC ¶ 66. The next he heard from anyone regarding the second mortgage was in January 2024, when he received a Notice of Intent to Foreclose from SLS, a company that had never communicated with him before. SAC ¶¶ 67-69. The notice stated that, despite what the earlier billing statements from Ditech informed him about the obligation, he owed $52,156.19 to bring the loan current, comprised mostly of interest that SLS had, without any explanation, retroactively assessed. SAC ¶ 69. After SLS merged into Defendant Shellpoint, Defendant filed a foreclosure in the Allegheny County court, seeking a judgment of over $53,000. SAC ¶¶ 70-72. According to Defendant, *see* ECF 37-1 at 15, it served the foreclosure complaint on Mr. Cancelliere on October 22, 2024. As a result of these actions by Defendant and its predecessor, Plaintiff has lost tens of thousands of dollars in wrongfully assessed interest from his home equity. SAC ¶ 73.

III. LEGAL STANDARD

In considering a motion to dismiss under Rule 12(b)(6), the court must accept as true all well-pleaded facts and then "determine whether the facts alleged in the complaint are sufficient to show that the plaintiff has a 'plausible claim for relief.'" *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210 (3d Cir. 2009) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009)). "The plausibility

standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Iqbal*, 556 U.S. at 678.

IV. ARGUMENT

A. Plaintiffs Have Plausibly Alleged that Defendant Has Engaged in "Unfair or Unconscionable" and "False and Misleading" Debt Collection, in Violation of 15 U.S.C. §§ 1692f (Count One) and 1692e (Count Two)

To state a claim under the FDCPA, a plaintiff must establish that (1) she "is a consumer, (2) the defendant is a debt collector, (3) the defendant's challenged practice involves an attempt to collect a 'debt' as the [FDCPA] defines it, and (4) the defendant has violated a provision of the FDCPA in attempting to collect the debt." *Moyer v. Patenaude & Felix, A.P.C.*, 991 F.3d 466 at 470 (3d Cir. 2021) (cleaned up). Since Defendant's motion to dismiss under Rule 12(b)(6) raises no issue regarding the first three of these elements,[6] this Court must simply determine whether Plaintiffs have plausibly alleged facts which, if proven, would establish that Defendant has violated an FDCPA provision.

1. The Unavailability of TILA Claims against Defendant Does Not Insulate It from Liability under the FDCPA

Defendant's lengthy brief pays little attention to FDCPA law. Instead, Defendant argues that it can avoid that analysis entirely because, "at bottom, [this action] is nothing more than an

[6] Under the FDCPA definitions, a "consumer" is simply a natural person who is obligated pay any debt; a "debt" includes "any obligation or alleged obligation" to pay money in a transaction that was "primarily for personal, family, or household purposes." Plaintiffs are "consumers" and the second mortgage obligations on their homes are "debts." A "debt collector" is any entity that uses the instrumentalities of interstate commerce to operate a business the principal of which is the collection of debts. 15 U.S.C. § 1692a(3),(5),(6). *See Tepper v. Amos Fin., LLC*, 898 F.3d 364 (3d Cir. 2018). Plaintiffs allege that debt collection is the principal purpose of Defendant's business, SAC ¶ 84, and the motion raises no issue regarding that allegation. It is worth noting that the FDCPA coverage exclusion that is often asserted by mortgage servicers, 15 U.S.C. § 1692a(6)(F)(iii) ("a debt which was not in default at the time it was obtained" for collection), does not apply since the SAC alleges that Defendant acquired the Plaintiffs' accounts for collection after they were in default. SAC ¶ 6.

attempt to enforce an alleged violation of the TILA — a statute under which neither SLS nor Shellpoint can be held liable — through the FDCPA." ECF 37-1 at 8.

While it may be true that Defendants cannot be held liable for not sending the periodic statements required by TILA because they are debt collectors rather than the creditors who own these second mortgage debts, *see* 15 U.S.C. § 1640(a), that says nothing about their liability under the FDCPA. Without analyzing Counts One and Two under the FDCPA, Defendant argues that Plaintiffs' reliance on matters related to the TILA-mandated periodic statement are, by itself, grounds for dismissing these claims. But TILA and the FDCPA are separate consumer protection statutes with separate private enforcement mechanisms. *See Daniels v. Select Portfolio Servicing, Inc*., 34 F.4th 1260, 1267 (11th Cir. 2022). Even though TILA claims generally run against only a "creditor," there is nothing inherently contradictory about Defendant, as a covered "debt collector," being liable for FDCPA violations. *Lamirand v. Fay Servicing, LLC*, 38 F.4th 976, 980 (11th Cir. 2022) ("The Truth in Lending Act requires a servicer to send periodic statements, and the FDCPA requires those statements to be fair and accurate when they contain language that would induce a debtor to pay.")

Honoring the overlapping purposes of FDCPA and TILA is especially important given that both statutes are remedial in purpose and are supposed to be construed liberally in favor of consumer protection. *Cappuccio v. Prime Cap. Funding, LLC*, 649 F.3d 180, 188 (3d Cir. 2011), *as amended* (Sept. 29, 2011) (TILA); *DiNaples v. MRS BPO, LLC*, 934 F.3d 275, 281 (3d Cir. 2019) (FDCPA). Even if there were some alleged tensions between the two statutes, "it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective." *Simon v. FIA Card Servs., N.A.*, 732 F.3d 259, 274 (3d Cir. 2013) (cleaned up).

Defendant ignores the teaching of *Simon* and simply assumes, wrongly, that the statutory conflict it projects is enough to dismiss Plaintiffs' action.

In fact, there is no tension here between the duties Congress established in these two consumer protection regimes, and no logical reason for importing the absence of an enforceable claim under TILA into an analysis of Defendant's independent liability under the FDCPA. The fact that Defendant has successfully persuaded some courts to abandon any analysis of FDCPA claims similar to Plaintiffs' and to adopt its view that cases like this are improperly "derivative" of unavailable TILA claims, *see* ECF 37-1 at 12-13, is not a reason for this Court to abdicate its responsibility—as instructed by *Simon*—to analyze the claims alleged here and give effect to the FDCPA. Plaintiffs separately address Defendant's incomplete account of those decisions which it claims support its theory, *see infra* at 22-25, but will begin, appropriately, by applying Plaintiffs' allegation to the text and settled interpretation of the FDCPA.

2. FDCPA §§ 1692e and 1692f Make Different Categories of Collection Misconduct Actionable, Requiring the Plausibility of Counts One and Two to Be Evaluated Separately

As an initial matter, given Defendant's overriding position that it is insulated from FDCPA liability because it cannot be sued under the TILA, Defendant's motion eschews any separate analysis of the FDCPA claims raised in Counts One and Two. It lumps both claims together, summarizing them as challenging the failure of Defendant's predecessor, SLS, to provide TILA-mandated period statements. *See* ECF 37-1 at 8. Yet contrary to Defendant's belief that "Plaintiffs appear to rely on the same general allegations for both FDCPA claims," *id*. at n. 5, Counts One and Two are based on two separate categories of debt collection misconduct, both of which are plausibly alleged by Plaintiffs.

15 U.S.C. § 1692e, the basis of Count One, prohibits a debt collector from using "any false, deceptive, or misleading representation or means in connection with the collection of any debt."

15 U.S.C. § 1692f, the basis of Count Two, prohibits debt collectors from using any "unfair or unconscionable means to collect or attempt to collect any debt." These are separate prohibitions, covering different categories of collection conduct. *See generally Demarais v. Gurstel Chargo, P.A.,* 869 F.3d 685, 697–98 (8th Cir. 2017).

Both sections are internally structured the same way, articulating a general prohibition and then providing examples of the conduct being proscribed. In both sections, Congress expressly instructed that the listed examples are non-exhaustive by introducing the examples with the same cautionary language: "Without limiting the general application of the foregoing, the following conduct is a violation of this section: . . . ."

The listed examples highlight the different categories of conduct covered by the two sections. Section 1692e of the FDCPA focuses on the stated or implied content of the *communications* sent to borrowers, for example, hiding or misrepresenting the identity of the debt collector, 15 U.S.C. § 1962e(1),(3); falsely representing "the character, amount, or legal status" of the debt, § 1962e(2)(A); or threatening to take legal action that is not actually intended or is otherwise illegal, § 1962e(5).

In contrast, Section 1692f bars the use of "unfair or unconscionable *means*" (emphasis added) "to collect or attempt to collect" a debt, providing a list of enumerated, miscellaneous examples, including those covering *how much* the collector collects or attempts to collect, 15 U.S.C. § 1692(f)(1) (barring the collector from adding "any interest, fee, charge, or expense incidental to the principal obligation [,] unless such amount is expressly authorized by the agreement creating the debt or permitted by law," and § 1692(f)(5) (causing the debtor to be charged for the collection communication itself); soliciting or unfairly using the debtor's post-dated checks, § 1692(f)(2)-(4); and using letter or postcard forms that are likely to reveal to third

parties that the debtor is in collection. § 1692(f)(7),(8). Plaintiffs have alleged violations of both the general prohibitions and enumerated examples in each of the two sections.

Proof of a violation of Section 1692f does not require proof of any deception or misrepresentation. Rather it is the debt collector's "unfair or unconscionable" methods, whether or not involving actual deception of the plaintiff, that is actionable. *See Demarais v. Gurstel Chargo* (remedying an improper garnishment); *Sykes v. Mel Harris & Assoc*., 757 F. Supp. 2d 413 (S.D.N.Y. 2010), *aff'd*, 780 F.3d 70 (2d Cir. 2015) (class action challenging debt collector's use of "sewer service"); *Villanueva v. Acct. Discovery Sys., LLC*, 77 F. Supp. 3d 1058, 1074 (D. Colo. 2015) (unauthorized withdrawal of funds from consumer's account)

3. Count One: The Inclusion of Previously Waived Interest Charges Constitutes Actionable "False or Misleading" Collection Communications

Defendant's predecessor, SLS, engaged in a deliberate business strategy of acquiring for collection second mortgage obligations that had been written off by previous mortgage servicers, which, as a result of those charge offs, suspended sending any billing notices to the homeowners.[7] SAC at 9 ¶ 33. Without notifying the homeowners of its connection to their mortgages and without resuming written billing communications, SLS would rewrite the history of these accounts by retroactively assessing past interest accruals that the earlier servicers had waived, then making

[7] As a general matter, a "charge off" reflects a business's decision to "treat (an account receivable) as a loss or expense because payment is unlikely; to treat as a bad debt." Black's Law Dictionary (12th ed. 2024). Critically, charging off a debt provides benefits to the creditors. First, they can cease having to pay the expense of actively servicing the debt. And second, they can claim a loss to the IRS for the value of the whole or partial debt. I.R.C. § 166(a) (IRS Code provision for "Bad debts"). As part of this process, however, the debt holder also stops charging contractual interest on the debt. *See Stratton v. Portfolio Recovery Associates, LLC*, 770 F.3d 443, 445 (6th Cir. 2014), *as amended* (Dec. 11, 2014) ("GE also stopped charging Stratton interest on her debt. GE's decision was neither irrational nor altruistic: By charging off the debt and ceasing to charge interest on it, GE could take a bad-debt tax deduction, I.R.C. § 166(a)(2), and could avoid the cost of sending Stratton periodic statements on her account, 12 C.F.R. § 226.5(b)(2)(i).").

demands for this never-previously-assessed interest, packaged for emphasis within foreclosure notices. SAC at 9-10 ¶¶ 33-35.

"Under Pennsylvania law, a waiver 'is the act of *intentionally* relinquishing or abandoning some known right, claim or privilege.'" *Archway Ins. Servs. v. James River Ins. Co.*, 507 F. App'x 270, 272 (3d Cir. 2012) (quoting *Brown v. Pittsburgh*, 186 A.2d 399, 401 (Pa. 1962)); *see also Connelly Constr. Corp. v. Travelers Cas. & Sur. Co. of Am.*, 788 F. App'x 122, 125 (3d Cir. 2019) (quoting *Brown*, 186 A.2d at 401). Waiver "may be expressed or implied." *Brown*, 186 A.2d at 401. In the cases of Plaintiffs Colbert and Cancelliere, the earlier charge offs, with the accompanying long periods of suspended communication, reflected intentional relinquishments of the right to collect interest, *i.e.*, an exchange for the various tax benefits and the benefits of greatly reduced servicing expenses. *See supra* at n.7. Because SLS and Defendant Shellpoint, as subsequent holders (or the agents of such holders), stand in the shoes of prior holders who charged off Plaintiff's mortgage and forewent continuing to accrue charges thereon, *see Crawford Cent. Sch. Dist. v. Com.*, 888 A.2d 616, 619–20 (Pa. 2005) (cleaned up) ("Under the law of assignment, the assignee succeeds to no greater rights than those possessed by the assignor. … Ultimately, an assignee stands in the shoes of the assignor."), they cannot as a matter of law retroactively assess the interest charges complained of here.

By acting as if the charge offs never happened, as Defendant has done here, and to literally rewrite past account history and charge the waived interest against the consumers' property, plausibly violates the general prohibition of 15 U.S.C. § 1692e ("any false, deceptive, or misleading representation or means in connection with the collection of [a] debt"), as well as the specific example in § 1692e(2)(A) (falsely representing "the character, amount, or legal status" of the debt). *See Grochowski v. Daniel N. Gordon, P.C.,* No. C13-343 TSZ, 2015 WL 3407441, at *5

(W.D. Wash. May 26, 2015) (holding that allegations that interest charges being demanded by debt collector had been previously waived "present a genuine dispute of material fact for trial on the issues of waiver and equitable estoppel"); *McDonald v. Asset Acceptance LLC*, 296 F.R.D. 513 (E.D. Mich. 2013), *vacated*, No. 11-11122, 2016 WL 7325655 (E.D. Mich. June 23, 2016) (class certification of FDCPA claim against debt collector that charged interest that had been waived by original creditor charged by assignee); *Terech v. First Resol. Mgmt. Corp.,* 854 F. Supp. 2d 537, 542 (N.D. Ill. 2012) (complaint sufficiently alleged that interest being demanded by debt collector had been previously waived as a result of a charge-off); *Gomez v. Cavalry Portfolio Services, LLC*, No. 14-CV-09420, 2018 WL 4590026 (N.D. Ill. Sept. 24, 2018) ("As the assignee, Defendants only acquired the rights that BOA had as of the date of assignment. … Since BOA waived its right to post-charge-off, pre-sale interest, Defendants did not acquire the right to this interest and could not seek it from Plaintiffs.").

Each of the three Plaintiffs illustrate different examples of this alleged class-wide FDCPA violation. SLS sent Plaintiff Colbert foreclosure notices that demanded payment of more than $50,000 in previously waived, and never previously billed, interest charges. SAC at 12-13 ¶¶ 50, 30-34. Following the merger of SLS into Defendant Shellpoint, Defendant has been sending periodic statements to Ms. Colbert or her foreclosure counsel, which writings contain demands for the disputed interest charges. SAC at 14 ¶39. Plaintiff Cancelliere has even more direct evidence of the earlier suspension of interest: in 2017 a previous servicer sent him billing statements that expressly stated that the interest rate on his charged-off second mortgage was zero. SAC ¶¶ 63-65. Then, after seven years of hearing nothing from any servicer, he received a foreclosure notice that included in its demand roughly $30,000 of previously waived and never billed interest charges, which Defendant is seeking to collect in a pending foreclosure action. SAC ¶¶ 67-72. With respect

to Plaintiff Litwin, the waiver of interest charges was a matter of contract, in that his HELOC agreement expressly connected the charging of periodic interest to the provision of written billing notices during those periods when interest was charged. SAC ¶ 44. When, after twelve years of complete silence, SLS appeared and started sending him statements, the payment demands included interest charges for that period of abandoned communications. SAC ¶¶ 52-58.

FDCPA § 1692e prohibits "false, deceptive, or misleading" collection notices, including any "false representation of . . . the character, amount, or legal status of any debt." § 1962e(2)(A). Under the law of this circuit, even small inaccuracies in the amount of the indebtedness claimed can trigger liability under 15 U.S.C. § 1692e. *See McLaughlin v. Phelan Hallinan & Schmieg, LLP*, 756 F.3d 240, 244-46 (3d Cir. 2014) (foreclosure attorney letter demanded payment of $550 in attorney fees and $650 in costs, when, in fact, only $440 in fees and $625 in costs had been incurred at the time). Defendant's demands for tens of thousands of dollars in previously waived interest are grotesque by comparison. The demands are not only false; they essentially hide the retroactive fabrication of the account histories alleged here. By any measure, these collection communications were "false, deceptive, or misleading."

4. Count Two: Adding Tens of Thousands to Consumers' Mortgage Debt, Including Retroactively Assessed Charges that Had Previously Been Waived, Is "Unfair or Unconscionable" Collection Conduct

a. Defendant Is Violating the General Prohibition in 15 U.S.C. §1692f

15 U.S.C. § 1692f prohibits debt collectors from using any "unfair or unconscionable means to collect or attempt to collect any debt." The term "unfair or unconscionable" is undefined, but has been interpreted to refer, generally, to practices that are "shockingly unjust or unfair, or affronting the sense of justice, decency, or reasonableness." *Gallego v. Northland Grp. Inc.,* 814 F.3d 123, 128 (2d Cir. 2016) (quoting Black's Law Dictionary (10th ed. 2014)). A debt collector that (a) conceals its acquisition of a mortgage debt for collection, (b) rewrites the history of the account by

retroactively assessing interest charges that earlier servicers had waived, and (c) after years in the shadows, suddenly introduces itself to the consumer with foreclosure threats that include demands for the interest charges it has wrongfully inflated, has violated the general prohibition against "unfair or unconscionable" collection methods in 15 U.S.C. § 1692f. *Terech v. First Resol. Mgmt. Corp.,* 854 F. Supp. 2d at 544.

But the "unfair and unconscionable" debt collection conduct alleged here is even more egregious than charging the previously waived interest. Defendant also concealed its ownership of the collection rights to each of the Plaintiffs' second mortgage obligations—for years—in violation of its obligation under 12 U.S.C. § 2605 and 12 C.F.R. 1024.33, while also violating TILA's periodic statement duty, 15 U.S.C. §§ 1637(b), 1638(f), after it surreptitiously resumed assessing periodic interest going forward.

b. As to Plaintiffs Colbert and Litwin, Defendant also Violated 15 U.S.C. § 1692f(1) by Collecting Interest "Not Expressly Authorized by Agreement or Permitted by Law"

The SAC also plausibly alleges violations of one of the specific statutory examples of "unfair or unconscionable" debt collection, namely, collecting or attempting to collect interest charges that are not "expressly authorized by the agreement creating the debt or permitted by law." 15 U.S.C. § 1692f(1). *See Pollice v. Nat'l Tax Funding, L.P.*, 225 F.3d 379, 406-08 (3d Cir. 2000) (holding that the "or" in § 1692(f)(1) provides alternative bases of FDCPA liability). Here, Plaintiffs Colbert and Litwin have alleged facts that support a claim that Defendant's imposition of the interest charges at issue is unlawful both for not being authorized by the underlying loan agreement and not permitted by law.

Mr. Litwin's HELOC agreement expressly linked the charging of interest for a particular month to his receipt of a periodic billing statement for that month. SAC at 15 § 44. With regard to

him and any class member with the same, or similar, second mortgage agreement, Defendant's charging of interest for periods during which a prior servicer chose not to send a periodic statement was an unlawful collection of charges not "expressly authorized by the agreement creating the debt."[8]

With regard to Ms. Colbert (and any member of the putative class whose mortgage, like hers, was a closed-end mortgage), Defendant's adding interest charges for periods during which she failed to receive periodic statements on her mortgage violated the other half of 15 U.S.C. § 1692f(1) in that it was not "permitted by law." Congress did not specify any "law" in particular, meaning that any proscription of fees or charges contained within state or federal law would apply to this prohibition. *See Pollice v. Nat'l Tax Funding* (interest rate added to utility bills larger than Pennsylvania law permits); *Linderman II*, 2026 WL 1266163, at *9 (retroactively charging interest for periods during which periodic statements were not sent is not permitted under Illinois law).

Reg. Z provides a source of law that functions like the state law in *Linderman II*. TILA requires that mortgage borrowers in closed-end mortgage obligations be provided a periodic statement for each billing cycle. 15 U.S.C. § 1638(f). While the statutory provision contains no exceptions to this rule, Reg. Z offer servicers relief from this requirement with regard to "Charged-off loans." 12 C.F.R. § 1026.41(e)(6). The regulation exempts a servicer that "has charged off the loan in accordance with loan-loss provisions and will not charge any additional fees or interest on the account" and that also informs the borrower that this is happening through use of a special

[8] It is worth noting that, as to Plaintiff Litwin, Defendant's *only* argument challenging his FDCPA claims is that they should be dismissed "to the Extent They Rely on TILA." ECF 37-1 at 7 (heading **I**). (The other arguments challenging the FDCPA claims in the SAC are only raised as to Plaintiffs Colbert and Cancelliere.) His argument that he was entitled to receive monthly statements for each month in which interest was charged relies on the terms of his HELOC agreement, not TILA, so essentially Defendant has raised no argument that justifies dismissal of his FDCPA claims.

mandated written notice. 12 C.F.R. § 1026.41(e)(6)(i)(A). In the event a servicer chooses to resume accruing interest and the sending of periodic statements, the regulation expressly prohibits the retroactive assessment of interest covering the earlier, exempt period. 12 C.F.R. § 1026.41(e)(6)(ii) ("A servicer may not retroactively assess fees or interest on the account for the period of time during which the exemption in paragraph (e)(6)(i) of this section applied."). By doing just that, retroactively charging interest on Ms. Colbert's account for the period during which periodic statements were not flowing, Defendant has added to the lien against her house amounts "not permitted by law." This states a violation of § 1962f. *Pollice v. Nat'l Tax Funding.*

Defendant argues that, because the special disclosure notice mandated by 12 C.F.R. § 1026.41(e)(6)(i)(B) was never sent, Ms. Colbert's claim must fail. ECF 37-1 at 13-15. This argument makes little sense. It would be absurd to interpret 15 U.S.C. § 1692f(1)—a consumer protection statute that "must be broadly construed in order to give full effect to [its remedial] purposes," *DiNaples*, 934 F.3d at 281 (cleaned up)—as insulating Defendant from liability because SLS and the other servicers of Ms. Colbert's loan *also* failed to send her the notice she should have received under 12 C.F.R. § 1026.41(e)(6)(i)(A). That notice requirement was supposed to be for her benefit, to inform her why she would no longer receive monthly statements, not, years later, to award a malfeasant debt collector a free pass to avoid FDCPA liability when doing precisely what the regulation prohibits, *i.e.*, the retroactive assessment of previously waived interest.[9]

[9] Defendant's reliance at ECF 37-1, 14-15 on *Gonzalez v. Specialized Loan Servicing, LLC*, 691 F. Supp 3d 1162 (C.D. Cal. 2023) and *Naranjo v. Bank of Am. N.A.,* No. EDCV 23-546-KK-ASX, 2024 WL 3915080 (C.C. Cal. Apr. 25, 2024) to support this cynical interpretation of the regulation is misplaced. *Gonzalez* actually held that SLS violated both the TILA statutory requirement of periodic statements and the procedures regarding the exemption in Reg. Z, a result contrary to Defendant's principal argument here that TILA is unavailing. While allowing the TILA claim to go forward, the court dismissed the FDCPA claims on the grounds that Reg. Z does not actually prohibit the retroactively assessed interest, but it failed to refer to the language in 12 C.F.R. § 1026.41(e)(6)(i)(B) ("Prohibition on retroactive fees") that does precisely that. In any case, that

5. Defendant's Substantially Inaccurate and Incomplete Account of Its Past Litigation Is an Unpersuasive Substitute for an Actual Analysis of the SAC under the Terms of the FDCPA

Defendant ignores all of the above authority and, instead, relies on a series of cases where it claims to have successfully persuaded other district courts that its not being subject to suit under TILA should insulate it from liability under FDCPA. ECF 37-1 at 9-10. Defendant's discussion of those decisions is both incomplete and misleading. As to those few decisions where it did obtain dismissals, their reasoning is either unpersuasive or irrelevant to this case.

First, although Defendant portrays this line of cases as reflecting an overwhelming, one-sided result in favor of mortgage servicers who charge retroactive interest without notice after years of silence, this summary is inaccurate and incomplete. For example, Defendant fails to mention a series of cases in the Eastern District of Virginia, many of which were against its predecessor, SLS, where second mortgage borrowers successfully used the FDCPA, both individually and as class representatives, to obtain relief from the retroactive assessment of previously waived interest charges.[10] These results—affirming the right of zombie-second

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court was not bound, as this Court is, by *Pollice*. In *Naranjo,* the context of the language quoted by Defendant is a discussion of the plaintiff's claim under California law, not the FDCPA.

[10] *Simon v. Specialized Loan Servicing, LLC*, No. 1:23-cv-01159 (E.D. Va.) involved a class claim much like Mr. Cancelliere's, where SLS assessed retroactive interest after the loan had been charged off and set at 0% by the prior servicer. SLS moved to dismiss FDCPA and RESPA claims, ECF No. 25, but the court denied the motion. Order of Jan. 4, 2024, ECF No. 42. Ultimately, after extensive discovery and motions practice, including an order certifying the FDCPA classes against SLS for the very similar misconduct alleged in this case, SLS agreed to a class settlement that afforded each class member monetary relief. ECF 216-1 (settlement agreement), ECF 229 (final order approving settlement). In *Lipford v. Specialized Loan Servicing, LLC*, No. 1:23-cv-01198 (E.D. Va.), SLS's similar motion to dismiss was also denied. ECF No. 178. *See also Mills v. Specialized Loan Servicing,* LLC, No. 1:24-cv-0063 (E.D. Va.). In *Brown v. Star 214, LLC*, No. 1:24-cv-1964 (E.D. Va.) borrowers successfully brought a class suit against a different mortgage servicer regarding its policy of assessing and attempting to collect retroactive interest on long-dormant second mortgages, asserting claims under the FDCPA and RESPA, which the servicer moved to dismiss. ECF No. 66. The court denied the motion, ECF No. 178, and the case ultimately resulted in a class settlement that, among other things, removed over $20 million in retroactive

mortgage consumers to challenge servicers' attempted collection of improper amounts, including under the FDCPA or analogous state unfair and deceptive practices statutes—have been repeated in other districts, as well.

Most notably, in *Linderman II,* 2026 WL 1266163, at *1-2, Judge Bucklo of the Northern District of Illinois considered a renewed motion by Defendant to dismiss the plaintiff-borrower's claims under the FDCPA and the Illinois Consumer Fraud and Deceptive Business Practices Act for its attempted collection of retroactive interest on a HELOC second mortgage after years of collection silence. Linderman alleged that this surprise billing of thousands of dollars in additional interest without prior notice constituted an unfair and deceptive debt collection practice under the FDCPA and Illinois law. *See id.* at *3-4. The court found that "it becomes simple to evaluate Linderman's [FDCPA] claim under Rule 12(b)(6)." *Id.* at *9. Because "Shellpoint is a 'debt collector' under the FDCPA," it could not "misrepresent the amount or legal status of a debt, . . . threaten foreclosure when foreclosure would be unlawful, or . . . threaten 'any action that cannot legally be taken.'" *Id.* (quoting § 1962(e)(2), (4), (5)). Because a separate statute, the Illinois Interest Act, rendered unlawful interest charged for periods in which statements were not sent, Judge Bucklo reasoned that the plaintiffs had stated FDCPA claims for Shellpoint's attempted collection of those unlawful amounts, including through foreclosure. *See id.* In other words, Judge Bucklo did precisely what the same defendant asks the Court to avoid here: she applied the asserted statutes (there, the FDCPA and the Illinois statute) on the statutes' own terms, while understanding

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interest charges. ECF 201-1 (settlement agreement), ECF 219 (final approval order). *See also Hernandez v. Dyck-O'Neal, Inc*., No. 1:23-cv-001029 (E.D. Va.) (class settlement voiding $10 million in retroactive interest charges. ECF 68-1 (settlement agreement), ECF 77 (final approval order).

that other sources of law (in that case, the Illinois Interest Act) could provide the explanation for *why* the assessed interest was unlawful, unfair, or deceptive in violation of the asserted statutes.

Second, most of the cases Defendant cites involved dismissals of claims and theories different from those raised here and/or claims that have not actually been dismissed.[11] The two that are at least similar to the FDCPA claims at issue here are distinguishable and not persuasive. As noted above, Plaintiffs are alleging that their never-billed interest was, as a matter of fact, waived. The existence of that waiver is buttressed by the Reg. Z provision, but such waiver is not solely premised on that provision. As a matter of persuasive authority, the district court in *Sellers v. Newrez LLC*, No. 25-CV-00035-LKG, 2026 WL 632357 (D. Md. Mar. 6, 2026), fails entirely to consider the elements of the FDCPA in assessing the claim, simply asserting a supposed generic defect in the complaint arising from misperceived conflicts between the FDCPA and TILA. And in *Tuttle v. Newrez, LLC*, No. 1:25CV223, 2026 WL 497010, at *4 (M.D.N.C. Feb. 23, 2026), the district court addressed the Reg. Z provision prohibiting the retroactive interest assessment in

[11] Defendant cites *Hodges v. Newrez LLC*, No. 25-CV-10147-ADB (D. Mass), but that case against Defendant was not dismissed. On the contrary, the cited dismissal order granted the plaintiff leave to amend. An amended complaint was filed on March 3, 2026, ECF 49, and a new motion to dismiss was briefed, ECF 52, 58, 66. In fact, on August 3, 2026, that motion was denied due to a reported settlement. ECF 67,69. As for Defendant's cite to *Linderman v. NewRez LLC (Linderman I)*, 808 F.Supp. 3d 898 (N.D. Ill. 2025), *reconsideration denied*, 2026 WL 63338 (Jan. 8, 2026), as originally filed, that case involved a TILA claim for not providing monthly statements and an FDCPA claim for collecting debt alleged to be time-barred. Neither of those claims are being raised here, and as discussed above, the revised FDCPA theory is proceeding following the discussed denial of the motion to dismiss. *See Linderman II*. *Richards v. NewRez LLC*, No. CV ELH-20-1282, 2021 WL 1060286 (D. Md. Mar. 18, 2021), unlike this action, involved an FDCPA claim based on the alleged failure to provide monthly statements, not on the charging of the previously waived interest. *Id*. at *27-*28. *Moody v. NewRez LLC*, No. 1:24-CV-5406-ELR-CMS (N.D. Ga.) involved a TILA claim for not providing monthly statements, also not involved here. Finally, in *Martinez v. Specialized Loan Servicing, LLC,* No. 2:24-CV-1387 WBS AC, 2025 WL 3030982, at *4 (Oct. 30, 2025), the FDCPA claim was dismissed because the complaint there failed to allege facts sufficient to establish that the mortgage servicer was a "debt collector," a holding not relevant to this case.

isolation as "a nonactionable TILA violation" without considering the FDCPA prohibition in 15 U.S.C. § 1962f(1) against imposing charges "not permitted by law." In any case, this Court, unlike the courts in *Tuttle* and *Sellers*, is bound by the holding in *Pollice v. Natl. Tax Funding* that any legal basis for claiming that interest charges are "not permitted by law" sets forth a violation, since Reg. Z is certainly such a source of law.

6. Plaintiff's FDCPA Claims Are Not Barred by the Statute of Frauds

Contrary to Defendant's argument, ECF 37-1 at 12-13, the Pennsylvania statute of frauds has no bearing on this case because Plaintiffs are not seeking to enforce an agreement for the purported transfer of a property interest. As the Pennsylvania Superior Court has explained:

> The statute of frauds directs that agreements for the sale of real estate shall not be enforced unless they are in writing and signed by the seller. The purpose of the statute is to prevent perjury and fraudulent claims. As a general rule, the effect of the statute is to render oral contracts for the sale of real estate unenforceable, although not invalid. Therefore, they cannot be specifically enforced, even though they may possibly form the basis for an action to recover damages.

*Hostetter v. Hoove*r, 547 A.2d 1247, 1250 (Pa. Super. 1988) (cleaned up); *see also Long v. Brown,* 582 A.2d 359, 361 (Pa. Super. 1990) ("The Statute of Frauds instructs that a purported transfer of an ownership interest in real property is not enforceable unless evidenced in writing and signed by the party(ies) granting the interest."). This follows the text of the statute itself, which simply provides that—without a writing—any parol "interest [in land] shall have the force and effect of leases or estates at will only" and that any "interests … in … any lands … shall… be assigned, granted or surrendered … in writing." 33 P.S. § 1.[12]

[12] The statute of frauds, as relevant, expressly provides that "all … interests of freehold or term of years, or any uncertain interest of, in, or out of any … lands … by parol, and not put in writing … shall have the force and effect of leases or estates at will only, and shall not, either in law or equity, be deemed or taken to have any other or greater force or effect … and moreover, that no … interests, either of freehold or terms of years, or any uncertain interest, of, in, to or out

With respect to mortgages, although "[a]n *agreement to forbear from foreclosure,* between mortgagor and mortgagee, has been held to represent an interest in land such that the agreement is subject to the Statute of Frauds and must be in writing," *Strausser v. PRAMCO, III*, 944 A.2d 761, 765 (Pa. Super. 2008) (emphasis added), there is no such agreement at issue here.[13] Plaintiffs have not pleaded the existence of any oral contract or agreement between herself and Defendant, but rather has alleged that prior servicers unilaterally waived the interest and fees over a course of years, and that Defendant's retroactive rewriting of that account history constitutes "unfair and unconscionable" and "false and misleading" collection conduct, in violation of 15 U.S.C. §§ 1692f and 1692e.

More pointedly, the statute of frauds "is to be used a shield and not as a sword, as it was designed to prevent frauds, not to encourage them." *Empire Properties, Inc. v. Equireal, Inc*., 674 A.2d 297, 302 (Pa. Super. 1996) (cleaned up). It provides a defense where parties attempt to enforce the transfer or surrender of real property interests. It does not void or render invalid oral modifications as to a mortgagor's "manner of performance," *Hostetter,* 547 A.2d at 1250 (citing

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of any … lands … shall … be assigned, granted or surrendered, unless it be by deed or note, in writing … ." 33 P.S. § 1.

[13] The relevant citations in *In re Cmmw. Renewable Energy, Inc.*, 540 B.R. 173, 188 (Bankr. W.D. Pa. 2015), all involve agreements to forbear from foreclosure.

Defendant also quotes an unpublished, non-precedential decision of the Pennsylvania Superior Court from 2016 which "may not be relied upon or cited by a Court or a party in any other action or proceeding." 210 Pa. Code § 65.37. They apparently did so because the case provides an overbroad and general statement that "[m]ortgages are subject to the Statute of Frauds as they represent interests in real property." *Cadles of Grassy Meadows, II, LLC v. Shavei-Tzion*, No. 1003 MDA 2015, 2016 WL 3166669, at *5 (Pa. Super. Ct. June 7, 2016) (non-precedential). Even that case, however, cites as its only authority an "agreement not to foreclose" case. *Id.* (citing *Eastgate Enterprises, Inc. v. Bank & Tr. Co. of Old York Rd.*, 345 A.2d 279, 281 (Pa. Super. 1975)). Contrary to Defendant's implication, specific oral agreements are subject to a statute of frauds defense to the extent that a party is attempting to enforce a transfer—or a surrender, in the case of an "agreement not to foreclose"—of an interest in land, not because they generically involve mortgages.

Novice v. Alter, 291 Pa. 64, 70–71 (Pa. 1927), such as here, where prior mortgage servicers had waived interest charges during the years of suspended collection. And, notably, "[w]here, as here, the plaintiff is seeking only compensatory damages, the Statute of Frauds does not preclude the introduction of evidence that a written contract for the sale of land was orally modified." *Empire Properties* 674 A.2d at 302; *see also Polka v. May*, 118 A.2d 154 (Pa. 1955) ("Under the interpretation that has been given to our statute of frauds a recovery of damages may be had for nonperformance of a parol agreement for the sale of land … .").

Ultimately, Plaintiffs do not challenge the validity of the underlying mortgages themselves or Defendant's right to foreclose under different circumstances. Instead, Plaintiffs challenge Defendant's unconscionable, unfair, and deceptive efforts to retroactively impose interest on long-dormant "zombie"-mortgages that was never charged at the time it would have accrued and was in fact waived by the prior noteholders. In the end, Defendant's statute of frauds argument cuts more sharply against them. The periodic statements were the actual means by which the prior noteholders would have established, *in writing*, their increasing property interests in Plaintiff's homes through building interest charges. The prior servicers' failures to contemporaneously reduce any such obligations to writing, at the time they would have been assessed, thus renders unconscionable and misleading Defendant's current efforts to enforce those obligations against the property.

B. These Violations Also Constitute *Per Se* Violations of the Pennsylvania FCEUA, Raised in Count Three, which Is Why the Wrongful-Debt-Collection Claim of Plaintiff Cancelliere Is Not Time-Barred

Under the Pennsylvania Fair Credit Extension Uniformity Act ("FCEUA"), any violation of the FDCPA "shall constitute an unfair or deceptive debt collection act or practice under this act." 73 P.S. § 2270.4(a). Such a violation is treated for purposes of relief as a *per se* violation of the Unfair Trade Practices and Consumer Protection Law ("UTPCPL"). 73 P.S. § 2270.5(a) ("If a

debt collector . . . engages in an unfair or deceptive debt collection act or practice under this act, it shall constitute a violation of the [UTPCPL].”). Defendant is therefore wrong when it argues that Plaintiffs must separately prove that the collection conduct at issue falls with the catchall provision of the UTPCPL, 73 P.S. § 201-2(4)(xxi) (prohibiting, as a general matter, “engaging in any . . . fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding”). *See* ECF 37-1 at 19. Having sufficiently pled that Defendant is violating the FDCPA, Plaintiff has thus made out an FCEUA violation, without having to separately make out a substantive UTPCPL claim.

There is one relevant distinction between Plaintiffs’ direct FDCPA claims under Counts One and Two and their derivative FDCPA claims under the FCEUA (Count Three). While the FDCPA has a one-year statute of limitations, 15 U.S.C. § 1692k(d), claims for violations of the FCEUA can be brought within two years of the violation 73 P.S. § 2270.5(b). This is why Defendant’s statute of limitations argument regarding Plaintiff Cancelliere, ECF 37-1 at 15-16, falls short.

As to Mr. Cancelliere, SLS came out of the shadows on January 23, 2024, when, after 14 years of not being billed for interest on his charged off HELOC—and seven years after a previous servicer confirmed that his rate was 0%—this company that had never before communicated with him, sent him a foreclosure notice demanding payment of $52,156 in supposed arrears on the account, SAC ¶69, that, according to the last billing statements he had received from Ditech, had a balance of $22,374, with no interest accruing. SAC ¶ 65. Following Defendant’s acquisition of SLS, Defendant followed up that threat by SLS with a foreclosure action, seeking to recover that inflated amount from Plaintiff’s house, SAC ¶¶ 71-72, which, according to Defendant, it served on Plaintiff on October 22, 2024. *See* ECF 37-1 at 15. The initial class complaint, filed on behalf

of all Pennsylvania consumers with second mortgage accounts acquired by Defendant from SLS and that included retroactively assessed interest charges, *see* ECF 11 at ¶ 51, was filed on March 6, 2026. Under the rule announced in *Crown, Cork & Seal Co. v. Parker*, 462 U.S. 345 (1983), that filing tolled Mr. Cancelliere's two-year FCEUA statute. Therefore, contrary to Defendant's argument, Plaintiff Cancelliere's FDCPA claim, which he can assert under the Pennsylvania FCEUA, is timely.

C. The Requirements of 73 P.S. §201-9.2(a) Are Not a Barrier to the FCEUA Claims of Plaintiffs Colbert and Cancelliere

1. The Loss of Home Equity Caused by Defendant's Unfair or Deceptive Debt Collection Is an Ascertainable Loss of Property

To bring an action under the UTPCPL's private action provision, a plaintiff must allege that they suffered "any ascertainable loss of money or property, real or personal, as a result of" a defendant's unfair or deceptive conduct. 73 P.S. § 201-9.2(a) (emphasis added). An "ascertainable loss" is simply "an actual, non-speculative, loss of money or property." *Levy-Tatum v. Navient & Sallie Mae Bank*, No. CV 15-3794, 2016 WL 75231, at *9 (E.D. Pa. Jan. 7, 2016) (citations omitted). The meaning of an ascertainable loss must be construed liberally in light of the UTPCPL's statutory purpose of thwarting "a broad spectrum of consumer frauds." *Brunwasser v. Trans World Airlines, Inc*., 541 F. Supp. 1338, 1346–47 (W.D.Pa.1982). "[T]he ascertainable loss requirement of this act is designed merely to ensure that individuals bringing suit have in fact been damaged by a deceptive trade practice." *Id.* (citing *Com., by Creamer v. Monumental Props., Inc.*, 329 A.2d 812, 816–17 (Pa. 1974)).

The statutory language recognizes, by its plain terms, that an ascertainable loss may be of "property, real or personal," not only a loss of money. *See, Brock v. Thomas*, 782 F. Supp. 2d 133, 143–44 (E.D. Pa. 2011) (denying motion to dismiss UTPCPL claim where equity theft scheme left victim's home encumbered by lien). Plaintiffs allege an ascertainable loss of real property, namely,

the tens of thousands of dollars in home equity that, according to Defendant's payment demands, monthly statements, and the foreclosure actions, they have already lost by force of Defendant's lien against their property

Kaymark v. Bank of Am., N.A., 783 F.3d 168 (3d Cir. 2015) is not contrary authority. That case involved claims that attorney fees that foreclosure counsel demanded in a foreclosure complaint that were not yet incurred—but that would be incurred later—constituted a false or misleading collection demand under the FDCPA and FCEUA. The Court held that the complaint did state a violation of the FDCPA, but upheld a dismissal of the parallel FCEUA claim, reasoning that the temporary nature of the false information in the foreclosure complaint—"The parties do not dispute that these fees were ultimately incurred in the course of the foreclosure action," *id*. at 173—ran afoul of the "ascertainable loss" requirement in 73 P.S. § 201-9.2(a). As noted by the Court, "Kaymark's temporary injury, which by all accounts shrank to zero after the filing of the foreclosure action, is too speculative, standing alone, to quality for the protection of the UTPCPL." *Id.* at 181. At the same time, the *Kaymark* panel limited the scope of its holding by making clear that it was the temporary nature of the alleged loss which rendered it as a speculative loss of home equity, not the fact that no money had been paid, and expressly acknowledged that "there may be situations in which a lien against a consumer's property provides a sufficiently concrete loss that a consumer need not pay off before bringing a UTPCPL claim to remedy her rights." *Id*. at 143-44 (citing with approval *Brock v. Thomas*).[14]

[14] The cases Defendant cites besides *Kaymark*, *see* ECF 37-1 at 20-22, have little relevance here. *Grimes v Enterprise Leasing, LLC*, 105 A.3d 1188 (Pa. 2014) simply ruled that a plaintiff's payment of attorney fees cannot be a recoverable "ascertainable loss" under 73 P.S. § 201-9.2(a), because attorney fees are separately recoverable under the same provision. *Benner v. Bank of Am., N.A*., 917 F. Supp. 2d 338, 360 n. 16 (E.D. Pa. 2013), which was decided before *Kaymark*, involved the challenged imposition of fees totaling $262.50, an amount so small that, unlike the tens of thousands of dollars in interest charges involved here, could understandably have been viewed by

The concrete loss of home equity that Plaintiff Litwin suffered is certainly beyond dispute; when he sold his house, the title company handling the closing in fact paid the disputed interest charges, as they would routinely do after obtaining a payoff statement from any mortgagee. Although Plaintiffs Colbert and Cancelliere have not yet sold their homes or lost their foreclosure cases, their loss of equity caused by Defendant is no less ascertainable.

During the last several years, the Pennsylvania Supreme Court has been underscoring and strengthening the remedial purposes underlying the private right of action in 73 P.S. § 201-9.2(a). *See, Dwyer v. Ameriprise, Inc*, 313 A.3d 969, 978-80 (Pa. 2024). Given that, it would be unreasonable to predict that the Court would interpret this critically important source of consumer redress to require Ms. Colbert and Mr. Cancelliere to sell their homes or lose their foreclosure cases before being able to remedy Defendant's unfair and deceptive collection actions.

2. Any "Justifiable Reliance" Requirement, to the Extent it Exists with regards to FCEUA Claims, Merely Requires a Causal Nexus between Plaintiffs' Losses and Defendant's Unlawful Conduct

Defendant also argues, citing *Hunt v. U.S. Tobacco Co*., 538 F.3d 217 (3d Cir. 2008), that Plaintiffs Colbert and Cancelliere lack standing to pursue their state law claim because they cannot meet the "justifiable reliance" requirement applicable to UTPCPL claims. In doing so, Defendant is asking this Court to expand *Hunt* to govern a particular claim not within the scope of the holding there, namely, a claim for violating the FCEUA.

Hunt ruled that "a private plaintiff alleging 'deceptive' (rather than 'fraudulent') conduct under the amended catch-all provision of the [UTPCPL] must prove that he justifiably relied on the defendant's alleged deceptive conduct or statements." *Id*. at 219. This followed the

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the court as a speculative loss of home equity. In any case, that court did not have the benefit of the Third Circuit's instruction in *Kaymark* that an amount liened to a property may be sufficiently concrete without first having to be paid.

Pennsylvania Supreme Court's incorporation of an extra-statutory justifiable reliance requirement into the UTPCPL's statutory "as a result of" causation requirement for claims that derive from the common law of fraud and misrepresentation. *See Schwartz v. Rockey*, 932 A.2d 885, 897 (Pa. 2007) ("[J]ustifiable reliance on the part of a plaintiff is required to support a cause of action *for fraud* under the UTPCPL based upon common law requirements.") (emphasis added). And the Third Circuit in *Hunt* recognized as much, limiting the holding to "unfair or deceptive acts or practices" grounded in deception. *See Hunt*, 538 F.3d at 226 (refusing to consider the consumer's argument against implying a justifiable reliance into actions to enforce violations of 73 P.S. § 201(4) on the grounds that some of its subsections "do not appear to proscribe deception or fraud (thus making it odd to ask whether the plaintiff would have purchased the product had he known the "truth"), [since] this argument is inapplicable to this case, as here the wrong that Hunt attributes to Smokeless *is* deception").

Notably, Count Three does not arise under the catch-all or any of the other substantive provisions of the UTPCPL, 73 P.S. § 201-2(4). Rather, it arises under the FCEUA. which simply piggybacks upon the private right of action provision in UTPCPL for its remedial mechanism. Significantly, the Pennsylvania Supreme Court has yet to address the meaning or applicability of justifiable reliance in the context of the numerous statutes—the FCEUA being only one of them—which establish standards for liability distinct from the predicate offenses of the UTPCPL, but utilize the UTPCPL's private right of action as the means of redress for violations of those separate statutes.[15]

[15] These statutes include, among others: 73 P.S. § 1961 (providing that a violation of the automobile Lemon Law is also a violation of the UTPCPL); 73 P.S. § 2175 (as to a violation of the Health Club Act); 75 Pa.C.S.A. § 7137 (as to the Odometer Tampering Act); 73 P.S. § 2190 (as to Credit Services Act); 73 P.S. § 2246 (as to Telemarketer Registration Act); 63 P.S. § 455.609 (as

In trying to predict how the Pennsylvania Supreme Court would address this question, as an initial matter, the Court would likely observe that, in enacting the FCEUA, the Pennsylvania legislature sought to protect consumers to the same extent provided for in the FDCPA. This intent is evinced in 73 P.S. § 2270.4(a), making FDCPA violations *per se* violations of the FCEUA. *Dicesari v. Asset Acceptance LLC*, No. 11-CV-6815, 2012 WL 4108944, at *4 (E.D. Pa. Sept. 18, 2012) ("[A] debt collector's violation of the FDCPA constitutes a *per se* violation of the FCEUA."). It is highly likely that the Pennsylvania Supreme Court would construe this language as reflecting a choice by the Pennsylvania legislature to ensure that injuries caused by FDCPA violations were equally actionable under the state law scheme.[16]

But, perhaps more critically, the Court has explained the justifiable reliance as a "borrow[ing] from the common law [to] flesh[] out *prevailing liability standards* under the UTPCPL." *Schwartz v. Rockey*, 932 A.2d 885 (2007) (emphasis added). Such an element makes no sense, and in fact, would subvert the intent of the legislature where, as here, the violation that caused Plaintiffs' losses was unconscionable, not only deceptive, collection conduct. The FCEUA statute demands such a construction. Putting aside *per se* liability for debt collectors that violate the FDCPA under § 2270.4(a), the FCEUA,§ 2270.4(b)(6), identifies expressly prohibited debt collection conduct that is "unfair or unconscionable" *which would not require reliance*. For instance, § 2270.4(b)(6)(iii) prohibits "the solicitation by a creditor of any postdated check … for the purpose of … instituting criminal prosecution; § 2270.4(b)(6)(v) prohibits "causing charges to

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to Real Estate Licensing Act); 66 Pa.C.S.A. § 2905 (as to Telephone Message Services Act); 73 P.S. § 210-6 (as to the Dog and Cat Product Act).

[16] While the FCEUA, through the UTPCPL, provides for actual damages trebled, 73 P.S. § 201-9.2, the FDCPA awards statutory damages in addition to actual damages, 15 U.S.C. § 1692k. Notably, the FCEUA recognizes the possible overlap and protects against any double recovery. *See* 73 P.S. § 2270.5(c).

be made to any person for communications by concealment of the true purpose of the communication;" and § 2270.4(b)(6)(vi) prohibits "taking … any nonjudicial action to effect dispossession or disablement of property" without having the right to do so. To read these prohibitions to require justifiable reliance on the part of the consumer in order to bring an action under the UTPCPL would, in effect, render these prohibitions dead letters. *See* 1 Pa.C.S.A. § 1921(a)("The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly. Every statute shall be construed, if possible, to give effect to all its provisions."). Notably, here, Plaintiffs bring claims under § 1692f, which, like § 2270.4(b)(6), prohibits the use of "unfair or unconscionable means to collect or *attempt to collect any debt*." (emphasis added).

But, perhaps even more critically, the relevant statutory language in the UTPCPL remedy provision is simply that a plaintiff must show that the ascertainable loss suffered was "as a result of" the particular violation. 73 P.S. § 201-9.2(a). This is simply a causation requirement, effectively providing that only consumers whose injures have been caused by Defendants' conduct can bring suit. Plaintiffs here plainly suffered ascertainable losses that were caused by Defendants illegal actions, which is all they have to prove under the statutory text.

Finally, incorporating a justifiable reliance requirement into an FCEUA claim that is derived from an FDCPA violation would make little sense in the context of the FDCPA's "least sophisticated consumer" standard. *See Arias v. Gutman, Mintz, Baker & Sonnenfeldt LLP*, 875 F.3d 128, 137 (2d Cir. 2017); *Tepper v. Amos Fin.*, 2017 WL 3446886, at *9. This is an objective, rather than subjective standard, meaning that even "false or misleading" conduct proscribed under the FDCPA—and by statutory incorporation, the FCEUA, as well—focuses on the objective nature of the conduct, from the perspective of the least sophisticated consumer, not on its actual effect on the plaintiff. Looking

at the conduct and the resulting harm alleged here through the eyes of "least sophisticated consumer," any consumer, who, like Plaintiffs Colbert and Cancelliere, were to find themselves facing foreclosure of their home, based on servicer records that contain unexplained, massive interest assessments like what occurred here, would be justified in relying on their validity, whether they ultimately pay the inflated interest charges through a sale, a foreclosure, or a payment plan they are forced to agree to.

D. Plaintiffs Have Adequately Pleaded the RESPA Claim

Defendant baldly asserts that Plaintiff has not pled the essential elements of her RESPA claim, arguing that the RESPA claim relies on Defendant's alleged violations of TILA and Regulation Z. This is a misstatement of Plaintiff's legal theory. In fact, Plaintiff has pled all the required elements of her RESPA claim.

To state a claim under RESPA, 12 U.S.C. § 2605(f), the complaint must plausibly allege violations of RESPA's "duty of [a] loan servicer to respond to borrower inquiries." 12 U.S.C. § 2605(e). *See Wilson v. Bank of Am., N.A.*, 48 F. Supp. 3d 787, 798-807 (E.D. Pa. 2014). A plaintiff claiming a RESPA violation must allege a breach of a duty required to be performed under RESPA, and that the breach caused them to suffer damages. *Id.* at 799; 12 U.S.C. § 2605(f) ("Whoever fails to comply with any provision of this section shall be liable to the borrower for each such failure" in the amount of "any actual damages to the borrower as a result of the failure"). RESPA imposes a duty on a servicer of a federally related mortgage loan to investigate and respond in writing to a borrower's written request identifying an error in the servicing of the loan, and either to correct the error or explain why it determined that no error occurred. 12 U.S.C. § 2605(e); 12 C.F.R. §§ 1024.35, 1024.36. Defendant does not dispute Plaintiff's allegations that she and the members of the putative class are borrowers with federally related mortgage loans serviced by Defendant, as required for RESPA to apply. *See* 12 U.S.C. §§ 2602(1) and 2605(i). Nor does Defendant dispute

that Plaintiff sent a qualified written request to Defendant which constituted a Notice of Error and Request for Information under RESPA, 12 U.S.C. § 2605(e); 12 C.F.R. §§ 1024.35, 1024.36.

Defendant's sole argument against the sufficiency of Plaintiff's RESPA claim appears to be that Shellpoint could not have committed a servicing error by retroactively charging interest for the period during which no statements were sent, because they cannot be sued directly under TILA. The argument that Plaintiff is trying to "have a piggyback RESPA claim" based on a non-viable TILA claim is specious. It was error for Defendant to retroactively charge more than $50,0000 in interest for periods when the loan was charged off. As explained above, that interest is not owed. Plaintiff notified Defendant of this error through her written inquiry on July 24, 2024, requesting removal of the erroneous interest charges. Am. Compl. ¶ 42; Ex. C (ECF 11-3). Defendant sent a response letter on October 9, 2024, refusing to remove the erroneous interest. Am. Compl. ¶44; Ex. D (ECF 11-4). Defendant's refusal to correct the error in response to Plaintiff's written request was a violation of RESPA, 12 U.S.C. § 2605(e); 12 C.F.R. § 1024.35.

Plaintiff has also alleged damages resulting from Defendant's violation of RESPA's Notice of Error provisions: additional emotional distress including anxiety and despair aggravated by Defendant's intransigence, along with the continued reduction of equity in her Property. Am. Compl. ¶¶ 45-46, 82. Such allegations are sufficient to make out a RESPA claim at the motion to dismiss stage. *See Benner v. Bank of Am., N.A.*, 917 F. Supp. 2d 338, 364-64 (E.D. Pa. 2013) (determining that mental and emotional suffering as a result of repeatedly seeking but failing to obtain information are sufficient damages allegations). In short, the Amended Complaint sufficiently alleges that Defendant violated a duty under RESPA, with resulting damages to Plaintiff.

V. CONCLUSION

Wherefore, Defendant's motion to dismiss should be denied.

Respectfully Submitted,

Dated: August 21, 2026

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CERTIFICATE OF SERVICE

I, Irv Ackelsberg, certify that on this 21st day of August, 2026, I caused a true and correct copy of the foregoing Brief in Opposition to Defendant's Motion to Dismiss to be filed and served via the Court's ECF system.

/s/ Irv Ackelsberg
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