No. 18-35923

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JILLIAN McADORY,
Plaintiff-Appellant,

v.

M.N.S. & ASSOCIATES, LLC, foreign limited liability company,
Defendant,

and

DNF ASSOCIATES, LLC, foreign limited liability company,
Defendant-Appellee.

On Appeal from the United States District Court
for the District of Oregon
Case No. 3:17-cv-00777-HZ
Hon. Marco A. Hernandez

APPELLANT'S OPENING BRIEF

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INTRODUCTION

In the Fair Debt Collection Practices Act (FDCPA), Congress specified two ways in which an entity can be a "debt collector" and thus liable for violations of the statute. One definition, not at issue here, covers any entity that "regularly collects or attempts to collect" certain debts owed to another. 15 U.S.C. § 1692a(6). The other definition, which focuses on the entity's purpose rather than its actions, encompasses businesses "the principal purpose of which is the collection of any debts." *Id.*

Plaintiff-appellant Jillian McAdory has alleged that defendant-appellee, DNF Associates, LLC (DNF), has just such a purpose: DNF's entire business model is to purchase defaulted debts and collect on them. DNF accomplishes this purpose, as it did in this case, by hiring third parties to help it collect on debts and, if that fails, hiring lawyers to commence lawsuits to collect on them. After Ms. McAdory was subjected to abusive debt collection practices by a contractor acting on DNF's behalf, defendant-below M.N.S. & Associates, LLC (MNS), Ms. McAdory sued both DNF and MNS under the FDCPA, in light of longstanding Ninth Circuit precedent holding that a debt collector can be liable for the FDCPA violations of its agent under general principles of agency and vicarious liability.

Despite this well-established principle, the district court granted DNF's motion to dismiss the claims against it. Although it recognized that DNF "literally" had a purpose of debt collection, the court held as a matter of law that a business cannot have a "principal purpose" of "the collection of any debts" unless it directly interacts with consumer debtors. As the Third Circuit recently recognized in *Barbato v. Greystone Alliance, LLC*, --- F.3d ---, 2019 WL 847920 (3d Cir. Feb. 22, 2019), however, the statute contains no such limitation. By its plain language, the "principal purpose" definition focuses on an entity's purpose—its objectives and goals—not the way it furthers that purpose. The "direct interaction" requirement the district court added to the statute has no basis in the statutory language, and, indeed, collapses the FDCPA's two alternative definitions of the term "debt collector." The district court's reliance on its suppositions as to Congress's goals cannot save its erroneous construction.

The district court's dismissal of the complaint rested entirely on its misreading of the "principal purpose" definition. Absent the court's unfounded direct interaction requirement, the allegations in the operative complaint did not permit the district court to conclude that DNF's principal purpose was not debt collection. The facts alleged gave rise to a plausible

inference that the collection of debts was not just one of DNF's business purposes, but its principal one. Notably, neither the district court nor DNF itself identified any other "purpose" of DNF. The district court also erred in relying on its erroneous statutory interpretation to deny Ms. McAdory leave to file a second amended complaint that provided additional detailed allegations about DNF's purpose.

This Court should join the Third Circuit in recognizing that there is no "direct interaction" requirement to be a debt collector under the principal purpose definition of the FDCPA, and the judgment of the district court should be reversed.

STATEMENT OF JURISDICTION

The district court had jurisdiction over plaintiff's FDCPA claim under 28 U.S.C. § 1331 and 15 U.S.C. § 1692k(d). This Court has jurisdiction under 28 U.S.C. § 1291. The district court entered a final judgment as to defendant-appellant DNF pursuant to Federal Rule of Civil Procedure 54(b) on October 9, 2018, ER 1 (Dkt. 44), and Ms. McAdory filed her timely notice of appeal on October 31, 2018, ER 35 (Dkt. 46), within the 30 days allowed by Federal Rule of Appellate Procedure 4(a)(1)(A).

STATEMENT OF THE ISSUE

Whether the district court erred in concluding that, as a matter of law, a business that purchases defaulted consumer debt for the sole purpose of collecting that debt cannot have a "principal purpose" of "the collection of any debts," and thus qualify as a "debt collector" under the FDCPA, unless it directly interacts with consumers.

STATUTORY PROVISION INVOLVED

The FDCPA's definition of "debt collector," 15 U.S.C. § 1692a(6), provides in pertinent part:

> The term "debt collector" means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.

The full text of 15 U.S.C. § 1692a(6) is reproduced in the statutory addendum to this brief.

STATEMENT OF THE CASE

This action arises out of DNF's attempts to collect a debt from plaintiff Jillian McAdory using the services of one of the several contractors it regularly uses for that purpose.

As alleged in Ms. McAdory's complaint, DNF is a debt collection company that regularly attempts, through its contractors, to collect defaulted consumer debts nationwide. ER 69-70 (FAC ¶¶ 5-6); ER 42-43 (SAC ¶¶ 5-6).[1] It operates by purchasing defaulted consumer debts "for pennies on the dollar" and then orchestrating the collection of those debts by contracting with third parties who are responsible for direct contacts with the debtors to collect the debts. ER 70 (FAC ¶ 6); ER 42-43 (SAC ¶¶ 6-7). DNF manages its network of contractors and puts limits on what payments they may accept. ER 70 (FAC ¶ 6); ER 42-43 (SAC ¶ 6). If its contractors' efforts are unsuccessful, DNF files collection lawsuits against consumers; it filed at least 47 such lawsuits in Oregon state courts in 2017 alone. ER 43, 53-54 (SAC ¶ 7, Ex. 1). Ms. McAdory alleged that all, or the vast majority of, DNF's income comes from the collection of defaulted consumer debts. ER 43 (SAC

[1] These facts are taken from the first amended complaint (FAC) and proposed second amended complaint (SAC). Because the district court considered the allegations in the SAC and accepted them as true in denying plaintiff's motion for leave to amend, which it construed as a motion for reconsideration, ER 17-18, it is appropriate for this Court to do the same. Indeed, as explained further below, the Court must do so in considering whether the district court erred in dismissing Ms. McAdory's claims with prejudice.

¶ 7). And DNF holds licenses to act as a collection agency in at least six states. ER 44, 56-59 (SAC ¶ 8, Ex. 2).

Ms. McAdory incurred a consumer debt with Kay Jewelers. ER 68-69 (FAC ¶ 3); ER 41 (SAC ¶ 3). After she was unable to make timely payments, DNF purchased the debt from Kay Jewelers. DNF purchased the debt in order to collect on it. ER 76 (FAC ¶ 20); ER 49 (SAC ¶ 22). In furtherance of that goal, it first contracted with third party First Choice Assets, LLC, which was unsuccessful in obtaining payment from Ms. McAdory because of her limited means. ER 71 (FAC ¶ 8); ER 44 (SAC ¶ 10). DNF then tried to collect the debt by contracting with MNS and providing it with information to use in attempting to obtain payment from Ms. McAdory. ER 70, 76 (FAC ¶¶ 6, 20); ER 42-43, 49 (SAC ¶¶ 6, 22). MNS succeeded in collecting, on DNF's behalf, a partial payment in satisfaction of the debt from Ms. McAdory. ER 73-75 (FAC ¶¶ 14-17); ER 45-47 (SAC ¶¶ 16-19).

The tactics MNS used to procure that payment from Ms. McAdory on DNF's behalf violated the FDCPA in numerous ways. For example, MNS's initial contact with Ms. McAdory was a misleading and deceptive voice mail that failed to comply with several provisions of the FDCPA. ER 71-72, 77-78 (FAC ¶¶ 9-12, 22); ER 44-45, 49-51 (SAC ¶¶ 11-14, 24). And after Ms.

McAdory agreed to make payment on a specific date, MNS deducted money from her checking account before that date. ER 75 (FAC ¶ 17); ER 47 (SAC ¶ 19).

Ms. McAdory commenced this action against both DNF and MNS on May 17, 2017, Dkt. 1, and amended her complaint on July 14, 2017, ER 67 (FAC, Dkt. 16). The First Amended Complaint identified eight separate violations of the FDCPA. ER 77-78. MNS never responded, and an order of default was entered against it on May 31, 2018. Dkt. 39. On July 24, 2017, DNF moved to dismiss the claims against it pursuant to Federal Rule of Civil Procedure 12(b)(6), arguing that it "cannot be held vicariously liable for MNS's alleged violations of the FDCPA, despite Plaintiff's revised allegations in the First Amended Complaint, because DNF does not meet the statutory definition of a 'debt collector.'" Dkt. 18 at 2. The district court granted DNF's motion on November 3, 2017, dismissing the claim against DNF based on the "conclu[sion] that DNF does not meet the statutory definition of 'debt collector' under the FDCPA as it is not a business whose principal purpose is the collection of debts." ER 33. The court stated, as a matter of law, that:

> Debt purchasing companies like DNF who have no interactions with debtors and merely contract with third parties to collect on the debts they have purchased simply do not have the principal purpose of collecting debts.

ER 30-31.

The district court did not specify whether the claims against DNF were dismissed with prejudice, and the case remained open in light of the claim against MNS. Ms. McAdory moved for leave to file a second amended complaint, seeking to provide supplemental allegations about DNF's debt collection activities. Dkt. 29. The additional allegations stated (1) that DNF files collection lawsuits on its own behalf if the contractors it hires are unsuccessful in obtaining payment, and (2) that DNF is licensed as a debt collection agency in multiple states. ER 43-44 (SAC ¶¶ 7-8).

Construing the motion for leave to amend as a motion for reconsideration, the district court confirmed that it had dismissed the claim against DNF with prejudice and reaffirmed its earlier decision. ER 14 (Dkt. 34). The district court explained that the additional allegations in the proposed second amended complaint had no impact on its conclusion that DNF was not a debt collector because, in its view, the statutory definition requires direct "interaction between DNF and the consumer." ER 23.

Ms. McAdory subsequently moved for entry of a separate final judgment as to DNF under Federal Rule of Civil Procedure 54(b), so that she could appeal the district court's legal conclusions before the resolution of her claim against MNS. Dkt. 40. Over DNF's opposition, the district court granted that motion, finding that doing so would reduce the risk of duplicative litigation and that "[t]he legal issue of [DNF's] debt collector status is a close one with courts around the country issuing conflicting decisions." ER 11. The court stayed the claim against MNS pending the resolution of this appeal. ER 12.

SUMMARY OF ARGUMENT

The district court incorrectly interpreted the "principal purpose" definition of "debt collector" under the FDCPA as requiring, as a matter of law, that an entity directly interact with consumer debtors in order to be a debt collector. Plaintiff more than adequately alleged facts that would support a plausible inference that DNF's principal, and sole, purpose is the collection of debts.

Properly construed, the "principal purpose" definition of a debt collector focuses on a business's objectives and goals, not the specific activities it undertakes in furtherance of those objectives and goals. As

confirmed by the only court of appeals to reach this issue, this reading follows from the plain and ordinary meaning of the word "purpose," demonstrated through contemporary and historical dictionary definitions, ordinary usage, and case law interpreting the term under both the FDCPA and other statutes. The relevant question is whether debt collection is incidental to a business's objectives or whether it is the business's dominant objective.

The district court's addition of a "direct interaction" requirement incorrectly collapsed the two alternative definitions of "debt collector" under the statute, contrary to the statute and this Court's precedent. While the "regularly collects" definition focuses on what activities an entity engages in, the "principal purpose" definition does not.

In going beyond the plain language of the statute to add a "direct interaction" requirement, the district court relied on what it viewed as a lack of support in the legislative history for the view that Congress intended entities like DNF to be covered by the statute. The district court's invocation of legislative history is both irrelevant and incorrect. First, whether entities like DNF were the principal evil Congress had in mind when enacting the FDCPA is irrelevant if, on its face, the language of the statute applies to DNF.

Limiting the statute's scope based on assumptions about what Congress had in mind is particularly inappropriate given the broad, pro-consumer construction that this Court has held applies in interpreting the FDCPA. Second, holding entities that do not directly interact with consumers liable under the FDCPA is consistent with the legislative history, the text of the statute, and case law from the past forty years—particularly precedents establishing that businesses can be held liable for violations committed by others under the doctrine of vicarious liability.

Under the proper reading of the statute, Ms. McAdory has alleged more than sufficient facts to support an inference that DNF falls under the principal purpose definition of a debt collector. The facts that she has pleaded—that DNF's sole source of income is debt collection, that DNF buys defaulted debts for the purposes of collecting on them, that DNF exercises control over a network of third-party debt collectors that it deploys to procure payment from consumers, that DNF files lawsuits against consumers when it cannot collect through its third-party contractors, and that DNF is registered as a debt collection agency in numerous jurisdictions—are all indicia of DNF's debt collection purpose, and indeed are the very same facts other courts have found probative of a business's

principal purpose. And although the district court correctly stated that a purpose of debt collection must be more than incidental to be a "principal" purpose, Ms. McAdory has alleged just that, and neither DNF nor the district court has identified, or can identify at this stage, any other purpose of DNF's business.

STANDARD OF REVIEW

This Court reviews *de novo* the district court's grant of DNF's motion to dismiss for failure to state a claim and its legal interpretation of the FDCPA. *See, e.g.*, *Syed v. M-I, LLC*, 853 F.3d 492, 499 (9th Cir. 2017). In so doing, it "accept[s] the factual allegations of the operative complaint, as well as the documents to which it refers, as true and construe[s] them in the light most favorable to the plaintiff." *Garmon v. County of Los Angeles*, 828 F.3d 837, 842 (9th Cir. 2016).

Whether the district court's denial of Ms. McAdory's December 2017 motion is construed as denial of a motion for leave to amend or denial of a motion for reconsideration, this Court reviews it under an abuse of discretion standard. *See, e.g.*, *Havensight Capital LLC v. Nike, Inc.*, 891 F.3d 1167 (9th Cir. 2018). "[T]his court has oft repeated that an error of law is an abuse of discretion." *Yokoyama v. Midland Nat'l Life Ins. Co.*, 594 F.3d 1087,

1091 (9th Cir. 2010). It has also repeatedly held that "[d]ismissal with prejudice and without leave to amend is not appropriate unless it is clear on *de novo* review that the complaint could not be saved by amendment." *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003), *quoted in Hicks v. PGA Tour, Inc.*, 897 F.3d 1109, 1124 (9th Cir. 2018).

ARGUMENT

I. An Entity Does Not Need Direct Debtor Interaction to Have a Principal Purpose of Debt Collection.

The relevant provision of the FDCPA provides that an entity that uses instrumentalities of interstate commerce in "a business the principal purpose of which is the collection of any debts" is a debt collector. 15 U.S.C. § 1692a(6). The district court acknowledged that "a debt purchasing company [such as DNF] may be a debt collector in the literal sense that it purchases debt for the purpose of making money by hiring a third party to collect on that debt." Dkt. 27-7 at 7. Nonetheless, the court concluded that such businesses do not, as a matter of law, qualify as debt collectors under the "principal purpose" prong of 15 U.S.C. § 1692a(6) if they do not have direct interaction with consumer debtors. *Id.*; *see also* Dkt. 34 at 11. The district court's holding that a purpose of collecting debts in the "literal

sense" is insufficient absent satisfaction of an additional "direct participation" requirement is inconsistent with the text of the statute and unsupported by canons of statutory interpretation and case law interpreting the FDCPA and other statutes.

The district court's ruling is also directly contrary to the Third Circuit's recent decision in *Barbato*, the only court of appeals decision squarely addressing the issue. The court there explicitly rejected the argument "that the 'principal purpose' definition applies only to those that engage in 'overt acts of collection' by interacting with consumers—not entities … that purchase debt and outsource the collection." 2019 WL 847920, at *6. As *Barbato* explained, "an entity that otherwise meets the 'principal purpose' definition cannot avoid the dictates of the FDCPA merely by hiring a third party to do its collecting." *Id.* at *1.

A. The principal purpose definition focuses on a business's objective.

"When construing the meaning of a statute, we begin with the language of that statute." *Benko v. Quality Loan Serv. Corp.*, 789 F.3d 1111, 1118 (9th Cir. 2015). The FDCPA's language, which defines an entity whose business has the "principal purpose" of "collecting any debts" as a "debt

collector," 15 U.S.C. § 1692a(6), does not support the district court's addition of a "direct interaction" requirement to that definition.

The FDCPA does not define the word "purpose." "When a statute does not define a term, a court should construe that term in accordance with its 'ordinary, contemporary, common meaning.'" *San Jose Christian Coll. v. City of Morgan Hill*, 360 F.3d 1024, 1034 (9th Cir. 2004) (quoting *A-Z Int'l v. Phillips*, 323 F.3d 1141, 1146 (9th Cir. 2003)); *see also Um v. Spokane Rock I, LLC*, 904 F.3d 815, 820 (9th Cir. 2018). Both in 1977 and today, the ordinary meaning of the word "purpose" is an objective or goal. *See Black's Law Dictionary* 1112 (5th ed. 1979) ("That which one sets before him to accomplish; an end, intention, or aim, object, plan, project."); *see also Barbato*, 2019 WL 847920, at *6 ("'purpose' is defined as something that one sets before himself as an object to be attained: an end or aim" (citing *Webster's Third New Int'l Dictionary* 1847 (1976))). Purpose is a measure of intent, not of action. *See United States v. Rodriguez-Ramirez*, 221 F. App'x 533, 535 (9th Cir. 2007) (citing *Webster's Ninth New Collegiate Dictionary* 629, 957 (9th ed. 1983)) ("purpose" means intent); *see also Bd. of Directors of Chi. Theological Seminary v. Illinois ex rel. Raymond*, 188 U.S. 662, 676 (1903) (construing "purposes" as synonym of "object"). All of the ordinary definitions of word "purpose" "focus on the

object or goal to be attained." *Bhutta v. Comm'r*, 145 T.C. 351, 362-63 (2015). Common usage of the term "purpose" makes clear that an entity can have a purpose even if it relies on others to achieve that purpose. A concert hall's purpose is to provide entertainment, even if it pays bands to entertain the crowds. A real estate broker's purpose is to sell real estate, even if independent contractor agents are the ones actually interacting with buyers.

As the Third Circuit explained, interpreting § 1692a(6) to incorporate this ordinary meaning of the word "purpose," "[a]s long as a business's *raison d'être* is obtaining payment on the debts that it acquires, it is a debt collector. Who actually obtains the payment or how they do so is of no moment." *Barbato*, 2019 WL 847920, at *6; *see also Tepper v. Amos Fin., LLC*, 898 F.3d 364, 365 (3d Cir. 2018) ("entities whose principal business is to collect the defaulted debts they purchase" have a principal purpose of debt collection). An entity's "purpose" does not change based on whether it hires others to contact the consumer debtors; the goal, the end result the business seeks, remains the collection of debt.

The focus on objectives, not how the objectives are achieved, is supported by this Court's interpretation of the term "principal purpose" in another statute, the Service Contract Act (SCA). The SCA limits its coverage

to contracts with a "principal purpose" of "the furnishing of services in the United States through the use of service employees." 41 U.S.C. § 6702(a)(3). This Court rejected the argument that a staffing company did not meet this requirement because it did not itself furnish services by employing the service employees who performed those services, but merely referred employees to a federal laboratory, where they worked under the direction of federal employees. *Menlo Serv. Corp. v. United States*, 765 F.2d 805, 809 (9th Cir. 1985). The Court explained that the fact that the staffing company did not directly control the service employees did not alter the principal purpose inquiry, as it was clear that "the services performed by these workers were the *raison d'etre*" of the referral agreements. *Id.* Likewise here, just as a staffing company cannot avoid the SCA by claiming a contract's principal purpose is not to furnish services, but merely to facilitate the furnishing of services by others, a company cannot avoid the FDCPA by claiming its principal purpose is not to collect a debt, but to get others to collect a debt on its behalf. Debt collection is the *raison d'etre* of a business that buys defaulted debt that it contracts with others to collect on its behalf.[2]

[2] Although two district courts cited by the district court below rejected arguments that a company that buys defaulted debts with the goal of

The district court acknowledged that debt collection was DNF's literal "purpose," but held that debt collection could not be its "principal" purpose if it did not interact directly with debtors. ER 31. Nothing in the definition of the word "principal" or the FDCPA, however, supports this narrow reading. A business's "principal" purpose is its main or major goal, as opposed to a goal that is merely incidental or ancillary. *Cf. AFL-CIO v. Donovan*, 757 F.2d 330, 336 (D.C. Cir. 1985) (in interpreting the SCA's "principal purpose" requirement, the question is whether the purpose is merely "incidental"); *see also Barbato*, 2019 WL 847920, at *6 ("'Principal' is defined as 'most important, consequential, or influential.'" (quoting *Webster's Third New Int'l Dictionary* 1802 (1976))). The determination of a business's principal purpose depends on a comparison of the business's various objectives, not on the specific *means* it uses to achieve its goals.

Put another way, an entity's purpose, that purpose's primacy, and the activities undertaken to achieve that purpose are three distinct questions. A

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collecting on them necessarily has a purpose of debt collection, neither explained why direct interaction would be necessary to show a "purpose" of debt collection, or what other "purpose" such a company *does* have. *See Gold v. Midland Mgmt., Inc.*, 82 F. Supp. 3d 1064, 1071 (N.D. Cal. 2015); *Kasalo v. Trident Asset Mgmt., LLC*, 53 F. Supp. 3d 1072, 1078-79 (N.D. Ill. 2014), *cited in* ER 29-31.

social services provider may have a *purpose* of feeding the hungry whether it achieves that purpose by providing gift cards to restaurants or by providing meals served on-site. Whether that purpose was its "principal" purpose would not depend on which of those two means it used to pursue the purpose but on whether it had other purposes more central to its mission. Conversely, a school that provided lunch to its students would not have a *principal* purpose of feeding the hungry, regardless of whether it directly gave food to students or contracted with someone else to prepare and distribute bag lunches. In neither hypothetical does the existence or the primacy of the purpose depend on whether the entity has direct interactions with others in pursuing its objective.

Thus, the relevant question in determining whether an entity qualifies as a debt collector under the principal purpose prong is whether an entity's "principal business aim" is to collect debt, *Larroza v. Resurgence Capital, LLC*, No. 17 C 8512, 2018 WL 2118134, at *2 (N.D. Ill. May 8, 2018), or whether the collection of debt is merely incidental or ancillary to the business's primary purpose. *See also Barbato*, 2019 WL 847920, at *6 ("an entity that has the collection of any debts as its most important aim is a debt collector" under the principal purpose definition (quotation marks omitted)). Focusing on the

objective, rather than the means by which the objective is achieved, is consistent with the Third Circuit's approach in *Barbato*, as well as that court's earlier decision in *Pollice v. National Tax Funding, L.P.*, 225 F.3d 379 (3d Cir. 2000). In *Pollice*, plaintiff brought an FDCPA claim against National Tax Funding (NTF), a company that purchased delinquent claims from municipalities, and then contracted out to a third party, CARC, to "contact[] homeowners in order to collect on the delinquent claims." *Id.* at 386. The Third Circuit held that, despite the lack of direct contact between NTF and consumer debtors, NTF was a debt collector under both of the two statutory definitions. *Id.* at 404. As to the principal purpose prong, it explained "there is no question that the 'principal purpose' of NTF's business is the 'collection of any debts,' namely, defaulted obligations which it purchases from municipalities." *Id.*[3]

[3] Although the district court dismissed *Pollice* as "not directly applicable," ER 32, the Third Circuit disagreed and relied on it for this same proposition in *Barbato*. The *Barbato* court expressly held that *Henson v. Santander Consumer USA Inc.*, 137 S. Ct. 1718 (2017), which held that the "regularly collects" prong does not apply to entities that collect debt that they own, regardless of its default status when they purchased it, did not affect or call into doubt *Pollice*'s holding with respect to principal purpose, as the principal purpose prong does not depend on ownership of the debt to be collected. *See Barbato*, 2019 WL 847920, at *5; *see also Tepper*, 898 F.3d at 365, 366–68, 370–71.

Similarly, in *Scott v. Jones*, 964 F.2d 314 (4th Cir. 1992), the Fourth Circuit rejected a lawyer's argument that he did not qualify as a debt collector under the principal purpose prong because he was engaging in "the practice of law," not debt collection. *Id.* at 316. The relevant question, the court explained, is not "what name is applied to [the business's] activities." *Id.* Because 70 to 80 percent of the lawyer's fees were generated in debt collection cases, "it [was] clear that the 'principal purpose' of his work was the collection of debt." *Id.*

Cases where courts have found entities *not* to have a principal purpose of debt collection are equally instructive. These cases—involving banks, property management companies, retailers, and resorts—illustrate the sorts of entities the "principal purpose" requirement is intended to exclude, and also show that an entity's purpose and the activities it engages in to pursue those purposes are distinct concepts. *See, e.g.*, *Romine v. Diversified Collection Servs., Inc.*, 155 F.3d 1142, 1145 (9th Cir. 1998) (debt collection not principal purpose of Western Union's business); *Bank of N.Y. Mellon Tr. Co. N.A. v. Henderson*, 862 F.3d 29, 34 (D.C. Cir. 2017) (same as to bank); *McCready v. eBay, Inc.*, 453 F.3d 882, 888 (7th Cir. 2006) (eBay); *Larroza*, 2018 WL 2118134, at *1 (private detective and process service companies); *Hunte v. Safeguard*

Props. Mgmt., LLC, 255 F. Supp. 3d 722, 725 (N.D. Ill. 2017) (property management company); *Alexander v. Omega Mgmt., Inc.*, 67 F. Supp. 2d 1052, 1055 (D. Minn. 1999) (property management company); *Griffin v. Bailey & Assocs., Inc.*, 855 F. Supp. 1047, 1048-49 (E.D. Mo. 1994) (resort management company); *Arnold v. Truemper*, 833 F. Supp. 678, 686 (N.D. Ill. 1993) (police department). Although many of these cases involved entities that directly contacted consumers to collect a debt, the main *purpose* of their businesses was not debt collection.

Unlike the businesses in such cases, businesses like DNF lack a *raison d'etre* other than the collection of the defaulted debts they buy. "If the collection of debts is precisely what sustains the business, unaided by any other significant sources of revenue, then the 'collection of ... debts' must be the business's 'primary purpose.'" *McMahon v. LVNV Funding, LLC*, 301 F. Supp. 3d 866, 884 (N.D. Ill. 2018) (ellipsis in original). "Simply because [DNF] 'outsources' its debt collection to [MNS] or other subcontractors does not mean that [DNF] sheds its essential character as a debt collection business or is somehow converted into something other than a debt collector." *Norman v. Allied Interstate, LLC*, 310 F. Supp. 3d 509, 515 (E.D. Pa. 2018); *see also Barbato*, 2019 WL 847920, at *7 ("The existence of a middleman does not

change the essential nature—the 'principal purpose'—of [defendant]'s business.").

Not surprisingly, therefore, a number of well-reasoned district court decisions have explicitly rejected the holding of the district court in this case. *See, e.g.*, *Hughes v. United Debt Holding*, No. 18 C 2235, 2018 WL 3970143, at *2 (N.D. Ill. Aug. 20, 2018); *Hordge v. First Nat'l Collection Bureau, Inc.*, No. 4:15-CV-1695, 2018 WL 3741979, at *5 (S.D. Tex. Aug. 7, 2018). And, in addition to the Third Circuit in *Barbato*, other courts have reached conclusions contrary to the decision below. *See, e.g.*, *Reygadas v. DNF Assocs. LLC,* No. 2:18-cv-02184, Dkt. 22 (W.D. Ark. Dec. 28, 2018) (Text Order) (denying DNF's motion to dismiss); *McMahon,* 301 F. Supp. 3d at 883 (noting "skepticism" regarding district court decision in this case and reaching contrary conclusion); *see also Meola v. Asset Recovery Sols., LLC*, No. 17-cv-01017, 2018 WL 5020171, at *6 (E.D.N.Y. Aug. 15, 2018); *Mitchell v. LVNV Funding, LLC,* No. 2:12-CV-523-TLS, 2017 WL 6406594, at *5-7 (N.D. Ind. Dec. 15, 2017).

B. A direct interaction requirement confuses the FDCPA's alternative "principal purpose" and "regularly collects" definitions.

In addition to violating the plain language of the statute, adding a "direct interaction" requirement to the principal purpose definition would render that definition largely superfluous. By concluding that an entity can meet the principal purpose definition only by directly interacting with consumer debtors, the district court incorrectly combined the alternative definitions set out in the statute. The principal purpose definition would be largely redundant if it only captured entities that regularly actively and directly collect debt themselves.

The statutory language makes "clear that Congress intended the 'principal purpose' prong to differ from the 'regularly' prong of its definition of 'debt collector.'" *Schroyer v. Frankel*, 197 F.3d 1170, 1174 (6th Cir. 1999) (citing *Garrett v. Derbes*, 110 F.3d 317, 281 (5th Cir. 1997) (per curiam)); *see also James v. Wadas*, 724 F.3d 1312, 1317 (10th Cir. 2013). And as this Court noted in *Schlegel v. Wells Fargo Bank, NA*, an interpretation that would render either of the two definitions superfluous is to be avoided. 720 F.3d 1204, 1209 (9th Cir. 2013) (citing *Hearn v. W. Conf. of Teamsters Pension Tr. Fund*, 68 F.3d 301, 304 (9th Cir. 1995)). The most logical reading—and one that avoids

superfluity—is that Congress intended the "principal purpose" prong to cover entities that do *not* regularly collect debts directly, but whose principal goal is debt collection regardless of how they carry out that goal. This reading is supported by both the meaning of the word "purpose" and the fact that:

> In contrast to the "regularly collects" definition, where Congress explicitly used the verb "to collect" in describing the actions of those it intended the definition to cover, in the "principal purpose" definition, Congress used the noun "collection" and did not specify who must do the collecting or to whom the debt must be owed. Thus, by its terms, the "principal purpose" definition sweeps more broadly than the "regularly collects" definition . . . .

Barbato, 2019 WL 847920, at *6 (internal cites omitted). "[T]he fact that the 'regularly collects' definition employs a verb and the 'principal purpose' definition employs a noun is critical." *Id.* at *7.

In *Schlegel*, the Court was faced with the flip side of the district court's argument here. There, the plaintiff alleged that the "principal purpose" definition focused on whether any *activity* of the entity had a purpose of debt collection, arguing that Wells Fargo's interactions with it to collect a debt involved such activities. 720 F.3d at 1209. The Court rightly rejected that argument, noting that the principal purpose inquiry focuses on the

business's purpose as a whole rather than on its activities. *Id*; *see also Garrett*, 110 F.3d at 318 ("a person may regularly render debt collection services, even if these services are not a principal purpose of his business").

Just as directly interacting with a consumer debtor to collect a debt does not prove that a business's "primary purpose" is debt collection, as *Schlegel* held, *not* having such a direct interaction does not establish that a business does not have such a primary purpose. If the only way an entity could have a principal purpose of debt collection would be by "regularly collect[ing]" debts, the definitions would almost entirely overlap. As *Schlegel* recognizes, the two definitions of debt collector ask different questions: what is the business's purpose versus what are the business's regular activities. Accordingly, the district court erred in conflating the "direct interaction" and "principal purpose" inquiries. As one district court recently explained, "[e]ven if the second prong may require interaction with debtors, the plain language of the first prong does not." *McMahon*, 301 F. Supp. 3d at 884.

For these reasons, the Supreme Court's decision in *Henson* is of no relevance to the statutory question at issue here, as the district court correctly noted. ER 28 n.1. *Henson* considered the question whether an entity that is collecting on debts it owns that were already in default when it acquired

them is collecting on debt "owed or due another" under the "regularly collects" prong. Justice Gorsuch's opinion for the Court explicitly stated that it was *not* addressing the principal purpose prong, 137 S. Ct. at 1721, and the language it construed is absent from the principal purpose prong. Indeed, in adopting the same view ultimately accepted in *Henson*, the Eleventh Circuit explicitly held that "entities that regularly acquire and pursue collection of defaulted debts" could still be debt collectors under the principal purpose prong, noting that "'principal purpose' [is] not modified by 'owed or due another.'" *Davidson v. Capital One Bank (USA), N.A.*, 797 F.3d 1309, 1316 n.8 (11th Cir. 2015); *see also Barbato*, 2019 WL 847920, at *5 (explaining that *Henson* did not alter case law on "principal purpose" definition); *Henson v. Santander Consumer USA, Inc.*, 817 F.3d 131, 135 (4th Cir. 2016), *aff'd*, 137 S. Ct. 1718 (2017) (noting that its holding does not apply "when the 'principal purpose' of the person's business is to collect debt").

C. Legislative intent does not support the addition of a direct interaction requirement to the "principal purpose" prong.

The district court's imposition of a "direct interaction" requirement was based on its view that the FDCPA's legislative history does not indicate that DNF's business model "was considered by Congress when it was

drafting the FDCPA." ER 32. Even if the legislative history supported such a conclusion (it does not), adding a direct interaction requirement would remain inconsistent with basic canons of statutory construction that require courts to begin with the text and structure of the statute.

The Supreme Court's decision in *Henson* rejects the view that courts may rewrite the FDCPA based on impressions of what Congress did or did not have in mind, untethered to the statutory text. 137 S. Ct. at 1725. Here, however, the district court did just that by adding a "direct interaction" requirement based only on its conclusion that there was "little to suggest" Congress contemplated the debt collection industry that has evolved. ER 32. But "[s]tatutory prohibitions often go beyond the principal evil to cover reasonably comparable evils, and it is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed." *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 79 (1998); *see also Lewis v. City of Chicago, Ill.*, 560 U.S. 205, 215 (2010) ("It is not for us to rewrite the statute so that it covers only what we think is necessary to achieve what we think Congress really intended.").

Thus, even if Congress did not consider debt buyers that contract with others to collect on their behalf, those entities are still "debt collectors" under

the statute if they fall within the statutory definition. As the Fourth Circuit explained in analyzing whether an entity has a principal purpose of collecting debts, "the statutory language of the FDCPA is sufficiently clear, and the legislative history sufficiently sparse, that the legislative history has relatively little persuasive weight in comparison to the plain meaning of the statute." *Scott*, 964 F.2d at 317; *see also Barbato*, 2019 WL 847920, at *8 (declining to consider the FDCPA's legislative history because the statutory definition is clear).

The district court's reliance on silence in legislative history as evidence that entities like DNF are excluded from the statute is also contrary to this Court's repeated statement that the FDCPA is to be interpreted liberally to protect consumer debtors. *See, e.g.*, *Hernandez v. Williams, Zinman & Parham PC*, 829 F.3d 1068, 1078-79 (9th Cir. 2016); *Tourgeman v. Collins Fin. Servs., Inc.*, 755 F.3d 1109, 118 (9th Cir. 2014); *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015, 1019 (9th Cir. 2012). Construing the statute in a way that provides less protection to consumers because of uncertainty about whether Congress had a specific business model in mind is not such an interpretation.

In any event, the district court's assertion that "what Congress was concerned with, and intended to regulate, was the *interaction* between a debt

collector and a consumer," ER 31 (emphasis in original), conflates the questions of *who* is a debt collector under the statute, and *for what* can a debt collector be held liable. *Cf. Plummer v. Atl. Credit & Fin., Inc.*, 66 F. Supp. 3d 484, 489 (S.D.N.Y. 2014) (rejecting argument that "conflate[s] the question of whether an entity is a debt collector under the FDCPA with the question of whether one debt collector can be found vicariously liable for the conduct of another acting on its behalf"). There is no question that Ms. McAdory's claims are based on the interaction between a debt collector and a consumer; that is not the question before the Court. On the question of who can be held accountable for unlawful such interactions, the limited legislative history suggests that applying the FDCPA to an entity like DNF is consistent with Congress's intent.

The 1977 Senate Report accompanying the FDCPA explains that "independent debt collectors" were the target of the statute because, unlike the originators of loans, they "are likely to have no future contact with the consumer and often are unconcerned with the consumer's opinion of them." S. Rep. No. 95-382, at 2 (1977), *reprinted in* 1977 U.S.C.C.A.N. 1695, 1696. These characteristics likewise distinguish an entity like DNF from originators of loans, like Kay Jewelers, "who generally are restrained by the

desire to protect their good will when collecting past due accounts." *Id.* "Independent debt collectors," on the other hand, profit only when they collect on a debt, and so "too often" have "the incentive to collect by any means." *Id*. This concern applies fully to entities like DNF—whose sole source of income is the debts they collect—and makes them "far more like a repo man than a creditor and gives [them] every incentive to hire the most effective repo man to boot." *Barbato*, 2019 WL 847920, at *7.

The district court's view that Congress did not intend for the statute, as a whole, to apply to those who do not interact with debtors directly is also belied by Congress's *explicit* contemplation of some such liability—as the alternative statutory definition of debt collector includes those who regularly "indirectly" collect debts owed to another. 15 U.S.C. § 1692a(6). If for example, MNS had subcontracted out activity to collect on Ms. McAdory's debt rather than doing it itself, it would still be a "debt collector" under the regularly collects prong (as well as the principal purpose prong), even though it did not directly interact with her. *See, e.g.*, *Polanco v. NCO Portfolio Mgmt.*, 132 F. Supp. 3d 567, 580 (S.D.N.Y. 2015) (discussing indirect liability under regularly collects prong). The assertion that Congress could

not have intended to cover those who do not directly collect debts is untenable given that Congress explicitly did just that.

The district court's conclusion that Congress did not intend to regulate any entities other than those who directly interact with consumers also runs up against the fact that this Court, like other courts, has recognized vicarious liability under the FDCPA for decades—applying the FDCPA in situations where the defendant entity never interacted with the consumer. *See, e.g.*, *Clark v. Capital Credit & Collection Servs., Inc.*, 460 F.3d 1162, 1172 (9th Cir. 2006); *Fox v. Citicorp Credit Servs., Inc.*, 15 F.3d 1507, 1516 (9th Cir. 1994).

In finding vicarious liability appropriate under the FDCPA, courts have repeatedly rejected the argument relied upon by the district court: that because Congress intended to regulate interactions with consumers, only those who engage in such interactions directly can be liable under the FDCPA. For example, in holding that a company that operates similarly to DNF could be held liable for actions of a contractor similar to MNS, the Seventh Circuit explained:

> A debt collector should not be able to avoid liability for unlawful debt collection practices simply by contracting with another company to do what the law does not allow it to do itself. Like the Third Circuit, we think it is fair and consistent with the Act to require a debt collector who is independently obliged to

> comply with the Act to monitor the actions of those it enlists to collect debts on its behalf.

Janetos v. Fulton Friedman & Gullace, LLP, 825 F.3d 317, 325 (7th Cir. 2016); *see also Pollice*, 225 F.3d at 405 (it is a "fair result" that "an entity that is itself a 'debt collector'… should bear the burden of monitoring the activities of those it enlists to collect debts on its behalf"); *Plummer*, 66 F. Supp. 3d at 493 ("A debt collector may not avoid FDCPA liability simply by hiring another to engage in unlawful debt collection activities on its behalf.").

To be clear, Ms. McAdory does not suggest that an entity that uses an agent to interact directly with consumer debtors to collect debts on its behalf is *always* a debt collector under the principal purpose definition. Rather, the recognition by this Court and others of the availability of vicarious liability under the statute shows that the statute does not preclude liability simply because the entity did not directly interact with the consumer debtor. By adding a direct interaction requirement to the "principal purpose" definition of debt collector, the district court erroneously wrote such a limitation into the statute.

II. Ms. McAdory Has Alleged That Debt Collection Is DNF's Principal Purpose.

Absent the district court's erroneous direct interaction requirement, a plaintiff meets her burden of pleading that a defendant is a "debt collector" under the "principal purpose" definition by alleging facts that support a plausible inference that an entity's principal business purpose is collection of debts. Ms. McAdory has done so here.

A. The allegations about DNF's business support an inference that debt collection is its principal purpose.

Ms. McAdory has alleged that DNF "derives all, or the vast majority of, its income from the collection of defaulted consumer debts." ER 43 (SAC ¶ 7); *see also* ER 70 (FAC ¶ 6). She has alleged that DNF has no "significant business activities" other than operation of the debt collection system described in her complaint, through which DNF orchestrates collection of debts nationwide, and that it has a singular goal of collection of those debts. ER 43-44 (SAC ¶ 7); *see also* ER 70 (FAC ¶ 6).[4] Specifically, Ms. McAdory has

[4] If either complaint sufficiently alleged "principal purpose," the judgment below must be reversed, as made clear by the district court's opinion denying Ms. McAdory's motion for reconsideration. *See, e.g.*, *AE ex rel. Hernandez v. County of Tulare*, 666 F.3d 631, 636 (9th Cir. 2012) ("A district court abuses its discretion by denying leave to amend unless amendment would be futile.").

alleged that DNF purchases defaulted debts for pennies on the dollar "so that it can derive large profits from the debts it purchases," by deploying third parties it retains to collect them. ER 42-43 (SAC ¶ 6); *see also* ER 70 (FAC ¶ 6). DNF provides these third-party contractors with information to use in contacting debtors and collecting from them, and exercises control over its contractors by "setting parameters of the terms and amounts of the payments made by the debtors." ER 42-43 (SAC ¶ 6); ER 70 (FAC ¶6). The amounts collected on the debts are returned to DNF. *Id.* If the first contractor DNF hires is unsuccessful, it hires another. ER 43 (SAC ¶ 6); ER 70 (FAC ¶ 6). If additional efforts are unsuccessful, DNF files collection lawsuits against debtors, including at least 47 such lawsuits in Oregon from July through November 2017 alone. ER 43, 53-54 (SAC ¶ 7, Ex. 1). Ms. McAdory has also alleged that DNF is licensed as a debt collection agency in six states. ER 44, 56-59 (SAC ¶ 8, Ex. 2).

The district court's rejection of these allegations as insufficient was based on its legally erroneous conclusion that direct interaction with debtors is essential to meet the principal purpose definition of a debt collector, and on the absence of allegations by Ms. McAdory of such "interaction between DNF and a debtor." ER 23. The district court's legally erroneous premise

requires reversal of its orders so that Ms. McAdory may attempt to prove her well-pleaded allegations that the primary purpose of DNF's debt-buying and collecting business is what it appears to be: the collection of debts.

An entity's interactions with consumer debtors may, of course, be evidence of a purpose to collect debts. But such interaction is not the only such evidence, and its presence or absence is not dispositive. Other factual allegations about the nature of the business are equally probative of a business's purpose. As one court explained, "If, for example, all or an overwhelming majority of a business's revenue is derived from acquiring distressed debt and collecting it, then surely that business's 'principal purpose' is 'the collection of any debts.'" *McMahon*, 301 F. Supp. 3d at 884. In addition to the role debt collection plays in a business's revenue stream, courts have looked at the relationship between the entity and the contractors it hires to interact directly with consumers, whether the entity commences lawsuits against consumers to collect debt, and whether the entity holds itself out as a debt collector either in state regulatory filings or in other materials—the exact allegations Ms. McAdory has made here.[5]

[5] Even if some sort of "direct interaction" were required, the act of filing lawsuits against consumer debtors, as Ms. McAdory alleged in the

For example, in *Bradley v. Selip & Stylianou, LLP*, No. 17-CV-6224-FPG, 2018 WL 4958964, at *6 (W.D.N.Y. Oct. 15, 2018), the court concluded that allegations that more than half of a business's revenue came from debt collection, that the business oversaw and controlled its contractor's collection activities, and that the business filed a lawsuit to collect on the debt made the plaintiff's allegation of a principal purpose of debt collection plausible. And in *Hordge*, 2018 WL 3741979, at *5, the court found that evidence showing that "all of an entity's revenue derives from debt collection and that that entity is the plaintiff in numerous debt collection lawsuits" was sufficient to create a fact dispute as to whether the entity's principal purpose was debt collection. *See also Scott*, 964 F.2d at 316; *Norman*, 310 F. Supp. 3d at 515; *Torres v. LVNV Funding, LLC*, No. 16 C 6665, 2018 WL 1508535, at *5 (N.D. Ill. Mar. 27, 2018). Ms. McAdory's similar allegations give rise to a reasonable inference that DNF's principal purpose is the collection of debt.

SAC, would meet that requirement. *See, e.g.*, *Meola*, 2018 WL 5020171, at *6; *Hordge*, 2018 WL 3741979, at *5; *McMahon*, 301 F. Supp. 3d at 884.

B. There is no basis to presume DNF has a principal purpose other than the collection of debts.

The district court premised its decision on its erroneous legal conclusion that direct interaction is essential to the FDCPA's "principal purpose" definition; indeed, the court expressly did not address DNF's alternative argument directed to the adequacy of Ms. McAdory's factual allegations. Dkt. 27 at 9; ER 14-15. The court, however, also stated in passing that "the fact that a business *benefits* from the collection of debt by an entirely separate third party does not necessarily make the principal purpose of that business the collection of those debts." ER 31; *see also* ER 17. That observation is true as far as it goes: Ms. McAdory does not dispute that debt collection must be the "most important or most influential purpose that [DNF] has." ER 17.

Nonetheless, here, the complaints cannot fairly be construed as simply alleging that DNF incidentally "benefits" from debt collection. To the contrary, Ms. McAdory has explicitly alleged that debt collection is DNF's most important purpose: Ms. McAdory has alleged that DNF buys debts so that they may be collected on at DNF's direction by agents DNF hires, and that DNF has no other purpose. On the facts alleged, DNF is not a bank that

also accepts deposits and/or lends money. It is not a retailer that incidentally provides credit. It does not service loans that are not in default. It does not buy loans in order to repackage and sell them. On the facts alleged, DNF buys defaulted debts with the sole purpose of collecting on them. Like the defendant in *Barbato*, it thus "falls squarely" within the principal purpose definition. 2019 WL 847920, at *7.

Neither the complaint, the district court's opinions, nor DNF's briefing indicated any principal purpose other than the collection of debt. At oral argument, the district court suggested that DNF had a "purpose" of "acquiring debt." ER 66 (13:15-21). But "acquiring debt" is not the goal of DNF's "business." Acquiring debt is not an end in itself: It yields no profit and serves no other conceivable purpose, unless the debts are turned into money. DNF does not acquire debt for the purpose of hanging it on a wall. DNF acquires debt as the first step in achieving the goal of collecting on it. To be sure, one can acquire debt for other purposes—for example, to forgive it or resell it. *See Barbato*, 2019 WL 847920, at *7. But those purposes are not the ones Ms. McAdory has alleged. *See Norman*, 310 F. Supp. 3d at 515 (denying motion to dismiss "absent evidence that [entity] engages in any

lending, or has a principal purpose other than buying old debt in order to collect on it").[6]

Notably, DNF's motion to dismiss did not contest Ms. McAdory's allegations, nor did it assert any business purpose other than collecting on the debts it purchases. Rightly so: DNF's motion under Rule 12(b)(6) must be decided on the facts properly pleaded by Ms. McAdory. If Ms. McAdory's case were to proceed, and DNF were to deny her well-pleaded allegations that its principal purpose is to collect the debts it purchases, Ms. McAdory would be entitled to obtain and present evidence about the extent to which DNF's business is driven by a goal of debt collection as opposed to any other hypothetical purpose that DNF may claim to pursue. The district court could then determine at the summary judgment stage whether there is a genuine

[6] Should this Court reject the district court's erroneous direct interaction standard but find some lack of specificity in Ms. McAdory's allegations of DNF's principal purpose in the FAC and SAC, the Court should grant Ms. McAdory leave to amend to add additional allegations that evidence DNF's purpose, in light of this Court's clarification of the statutory definition. *See, e.g.*, *Ovation Toys Co. v. Only Hearts Club*, 675 F. App'x 721, 724 (9th Cir. 2017) (vacating dismissal and "remand[ing] with instructions that [plaintiff] be given leave to amend its complaint consistent with this decision"); *Kotrous v. Goss-Jewett Co. of N. Cal.*, 523 F.3d 924, 934 (9th Cir. 2008) (leave to amend appropriate due to intervening change in "state of law").

dispute of fact as to DNF's principal purpose, and, if so, resolve that issue at trial. Based on Ms. McAdory's allegations, however, the district court erred in dismissing her FDCPA claims against DNF.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be reversed.

Respectfully submitted,

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March 11, 2019

STATEMENT OF RELATED CASES

Appellant is not aware of any related cases currently pending in this Court within the meaning of Ninth Circuit Rule 29-2.6.

March 11, 2019 /s/ Adam R. Pulver
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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and the Rules of this Court, it contains 8,863 words.

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14-point Book Antiqua.

March 11, 2019 /s/ Adam R. Pulver
Adam R. Pulver

ADDENDUM OF PROVISIONS INVOLVED

15 U.S.C. § 1692a

As used in this subchapter—

(6) The term "debt collector" means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Notwithstanding the exclusion provided by clause (F) of the last sentence of this paragraph, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. For the purpose of section 1692f(6) of this title, such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests. The term does not include--

(A) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;

(B) any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of such person is not the collection of debts;

(C) any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties;

(D) any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;

(E) any nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors; and

(F) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; (ii) concerns a debt which was originated by such

person; (iii) concerns a debt which was not in default at the time it was obtained by such person; or (iv) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.

CERTIFICATE OF SERVICE

I hereby certify that on March 11, 2019, the foregoing brief has been served through this Court's electronic filing system upon counsel for the Defendant-Appellee:

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