UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

DOUGLAS A. DENNING, on behalf of himself and others similarly situated,

Plaintiff,

v. Case No.: 8:21-cv-2822-MSS-MRM

MANKIN LAW GROUP, P.A.,

Defendant.
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REPORT AND RECOMMENDATION

Pending before the Court is Defendant's Motion to Dismiss Complaint filed on January 7, 2022. (Doc. 11). Plaintiff filed a response in opposition on January 28, 2022. (Doc. 15). On April 26, 2022, Defendant filed Defendant's Notice of Supplemental Authority in Support of Motion to Dismiss, (Doc. 21), and Plaintiff moved to strike the filing the next day, (Doc. 22).

On April 28, 2022, United States Magistrate Judge Thomas G. Wilson held oral argument on Defendant's motion to dismiss (Doc. 11) and Plaintiff's motion to strike (Doc. 22). (Docs. 24, 25).[1] Judge Wilson ultimately granted the motion to strike, struck the notice of supplemental authority, and permitted the parties to file

[1] In reaching the findings and recommendations contained herein, the Undersigned has carefully reviewed the electronic recording from the April 28, 2022 oral argument, (Doc. 25), as well as the written transcript, (Doc. 31).

additional briefing. (Doc. 26).[2] Defendant filed its reply on May 19, 2022, (Doc. 27), and Plaintiff filed his sur-reply on June 6, 2022, (Doc. 28).

On July 1, 2022, the case was re-assigned to the Undersigned. (Doc. 29). Because the motion was previously referred to the assigned magistrate judge, the motion was re-referred to the Undersigned. (*See id.*). For the reasons set forth below, the Undersigned recommends that the Motion to Dismiss Complaint (Doc. 11) be **GRANTED in part** and **DENIED in part**.

I. Background

Plaintiff is a member of the Countryside North Community Association, Inc. ("the Association"). (Doc. 11 at 2; *see also* Doc. 1 at ¶ 11). Defendant, on the other hand, is a law firm that specializes in community association representation and was acting as a debt collector on behalf of the Association. (*See* Doc. 1 at ¶¶ 13-16).

In his Complaint, Plaintiff alleges that on May 7, 2021, Defendant sent him a letter on behalf of the Association, seeking to collect a total of $634.36 in past-due assessments, interest, collection costs, and attorney's fees. (*Id.* at ¶¶ 26, 28, 31). Plaintiff alleges that he paid the outstanding debt in response to Defendant's letter. (*Id.* at ¶¶ 34, 77, 95, 105). Plaintiff asserts, however, that the subject assessments were void because they exceeded the amount the Association's governing materials, *i.e.*, the "Master Declaration of Covenants, Conditions and Restrictions for

[2] Because the notice of supplemental authority (Doc. 21) was stricken from the record, (Doc. 26), the Undersigned did not consider it in reaching the findings and recommendations contained herein

Countryside North" ("the Declaration"), permitted the Association to levy during the relevant years. (*See id.* at ¶¶ 42-50).

Based on these factual allegations, Plaintiff brought a class action against Defendant for two claims under the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692, *et seq.*, on behalf of the FDCPA class,[3] and one claim under Florida's Consumer Collection Practices Act, ("FCCPA"), Fla. Stat. § 559.55 *et seq.*, on behalf of the State Law Class.[4] (*Id.* at ¶ 51). More particularly, Plaintiff asserts (1) a violation of 15 U.S.C. § 1692e(2)(A) on behalf of the FDCPA Class, (Doc. 1 at 13-16), (2) a violation of 15 U.S.C. § 1692f(1) on behalf of the FDCPA Class, (*id.* at 16-19), and (3) a violation of Fla. Stat. § 559.72(9) on behalf of the State Law Class, (*id.* at 19-22).

In response, Defendant moves to dismiss the Complaint under Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. (*See generally* Doc. 11). More

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[3] The FDCPA Class is defined, with exceptions, as "[a]ll persons (a) with a Florida address, (b) to whom Mankin Law Group, P.A. mailed a debt collection communication not known to be returned as undeliverable, (c) in connection with the collection of a consumer debt, (d) in the one year preceding the date of this complaint, (e) that attempted to collect (i) assessments owed to Countryside North Community Association, Inc. in the amount of $125 for 2020 and/or 2021, and/or (ii) interest on such assessments." (Doc. 1 at ¶¶ 51-52).

[4] The State Law Class is defined, with exceptions, as "[a]ll persons (a) with a Florida address, (b) to whom Mankin Law Group, P.A. mailed a debt collection communication not known to be returned as undeliverable, (c) in connection with the collection of a consumer debt, (d) in the two years preceding the date of this complaint, (e) that attempted to collect (i) assessments owed to Countryside North Community Association, Inc. in the amount of $125 for 2019, 2020 and/or 2021, and/or (ii) interest on such assessments." (Doc. 1 at ¶¶ 51-52).

specifically, Defendant asserts that the Court lacks subject matter jurisdiction over this action because Plaintiff lacks standing to bring the claims. (*See id.* at 5-7). Alternatively, Defendant contends that even if Plaintiff has standing, the Court should decline to exercise jurisdiction over this matter for "prudential considerations" given that the Complaint "implicates a third party's (*i.e.*, the Association's) rights, alleges a general grievance, and asserts an injury outside the interests of the FDCPA/FCCPA." (*Id.* at 7 (citation omitted)). Finally, Defendant argues that Plaintiff failed to state a claim for (1) a violation of 15 U.S.C. § 1692e(2)(A), (*see id.* at 8-12), (2) a violation of 15 U.S.C. § 1692f(1), (*id.* at 13-14), or (3) a violation of Fla. Stat. § 559.72(9), (*id.* at 14-18). The Undersigned considers each argument in turn below.

II. Whether Dismissal Under Rule 12(b)(1) Is Warranted.

A. Parties' Arguments

First, Defendant argues that Plaintiff failed to sufficiently plead that he has standing because he did not allege that he suffered from an actual injury. (Doc. 11 at 5). More specifically, Defendant maintains that Plaintiff "has not alleged that he did not receive the benefits of the increased assessment amounts or alleged that the benefits he received were less than what he paid." (*Id.* at 5-6 (citation omitted)). Second, Defendant contends that Plaintiff has not pleaded and cannot show that any injury is "fairly traceable to the challenged conduct of [Defendant]." (*Id.* at 6 (alteration in original) (quoting *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016))). In

that regard, Defendant maintains that "Plaintiff has not alleged that he had no intention of paying the assessments or that he would have continued to refuse to pay" the assessments but for Defendant's letter. (*Id.*). Defendant further argues that Plaintiff's "conclusory statements" that he made the payment in response to the letter sent by Defendant cannot establish standing. (*Id.* at 6-7 (citation omitted)).

Moreover, Defendant asserts that "[e]ven if Plaintiff has alleged sufficient facts that would establish constitutional standing, the Court should decline exercising jurisdiction over this matter for prudential considerations." (*Id.* at 7 (citation omitted)). Essentially, Defendant asserts that because Plaintiff's grievances arise out of the rights and obligations between Plaintiff – and those similarly situated – and the Association, a declaratory relief action is better suited to resolve the issues. (*See id.* at 7-8) (citation omitted)).

In response, Plaintiff asserts that his "economic injury is directly traceable to Defendant's improper collection efforts." (Doc. 15 at 8 (original typeface omitted)). In support, Plaintiff first argues that he sufficiently pleaded that he suffered a tangible injury in the form of financial loss. (*See id.* at 8-10). Second, Plaintiff contends that he sufficiently pleaded that Defendant caused the financial harm because (1) but for Defendant's collection letter, Plaintiff would not have paid the debt and (2) Plaintiff paid the debt directly to Defendant. (*Id.* at 10-11 (citations omitted)). Based on this, Plaintiff asserts that he has adequately established Article III standing, which, Plaintiff maintains, does not require proximate causation. (*Id.* (citations omitted)).

B. Legal Standards

A plaintiff bears the burden to establish the district court's subject matter jurisdiction under Rule 12(b)(1). *See Thompson v. McHugh*, 388 F. App'x 870, 872 (11th Cir. 2010). A court lacks subject matter jurisdiction if the plaintiff does not have constitutional standing. *See Hollywood Mobile Estates Ltd. v. Seminole Tribe of Fl*a., 641 F.3d 1259, 1264-65 (11th Cir. 2011); *see also* U.S. Const. art. III, § 2. Thus, a plaintiff bears the burden of establishing the "irreducible constitutional minimum" of standing. *See Spokeo, Inc.*, 578 U.S. at 338 (quoting *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560-61 (1992)).

To establish standing, a plaintiff must show "(1) [that he] suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Id.* (citations omitted)). "When ruling on standing at the motion to dismiss stage, a court 'must accept as true all material allegations of the complaint and must construe the complaint in favor of the complaining party.'" *Colceriu v. Barbary*, 543 F. Supp. 3d 1277, 1280 (M.D. Fla. 2021) (quoting *Warth v. Seldin*, 422 U.S. 490, 501 (1975)).

Defendant challenges Plaintiff's standing on the first two elements: (1) injury in fact and (2) traceability. (*See* Doc. 11 at 5-7). The Undersigned considers each in turn below, before turning to Defendant's alternative argument that even if Plaintiff has sufficiently alleged standing, the Court should decline exercising jurisdiction.

C. Analysis

1. Injury in Fact

"To establish injury in fact, a plaintiff must show that he or she suffered 'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Spokeo, Inc.* 578 U.S. at 338 (quoting *Lujan,* 504 U.S. at 560). To be "concrete," an injury must "be *de facto*; that is, it must actually exist." *Id.* at 340 (quotation omitted). To be "particularized," the injury "must affect the plaintiff in a personal and individual way." *Id.* at 339 (citation omitted). When establishing standing, "[t]he plaintiff must clearly and specifically set forth facts showing an injury-in-fact; conclusory allegations will not suffice." *Colceriu*, 543 F. Supp. 3d at 1280 (citing *Muransky v. Godiva Chocolatier, Inc.*, 979 F.3d 917, 924-25 (11th Cir. 2020)).

Here, Plaintiff alleges an injury in fact in the form of an economic injury. (Doc. 1 at ¶¶ 82, 100, 116). More specifically, Plaintiff asserts that he "suffered actual damages in the form of his making a payment of $634.36 in June 2021, which included improperly levied annual assessments and associated interest charges to which neither Defendant nor the Association was entitled." (*Id.*). The Undersigned finds these allegations sufficient to allege the existence of an injury in fact.

In reaching this finding, the Undersigned first considers concreteness. Implicit in Plaintiff's allegations that he paid a debt that he did not owe – comprised of an improperly levied assessments and the associated charges – is an allegation that

Plaintiff did not have and could not use money that belonged to him. (*See id.*). As the Eleventh Circuit has recognized "[t]he inability to have and use money to which a party is entitled is a concrete injury." *MSPA Claims 1, LLC v. Tenet Fla., Inc.*, 918 F.3d 1312, 1318 (11th Cir. 2019) (citing *Craig v. Boren*, 429 U.S. 190, 194-95 (1976) and finding a seven-month delay in reimbursing the plaintiff to be a concrete economic injury). Thus, the Undersigned finds Plaintiff's alleged harm to be concrete.

Second, the Undersigned finds the alleged injury to be particularized in that Plaintiff lost the benefit of having and using his own money. Thus, Plaintiff was injured "in a personal and individual way." *See Trichell v. Midland Credit Mgmt., Inc.*, 964 F.3d 990, 1001 (11th Cir. 2020) (quotation omitted). Put simply, because Plaintiff himself was "among the injured," *see id.* (quotation omitted), the Undersigned finds Plaintiff's injury to be particularized.

Third, the Undersigned finds that the alleged injury is actual, rather than conjectural or hypothetical. As discussed above, Plaintiff lost the benefit of his funds as a result of paying a debt he did not owe. *See MSPA Claims 1, LLC*, 918 F.3d at 1318. Thus, Plaintiff's alleged injury is not hypothetical or conjecture.

To the extent Defendant relies on *Thorne v. Peb Boys Manny Moe & Jack, Inc.*, 980 F.3d 879 (3d Cir. 2020) to argue that there is no injury in fact, the Undersigned finds the case to be inapposite. In *Thorne*, a consumer plaintiff brought a class action against the defendant, a tire dealer unaffiliated with a tire manufacturer, for a violation of 49 C.F.R. § 574.8, which requires a tire dealer unaffiliated with a tire

manufacturer to help register newly purchased tires with the manufacturer for warrantee purposes. *See Thorne*, 980 F.3d at 883-85. On appeal, the Third Circuit considered whether the plaintiff had sufficiently pleaded an injury in fact. *Id.* at 885. In so doing, the Third Circuit assessed whether the plaintiff had received the benefit of the bargain. *Id.* at 886-88. The Third Circuit ultimately determined that the plaintiff had not sufficiently pleaded an injury in fact because the tires were functional, there were no allegations that the tires had been or were being recalled, and any allegation that the defendant included the regulation obligation into the price of the tires was undermined by other allegations within the complaint. *Id.*

Here, unlike in *Thorne*, the question is not whether Plaintiff received the benefit for his bargain. Rather, Plaintiff's factual allegations essentially amount to a situation in which he paid in excess of the bargain and that no bargain existed as to the overpayment. In that regard, Plaintiff alleges that he agreed to be a member of the Association, which is governed by the Declaration. (*See* Doc. 1 at ¶¶ 11, 35, 37). The Declaration requires Plaintiff to pay assessments, which may be increased consistent with the Consumer Price Index for All Urban Consumers or by a vote at a meeting duly called to increase the assessments. (*Id.* at ¶¶ 37, 43-44). Plaintiff alleges that the Association levied assessments without complying with the Declaration. (*See id.* at ¶¶ 47-50, 70-76, 88-93, 107-112). Thus, Plaintiff alleges that he did not owe the subject debt comprised of the levied assessments and fees because the assessments were beyond that which the Association could impose. (*See id.* at ¶¶ 70, 88, 107). Plaintiff ultimately asserts that Defendant, acting as a debt collector,

collected the subject debt despite that Plaintiff did not owe it. (*See id.* at ¶¶ 69, 87, 106).

Under these facts, accepted as true, and construing the Complaint in Plaintiff's favor, the Undersigned finds that Plaintiff never bargained for any benefit he may have received as a result of the improper assessments. Instead, Plaintiff agreed to pay a certain amount in assessments in exchange for the benefits associated with those properly levied assessments. (*See id.* at ¶¶ 11, 35, 37). Put differently, Plaintiff essentially asserts that the amount paid exceeded the bargain. (*See id.* at ¶¶ 47-50, 70-76, 88-93, 107-112). Thus, Plaintiff was injured by paying a debt he did not owe. (*See id.* at ¶¶ 82, 100, 116). The mere fact that Plaintiff may have received a proportional benefit from the amount he overpaid does not negate or void the existence of an injury for standing purposes. *See Denney v. Deutsche Bank AG*, 443 F.3d 253, 265 (2d Cir. 2006) ("[T]he fact that an injury may be outweighed by other benefits, while often sufficient to defeat a claim for damages, does not negate standing." (citation omitted)). Thus, the Undersigned finds no basis to prevent Plaintiff from arguing that he was harmed by paying the excess assessments and resulting fees.

To the extent Defendant attempted to argue at the April 28, 2022 hearing that Plaintiff accepted the increase by not challenging the assessments earlier and by enjoying the benefits of the increased assessments, (*see*, *e.g.*, Doc. 31 at 18; *see also* Doc. 27 at 5 n.1), the Undersigned finds that the argument fails on a motion to dismiss. Rather, on the issue of standing in a motion to dismiss, the Court "must

accept as true all material allegations of the complaint and must construe the complaint in favor of the complaining party." *Colceriu*, 543 F. Supp. 3d at 1280 (quoting *Warth*, 422 U.S. at 501). Accepting Plaintiff's material allegations as true and construing the Complaint in Plaintiff's favor, the Undersigned finds that Plaintiff has sufficiently alleged an injury in fact. The Court will be in a better position to determine whether Plaintiff acquiesced to or ratified the amount of the assessments by failing to object before paying the debt at summary judgment, at which point both the parties and the Court will have the benefit of completed discovery. *See Lawrence v. FPA Villa Del Lago, LLC*, No. 8:20-cv-1517-VMC-JSS, 2021 WL 2401847, at *6 (M.D. Fla. June 10, 2021) (applying the same reasoning to whether a debt is legitimate).

In sum, the Undersigned finds that Plaintiff has sufficiently alleged an injury in fact.

2. Fairly Traceable

Defendant also argues that Plaintiff has not alleged and cannot show that any injury is "fairly traceable to the challenged conduct of Defendant" because (1) "[t]he amount of the assessments . . . were set by the Association and were owed regardless of Defendant's role" and (2) "Plaintiff has not alleged that he had no intention of paying the assessments or that he would have continued to refuse to pay what he owed if not for Defendant's Letter." (Doc. 11 at 6 (original alteration and citation omitted)). The Undersigned disagrees.

"To satisfy Article III's causation requirement, the named plaintiffs must allege that their injuries are 'connect[ed] with the conduct of which [they] complain.'" *Wilding v. DNC Servs. Corp.*, 941 F.3d 1116, 1125 (11th Cir. 2019) (alterations in original) (quoting *Trump v. Hawai'i*, 138 S. Ct. 2392, 2416 (2018)). In other words, for the purposes of Article III standing, a plaintiff need only show that there is a "substantial likelihood" of causation. *Duke Power Co. v. Envtl. Study Grp.*, 438 U.S. 59, 75 n.20 (1978). As a result, "[e]ven harms that flow indirectly from the action in question can be said to be 'fairly traceable' to that action for standing purposes." *Wilding*, 941 F.3d at 1125 (quoting *Focus on the Family v. Pinellas Suncoast Transit Auth.*, 344 F.3d 1263, 1273 (11th Cir. 2003)). Ultimately, "traceability is a 'relatively modest' burden" for the plaintiff to satisfy. *State Farm Mutual Automobile Ins. Co. v. At Home Auto Glass LLC*, No. 8:21-cv-239-TPB-AEP, 2021 WL 6118102, at *3 (M.D. Fla. Dec. 27, 2021) (quoting *Bennet v. Spear*, 520 U.S. 154, 171 (1997)).

Here, Plaintiff meets the "relatively modest" burden. *See id.* Specifically, Plaintiff alleges that Defendant's conduct caused "Plaintiff to pay money that he did not owe," (Doc. 1 at ¶¶ 83, 101, 117), and that Plaintiff paid the debt "[i]n response to Defendant's demand letter," (*id.* at ¶¶ 77, 95, 105). Thus, the Undersigned finds that Plaintiff has pleaded a "factual connection" between Defendant's conduct and the alleged harm. *See At Home Auto Glass LLC*, 2021 WL 6118102, at *3 (citing *Charles H. Wesley Educ. Found., Inc. v. Cox*, 408 F.3d 1349, 1352 (11th Cir. 2005)). Defendant's causation arguments – that the amounts of the assessments were set by

the Association and were due regardless of Defendant's role – essentially amount to a question of legal responsibility, rather than a question of factual connection. (*See* Doc. 11 at 6 (citation omitted)). Such arguments are not an appropriate way to challenge standing. *See Charles H. Wesley Educ. Found., Inc.*, 408 F.3d at 1352 ("Defendants' causation argument . . . conflates standing with the merits of the case. Causation in the standing context is a question of fact unrelated to an action's propriety as a matter of law.").

To the extent Defendant argues that Plaintiff's allegations are impermissibly "conclusory," the Undersigned is unpersuaded. The case relied on by Defendant to support this argument, *Crowder v. Andreu, Palma, Lavin & Solis, PLLC*, No. 2:19-cv-820-SPC-NPM, 2021 WL 1338767, at *4 (M.D. Fla. Apr. 9, 2021), is inapposite for at least two reasons: (1) the Court in *Crowder* considered the question of standing at summary judgment and (2) in *Crowder* the plaintiff's allegations involved conclusory statements that a statutory violation caused the injury. *See Crowder*, 2021 WL 1338767, at *4. In contrast, the Court here is considering the question of standing at the pleading stage, which requires a court to "accept as true all material allegations of the complaint and [to] construe the complaint in favor of the complaining party." *Colceriu*, 543 F. Supp. 3d at 1280 (quotation omitted). Additionally, Plaintiff's allegations here do more than allege in a conclusory fashion that Defendant's statutory violation caused the injury. Rather, Plaintiff specifically alleges that he paid the debt in response to the letter and that Defendant's conduct caused Plaintiff to pay a debt that he did not owe. (*See* Doc. 1 at ¶¶ 77, 83, 95, 101, 105, 117).

Ultimately, the Undersigned finds that Plaintiff's statements, taken as true, sufficiently show a factual connection between Defendant's conduct and the harm. Accordingly, the Undersigned finds that Plaintiff has sufficiently pleaded that the alleged harm is fairly traceable to Defendant for the purposes of Article III standing.

3. Prudential Considerations

Turning to Defendant's alternative standing argument—that "[e]ven if Plaintiff has alleged sufficient facts that would establish constitutional standing, the Court should decline exercising jurisdiction over this matter for prudential considerations because Plaintiff's Complaint implicates a third party's (*i.e.*, the Association's) rights, alleges a general grievance, and asserts an injury outside the interests of the FDCPA/FCCPA"—(Doc. 11 at 7 (citation omitted)), the Undersigned is not persuaded.

In addition to the constitutional requirements of standing, a plaintiff must overcome the "prudential considerations[,] . . .which discourage judicial action despite a party's satisfaction of the constitutional prerequisites for standing." *E.F. Hutton & Co. v. Hadley*, 901 F.2d 979, 984 (11th Cir. 1990). The recognized prudential considerations are: "(1) assertion of a third party's rights, (2) allegation of a generalized grievance rather than an injury particular to the litigant, and (3) assertion of an injury outside the zone of interests of the statute or constitutional provision." *Id.* at 985. The Undersigned finds that none of the prudential consideration discourage judicial action here.

i. Assertion of a Third Party's Right

First, the Undersigned finds that Plaintiff is not asserting a third party's right. *See Mancilla-Coello v. McIntosh*, No. 6:07-cv-1446-Orl-19UAM, 2007 WL 4115293, at *2 (M.D. Fla. Nov. 16, 2007) (citing *Hadley*, 901 F.2d at 985 for the proposition that "federal courts generally will not find standing where a party is asserting a third-party's rights"). The cases considering whether an action should be dismissed on this basis involve instances in which a plaintiff is suing on behalf of another. *See id.* (discussing this consideration when a plaintiff sued on behalf of her incarcerated son); *McDowell v. Lugo-Janer*, No. 6:07-cv-838-Orl-19KR, 2007 WL 2671278, at *4 (M.D. Fla. Sept. 7, 2007) (dismissing a complaint, *inter alia*, because a plaintiff appeared to be asserting his wife's right to collect in a previous case without establishing why he is the appropriate party to assert her right).

Here, Plaintiff asserts his own rights on his own behalf and class action claims on behalf of those similarly situated. (*See generally* Doc. 1). Moreover, while Defendant attempts to frame the issue as between Plaintiff and the Association, Plaintiff's Complaint centers on Defendant's actions and violations of the applicable statutes. (*See id.* at 13-22).

In sum, because Plaintiff asserts his own rights as against Defendant, the Undersigned finds the first prudential consideration inapplicable.

ii. General Grievance

Second, for the reasons addressed above, *see* section II.C.1, *supra*, the Undersigned finds that Plaintiff is not asserting a generalized grievance. Rather, Plaintiff asserts a concrete, particularized injury. Additionally, the fact that others share in the same injury does not indicate that Plaintiff's complained of harm is a "generalized grievance." *See United States v. Students Challenging Regul. Agency Procedures (SCRAP*), 412 U.S. 669, 686-88 (1973); *see also Fed. Election Comm'n v. Akins*, 524 U.S. 11, 35 (1998) (Scalia, J., dissenting) (explaining that the generalized grievance requirement does not block standing for a mass tort because "each individual suffers a particularized and differentiated harm").

Thus, because Plaintiff asserts a concrete, particularized injury, the Undersigned finds the second prudential consideration inapplicable.

iii. Zone of Interests

Finally, the Undersigned finds that Plaintiff's Complaint does not assert an injury outside the zone of interests of the relevant statutes.

To satisfy the zone of interests test, a plaintiff must assert some interest that is "arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question." *Chiles v. Thornburgh*, 865 F.2d 1197, 1210 (11th Cir. 1989) (quoting *Ass'n of Data Processing Serv. Orgs. v. Camp,* 397 U.S. 150, 153 (1970)). Here, the injuries alleged by Plaintiff—*i.e.*, financial harm to a consumer resulting from a debt collector's allegedly abusive or unconscionable

practices—are the exact type of injury the FCDPA and FCCPA seek to prevent. *See, e.g.*, 15 U.S.C. § 1692(e) ("Purposes. It is the purpose of this subchapter [15 U.S.C. §§ 1692 *et seq*.] to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses." (original typeface omitted)); *LeBlanc v. Unifund CCR Partners,* 601 F.3d 1185, 1190 (11th Cir. 2010) (noting that the "FCCPA . . . was enacted as a means of regulating the activities of consumer collection agencies within the state"); *see also Owen v. I.C. Sys., Inc.*, 629 F.3d 1263, 1270 (11th Cir. 2011) (noting that the purpose of 15 U.S.C. § 1692e(2) would be "frustrated" if a debt collector could shield itself from liability by contractually requiring a creditor to refer only debts that are validly due and owing). Thus, the Undersigned finds the third prudential consideration inapplicable.

Based on the foregoing, the Undersigned finds that none of the prudential considerations discourage judicial action in this case. Accordingly, because the Undersigned otherwise finds Plaintiff has sufficiently pleaded standing, the Undersigned recommends that Defendant's motion (Doc. 11) be denied on this basis.

III. Whether Dismissal Under Rule 12(b)(6) Is Warranted.

Because Defendant argues that each of Plaintiff's claims is due to be dismissed under Rule 12(b)(6), the Undersigned considers each claim individually below. Before doing so, however, the Undersigned summarizes the relevant legal standards governing motions to dismiss under Rule 12(b)(6).

A. Legal Standards

A pleading must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). "[T]he pleading standard Rule 8 announces does not require 'detailed factual allegations,' but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). A pleading that offers "labels and conclusions" or "a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555. Nor does a complaint suffice if it tenders "naked assertion[s]" devoid of "further factual enhancement." *Id.* at 557. When considering a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure, the reviewing court must accept all factual allegations in the complaint as true and view them in the light most favorable to the plaintiff. *See Iqbal*, 556 U.S. at 678.

This standard of review, however, does not permit all pleadings adorned with facts to survive to the next stage of litigation. The Supreme Court has been clear on this point—a district court should dismiss a claim where a party fails to plead facts that make the claim facially plausible. *See Twombly*, 550 U.S. at 570. A claim is facially plausible when the court can draw a reasonable inference, based on the facts pled, that the opposing party is liable for the alleged misconduct. *See Iqbal*, 556 U.S. at 678. This plausibility standard requires "more than a sheer possibility that a defendant has acted unlawfully." *Id.* (citing *Twombly*, 550 U.S. at 557).

Importantly, "[t]he tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions." *Id.* at 678 (emphasis added); *see also Papasan v. Allain*, 478 U.S. 265, 286 (1986) ("Although for the purposes of this motion to dismiss we must take all the factual allegations in the complaint as true, we are not bound to accept as true a legal conclusion couched as a factual allegation."). "A district court may properly dismiss a complaint if it rests only on 'conclusory allegations, unwarranted factual deductions or legal conclusions masquerading as facts.'" *Magwood v. Secretary, Fla. Dep't Corr.*, No. 15-10854, 2016 WL 3268699, at *2 (11th Cir. 2016) (quoting *Davila v. Delta Air Lines, Inc.*, 326 F.3d 1183, 1185 (11th Cir. 2003)).

B. Analysis

1. Plaintiff's FDCPA Claims

Plaintiff's first two claims arise under the FDCPA. (Doc. 1 at 13-19). "To adequately state a claim under the FDCPA, Plaintiff must allege that: (1) he was the object of debt-collection activity arising from consumer debt; (2) Defendant qualifies as a 'debt collector' as defined by 15 U.S.C. § 1692a; and (3) Defendant engaged in an act or omission prohibited by the FDCPA." *Spears v. N. Am. Holdings, LLC*, No. 8:16-cv-392-MSS-TBM, 2016 WL 8999462, at *2 (M.D. Fla. Aug. 31, 2016) (citing *Martinez v. Com. Recovery Sys., Inc.*, No. 8:13-cv-391-T-30MAP, 2013 WL 2237571, at *1 (M.D. Fla. May 21, 2013)).

The Undersigned considers whether Plaintiff stated a claim for either of his FDCPA claims individually below.

i. Count I: 15 U.S.C. § 1692e(2)(A)

As to this claim, Plaintiff alleges that Defendant violated 15 U.S.C. § 1692e(2)(A) by falsely representing the amount of the debt owed when attempting to collect on the debt. (Doc. 1 at ¶¶ 66-83).

The gravamen of Defendant's argument is that the FDCPA does not require debt collectors to do a pre-collection investigation into the validity of a debt and an opposite finding would render other provisions in the FDCPA superfluous and unduly burden debt collectors. (*See* Doc. 11 at 8-13; *see also* Doc. 27). In response, Plaintiff argues that because the FDCPA is a strict liability statute, Defendant may not rely solely on a presumption that the debt is valid and finding otherwise contradicts binding and persuasive authority. (*See* Doc. 15 at 11-17; *see also* Doc. 28).

While the FDCPA is silent on the issue, the Undersigned agrees with Plaintiff. As the Eleventh Circuit has recognized "[t]he FDCPA typically subjects debt collectors to liability even when violations are not knowing or intentional," unless the defendant can prove the bona fide error defense.[5] *Owen v. I.C. Systems, Inc.*, 629 F.3d 1263, 1270-71 (11th Cir. 2011).

[5] The bona fide error defense allows a debt collector to avoid liability if the debt collector demonstrates that the "FDCPA violation: (1) was not intentional; (2) was a bona fide error; and (3) occurred despite the maintenance of procedures reasonably adapted to avoid any such error." *Owen*, 629 F.3d at 1271 (quotation marks and citation omitted).

Moreover, the Eleventh Circuit considered an analogous argument in *Owen v. I.C. Systems, Inc.*, 629 F.3d 1263, 1276 (11th Cir. 2011), and rejected it. In *Owen*, the Eleventh Circuit considered whether a debt collector could shield itself from liability by contractually obligating the creditor to provide the debt collector with accurate information and only debts that were "validly due and owing." *Owen*, 629 F.3d at 1267. The Eleventh Circuit ultimately answered the question in the negative, reasoning that allowing a debt collector to shield itself from liability merely by incorporating this or similar obligations into contracts would "frustrate[]" the FDCPA because:

> [it] would allow debt collectors to make an end-run around statutory provisions that ensure accurate collection practices merely by inserting boilerplate language in its contracts with creditors. Debt collectors who presently maintain internal procedures to avoid FDCPA errors would be incentivized to scrap these measures altogether, since full immunity could be guaranteed by placing the onus of accuracy on creditors.

Owen, 629 F.3d at 1276-77. Importantly, however, the Eleventh Circuit considered in *Owen* the issue in the context of the bona fide error affirmative defense. *Id.* at 1276. In so doing, the Eleventh Circuit noted that to qualify for the bona fide error affirmative defense, "the FDCPA does not require debt collectors to independently investigate and verify the validity of a debt." *Id.*

Here, Defendant proffers a similar argument to attempt to shield itself from liability, without having to litigate the merits of the bona fide error defense. (*See generally* Doc. 11 at 9-12 (arguing that the FDCPA does not require Defendant to do

a pre-collection investigation into the validity of a debt and that it may rely on the Association's representations with respect to the debt)). Based on the Eleventh Circuit's reasoning in *Owen*, the Undersigned finds the argument pre-mature. Put simply, the Undersigned finds that Defendant may not, as a matter of law, shield itself from liability by relying on the Association's representation that the debt was owed. *See Owen*, 629 F.3d at 1277.[6] Holding otherwise would "frustrate[]" the purpose of the FDCPA by allowing "debt collectors to make an end-run around statutory provisions that ensure accurate collection practices merely" by presuming the legitimacy of the debt. *Id.* More specifically, allowing a debt collector to presume the validity of the debt would "incentivize[]" debt collectors to scrap any internal procedures to avoid FDCPA errors and instead rely solely on the presumption of validity. *See id.*

Additionally, Defendant's argument is one step removed from the factual situation presented in *Owen*. Here, unlike in *Owen*, Defendant has not asserted that it had *any* agreement that the Association would refer only debts that are validly due. (*See* Doc. 11 at 8-12; Doc. 27). Thus, to agree with Defendant's broad argument that a debt collector is entitled to rely on a creditor's representations as to a debt – regardless of any contractual obligations requiring the debt to be valid – would necessarily run afoul of the Eleventh Circuit's holding that a debt collector may not

[6] Tellingly, Defendant failed to squarely address the Eleventh Circuit's holding *Owen* in either its motion or its reply. (*See* Doc. 11; *see also* Doc. 27).

rely on the creditor's representations simply by obligating the creditor to send only valid debts. *See Owen*, 629 F.3d at 1277.

Moreover, the Eleventh Circuit specifically highlighted this factual scenario in *Hepsen v. Resurgent Capital Services, LP*, 383 F. App'x 877 (11th Cir. 2010). In *Hepsen*, the Eleventh Circuit recognized, in dicta, the possibility that a debt collector "could be liable for sending the demand letter to [a consumer] even if the FDCPA does not explicitly require that [the debt collector] verify the debt before sending a demand." *Hepsen*, 383 F. App'x at 882. Although dicta, the Undersigned finds the statement persuasive when read alongside the Eleventh Circuit's decision in *Owen*.[7] Thus, the Undersigned finds that Defendant may not, as a matter of law, shield itself from liability by relying on the Association's representation that the debt was owed. *See Owen*, 629 F.3d at 1277; *see also Malone v. Accts. Receivable Res., Inc.*, 408 F. Supp. 3d 1335, 1344 (S.D. Fla. 2019) (relying on *Owen* to find that a creditor is not entitled to simply rely on the presumption that all debts referred from the creditor are valid); *Garrett v. I.Q. Data Int'l, Inc.*, No. 5:18-cv-352-Oc-30PRL, 2018 WL 7372077, at *3

[7] The Undersigned is aware of the presiding United States District Judge's decision in *Forlizzo v. Allied Interstate LLC*, No. 8:14-cv-1389-T-35AEP, 2014 WL 12617968 (M.D. Fla. Oct. 20, 2014), which was discussed briefly at the April 28, 2022 hearing. (*See* Doc. 31 at 21-22). In her decision, the presiding District Judge found this language from *Hepsen* unpersuasive because it is non-binding dicta. *Forlizzo*, 2014 WL 12617968, at *2 (citing 11th Cir. R. 36-2). The Undersigned distinguishes the *Forlizzo* decision because it did not address the Eleventh Circuit's holding in *Owen* – which the Undersigned finds to be analogous to the instant case and binding on this Court – and the presiding District Judge did not have the benefit of the more recent case law cited in this Report and Recommendation. *See Malone*, 408 F. Supp. 3d at 1344; *Garrett*, 2018 WL 7372077, at *3; *Lawson*, 2019 WL 2501916, at *5.

(M.D. Fla. Aug. 9, 2018) (noting that a debt collector can be held liable for attempting to collect on an invalid debt, unless the debt collector proves entitlement to the bona fide error defense); *Lawson v. I.C. Sys., Inc.*, No. 3:18-cv-00083-AKK, 2019 WL 2501916, at *5 (N.D. Ala. June 17, 2019) (rejecting the notion that a debt collector is entitled, as a rule, to rely on the creditors representations that the debt is valid). Nevertheless, Defendant may ultimately prevail on the claim based on the bona fide error defense.

To the extent Defendant attempts to argue that the Undersigned's conclusion would "render § 1692g(a)(3) superfluous, especially as applied to the first communication between a debt collector and consumer," (*see* Doc. 11 at 10 (citing, *inter alia, Cornette v. I.C. Sys., Inc.*, 280 F. Supp. 3d 1362, 1370 (S.D. Fla. 2017)), the Undersigned is not persuaded. First, when faced with a similar argument, the Court has rejected it, finding that compliance with one section of the FDCPA may, but does not always, foreclose liability under other provisions. *See Mraz v. I.C. Sys., Inc.*, No. 2:18-cv-254-FtM-38NPM, 2019 WL 10784290, at *4 (M.D. Fla. Aug. 7, 2019). Second, the cases cited by Defendant are not binding on this Court and, in light of the Eleventh's Circuit's decision in *Owen*, the Undersigned finds them to be unpersuasive. *See Malone*, 408 F. Supp. 3d at 1344 (declining to follow *Cornette* in light of *Owen*).

Finally, to the extent Defendant asserts that Plaintiff's Complaint fails because Plaintiff does not allege facts sufficient to show that he in fact did not owe the debt, (*see* Doc. 11 at 12), the Undersigned is not persuaded. Again, at the motion to

dismiss stage, the Court must accept as true all factual allegations in the complaint and view them in a light most favorable to the plaintiff. *See Iqbal*, 556 U.S. at 678. Further, the Court must make all inferences in favor of the non-moving party. *See id.* Here, Plaintiff alleges that he did not owe the debt because (1) the Declaration limits the Association's ability to increase the assessments consistent with the Consumer Price Index for All Urban Consumers, unless approved at an authorize meeting, (2) the increase was not consistent with the increase of the Consumer Price Index for All Urban Consumers for the relevant years, and (3) the Association did not hold a meeting, at which a quorum existed, to approve an additional increase. (Doc. 1 at ¶¶ 42-50). Taking the factual allegations as true and making all reasonable inferences in Plaintiff's favor, the Undersigned finds that Plaintiff has sufficiently alleged that he did not owe the debt. (*See id.*).[8]

[8] To the extent Defendant may object on the basis that these allegations are "legal conclusions masquerading as facts," *see Magwood*, 2016 WL 3268699, at *2, the Undersigned finds that Defendant has not argued the same at this time, (*see* Doc. 11 at 12). Moreover, Plaintiff supported his allegations with the plain language of the Declaration. (*See* Doc. 1 at 44; *see also* Doc. 1-2). Thus, making all reasonable inferences in favor of Plaintiff, the Undersigned finds that Plaintiff has sufficiently alleged that he did not owe the debt. Ultimately, the Court will be in a better position to determine the legitimacy of the debt at summary judgment. *See Lawrence v. FPA Villa Del Lago, LLC*, No. 8:20-cv-1517-VMC-JSS, 2021 WL 2401847, at *6 (M.D. Fla. June 10, 2021). If the presiding United States District Judge disagrees with the Undersigned's finding, however, the Undersigned recommends that the Complaint be dismissed with leave to amend on all claims. *See Magwood*, 2016 WL 3268699, at *2 ("A district court may properly dismiss a complaint if it rests only on 'conclusory allegations, unwarranted factual deductions or legal conclusions masquerading as facts.'")).

Accordingly, the Undersigned finds that Defendant's motion is due to be denied as to this claim. Defendant may yet be able to avoid liability based, for example, on either the bona fide error defense or the validity of the debt. Indeed, the Court will be in a better position to determine both issues at summary judgment when both the parties and the Court have the benefit of completed discovery. *See Lawrence v. FPA Villa Del Lago, LLC*, No. 8:20-cv-1517-VMC-JSS, 2021 WL 2401847, at *6 (M.D. Fla. June 10, 2021). But, at this time, the Undersigned finds Plaintiff's allegations sufficient to withstand the motion to dismiss.

ii. Count II: 15 U.S.C. § 1692f(1)

As to this claim, Plaintiff alleges that Defendant violated 15 U.S.C. § 1692f(1) by using unfair and unconscionable means – in the form of collecting an amount that is not authorized by agreement or law – when attempting to collect on the debt. (Doc. 1 at ¶¶ 84-101).

Defendant argues that Count II is due to be dismissed because Plaintiff's claim under 15 U.S.C. § 1692f(1) "is merely a regurgitation of Count I" in that Plaintiff has failed to allege any misconduct beyond what is alleged in support of the § 1692e(2)(A) claim. (*See* Doc. 11 at 13-14 (citations omitted)). In response, Plaintiff argues that "courts nationwide have readily sustained simultaneous 1692e(2) and 1692f(1) claims premised on the same misconduct, where the allegations support both." (Doc. 15 at 19 (citations omitted)). Plaintiff also distinguishes the cases relied on by Defendant, arguing that in those instances, the decisions rested on the failure

"to support either a 1692e or 1692f claim, let alone both." (*Id.* at 17-18 (emphasis omitted)).

Upon review, the Undersigned finds that Defendant's motion is due to be denied on this basis. First, the Court has held that "conduct running afoul of § 1692e may subject a defendant to liability under § 1692f." *Bond v. Ideal Collection Servs., Inc.*, No. 2:18-cv-150-FtM-99CM, 2018 WL 7351699, at *3 (M.D. Fla. Aug. 29, 2018) (citing *LeBlanc v. Unifund CCR Partners*, 601 F.3d 1185, 1200 (11th Cir. 2010)).

Second, 15 U.S.C. § 1692f expressly identifies the collection of an amount not authorized by the agreement creating the debt or permitted by law as conduct that violates the section. 15 U.S.C. § 1692f(1). As addressed fully above, the Undersigned finds that Plaintiff has sufficiently alleged that Defendant engaged in conduct prohibited by the relevant statute by attempting to collect an amount not authorized under the agreement creating the debt. (Doc. 1 at ¶¶ 84-101). Given that the allegations in Count II are substantially similar to those in Count I, the Undersigned finds no basis to reach the opposite conclusion here. Moreover, Plaintiff specifically alleged that the manner by which Defendant collected the debt was unfair and unconscionable. (*Id.* at ¶ 96). Thus, Plaintiff has alleged the requisite conduct to assert a claim under this provision. (*See id.*).

To the extent Plaintiff may be unable to recover under both provisions, the Undersigned finds this to be an inappropriate basis to dismiss the claim. *Mraz v. I.C. Sys., Inc.*, No. 2:18-cv-254-FtM-38NPM, 2019 WL 10784290, at *4 (M.D. Fla. Aug.

7, 2019) (declining to dismiss the 15 U.S.C. § 1692f(1) claim on the basis that the plaintiff cannot recover under both 15 U.S.C. § 1692e(2) and 15 U.S.C. § 1692f(1)). Rather, the Court can address duplicative damages at a future, appropriate stage in these proceedings. *Id.*

Thus, the Undersigned finds that the motion to dismiss is due to be denied as to this claim.

2. Plaintiff's FCCPA Claim

Plaintiff's third claim arises under the FCCPA. (Doc. 1 at 19-22). "The elements necessary to plead a claim under the FCCPA are similar but distinguishable from the elements of establishing a claim under the FDCPA." *Deutsche Bank Nat. Tr. Co. v. Foxx*, 971 F. Supp. 2d 1106, 1114 (M.D. Fla. 2013). In that regard, the FCCPA provides that "[i]n collecting consumer debts, no person shall . . . [c]laim, attempt, or threaten to enforce a debt when such person knows that the debt is not legitimate, or assert the existence of some other legal right when such person knows that the right does not exist." Fla. Stat. § 559.72(1), (9); *see also Foxx*, 971 F. Supp. 2d at 1114. Thus, to state the claim under Fla. Stat. § 559.72(9), Plaintiff must allege: "(1) an illegitimate debt; (2) a threat or attempt to enforce that debt; and (3) actual knowledge that the debt is illegitimate." *Rafer v. Internal Credit Sys., Inc.*, No. 8:19-cv-1312-WFJ-JSS, 2021 WL 2554048, at *5 (M.D. Fla. June 22, 2021) (citation omitted). Importantly, "[c]onstructive knowledge is not sufficient for the third prong." *Id.* (citing *Williams v. Streeps Music Co., Inc.*, 333 So. 2d 65, 67 (Fla. 4th DCA 1976)).

As to his Fla. Stat. § 559.72(9) claim, Plaintiff alleges that Defendant violated Fla. Stat. § 559.72(9) by attempting to collect on a debt that Defendant knew or should have known was not legitimate. (Doc. 1 at ¶¶ 102-117).

Defendant argues that Count III must be dismissed "because Plaintiff has not sufficiently alleged that Defendant had actual knowledge that the Debt was illegitimate under Fla. Stat. § 559.72(9)." (Doc. 11 at 14). In support, Defendant contends that (1) Plaintiff must allege actual knowledge – as opposed to constructive knowledge – and (2) Plaintiff's conclusory allegations of actual knowledge are insufficient to state a claim under Fla. Stat. § 559.72(9). (*Id.* at 15-18). In response, Plaintiff asserts that because he alleged actual knowledge and proffered facts related to Defendant's expertise in this type of debt collection, Plaintiff has sufficiently asserted a claim under this provision. (Doc. 15 at 18-21). Plaintiff further argues that, to the extent he is not permitted to allege constructive knowledge, the correct remedy is to strike the impermissible allegations, rather than dismiss the Count. (*Id.* at 21 (citation omitted)).

As noted above, Fla. Stat. § 559.72(9) requires that the defendant have actual knowledge that the debt is not legitimate. *See Rafer*, 2021 WL 2554048, at *5; *see also Williams v. Educ. Credit Mgmt. Corp.*, 88 F. Supp. 3d 1338, 1347 (M.D. Fla. 2015) (citation omitted). Constructive knowledge is not sufficient under this provision. *See id.* Plaintiff appears to have conceded the same in his response and during the hearing. (*See* Doc. 15 at 21; *see also* Doc. 31 at 33-35, 41-42). Based on this apparent concession, and without objection by Defendant, Judge Wilson agreed to strike the

allegations that Defendant "should have known" that the debt was illegitimate from paragraphs 104 and 117 of the Complaint.

Upon independent review, the Undersigned agrees that the allegations that Defendant "should have known" that the debt was illegitimate are inappropriate under the relevant statute. *See Rafer*, 2021 WL 2554048, at *5. Additionally, for the reasons below, the Undersigned finds that the remainder of the motion is due to be denied as to this claim. Given this, the Undersigned finds striking the language – rather than dismissing the claim with leave to amend – to be the appropriate remedy, in the interests of justice and judicial economy. Accordingly, the Undersigned recommends that the allegations that Defendant "should have known" that the debt was illegitimate be stricken from paragraphs 104 and 117 of the Complaint because the allegations are immaterial and impertinent to the claim at issue. *See* Fed. R. Civ. P. 12(f) ("The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.").

With those allegations stricken, the Undersigned finds that Plaintiff's claim survives the motion to dismiss. In that regard, besides impermissibly alleging constructive knowledge, Plaintiff alleged that Defendant had actual knowledge that the debt was not legitimate. (Doc. 1 at ¶¶ 104, 107). While Defendant asserts that the allegations of actual knowledge are insufficient because they merely track the language of the statute and do not provide any factual basis for Defendant's knowledge, (Doc. 11 at 15-18), the Undersigned disagrees. The Complaint includes allegations regarding Defendant's expertise in the relevant practice area. (Doc. 1 at

¶¶ 13-16). Making all reasonable inferences in favor of Plaintiff, the Undersigned finds that the Complaint sufficiently alleges that Defendant had actual knowledge that the debt was illegitimate. *See Williams*, 88 F. Supp. 3d at 1347 (finding that because the non-moving party is entitled to all reasonable inferences that can be drawn from the well-pleaded facts, a plaintiff need not specifically allege that the defendant had any documentation that would establish actual knowledge that the plaintiff did not owe the debt); *Lawrence*, 2021 WL 2401847, at *6 (permitting the knowledge of a co-debt collector to show reasonable inference of another debt collector's knowledge). Put simply, taking the factual allegations as true, it is reasonable to infer that because Defendant is an expert in this type of debt collection, Defendant knew that the Declaration prohibited the Association from increasing its assessments in the manner alleged here. (*See* Doc. 1 at ¶¶ 13-16, 104, 107). Thus, the Undersigned finds that, as to this claim, the motion is due to be granted in limited part and denied in remaining part.

In sum, the Undersigned finds that the motion is due to be granted in part and denied in part. More specifically, the Undersigned recommends the allegations that Defendant "should have known" that the debt was illegitimate be stricken from paragraphs 104 and 117 of the Complaint, but that the remainder of the motion be denied.

In the event the presiding United States District Judge disagrees with the Undersigned's findings and recommendations above, the Undersigned recommends

that the presiding District Judge provide Plaintiff with an opportunity to amend the Complaint as to any dismissed claim.

CONCLUSION

Accordingly, the Undersigned **RESPECTFULLY RECOMMENDS** that:

1. The Motion to Dismiss Complaint (Doc. 11) be **GRANTED in part and DENIED in part** as set forth below:
   a. The presiding United States District Judge strike the allegations that Defendant "should have known" that the debt was illegitimate from paragraphs 104 and 107 of the Complaint; and
   b. The motion be denied to the extent it seeks any greater or different relief.
2. Defendant be directed to Answer the Complaint within twenty-one (21) days of the presiding United States District Judge's Order on the motion.

RESPECTFULLY RECOMMENDED in Tampa, Florida on August 11, 2022.

Mac R. McCoy
United States Magistrate Judge

NOTICE TO PARTIES

A party has fourteen days from the date the party is served a copy of this Report and Recommendation to file written objections to the Report and Recommendation's factual findings and legal conclusions. 28 U.S.C. § 636(b)(1)(C). A party's failure to file written objections waives that party's right to challenge on appeal any unobjected-to factual finding or legal conclusion the district judge adopts from the Report and Recommendation. *See* 11th Cir. R. 3-1. A party wishing to respond to an objection may do so in writing fourteen days from the date the party is served a copy of the objection. The parties are warned that the Court will not extend these deadlines. To expedite resolution, the parties may also file a joint notice waiving the fourteen-day objection period.

Copies furnished to:

Counsel of Record
Unrepresented Parties