

ORIGINAL

IN THE SUPREME COURT OF OHIO

SANDRA J. TAYLOR JARVIS, : Case Number 2013-0118  
 Plaintiff-Appellee : On Appeal from the  
 vs. : Summit County Court of Appeals,  
 : Ninth Appellate District  
 FIRST RESOLUTION INVESTMENT :  
 CORP., *et al.*, : Court of Appeals  
 : Case No. CA26042  
 Defendants-Appellants

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 AND FIRST RESOLUTION MANAGEMENT CORP.

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## INTRODUCTION

In her expansive statement of facts, (Appellee's Br. at 2-19), Appellee, Sandra Taylor-Jarvis ("Appellee" or "Jarvis") admits or omits several points key to this appeal. Jarvis admits she used her Chase Bank USA, N.A. ("Chase") credit card to make "personal, family, and household" -- but not commercial -- purchases. (*Id.* at 3). She confesses that she stopped making minimum payments on her account after January 1, 2005, (*id.* at 9), the last date upon which she made a minimum payment, (*id.* at 8-9). When she ceased making minimum payments, Chase declared her account delinquent on February 7, 2005. (FRIC Supp. at 32 (FRMC Resp. to Interrog. No. 23)). Appellee does not include these important considerations: 1) that at least one of Chase's account invoices required that Jarvis send her payment to Illinois, (Jarvis Supp. at 223, 435); 2) that no record evidence exists to establish Jarvis was in Delaware when she breached her payment duties or that she used the credit card in Delaware; 3) that no evidence indicates that she did not consent to interest exceeding Ohio's statutory rate by agreeing to a cardholder's agreement, (FRIC Supp. at 51, ¶ 56); and, notably 4) that she was an Ohio resident at all relevant times, (*id.* at 797, 805-25).

This final item is crucial. As Appellants, First Resolution Investment Corporation ("FRIC"), First Resolution Management Corporation ("FRMC") (collectively, "FRIC"), argued, (FRIC Br. at 9, 13), the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA" or "the Act") required them to sue Jarvis in Ohio. 15 U.S.C. § 1692i(a)(2). "Debt collectors who fail to comply with this or other provisions of the Act are subject to civil liability under 15 U.S.C. § 1692k." *Wadlington v. Credit Acceptance Corp.*, 76 F.3d 103, 106 (6<sup>th</sup> Cir.1996); *see CACV of Colorado, LLC v. Stevens*, 274 P.3d 859, 864 (Or.App.2012) ("The FDCPA preempts any contrary state venue law for debt-collection actions.") Nevertheless, Appellee does not

discuss this provision in her brief; indeed, she accords it only a passing reference. (Appellee's Br. at 20 n.153). Jarvis seeks to have it both ways: require FRIC to initiate suit in Ohio yet apply Delaware procedure inapposite at the time of breach. The Court should not sanction the illogical and potentially-manipulative consequences of Appellee's position.

### **ARGUMENTS IN SUPPORT OF APPELLANTS' PROPOSITIONS OF LAW**

Proposition of Law No. I: Absent an agreement otherwise, a cause of action against an Ohio consumer for breach of a credit card contract accrues in Ohio.

Proposition of Law No. II: Absent an agreement otherwise, a claim for breach of a credit card contract accrues when a consumer fails to make a required payment and subsequent insufficient payments do not cure the breach.

#### A. Accrual location

Jarvis commences her opposition to these Propositions by attempting to diminish FRIC's position concerning the purpose underlying borrowing statutes. (Appellee's Br. at 20). Although there are other factors that inform borrowing statutes, "[m]ost importantly, they impede forum shopping." *CMACO Automotive Systems, Inc. v. Wanxiang America Corp.*, 589 F.3d 235, 242 (6<sup>th</sup> Cir.2009); see *Executone of Columbus, Inc. v. Inter-Tel, Inc.*, 665 F.Supp.2d 899, 916 (S.D. Ohio 2009) ("The purpose of the borrowing statutes is to prevent forum shopping.") So, too, is the purpose of the FDCPA's requirement that debtors be sued where they reside. "[T]he legislative goal of the FDCPA, 15 U.S.C. § 1692i, is to ensure convenience to the debtor—not forum shopping by the creditor." *Balsly v. West Michigan Debt Collections, Inc.*, E.D.Va. No. 3:11cv642–DJN, 2012 WL 628490, \*13 (Feb. 27, 2012). Yet that is precisely what Jarvis invites.<sup>1</sup> As stated in FRIC's merit brief, (FRIC Br. at 11-12), the consequence to debtors from Appellee's argument would render them subject to manipulation of payment locations when their accounts approach default.

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<sup>1</sup> This may be the reason Appellee cites 15 U.S.C. § 1692i here, (Appellee's Br. at 20), but does not discuss its provisions here or at any other point in her merit brief.

Jarvis next seeks to marginalize FRIC's argument by alleging that delving into legislative goals is improper when a statute is unambiguous. (Appellee's Br. at 21-22). Jarvis cites to this Court's recent opinion, *Dunbar v. State*, --- Ohio St.3d ---, 2013-Ohio-2163, 992 N.E.2d 1111, ¶ 16, yet fails to distinguish between legislative intent and effect. Even when a statute is unambiguous, this Court is not prohibited from ensuring application of the statute advances a legislative goal. "Appellants have also failed to demonstrate that the Smoke Free Act interfered with a distinct investment-backed expectation. The goal of this legislation is to protect the health of the workers and other citizens of Ohio." *Wymyslo v. Bartec, Inc.*, 132 Ohio St.3d 167, 2012-Ohio-2187, 970 N.E.2d 898, ¶ 57. One of the General Assembly's unequivocal goals when it amended R.C. § 2305.03 was that it not apply retroactively, *infra*; therefore, since Jarvis' default occurred prior to the amendment's effective date, April 5, 2005, the language of the statute's amended borrowing provisions, R.C. § 2305.03(B), is inapposite.

The Appellee contends a trio of this Court's decisions mandate that a breach of contract accrues where payment is due. All three cases involved different species of debt obligations than the credit card contract at issue. In *Alropa Corp. v. Kirchwehm*, 138 Ohio St. 30, 33 N.E.2d 655 (1941), the instrument was a real estate mortgage; in *Payne v. Kirchwehm*, 141 Ohio St. 384, 48 N.E.2d 224 (1943), a series of mortgage obligations; and, in *Meekison v. Groschner*, 153 Ohio St. 301, 91 N.E.2d 680 (1950), a promissory note.

Jarvis fails to acknowledge that, as Ohio courts have held, credit card accounts are distinct from other debt obligations. *Calvary S.P.V. I, L.L.C. v. Krantz*, 8<sup>th</sup> Dist. No. 97422, 2012-Ohio-2202, ¶ 13; *Capital One Bank (USA), N.A. v. Heidebrink*, 6<sup>th</sup> Dist. No. OT-08-049, 2009-Ohio-2931, ¶ 44; *see Smith v. Palasades Collection, LLC.*, N.D. Ohio No. 1:07 CV 176, 2007 WL 1039198, \*6 (Apr. 3, 2007); R.C. § 1309.102(A)(47)(b) ("Instrument' does not

include \* \* \* writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.”) The terms of a mortgage or promissory note specify the amount of the debt, the term of the obligation and the place of payment. *See Meekison*, 153 Ohio St. at 302-03, 307 (promissory note). Such obligations are distinct from credit card obligations. *See Smither v. Asset Acceptance, LLC*, 919 N.E.2d 1153, 1159 (Ind.App.2010) (“credit card accounts would appear to closely resemble the common law definition of an ‘open account.’”). Rather than specifying “the total amount of indebtedness and a defined schedule of repayment, including precise dates for payment and the amount of each payment until the debt is fully repaid,” with credit card contracts:

the precise amount of debt that a consumer may undertake is unknown at the outset and fluctuates, depending on how the card is used. Instead, the creditor sends monthly statements to the debtor indicating the amount of that month's required minimum payment, which may vary depending upon how much the card has been used, whether the creditor has imposed fees of different kinds, whether the interest rate for the card is variable, and how previous payments have been made.

*Id.* In this case, Jarvis did not execute a note; instead, she used her Chase credit card after it was issued, which is sufficient under Ohio law to obligate her. *Bank One, Columbus, N.A. v. Palmer*, 63 Ohio App.3d 491, 493, 579 N.E.2d 284 (10<sup>th</sup> Dist.1989).

The omission of a note's formalities, including a specific payment location, from a credit card contract, among other distinctions, reveals a court's focus should be not on where payment is due but upon the debtor's residence when she defaults. *See* 15 U.S.C. § 1692i(A)(2)(B); *Celebrezze v. United Research, Inc.*, 19 Ohio App.3d 49, 50, 482 N.E.2d 1260 (9<sup>th</sup> Dist.1984) (and federal statute and cases cited therein).. The Appellee frankly does not have a sufficient response to this Court's position that an action accrues “at the place where the facts creating the necessity for bringing the action occur.” *State ex rel. Hawley v. Industrial Commission*, 137

Ohio St. 332, 335, 30 N.E.2d 332 (1940); *accord State ex rel. Barber v. Rhodes*, 165 Ohio St. 414, 136 N.E.2d 60 (1956). Nor does Jarvis counter the Sixth Circuit's similar view:

Peabody cites several cases in support of its argument that a cause of action for breach of contract accrues where the damages are sustained; however, each of these cases required payments to be made at a location defined in the contract. \* \* \* Peabody was required to pay the Plaintiffs whether the Plaintiffs showed up at Peabody's Missouri office, or were living in Kansas or had just moved to China.

*Willits v. Peabody Coal Co.*, 6<sup>th</sup> Cir. Nos. 98-5458, 98-5527, 1999 WL 701916, \*13 (Sept. 1, 1999); *accord Combs v. International Ins. Co.*, 163 F.Supp.2d 686, 691 (E.D.Ky.2001), *aff'd*, 354 F.3d 568 (6<sup>th</sup> Cir.2004).

Jarvis is unsuccessful in her attempts to avoid the on-point case of *Matrix Acquisitions, LLC v. Hooks*, 5<sup>th</sup> Dist. No. 10CA1112, 2011-Ohio-3033 ("*Hooks*"). In *Hooks*, the Fifth District Court of Appeals held, where a credit card agreement is not part of the record, Ohio procedural law controls. *Id.*, ¶ 13, 15 (applying Restatement (Second) of Conflict of Laws § 142(2) (1971)). The Appellee claims *Hooks* "did not turn on where the cause of action arose; lack of evidence was the key." (Appellee's Br. at 25 n.183). Jarvis misses the point, however. As in *Hooks*, Jarvis merely "conclusively and summarily alleged the cause of action accrued in Delaware and the cardholder agreement is likely to elect Delaware Law as the choice of law," without introducing the agreement into the record. *Hooks*, 2011-Ohio-3033, ¶ 15. It was because of the lack of evidence that the Fifth District held Ohio procedure applied. The lack of the agreement in this case should dictate the same outcome. *Accord Unifund CCR Partners Assignee of Palisades Collection, LLC v. Childs*, 2<sup>nd</sup> Dist. No. 23161, 2010-Ohio-746 (no cardholder agreement); *Midland Funding, L.L.C. v. Paras*, 8<sup>th</sup> Dist. No. 93442, 2010-Ohio-264 (cardholder agreement did not specify which limitations provision to apply).<sup>2</sup>

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<sup>2</sup> Jarvis does not address these cases.

Instead, the Appellant looks outside Ohio and locates a mere five (5) cases. (Appellee's Br. at 25-26). Two of these cases are from the same state, New York, and in one case, the court distinguished the appropriate limitations provision because the debtor did not reside in the state until after her default. *Martin v. Law Offices Howard Lee Schiff, P.C.*, D.R.I. No. 11-484S, 2012 WL 7037743, \*4 (Dec. 10, 2012). The other cases concerned borrowing statutes that were effective at the time of the debtor's delinquency, unlike the facts here. Furthermore, the Appellee's inability to posit a meaningful retort to FRIC's argument is shown by her reliance upon a magistrate's report and recommendation denying a motion to dismiss in a Northern District of Ohio case. Her citation to *Jenkins v. United Collection Bureau*, N.D. Ohio No. 3:11 CV 1191 (Dec. 2, 2011) (Jarvis Supp. at 988) is, at best, disingenuous because the district court judge never ruled on the objections filed in response. (*Jenkins* Docket, attached to Appx.) "[A] Magistrate's determination only becomes final once the district court makes it final \* \* \*" *In re Subpoena Duces Tecum Issued to Commodity Futures Trading Com'n*, 439 F.3d 740, 746-47 (D.C. Cir. 2006); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The *Jenkins* report and recommendation, therefore, lacks any authoritative value.

To ensure consistency with federal law and analogous case authority, and to eliminate blatant forum shopping through manipulation of payment locations, FRIC respectfully requests that the Court reverse the Ninth District Court of Appeals and hold the location of the breach of a credit card contract is where the consumer resides at the time of the breach.

**B. Accrual time**

Jarvis engages in the proverbial apples-and-oranges argument when she mixes the concepts of *accrual* of a cause of action and the *commencement* of a cause of action. R.C. § 2305.03(B)'s borrowing provision is contingent upon "a cause of action that accrued in any other

state \* \* \*” “Accrual” means ““to come into existence as an enforceable claim: vest as a right.”” *State ex rel. Estate of McKenney v. Indus. Comm.*, 110 Ohio St.3d 54, 2006-Ohio-3562, ¶ 8 (quoting Webster's Third New International Dictionary (1986) 13). FRIC’s claim accrued when Jarvis failed to pay her minimum payment on January 1, 2005.<sup>3</sup> *Dudek v. Thomas & Thomas Attorneys & Counselors at Law, LLC*, 702 F.Supp.2d 826, 840 (N.D. Ohio 2010); *Discover Bank v. Heinz*, 10<sup>th</sup> Dist. No. 08AP-1001, 2009-Ohio-2850, ¶ 17; *Discover Bank v. Poling*, 10<sup>th</sup> Dist. No. 04AP-1117, 2005-Ohio-1543, ¶ 18. “Accrual” is distinct from “commencement.” “[A] civil action may be commenced only within the period prescribed in sections 2305.04 to 2305.22 of the Revised Code.” R.C. § 2305.03(A). In other words, an action may only be “commenced” after it has “accrued” and then only within the applicable limitations period. Furthermore, an action may only be “commenced” by the filing of a complaint. Civ.R. 3(A). When an action “accrued,” therefore, may not be measured by the date an action was “commenced.”

But that is precisely Jarvis’ argument when she cites this Court’s recent decision in *Estate of Johnson v. Randall Smith, Inc.* (“*Johnson*”) to maintain that amended Section 2305.03(B) applies because FRIC did not commence its action until after amendment. In *Johnson*, the Court construed an amended evidentiary rule: the “apology statute,” R.C. 2317.43, which applied “to all civil actions *filed* after the statute's effective date of September 13, 2004.” 135 Ohio St.3d 440, 2013-Ohio-1507, 989 N.E.2d 35, ¶ 20 (emphasis added). Because the plaintiff’s complaint was dismissed and then refiled after the statute’s amendment, the Court held the amended language applied to the refiled case. *Id.*, ¶ 21. *Johnson* had nothing to do with “accrual” but everything to do with “commencement.” Such is not the case here. R.C. 2305.03(B) speaks of

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<sup>3</sup> Neither did Jarvis’ subsequent payments, which never amounted to the minimum payment due, cure her breach. . *Capital One Bank (USA) v. Rhoades*, 8<sup>th</sup> Dist. No. 93968, 2010-Ohio-5127, ¶ 23; *Discover Bank v. Cummings*, 9<sup>th</sup> Dist. No. 08CA009453, 2009-Ohio-1711, ¶ 36; *Siemientkowski v. Bank One Columbus, N.A.*, 8<sup>th</sup> Dist. No. 66531, 1994 WL 663483, \*1, 3 (Nov. 23, 1994) (FRIC Supp. at 232).

“accrual” and not “commencement.” The Appellee’s entire argument on this point, (Appellee’s Br. at 36), cannot stand because it is contrary “to the plain meaning of the statute, as well as R.C. 1.48’s instruction that laws are presumed to apply prospectively.” *Id.*

As FRIC argued, (FRIC’s Br. at 14-15), unless otherwise specified, the General Assembly lacks authority to enact statutes that operate prospectively. Ohio Const. art. II, § 28. (Appx. at 49); *State v. LaSalle*, 96 Ohio St.3d 178, 2002-Ohio-4009, 772 N.E.2d 1172, paragraph 1 of the syllabus; see *Dudek*, 702 F.Supp.2d at 836-37; R.C. 1.48. Moreover, “[w]hen the retroactive application of a statute of limitation operates to destroy an accrued substantive right, such application conflicts with Section 28, Article II of the Ohio Constitution.” *Gregory v. Flowers*, 32 Ohio St.2d 48, 290 N.E.2d 181 (1972), paragraph 3 of the syllabus; see *Dudek*, 702 F.Supp.2d at 838. This Court should reject Jarvis’ position, which would promote “commencement” over “accrual.”

The Appellee is incorrect when she asserts this Court should view a credit card account as the equivalent of an installment contract. Although it erred in its application of *Smither*, (see FRIC’s Br. at 15-18), the court of appeals below acknowledged, “The Court of Appeals of Indiana has thoughtfully considered the nature of credit card accounts, distinguishing them from promissory notes and installment loans in which the total amount of indebtedness and a repayment schedule are fixed.” *Jarvis v. First Resolution Mgt. Corp.*, 2012-Ohio-5653, 983 N.E.2d 380, ¶ 34 (citing *Smither*, 919 N.E.2d 1159). It is odd that Jarvis wants to subject consumers to multiple lawsuits based upon each missed minimum payment. Nevertheless, Appellee looks to parlay her installment contract argument into a requirement that Chase was required “to exercise an option to accelerate the remaining unpaid balance” before the entire unpaid balance was due and, therefore, without acceleration, Chase’s claim to the entire unpaid

balance did not accrue before the amendment of R.C. 2305.03(B). (Appellee's Br. at 39). The Appellee's position is contrary to Ohio case law concerning when breach occurs, *supra*, and to *Smither*. "Having already concluded that a credit card account is more akin to an open account or unwritten contract than a promissory note or installment loan contract, it is not clear to us that we ought to incorporate the law regarding optional acceleration clauses into this case." 919 N.E.2d at 1160.

Courts within and without Ohio look to when the last minimum payment was paid to calculate the time of breach. *Dudek*, 702 F.Supp.2d at 840; *Heinz*, 2009-Ohio-2850, ¶ 17; *Poling*, 2005-Ohio-1543, ¶ 18; *Citibank (South Dakota), N.A. v. Carroll*, 220 P.3d 1073, 1074 (Idaho 2009) (*see cases cited in Appellants, Cheek Law Office and Attorney Parri Hockenberry's Reply Br. ("C&H Reply Br.") at 8 n. 27*). Because Jarvis breached the credit card account when she failed to make minimum payments after January 1, 2005, FRIC's cause of action accrued at that time, prior to the General Assembly's amendment of R.C. 2305.03(B). Since the statute applies only prospectively, Ohio's borrowing statute does not apply to this action. The Court should reverse the Ninth District's contrary holding.

Proposition of Law No. III: A complaint for breach of a credit card contract may pray for a post-judgment interest rate that exceeds the statutory rate when there is evidence suggesting that the parties agreed to the higher rate.

In an abrupt change-of-face, Jarvis asserts the Court should apply Ohio law notwithstanding her argument that the credit card contract was executed in Delaware and that this case accrued in Delaware. (Appellee's Br. at 7, 22). Jarvis asks the Court to apply Ohio law pertinent to the effective interest rate, (*id.* at 43, 48), and maintains FRIC must prove the applicable rate in its pleadings rather than simply provide Appellee with notice of its claim as require by Civil Rule 8's pleading requirements. "[O]nly in a few circumscribed types of cases

[inapplicable here] do we require that the plaintiff plead operative facts with particularity.” *Cincinnati v. Beretta U.S.A. Corp.*, 95 Ohio St.3d 416, 2002-Ohio-2480, 768 N.E.2d 1136, ¶ 29 n.5. Notice pleading does not require “a plaintiff \* \* \* prove his or her case at the pleading stage [but] only give reasonable notice of the claim.” *State ex rel. Harris v. Toledo*, 74 Ohio St.3d 36, 37, 656 N.E.2d 334 (1995). In addition, Jarvis’ argument is contrary to settled law construing similar FDCPA arguments. *Harvey v. Great Seneca Financial Corp.*, 453 F.3d 324, 333 (6<sup>th</sup> Cir.2006); *Deere v. Javitch, Block and Rathbone LLP*, 413 F.Supp.2d 886, 891 (S.D. Ohio 2006).

Notwithstanding Appellee’s attempt to distinguish *Harvey*, (Appellee’s Br. at 46-47), the case is on-point. Jarvis’ argument distills to her claim that FRIC must have had, in hand, evidence to support all of its claims when filing suit. (Appellee’s Br. at 45-46). *Harvey*, 453 F.3d at 333, and courts within the Sixth Circuit, do not require such premature proof:

neither the Rules of Civil Procedure nor the FDCPA require debt collectors to be certain they will prevail on their claims before filing suit for collection. *Harvey* and other cases, e.g., *Deere v. Javitch, Block & Rathbone, LLP*, 413 F.Supp.2d 886, 891 (S.D. Ohio 2006) (Beckwith, C.J.), establish that evidentiary issues concerning the debt can be fleshed out through discovery and exchange of pleadings. *Harvey*, 453 F.3d at 331; *see also id.* at 333 (“[A] debt may be properly pursued in court, even though the debt collector does not yet possess adequate proof of his claim.”). Therefore, Javitch did not violate the FDCPA by not having documentation in hand supporting its claim when it filed suit \* \* \*

*Hill v. Javitch, Block & Rathbone, LLP*, 574 F.Supp.2d 819, 824 (S.D. Ohio 2008) (internal citation omitted); *see Deere*, 413 F.Supp.2d at 891 (plaintiff “essentially alleges that more of a paper trail should have been in the lawyers’ hands or attached to the complaint. The FDCPA imposes no such obligation.”). Of course, FRIC’s action against the Appellee never reached the proof stage because it dismissed its case against Jarvis after she answered and counterclaimed.

Jarvis’ argument discounts that litigants may prove interest in excess of the statutory rate without producing the written contract that specifies such rate. Ohio law permits recovery of

interest in an amount greater than the statutory rate when “a written contract provides a different rate of interest \* \* \* in which case the creditor is entitled to interest at the rate provided in that contract.” R.C. § 1343.03(A). Several Ohio courts have addressed this issue and found documentation other than a written contract sufficient. *Discover Bank C/O DFS Servs. L.L.C. v. Lammers*, 2<sup>nd</sup> Dist. No. 08-CA-85, 2009-Ohio-3516, ¶ 24 (monthly statements); *Citibank (South Dakota) N.A. v. Ogunduyile*, 2<sup>nd</sup> Dist. No. 21794, 2007-Ohio-5166, ¶ 12 (account statements); *Champaign Landmark v. McCullough*, 3d Dist. No. 6–89–17, 1990 WL 188002 (Nov. 27, 1990) (cited in *Minster Farmers Coop. Exchange Co., Inc. v. Meyer*, 117 Ohio St.3d 459, 2008-Ohio-1259, 884 N.E.2d 1056 (“*Minster*”)) (letter from consumer to creditor); see *Matrix Acquisitions, L.L.C. v. Swope*, 8<sup>th</sup> Dist. No. 94943, 2011-Ohio-111, ¶ 18 (request for 25% interest without contract in the record did not violate “the FDCPA or the OCSPA because the court was to determine the proper interest rate at trial.”)

Jarvis’ reliance on *Minster* is misplaced. (Appellee’s Br. at 42-43). Although the *Minster* Court held “an invoice or account statement unilaterally stating interest terms does not meet R.C. 1343.03’s requirement of a written contract,” 2008-Ohio-1259, ¶ 28, the Court limited its holding to the two cases considered in *Minster* “and for transactions occurring after the date of this decision,” *id.*, ¶ 30, which was March 26, 2008. The instant transaction occurred on or about January 1, 2005 – more than three years before *Minster*. Furthermore, the Appellee here again attempts to divert attention from the fact that FRIC could pray for an interest rate in its pleadings without concurrently having proof of the interest rate in hand. The Court should reverse the appellate panel’s holding that FRIC must prove its case in its pleadings to avoid an FDCPA violation.

Proposition of Law No. IV: The Ohio Consumer Sales Practices Act does not apply to bank assignees and their collection attorneys because there is no “consumer transaction” or “supplier.”

**A. “Consumer Transaction”**

Notable by its absence from Jarvis’ brief and the State of Ohio’s amicus brief is anything beyond a conclusory treatment of what defines a “consumer transaction” required to apply the Ohio Consumer Sales Practices Act (“OCSPA”). The statute prohibits a “supplier” from “commit[ting] an unfair or deceptive act or practice in connection with a consumer transaction \* \* \* whether it occurs before, during, or after the transaction.” R.C. § 1345.02(A) (emphasis added). But the State fails when it attempts to fashion FRIC’s conduct into a “consumer transaction.” The State equates FRIC’s notices to Jarvis to pay her outstanding credit card balance with “solicitations to transfer a service \* \* \*” (State’s Br. at 5). The State’s “square-peg-round-hole” proposition does not comport with the statute or construing authority.

It is without question that the OCSPA defines “‘consumer transaction’ \* \* \* as ‘a sale, lease, assignment, award by chance, or other transfer of an item of goods, a service, a franchise, or an intangible, to an individual for purposes that are primarily personal, family, or household, or solicitation to supply any of these things.’” *Broadnax v. Greene Credit Service*, 118 Ohio App.3d 881, 892, 694 N.E.2d 167 (2<sup>nd</sup> Dist.1997) (citing R.C. § 1345.01(A)). But the State then takes an unfounded leap, based solely on what it believes the statute “implicitly recognizes,” that FRIC’s solicitation was to transfer a service. The analogy fails. First, the State asserts FRIC “wanted to collect the debt itself.” (State’s Br. at 9). FRIC’s solicitation, therefore, was not for “purposes that are primarily personal, family, or household,” and does not qualify as a “consumer transaction.” See *Anderson v. Barclay’s Capital Real Estate, Inc.*, 136 Ohio St.3d 31, 2013-Ohio-1933, 989 N.E.2d 997, ¶ 17 (“A mortgage servicer provides a service to a financial institution, but providing such a service to a financial institution is neither analogous to

transferring a service to a borrower nor sufficient to impose liability under the CSPA.”) Next, the State is forced to rely on purely inapposite analogies to make its argument work. FRIC is not a “nonbank mortgage broker,” (State’s Br. at 5); FRIC is not in the “debt adjusting” or “debt pooling” business (*id.*); consequently, neither R.C. § 4710.01 *et seq.*<sup>4</sup> nor *Bumpus v. Ward*, 5<sup>th</sup> Dist. No. 2012-CA-5, 2012-Ohio-4674, apply.<sup>5</sup>

The State then cites to several “consumer transaction” cases, all distinguishable upon their facts. *Weaver v. J. C. Penney Co., Inc.* involved the well-known retailer’s failure to issue a “rain-check” for an out-of-stock advertised closeout sale item. 53 Ohio App.2d 165, 166, 372 N.E.2d 633 (8<sup>th</sup> Dist.1977). In *Utley v. M.T. Automotive, Inc.*, the consumer transaction was an attempt to sell a motor vehicle. 9<sup>th</sup> Dist. Nos. 24482, 24483, 2009-Ohio-5161, ¶ 11. A court found “lowering the trade-in price of plaintiff’s automobile as a guise by which [defendant] could evade its automobile sales contract with plaintiff,” was a consumer transaction that violated the OCSPA. *McDonald v. Bedford Datsun*, 59 Ohio App.3d 38, 39, 570 N.E.2d 299 (8<sup>th</sup> Dist.1989). In *Hagy v. Demers & Adams, LLC*, the court did not determine whether a “consumer transaction” was involved, and was only concerned with a motion to dismiss the complaint. S.D. Ohio No.

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<sup>4</sup> Ohio’s Debt Adjustment Act provides, “a person engaged in debt adjusting shall do all of the following: (1) Unless specifically instructed otherwise by a debtor, *disburse to the appropriate creditors all funds received from the debtor*, less any contributions not prohibited by division (B) of this section, within thirty days of receipt of the funds from the debtor \* \* \*” R.C. § 4710.01(A)(1) (emphasis added). “‘Debt pooling’ may be defined as the making of an agreement with a particular debtor \* \* \* whereby such debtor agrees to pay a certain sum of money periodically to one engaged in the debt-pooling business, who, for a consideration (frequently substantial), distributes the same among designated creditors \* \* \*” *State ex rel. Clark v. Brown*, 1 Ohio St.2d 121, 121-22, 205 N.E.2d 377 (1965). Appellee and the State do not cite any evidence that FRIC served as a “clearinghouse” for disbursement of Jarvis’ funds to her creditors.

<sup>5</sup> In *Bumpus*, the plaintiff sued an alleged “‘for profit’ debt relief or credit repair company that promise[d] consumers resolution of their credit card debt at a substantial discount.” 2012-Ohio-4674, ¶ 2. There is no evidence to permit the State to force FRIC into that mold. In addition to R.C. § 4710.01 *et seq.*, the court construed “the Ohio Credit Services Organization Act, R.C. Chapter 4712 \* \* \*” *Id.*, ¶ 3. That Act protects “an individual who is solicited to purchase or who purchases the services of a credit services organization for purposes other than obtaining a business loan \* \* \*” R.C. § 4712.01(A). The State cites no evidence that FRIC is a credit services organization.

2:11-cv-530, 2011 WL 6091797, \*11 (S.D. Ohio, Dec. 7, 2011). None of the cases hold that FRIC's actions constituted a "consumer transaction."

Jarvis and the State have no response to case authority that holds FRIC's conduct is not a "consumer transaction." The Southern District of Ohio recognized that "unless the collection action is associated with an underlying 'consumer transaction,'" there can be no violation of the OCSPA." *Gionis v. Javitch, Block & Rathbone*, 405 F.Supp.2d 856, 869 (S.D. Ohio 2005). That court also understood that collection of a credit card debt was not a "consumer transaction" because the OCSPA's "definition of a 'consumer transaction,' \* \* \* specifically excludes transactions between financial institutions \* \* \*" *Id.*; accord *Clark v. Lender Processing Services, Inc.*, --- F.Supp.2d ---, 2013 WL 2476944, \*10 (N.D. Ohio, June 7, 2013). There is no question but that FRIC was collecting upon a pre-existing credit card debt. Since the Chase's extension of credit was not a "consumer transaction" neither were FRIC's efforts to collect it. The Court should reverse the Ninth District's judgment that includes what the General Assembly excluded from the statute.

## **B. "Supplier"**

The State is forced to alter FRIC's status vis-à-vis Chase to argue that FRIC is a "supplier" pursuant to the OCSPA's terms.<sup>6</sup> The State claims FRIC is not entitled to benefit from "derivative use" of the OCSPA's financial institution exemption because FRIC is a "subsidiary" of Chase. (Appellee's Br. at 7). As the record clearly shows, (FRIC Supp. at 40), FRIC is not a subsidiary of Chase but, rather, its assignee. This is a distinction with a difference.

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<sup>6</sup> Furthermore, Jarvis ignores her own brief to posit that there is no evidence that Chase is a financial institution. (Appellee's Br. at 49). The Appellee relied on the Federal Deposit Insurance Corp's web-based "Bank Finder" in her brief, (*id.* at 7 n.67), to identify Chase's Delaware headquarters. Courts have taken judicial notice of an entity's national bank status. "If a bank is described by its chartered name as a 'National Bank,' the district court and this court can take judicial notice that the bank is, in fact, a national bank." *United States v. Harris*, 530 F.2d 576, 578 (4<sup>th</sup> Cir.1976); accord *Kline v. Mortgage Electronic Sec. Systems*, S.D. Ohio No. 3:08cv408, 2011 WL 1233582, \*4 (Feb. 16, 2011) (magistrate's report and recommendations), *rev'd in part on other grounds*, 2011 WL 1233516 (Mar. 28, 2011).

“Appellants' FDCPA claims fail on the merits because the FDCPA applies only to third-party debt collectors, rather than creditors or bona fide assignees.” *Wells Fargo Bank, N.A. v. Sessley*, 188 Ohio App.3d 213, 2010-Ohio-2902, 935 N.E.2d 70, ¶ 26. Jarvis has not set forth any independent basis to support a violation of the OCSPA; therefore, since FRIC did not violate the FDCPA as Chase's assignee, it did not violate the OCSPA. *See Federal Home Loan Mortg. Corp. v. Lamar*, 503 F.3d 504, 513 (6<sup>th</sup> Cir.2007) (debtor “simply relied on the asserted violations of the FDCPA to support his OCSPA claims.”)

The State posits that the OCSPA's “financial-institution exemption immunizes entities, not transactions.” (State Br. at 7). The State can make this argument only if it ignores the statute's plain language. “[T]he Legislature must be assumed or presumed to know the meaning of words, to have used the words of a statute advisedly and to have expressed legislative intent by the use of the words found in the statute \* \* \*” *Wachendorf v. Shaver*, 149 Ohio St. 231, 236-37, 78 N.E.2d 370 (1948). The General Assembly excluded the following transactions from the definition of “consumer transactions”:

*transactions between persons, defined in sections 4905.03 and 5725.01 of the Revised Code, and their customers, except for transactions involving a loan made pursuant to sections 1321.35 to 1321.48 of the Revised Code and transactions in connection with residential mortgages between loan officers, mortgage brokers, or nonbank mortgage lenders and their customers \* \* \**

R.C. § 1345.01(A) (emphasis added). The exception does not appear in the OCSPA's definition of “supplier.” R.C. § 1345.01(C). If the legislature intended the exception to apply to entities rather than transactions, it presumably knew how to craft the law to that end but did not.

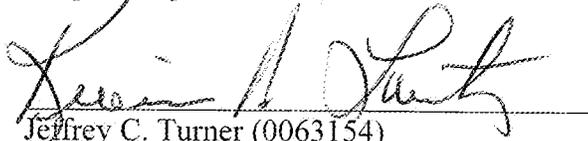
Indeed, the General Assembly acted in 2006 to amend the definition of “consumer transactions” to exclude “transactions in connection with residential mortgages between loan officers, mortgage brokers, or nonbank mortgage lenders and their customers.” Am. Sub. S.B.

No. 195. The legislature thereby distinguished between residential mortgage transactions by financial institutions, which remain shielded from the OCSPA, and residential mortgage transactions by “loan officers, mortgage brokers, or nonbank mortgage lenders,” which are no longer exempt. As aptly stated by Appellants, Cheek Law Offices, LLC, and Attorney Parri Hockenberry, “There is no similar exemption for ‘transactions in connection with credit accounts between debt collectors and debtors.’” (C&H Reply Br. at 16). Because FRIC is Chase’s assignee and because there is no legislative exemption for its actions, the Court should reverse the Ninth District’s judgment.

### **CONCLUSION**

For the reasons set forth herein and in their Merit Brief, the Appellants, First Resolution Investment Corporation and First Resolution Management Corporation, request that the Court reverse the judgment of the Ninth District Court of Appeals and render judgment in favor of the Appellants.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served on this 20th day of September, 2013, via U.S. regular mail to the following:

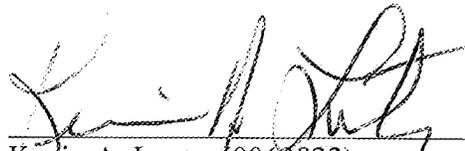
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**APPENDIX**

*Jenkins v. United Collection Bureau*, N.D. Ohio No. 3:11 CV 1191 (Docket)

Cat12,Standard,Termed

**U.S. District Court  
Northern District of Ohio (Toledo)  
CIVIL DOCKET FOR CASE #: 3:11-cv-01191-DAK**

Jenkins v. United Collection Bureau, Inc. et al  
Assigned to: Judge David A. Katz  
Cause: 15:1692 Fair Debt Collection Act

Date Filed: 06/09/2011  
Date Terminated: 12/27/2011  
Jury Demand: Both  
Nature of Suit: 480 Consumer Credit  
Jurisdiction: Federal Question

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V.

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*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

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V.

**Counter-Defendant****Matt Jenkins**

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*ATTORNEY TO BE NOTICED*

**Counter-Defendant****Shephard Service Company**

<b>Date Filed</b>	<b>#</b>	<b>Docket Text</b>
12/27/2011	<u>53</u>	<b>Stipulation &amp; Order</b> of Case Dismissal with prejudice. Judge David A. Katz on 12/27/11. (G,C) (Entered: 12/27/2011)

12/23/2011	<u>52</u>	Proposed Order of Dismissal filed by parties. (Slodov, Michael) Modified on 12/23/2011 to edit text (B,TM). (Entered: 12/23/2011)
12/18/2011	<u>51</u>	Response in Opposition to <i>Plaintiff's Objections to Report &amp; Recommendation</i> filed by Citibank South Dakota N.A.. Related document(s) <u>50</u> . (Slodov, Michael) (Entered: 12/18/2011)
12/16/2011	<u>50</u>	<b>Objection</b> to Report and Recommendation filed by All Plaintiffs. Related document(s) <u>47</u> . (LeLiever, W.) (Entered: 12/16/2011)
12/09/2011	<u>49</u>	<b>Motion</b> Compel Arbitration and Dismiss or Stay Proceedings filed by Plaintiff Matt Jenkins. (Attachments: # <u>1</u> Exhibit Credit Card Agreement)(LeLiever, W.) Modified text on 12/12/2011 (G,Di). (Entered: 12/09/2011)
12/07/2011	<u>48</u>	<b>Order</b> of Telephone Status Conference held on 12/2/11 to resolve a discovery dispute. Court resolved the parties' concerns regarding Plaintiff's responses to Defendant's Requests for Production. Plaintiff shall have until 12/16/11 to comply with Court's order. Magistrate Judge James R. Knepp, II on 12/7/11. Time: 1 hour(A,P) (A,P). (Entered: 12/07/2011)
12/02/2011	<u>47</u>	<b>Report and Recommendation</b> recommending that plaintiff's Motion to dismiss be denied <u>36</u> . Objections to R&R due by 12/16/2011. Magistrate Judge James R. Knepp, II on 12/2/11. (A,P) (Entered: 12/02/2011)
11/30/2011		Notice [non-document] of Telephone Status Conference re: Discovery Dispute set for 12/2/2011 at 03:00 PM before Magistrate Judge James R. Knepp II. Court will initiate call. (A,P) (Entered: 11/30/2011)
11/22/2011	<u>46</u>	<b>Order</b> authorizing document production and Third Party Notice (Related Doc # <u>44</u> ). Magistrate Judge James R. Knepp, II on 11/22/11.(A,P) (Entered: 11/22/2011)
11/09/2011	<u>45</u>	<b>Order</b> of Telephone Status Conference to resolve discovery dispute held on 11/8/11 before Magistrate Judge James R. Knepp, II. Court orders Plaintiff to provide counsel for Defendants all disclosures pursuant to Rule 26(a) on or before 11/21/11, including but not limited to any information and documentation substantiating Plaintiffs claims and claimed damages; Plaintiff shall respond to all outstanding discovery requests on or before 11/21/11. Plaintiff shall make a good faith effort to respond to any objectionably overbroad requests and shall not simply stand on objections of overbreadth and/or undue burden alone; and Plaintiff shall appear for his deposition on or before 1/15/12 in the Northern District of Ohio at a specific time and place agreeable to all parties. Magistrate Judge James R. Knepp, II on 11/9/11. Time: 30 minutes.(A,P) Modified date of phone conference on 11/14/2011 (A,P). (Entered: 11/09/2011)
11/09/2011	<u>44</u>	<b>Motion</b> for order authorizing document production and third party notice filed by Defendant Citibank South Dakota N.A.. (Attachments: # <u>1</u> Proposed Order) (Slodov, Michael) Modified on 11/9/2011 (G,Di). (Entered: 11/09/2011)
11/04/2011		Notice [non-document] of Telephone Status Conference set for 11/8/2011 at 04:00 PM before Magistrate Judge James R. Knepp II. Court will initiate call. (A,P) (Entered: 11/04/2011)

11/01/2011		Magistrate Judge James R. Knepp, II assigned to case. Related document(s) <u>36</u> . (A,P) (Entered: 11/01/2011)
11/01/2011	<u>43</u>	<b>Order</b> Adopting Report and Recommendation. Plaintiff's motion to dismiss counterclaim denied. [11] Stay imposed lifted. Judge David A. Katz on 11/1/11. (G,C) (Entered: 11/01/2011)
10/31/2011	<u>42</u>	Reply to Defendant's Memorandum in Opposition to Plaintiff's Motion to Dismiss Amended Counterclaim filed by All Plaintiffs. Related document(s) <u>38</u> . (LeLiever, W.) (Entered: 10/31/2011)
10/27/2011	<u>41</u>	<b>Response to <u>39</u> Motion</b> to stay <i>Discovery pending motion to dismiss &amp; request for clarification</i> filed by Citibank South Dakota N.A.. (Attachments: # <u>1</u> Exhibit 1- Shephard Service Company Check, # <u>2</u> Exhibit 2 Shephard Service Company certified records CA SOS, # <u>3</u> Exhibit 3 exhibit 3 Citibank RFP 9-20-11, # <u>4</u> Exhibit 4 exhibit 4 jenkins-notice of deposition 9-22-11, # <u>5</u> Exhibit 5 - emails 10-10 to 10-13, # <u>6</u> Exhibit 6 -10-19-11 cover letter, # <u>7</u> Exhibit 7 - plaintiff's discovery, # <u>8</u> Exhibit 8 -10-25-11 email.pdf, # <u>9</u> Exhibit 9 10-26-11 email)(Slodov, Michael) (Entered: 10/27/2011)
10/26/2011	<u>40</u>	<b>Marginal Entry Order</b> granting Motion to stay discovery pending resolution of motion to dismiss defendant Citibank's counterclaim (Related Doc # <u>39</u> ). Judge David A. Katz on 10/26/11.(R,Ci) (Entered: 10/26/2011)
10/25/2011	<u>39</u>	<b>Motion</b> to stay <i>Discovery pending motion to dismiss</i> filed by Plaintiff Matt Jenkins. (LeLiever, W.) (Entered: 10/25/2011)
10/20/2011	<u>38</u>	<b>Response to <u>36</u> Motion</b> to dismiss <i>Amended Counterclaim Motion</i> to dismiss for failure to state a claim filed by Citibank South Dakota N.A.. (Slodov, Michael) (Entered: 10/20/2011)
10/19/2011	<u>37</u>	<b>Plaintiff's Reply to <u>20</u> Answer, Counterclaim,, and affirmative defenses</b> filed by Matt Jenkins. (LeLiever, W.) (Entered: 10/19/2011)
10/19/2011	<u>36</u>	<b>Motion</b> to dismiss <i>Amended Counterclaim, Motion</i> to dismiss for failure to state a claim filed by Plaintiff Matt Jenkins. Related document(s) <u>20</u> . (Attachments: # <u>1</u> Exhibit Exhibit A Citi Account Statement 1, # <u>2</u> Exhibit Exhibit B Citi Account Statements 2)(LeLiever, W.) (Entered: 10/19/2011)
10/14/2011	<u>35</u>	<b>Report and Recommendation</b> recommending that <u>11</u> Motion to dismiss be denied. Objections to R&R due by 10/28/2011. Magistrate Judge James R. Knepp, II on 10/14/11. (A,P) (Entered: 10/14/2011)
10/06/2011		Copy of <u>34</u> Default Entered mailed to Shephard Service Company at 14833 Mansa Dr. Lamirada CA 90638 and Matt Jenkins, Agent at 116 Milbros Lane, Mooresville, N.C., 28117 on 10/7/11. Related document(s) <u>34</u> . (A,P) (Entered: 10/06/2011)
10/06/2011	<u>34</u>	Default Entered on 10/6/11 against counter-defendant Shephard Service Company. Geri M. Smith, Clerk by Pamela A. Armstrong, Deputy Clerk. Related document(s) <u>33</u> . (A,P) (Entered: 10/06/2011)
10/06/2011		<b>Order</b> [non-document] of Telephone Status Conference held on 10/6/11 before Magistrate Judge James R. Knepp, II. Andrew LeLiever, Tracey Turnbull and

		Michael Slodov attended by phone. Plaintiff's Motion to strike <u>22</u> is denied. Magistrate Judge James R. Knepp, II on 10/6/11. Time: 20 minutes(A,P) (Entered: 10/06/2011)
09/28/2011		Notice [non-document] of Phone Status Conference set for 10/6/2011 at 08:30 AM before Magistrate Judge James R. Knepp II. Court will initiate call. (A,P) (Entered: 09/28/2011)
09/23/2011	<u>33</u>	Application to Clerk for entry of default against Shephard Service Company filed by Citibank South Dakota N.A.. (Attachments: # <u>1</u> Affidavit of Darleen Carter, of personal service, # <u>2</u> Exhibit California Secretary of State record, # <u>3</u> Exhibit Periodic statement of Matt Jenkins - address, # <u>4</u> Exhibit federated fin. corp. v. jenkins)(Slodov, Michael) (Entered: 09/23/2011)
09/16/2011	<u>32</u>	<b>Order</b> of Case Management Conference held on 9/16/11. Case is assigned to the standard track. Case referred to ADR by settlement conference to be held by Magistrate Judge Knepp. Discovery due by 5/18/2012. Parties to be Joined and Pleading Amendments due by 9/30/2011. Dispositive Motions due by 6/1/2012, response due 7/2/12, reply due 7/17/12. Settlement Conference set for 1/19/2012 at 01:30 PM in Chambers 318 before Magistrate Judge James R. Knepp II. <b>Ex parte settlement statements shall be submitted by e:mail to Knepp_chambers@ohnd.uscourts.gov 3 days before the conference.</b> Application for default judgment is denied. <u>26</u> Magistrate Judge James R. Knepp, II on 9/16/11. Time: 40 minutes(A,P) (Entered: 09/16/2011)
09/13/2011	<u>31</u>	Report of Parties' Planning Meeting ( <i>submitted without approval of Plaintiff's counsel</i> ), parties do not consent to this case being assigned to the magistrate judge, filed by Citibank South Dakota N.A.. (Slodov, Michael) (Entered: 09/13/2011)
09/08/2011		Copy of <u>30</u> Case Management Conference Scheduling Notice mailed to Shephard Service Company c/o Matt Jenkins, Agent at 116 Milbros Lane Mooresville, N.C., 28117 on 9/9/11. Related document(s) <u>30</u> . (A,P) (Entered: 09/08/2011)
09/08/2011	<u>30</u>	<b>Case Management Conference Scheduling Notice</b> with case management conference to be held by phone on 9/15/2011 at 03:30 PM before Magistrate Judge James R. Knepp II. Court will initiate call. Magistrate Judge James R. Knepp, II on 9/8/11. (A,P) (Entered: 09/08/2011)
09/08/2011	<u>29</u>	Reply to <u>28</u> Opposition to <u>26</u> Application to Clerk for entry of default against Plaintiff Matt Jenkins filed by Citibank South Dakota N.A. (Slodov, Michael) Modified on 9/9/2011 (M,L). (Entered: 09/08/2011)
09/07/2011	<u>28</u>	<b>Opposition</b> to <u>26</u> Application to Clerk for entry of default against Plaintiff Matt Jenkins filed by Matt Jenkins. (LeLiever, W.) Modified on 9/8/2011 (M,L). (Entered: 09/07/2011)
09/02/2011	<u>27</u>	Return of Service by personal service executed upon Shephard Service Company, filed on behalf of Citibank South Dakota N.A. Related document(s) <u>24</u> . (Slodov, Michael) (Entered: 09/02/2011)
09/02/2011	<u>26</u>	Application to Clerk for entry of default against Plaintiff Matt Jenkins filed by

		Citibank South Dakota N.A.. (Slodov, Michael) (Entered: 09/02/2011)
08/31/2011	<u>25</u>	<b>Opposition to <u>22</u> Motion</b> to strike <i>defendant UCB's affirmative defenses</i> filed by United Collection Bureau, Inc.. (Turnbull, Tracey) (Entered: 08/31/2011)
08/30/2011	<u>24</u>	INCOMPLETE DOCUMENT: To be refiled. Filer notified. Return of Service by personal service executed upon Shephard Service Company on 8/26/2011, filed on behalf of Citibank South Dakota N.A. (Slodov, Michael) Modified on 8/31/2011 (M,L). (Entered: 08/30/2011)
08/25/2011	<u>23</u>	<b>Memorandum in Support</b> of Motion to strike filed by Plaintiff Matt Jenkins. Related document(s) <u>22</u> . (LeLiever, W.) Modified on 8/26/2011 (R,Ci). (Entered: 08/25/2011)
08/25/2011	<u>22</u>	<b>Motion</b> to strike <i>defendant UCB's affirmative defenses</i> filed by Plaintiff Matt Jenkins. Related document(s) <u>20</u> . (LeLiever, W.) (Entered: 08/25/2011)
08/10/2011	<u>21</u>	<b>Opposition to <u>11</u> Motion</b> to dismiss <i>Counterclaim</i> filed by Citibank South Dakota N.A.. (Slodov, Michael) (Entered: 08/10/2011)
08/08/2011	<u>20</u>	Amended <b>Answer</b> , Affirmative defenses with joinder of additional co-defendant Shephard Service Company AND <b>Counterclaim</b> filed by Citibank South Dakota N.A.. Related document(s) <u>17</u> . (Attachments: # <u>1</u> Exhibit A-1402 HD Commercial Account, # <u>2</u> Exhibit B- 5167 Citi Business Account, # <u>3</u> Exhibit C -0471 Citi Business Account) (Slodov, Michael) Modified on 8/9/2011 (B,TM). (Entered: 08/08/2011)
08/05/2011	<u>19</u>	Corporate Disclosure Statement filed by United Collection Bureau, Inc.. (Turnbull, Tracey) (Entered: 08/05/2011)
08/04/2011	<u>18</u>	<b>Answer to <u>1</u> Complaint with Jury Demand</b> filed by United Collection Bureau, Inc.. (Turnbull, Tracey) (Entered: 08/04/2011)
07/25/2011		<b>Order</b> [non-document] granting <u>10</u> plaintiff's Motion for Extension of Time until 8/1/2011 to respond to affirmative defenses. Magistrate Judge James R. Knepp, II on 7/25/11.(A,P) (Entered: 07/25/2011)
07/25/2011	<u>17</u>	<b>Order</b> granting in part and denying in part defendant's Motion for leave to Amend by Interlineation. Rather than permit amendment by interlineation, Court grants Defendant leave to file amended answer and counterclaim making requested change (Related Doc # <u>14</u> ) and denying <u>15</u> defendant's Motion to Extend time to respond to motion to dismiss. Magistrate Judge James R. Knepp, II on 7/25/11.(A,P) (Entered: 07/25/2011)
07/22/2011	<u>16</u>	Original Summons issued for service upon Shephard Service Company. (M,L) (Entered: 07/22/2011)
07/20/2011	<u>15</u>	<b>Motion</b> for extension of time to file Response to Motion to Dismiss until 21 days after ruling on Motion to Amend filed by Defendant Citibank South Dakota N.A., Counter-Claimant Citibank South Dakota N.A. Related document (s) <u>11</u> , <u>14</u> . (Slodov, Michael) Modified on 7/22/2011 (M,L). (Entered: 07/20/2011)
07/20/2011	<u>14</u>	<b>Motion</b> for leave <i>to Amend by Interlineation</i> filed by Defendant Citibank South

		Dakota N.A., Counter-Claimant Citibank South Dakota N.A.. Related document(s) <u>5</u> . (Slodov, Michael) (Entered: 07/20/2011)
07/20/2011	<u>13</u>	Praecipe for issuance of Original Summons . filed by Citibank South Dakota N.A.. (Attachments: # <u>1</u> Summons)(Slodov, Michael) (Entered: 07/20/2011)
07/18/2011	<u>12</u>	Brief <i>In support of <u>11</u> Motion to Dismiss Counterclaim</i> filed by All Plaintiffs. Related document(s) <u>11</u> . (LeLiever, W.) Modified on 7/20/2011 (M,L). (Entered: 07/18/2011)
07/18/2011	<u>11</u>	<b>Motion</b> to dismiss <i>Counterclaim</i> filed by Plaintiff Matt Jenkins. (LeLiever, W.) (Entered: 07/18/2011)
07/18/2011	<u>10</u>	<b>Motion</b> for extension of time until 8/1/2011 to respond to affirmative defenses filed by Plaintiff Matt Jenkins. (LeLiever, W.) (Entered: 07/18/2011)
07/18/2011	<u>9</u>	Attorney Appearance by W. Andrew LeLiever filed by on behalf of Matt Jenkins. (LeLiever, W.) Modified on 7/20/2011 (M,L). (Entered: 07/18/2011)
07/13/2011		<b>Order</b> [non-document] granting Motion for appearance pro hac vice by attorney W. Andrew LeLiever for Matt Jenkins. (Related Doc # <u>8</u> ). Magistrate Judge James R. Knepp, II on 7/13/11.(A,P) (Entered: 07/13/2011)
07/13/2011		Financial Transaction in the amount of \$100.00 received for motion to appear pro hac vice by attorney W. Andrew LeLiever, Receipt # 14660046141 Related document(s) <u>8</u> . (C,BA) (Entered: 07/13/2011)
07/11/2011	<u>8</u>	<b>Motion</b> for attorney W. Andrew LeLiever to Appear Pro Hac Vice. No Filing fee paid, filed by Plaintiff Matt Jenkins. (Attachments: # <u>1</u> Affidavit of W. Andrew LeLiever, # <u>2</u> Proposed Order)(E,P) Modified text on 7/12/2011 (E,P). (Entered: 07/11/2011)
07/01/2011		<b>Order</b> [non-document]granting <u>7</u> United Collection Bureau Motion for extension to 8/4/11 to Answer. Judge David A. Katz on 7/1/11.(G,C) (Entered: 07/01/2011)
07/01/2011	<u>7</u>	<b>Motion</b> for extension of time until August 4, 2011 to answer <i>Complaint</i> filed by Defendant United Collection Bureau, Inc. Related document(s) <u>1</u> . (Turnbull, Tracey) (Entered: 07/01/2011)
06/27/2011	<u>6</u>	Corporate Disclosure Statement identifying Corporate Parent Citigroup Inc. filed by Citibank South Dakota N.A.. (Slodov, Michael) Modified on 6/29/2011 (M,L). (Entered: 06/27/2011)
06/27/2011	<u>5</u>	<b>Answer to <u>1</u> Complaint , Counterclaim</b> against <i>Matt Jenkins &amp; additional counterclaim defendant</i> Shephard Service Company filed by Citibank South Dakota N.A.. (Attachments: # <u>1</u> Exhibit A-'1402 Account, # <u>2</u> Exhibit B-'5167 Account, # <u>3</u> Exhibit C-'0471 Account)(Slodov, Michael) (Entered: 06/27/2011)
06/22/2011		Copy of <u>4</u> Order of Referral mailed to Matt Jenkins at 116 Milbros Lane, Mooresville, NC 28117 on 6/22/2011. Related document(s) <u>4</u> . (R,Ci) (Entered: 06/22/2011)
06/22/2011	<u>4</u>	<b>Order</b> referring case to Magistrate Judge James R. Knepp, II. Judge David A.

		Katz on 6/22/2011. (R,Ci) (Entered: 06/22/2011)
06/17/2011	<u>3</u>	Return of Service by Clerk by certified mail executed upon Citibank South Dakota N.A. on 6/14/2011; and United Collection Bureau, Inc. on 6/14/2011, filed on behalf of Plaintiff. Related document <u>1</u> . (M,C) (Entered: 06/21/2011)
06/10/2011		Copy of <u>1</u> Complaint, <u>2</u> Magistrate Consent form mailed to Matt Jenkins at 116 Milbros Lane, Mooresville, NC 28117 on 6/10/11. (M,C) (Entered: 07/11/2011)
06/10/2011		Service by Clerk. Summons and Complaint placed in U.S. Mail with certified receipt numbers addressed to: United Collection, Inc., 7009 2250 0002 8044 1378; and CitiBank South Dakota N. A., 7009 2250 0002 8044 1385. (M,C) (Entered: 06/17/2011)
06/09/2011	<u>2</u>	Magistrate Consent Form issued. Summons (2) were issued by Clerk. (M,L) (Entered: 06/13/2011)
06/09/2011	<u>1</u>	<b>Complaint</b> with jury demand against Citibank South Dakota N.A., United Collection Bureau, Inc. Filing fee paid. Receipt # 34660006079. Filed by Matt Jenkins. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Summons) (M,L) (Entered: 06/13/2011)
06/09/2011		Random Assignment of Magistrate Judge pursuant to Local Rule 3.1. In the event of a referral, case will be assigned to Magistrate Judge Knepp. (M,C) (Entered: 06/10/2011)
06/09/2011		Judge David A. Katz assigned to case. (M,C) (Entered: 06/10/2011)

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