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## INTEREST OF AMICI AND ARGUMENT

Cleveland's res-judicata argument actually proves the constitutional violation in *Walker v. Toledo* and *Jodka v. Cleveland* and thus these gentlemen are naturally interested in this case.

### **I. The city's employee's "jurisdiction" is not competent and therefore the res-judicata doctrine is not triggered.**

The res-judicata doctrine prevents attack of a final judgment on the merits made by a tribunal of *competent* jurisdiction. *Portage Cty. Bd. of Commrs. v. Akron*, 109 Ohio St.3d 106, 2006-Ohio-954, ¶84. By attempting to invoke the doctrine here, Cleveland necessarily argues that its hearing officer—a city employee—has jurisdiction under CCO 413.031(k), mandating that "(n)otice of appeal **shall be** filed with the Hearing Officer." In fact, "shall be" means that the employee has exclusive jurisdiction. *State ex. rel. Taft-O'Connor '98 v. Court of Com. Pl.*, 83 Ohio St.3d 487, 488, 1998-Ohio-500.

But under R.C. 1901.20(A)(1), the municipal court—not a municipal employee—has jurisdiction. Cleveland apparently prefers to mandate "appeals" to a city employee rather than proving its allegations in municipal court. But because replacing a court's jurisdiction with that of a random city employee violates Art. IV, Sec. 1, the employee's "jurisdiction" is *not* competent and therefore the res-judicata doctrine isn't triggered. Thus, the city's incantation of "res judicata" to cloak an unconstitutional power grab from the Judicial Branch must be rejected.

Otherwise, nothing stops a city council from politically targeting the jurisdiction of individual judges in any civil *or* criminal case. For example, "Violations of this ordinance **shall be** determined by Judge Doe" or "**shall not be** determined by Judge Doe."

### **II. A city has no power to police a court's jurisdiction by carving it out.**

Contrary to Cleveland's merit brief at page eleven, policing a municipal court's jurisdiction is not a "home-rule power." A municipal court is a check on local power, not vice

versa. Yet Cleveland’s argument in this case wholly depends upon the hearing officer exercising jurisdiction. But in *Walker*, Cleveland (as amicus) and Toledo (as appellant) argued that the municipal court’s jurisdiction was unaffected. Here, Cleveland (as appellant) and Toledo (as amicus) argue the opposite. For if the hearing officer is exercising jurisdiction—which is what their res-judicata argument requires—then the municipal court is not.

Thus, the cities’ own argument here demonstrates the illegal jurisdictional impairment that the appeals courts correctly determined in *Walker* and *Jodka*. Indeed, when city council ensures that a municipal court judge will *never* decide if an ordinance violation even occurred, council has breached Art. IV, Sec. 1.<sup>1</sup> So when RedFlex insists on page 7 of its amicus brief that the res-judicata doctrine has no “carve-out” for traffic infractions, it overlooks the true issue: i.e., R.C. 1901.20 has no carve-out for CCO 413.031. Instead, Cleveland carved-out the municipal court unilaterally. This unconstitutional defect is *not* cured by a supposed right to further appeal from the employee’s already-incompetent jurisdiction.<sup>2</sup>

### **III. The claimed availability of an “administrative appeal” is immaterial.**

Because the city employee lacks constitutional jurisdiction, the availability of an appeal is immaterial. *See e.g., Chesapeake Exploration L.L.C. v. Oil & Gas Comm.*, 135 Ohio St.3d

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<sup>1</sup> Additionally, footnote three of Toledo’s amicus brief is wrong. It states that if there is an administrative determination of liability, then Cleveland may sue the vehicle owner for payment under CCO 413.031(k)(4) and that citizens may once again dispute liability. This overlooks the entire point of the hearing officer—whose sole function is to determine violations, so that by the time Cleveland theoretically sues in municipal court (if it hasn’t already extracted payment through actual or threatened impoundment or dinging someone’s credit), the determination of liability is already established preclusively.

<sup>2</sup> An undertone of Cleveland’s brief is that §413.031 is civil in nature, as if the constitution does not apply in civil cases. Article IV, Section 1 is perhaps *most* important in civil cases where the government is plaintiff because in criminal cases additional constitutional protections apply—e.g., the Fourth, Fifth, Sixth, Seventh, and Eighth Amendments—that do not apply in civil cases.

204, 985 N.E.2d 480, 2013-Ohio-224, ¶11. Yet Cleveland apparently contends that if Ms. Lycan had “appealed” to the city employee—where no rules of evidence apply and the city is not required to produce a single witness—the employee theoretically might have sided with her. But what *might* have happened begs whether the city employee had competent jurisdiction. “The focus is on the *power* of the administrative body to afford the requested relief, and not on the happenstance of the relief being granted.” *Nemazee v. Mt. Sinai Medical Center*, 56 Ohio St.3d 109, 115, 564 N.E.2d 477 (italics in original).

Relatedly, the third element of a res-judicata defense—*viz.*, a second action raising issues that could have been litigated in the first<sup>3</sup>—is also missing here because the Article IV, Section 1 issue could *not* have been raised before the hearing officer. *Jones v. Chagrin Falls*, 77 Ohio St.3d 456, 460-461, 674 N.E.2d 1388, 1997-Ohio-253. (“Because administrative bodies have no authority to interpret the Constitution, requiring litigants to assert constitutional arguments administratively would be a waste of time and effort for all involved.”)

#### **IV. Cleveland’s reliance upon R.C. Chapter 2506 is illogical.**

Chapter 2506 itself confers absolutely no jurisdiction upon any city employee. Rather, that chapter strictly gives the common pleas court jurisdiction of appeals from competent tribunals, such as zoning boards. The city’s logic that because the common pleas court has appellate jurisdiction under R.C. Chapter 2506 that therefore the hearing officer has exclusive original jurisdiction doesn’t follow: just because Chapter 2506 gives the common pleas court certain jurisdiction does not mean that a random city employee suddenly has jurisdiction over ordinance violations. To the contrary, R.C. 1901.20 specifically provides that “*the municipal court has jurisdiction.*” Cleveland’s reliance upon Chapter 2506 is analogous to attempting to

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<sup>3</sup> *Portage Cty*, *supra*, 2006-Ohio-954, ¶84.

indirectly determine a trial court's jurisdiction by referencing an appellate court's jurisdiction, which is absurd. One must determine directly how the city employee purportedly acquired jurisdiction. Here, that purported jurisdiction flows from §413.031(k), not from R.C. Ch. 2506.

In essence, Cleveland has enabled itself to forum-shop for its own employee's "jurisdiction." This is illegal because the Cleveland municipal court has jurisdiction and Cleveland city council cannot diminish that jurisdiction unless first enabled by the General Assembly. *See, e.g.,* R.C. Chapter 4521 (enabling municipalities to establish parking-violation bureaus under certain conditions). Chapter 4521 would be unnecessary, and an unconstitutional limitation upon home rule, if municipalities could confer jurisdiction upon their employees as they deem fit, which is essentially Cleveland's argument. If Cleveland were correct, no city would abide by Chapter 4521. Yet Cleveland and Toledo both do.<sup>4</sup> They abide because it's known that cities may not unilaterally confer (or strip) jurisdiction.

Similarly, *State ex. rel. Scott v. Cleveland*, 112 Ohio St.3d 324, 859 N.E.2d 923, 2006-Ohio-6573—a prohibition case—lends Cleveland no aid. There, the relators argued that CCO 413.031(k) conflicted with R.C. 4521.05. *Id.*, ¶20. In *Scott*, this court did *not* reject that argument. Rather, it simply declined to address the narrow home-rule challenge presented because the relators hadn't shown the heightened "patent-and-unambiguous-conflict" standard applicable in prohibition cases, which isn't relevant here because this is not a prohibition case. Next, the city employee's jurisdiction was incompetent in *Walker* and *Jodka*—and therefore equally incompetent here—because of the Article IV, Section 1 violation, which was never

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<sup>4</sup> Attached is the underlying permission that Cleveland and Toledo both sought and received to establish a parking-violation bureau under R.C. Chapter 4521.04. These documents, the exception in R.C. 1901.20(A)(1), and all of Chapter 4521 would not make sense if municipalities could unilaterally confer jurisdiction away from a municipal court judge onto its own employees.

raised in *Scott*. Thus, *Scott* is entitled to “no consideration whatsoever as settling, by judicial determination, a question not passed upon or raised at the time of the adjudication.” *State ex. rel. Gordon v. Rhodes*, 58 Ohio St. 129, 107 N.E.2d 206 (1952), syllabus.

**V. Lycan and Jodka both have standing.**

Because the city employee’s “jurisdiction” is unconstitutional, Lycan (and Messrs. Walker and Jodka) need not have submitted to it. “An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed.” *City of Middletown v. Ferguson*, 25 Ohio St.3d 71, 80, 495 N.E.2d 380 (1986). But if the ticket was not paid—or an “appeal” not filed to the city employee—then Cleveland and other municipalities claim the self-help power to impound vehicles, ruin credit, *etc.*<sup>5</sup> The rational way to resolve this dilemma is to pay first—protect one’s property and credit—and seek restitution later. A payment doesn’t bar one’s standing to seek restitution in these circumstances: the payment is the first element of the claim—it’s those persons *who did not pay* who lack standing to seek restitution.

Yet Cleveland insists that under the Eight District’s decision in *Jodka*, Lycan’s restitution claim is barred by standing and/or *res judicata*. Not so. Cleveland never even raised standing or *res judicata* in *Jodka*. Rather, two judges—with no notice to the parties or briefing on point—*sua sponte* opined upon standing and came to the wrong decision.<sup>6</sup> This manner of reaching the merits of a plaintiff’s underlying constitutional challenge—ruling in plaintiff’s favor—and then

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<sup>5</sup> For example, attached are collections letters sent by Cleveland’s outside collections agency.

<sup>6</sup> “[A]ppellate courts should not decide cases on the basis of a new, unbriefed issue without ‘giv[ing] the parties notice of its intention and an opportunity to brief the issue.’” *State v. Tate*, (Slip Opinion, September 4, 2014), 2014-Ohio-3667, ¶21, quoting *State v. 1981 Dodge Ram Van*, 36 Ohio St.3d 168, 170, 522 N.E.2d 524 (1988).

concluding that plaintiff lacked standing because he didn't submit to the very thing held unconstitutional contradicts Ohio law and needlessly overcomplicates the standing doctrine.

In *Jodka*, the plaintiff acquired standing to seek restitution precisely because his money was held and collected under the very ordinance that the entire appellate panel (correctly) held unconstitutional. *Jodka* asserted a justiciable claim that could be remedied by restitution and therefore he had standing. That's all standing means or requires. It's quite simple:

[S]tanding is not a technical rule intended to keep aggrieved parties out of court. Rather, it is a practical concept designed to insure that courts and parties are not vexed by suits brought to vindicate nonjusticiable interests and that judicial decisions which may affect the rights of others are forged in hot controversy, with each view fairly and vigorously represented.

*Moore v. Middletown*, 133 Ohio St.3d 55, 2012-Ohio-3897, ¶47.

The purpose of the res-judicata doctrine is entirely different. It protects final decisions made on the merits by a tribunal of competent jurisdiction. And because decisions on the merits must not be made where standing is lacking, the defense of res judicata necessarily presumes that the plaintiff has standing. But a plaintiff's standing doesn't evaporate after a decision is made. If so, the res-judicata doctrine would be unnecessary. It is necessary because it bars even those *with standing* from making claims that have already been decided on the merits by a tribunal of competent jurisdiction. That Cleveland simultaneously argues both "standing" and "res judicata"—which are mutually exclusive—illustrates that the city actually has no argument.

**VI. Cleveland's arguments would promote bad public policy if adopted because they would allow governments to collect monies unlawfully and retain the benefit.**

Monies held and collected wrongfully by the government are subject to unjust-enrichment claims. The payment is the first element of the claim; not a bar to it. And in almost every instance where government has collected monies unlawfully, there could have been a

theoretical chance for the citizen to resist collection. But in any one individual case where a modest sum is at stake, resisting payment (or the consequences of refusing payment) will outweigh the costs of capitulating and paying what is sought. Allowing government to retain people's money under such circumstances is unjust. Thus, even if the doctrine of res judicata were triggered here—which it is not—the doctrine still shouldn't bar Lycan's claim because "(t)he binding effect of res judicata has been held not to apply when fairness and justice would not support it." *State ex. rel. Estate of Miles v. Village of Piketon*, 121 Ohio St.3d 231, 903 N.E.2d 311, 2009-Ohio-786, ¶30.

If Cleveland were correct, unjust-enrichment actions that remedy the unlawful governmental collection and retention of monies would effectively cease to exist, which is contrary to public policy because even the potential for such claims helps keep government honest in the long run, which benefits all Ohioans.

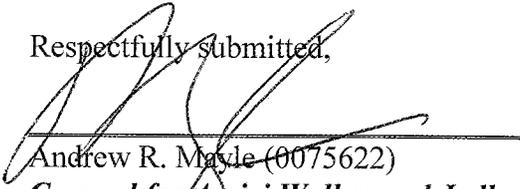
### **Conclusion**

Because the ordinance replaces the municipal court's jurisdiction with that of a city employee, the ordinance is unconstitutional and thus the employee's jurisdiction is not competent and therefore the res-judicata doctrine isn't triggered. Under R.C. 1901.20, "the municipal court has jurisdiction," not a city employee. Cleveland may petition its state representatives and request a carve-out in R.C. 1901.20.

Under the separation of powers, city council cannot make its own carve-out; nor may this court do so by judicial fiat. *Pauley v. Circleville*, 137 Ohio St.3d 212, 998 N.E.2d 1083, 2013-Ohio-4541, ¶38. "[A] court has nothing to do with the policy or wisdom of a statute. That is the exclusive concern of the legislative branch of the government." *State ex rel. Bishop v. Mt. Orab Village School Dist. Bd. of Edn.*, 139 Ohio St. 427, 438, 40 N.E.2d 913 (1942). Cleveland's

illegal attempt to police a court's constitutionally-protected jurisdiction should be rejected and the Eighth District should be **affirmed**.

Respectfully submitted,

  
Andrew R. Mayle (0075622)

*Counsel for Amici Walker and Jodka*

**CERTIFICATE OF SERVICE**

I hereby certify that on September 16, 2014 a true and accurate copy of the foregoing was sent by U.S. Mail, postage prepaid to the following:

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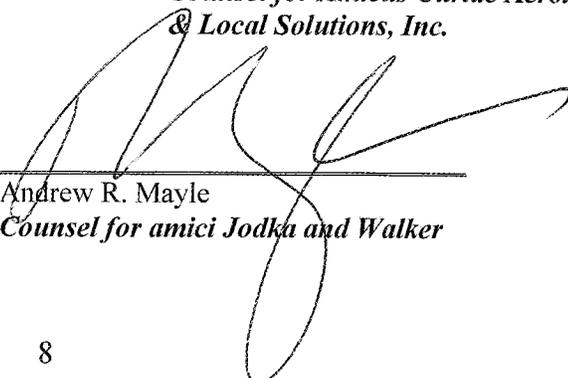
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*Counsel for amici Jodka and Walker*

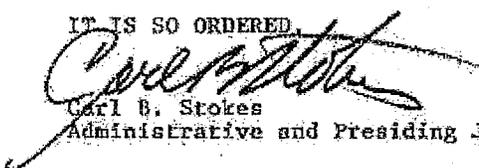
IN THE CLEVELAND MUNICIPAL COURT  
CUYAHOGA COUNTY, OHIO

In re: The Matter Of A ) JOURNAL ENTRY  
Parking Violations Bureau )

The Court has been informed that, pursuant to R.C. 4521.04, a request has been filed with its Clerk seeking authorization to establish a parking violations buresu within the territorial jurisdiction of the City of Cleveland.

Therefore, by majority vote and as mandated by law, the Court hereby authorizes the City of Cleveland to establish a parking violations buresu to handle all parking infractions occuring within the territory of the municipal corporation.

IT IS SO ORDERED.

  
Carl B. Stokes  
Administrative and Presiding Judge

JUDGMENT ENTRY RECEIVED  
FOR JOURNALIZATION

MAR 1 1985

GEROME F. KRACKOWSKI, Clerk

A

J # 129, Pg. 39

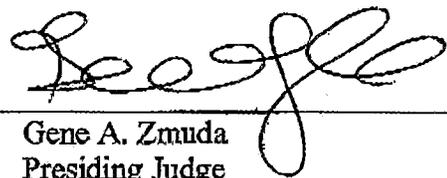
JE 04-6-006

**IN THE MUNICIPAL COURT OF TOLEDO, LUCAS COUNTY, OHIO**

**JOURNAL ENTRY**

The Toledo Municipal Court hereby authorizes the City of Toledo to establish the City of Toledo Parking Violations Bureau in accordance with Revised Code Section 4521.04, pursuant to Section 7 of City of Toledo Ordinance 697-02.

Date: 6/17/04

  
\_\_\_\_\_  
Gene A. Zmuda  
Presiding Judge

FILED  
THE CLERK OF COURT  
04 JUN 18 PM 12:23  
CLERK  
VALIE BOMMAN-ENGLISH

B



6565 KIMBALL DRIVE SUITE 200  
GIG HARBOR WA 98335

Telephone : Toll Free 1-800-858-4506  
July 22, 2014

Account Number : 31660691  
Client Reference Number : G004084047  
Client : Your Court Clients

PIN : XP

Name : STEVEN T OLANDER

Your account has been reported past due, and has now been placed with AllianceOne for immediate collection efforts. It is important to contact us as soon as possible. If remitting payment, please be sure your account number appears on your check or money order. All contacts and payments are to be made through this office to ensure proper posting.

Where the debt is \$50.00 or more, it is our practice to place information regarding the debt with the appropriate credit-reporting agencies.

You may be eligible for a time payment program. Please contact us for details.

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice that you dispute this debt or any portion thereof, this office will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request this office in writing within 30 days after receiving this notice, this office will provide you with the name and address of the original creditor, if different from the current creditor.

For your convenience you can now make your debit card or credit card payment towards your AllianceOne account online at: <http://www.payaol.com> or by calling our 24-hour automated phone system at the number above. Please use your AllianceOne account number 31660691. You may also mail your payment to the address below or visit the office at the address noted above; there is no fee assessed to process mail or walk-in payments.

This communication is from a debt collector. This is an attempt to collect a debt, and any information obtained will be used for that purpose.

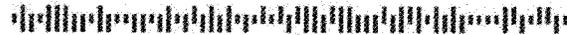
A \$10.00 FEE WILL BE CHARGED FOR EACH CREDIT OR DEBIT CARD PAYMENT.

CREDITOR	CLIENT REFERENCE NUMBER	DATE	VIOLATION	INTEREST	FEES	TOTAL
CLEVELAND MUNICIPAL COURT	G004084047	01-15-14	160.00	0.00	0.00	160.00
<b>TOTAL</b>			160.00	0.00	0.00	160.00



PLACE  
YOUR  
STAMP  
HERE

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



ALLIANCEONE RECEIVABLES MANAGEMENT INC.  
PO BOX 2449  
GIG HARBOR WA 98335-2449

C

August 19, 2014

To Whom It May Concern:

I am writing in reference to Account Number 31660691, Client Reference number G004084047. My name is Steven T. Olander. I am writing within the 30 days allotted to dispute the alleged debt.

The alleged debt is from processing of a "red light camera" ticket within the City of Cleveland for violation of speed. The ticket and precedings were handled by the Parking Violations Bureau division of the City of Cleveland.

Per the findings of the Eighth District Court of Appeals, *Jadka v. City of Cleveland*, the ticket at issue is for a violation of "speed" and not "Parking or Standing" and therefore is under the jurisdiction of the Municipal Court, and as such the Parking Violations Bureau deprives the Municipal Court's jurisdiction by requiring me to be heard by a Hearing Officer in a quasi-judicial process of the Parking Violations Bureau. The official finding from Journal Entry and Opinion No. 99951 from the case is as follows...

*While the General Assembly has provided jurisdiction to municipal courts over criminal traffic-code violations, R.C. 1901.20(A)(1), and has allowed for the establishment of a parking violations bureau in a municipality for handling local, noncriminal "parking infractions," R.C. 4521.04, there are no provisions concerning the implementation of automated traffic enforcement systems. Moreover, there is nothing within R.C. Chapters 1901, 4511, or 4521, or elsewhere in the Ohio Revised Code, that specifically allows a municipality to establish a civil automated traffic enforcement system with administrative procedures that are handled by a parking violations bureau.*

As such, there is no legal requirement for me to attend a violation of my Ohio Constitutional rights. Furthermore the Court states...

*This court agrees with Walker, 6th Dist. Lucas No.L-12-1066, 2013-Ohio-2809, ¶ 35-36, that the power to adjudicate civil violations of moving traffic laws lies solely in municipal court.*

As well as...

*This court finds that sections CCO 413.031(k) and (l) violate Article IV, Section 1 of the Ohio Constitution.*

Therefore, it has been ruled by the Eighth District Court of Appeals that the Parking Violations Bureau division of the City of Cleveland does NOT have jurisdiction to rule in this case nor has the power to impose any penalty for violations of this type.

Should the City of Cleveland schedule a Hearing for this matter within the Municipal Court, who has jurisdiction in this matter, I would of course appear and contest with my printed paid work schedule that plainly illustrates I was at work in Avon Lake at the Ford Motor Company on the date and time of the alleged infraction.

Sincerely,

Steven T. Olander

ALLIANCEONE  
6565 KIMBALL DRIVE SUITE 200  
P.O. BOX 2449  
GIG HARBOR WA 98335  
253-620-2222

STEVEN T OLANDER  
28574 SPRUCE DR  
NORTH OLMSTED OH 44070

31660691

08-21-14

ORIGINAL CREDITOR: CLEVELAND MUNICIPAL COURT  
ORIGINAL ACCOUNT #: G004084047  
CURRENT ACCOUNT #: 31660691

NOTICE TO CONSUMER REGARDING DISPUTE:

We have reviewed your dispute and provide the following response:

- ( X ) We have completed our investigation of your dispute. Our investigation revealed that our original information was accurate. For your added convenience and immediate credit, you may make your debit or credit card payment at <http://www.payaai.com>.
- ( ) We have completed our investigation of your dispute. Our investigation resulted that your account has been cancelled and returned to our client. If this account was credit reported, a deletion request has been submitted to the credit bureaus.
- ( ) We have completed our investigation of your dispute. Our investigation revealed that our original information was incomplete or inaccurate. Your file has been updated with correct information.
- ( ) We have not had sufficient time to complete an investigation of your dispute.
- ( ) We have not received information sufficient to determine the accuracy or inaccuracy of the dispute, and therefore we have changed the information in our file to reflect your dispute and cancelled and returned your account to our client. If your account was credit reported, a deletion request has been submitted to the credit bureaus.
- ( ) Your account has not been reported to the credit reporting agencies.
- ( ) Please see the attached information from our client. If you need more information, or if you disagree with this information, you will need to contact the client directly at this address:  
1200 ONTARIO STREET  
CLEVELAND OH 44113
- ( ) We have not received sufficient enough information in order to complete our investigation of your dispute. Please send in additional information such as vehicle report of sale, proof of payment (front and back of the cancelled check) or receipt of payment.

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- ( ) We have received your dispute and/or report of identity theft and a deletion request has been submitted to the credit bureaus. Please contact the court at the following address:

CLEVELAND MUNICIPAL COURT  
1200 ONTARIO STREET  
CLEVELAND OH 44113

- ( ) Your account has been reported to the credit reporting agencies as paid in full.
- ( ) A request has been sent to the credit reporting agencies to remove our trade line from your credit report.

Sincerely,  
AllianceOne Receivables Management Inc.

This communication is from a debt collector. This is an attempt to collect a debt and any information obtained will be used for that purpose.