IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

Case No. 8:19-cv-02223-WJF-AAS

AMI DUNN

Plaintiff,

v.

GLOBAL TRUST MANAGEMENT, LLC
FRANK TORRES

Defendants.

DEFENDANTS GLOBAL TRUST MANAGEMENT, LLC'S AND FRANK TORRES' DISPOSITIVE MOTION TO COMPEL ARBITRATION, OR IN THE ALTERNATIVE, FOR JUDGMENT ON THE PLEADINGS WITH INCORPORATED MEMORANDUM OF LAW

Defendants Global Trust Management, LLC ("GTM") and Frank Torres (collectively "Defendants"), by and through their undersigned counsel, hereby moves this Court, pursuant to Fed. R. Civ. P. 12(b)(1) and 9 U.S.C. § 3 for an Order granting Defendants motion to dismiss and/or compel arbitration of Plaintiff Ami Dunn's ("Plaintiff") claims for violations of 15 U.S.C. §§ 1692c, 1692e and 1692f and Florida Statutes § 559.72(9), or in the alternative, for judgment on the pleadings pursuant to Fed. R. Civ. P 12(c), dismissing the Complaint in its entirety.

Plaintiff alleges that Defendants violated the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq*. ("FDCPA") and Florida Consumer Collection Practices Act ("FCCPA"), Fla. Stat. § 559.72(9) when Defendants hired a third party debt collector to collect and also attempted to collect, themselves, an unenforceable debt because it violated Florida usury laws. As set forth in detail in the below Memorandum of Law, a valid, enforceable agreement to arbitrate Plaintiff's claims exists and the Court should, therefore, compel arbitration of same. In the alternative, should

the Court decline to compel arbitration, the issue of whether the debt originated by Mobiloans, LLC ("Mobiloans") is valid and enforceable is not governed by Florida law as Plaintiff contends, but rather, the laws of the Tunica-Biloxi Tribe of Louisiana pursuant to Plaintiff's line of credit agreement with Mobiloans. As the law governing the validity and enforceability of the subject debt that serves as a basis for all but one of her claims against Defendants is inapplicable, those claims should be dismissed. In addition, Plaintiff's allegations that Defendants violated 15 U.S.C. § 1692c(b) by conveying information about her debt to their contracted third party debt collector should also be dismissed because the transmission of such information is not a "communication in connection with the collection of a debt." Accordingly, and in the event the Court declines to compel arbitration of Plaintiff's claims, the Court should grant Defendants' motion for judgment on the pleadings and dismiss the Complaint in its entirety.

MEMORANDUM OF LAW

FACTUAL AND PROCEDURAL BACKGROUND

On or about July 23, 2015, Plaintiff applied and was approved for a line of credit account with Mobiloans (the "Mobiloans Account"). *See* Declaration of Frank Torres ("Torres Dec."), ¶ 6; Exhibit A. As a result, Mobiloans extended an open line of credit to Plaintiff. As part of the Mobiloans Account application Plaintiff acknowledged, *inter alia*, that: (1) she read and consented to the Mobiloans Line of Credit Terms and Conditions (the "Terms and Conditions"); and (2) the Mobilaons Account is governed by the laws of the Tunica-Biloxi Tribe of Louisiana. *Id*. The Terms and Conditions explicitly provides:

> **XIX. Governing Law**
>
> This Agreement and the Arbitration Agreement are governed by the laws of the Tunica-Biloxi Tribe of Louisiana, the Indian Commerce Clause of the United States Constitution, the Federal Arbitration Act ("FAA"), and any applicable federal law necessary to uphold federal

substantive statutory rights or remedies.

Torres Dec., Exhibit B, p. 18. In addition, in agreeing to the Terms and Conditions, Plaintiff agreed to arbitrate any claim or dispute arising from or related to her Mobiloans Account (the "Arbitration Agreement"). Torres Dec., Exhibit B, pp. 15-18.

Between July 23, 2015 and April 6, 2018, Plaintiff drew on and made payments to her Mobiloans Account line of credit. Torres Dec., ¶¶ 6, 8. On or about July 20, 2018, GTM purchased Plaintiff's Mobilaons Account. Torres Dec., ¶ 9. On or about July 29, 2018, GTM placed Plaintiff's account with GMA Investments, LLC doing business as Summit Receivables ("Summit") for collection. Torres Dec., ¶ 13.

On September 6, 2019, Plaintiff filed a Complaint in the Middle District of Florida alleging that Defendants violated the FDCPA and FCCPA related to Plaintiff's Mobiloans Account. Doc. 1. The Complaint alleges that Plaintiff obtained a payday loan from internet-based lender Mobiloans. Doc. 1, ¶ 13. The Complaint further alleges that GTM purchased Plaintiff's Mobiloans Account around September 2018, which had a balance of $1,198.76. *Id.*, ¶¶ 28, 30. In addition, Plaintiff alleges that Frank Torres is Chief Operations Manager and Chief Compliance Officer of GTM. *Id.*, ¶ 11. According to the Complaint, Mobiloans charges interest rates between 206% and 442% annually. *Id.*, Exhibit B. After GTM purchased the account, Plaintiff alleges that GTM and Summit, an independent third party debt collector, attempted to collect Plaintiff's Mobiloan debt. *Id.*, ¶¶ 36-39. While there are vague references to calls placed by GTM to Plaintiff (Doc. 1, ¶¶ 36, 75), the overwhelming majority of the factual allegations relate to non-party Summit's collection activity. *Id.*, ¶¶ 49-58. Plaintiff contends that GTM knew or should have known of Summit's history of non-compliance with debt collection laws, and that GTM placed Plaintiff's debt with Summit because of their propensity to engage in unlawful collection practices, yielding a higher

rate of return on GTM's investments. *Id.*, ¶¶ 61-63. On October 1, 2019, Defendants filed their Answer denying the allegations in the Complaint.

ARGUMENT

I. Plaintiff Should Be Compelled to Arbitrate Her Claims

"Motions to compel arbitration are treated generally as motions to dismiss for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1)." *Bell v. Atl. Trucking Co.*, No. 309-CV-406-J-32MCR, 2009 WL 4730564, at *2 (M.D. Fla. Dec. 7, 2009). "Courts have deemed a motion seeking to compel arbitration as a factual attack as it asserts that a provision of an extrinsic document, an arbitration clause contained within the body of a contract, deprives the court of its power to adjudicate the plaintiff's claims." *Id.*, at *3.

The Federal Arbitration Act ("FAA") governs the enforceability of arbitration agreements. *Bhim v. Rent-A-Ctr., Inc.*, 655 F. Supp. 2d 1307, 1310 (S.D. Fla. 2009). There is an "emphatic federal policy in favor of arbitral dispute resolution." *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 631 (1985). Given the federal policy favoring arbitration, courts are required to "rigorously enforce agreements to arbitrate." *Davis v. Prudential Sec., Inc.*, 59 F.3d 1186, 1192 (11th Cir. 1995) (quoting *Shearson/American Express, Inc. v. McMahon*, 482 U.S. 220, 226 (1987)) (alteration in original). "Accordingly, the FAA requires a court to either stay or dismiss a lawsuit and to compel arbitration upon a showing that (a) the plaintiff entered into a written arbitration agreement that is enforceable 'under ordinary state-law' contract principles and (b) the claims before the court fall within the scope of that agreement." *Lambert v. Austin Ind.*, 544 F.3d 1192, 1195 (11th Cir. 2008) (citing 9 U.S.C. §§ 2-4). As a matter of policy, courts should resolve "any doubts concerning the scope of arbitrable issues… in favor of arbitration." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24–25 (1983).

Section 3 of the FAA provides:

> [i]f any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement[.]

9 U.S.C. § 3 (emphasis added). In accordance with the FAA, "the party seeking to compel arbitration has the initial burden of producing the arbitration agreement and establishing the contractual relationship necessary to implicate the FAA and its provisions granting this Court authority to dismiss or stay [the plaintiff's] cause of action and to compel arbitration." *Compere v. Nusret Miami, LLC*, No. 1:19-CV-20277-KMM, 2019 WL 3939475, at *3 (S.D. Fla. Aug. 20, 2019) (internal citation and quotation omitted). When the party seeking to compel arbitration has met his burden, the opposing party "has the affirmative duty of coming forward by way of affidavit or allegation of fact to show cause why the court should not compel arbitration." *Aronson v. Dean Witter Reynolds, Inc.*, 675 F. Supp. 1324, 1325 (S.D. Fla. 1987). "Whether a valid agreement to arbitrate exists is a matter of state contract law. Under Florida law, a valid contract requires offer, acceptance, and consideration." *Compere*, 2019 WL 3939475, at *3.

The FAA represents a "liberal federal policy favoring arbitration" and the "fundamental principle that arbitration is a matter of contract." *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011) (citations and quotations omitted). The FAA provides that written agreements to arbitrate "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. The FAA also provides that a court must stay its proceedings if an issue before it is subject to arbitration under a written arbitration agreement. *See* 9 U.S.C. § 3. The FAA authorizes a federal district court to issue an order

compelling arbitration if there has been a failure to comply with the arbitration agreement. *See* 9 U.S.C. § 4.

Moreover, the FAA directs that any doubts concerning the scope of arbitral issues should be resolved in favor of arbitration. *Granite Rock Co. v. Int'l Bhd. of Teamsters*, 561 U.S. 287, 289 (2010). "By its terms, the Act leaves no place for the exercise of discretion by a district court, but instead mandates that district courts *shall* direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed." *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985).

"A district court must grant a motion to compel arbitration if it is satisfied that the parties actually agreed to arbitrate the dispute." *Sundial Partners, Inc. v. Atl. St. Capital Mgmt. LLC*, No. 8:15-CV-861-T-23JSS, 2016 WL 943981, at *3 (M.D. Fla. Jan. 8, 2016), *report and recommendation adopted*, No. 8:15-CV-861-T-23JSS, 2016 WL 931135 (M.D. Fla. Mar. 11, 2016). "The determination of whether a dispute is arbitrable under the [FAA] consists of two prongs: (1) whether the parties agreed to arbitrate the dispute, and (2) whether legal constraints external to the parties' agreement foreclosed arbitration." *Cusolito v. Citibank, N.A.*, No. 0:17-CV-60963-WPD, 2017 WL 8890662, at *2 (S.D. Fla. Oct. 6, 2017) (quoting *Klay v. All Defendants*, 389 F.3d 1191, 1200 (11th Cir. 2004)) (citation and internal quotation marks omitted). "The second step concerns whether 'Congress has clearly expressed an intention to preclude arbitration of [a] statutory claim.'" *Id*. (quoting *Davis v. S. Energy Homes, Inc.*, 305 F.3d 1268, 1273 (11th Cir. 2002)).

In this regard, "[t]he Eleventh Circuit has held that a claim 'relates to' a contract if the dispute giving rise to the claim 'occurs as a fairly direct result of the performance of contractual duties' and if there is 'some direct relationship' between the dispute and the contract." *Cronin v.*

Portfolio Recovery Assocs., LLC, No. 815CV00768EAKEAJ, 2016 WL 1756892, at *3 (M.D. Fla. Apr. 29, 2016) (quoting *Bahamas Sales Assoc., LLC v. Byers*, 701 F.3d 1335, 1340—1341 (11th Cir. 2012)). Importantly, it is well-settled that alleged FDCPA violations are a direct result of a plaintiff's "contractual duties and would therefore relate to [the plaintiff's] account and fall within the scope of the Arbitration Agreement." *Id*.; *see also Levinson v. Green Tree Servicing, LLC*, No. 8:14-CV-02120-EAK, 2015 WL 1912276, at *2 (M.D. Fla. Apr. 27, 2015); *Wilder v. Midland Credit Mgmt.*, No. CIVA109CV2039JOFAJB, 2010 WL 2499701, at *4 (N.D. Ga. May 20, 2010), *report and recommendation adopted*, No. CIVA109CV02039JOFAJB, 2010 WL 2499659 (N.D. Ga. June 15, 2010). Furthermore, "it is well-settled that a nonparty can enforce an arbitration agreement if the language of the agreement is broad enough to permit the nonparty to invoke it." *Bolanos v. First Inv'rs Servicing Corp.*, No. 10-23365-CIV, 2010 WL 4457347, at *2 (S.D. Fla. Oct. 29, 2010).

The instant action is analogous to *Cronin*, which dealt with a similar arbitration provision. There, the defendant purchased the plaintiff's account as part of a large portfolio of account from the original creditor and sent letters to debtors that allegedly violated the FDCPA. *Cronin*, 2016 WL 1756892, at *1. In finding that the defendant was entitled to enforce the arbitration agreement, the court held that the plaintiff's FDCPA claim was arbitrable as the claim related to the plaintiff's account, and administratively closed the case pending arbitration. *Id*., at *3.

Here, the Terms and Conditions provides, in relevant part that:

> PLEASE READ THIS WAIVER OF JURY TRIAL AND ARBITRATION AGREEMENT CAREFULLY. Unless you exercise your right to opt-out of arbitration in the manner described above, any dispute related to this Agreement will be resolved by binding arbitration. Arbitration replaces the right to go to court, including the right to have a jury, to engage in discovery (except as may be provided in the arbitration rules), and to participate in a class action or similar proceeding.

> ***Agreement to Arbitrate***. You agree that any Dispute (defined below) will be resolved in accordance with Tribal Law and applicable federal law.
>
> ***Arbitration Defined***. Arbitration is a means of having an independent third party resolve a Dispute. **A "Dispute" is any controversy or claim related in any way to your Mobiloans Credit Account or your application for a Mobiloans Credit Account, involve you and Lender, its marketing agent, collection agent, any subsequent holder of your Mobiloans Credit Account, or any of their respective agents, affiliates, assigns, employees, officers, managers, members or shareholders** (each considered a "Holder" for purposes of this Agreement). **The term Dispute is to be given its broadest possible meaning** and includes, without limitation, all claims or demands (whether past, present, or future, including events that occurred prior to the opening of your Account), based on any legal or equitable theory (tort, contract, or otherwise), and regardless of the type of relief sought (i.e. money, injunctive relief, or declaratory relief). A dispute includes, by way of example and without limitation, any claim arising from, related to or based upon marketing or solicitations to obtain the Mobiloans Credit Account and the handling or servicing of your Account whether such Dispute is based on a Tribal, federal or state constitution, statute, ordinance, regulation, or common law, and including any issue concerning the validity, enforceability, or scope of this Account or the Arbitration Agreement.

Torres Dec., Exhibit B, p. 16 (emphasis added). Like in *Cronin*, Plaintiff's FDCPA and FCCPA claims are subject to mandatory binding arbitration because the claims are a direct result of Plaintiff's performance of her contractual obligations. Pursuant to the above-referenced Arbitration Agreement, ***any claim related in any way*** to her Mobiloans Account must be resolved by binding arbitration. Torres Dec., Exhibit B, p. 16. Here, Plaintiff brought action against Defendants alleging violations of the FDCPA and FCCPA, stemming from GTM's and Summit's efforts to collect on Plaintiff's obligation to pay a debt created by her Mobiloans Account.

It is clear that all of Plaintiff's allegations involve disputes relating to the Mobiloans Account. Specifically, in order to assert her claim under the FDCPA and FCCPA, Plaintiff must

establish that a "debt collector" was attempting to collect a "debt" as that term is defined in the FDCPA. Under the FDCPA, a "debt" means "any obligation or alleged obligation of a consumer to pay money arising out of a transaction…" 15 U.S.C. § 1692a(5). A "debt collector" is any person, *inter alia*, "who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another." 15 U.S.C. § 1692a(6). Necessarily, in order to prevail in this litigated matter, Plaintiff would need to rely on the underlying Mobiloans Account to establish that a debt was owed and that Defendants were debt collectors. As such, all of Plaintiff's claims are subject to mandatory and binding arbitration.

Moreover, any argument that the Arbitration Agreement does not apply to Defendants cannot prevail. The Arbitration Agreement explicitly states that claims related to Plaintiff's Mobiloans Account applies to Mobiloans' subsequent holders, including its officers and managers. Torres Dec., Exhibit B at p. 16. Here, the evidence establishes that GTM purchased Plaintiff's Mobiloans Account and placed her account with Summit to collect the subject debt owed by Plaintiff on GTM's behalf. Torres Dec., ¶¶ 9, 13. Thus, there can be no dispute regarding the applicability of the Arbitration Agreement to GTM and Frank Torres.

Additionally, Plaintiff cannot avoid arbitrating her claims against Defendants because Plaintiff enjoyed the benefits of the Mobiloans Account when she received a line of credit from Mobiloans. Having enjoyed the benefits of the Mobiloans Account, Plaintiff cannot now avoid the burden it imposes and to which she earlier agreed. GTM, as the subsequent holder of Plaintiff's Mobiloans Account, and Frank Torres, as GTM's Chief Operations Officer, may therefore compel Plaintiff to resolve her claims in arbitration pursuant to the Arbitration Agreement.

Pursuant to the FAA, a party to an arbitration agreement "may petition any United States district court . . . for an order directing that such arbitration proceed in the manner provided for in

such agreement." 9 U.S.C. § 4. If the court is satisfied that a valid arbitration agreement exists between the parties, the court shall order the parties to proceed to arbitration in accordance with the terms of the agreement. *Id.* As the Complaint raises only issues fully governed by the Arbitration Agreement, Defendants request the Court issue an Order compelling arbitration of Plaintiff's claims against Defendants and dismiss this action, or in the alternative, stay proceedings pending arbitration of Plaintiff's claims.

II. The Court Should Grant Defendants Motion for Judgment on the Pleadings in the Event It Does Not Compel Arbitration

a. Legal Standard

"After the pleadings are closed – but early enough not to delay trial – a party may move for judgment on the pleadings." FED. R. CIV. P. 12(c). "A motion for judgment on the pleadings is governed by the same standard as a Rule 12(b)(6) motion to dismiss." *Guarino v. Wyeth LLC*, 823 F. Supp. 2d 1289, 1291 (M.D. Fla. 2011), *aff'd*, 719 F.3d 1245 (11th Cir. 2013). "Judgment on the pleadings is appropriate when there are no material facts in dispute, and judgment may be rendered by considering the substance of the pleadings and any judicially noticed facts." *Hawthorne v. Mac Adjustment, Inc.*, 140 F.3d 1367, 1370 (11th Cir. 1998); *see also Cannon v. City of W. Palm Beach*, 250 F.3d 1299, 1301 (11th Cir. 2001). "In determining whether a party is entitled to judgment on the pleadings, we accept as true all material facts alleged in the non-moving party's pleading, and we view those facts in the light most favorable to the non-moving party." *Perez v. Wells Fargo N.A.*, 774 F.3d 1329, 1335 (11th Cir. 2014). In addition to accepting material allegations of fact as true, "the district court may consider an extrinsic document if it is (1) central to the plaintiff's claim, and (2) its authenticity is not challenged." *SFM Holdings, Ltd. v. Banc of Am. Sec., LLC*, 600 F.3d 1334, 1337 (11th Cir. 2010). When considering a motion for judgment on the pleadings, "[a claim] may not be dismissed 'unless it appears beyond doubt that the plaintiff can prove no set

of facts in support of his claim which would entitle him to relief.'" *Hawthorne*, 140 F.3d at 1370 (quoting *Slagle v. ITT Hartford*, 102 F.3d 494, 497 (11th Cir. 1996)).

The "least sophisticated consumer" standard is used to evaluate claims for violations of 15 U.S.C. §§ 1692e and 1692f. *LeBlanc v. Unifund CCR Partners*, 601 F.3d 1185, 1193, 1200 (11th Cir. 2010). "The least-sophisticated consumer standard takes into account that consumer-protection laws are not made for the protection of experts, but for the public – that vast multitude which includes the ignorant, the unthinking, and the credulous." *Crawford v. LVNV Funding, LLC*, 758 F.3d 1254, 1258-59 (11th Cir. 2014) (internal citation and quotations omitted). "However, the test has an objective component in that while protecting naive consumers, the standard also prevents liability for bizarre or idiosyncratic interpretations of collection notices by preserving a quotient of reasonableness." *Id*. at 1259 (quoting *LeBlanc*, 601 F.3d at 1194 (11th Cir. 2010)). Although the least sophisticated consumer standard is used in evaluating misrepresentations and unconscionable means to collect a debt, Plaintiff's allegations concerning her claims that Defendants violated 15 U.S.C. §§ 1692e, 1692f relate exclusively to the statutory legality and enforceability of Plaintiff's debt originated by Mobiloans.

b. Plaintiff's Claim that Defendants Violated the FDCPA and FCCPA Fails

Plaintiff claims that the Mobiloans debt is invalid and unenforceable pursuant to Florida law and, as a result, Defendants violated the FDCPA and FCCPA when collection attempts were made to collect the debt created by the Mobiloans Account. However, the validity of the debt in the context of usury limitations is not evaluated under Florida law but, instead, the law of the state to which the parties to the contract agreed. *See L'Arbalete, Inc. v. Zaczac*, 474 F. Supp. 2d 1314, 1320–22 (S.D. Fla. 2007). Indeed, the Florida Supreme Court discussed the validity and enforceability of debts that would be usurious pursuant to Florida law, but where the parties agreed

to the laws of another jurisdiction and the transaction had a reasonable relation to the foreign jurisdiction in *Morgan Walton Properties, Inc. v. Int'l City Bank & Tr. Co.*, 404 So. 2d 1059, 1063 (Fla. 1981).

In *Morgan*, the court addressed the certified question of "whether Florida's legislation on usurious interest establishes a public policy that prevents the application of the traditional choice of law rules to [contracts] executed and to be performed in Louisiana." *Id*. at 1062. There, the court determined that it "[did] not think the mere fact that there exists in Florida a usury statute which prohibits certain interest rates establishes a strong public policy against such conduct in this state where interstate loans are concerned." *Id*. Importantly, the court held that "[i]n a situation where, under the law of one state with a relation to the transaction, it is void, while under the law of the other state with a relation, the interest is forfeited but principal is an enforceable debt, the law construes the parties' intent to be that the law of the latter should apply." *Id*. at 1063. Thus, where parties to a contract agree that the law of another jurisdiction controls the terms of the contract and the contract is enforceable under the laws of the other jurisdiction, the laws of that jurisdiction shall apply. *See id*.

i. Plaintiff's 15 U.S.C. §§ 1692e, 1692e(2)(a), 1692e(5), 1692e(10), and 1692f and Fla. Stat. §559.72(9) Claims

Here, Plaintiff's claims that Defendants violated 15 U.S.C. §§ 1692e, 1692e(2)(a), 1692e(5), 1692e(10), and 1692f and Fla. Stat. §559.72(9) because Defendants attempted to collect a debt that void as usurious under Florida law are without merit. As demonstrated by Plaintiff's Mobiloans Account application and the Terms and Conditions, the laws of the Tunica-Biloxi Tribe of Louisiana applies to her Mobiloans Account, not Florida law. Torres Dec., Exhibit A, p. 3; Exhibit B, p. 18. In this regard, the Complaint alleges that the debt in question is void and unenforceable because Florida law prohibits interest rates to exceed 18%. Doc. 1, ¶¶ 20, 26.

However, as demonstrated by the Terms and Conditions, the Mobiloans Account is "governed by the laws of the Tunica-Biloxi Tribe of Louisiana, the Indian Commerce Clause of the United States Constitution, the [FAA], and any applicable federal law necessary to uphold federal substantive statutory rights or remedies." Torres Dec., Exhibit B, p. 18. Furthermore, when Plaintiff applied for her Mobiloans Account, she acknowledged that laws of the Tunica-Biloxi Tribe of Louisiana governed the Mobiloans Account. *Id.*, Exhibit A, p. 3. Specifically, Plaintiff acknowledged and agreed "that the line of credit account is governed by the laws of the Tunica-Biloxi Tribe and that the account may not have any limitations on the terms of the account that the laws of my state may provide." *Id*. The debt in question cannot be held to be void and unenforceable pursuant to Florida law because Florida law does not govern the Mobiloans Account.

With regard to Plaintiff's FCCPA claim and in addition to Florida law's inapplicability to the Mobiloans Account, Florida courts have found no violation of Fla. Stat. §559.72(9) for failing to provide notice of assignment. *See Ramos v. CACH, LLC*, 183 So. 3d 1149, 1152 (Fla. 5th DCA 2015) ("the 2010 changes to section 559.715 … did not create a private cause of action … and makes no reference to the FCCPA's notice provision"); *see also Schmidt v. Synergentic Commc'ns, Inc.*, No. 214-CV-539-FTM-29, 2015 WL 248635, at *3 (M.D. Fla. Jan. 20, 2015) ("there is no private cause of action under the FCCPA for failure to serve a notice of assignment"). Likewise, loans issued to Florida residents by an unlicensed deferred presentment provider, as alleged by Plaintiff, are not rendered void or unenforceable under Florida law. *See Cross v. Point & Pay, LLC*, 274 F. Supp. 3d 1289, 1296 (M.D. Fla. 2017) ("section 560.204 does not render agreements with money transmitters who are unlicensed thereunder unenforceable"). Given that Mobiloans Account is governed by the laws of the Tunica-Biloxi Tribe of Louisiana rather than Florida law, Plaintiff's claims that Defendants violated 15 U.S.C. §§ 1692e, 1692e(2)(a), 1692e(5), 1692e(10),

and 1692f and Fla. Stat. §559.72(9) must be dismissed with prejudice.

ii. Plaintiff's 15 U.S.C. § 1692c(b) Claim

Regarding Plaintiff's claim that Defendant violated 15 U.S.C. § 1692c(b), the Middle District of Florida in *Hunstein v. Preferred Collection and Mgmt. Servs., Inc.*, Case No. 8:19-cv-983-T-60SPF, 2019 WL 5578878 (M.D. Fla. Oct. 29, 2019) (appeal pending) recently addressed this exact claim where a debt collector disclosed a consumer's information to a third party. There, the plaintiff, who was represented by the same law firm as the instant action, claimed that the defendant sent information regarding the plaintiff's debt to a third party mail house to prepare and send a collection letter on its behalf violated the FDCPA and FCCPA because the mail house was an unauthorized third party. *Id*., at *1. In dismissing the FDCPA claims against the defendant, the court held that transmitting information regarding a debt to a mail house was not a communication made "in connection with the collection of a debt." *Id*., at *3. The court discussed the Eleventh Circuit's standard in determining whether a communication is in connection with the collection of a debt, and noted the threshold question is "whether the communication makes an express or implied demand for payment." *Id*., at *2. Additionally, the court addressed the plaintiff's conflation of two communications: (1) the transmission of information to the mail house in order to generate the collection letter; and (2) the actual collection letter that was allegedly sent from the mail house to the plaintiff. *Id*., at *3. In distinguishing the two communications, the court observed that the transmission of information was merely a communication with a third party, not a communication in connection with the collection of a debt. *Id.* Given the distinction, the court dismissed the FDCPA claims with prejudice and declined to exercise supplemental jurisdiction over the FCCPA claim.

Here, Plaintiff claims that "Defendants" violated the § 1692c(b) of the FDCPA by

communicating information about a debt to an unauthorized third party. *See* Doc. 1, ¶ 75. Like *Hunstein*, however, communicating information to a third party only falls within the purview of the FDCPA if the communication makes an express or implied demand for payment. *See Hunstein*, 2019 WL 5578878, at *2 (citing *Farquharson v. Citibank, N.A.*, 664 F. App'x 793, 801 (11th Cir. 2017); *Kinlock v. Wells Fargo Bank, N.A.*, 636 F. App'x 785, 787 (11th Cir. 2016)). The allegations that Plaintiff did not authorize GTM to convey information related to her Mobiloans Account cannot be determined to be a "communication in connection with the collection of a debt." As such, Plaintiff does not and cannot allege that providing information to Summit was such a communication prohibited by the FDCPA. Accordingly, Plaintiff's claim that Defendants violated 15 U.S.C. § 1692c(b) must be dismissed with prejudice.

CONCLUSION

Based on the forgoing, Defendants Global Trust Management, LLC and Frank Torres respectfully request the Court grant their motion to compel arbitration and dismiss or stay this action. Should the Court decline to Order arbitration of Plaintiff's claims, the Court should grant Defendants' motion for judgment on the pleadings and dismiss the Complaint in its entirety.

Dated: January 24, 2020

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