UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

KIRK CULVER,

Plaintiff,

v. **Case No: 6:20-cv-2292-PGB-EJK**

PHH MORTGAGE CORPORATION,

Defendant.
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ORDER

This cause comes before the Court on Defendant PHH Mortgage Corporation's ("**PHH**") Motion to Dismiss (Doc. 21 (the "**Motion**")), filed March 18, 2021. Plaintiff responded in opposition (Doc. 25 (the "**Response**")). Upon consideration, Defendant's Motion is due to be granted in part and denied in part.

I. BACKGROUND[1]

Plaintiff purchased a home in New Smyrna, Florida, secured by a mortgage and a note. (Doc. 1, ¶ 7; Doc. 1-1). Plaintiff's mortgage is a Standard Federal National Mortgage Association ("**Fannie Mae**") and a Federal Home Loan

[1] This account of the facts comes from Plaintiff's Complaint. (Doc. 1). The Court accepts these factual allegations as true when considering motions to dismiss. *See Williams v. Bd. of Regents*, 477 F.3d 1282, 1291 (11th Cir. 2007).

Mortgage Corporation ("**Freddie Mac**") mortgage (the "**Mortgage**"), owned by Fannie Mae and serviced by Defendant.[2] (*Id.* ¶¶ 8–9).

In September 2012, Plaintiff defaulted on his loan. (*Id.* ¶ 28). Pursuant to the Mortgage, the lender was permitted to "do and pay whatever is reasonable and appropriate" to protect the lender's interest in the property. (Doc. 1-1, ¶ 9). As the lender's agent, Defendant was only permitted to charge: (1) "any amounts disbursed by [Defendant] under this Section 9;"and (2) "all expenses incurred in pursuing . . . remedies." (*Id.* ¶¶ 9, 22).

Defendant contracts with a third-party vendor to use a "computerized mortgage servicing system that generates recurring property inspections every 20–30 days for defaulted loans." (Doc. 1, ¶¶ 16–17). After each inspection, Defendant added between $15.00 and $19.50 to Plaintiff's mortgage account and the total amount owed, even though the actual cost of the property inspections was "much less than what was charged to Plaintiff." (*Id.* ¶¶ 31–33). Defendant notified Plaintiff of the charges via his monthly mortgage statement. (*Id.* ¶¶ 37–50).

Consequently, Plaintiff—on behalf of himself and all others similarly situated—filed the instant purported class action lawsuit alleging: violations of the Fair Debt Collection Practices Act ("**FDCPA**") (Counts I and II); violations of the Florida Consumer Collection Practices Act ("**FCCPA**") (Count III); constructive fraud (Count IV); and breach of contract (Count V). (*Id.*). Defendants now move to dismiss the Complaint, and the matter is ripe for review.

[2] Defendant became the servicer of the loan sometime after it entered default. (*Id.* ¶ 29).

II. LEGAL STANDARD

A complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." FED. R. CIV. P. 8(a)(2). To survive Rule 12(b)(6) motion to dismiss, the complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is plausible on its face when the plaintiff "pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* Legal conclusions and recitation of a claim's elements are properly disregarded, and courts are "not bound to accept as true a legal conclusion couched as a factual allegation." *Papasan v. Allain*, 478 U.S. 265, 286 (1986). Courts must also view the complaint in the light most favorable to the plaintiff and must resolve any doubts as to the sufficiency of the complaint in the plaintiff's favor. *Hunnings v. Texaco, Inc.*, 29 F.3d 1480, 1483 (11th Cir. 1994) (per curiam). In sum, courts must (1) ignore conclusory allegations, bald legal assertions, and formulaic recitations of the elements of a claim; (2) accept well-pled factual allegations as true; and (3) view well-pled allegations in the light most favorable to the plaintiff. *Iqbal*, 556 U.S. at 67.

III. DISCUSSION

Defendant makes five arguments in favor of dismissal: (1) Plaintiff, and the members of the purported class, fail to allege satisfaction of the notice-and-cure provision of the mortgage before filing suit; (2) Plaintiff fails to plausibly allege

that Defendant marked up any fees; (3) Plaintiff fails to allege a claim under either the FDCPA or the FCCPA; (4) Plaintiff fails to allege a claim for constructive fraud; and (5) Plaintiff fails to allege a claim for breach of contract. The Court will discuss each argument in turn.[3]

A. Notice-and-Cure

Defendant argues that Plaintiff has not alleged that all conditions precedent to filing suit have been performed. (Doc. 21, pp. 5–8). Specifically, Defendant argues that Plaintiff failed to comply with Paragraph 20 of the Mortgage, which provides in pertinent part that "[n]either Borrower nor Lender may commence, join, or be joined to any judicial action . . . until such Borrower or Lender has notified the other party of [the] alleged breach and afforded the other party hereto a reasonable period after giving of such notice to take corrective action." (Doc. 1-1, p. 17). Additionally, Defendant maintains that Plaintiff fails to allege compliance for the absent class members. (Doc. 21, p. 8).

Plaintiff argues that Defendant was "allowed ample time for corrective action" after providing a letter (Doc. 21-1 (the "**Cure Letter**")) to inform Defendant of the alleged wrongdoing; the Cure Letter detailing Plaintiff's allegations was sent on October 26, 2020.[4] (Doc. 25, p. 7). Plaintiff states that class relief is not precluded because "the mortgage itself specifically contemplates class

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[3] Defendant also moves to strike Plaintiff's demand for a jury trial, but Plaintiff consented to withdraw his demand. (Doc. 24).

[4] This lawsuit was not filed until December 16, 2020. (Doc. 1).

actions." (*Id.*). The Court finds that satisfaction of conditions precedent was sufficiently alleged.

"In pleading conditions precedent, it suffices to allege generally that all conditions precedent have occurred or been performed. But when denying that a condition precedent has occurred or been performed, a party must do so with particularity." FED. R. CIV. P. 9(c). "Satisfaction of conditions precedent . . . is not a matter that is adjudicated on a motion to dismiss." *APR Energy, LLC v. Pak. Power Res., LLC*, 653 F. Supp. 2d 1227, 1233 (M.D. Fla. 2009).

Defendant concedes that Plaintiff, via counsel, provided the Cure Letter prior to initiating suit. But Defendant maintains that the Letter fails to comply with the notice-and-cure requirement in Paragraph 20 of the Mortgage because it: (a) does not provide Defendant with an opportunity to take corrective action; (b) states that Plaintiff has already retained counsel and prepared a class action complaint. (*Id.* at p. 7).[5]

As stated, it would be improper for the Court to decide whether the conditions precedent have in fact been satisfied at this stage. Instead, the Court must determine whether Plaintiff has *alleged* that he satisfied the conditions precedent, and his pleading is sufficient. *See APR Energy*, 653 F. Supp. 2d at 1233 ("Plaintiffs['] general allegations that all conditions precedent to the bringing of

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5 Plaintiff also points out that the Letter does not indicate that Plaintiff will refrain from proceeding with the class action complaint eve if Defendant takes corrective action. However, inclusion of such a statement has no bearing on whether Plaintiff has sufficiently alleged compliance.

this action and to the obligation [under the relevant contract] are sufficient to withstand the present Motion to Dismiss."). Plaintiff explicitly pleads that "all conditions precedent to the filing of this class action lawsuit have occurred or otherwise been waived." (Doc. 1, ¶ 63). So, they have satisfied this requirement.

As for the class, the "parties' pleadings alone are often not sufficient to establish whether class certification is proper, and the district court will need to go beyond the pleadings and permit some discovery and/or an evidentiary hearing to determine whether a class may be certified." *Mills v. Foremost Ins.*, 511 F.3d 1300, 1309 (11th Cir. 2008). At this stage, Plaintiff has sufficiently alleged that the purported class satisfied conditions precedent to filing suit.[6]

B. Plausibility

Defendant next argues that the Complaint should be dismissed for failure to plausibly allege that Defendant marked up any fees. (Doc. 21, pp. 9–12). Defendant relies on two invoices for inspections of Plaintiff's property: the first lists a fee of $15.00, while the second lists a fee of $19.50. (Docs. 21-2. 21-3). Defendant maintains that these invoices contradict Plaintiff's allegations by demonstrating that it "merely passed" the cost of the inspection through to Plaintiff "without any markup." (Doc. 21, p. 11). Therefore, Defendant argues that the entire case should be dismissed. Further, Defendant contends that because Plaintiff's allegation is

[6] For class certification to move forward, Plaintiff will have to allege more than general compliance because "class certification is an evidentiary issue and 'it may be necessary for the court to probe behind the pleadings before coming to a rest on the certification question.'" *Herrera v. JFK Med. Ctr. Ltd.*, 649 F. App'x 930, 934 (11th Cir. 2016) (quoting *Comcast Corp. v. Behrend*, 569 U.S. 27 (2013)).

"upon information and belief," it does not rise above an "unadorned, the defendant-unlawfully harmed me accusation." (Doc. 21, pp. 9–10) (quoting *Iqbal*, 556 U.S. at 678 (2009)).

Defendant misses the mark. Plaintiff's claims are premised on two factual allegations: (1) that Defendant did not incur the fees that were charged to Plaintiff, and (2) that the full cost charged to Plaintiff was not disbursed to the inspection vendor. (Doc. 1. ¶¶ 11, 22, 34, 52). Defendant's documents can only plausibly establish that it incurred the cost. They do not establish that the full amount—or any amount—was disbursed to the inspection vendor. Plaintiff's allegation that Defendant did not incur or disburse the full cost of the inspection is not a legal conclusion that the Court may disregard. The phrase "upon information and belief" is not a magic spell that transforms Plaintiff's factual allegation into a legal conclusion. Nor does the inference that Defendant undertook illegal activity make the claim implausible—in fact, this inference is precisely why the case is before the Court.

Plaintiff is correct that this claim should not be dismissed merely because a key factual allegation is made "upon information and belief." (*Id.* ¶ 21). "Asking for plausible grounds to infer an agreement does not impose a probability requirement at the pleading stage; it simply calls for enough fact to raise a reasonable expectation that discovery will reveal evidence of illegal [activity.]" *Twombly*, 550 U.S. at 556. "Determining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its

judicial experience and common sense." *Iqbal*, 556 U.S. 662 at 679. Moreover, the Court must accept Plaintiff's factual allegations as true on a motion to dismiss. *See Williams*, 477 F.3d 1291 (11th Cir. 2007). Plaintiff adequately pleaded allegations that when accepted as true, lead to a reasonable inference that he is entitled to relief.

C. Counts I–III: FDCPA and FCCPA

Congress enacted the FDCPA "to eliminate abusive debt collection practices by debt collectors, to ensure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses." 15 U.S.C.A. § 1692(e). To state a claim under the FDCPA, a plaintiff must allege that: (1) the defendant is a debt collector; (2) he or she was the object of collection activity arising from consumer debt; and (3) the defendant engaged in an act or omission prohibited by the FDCPA or FCCPA. *Garrison v. Caliber Home Loans, Inc.*, 233 F. Supp. 3d 1282, 1290 (M.D. Fla. 2017) (citations omitted).

The FCCPA is the state counterpart to the federal FDCPA, *Oppenheim v. I.C. Sys.*, 627 F.3d 833, 836 (11th Cir. 2010) (per curiam), and "was enacted as a means of regulating the activities of consumer collection agencies within [Florida]," *LeBlanc v. Unifund CCR Partners*, 601 F.3d 1185, 1190 (11th Cir. 2010). Although the FCCPA is not "restricted to debt collectors," *Bentley v. Bank of Am., N.A.*, 773 F. Supp. 2d 1367, 1372 (S.D. Fla. 2011), it requires substantially the same elements as the FDCPA to state a claim for relief. *Garrison*, 233 F. Supp. 3d at 1290. In

applying and construing the FCCPA, "due consideration and great weight" is given to interpretations of the FDCPA. FLA. STAT. § 559.552; *Lear v. Select Portfolio Servicing, Inc.*, No. 17-62206-CIV, 2018 WL 1960108, at *1 (S.D. Fla. Apr. 25, 2018).

The FDCPA and FCCPA only impose liability when an entity is attempting to collect debt. *Parker v. Midland Credit Mgmt., Inc.*, 874 F. Supp. 2d 1353, 1355 (M.D. Fla. 2012); *Wood v. Citibank, N.A.*, No. 8:14–cv–2819–T–27EAJ, 2015 WL 3561494, at *3, 5 (M.D. Fla. June 5, 2015) (stating that for the FDCPA and FCCPA to apply, the challenged communication must have been made in connection with the collection of a debt); *see also* 15 U.S.C. §§ 1692c–f (proscribing activities taken "in connection with the collection of debt"); *see* FLA. STAT. § 559.72 (prohibiting enumerated activities taken "[i]n collecting consumer debts"). When reviewing these claims, "the inquiry is not whether the particular plaintiff-consumer was deceived or misled; instead, the question is whether the 'least sophisticated consumer' would have been deceived by the debt collector's conduct." *Green v. Specialize Loan Servicing, LLC*, 766 F. App'x 777, 781 (11th Cir. 2019) (quoting *Crawford v. LVNV Funding, Jackson*, 988 F.3d 1254, 1258 (11th Cir. 2014)). Additionally, the Truth In Lending Act ("**TILA**"), 12 C.F.R. § 1026.41, "requires lenders to send mortgage statements that contain certain information, 'for each billing cycle at the end of which there is an outstanding balance in that account or with respect to which a finance charge is imposed.'" *Id.* at 784 (quoting 15 U.S.C. § 1637(b); 12 C.F.R. § 1026.41).

District courts in this Circuit are split on whether monthly mortgage statements required by TILA qualify as debt collection communications. *Compare Shaffer*, 347 F. Supp. 3d at 1044 (M.D. Fla. 2018) (finding no debt collection communication when the monthly mortgage statement simply complied with the requirements of TILA); *with Roche v. Rushmore Loan Mgmt. Serv., LLC,* No. 19-cv-24872, 2020 WL 1452346 (S.D. Fla. Mar. 25, 2020) (finding a debt collection communication where the monthly mortgage statement included the amount of debt and described how and where to make payment). The Eleventh Circuit has not established a bright-line rule under the FDCPA for what qualifies as "in connection with the collection of any debt." *Dyer v. Select Portfolio Servicing, Inc.*, 108 F. Supp. 3d 1278, 1280 (M.D. Fla. 2015). However, courts are instructed to "look to the language of the letters in question, specifically to statements that demand payment, discuss additional fees if payment is not tendered, and disclose that the [writer] was attempting to collect a debt and was acting as a debt collector." *Pinson v. Albertelli Law Partners LLC,* 618 F. App'x 551, 553 (11th Cir. 2015) (alteration in original). For mortgage statements to be debt collection communications, the statements must "rise above the garden variety type of statement required by TILA." *Green*, 766 F. App'x at 785.

"A communication can have more than one purpose, for example, providing information to a debtor as well collecting a debt." *Pinson*, 618 F. App'x at 553. And that much of the document *does* comply with TILA does not foreclose the possibility that this is a debt collection communication. *Green*, 766 F. App'x at 785

(acknowledging "the unremarkable principle that a monthly mortgage statement that is in conformity with TILA may nevertheless include additional language that constitutes debt collection" (citations omitted)).

Defendant argues that its monthly mortgage statements are not debt collection communications because: (1) they are required by the TILA; (2) they are "substantially similar" to the model statement provide by the Consumer Financial Protection Bureau; and (3) they are no more than a garden-variety mortgage statement. (Doc. 21, p. 15). Plaintiff argues that Defendant's documents are more than garden-variety mortgage statements and are, therefore, debt collection communications. (Doc. 25, p. 11). The Court agrees.

Defendant's mortgage statements satisfy all three debt collection communication requirements. Defendant's mortgage statements include a total amount due and reference a $72.22 late fee that "may be charged." (Doc. 1-2, p. 2; Doc. 1-3, p. 2). They also include a clear statement that "this communication is from a debt collector attempting to collect a debt; and information obtained will be used for that purpose." (Doc. 1-2, p. 3; Doc. 1-3, p. 3). A consumer reading this language would believe it to be a debt collection communication. Whether much of the instant document does comply with TILA is immaterial because, as stated above, a document can have more than one purpose. *See Green*, 766 F. App'x at 785.

Defendant mistakenly relies on *Green* and *Shaffer* for support. In *Green*, the Eleventh Circuit found that the mortgage statement at issue was not a debt

collection communication because it merely complied with TILA. 766 F. App'x at 777. Unlike the present case, however, the mortgage statement in question did not include unambiguous language about the defendant's status as a debt collector attempting to collect a debt. *Id.* Likewise, in *Shaffer*, the plaintiff merely complained that the inclusion of a payment coupon, meant to be mailed back with plaintiff's payment, made an otherwise mundane mortgage statement a debt collection communication. 347 F. Supp. 3d at 1045. Again, the mortgage statement lacked clear language identifying the defendant as a debt collector. The court acknowledged that where, there is "clear language such as 'this is an attempt to collect a debt'," the language "falls outside the realm of TILA or [is] 'debt collection language.'" *Id.* at 1045–46 (quoting *Lear v. Select Portfolio Servicing, Inc.*, 309 F. Supp. 3d 1237, 1240 (S.D. Fla. 2018)). Additionally, while the mortgage statement mentioned a late fee, it was for "$0.00." *Id.* at 1046.

If the instant communication—which includes clear language identifying Defendant as a debt collector attempting to collect a debt, a potential late fee of $72.22, and a total amount due—does not qualify as a debt collection communication, it is difficult to comprehend what would.[7] Because the statements

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[7] Defendant relies on *Helman v. Udren Law Offices, P.C.*, 85 F. Supp. 3d 1319, 1325 (S.D. Fla. 2014), and contends that merely including the phrase "'[t]his communication is from a debt collector attempting to collect a debt' . . . does not automatically trigger the protections of the FDCPA." (Doc. 21, pp. 16–17). The Court does not find this persuasive. First, the instant document satisfies all three requirements of a debt collection communication, so even if the inclusion of a clear statement does not *automatically* trigger the FDCPA, the court does not *only* rely on the statement. Second, the Eleventh Circuit has issued more recent holdings, cited above, that bind this court.

sent to Plaintiff qualify as debt collection communications, Plaintiff properly pleads that the challenged conduct "is related to debt collection." Therefore, Defendant's Motion to dismiss as it relates to Counts I–III is due to be denied.

D. Count IV: Constructive Fraud

"Constructive fraud exists where a duty arising from a confidential or fiduciary relationship has been abused, or where an unconscionable advantage has been taken. . . . Florida courts have construed the term fiduciary or confidential relation as being very broad." *Linville v. Ginn Real Estate Co.*, 697 F. Supp. 2d 1302, 1309 (M.D. Fla. 2010) (internal quotations and citations omitted). Defendant argues that Count IV should be dismissed because: (a) Plaintiff cannot allege the requisite fiduciary relationship; and (b) the claim is barred by the independent tort doctrine. (Doc. 21, pp. 17–22).[8]

Under Florida law, "it is well settled that a plaintiff may not recast causes of action that are otherwise breach-of-contract claims as tort claims." *Spears v. SHK Consulting and Dev., Inc.*, 338 F. Supp. 3d 1272, 1279 (M.D. Fla. 2018) (internal citations omitted). "However, the independent tort doctrine does not bar claims where the plaintiff has alleged conduct that is independent from acts that breach the contract and does not itself constitute breach of the contract at issue." *Matonis v. Care Holdings Grp., L.L.C.,* 423 F. Supp. 3d 1304, 1311 (S.D. Fla. 2019) (citations omitted). "The critical inquiry for a fraud claim focuses on whether the alleged

[8] The Court finds it unnecessary to discuss Defendant's fiduciary relationship argument because, as explained below, the independent tort doctrine bars Plaintiff's constructive fraud claim.

fraud is separate and apart from the contract." *Spears,* 338 F. Supp. 3d at 1279 (internal quotations and citations omitted).

Here, Plaintiff relies on the same underlying factual allegations that Defendant contracted with a third-party to perform home inspections and then charged Plaintiff more than the actual cost for both his breach of contract claim and his constructive fraud claim. (Doc. 1, ¶¶ 100–102, 109). Plaintiff maintains that the fraud claim relies on the additional material fact that the true cost of the home inspection was "concealed from Plaintiff, [which] goes beyond merely breaching a provision of the mortgage agreement." (Doc. 25, p. 18).[9] However, the constructive fraud claim is inextricably tied to the Mortgage and breach of contract claim. (*See Id.* ¶ 103, 109) ("Defendant has received greater economic benefit that what was contemplated *under the mortgage*." (emphasis added)).[10] In sum, Plaintiff's constructive fraud claim is not "separate and distinct" from Plaintiff's breach of contract claim.[11] Because the constructive fraud claim is barred by the independent tort doctrine, Count IV of Plaintiff's Complaint is due to be dismissed.

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[9] The Court notes that concealment is not mentioned in Count IV of Plaintiff's Complaint. (*See Id.* ¶¶ 96–104).

[10] In Plaintiff's breach of contract claim, he alleges that Defendant "breached the [Mortgage] by charging Plaintiff . . . unfair, deceptive, and unreasonable property inspection fees, *as set out above*." (*Id.* ¶ 109) (emphasis added). Without additional explanation as to what "set out above" means, the Court is left to connect the dots back to Plaintiff's constructive fraud claim.

[11] Plaintiff argues in a footnote that he is permitted to plead in the alternative. (Doc. 25, p. 19 n. 4). However, that is not what Plaintiff has done. The breach of contract claim and the constructive fraud claim are entirely coextensive. They rise and fall together. Pleading in the alternative occurs where, if a plaintiff is unable to prove one claim, the other serves as an independent basis for holding the defendant liable. For instance, a plaintiff might plead that if the defendant is not reckless, he was at least negligent. "Alternative [pleading] . . . usually is

E. Count V: Breach of Contract

To plead a claim for breach of contract under Florida law a plaintiff must plead: (1) the existence of a contract; (2) a material breach of that contract; and (3) damages resulting from the breach. *Vega v. T-Mobile USA, Inc.*, 564 F.3d 1256. 1272 (11th Cir. 2009).

Defendant argues that Plaintiff has not sufficiently alleged damages because his damages are premised on "disputed fees [Plaintiff] has not paid." (Doc. 21, p. 22). Plaintiff responds, first, that the cases cited by Defendant have no precedential value in this Court.[12] (Doc. 25, p. 19). And second, Plaintiff argues that Florida law provides for damages where there is "'an obligation to repay' where a plaintiff is 'alleged to be indebted an actual sum of money as a result of fraudulent and deceptive practices.'" (*Id.*) (quoting *Sharon v. Royal Caribbean Cruises Ltd.*, No. 17-CV-22323, 2017 WL 11220344, at *4 (S.D. Fla. Oct. 6, 2017)).

The Court finds that Plaintiff has sufficiently alleged damages. Here, "[Plaintiff's] damage is the obligation to repay the actual debt owed." *Sharon*, 2017 WL 11220344 at *4. Defendant added the cost of the inspections to the total amount owed by Plaintiff, increasing the "actual debt owed." (*See* Doc. 1, ¶ 109). This allegation of increased debt, in violation of the Mortgage, is sufficient to plead

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drafted in terms of 'either-or' propositions." 5 WRIGHT & MILLER, FED. PRAC. & PROC. § 1282 (Miller et al. eds., 3d ed. 2021). Here, there is no "either-or" proposition for the two claims.

[12] Defendant relies on two unreported, out-of-circuit, cases from the Northern District of Illinois applying Illinois law. *See Antonicic v. HSBC Bank USA, N.A.*, No. 19-CV-3038, 2020 WL 1503201, at *2 (N.D. Ill. Mar. 27, 2020); *Miszczyszyn v. JPMorgan Chase Bank, N.A.*, 2019 WL 1254912 (N.D. Ill. Mar. 19, 2019).

damages under Florida law. Thus, Defendant's Motion as it relates to Count V is due to be denied.

IV. CONCLUSION

Accordingly, it is **ORDERED AND ADJUDGED** that:

1. Defendant's Motion to Dismiss (Doc. 21) is **GRANTED** as to Count IV;
2. Count IV of Plaintiff's Complaint is **DISMISSED WITH PREJUDICE**;
3. Defendant's Motion to Dismiss is otherwise **DENIED** as to Counts I-III and V; and
4. On or before July 13, 2021, Defendant shall answer Plaintiff's Complaint.

DONE AND ORDERED in Orlando, Florida on June 28, 2021.

PAUL G. BYRON
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Parties