UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 1:18-cv-20389-UU

HERBERT L. JONES, JR.,

Plaintiff,

v.

SELECT PORTFOLIO SERVICING, INC.,

Defendant.
_____/

ORDER ON MOTION TO DISMISS

THIS CAUSE is before the Court upon Defendant's Motion to Dismiss the Complaint (the "Motion"). D.E. 14.

THE COURT has reviewed the Motion, the pertinent portions of the record and is otherwise fully advised in the premises.

I. Factual Background

Unless otherwise indicated, the following facts are taken from the well-pleaded allegations in Plaintiff's Complaint. D.E. 1. Plaintiff, Herbert Jones, Jr., executed a note and mortgage on September 22, 2006. D.E. 14.[1] Defendant is the loan servicer on the debt arising from Plaintiff's mortgage. D.E. 1-1.[2]

[1] Plaintiff has not disputed this fact, although it is taken from Defendant's Motion to Dismiss. D.E. 14.

[2] Federal Rule of Civil Procedure 10(c) provides "A statement in a pleading may be adopted by reference elsewhere in the same pleading or in any other pleading or motion. A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes." *Id.* Similarly, under the "incorporation by reference doctrine" the Court may consult documents attached to a motion to dismiss without converting the motion into a motion for summary judgment if the document is central to the Plaintiff's claim and undisputed, i.e. unchallenged. *Horsley v. Feldt*, 304 F.3d 1125, 1134 (11th Cir. 2002); *see also Harris v. Ivax Corp*., 182 F.3d 799, 802 n. 2 (11th Cir.1999). Accordingly, the Court reviews the exhibits attached to Plaintiff's complaint and Defendant's motion to dismiss for the purposes of this order.

Plaintiff was named as a defendant in a foreclosure action in Miami-Dade County Circuit Court (the "Foreclosure Action") relating to the subject note and mortgage, and on September 12, 2016, Loan Lawyers, LLC entered an appearance as Plaintiff's counsel in that action. D.E. 1 ¶ 14. On or about April 24, 2017, Loan Lawyers, LLC, Plaintiff's counsel, sent Defendant a letter that stated, in relevant part:

> "Please be advised that this firm represents the above-referenced clients [Plaintiff] in the above referenced matter for the debt arising from the mortgage serviced by you. All communications regarding this matter, including, but not limited to: requests for payment, forbearance or modification questions or offers, discussions regarding status, or any other matter whatsoever in connection to the above mentioned mortgage must be made through our office. **You are hereby advised to cease all contacts with our client immediately**…."
> D.E. 1-1 (emphasis in original).

Defendant received the letter on May 1, 2018. D.E. 1 ¶ 18.

Subsequently, Defendant mailed monthly mortgage statements (the "Statements") to Plaintiff's primary residence on May 15, 2017, D.E. 1-2 at 1-3, August 15, 2017, *id.* at 4-5, November 15, 2017, *id.* at 6-8, and January 11, 2018, *id.* at 9. The Statements contained account and billing information, including, *inter alia*, phone numbers for Defendant's customer service line, amount due, transaction activity, a delinquency notice, past payment breakdowns, and a monthly payment coupon. *See* D.E. 1-2. Plaintiff also contends that "Defendant communicated with Plaintiff on a nearly monthly basis after May 15, 2017, in the same manner as described [with respect to the Statements] … Defendant communicated with Plaintiff a number of other times after Defendant was aware that Plaintiff was represented by counsel in regard to the disputed debt." D.E. 1 ¶¶ 26-27.

II. Procedural Background

On January 31, 2018, Plaintiff filed a three-count Complaint, seeking injunctive relief and statutory damages arising out of allegations that Defendant: (1) violated the Florida Consumer

Collection Practices Act, Fla. Stat. §§ 559.55-559.785 (the "FCCPA") by communicating with Plaintiff, as a debtor, despite knowing that Plaintiff was represented by counsel with respect to the alleged debt, D.E. 1 ¶¶ 28-33 (citing § 559.72(18)); (2) violated the FCCPA, Fla. Stat. § 559.72(7) by communicating with Plaintiff with such frequency and in such a manner as can be reasonably expected to harass Plaintiff, as a debtor, D.E. 1 ¶¶ 34-52; and (3) violated the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.,* (the "FDCPA") by communicating with Plaintiff in connection with the collection of a debt when Defendant knew that Plaintiff was represented by counsel with respect to the alleged debt. D.E. 1 ¶¶ 53-67 (citing § 1692c(a)(2)). On March 5, 2018, Defendant filed a Motion to Dismiss for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6). D.E. 14.

III. Legal Standard

In order to state a claim, Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." While a court, at this stage of the litigation, must consider the allegations contained in the plaintiff's complaint as true, this rule "is inapplicable to legal conclusions." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). In addition, the complaint's allegations must include "more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Id.* (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Thus, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id*. (citing *Twombly*, 550 U.S. at 555).

In practice, to survive a motion to dismiss, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Id.* (quoting *Twombly*, 550 U.S. at 570). A claim has facial plausibility 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.* The plausibility standard requires more than a sheer possibility that a defendant has acted unlawfully. *Id.* Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief. *Id.* Determining whether a complaint states a plausible claim for relief is a context-specific undertaking that requires the court to draw on its judicial experience and common sense. *Id.* at 679.

IV. Analysis

A. Grounds

Defendant's Motion to Dismiss argues that Plaintiff fails to state a claim under the FCCPA and FDCPA because: (1) mortgage statements sent pursuant to the Truth in Lending Act, 15 U.S.C. §§ 1601-1667f (the "TILA") do not constitute debt collection activity under the FDCPA or the FCCPA as a matter of law; and (2) the TILA preempts the FCCPA to the extent it is inconsistent therewith. D.E. 14. For the following reasons, the Court agrees and Defendant's Motion to Dismiss is GRANTED.

B. Mortgage Statements as Debt Collection Activity

i. FDCPA and FCCPA

As an initial matter, the FDCPA and the FCCPA are "largely identical and the FCCPA is construed in accordance with the FDCPA." *Lear v. Select Portfolio Servicing, Inc.*, No. 17-62206-CIV, 2018 WL 1960108, at *1 (S.D. Fla. Apr. 25, 2018) (quoting *Lilly v. Bayview Loan Servicing, LLC*, No: 2:17-cv-00345, 2017 WL 4410040 at *2 (M.D. Fla. 2017) (other citations omitted)). Accordingly, although the Court focuses its analysis on cases interpreting the FDCPA, conclusions drawn from these cases will also inform the Court's decision as to Plaintiff's alleged FCCPA violations. *See Kelliher v. Target Nat. Bank*, 826 F.Supp.2d 1324, 1327 (M.D.Fla.2011)

(quoting Fla. Stat. § 559.77(5) ("The FCCPA provides that '[i]n applying and construing this section, due consideration and great weight shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to the federal Fair Debt Collection Practices Act.'")).

ii. Potential Conflict between the FDCPA and the TILA

This dispute requires the resolution of a perceived conflict between the FDCPA's communication prohibitions and the TILA's communication requirements. In Counts One and Three of his Complaint, Plaintiff alleges that the Statements and "other communications" from Defendant constitute prohibited debt collection communication under the FDCPA and FCCPA. D.E. 1. The FDCPA prohibits communications with debtors who are represented by counsel if such communication was made "in connection with the collection of any debt." *Parker v. Midland Credit Mgmt., Inc.*, 874 F. Supp. 2d 1353, 1355 (M.D. Fla. 2012) (quoting 15 U.S.C. § 1692 *et seq.*); 15 U.S.C. § 1692c(a).[3] However, Regulation Z of the TILA requires that mortgage service providers provide debtors with monthly statements. *See* 12 C.F.R. § 1026.41.[4] Thus, Defendant argues it is put into the impossible position of violating the FDCPA by complying with the TILA, and that Counts One and Three should be dismissed because compliance with the TILA requirements immunizes mortgage service providers with respect to claims pursuant to the FDCPA. D.E. 14 (citing 15 U.S.C. §1692c(a)).

Recognizing this potential conflict, the Consumer Financial Protection Bureau (the "CFPB") issued a bulletin expressly stating that a "servicer acting as a debt collector would not be liable

[3] The Defendant must also be a debt collector under the FDCPA, but Defendant does not dispute this designation. *See* D.E. 14.

[4] Regulation Z of the TILA mandates that mortgage servicers provide monthly mortgage statements containing information on, *inter alia*, the amount due, details of past payment, and mortgage-servicer contact information. *See* 12 C.F.R. § 1026.41.

under the FDCPA for complying with these [TILA monthly mortgage statement] requirements." Implementation Guidance for Certain Mortgage Servicing Rules, 10152013 CFPBGUIDANCE, 2013 WL 9001249 (C.F.P.B. Oct. 15, 2013) (emphasis added).[5] Courts in this circuit have followed the CFPB guidance in the context of monthly mortgage statements by holding that if the monthly mortgage statements were sent pursuant to TILA, they are not "communication in connection with the collection of a debt" under the FDCPA. *See, e.g., Brown v. Select Portfolio Servicing, Inc.*, No. 16-62999-CIV, 2017 WL 1157253 (S.D. Fla. Mar. 24, 2017) (citing the guidance to hold that plaintiff could not state a claim because the monthly mortgage statement sent in compliance with TILA did not constitute debt collection communication under the FDCPA.).

However, compliance with TILA may not automatically exonerate Defendant as "a communication can have more than one purpose … [e.g.] providing information as well [as] collecting a debt." *Pinson v. Albertelli Law Partners, LLC*, 618 Fed. App'x 551, 553 (11th Cir. 2015) (citations omitted). Thus, if a communication contains additional language not required by the TILA that could be construed as "debt collection language," it may still violate the FDCPA. *See Kelliher*, 826 F. Supp. 2d at 1328 (denying a motion to dismiss where the monthly statements contained increasingly severe language, for example: "Account Seriously Past Due ... but we may still be able to offer special payment arrangements...."). Courts determine whether a communication amounts to "debt collection language" by scrutinizing and evaluating the language employed by the servicer. *Wood v. Citibank, N.A.*, No. 8:14-CV-2819-T-27EAJ, 2015

[5] The bulletin states, in relevant part: "[t]he CFPB has determined that a servicer acting as a debt collector would not be liable under the FDCPA for complying with these requirements [12 C.F.R. 1026.41] despite a consumer's 'cease communication' request. These disclosures are specifically mandated by …Dodd-Frank Act [[Public Law 111-203, sec. 1420, 124 Stat. 1376 (2010)13] … which makes no mention of their potential cessation under the FDCPA and presents a more recent and specific statement of legislative intent regarding these disclosures than does the FDCPA. Moreover, the CFPB believes that these notices provide useful information to consumers regardless of their collections status." Implementation Guidance for Certain Mortgage Servicing Rules, 10152013 CFPB GUIDANCE, 2013 WL 9001249 (C.F.P.B. Oct. 15, 2013).

WL 3561494, at *3 (M.D. Fla. June 5, 2015), guided by whether the communication's purpose was to induce payment by the debtor or whether it was merely "informational." *See Parker*, 874 F. Supp. 2d at 1358 (collecting cases explaining that informational letters are not an attempt to collect a debt); *see also Grden v. Leikin Ingber & Winters, PC*, 643 F.3d 169, 173 (6th Cir.2011) (explaining that for a communication to be made in connection with the collection of a debt "an animating purpose of the communication must be to induce payment by the debtor.").[6]

iii. The Statements as "communications in connection with debt the collection of any debt" under the FDCPA and FCCPA

Plaintiff does not dispute the CFPB's guidance, but argues that he has stated a claim because the Statements contain debt collection language not required by the TILA, rendering the Statements debt collection communication. D.E. 18. Specifically, Plaintiff points to: (1) an amount due and payment due date; (2) a delinquency notice warning the Plaintiff what may occur if payment is not made; (3) an "Important Messages" section, which states: "[t]his is an attempt to collect a debt. All information obtained will be used for that purpose;" and (4) a detachable bottom portion, titled "Monthly Payment Coupon," which states "please detach bottom portion and return with your payment. Allow 7-10 days for postal delivery. Please do not

[6] Some Courts have held that "whether a particular communication's animating purpose is to induce a debtor to pay is determined through the eyes of the 'least sophisticated consumer.'" *Lilly v. Bayview Loan Servicing, LLC*, No. 217CV345FTM99MRM, 2017 WL 4410040, at *3 (M.D. Fla. Oct. 4, 2017) (citing *Caceres v. McCalla Raymer, LLC*, 755 F.3d 1299, 1303 (11th Cir. 2014)). However, this standard is generally applied to whether a communication is false or misleading under § 1692e, not whether it constitutes a communication in connection with the collection of a debt under § 1692c. *See LeBlanc v. Unifund CCR Partners*, 601 F.3d 1185, 1194 (11th Cir. 2010) (applying the least sophisticated consumer standard to § 1692e); *Landeros v. Pinnacle Recovery, Inc.*, 692 F. App'x 608, 613 (11th Cir. 2017) ("The least sophisticated consumer standard will not apply to FDCPA claims in which the consumer's sophistication is irrelevant."). Whether a communication is debt collection is a fact-specific inquiry based on whether it is informational or seeks to collect payment, not whether the receiver perceives it to be debt collection. *See Pinson v. Albertelli Law Partners, LLC*, 618 Fed. App'x at 553 (looking at a communication's content rather than discussing the least sophisticated consumer in analyzing whether a communication is a debt collection communication under the FDCPA). However, the Court need not decide whether this standard applies because even the "least sophisticated consumer" looking at the Statements, which only minimally deviate from the model form, would not conclude that they constitute a debt collection communication for the reasons discussed below. *See infra* pp. 8-9.

send cash." D.E. 18 at 4 (citing D.E. 1-2). Defendant counters that the Statements are identical to the statements in *Brown*, the Statements are based off the TILA model form, and any minor discrepancies do not transform an otherwise model monthly mortgage statement into a debt collection communication under the FDCPA. The Court agrees.

The amount due, payment due date, and delinquency information, are specifically required by the TILA. *See* 12. C.F.R. § 1026.41(d). Further, the Statements are based on model form H-30(B) Sample Form of Periodic Statement with Delinquency Box § 1026.41, in Appendix H to Part 1026 of Regulation Z. *Compare* D.E. 1-2, *and* D.E. 14-1. This model form also contains an "Important Messages" section, and a detachable bottom portion (i.e. a "payment coupon"), including, *inter alia*: a specific amount due, a warning about late fees, areas to write in payment, and instructions stating, "make check payable to Springside Mortgage." *Id.* Thus, the substance of the Statements is substantially similar to model form H-30(B), and the minor discrepancies in language noted above, when taken in the context of the document as an otherwise carbon copy of form H-30(B), do not take the Statements out of the realm of monthly statement and into the realm of debt collection communication.

To be sure, at least three other district courts have held that the inclusion of payment warnings, a payment coupon, and language such as "this is an attempt to collect a debt" could convert a monthly statement into a debt collection communication in violation of the FDCPA. *See, e.g., Lear v. Select Portfolio Servicing, Inc.*, No. 17-62206-CIV, 2018 WL 1960108, at *3 (S.D. Fla. Apr. 25, 2018) (holding that language such as "this is an attempt to collect a debt" went beyond the minimum required by the TILA and could therefore be considered FDCPA debt collection communication); *see also Kelliher*, 826 F. Supp. 2d at 1328 (strong debt payment language converted mortgage statement into FDCPA debt collection communication); *Jackson v.*

Carrington Mortg. Servs., LLC, No. 17-60516-CIV, 2017 WL 4347382 (S.D. Fla. Sept. 29, 2017), reconsideration denied, No. 17-60516-CIV, 2017 WL 5513704 (S.D. Fla. Nov. 17, 2017) (Holding that the addition of a payment coupon converted a monthly mortgage statement into a debt collection communication).

Kelliher can be distinguished as the mortgage statements at issue contained increasingly severe payment warnings, and no such language is present here. 826 F. Supp. 2d at 1328. In *Jackson*, the court held that the addition of the words "payment coupon" created an issue of material fact as to whether the mortgage statement could be construed as debt collection under the FDCPA. *Jackson*, No. 17-60516-CIV, 2017 WL 5513704, at *2. In the context of the Statements in this case, this Court disagrees; as discussed above, the detachable bottom portion of the Statements (i.e. the "payment coupon") is present in a similar format in model form H-30(B), and an identical coupon was also present in *Brown*, as the statements in both cases are substantially identical. *Compare* D.E. 1-2, *and* D.E. 14-3. In *Lear*, the court held that language such as: "this is an attempt to collect a debt," which is also present in this case, indicated that the mortgage statements were debt collection communications prohibited by the FDCPA after issuance of a "cease communication" letter. No. 17-62206-CIV, 2018 WL 1960108, at *3. But according to the CFPB guidance, lenders and servicers that have been instructed to "cease communication," are permitted to send periodic statements to borrowers who have defaulted so long as the communications substantially comply with the TILA regulations. Implementation Guidance for Certain Mortgage Servicing Rules, 10152013 CFPBGUIDANCE, 2013 WL 9001249 (C.F.P.B. Oct. 15, 2013) (explaining that periodic statements are mandated by the Dodd-Frank Act, which "presents a more recent and specific statement of legislative intent regarding these disclosures than does the FDCPA.") Where, as here, a mortgage servicer has sent

mortgage statements substantially in compliance with the TILA, which do not materially deviate in substance from the Regulation Z model form and which factually apprise the borrower of his delinquency status, it should not be held liable under § 1692c of the FDCPA for itsapparent good faith compliance with the TILA.

Consistent with this conclusion, many other district courts have held that TILA-mandated mortgage statements sent by servicers to defaulted borrowers pursuant to Regulation Z are almost categorically not debt collection communications under the FDCPA. *See e.g., Green v. Specialized Loan Servicing LLC*, 280 F. Supp. 3d 1349, 1355 (M.D. Fla. 2017) (holding that a TILA-compliant monthly mortgage statement was not "debt collection" under the FDCPA as a matter of law); *Antoine v. Carrington Mortg. Servs., LLC*, No. 0:17-CV-61216-WPD, 2017 WL 3404389, at *2 (S.D. Fla. Aug. 8, 2017) (holding that monthly mortgage statements are not debt collection if sent in compliance with Regulation Z); *Williams v. Bank of Am., N.A.*, No. 617CV103ORL31TBS, 2017 WL 3662441, at *5 (M.D. Fla. Aug. 24, 2017) (same); *Brown*, No. 16-62999-CIV, 2017 WL 1157253 (same).

Accordingly, as "Plaintiff cannot state a claim under the FDCPA with respect to the monthly mortgage statements sent pursuant to federal law," *id.* at 2, Defendant's motion to dismiss Count Three with prejudice is granted as to the Statements.

With regard to communications under the FCCPA, Plaintiff properly alleges that Defendant communicated with him while knowing he was represented by counsel. D.E. ¶ 18. However, Florida courts have also held that monthly mortgage statements do not constitute an attempt to collect a debt under the FCCPA. *See Vanecek v. Discover Financial Services, LLC,* No. COCE14023621, 2015 WL 6775633 (Fla. 17th Cir. Ct. 2015) ("the monthly billing statement was not an attempt to collect a debt as a matter of law"). Further, the FCCPA provides that "[i]n

applying and construing this section, due consideration and great weight shall be given to the interpretations of the … federal courts relating to the [FDCPA].” Fla. Stat. § 559.77(5). Accordingly, for the reasons set out above, Count One of Plaintiff’s Complaint is also dismissed with prejudice as to the Statements.

However, Plaintiff’s complaint also alleges that Defendant “communicated with Plaintiff a number of other times after Defendant was aware that Plaintiff was represented by counsel in regard to the disputed debt.” D.E. 1 ¶ 27. Accordingly, the Court will grant Plaintiff leave to amend the complaint to specifically identify these other communications and explain, with specificity, how these other communications constitute violations of the FCCPA (Fla. Stat. § 559.72(18)) as alleged in Count One, and the FDCPA (§ 1692c(a)(2)) as alleged in Count Three.

C. Count Two – FCCPA Harassment

The FCCPA prohibits a mortgage servicer from willfully communicating with a debtor “with such frequency as can be reasonably expected to [abuse or] harass the debtor.” Fla. Stat. § 559.72(7). Plaintiff argues that Defendant has violated this provision of the FCCPA in three ways: (1) by sending “relentless requests for payments,” D.E. 1 ¶ 35, before Plaintiff obtained counsel; (2) by communicating “with Plaintiff a number of other times after Defendant was aware that Plaintiff was represented by counsel in regard to the disputed debt,” *id.* ¶ 45; and (3) by sending the Statements. *Id.* ¶ 44. Plaintiff contends that the communications prior to obtaining counsel left him distraught at the thought of losing his home, *Id.* ¶ 36, and that all of these communications were an attempt “to trick Plaintiff into acting against Plaintiff’s interest into [sic] giving up Plaintiff’s home for a deed in lieu of foreclosure, [and] engaging in abusive conduct towards Plaintiff.” D.E. 1 ¶ 47.

In analyzing the analogous FDCPA statue, the court in *Valle v. Nat'l Recovery Agency*, No. 8:10-CV-2775-T-23MAP, 2012 WL 1831156, at *1 (M.D. Fla. May 18, 2012), set out a list of factors commonly considered by Courts in determining whether a communication constitutes harassment or abuse, including, *inter alia*: (1) the volume and frequency of communication; (2) duration of communication; (3) medium of communication; (4) the time of day the communication occurred; (5) the use of abusive language or lies; and (6) any contact with family or friends. *See id.* (citations omitted).

Plaintiff's complaint fails to state a claim for violations of § 559.72(7). Plaintiff's allegation that Defendant made "relentless requests for payment," and communicated "a number of other times" does not provide sufficient information to make out a claim that is plausible on its face. Although Plaintiff alleges the communications caused him distress and were abusive, there is no discussion of: the medium of communication, time of day, duration, language used, whether any of Plaintiff's family was contacted, and "relentless" and a "number of other times" are not a sufficient description of the quantity of communications. As to the Statements, they were only sent once a month by mail, and as they are substantially identical to the TILA model form, they do not contain any abusive or disagreeable language. Plaintiff's complaint does not contain any other allegations that explain how sending the Statements constitutes a violation of § 559.72(7) that is plausible on its face.

Accordingly, as Plaintiff's Complaint does not allow the Court to draw a reasonable inference that Defendant is liable for violations of § 559.72(7), Defendant's Motion to Dismiss Count Two of Plaintiff's Complaint is granted. *Iqbal*, 556 U.S. at 662.[7] However, the Court will grant Plaintiff leave to amend the complaint to specifically identify these communications and

[7] Because the Court grants Defendant's Motion to Dismiss on other grounds, it does not address Defendant's preemption arguments.

specifically explain how the "relentless requests for payment" and "communications made after Defendant was aware Plaintiff was represented by counsel" constitute the violations of the FCCPA (Fla. Stat. § 559.72(7) alleged in Count Two.

V. Conclusion

For the reasons set out above Defendant's Motion to Dismiss is granted. Accordingly, it is

ORDERED AND ADJUDGED that Defendant's Motion to Dismiss the Complaint is GRANTED. Counts One Two and Three of Plaintiff's Complaint are DISMISSED WITH PREJUDICE as to the Statements. It is further

ORDERED AND ADJUDGED that Counts One and Three are DISMISSED WITH LEAVE TO AMEND to specifically identify the communications referenced in paragraph 27 of the Complaint and explain how these communications constitute the violations of the FCCPA (Fla. Stat. § 559.72(18)) alleged in Count One, and the violations of the FDCPA (§ 1692c(a)(2)) alleged in Count Three. It is further

ORDERED AND ADJUDGED that Count TWO is DISMISSED WITH LEAVE TO AMEND to specifically identify communications referenced in paragraphs 45 and 35 of the Complaint and specifically explain how these communications constitute the violations of the FCCPA (Fla. Stat. § 559.72(7)) alleged in Count Two. It is further

ORDERED AND ADJUDGED that Plaintiff SHALL FILE an AMENDED COMPLAINT by **May 14, 2018.** Plaintiff shall not include any allegations as to the Statements in its amended complaint. Failure to file an amended complaint by the deadline will result in dismissal of Plaintiff's action.

DONE AND ORDERED in Chambers at Miami, Florida, this _2d__ day of May, 2018.

URSULA UNGARO
UNITED STATES DISTRICT JUDGE

cc: counsel of record via cm/ecf