



1 (“P&F”), and ADVANCED ATTORNEY SERVICES, INC. (“AASI”), (collectively  
2 “Defendants”) motions.

3 **I. FACTS<sup>1</sup>**

4 On July 20, 2012, Manikan, the owner of real property located at 6283 Canyon Bluff  
5 Ct., San Diego, CA 92121, filed for Chapter 13 bankruptcy protection (hereinafter  
6 “Bankruptcy Case”).<sup>2</sup> (Doc. Nos. 22 ¶¶ 23, 24.) Included in his petition was a claim held  
7 by Pacific Ridge indicating Manikan was in arrears \$3,047.04 for homeowner’s association  
8 dues. *Id.* ¶ 25. The bankruptcy trustee assigned to Manikan’s case prepared a Chapter 13  
9 Plan (hereinafter, the “Plan”) reflecting that Pacific Ridge would be repaid its full arrears  
10 upon completion of bankruptcy proceedings.<sup>3</sup> *Id.* ¶¶ 26, 27.

11 On June 20, 2013, N.N. Jaeschke, filed a Proof of Claim in the Bankruptcy Case, as  
12 Claim No. 9-1, wherein N.N. Jaeschke as a collection agent for Pacific Ridge represented  
13 that the true amount of arrears owed on the date Manikan filed his bankruptcy case was  
14 \$2,978.24. *Id.* ¶ 25. In a correspondence dated March 17, 2014, N.N. Jaeschke informed  
15 the trustee in Manikan’s Bankruptcy Case that the arrears had been paid in full and  
16 requested no further payment be sent. *Id.* ¶ 26. In response to N.N. Jaeschke’s  
17 correspondence on behalf of Pacific Ridge, the trustee filed a Notice Intent to Reconsider  
18 and Re-Allow Proof of Claim in the bankruptcy case, certifying that N.N. Jaeschke and  
19 Pacific Ridge’s records reflect the true amount of pre-petition arrears due and owing by  
20 Manikan was \$2,277.10. *Id.* ¶ 30.

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24 <sup>1</sup> Manikan’s objections to the evidence are **OVERRULED** to the extent they are  
25 inconsistent with this Order.

26 <sup>2</sup> Manikan filed his Petition under Chapter 13 in the U.S. Bankruptcy Court for the  
27 Southern District Court of California, titled *In re Vincent G. Manikan*, with Case No.: 12-  
10069-LT13. (Doc. No. 22 ¶ 24.)

28 <sup>3</sup> The Bankruptcy Court confirmed Manikan’s Chapter 13 Plan on September 4,  
2012, by order of Court. *Id.* ¶¶ 27.

1 On November 24, 2015, the trustee filed a Notice of Final Cure Payment and  
2 Completion of Payments Under the Plan and duly noticed N.N. Jaeschke on behalf of  
3 Pacific Ridge that Manikan had repaid all arrears due and owing and the pre-petition arrears  
4 balance had been repaid in full. *Id.* ¶¶ 28-31.

5 On September 2, 2016, while Manikan was current with all his obligations due and  
6 owing to Pacific Ridge, Dakotah Douglas (“Douglas”), a contract process server for  
7 Defendant AASI, gained entry to Manikan’s backyard by forcing the side gate open,  
8 allegedly causing significant damage to the gate and its frame.<sup>4</sup> *Id.* ¶¶ 39-40.

9 Douglas then entered the backyard and “began forcefully banging on the plaintiff’s  
10 kitchen” window. *Id.* ¶ 42. Manikan’s cousin, who was eating breakfast in the kitchen  
11 was so terrified by Douglas, she called 911 for police assistance and yelled for Manikan to  
12 come to help her. *Id.* Manikan rushed downstairs and witnesses Douglas banging on the  
13 kitchen window and yelling something unintelligible. *Id.* Manikan was unable to make  
14 out what Douglas was yelling because the double pane windows on Manikan’s house  
15 muffled Douglas’s voice. *Id.* Thinking that Douglas was attempting to break into his  
16 house, Manikan alleges he was overcome with terror, fear, and anxiety. *Id.*

17 When Douglas received no response from Manikan or his cousin, he made his way  
18 around the house to another window. *Id.* ¶ 43. This was the bedroom window of Manikan’s  
19 elderly mother who was recuperating from chemotherapy treatment. *Id.* Douglas pounded  
20 on her window, abruptly waking the elderly woman. *Id.* Terrified by the noise outside,  
21 she called out for Manikan. *Id.* Upon reaching his mother’s room, Manikan again observed  
22 Douglas forcefully pounding on his mother’s bedroom window and yelling something  
23 unintelligible. *Id.* Fearing for his family’s safety, Manikan retrieved his firearm and  
24 confirmed with his cousin that the police were on their way. *Id.*

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27 <sup>4</sup> Dakotah Douglas’s forceful pushing open of Manikan’s back gate caused  
28 significant damage to the gate, posts and window surrounding the gate totaling \$1,218.00.  
(Doc. No. 22. ¶¶ 41-42.)

1 Hearing the police approaching, Douglas went to the front of the property and  
2 awaited their arrival. *Id.* ¶ 44. With the police now on site, Douglas explained that he was  
3 a process server and had come to Manikan's house to serve him with a Notice of Default  
4 on behalf of Pacific Ridge. *Id.* Douglas was at the front door when Manikan opened it for  
5 the police. *Id.*

6 When Manikan spoke to the officers, he stated that Douglas illegally trespassed on  
7 his property and terrorized him and his family. *Id.* ¶ 45. Per his request, the officers agreed  
8 to take a police report of the incident.<sup>5</sup> *Id.*

9 At some point, after the police arrived, Douglas served Manikan with a copy of the  
10 Notice of Default ("NOD") from Pacific Ridge.<sup>6</sup>

11 The NOD specifically stated in caps at the top of the document

12 PETERS & FREEDMAN, LLP IS ACTING IN THE FUNCTION OF A  
13 DEBT COLLECTOR, ANY INFORMATION OBTAINED WILL BE  
14 USED FOR THAT PURPOSE

15 NOTICE OF DEFAULT AND ELECTION TO SELL  
16 IMPORTANT NOTICE

17 IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE  
18 BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD WITHOUT  
19 ANY COURT ACTIONS.

(*Id.* ¶ 47.)

20 The NOD further stated:

21 You may have the legal right to bring your account in good standing by  
22 paying all of your past-due payments plus permitted costs and expenses  
23 within the time permitted by law for reinstatement of your account...

24 This amount is \$2,597.04 as of April 2, 2012, and will increase until  
25 your account becomes due.

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26 <sup>5</sup> Manikan's believes that no formal charges have ever been brought against  
27 Defendant's agent. *Id.* ¶ 45.

28 <sup>6</sup> The NOD had a stamped recordation date of April 9, 2012, cited a balance owed as  
of April 9, 2012, and stated that it was from Defendant P&F, and was sent on behalf of  
Defendant Pacific Ridge. *Id.* ¶ 46.

1  
2 *Id.* ¶ 48.

3 Believing that he was current on his payments to Pacific Ridge, Manikan was  
4 confused by and concerned with the NOD that had just been served on him causing him to  
5 experience further panic, anxiety, fear, concern, sleeplessness, hopelessness, and despair.

6 *Id.* ¶ 49.

7 On or about September 6, 2016, Manikan called and explained to P&F representative  
8 Macella Herder that he had already repaid all his pre-bankruptcy arrears to Pacific Ridge.  
9 After reviewing Manikan's account, Macella stated that P&F's records reflected Manikan  
10 still had an HOA arrears balance of \$2,597.04, as was indicated on the NOD. *Id.* ¶ 50.

11 The thought of imminent foreclosure caused Manikan's anxiety and depression to  
12 increase exponentially, necessitating a medical doctor to treat Manikan's high blood  
13 pressure, allegedly as a direct and proximate result of this incident. *Id.* ¶¶ 51-52.

14 On February 2, 2017, Manikan commenced this action by filing a two count  
15 Complaint in the Superior Court, County of San Diego, California.<sup>7</sup> Following removal on  
16 March 7, 2017, (Doc. No. 1), the FAC was filed by Manikan on July 24, 2017, and includes  
17 three causes of action.<sup>8</sup> (Doc. No. 22.) Defendants filed Motions to Dismiss (Doc. Nos. 3,  
18 4, 26), which were denied on July 25, 2017, and March 29, 2018. (Doc. Nos. 23, 57.)

19 On April 2, 2018, AASI filed a Motion for Summary Judgment or, in the Alternative,  
20 Partial Summary Judgment. (Doc. No. 58.) Manikan filed a Motion for Partial Summary  
21 Judgment against P&F on June 25, 2018. (Doc. No. 81.) P&F also filed its Motion for  
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24 <sup>7</sup> Superior Court Case Number: 37-2017-00004154-CU-NP-CTL.

25 <sup>8</sup> The FAC includes three causes of action. The first cause of action is alleged  
26 against P&F and AASI for violations of the FDCPA. (Doc. No. 22 at 12-15.) The  
27 second cause of action is alleged against defendants Pacific Ridge, Jaeschke, and AASI  
28 for violations of California's Rosenthal Fair Debt Collection Practices Act ("the  
RFDCPA"). P&F is not named in this cause of action. *Id.* at 15-17. The third cause of  
action alleges trespass under California law against defendant AASI only. *Id.* at 17-18.

1 Summary Judgment, or in the Alternative, Summary Adjudication on June 25, 2018, as  
2 well. (Doc. No. 83.)

## 3 **II. DISCUSSION**

### 4 **A. Motion for Determination of Good Faith Settlement**

5 At the May 2, 2018, mandatory settlement conference, with the help of Magistrate  
6 Judge Jill Burkhardt, Manikan and AASI reached an arms-length settlement. (Doc. No. 80  
7 at 2.) On the condition that the settlement is determined to have been reached in good faith,  
8 AASI will pay \$8,000 to settle this action with Manikan in exchange for a dismissal of the  
9 action with prejudice. *Id.* Manikan and AASI seek an order from the Court finding the  
10 settlement was made in good faith pursuant to section 877 of the California Code of Civil  
11 Procedure. *Id.* At the request of Magistrate Judge Jill L. Burkhardt, Magistrate Judge  
12 Karen S. Crawford reviewed the Joint Motion and related documents and prepared a Report  
13 and Recommendation. *Id.* In her Report and Recommendation, Judge Crawford  
14 recommends that the District Court grant the Motion for Determination of Good Faith  
15 Settlement.

16 The Ninth Circuit has recognized that a district court is not required to review de  
17 novo a magistrate judge's R&R where no objections have been filed. *See, e.g., United*  
18 *States v. Reyna-Tapia*, 328 F.3d 1114, 1122 (9th Cir. 2003). In this case, no objections to  
19 the R&R were filed, and the deadline to do so has now passed.

20 Accordingly, the R&R, (Doc. No. 112), is **ADOPTED** in its entirety. Any claims  
21 for indemnity, contribution or comparative fault with prejudice as to AASI are dismissed.  
22 The non-settling party P&F is entitled to an offset in the amount of the settlement  
23 ("\$8,000.00"). AASI had previously submitted a Motion for Summary or Partial Summary  
24 Judgment. Because the settlement is approved, this motion is moot.

### 25 **B. Manikan's Motion for Partial Summary Judgment**

26 Manikan moves for Partial Summary Judgment claiming P&F violated the Fair Debt  
27 Collection Practices Act ("FDCPA"). Manikan contends P&F violated the FDCPA (§  
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1 1692e(2), § 1692f(1), and § 1692f(6)) by attempting to collect HOA assessment not owed,  
2 and by further unlawfully threatening to foreclose on Manikan's property.

3 **C. P & F's Cross-Motion for Summary Judgment**

4 P&F cross-moves for Summary Judgment, claiming under Ninth Circuit  
5 jurisprudence, a consumer cannot use a violation of the United States Bankruptcy Code's  
6 discharge injunction as a basis to support an FDCPA lawsuit. In other words, since the  
7 nature of the debt necessarily entails bankruptcy-laden determinations, relief should be  
8 sought in a bankruptcy court. *Id.* Thus, there is no genuine issue of material fact, entitling  
9 P&F to judgment as a matter of law. *Id.* As discussed below, P&F is correct.

10 **II. DISCUSSION**

11 **Cross-Motions for Partial Summary Judgment.**

12 Manikan argues that he is entitled to partial summary judgment on the basis that  
13 P&F violated the FDCPA. P&F contends that Manikan's motion should be denied because  
14 a consumer cannot use a violation of the United States Bankruptcy Code's discharge  
15 injunction as a basis to support an FDCPA lawsuit. Moreover, even if a technical violation  
16 of the FDCPA did occur, P&F is entitled to application of the FDCPA's bona fide error  
17 defense. *Id.*

18 The Court agrees that FDCPA claims that hinge upon whether the debt at issue was  
19 discharged are precluded. *See Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502 (9th Cir.  
20 2002); *Goad v. MCT Group*, No. 09-cv-1321, 2010 WL 1407257 (S.D. Cal. Apr. 6, 2010)  
21 (Moskowitz, J.). Other courts have also found these Bankruptcy-related FDCPA claims  
22 to be precluded in district court. For example, in *Wehrheim v. Secrest*, 2002 WL 31242783  
23 (S.D. Ind. Aug. 16, 2002), the court held that the plaintiff's FDCPA claims under 15 U.S.C.  
24 § 1692e(10) and 1692(f) were precluded because if the plaintiff were allowed to pursue the  
25 claims, the court would have to decide whether the debt on the mortgage note had been  
26 discharged in bankruptcy – "This would interject the court into bankruptcy laden question  
27 and require reference to the Bankruptcy Code." *Id.* at \*8. Similarly, in *Necci v. Universal*  
28 *Fidelity Corp.*, 297 B.R. 376, 381 (E.D.N.Y. Aug. 4, 2003), the court held that the

1 plaintiff's claims under 15 U.S.C. § 1692e(2)(A), (5), and (10) were precluded because  
2 they were premised upon a violation of the bankruptcy stay by post-discharge injunction  
3 collection attempts.

4 Here, the result is no different. Manikan's attempt to state claims under the FDCPA  
5 are precluded in the district court because they are premised upon violations of the  
6 bankruptcy post-discharge injunction. According to *Walls*, a plaintiff's remedy must be  
7 pursued in the U.S. Bankruptcy Court forum. 276 F.3d at 510. Therefore, per *Walls* and  
8 Judge Moskowitz' holding in *Goad*, P&F is correct in asserting that Manikan's FDCPA  
9 claims, as currently pled, present no cognizable claim for relief in this forum. Manikan's  
10 motion for summary judgment is denied. Judgment is granted to P&F on Manikan's  
11 FDCPA claims, as Manikan must pursue relief in proceedings before the U.S. Bankruptcy  
12 Court.

### 13 **III. CONCLUSION**

14 For the foregoing reasons, the Court:

15 1. **Adopts in full** Magistrate Judge Karen S. Crawford's Report and  
16 Recommendation re Motion for Determination of Good Faith Settlement;

17 2. **GRANTS** Manikan and AASI's Motion for Determination of Good Faith  
18 Settlement;

19 3. **DENIES as moot** AASI's Motion for Summary or Partial Summary Judgment;

20 4. **DENIES** Manikan's Motion for Partial Summary Judgment;

21 5. **GRANTS** P&F's Motion for Summary Judgment.

22 The Final Pretrial Conference scheduled for Monday, March 25, 2019, at 10:30 am  
23 **is vacated and reset to April 22, 2019, at 10:30 am.**

24 **IT IS SO ORDERED.**

25 DATED: March 21, 2019

26   
27 **HON. ROGER T. BENITEZ**  
28 United States District Court Judge