No. 23-

IN THE
Supreme Court of the United States

JANIS WOLF,
individually and on behalf of those similarly situated,
Petitioner

v.

CARPENTER, HAZLEWOOD, DELGADO & BOLEN, LLP,

Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

This case asks whether a typical HOA assessment qualifies as an FCRA "credit transaction" that authorizes an HOA to obtain a homeowner's credit report.

The Fair Credit Reporting Act ("FCRA") allows credit reporting agencies to furnish reports "in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the . . . collection of an account." 15 U.S.C. § 1681b(a)(3)(A). The term "credit" means the "right granted by a creditor to a debtor to defer payment of debt or to incur debts and defer its payment or to purchase property or services and defer payment therefor." 15 U.S.C. §§ 1681a(r)(5); 1691a(d).

There is a circuit split regarding the standard for determining whether a transaction involves "credit." In 1984, the Ninth Circuit held that any transaction in which payment is deferred is "credit." The Second, D.C., and Seventh Circuits have all subsequently held that when payment is substantially contemporaneous with performance, there is no "credit transaction" even if there are deferred payments. The question presented is:

Whether all transactions involving deferred payment, even if payment is substantially contemporaneous with performance, are "credit transactions" under the FCRA.

PARTIES TO THE PROCEEDING

The Petitioner is Janis Wolf. Ms. Wolf's action in the U.S. District Court for the District of Arizona was asserted as a class action on behalf of those similarly situated.

The Respondent is Carpenter, Hazlewood, Delgado & Bolen, LLP.

RELATED PROCEEDINGS

Wolf v. Carpenter, Hazlewood, Delgado & Bolen, LLP, No. CV-20-00957-PHX-DLR, U.S. District Court for the District of Arizona. Judgment entered February 15, 2022.

Wolf v. Carpenter, Hazlewood, Delgado & Bolen, LLP, No. 22-15233, U.S. Court of Appeals for the Ninth Circuit. Judgment entered May 4, 2023.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The Ninth Circuit's opinion (Pet. App. 1a-7a) has not been published but is available at 2023 WL 2552332. The Ninth Circuit's order denying the petition for rehearing *en banc* (Pet. App. 17a) has not been published and is not available on Westlaw. The district court's opinion (Pet. App. 8a-16a) has not been published but is available at 2022 WL 168572.

JURISDICTION

The Ninth Circuit issued its decision on March 17, 2023, and entered its order denying the petition for rehearing *en banc* on May 4, 2023. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS

The relevant statutory provisions are 15 U.S.C. § 1681b(a) (reproduced at Pet. App. 18a-21a), 15 U.S.C. § 1681a(r)(5) (reproduced at Pet. App. 18a), and 15 U.S.C. § 1691a(d)-(e) (reproduced at Pet. App. 21a).

INTRODUCTION

Congress enacted the Fair Credit Reporting Act ("FCRA") to ensure "respect for the consumer's right to privacy." 15 U.S.C. § 1681. The FCRA permits companies to obtain a consumer's credit report in only six enumerated circumstances, "and no other." 15 U.S.C. § 1681b(a), 1681b(f)(1). Among those "permissible purposes" is when the person obtaining the report:

> intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer.

15 U.S.C. § 1681b(a)(3)(A) (emphasis added).

The FCRA does not define the phrase "credit transaction," but it incorporates the definition of "credit" set forth in the Equal Credit Opportunity Act ("ECOA"):

> The term "credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debts and defer its payment or to purchase property or services and defer payment therefor.

15 U.S.C. §§ 1681a(r)(5); 1691a(d).

In 1984, the Ninth Circuit held that a consumer lease was a "credit" transaction within the meaning of the ECOA because the lessee became obligated to pay a sum certain, and payment of that total was deferred over several months of installment payments. *Brothers v. First Leasing*, 724 F.2d 789, 792 n.8 (9th Cir. 1984).

In subsequent years, the Ninth Circuit's approach in *Brothers* has become the minority view regarding what "credit" means. Several federal district courts and notably, three circuit courts of appeal, have rejected the rigid test which finds "credit" whenever a payment is deferred. These courts have instead adopted a "contemporaneous exchange" test, under which a transaction which involves deferred payments is not a "credit transaction" if payment is substantially contemporaneous with performance. *See Shaumyan v. Sidetex Co., Inc.*, 900 F.2d 16 (2d Cir. 1990) (home improvement contract calling for payment over several installments is not a credit transaction); *Mick's at Pennsylvania Ave., Inc. v. BOD, Inc.*, 389 F.3d 1284 (D.C. Cir. 2004) (commercial lease is not a credit transaction); *Laramore v. Ritchie Realty Mgmt. Co.*, 397 F.3d 544 (7th Cir. 2005) (residential lease is not a credit transaction).

Despite the consistent doctrinal trend, in this case the Ninth Circuit reaffirmed its commitment to the unbending approach it adopted in Brothers thirty-nine years ago. Here, the district court, applying *Brothers*, held that Petitioner's homeowner

association assessments are "credit transactions" because they were imposed annually and collected in monthly installments. In its decision affirming the district court's ruling, the Ninth Circuit declined to decide whether assessments are "credit transactions" but held Respondent was entitled to rely on *Brothers* in concluding they were.[1] These rulings are not only out of step with consensus, they invite abusive credit inquiries, undermining the purpose of the FCRA.

This Court should grant certiorari to resolve the circuit split and overturn *Brothers*. As the courts that have adopted the contemporaneous exchange test have observed, under the *Brothers* test almost every transaction becomes a credit transaction, which means it is permissible to run a hard credit inquiry into any consumer, seemingly at will. This is not what Congress intended when it passed the FCRA, a statute intended to protect consumer privacy.

This Court should grant certiorari and reverse.

STATEMENT OF THE CASE

I. Legal Background

The FCRA became law because Congress determined there was "a need to insure [sic] that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a

[1] In a concurring opinion, Judge Christen acknowledged the Ninth Circuit should revisit *Brothers*, but declined to do so in this case. [Pet. App. 3a-7a]

respect for the consumer's right to privacy." 15 U.S.C. § 1681(a)(4). Under the FCRA, companies that contract with credit reporting agencies may only make hard inquiries of consumers in certain circumstances "and no other." 15 U.S.C. § 1681b(a). Companies "shall not" use or obtain a report outside of those enumerated circumstances. *Id.*, § 1681b(f)(1). A person who obtains a credit report outside of these permissible purposes is liable to the consumer for actual or statutory damages. *See* 15 U.S.C. § 1681n (willful violations), § 1681o (negligent violations).

The "permissible purposes" for obtaining a consumer's credit report include when the consumer has given written consent;[2] when the person making the credit inquiry has a legitimate business need for the information "in connection with a business transaction that is initiated by the consumer" or "to review an account to determine whether the consumer continues to meet the terms of the account,"[3] and—at issue here—when the person obtaining the credit report:

> intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer.

15 U.S.C. § 1681b(a)(3)(A) (emphasis added).

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[2] 15 U.S.C. § 1681b(a)(2).
[3] 15 U.S.C. § 1681b(a)(3)(F)

When the FCRA was enacted, it did not define "credit" or "credit transaction." The definition of "credit" set forth in the Equal Credit Opportunity Act ("ECOA") was incorporated into the FCRA through the Fair and Accurate Credit Transactions Act of 2003 ("FACTA"). The ECOA definition is as follows:

> The term "credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debts and defer its payment or to purchase property or services and defer payment therefor.

15 U.S.C. §§ 1681a(r)(5); 1691a(d).

Different federal courts have taken different approaches applying that definition to particular transactions, resulting in a circuit split. As discussed in further detail below, in the Ninth Circuit the presence of a deferred payment is definitive; all such transactions are "credit." In three other circuits—the Second, D.C., and Seventh—transactions are not considered "credit" if they involve contemporaneous exchanges of consideration for services even if there are deferred payments.

II. Factual Background and Procedural History

The claim in this case is that Respondent did not have a permissible purpose, and thus violated the FCRA, when it obtained Petitioner's credit report

before suing her to collect allegedly unpaid homeowner association assessments, because such assessments do not involve "credit."

Petitioner Janis Wolf ("Wolf") owns a home that is part of the Neely Farms Homeowners' Association (the "Association"). [Pet. App. 8a-9a] The Association's governing documents require homeowners to pay assessments. Specifically, under the Declaration of Covenants, Conditions, Restrictions & Easements Neely Farms ("Declaration"), each year the Association determines the total amount it will assess and that annual assessment is imposed and collected in monthly installments. [Pet. App. 9a]

In 2019 the Association hired Respondent Carpenter, Hazlewood, Delgado & Bolen, LLP ("Carpenter") to attempt to collect assessments which it alleged Wolf was delinquent in paying. [Pet. App. 2a] Before filing suit against Wolf, Carpenter obtained her credit report. [Pet. App. 2a]

Wolf filed a class action complaint alleging Carpenter did not have a permissible purpose under the FCRA to obtain her credit report because HOA assessments are not "credit transactions." [Pet. App. 2a]

On January 19, 2022, the district court issued a ruling by order (the "Order") granting Carpenter's Motion for Summary Judgment, denying Wolf's Motion for Summary Judgment, and denying Wolf's Motion for Class Certification as moot. [Pet. App. 8a-

16a] The district court held Carpenter had a permissible purpose to obtain Wolf's credit report because it was attempting to collect her HOA assessments, which are "credit transactions" under the FCRA because they involve deferred payments:

> The undisputed facts show that the HOA annual assessment was structured to provide for deferred payment. The HOA assessment is set on a yearly basis, and homeowners pay that assessment in installments throughout the year. This is exactly like the consumer lease in *Brothers* where "[u]nder the terms of the lease that [Lessee] applied for, [Lessee] would have had to pay a total amount of $16,280.16. Payment of that debt would have been deferred, and [Lessee] would have been required to make 48 monthly installment payments of $339.17." *Brothers*, 724 F.2d at 794. The *Brothers* court determined that such a transaction was a credit transaction; so too here. *Id.*

[Pet. App. 12a]

Wolf appealed, and on March 17, 2023, the Ninth Circuit panel issued its Memorandum decision affirming the district court. [Pet. App. 1a-7a] The Ninth Circuit's decision, in relevant part, reads as follows:

> Here, assuming without deciding that Defendant violated FCRA, its conduct was not willful as so defined. Its reading of the statute is consistent with our decision in *Brothers v. First Leasing*, 724 F.2d 789 (9th Cir. 1984). Plaintiff had a grace period during which she could receive half a month's services that she had not yet paid for. Because that grace period could be considered an extension of credit under our reasoning in *Brothers*, Defendant's reading of the statute was not objectively unreasonable.

[Pet. App. 2a-3a]

Wolf filed a Petition for Rehearing En Banc, which the Ninth Circuit denied on May 4, 2023. [Pet. App. 17a]

This petition followed.

REASONS FOR GRANTING THE WRIT

I. The Circuits Are Split Over the Standard to Determine Whether a Given Transaction Is a "Credit Transaction" Under the FCRA.

Resolving a circuit split is a proper basis for granting certiorari. *See, e.g., Yegiazaryan v. Smagin*, 143 S. Ct. 1900, 1907 (2023) ("This Court granted

certiorari to resolve the Circuit split."); *United States, ex rel. Polansky v. Executive Health Res., Inc*., 143 S. Ct. 1720, 1730 (2023) ("Because both those questions have occasioned circuit splits, we granted certiorari."); *Davis v. United States*, 143 S. Ct. 647, 648 (2023) ("This petition presents the Court with a clear opportunity to resolve a Circuit split … I would grant certiorari to resolve that issue.") (Jackson, J., dissenting).

Here, certiorari should be granted to resolve a circuit split regarding what sort of contracts, purchases, and other transactions are "credit transactions" under the FCRA. More specifically, the circuits are split regarding the proper test for making that determination. The Ninth Circuit applies a simple, rigid, test: are any payments deferred? If the answer is yes, there is a "credit transaction" and it is permissible to obtain a consumer's credit report to review or collect the account. On the other side of the split are the Second, D.C., and Seventh Circuits, which look at the transaction holistically and ask whether, even if payments are deferred, is the transaction structured such that payment is substantially contemporaneous with performance? If there is a "contemporaneous exchange," there is no credit transaction.

As noted in the introduction to this Petition, in *Brothers* the Ninth Circuit held that a consumer lease was a "credit" transaction because the lessee became obligated to pay a sum certain, and payment of that total was deferred over several installments. *Brothers v. First Leasing*, 724 F.2d 789, 792 n.8 (9th Cir. 1984).

Applying this reasoning, the district court held Wolf's HOA assessments are credit transactions because her annual assessment is deferred into monthly payments, and thus Carpenter did not violate the FCRA when it ran her credit. [Pet. App. 12a, 15a-16a] But long before Carpenter ran Wolf's credit, the Ninth Circuit's interpretation of "credit" became the minority view as a circuit split developed.

The Second Circuit was the first to reject *Brothers*, in *Shaumyan v. Sidetex Co., Inc.*, 900 F.2d 16 (2d Cir. 1990). In *Shaumyan* the plaintiffs, citing *Brothers*, asserted their home-improvement contract was a "credit transaction" under ECOA. *Id.* at 18. The contract required payments of "$3,000 deposit; $4,000 at start of work; $3,900 at halfway; $1,950 on completion of siding; $1,950 on completion of storm doors and shutters." *Id.* at 17. The Shaumyans argued that "since payment was not simultaneous with performance of the work, the contract was a credit transaction." *Id.* at 18. The Second Circuit rejected the argument, explaining that:

> If this proposition were strictly applied, however, countless transactions in which compensation for services is not instantaneous would be characterized as credit transactions. Such indiscriminate application of the ECOA is not appropriate. Since the Shaumyans' payment obligation was substantially contemporaneous with Sidetex's performance, the contract was not a credit transaction.

Id. at 19.

In 2004, the D.C. Circuit joined the Second by rejecting *Brothers* and holding commercial real estate leases are not credit transactions:

> *Brothers v. First Leasing*, 724 F.2d 789 (9th Cir.1984), cited by O'Donnell, involved a consumer automobile lease which the Ninth Circuit concluded fit within the Act's definition of "credit transaction" because it required the consumer lessee to pay a fixed sum in equal installment payments at fixed intervals. *See* 724 F.2d at 793 n. 8. The court there based its holding on the premise that the anti-discrimination provisions of the Act apply to all transactions covered by the Consumer Leasing Act, 15 U.S.C. §§ 1667-1667e. *See id.* at 791-94. The reasoning in Brothers, therefore, has no application to a commercial real estate lease.

Mick's at Pennsylvania Ave., Inc. v. BOD, Inc., 389 F.3d 1284, 1289, FN 6 (D.C. Cir. 2004).

The D.C. Circuit ultimately concluded the lease was not a credit transaction because "Mick's did not grant any credit right to BOD under the sublease but acted simply as a sublessor of the restaurant property entitled to receive monthly rent payments for the term of the sublease." *Id.* at 1289.

The circuit split, and the Ninth Circuit's outlier position, solidified a year later when the Seventh Circuit considered, and expressly rejected, the *Brothers* test. *See Laramore v. Ritchie Realty Mgmt. Co.*, 397 F.3d 544, 546-547 (7th Cir. 2005) ("In *Brothers* … the Ninth Circuit held the ECOA applies to consumer leases … "[o]ther cases have held that leases are not subject to the ECOA …We find these cases persuasive."). The court went on to clearly enumerate why residential lease payments—a close analogue of HOA assessments—are not "credit transactions."

> We hold that a typical residential lease does not involve a credit transaction. The typical residential lease involves a contemporaneous exchange of consideration—the tenant pays rent to the landlord on the first of each month for the right to continue to occupy the premises for the coming month. A tenant's responsibility to pay the total amount of rent due does not arise at the moment the lease is signed; instead a tenant has the responsibility to pay rent over roughly equal periods of the term of the lease. The rent paid each period is credited towards occupancy of the property for that period (i.e., rent paid November 1 is credited towards the right of a tenant to occupy the premises in November). As such, there is no deferral of a debt, the requirement for a

> transaction to be a credit transaction under the Act.

Id. at 546-48.

As explained in further detail below, this Court should resolve the circuit split by rejecting the Ninth Circuit's minority view. The majority's contemporaneous exchange test is aligned with the FCRA's purpose of protecting consumer privacy.

II. The Question Presented Is Important

The Court should grant certiorari because the question presented affects the privacy of tens of millions of Americans. The FCRA is a rule of national application which must be applied in a uniform way. *Gorman v. Wolpoff & Abramson, LLP*, 584 F.3d 1147, 1172 (9th Cir. 2009) (legislative history of FCRA "recogniz[ed] the national scope of the consumer reporting industry and the benefits of uniformity").

Within the Ninth Circuit alone, there "are likely millions of homeowners… subject to homeowner association assessments." [Pet. App. 3a]. And although the Ninth Circuit Panel did not rule on whether HOA assessments are credit transactions, it affirmed the District Court's holding that they are. By affirming that ruling, the Ninth Circuit not only remains out of step with a thirty-year doctrinal trend, but it also undermines the privacy of millions of homeowners.

If HOA assessments are "credit transactions," an HOA has the right to run a hard credit inquiry for the purpose of the "review … of an account of" any homeowner. 15 U.S.C. § 1681b(a)(3)(A). The perpetual nature of HOA assessments (the obligation to pay arises from recorded covenants running with the land) means homeowners always have "an account" open with their HOAs. The Ninth Circuit's ruling, therefore, means an HOA can run a hard credit inquiry on any homeowner, at any time, even if that homeowner has not missed any payments. The potential for abuse is self-evident and staggering.

Along the same lines, it is also important to note the context in which *Brothers* was decided. *Brothers* was an ECOA case, and the ECOA is an anti-discrimination statute. The Court interpreted "credit" broadly to serve that anti-discrimination purpose.

> Because the language of the ECOA is broad and its antidiscriminatory purpose is overriding, and because the Consumer Leasing Act and the ECOA are part of a comprehensive umbrella statute designed to protect the interests of consumers, we conclude that the ECOA applies to consumer leases.

Brothers, 724 F.2d at 796.

Although ECOA's definition of "credit" was incorporated into the FCRA, the FCRA is a privacy statute. In the FCRA context, then, the definition should be interpreted to protect privacy. While the

ECOA's purposes were served by a broad view, the FCRA's are served by a narrow reading. Under the narrow reading adopted by the Second, D.C., and Seventh Circuits, HOA assessments are not credit transactions. This Court should grant certiorari, reverse the Ninth Circuit's ruling, formally overturn *Brothers*, and to restore privacy to millions of Ninth Circuit homeowners.

III. This Case Is Key to Answering the Question Presented

The Ninth Circuit chose not to decide whether Carpenter violated the FCRA, instead affirming the district court on the basis that Carpenter's reliance on *Brothers* was reasonable. [Pet. App. 2a-3a] Unless this Court resolves the circuit split now, it is difficult to see how it will be possible to do so in the future. After all, the Ninth Circuit affirmed the District Court's holding that HOA assessments are "credit transactions," *Brothers* remains good law, and the Ninth Circuit has held that reliance on *Brothers* is a proper defense. If defendants can continue to rely on *Brothers* as a shield for liability for willful violations of the FCRA, no complaint will reach the procedural posture where *Brothers* can be overturned.

IV. The Decision Below Is Incorrect.

The District Court held that under *Brothers*, HOA assessments are "credit transactions" and thus Carpenter did not violate the FCRA when it obtained Wolf's credit report. [Pet. App. 12a, 15a-16a] Having decided there was no violation, the District Court did

not address Wolf's argument that Carpenter's alleged violation was willful. By contrast, on appeal the Ninth Circuit Panel did not decide whether Carpenter violated the statute, instead holding that even if it had, it did not do so willfully because its reliance on *Brothers* was reasonable. [Pet. App. 2a-3a]

But the Panel exceeded its authority because the appellate record contains no evidence whatsoever that Carpenter actually relied on *Brothers* when it obtained Wolf's credit report, and a court of appeals can only affirm on grounds "supported by the record that was before the district court." *Cassirer v. Thysssen-Bornemisza Collection Found*, 862 F.3d 951, 974 (9th Cir. 2017). Stated differently, the Panel could only affirm on the basis Carpenter reasonably relied on Brothers upon evidence Carpenter actually relied on Brothers, but there is no such evidence in the record.

Carpenter's deposition testimony did not mention *Brothers*. That testimony did not mention deferred payments, grace periods, or even credit transactions. Similarly, Carpenter's written discovery responses do not indicate any reliance on *Brothers*. Specifically, in response to Wolf's interrogatory requesting that Carpenter identify the legal or factual bases for its assertion that it "properly obtained a copy of Plaintiff's credit report as permitted by 15 U.S.C. § 1681b(a)," Carpenter answered as follows:

ANSWER: The FCRA allows credit reporting agencies to furnish reports "in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the . . . collection of an account." 15 U.S.C. § 1681b(a)(3)(A). That is exactly what happened in this case. *See Hasbun v. County of Los Angeles*, 323 F.3d 801, 803 (9th Cir. 2003) (holding that "creditors have a permissible purpose in receiving a consumer report to assist them in collecting a debt."). CHDB obtained Plaintiff's credit to confirm her location before filing suit to collect her unpaid HOA assessments, all of which were indisputably owed.

Although the Ninth Circuit has held that creditors cannot pull credit reports in connection with the collection of involuntary debts without first obtaining a judgment, *Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665 (9th Cir. 2010), Plaintiff's debts at issue were voluntary. Plaintiff chose to purchase property in the Neely Farms HOA and assume the burdens of ownership therein, including the obligation to pay annual assessments pursuant to the HOA's covenants, conditions, restrictions, and/or by-laws. Because Plaintiff's debt was thus

> voluntarily incurred, CHDB did not need to obtain a judgment against Plaintiff before it could make a credit inquiry on her in connection with the collection of her account.
>
> CHDB's actions are supported by the terms of its service contract with Experian. The terms of use in that contract explain that obtaining a consumer credit report is permissible under the FCRA in the absence of a judgment where the subject debt was voluntarily incurred by the consumer. CHDB thus did nothing more in this case than they were permitted to do by Experian, as well as by law.
>
> Discovery in this case is ongoing, and CHDB reserves the right to amend its answer to this interrogatory to state additional facts and legal theories as discovery continues.

In other words, when Carpenter obtained Wolf's credit report, it was relying on Hasbun,[4] and it was relying on Pintos, but it was not relying on *Brothers*. The "record that was before the district court" indicates Carpenter believed it could run credit to collect any debt voluntarily incurred. *Cassirer*, 862

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[4] Hasbun is bad law. *See Pintos v. Pac. Creditors Ass'n*, 504 F.3d 792, 800 (9th Cir. 2007), opinion withdrawn and superseded, 565 F.3d 1106 (9th Cir. 2009), opinion amended and superseded on denial of reh'g, 605 F.3d 665 (9th Cir. 2010).

F.3d at 974. That is clearly at odds with the statutory text, which requires a "connection with a credit transaction." 15 U.S.C. § 1681b(a)(3)(A). And when the statutory language at issue "is not subject to a range of plausible interpretations," a court need not consider the defendant's subjective interpretation and can decide the defendant acted willfully, "purely as a matter of law." *Syed v. M-I, LLC*, 853 F.3d 492, 505 (9th Cir. 2017).

There was no evidence supporting the Panel's finding that Carpenter relied on *Brothers*. And absent such evidence, the Panel was wrong to avoid deciding whether HOA assessments are "credit transactions." This Court should grant certiorari to resolve the circuit split and hold that under the contemporaneous exchange test, HOA assessments are not credit transactions.

CONCLUSION

For the foregoing reasons, certiorari should be granted. This Court should resolve the circuit split by overturning *Brothers* and restoring the privacy protections Congress intended to extend to consumers nationwide.

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Respectfully Submitted this 31st day of July, 2023.

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APPENDIX

APPENDICES

APPENDIX A, Court of Appeals Decision

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Janis WOLF, Individually and on behalf of those similarly situated, Plaintiff-Appellant, v. CARPENTER, HAZLEWOOD, DELGADO & BOLEN, LLP, Defendant-Appellee.	No. 22-15233 D.C. No. 2:20-cv-00957-DLR MEMORANDUM

Appeal from the United States District Court
for the District of Arizona,
Douglas L. Rayes, District Judge, Presiding

Argued and Submitted February 7, 2023
Phoenix, Arizona

Before: HAWKINS, GRABER, and CHRISTEN, Circuit Judges.
Concurrence by Judge CHRISTEN.

This case arises out of a dispute over Defendant Carpenter, Hazlewood, Delgado & Bolen, LLP's procurement of Plaintiff Janis Wolf's credit report. Plaintiff stopped paying assessments that she owed to her homeowners' association. The association hired Defendant law firm to collect the unpaid assessments. Before filing suit, Defendant obtained Plaintiff's credit report, without her consent, to learn her current address. Plaintiff filed the present action alleging that Defendant had violated the Fair Credit Reporting Act ("FCRA"). The district court granted summary judgment in favor of Defendant. Plaintiff timely appeals. Reviewing de novo, Zobmondo Ent., LLC v. Falls Media, LLC, 602 F.3d 1108, 1113 (9th Cir. 2010), we affirm.

"Any person who willfully fails to comply" with FCRA is liable to the affected consumer. 15 U.S.C. § 1681n(a) (emphasis added). In this context, "willfulness" describes an action taken in "reckless disregard of statutory duty" or "known to violate [FCRA]." Safeco Ins. Co. of Am. v. Burr, 551 U.S. 47, 56–57 (2007). A party does not act in reckless disregard of FCRA "unless the action is not only a violation under a reasonable reading of the statute's terms, but shows that the company ran a risk of violating the law substantially greater than the risk associated with a reading that was merely careless." Id. at 69. Here, assuming without deciding that Defendant violated FCRA, its conduct was not willful as so defined. Its reading of the statute is consistent with our decision in Brothers v. First Leasing, 724 F.2d 789 (9th Cir. 1984). Plaintiff had a grace period during which she could receive half a month's services

that she had not yet paid for. Because that grace period could be considered an extension of credit under our reasoning in Brothers, Defendant's reading of the statute was not objectively unreasonable.[1]

AFFIRMED.

CHRISTEN, Circuit Judge, concurring:

I join in full the majority's decision that any violation of the Fair Credit Reporting Act (FCRA) in this case was not "willful" within the meaning of 15 U.S.C. § 1681n(a). On that basis, I agree that the district court correctly granted summary judgment in defendant's favor. I write separately because FCRA provides important privacy protections for consumers, there are likely millions of homeowners in the Ninth Circuit subject to Homeowners Association (HOA) assessments, and I question whether a typical HOA assessment qualifies as a "credit transaction" that authorizes an HOA to obtain a homeowner's credit report.

FCRA permits a creditor to obtain a credit report in only six enumerated circumstances. The relevant FCRA provision in this case permits a creditor to obtain a report when the creditor "intends to use the information in connection with a credit

[1] Under FCRA, "credit" means "the right granted by a creditor to a debtor to defer payment of debt or to incur debts and defer its payment or to purchase property or services and defer payment therefor." 15 U.S.C. §§ 1681a(r)(5), 1691a(d) (emphases added). "[C]reditor" is defined here as "any person who regularly extends, renews, or continues credit." 15 U.S.C. §§ 1681a(r)(5), 1691a(e). The association regularly extends credit in that form.

transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer." 15 U.S.C.A. § 1681b(a)(3)(A) (emphasis added). The district court concluded that the HOA's actions in this case were authorized by FCRA based on our decision in *Brothers v. First Leasing*, 724 F.2d 789 (9th Cir. 1984). There, the defendant refused to lease an automobile to Brothers in her own name because her husband had previously declared bankruptcy. *Id*. at 790–91. Brothers sued under the Equal Credit Opportunity Act (ECOA), alleging that the defendant unlawfully discriminated against her in a "credit transaction." *Id*. Our court broadly construed the meaning of "credit" and "credit transaction" in ECOA based on the anti-discrimination purpose of that statute, and we held that ECOA applied to consumer leases. *Id*. at 795–96. FCRA incorporates ECOA's definitions of "credit" and "creditor," but FCRA serves a very different purpose from ECOA's anti-discrimination goal. FCRA protects consumer privacy. 15 U.S.C. § 1681(a)(4). A broad construction of the term "credit transaction" is consistent with ECOA's goal of preventing discrimination, but it runs contrary to FCRA's purpose of protecting consumer privacy.

FCRA defines "credit" as "the right granted by a creditor to a debtor to defer payment of debt or to incur debts and defer its payment or to purchase property or services and defer payment therefor." 15 U.S.C. §§ 1681a(r)(5), 1691a(d). "[C]reditor," refers to "any person who regularly extends, renews, or continues credit." 15 U.S.C. §§ 1681a(r)(5), 1691a(e).

In this case, Wolf did not dispute that her HOA qualifies as a creditor, but, in my view, it is far from clear that an HOA "regularly extends, renews, or continues credit" within the meaning of FCRA, 15 U.S.C. §§ 1681a(r)(5), 1691a(e), when it collects monthly assessments and dues. There is no evidence the HOA was involved in Wolf's home purchase process, there is no indication that it evaluated Wolf's credit when she purchased her home, and the HOA did not set the terms of its assessments' 15-day grace period, which Arizona law requires, see Ariz. Rev. Stat. § 33-1803(A).

Nor is it clear under our case law that an HOA assessment is a "credit transaction" for purposes of the FCRA exception invoked in this case. In *Pintos v. Pacific Creditors Ass'n*, we explained that a "credit transaction" must: "(1) be 'a credit transaction involving the consumer on whom the information is to be furnished' and (2) involve 'the extension of credit to, or review or collection of an account of, the consumer.' " 605 F.3d 665, 674 (9th Cir. 2010) (quoting 15 U.S.C. § 1681b(a)). Consistent with FCRA's privacy purpose, *Pintos* explained that the word "involving" must be read narrowly and means the consumer was "drawn in as a participant in the transaction, but not [that] she [wa]s obliged to become associated with the transaction." *Id.* at 675 (original alterations accepted) (citation and internal quotation marks omitted). *Pintos* explained that a participant is "drawn in" to a transaction only if she initiates it. *Id.* We rejected the argument that Pintos initiated a credit transaction with a towing company for impound charges merely because she owned the car it

impounded. *Id*. Our conclusion that Pintos did not involve herself in a credit transaction with the towing company was bolstered by other circumstances: Pintos did not "participate in seeking credit from the towing company," she "had no contact" with the company until it towed her car, "she never asked to have the vehicle towed," and she did not initiate the transaction that resulted in the credit report request. Id.

Here, the district court reasoned that Wolf was involved in a transaction with her HOA because she purchased a home while being aware of the relevant HOA covenants and restrictions. It is easy to see that a homeowner voluntarily initiates a "credit transaction" with a mortgage lender when she purchases a home, because lenders voluntarily decide to extend credit to home buyers, and home buyers "participate in seeking credit" from mortgage lenders. In that situation, FCRA quite sensibly authorizes lenders to obtain consumers' credit reports. But the same cannot be said of the relationship between a homeowner and an HOA, because homeowners do not typically "participate in seeking credit" from HOAs, nor do HOAs decide whether to extend credit to homeowners. The conclusion that Wolf initiated a credit transaction with the HOA is arguably in tension with our holding in Pintos. As the Seventh Circuit has explained, "the plain meaning of 'credit transaction' [in FCRA] contemplates an agreement by which the right of deferred payment is promised in exchange for some form of consideration." *See Persinger v. Sw. Credit Sys., L.P.*, 20 F.4th 1184, 1195 n.5 (7th Cir. 2021). No such agreement ordinarily

exists between homeowners and HOAs issuing monthly assessments. Defendant argued that the HOA extended credit to Wolf because it allowed a fifteen-day grace period for members to pay their assessments. But as explained, this grace period was legally required.

It is hard to imagine that Congress intended FCRA, a statute that protects consumer privacy, to empower HOAs composed of neighboring homeowners to run their neighbors' credit reports if homeowners fall two weeks behind in their payments. In the right case, our court should revisit this issue.

APPENDIX B, District Court Decision

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Janis Wolf, Plaintiff, v. Carpenter Hazlewood Delgado & Bolen LLP, Defendant	No. CV-20-00957-PHX-DLR **ORDER**

Several motions, including cross-motions for summary judgment, pend before the Court in this matter; however, they all stand or fall on the resolution of two questions: (1) whether a particular homeowner association ("HOA") assessment is a voluntary "credit transaction" under the Fair Credit Reporting Act ("FRCA"), and if so, (2) was there a "direct link" between that transaction and obtaining Plaintiff Janis Wolf's credit report. For the following reasons, the Court answers both questions in the affirmative and therefore grants Defendant's motion for summary judgment and denies Plaintiff's motion for summary judgment.

I. Facts

The facts are undisputed. Plaintiff became interested in purchasing a home in the Neely Farms subdivision. (Doc. 58-1 at 4-5.) Before she purchased it, she learned it was located within a HOA, which imposed an assessment under the Neely Farms HOA's Covenants, Conditions, and Restrictions ("CC&Rs"). Under the CC&Rs, which Plaintiff read "from cover to cover" (Doc. 58-1 at 6), the assessment is imposed on an annual basis, with homeowners paying the full amount in installments throughout the year (Doc. 58-3 at 9).

But in 2017, she stopped making those payments. The Neely Farms HOA hired Defendant Carpenter Hazlewood Delgado & Bolen, a law firm, to collect the unpaid assessments. (Doc. 58-1 at 4.) Before filing a lawsuit to collect the unpaid HOA assessment, Defendant obtained Plaintiff's credit report—without her consent—in September 2019 to learn Plaintiff's current address.[1] (Doc. 58-7 at 30.) Carpenter justifies this practice because "many debtors do not reside in the homes subject to the HOA assessments being collected, and because debtors often have common or similar names." (Doc. 58-6 at 6.)

Upon learning that Defendant had obtained her credit report, Plaintiff sued it under the Fair

[1] Plaintiff contends that Defendant also obtained her credit report in October 2019. Defendant acknowledges that it received a bill for a credit inquiry on Plaintiff in October 2019, but Defendant argues that it obtained Plaintiff's credit report for the same reason as the first report: to obtain her current address as part of its ordinary procedures in collecting a debt. (Doc. 58 at 8 n. 5.) Plaintiff does not dispute this.

Credit Reporting Act. (Doc. 1.) She then filed a motion for class certification, which is fully briefed. (Docs. 21, 43, 48.) Both Plaintiff and Defendant have filed motions for summary judgment, which are also fully briefed. (Docs. 58, 62, 68, 71, 74, 75.) Also pending are a handful of motions for leave to file supplemental briefing related to Plaintiff's motions for class certification and summary judgment. (Docs. 52, 76, 78.)

II. Standard

Summary judgment is appropriate when there is no genuine dispute as to any material fact and, viewing those facts in a light most favorable to the nonmoving party, the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). A fact is material if it might affect the outcome of the case, and a dispute is genuine if a reasonable jury could find for the nonmoving party based on the competing evidence. *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 248 (1986); *Villiarimo v. Aloha Island Air, Inc*., 281 F.3d 1054, 1061 (9th Cir. 2002). Summary judgment may also be entered "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

The party seeking summary judgment "bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of [the record] which it believes demonstrate

the absence of a genuine issue of material fact." Id. at 323. The burden then shifts to the non-movant to establish the existence of a genuine and material factual dispute. Id. at 324. The non-movant "must do more than simply show that there is some metaphysical doubt as to the material facts[,]" and instead "come forward with specific facts showing that there is a genuine issue for trial." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986) (internal quotation and citation omitted).

III. Discussion

The FRCA allows a third party to obtain a consumer's credit report without that consumer's consent under certain circumstances, including if it intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer. 15 U.S.C. § 1681b. Courts have also required that there be a "direct link" between the credit transaction and the collector's request for the credit reports. *See, e.g., Baron v. Kirkorsky*, No. CV-17-01118-PHX-DGC, 2017 WL 4573614, at *3 (D. Ariz. Oct. 13, 2017).

A. Credit Transaction

The definition of "credit transaction" under the FCRA is one of first impression. But the FRCA and the Equal Credit Opportunity Act ("ECOA") use the same definition of credit: "the right granted by a creditor to a debtor to defer payment of debt or to

incur debts and defer its payment or to purchase property or services and defer payment therefor." 15 U.S.C. §§ 1681a(r)(5); 1691a(d). And the Ninth Circuit, interpreting the ECOA's definition of credit, explained that the hallmark of a "credit transaction" is a transaction in which payment is deferred. *Brothers v. First Leasing*, 724 F.2d 789, 792, 792 n.8 (9th Cir. 1984). Thus, the Court will apply the *Brothers* characterization of "credit transaction."[2] Still, deferred payment on its own is not enough; the transaction must also be voluntary to qualify as a credit transaction. *Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665 (9th Cir. 2010); *Baron*, 2017 WL 4573614, at *3.

1. Deferred Payment

The undisputed facts show that the HOA annual assessment was structured to provide for deferred payment. The HOA assessment is set on a yearly basis, and homeowners pay that assessment in installments throughout the year.[3] This is exactly like the consumer lease in Brothers where "[u]nder the terms of the lease that [Lessee] applied for, [Lessee] would have had to pay a total amount of $16,280.16. Payment of that debt would have been deferred, and

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[2] Plaintiff urges the Court to accord deference to a later official commentary by the Board of Governors of the Federal Reserve Systems that chided the *Brothers* court for interpreting "credit" too broadly. (Doc. 68.) But *Brothers* remains the law in the Ninth Circuit.

[3] It is unclear whether members pay monthly—following the CC&R—or quarterly—following the HOA bylaws. (Docs. 58-3, 58-4.) The fact remains, however, that the annual assessment is due in installments.

[Lessee] would have been required to make 48 monthly installment payments of $339.17." *Brothers*, 724 F.2d at 794. The *Brothers* court determined that such a transaction was a credit transaction; so too here. *Id*.

Plaintiff presents several unpersuasive counterarguments. First, Plaintiff argues that "[t]he obligation to pay does not exist until the assessment is billed and becomes due; nothing is deferred." (Doc. 68 at 6.) But this misstates the record. The assessment is imposed on an annual basis, triggering the obligation to pay, and allowing payment in installments thereafter.

Second, Plaintiff contends that neither the HOA nor Defendant are creditors within the meaning of the FCRA. (Doc. 68 at 2-3.) But, under the Agreement, the HOA determines the assessment amount for a full year and then makes it payable in installments over the course of the year. Thus, it regularly extends credit.[4]

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[4] Plaintiff also directs the Court to the deposition testimony of one of Defendant's corporate representatives for the proposition that "the clients the firm represents in collections matters do not regularly extend credit to potential defendants" and are thus not creditors. (Doc. 62 at 3.) But that characterization of the deposition testimony bears little resemblance to the testimony itself, where the deponent says, "The delinquency we are trying to collect is unpaid homeowner assessments." (Doc. 62-5 at 5:20-21.) Plaintiff's interpretation of this testimony does not create a dispute in fact; neither does it entitle her to judgment as a matter of law.

Finally, Plaintiff's reliance on *Ollie v. Waypoint Homes, Inc.*, 104 F. Supp. 3d 1012, 1014 (N.D. Cal. 2015) is misplaced. Ollie asked whether a residential lease was a credit transaction, and so that court declined to apply Brothers, which concerned a commercial lease.[5] Here, an HOA is not a residential lease, rather it is a consumer transaction under the CPA. *See Thies v. L. Offs. of William A. Wyman*, 969 F. Supp. 604, 607 (S.D. Cal. 1997). Thus, *Brothers*, which concerned a consumer transaction, guides the analysis here.

2. Voluntariness

"Debt collection is a permissible reason for obtaining a credit report only insofar as the debt arose from a transaction in which the debtor voluntarily and directly sought credit." Baron, 2017 WL 4573614, at *3; accord *Pintos*, 605 F.3d at 675. As relevant here, Arizona law is clear that a home buyer who accepts a deed containing restrictions, he or she "assents to these restrictions and is bound to their performance as effectively as if [he or she] had executed an instrument containing them." *Heritage Heights Home Owners Ass'n v. Esser*, 565 P.2d 207, 210 (Ariz. Ct. App. 1977).

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[5] The *Ollie* court also emphasized that the residential lease lacked a "grace period" after rent became due. 104 F. Supp. 3d at 1014. By contrast, the HOA allows a fifteen- day grace period for unpaid assessments. (Doc. 58-4 at 11.) That means that a homeowner could defer payment of the assessment for fifteen days after it became due and still receive services with no penalty.

The facts are not in dispute. Plaintiff liked the home's size, price, and location. (Doc. 58-1 at 5.) "Right before signing the papers to own the home," she read the CC&Rs "from cover to cover." (Doc. 58-1 at 6.) She admitted she knew that the property was located in an HOA, and that as a homeowner there she would have to pay annual assessments to the HOA. (Doc. 58-1 at 6.) Knowing all of this, Plaintiff decided to buy the property, and she concedes that nobody forced her to buy it. (Doc. 58-1 at 5.) Thus, the undisputed facts all show that Plaintiff acted of her own accord, with full knowledge of her obligations to the HOA if she purchased the property.

Plaintiff argues "[w]hen consumers like Plaintiff buy property in an HOA, they have no choice but to become bound by the HOA's common recorded deed restrictions (i.e., CC&Rs)." And that's true. But Plaintiff could have decided not to purchase the home in the first place. She instead chose to buy the home, knowing full well that a purchase would obligate her to pay annual assessments to the HOA in which the home was located. Plaintiff's home purchase bears no resemblance to the transactions that courts have deemed involuntary. *Pintos*, 605 F.3d at 675 (fees from a police-initiated towing for a car with expired registration); *Baron*, 2017 WL 4573614, at *3 (judgment for court costs).

B. Direct Link

Merely identifying a credit transaction is not enough. There must be a "direct link" between the credit transaction and the collector's request for a

credit report. Id. It is undisputed that Defendant "obtained Plaintiff's credit report to confirm her whereabouts before filing [a] justice court action against her in November 2019" to collect the outstanding debt. (Doc. 58 at 13.) Defendant has established the requisite "direct link."

IV. Conclusion

Defendant's motion for summary judgment is granted, which moots Plaintiff's motions for class certification and summary judgment, as well as all motions for leave to submit supplemental briefing. Therefore,

IT IS ORDERED as follows:

1. Defendant's motion for summary judgment (Doc. 58) is GRANTED.
2. Plaintiff's motion for class certification (Doc. 21) is DENIED.
3. Plaintiff's motion for summary judgment (Doc. 62) is DENIED.
4. All motions for leave to file supplementary briefing (Docs. 52, 76, 78) are DENIED.
5. The clerk of the Court is directed to enter judgment accordingly and terminate this case.

Dated this 18th day of January, 2022.

/s/
Douglas L. Rayes
United States District Judge

APPENDIX C, Order Denying Rehearing

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Janis WOLF, Individually and on behalf of those similarly situated, Plaintiff-Appellant, v. CARPENTER, HAZLEWOOD, DELGADO & BOLEN, LLP, Defendant-Appellee.	No. 22-15233 D.C. No. 2:20-cv-00957-DLR District of Arizona, Phoenix ORDER

Before: HAWKINS, GRABER, and CHRISTEN, Circuit Judges.

Judge Christen has voted to deny Appellant's petition for rehearing en banc, and Judges Hawkins and Graber have so recommended.

The full court has been advised of Appellant's petition for rehearing en banc, and no judge of the court has requested a vote on it.

Appellant's petition for rehearing en banc, Docket No. 38, is DENIED.

APPENDIX D, Statutory Provisions Involved

15 U.S.C. § 1681a(r)(5)

Credit and creditor

The terms "credit" and "creditor" have the same meanings as in section 1691a of this title.

15 U.S.C. § 1681b(a)

(a) In general

Subject to subsection (c), any consumer reporting agency may furnish a consumer report under the following circumstances and no other:

(1) In response to the order of a court having jurisdiction to issue such an order, a subpoena issued in connection with proceedings before a Federal grand jury, or a subpoena issued in accordance with section 5318 of Title 31 or section 3486 of Title 18.

(2) In accordance with the written instructions of the consumer to whom it relates.

(3) To a person which it has reason to believe--

> **(A)** intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and

involving the extension of credit to, or review or collection of an account of, the consumer; or

(B) intends to use the information for employment purposes; or

(C) intends to use the information in connection with the underwriting of insurance involving the consumer; or

(D) intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(E) intends to use the information, as a potential investor or servicer, or current insurer, in connection with a valuation of, or an assessment of the credit or prepayment risks associated with, an existing credit obligation; or

(F) otherwise has a legitimate business need for the information--

(i) in connection with a business transaction that is initiated by the consumer; or

(ii) to review an account to determine whether the consumer continues to meet the terms of the account.

(G) executive departments and agencies in connection with the issuance of government-sponsored individually-billed travel charge cards.

(4) In response to a request by the head of a State or local child support enforcement agency (or a State or local government official authorized by the head of such an agency), if the person making the request certifies to the consumer reporting agency that--

(A) the consumer report is needed for the purpose of establishing an individual's capacity to make child support payments, determining the appropriate level of such payments, or enforcing a child support order, award, agreement, or judgment;

(B) the parentage of the consumer for the child to which the obligation relates has been established or acknowledged by the consumer in accordance with State laws under which the obligation arises (if required by those laws); and

(C) the consumer report will be kept confidential, will be used solely for a purpose described in subparagraph (A), and will not be used in connection with any other civil, administrative, or criminal proceeding, or for any other purpose.

(5) To an agency administering a State plan under section 654 of Title 42 for use to set an initial or modified child support award.

(6) To the Federal Deposit Insurance Corporation or the National Credit Union Administration as part of its preparation for its appointment or as part of its exercise of powers, as conservator, receiver, or liquidating agent for an insured depository institution or insured credit union under the Federal Deposit Insurance Act or the Federal Credit Union Act, or other applicable Federal or State law, or in connection with the resolution or liquidation of a failed or failing insured depository institution or insured credit union, as applicable.

15 U.S.C. § 1691a(d) – (e)

(d) The term "credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debts and defer its payment or to purchase property or services and defer payment therefor.

(e) The term "creditor" means any person who regularly extends, renews, or continues credit; any person who regularly arranges for the extension, renewal, or continuation of credit; or any assignee of an original creditor who participates in the decision to extend, renew, or continue credit.

SUPREME COURT OF THE UNITED STATES

No. 23-

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JANIS WOLF, INDIVIDUALLY AND ON BEHALF OF THOSE SIMILARLY SITUATED,

Petitioner,

v.

CARPENTER, HAZLEWOOD, DELAGO & BOLEN, LLP.,

Respondent.

----------X

CERTIFICATE OF WORD COUNT

As required by Supreme Court Rule 33.1(h), I certify that the document contains 4,004 words, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 1, 2023.

_____

Noel Reyes

Sworn to and subscribed before me this 1st day of August, 2023.

MARIANA BRAYLOVSKIY
Notary Public State of New York
No. 01BR6004935
Qualified in Richmond County
Commission Expires March 30, 2026

#322755

AFFIDAVIT OF SERVICE

SUPREME COURT OF THE UNITED STATES

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Respondent,

----------X

STATE OF NEW YORK)

COUNTY OF NEW YORK)

I, Noel Reyes, being duly sworn according to law and being over the age of 18, upon my oath depose and say that:

I am retained by Counsel of Record for *Petitioner(s).*

That on the 1st day of August, 2023, I served the within *Petition for a Writ of Certiorari* in the above-captioned matter upon:

Brett B. Larsen
Hinshaw Culbertson LLP
2375 E. Camelback Rd., Suite 410
Phoenix, AZ 85016
(602) 631-4400
blarsen@hinshawlaw.com

by sending three copies of same, addressed to each individual respectively, and enclosed in a properly addressed wrapper, through the United States Postal Service, by Express Mail, postage prepaid. An electronic version was also served by email to each individual.

That on the same date as above, I sent to this Court forty copies of the within *Petition for a Writ of Certiorari* and three hundred dollar filing fee check through the United States Postal Service by Express Mail, postage prepaid. In addition, the brief has been submitted through the Court's electronic filing system.

All parties required to be served have been served.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 1st day of August, 2023.

Noel Reyes

Sworn to and subscribed before me this 1st day of August, 2023.

MARIANA BRAYLOVSKIY
Notary Public State of New York
No. 01BR6004935
Qualified in Richmond County
Commission Expires March 30, 2026

#322755