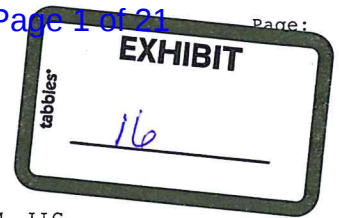


Residential Transaction Report
Sundance Residential
01/01/1900 to: 11/14/2018



Parcel: S9-R043 Sundance Residential
Administrative Assistant
cdevine@associatedasset.com
Buckeye, AZ 85326-6186

Management Co: AAM, LLC
1600 W Broadway Rd.
Suite 200
Tempe, AZ 85282

	Type	Date	CC Description	Check No	Amount	Balance
0079 03			App# 403381		Beg Bal	0.00
Curt Glawe	Pay	12/07/2009	TITLE SECURITY 299960		-210.44	-210.44
2240 570th St	Chg	12/07/2009	W1 Res-Wkg Capital		63.51	-146.93
Aurelia IA 51005-7107	Chg	12/07/2009	WC Working Capital		20.67	-126.26
	Chg	01/01/2010	QA Quarterly Assessment		31.00	-95.26
	Chg	01/01/2010	S1 Due to Residential		95.26	0.00
	Chg	04/01/2010	QA Quarterly Assessment		31.00	31.00
	Chg	04/01/2010	S1 Due to Residential		95.26	126.26
	Chg	04/13/2010	CV CC&R Violation		100.00	226.26
	Chg	04/15/2010	LF Late Fee		15.00	241.26
	Chg	05/04/2010	CV CC&R Violation		200.00	441.26
	Chg	05/17/2010	DN Demand Fee		45.00	486.26
	Chg	07/01/2010	S1 Due to Residential		95.26	581.52
	Chg	07/01/2010	QA Quarterly Assessment		31.00	612.52
	Chg	07/09/2010	LN Lien/Lien Release		150.00	762.52
	Chg	07/15/2010	LF Late Fee		15.00	777.52
	Chg	10/01/2010	S1 Due to Residential		95.26	872.78
	Chg	10/01/2010	QA Quarterly Assessment		31.00	903.78
	Chg	10/15/2010	LF Late Fee		15.00	918.78
	Chg	01/01/2011	S1 Due to Residential		95.26	1,014.04
	Chg	01/01/2011	QA Quarterly Assessment		31.00	1,045.04
	Chg	01/17/2011	LF Late Fee		15.00	1,060.04
	Chg	03/03/2011	CV CC&R Violation		100.00	1,160.04
	Chg	03/24/2011	CV CC&R Violation		200.00	1,360.04
	Chg	04/01/2011	QA Quarterly Assessment		31.00	1,391.04
	Chg	04/01/2011	S1 Due to Residential		95.26	1,486.30
	Chg	04/15/2011	LF Late Fee		15.00	1,501.30
	Chg	04/21/2011	CV CC&R Violation		200.00	1,701.30
	Chg	05/17/2011	CV CC&R Violation		200.00	1,901.30
	Chg	06/27/2011	CV CC&R Violation		200.00	2,101.30
	Chg	07/01/2011	S1 Due to Residential		95.26	2,196.56
	Chg	07/01/2011	QA Quarterly Assessment		31.00	2,227.56
	Chg	07/15/2011	LF Late Fee		15.00	2,242.56
	Chg	08/11/2011	CV CC&R Violation		200.00	2,442.56
	Chg	08/30/2011	CV CC&R Violation		200.00	2,642.56
	Chg	10/01/2011	QA Quarterly Assessment		31.00	2,673.56
	Chg	10/01/2011	S1 Due to Residential		95.26	2,768.82
	Chg	10/17/2011	LF Late Fee		15.00	2,783.82
	Chg	01/01/2012	S1 Due to Residential		95.26	2,879.08
	Chg	01/01/2012	QA Quarterly Assessment		31.00	2,910.08
	Chg	01/17/2012	LF Late Fee		15.00	2,925.08
	Chg	04/01/2012	S1 Due to Residential		95.26	3,020.34
	Chg	04/01/2012	QA Quarterly Assessment		31.00	3,051.34
	Chg	04/16/2012	LF Late Fee		15.00	3,066.34
	Chg	07/01/2012	QA Quarterly Assessment		31.00	3,097.34
	Chg	07/01/2012	S1 Due to Residential		95.26	3,192.60

Resident Transaction Report

Sundance Residential

01/01/1900 to: 11/14/2018

Parcel: S9-R043 Sundance Residential
 Administrative Assistant
 cdevine@associatedasset.com
 Buckeye, AZ 85326-6186

Management Co: AAM, LLC
 1600 W Broadway Rd.
 Suite 200
 Tempe, AZ 85282

Type	Date	CC Description	Check No	Amount	Balance
Chg	07/15/2012	LF Late Fee		15.00	3,207.60
Cr	08/03/2012	LF Settlement W/O		-15.00	3,192.60
Cr	08/03/2012	CV Settlement W/O		-100.00	3,092.60
Cr	08/03/2012	LF Settlement W/O		-15.00	3,077.60
Cr	08/03/2012	LF Settlement W/O		-15.00	3,062.60
Cr	08/03/2012	LF Settlement W/O		-15.00	3,047.60
Cr	08/03/2012	CV Settlement W/O		-200.00	2,847.60
Cr	08/03/2012	CV Settlement W/O		-200.00	2,647.60
Cr	08/03/2012	LF Settlement W/O		-15.00	2,632.60
Cr	08/03/2012	CV Settlement W/O		-200.00	2,432.60
Cr	08/03/2012	QA Settlement W/O		-31.00	2,401.60
Cr	08/03/2012	CV Settlement W/O		-200.00	2,201.60
Cr	08/03/2012	LF Settlement W/O		-15.00	2,186.60
Cr	08/03/2012	QA Settlement W/O		-31.00	2,155.60
Cr	08/03/2012	S1 Settlement W/O		-95.26	2,060.34
Cr	08/03/2012	DN Settlement W/O		-45.00	2,015.34
Cr	08/03/2012	LF Settlement W/O		-15.00	2,000.34
Cr	08/03/2012	CV Settlement W/O		-200.00	1,800.34
Pay	08/03/2012	CH 28094		-126.36	1,673.98
Cr	08/03/2012	QA Settlement W/O		-31.00	1,642.98
Cr	08/03/2012	S1 Settlement W/O		-95.26	1,547.72
Cr	08/03/2012	LF Settlement W/O		-15.00	1,532.72
Cr	08/03/2012	CV Settlement W/O		-200.00	1,332.72
Cr	08/03/2012	CV Settlement W/O		-100.00	1,232.72
Cr	08/03/2012	LF Settlement W/O		-15.00	1,217.72
Cr	08/03/2012	S1 Settlement W/O		-44.46	1,173.26
Cr	08/03/2012	QA Settlement W/O		-31.00	1,142.26
Cr	08/03/2012	LF Settlement W/O		-15.00	1,127.26
Cr	08/03/2012	S1 Settlement W/O		-95.26	1,032.00
Cr	08/03/2012	CV Settlement W/O		-200.00	832.00
Pay	08/22/2012	Lckbx Pmt 028504		-832.00	0.00
Chg	10/01/2012	QA Quarterly Assessment		31.00	31.00
Chg	10/01/2012	S1 Due to Residential		95.26	126.26
Chg	10/15/2012	LF Late Fee		15.00	141.26
Chg	01/01/2013	S1 Due to Residential		95.26	236.52
Chg	01/01/2013	QA Quarterly Assessment		31.00	267.52
Chg	01/15/2013	LF Late Fee		15.00	282.52
Chg	02/15/2013	DN Demand Fee		65.00	347.52
Chg	04/01/2013	S1 Due to Residential		95.26	442.78
Chg	04/01/2013	QA Quarterly Assessment		31.00	473.78
Chg	04/15/2013	LF Late Fee		15.00	488.78
Chg	04/25/2013	LN Lien Prep Fee		195.00	683.78
Chg	05/30/2013	C7 Delinquency AdminFee		75.00	758.78
Chg	07/01/2013	QA Quarterly Assessment		31.00	789.78
Chg	07/01/2013	S1 Due to Residential		95.26	885.04
Chg	07/15/2013	LF Late Fee		15.00	900.04

01/01/1900 to: 11/14/2018

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Management Co: AAM, LLC
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 Suite 200
 Tempe, AZ 85282

Type	Date	CC Description	Check No	Amount	Balance
Chg	08/14/2013	CV CC&R Violation		100.00	1,000.04
Chg	10/01/2013	QA Quarterly Assessment		31.00	1,031.04
Chg	10/01/2013	S1 Due to Residential		95.26	1,126.30
Chg	10/16/2013	LF Late Fee		15.00	1,141.30
Chg	01/01/2014	QA Quarterly Assessment		31.00	1,172.30
Chg	01/01/2014	S1 Due to Residential		95.26	1,267.56
Chg	01/15/2014	LF Late Fee		15.00	1,282.56
Chg	04/01/2014	QA Quarterly Assessment		31.00	1,313.56
Chg	04/01/2014	S1 Due to Residential		95.26	1,408.82
Chg	04/02/2014	CV CC&R Violation		100.00	1,508.82
Chg	04/15/2014	LF Late Fee		15.00	1,523.82
Chg	07/01/2014	S1 Due to Residential		95.26	1,619.08
Chg	07/01/2014	QA Quarterly Assessment		31.00	1,650.08
Chg	07/15/2014	LF Late Fee		15.00	1,665.08
Chg	10/01/2014	QA Quarterly Assessment		31.00	1,696.08
Chg	10/01/2014	S1 Due to Residential		95.26	1,791.34
Chg	10/15/2014	LF Late Fee		15.00	1,806.34
Chg	11/14/2014	AF ATTY#130336 10.7.14		2,883.70	4,690.04
Chg	01/01/2015	QA Quarterly Assessment		31.00	4,721.04
Chg	01/01/2015	S1 Due to Residential		95.26	4,816.30
Chg	01/15/2015	LF Late Fee		15.00	4,831.30
Chg	04/01/2015	S1 Due to Residential		95.26	4,926.56
Chg	04/01/2015	QA Quarterly Assessment		31.00	4,957.56
Chg	04/15/2015	LF Late Fee		15.00	4,972.56
Chg	05/29/2015	AF ATTYINV#138379		1,531.15	6,503.71
Chg	05/29/2015	AF ATTYINV#137003		517.50	7,021.21
Chg	06/01/2015	AF ATTYINV135696		148.00	7,169.21
Chg	06/01/2015	AF ATTYINV133115		33.00	7,202.21
Chg	06/01/2015	AF ATTYINV139895		405.00	7,607.21
Chg	06/01/2015	AF ATTYINV134322		257.00	7,864.21
Chg	06/05/2015	AF ATTYINV#141237		404.50	8,268.71
Chg	06/12/2015	AF Atty Fee Inv#131774		448.00	8,716.71
Chg	06/15/2015	AF Atty Fee Inv# 128930		145.00	8,861.71
Chg	07/01/2015	QA Quarterly Assessment		31.00	8,892.71
Chg	07/01/2015	S1 Due to Residential		95.26	8,987.97
Chg	07/08/2015	AF Atty fee Inv# 142496		1,319.00	10,306.97
Chg	07/15/2015	LF Late Fee		15.00	10,321.97
Chg	08/06/2015	AF ATTYINV#1144058		741.00	11,062.97
Chg	09/14/2015	AF ATTYINV#145397		2,382.00	13,444.97
Chg	10/01/2015	QA Quarterly Assessment		31.00	13,475.97
Chg	10/01/2015	S1 Due to Residential		95.26	13,571.23
Chg	10/06/2015	AF Atty Fee#146871		2,382.00	15,953.23
Chg	10/15/2015	LF Late Fee		15.00	15,968.23
Chg	11/05/2015	AF Atty Fee#148402		4,899.00	20,867.23
Chg	12/07/2015	AF Atty Fee#149830		2,476.25	23,343.48
Chg	01/01/2016	S1 Due to Residential		95.26	23,438.74

Resident Transaction Report

Sundance Residential

01/01/1900 to: 11/14/2018

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 Administrative Assistant
 cdevine@associatedasset.com
 Buckeye, AZ 85326-6186

Management Co: AAM, LLC
 1600 W Broadway Rd.
 Suite 200
 Tempe, AZ 85282

Type	Date	CC Description	Check No	Amount	Balance
Chg	01/01/2016	QA Quarterly Assessment		31.00	23,469.74
Chg	01/06/2016	AF Atty Fee#151237		1,693.60	25,163.34
Chg	01/15/2016	LF Late Fee		15.00	25,178.34
Chg	02/08/2016	AF Atty Fee#152831		485.00	25,663.34
Chg	03/16/2016	AF Atty Fee Inv: 154235		58.00	25,721.34
Chg	03/16/2016	AF Atty Fee Inv: 154235		58.00	25,779.34
Chg	03/16/2016	AF Atty Fee Inv: 154235		116.00	25,895.34
Chg	03/16/2016	AF Atty Fee Inv: 154235		116.00	26,011.34
Chg	03/16/2016	AF Atty Fee Inv: 154235		145.00	26,156.34
Chg	03/16/2016	AF Atty Fee Inv: 154235		203.00	26,359.34
Chg	03/16/2016	AF Atty Fee Inv: 154235		319.00	26,678.34
Chg	03/16/2016	AF Atty Fee Inv: 154235		319.00	26,997.34
Chg	03/16/2016	AF Atty Fee Inv: 154235		319.00	27,316.34
Chg	03/16/2016	AF Atty Fee Inv: 154235		638.00	27,954.34
Chg	03/16/2016	AF Atty Fee Inv: 154235		754.00	28,708.34
Chg	03/16/2016	AF Atty Fee Inv: 154235		87.00	28,795.34
Chg	03/16/2016	AF Atty Fee Inv: 154235		783.00	29,578.34
Chg	03/16/2016	AF Atty Fee Inv: 154235		783.00	30,361.34
Chg	03/16/2016	AF Atty Fee Inv: 154235		52.50	30,413.84
Chg	03/16/2016	AF Atty Fee Inv: 154235		35.00	30,448.84
Chg	03/16/2016	AF Atty Fee Inv: 154235		9.00	30,457.84
Chg	03/16/2016	AF Atty Fee Inv: 154235		6.00	30,463.84
Chg	03/16/2016	AF Atty Fee Inv: 154235		6.00	30,469.84
Chg	04/01/2016	S1 Due to Residential		95.26	30,565.10
Chg	04/01/2016	QA Quarterly Assessment		31.00	30,596.10
Pay	04/11/2016	Lckbx Pmt 000207		-1,767.64	28,828.46
Chg	04/13/2016	AF Atty Fee Inv: 155820		58.00	28,886.46
Chg	04/13/2016	AF Atty Fee Inv: 155820		58.00	28,944.46
Chg	04/13/2016	AF Atty Fee Inv: 155820		6.00	28,950.46
Chg	04/13/2016	AF Atty Fee Inv: 155820		6.00	28,956.46
Chg	04/13/2016	AF Atty Fee Inv: 155820		6.00	28,962.46
Chg	04/13/2016	AF Atty Fee Inv: 155820		6.00	28,968.46
Chg	04/13/2016	AF Atty Fee Inv: 155820		35.00	29,003.46
Chg	04/13/2016	AF Atty Fee Inv: 155820		145.00	29,148.46
Chg	04/13/2016	AF Atty Fee Inv: 155820		122.50	29,270.96
Chg	04/13/2016	AF Atty Fee Inv: 155820		70.00	29,340.96
Chg	04/15/2016	LF Late Fee		15.00	29,355.96
Chg	05/13/2016	AF Atty Fee Inv: 157395		116.00	29,471.96
Chg	05/13/2016	AF Atty Fee Inv: 157395		667.00	30,138.96
Chg	05/13/2016	AF Atty Fee Inv: 157395		6.00	30,144.96
Chg	05/13/2016	AF Atty Fee Inv: 157395		35.00	30,179.96
Chg	05/13/2016	AF Atty Fee Inv: 157395		122.50	30,302.46
Chg	05/13/2016	AF Atty Fee Inv: 157395		58.00	30,360.46
Chg	05/13/2016	AF Atty Fee Inv: 157395		696.00	31,056.46
Chg	05/13/2016	AF Atty Fee Inv: 157395		58.00	31,114.46
Chg	05/13/2016	AF Atty Fee Inv: 157395		35.00	31,149.46

Resident Transaction Report

Sundance Residential

01/01/1900 to: 11/14/2018

Parcel: S9-R043 Sundance Residential
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Management Co: AAM, LLC
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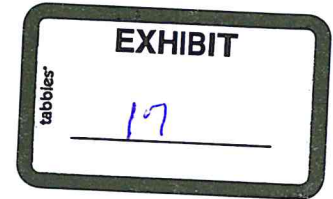
Type	Date	CC Description	Check No	Amount	Balance
Chg	05/13/2016	AF Atty Fee Inv: 157395		52.50	31,201.96
Chg	06/20/2016	AF Atty Fee Inv: 159057		145.00	31,346.96
Chg	06/20/2016	AF Atty Fee Inv: 159057		35.00	31,381.96
Chg	06/20/2016	AF Atty Fee Inv: 159057		6.00	31,387.96
Chg	06/20/2016	AF Atty Fee Inv: 159057		696.00	32,083.96
Chg	06/20/2016	AF Atty Fee Inv: 159057		174.00	32,257.96
Chg	06/20/2016	AF Atty Fee Inv: 159057		232.00	32,489.96
Chg	06/20/2016	AF Atty Fee Inv: 159057		58.00	32,547.96
Chg	06/20/2016	AF Atty Fee Inv: 159057		58.00	32,605.96
Chg	06/20/2016	AF Atty Fee Inv: 159057		87.00	32,692.96
Chg	06/20/2016	AF Atty Fee Inv: 159057		87.50	32,780.46
Chg	07/01/2016	S1 Due to Residential		95.26	32,875.72
Chg	07/01/2016	QA Quarterly Assessment		31.00	32,906.72
Chg	07/14/2016	AF Atty Fee Inv: 160519		4,323.00	37,229.72
Chg	07/15/2016	LF Late Fee		15.00	37,244.72
Chg	08/19/2016	AF Atty Fee#161968		2,013.00	39,257.72
Chg	09/19/2016	AF Atty Fee Inv: 163491		2,141.00	41,398.72
Chg	10/01/2016	QA Quarterly Assessment		31.00	41,429.72
Chg	10/01/2016	S1 Due to Residential		95.26	41,524.98
Chg	10/14/2016	AF Atty Fee Inv: 164996		586.00	42,110.98
Chg	10/15/2016	LF Late Fee		15.00	42,125.98
Pay	11/10/2016	Lckbx Pmt 000221		-378.78	41,747.20
Chg	11/14/2016	AF Atty Fee Inv: 166455		8,712.50	50,459.70
Chg	11/14/2016	AF Atty Fee Inv: 166455		8,712.50	59,172.20
Cr	11/30/2016	AF Duplicate Post		-8,712.50	50,459.70
Chg	12/14/2016	AF Atty Fee Inv: 167969		947.00	51,406.70
Chg	01/01/2017	S1 Due to Residential		104.78	51,511.48
Chg	01/01/2017	QA Quarterly Assessment		21.48	51,532.96
Chg	01/15/2017	LF Late Fee		15.00	51,547.96
Chg	01/19/2017	AF Atty Fee Inv: 169403		292.12	51,840.08
Chg	03/08/2017	AF Atty Inv. 402.50		402.50	52,242.58
Chg	03/08/2017	AF Atty Inv. 172665		244.00	52,486.58
Chg	04/01/2017	S1 Due to Residential		104.78	52,591.36
Chg	04/01/2017	QA Quarterly Assessment		21.48	52,612.84
Chg	04/12/2017	AF Atty Fee Inv: 174355		35.00	52,647.84
Pay	04/12/2017	Lckbx Pmt 000090		-126.26	52,521.58
Chg	05/12/2017	AF Atty Fee Inv: 175611		1,734.90	54,256.48
Chg	06/07/2017	AF Atty Fee Inv: 177493		186.00	54,442.48
Chg	07/01/2017	QA Quarterly Assessment		21.48	54,463.96
Chg	07/01/2017	S1 Due to Residential		104.78	54,568.74
Chg	07/13/2017	AF Atty Fee Inv: 179208		10,626.70	65,195.44
Chg	07/15/2017	LF Late Fee		15.00	65,210.44
Pay	07/27/2017	M.O. 918251		-126.16	65,084.28
Chg	08/11/2017	AF Atty Fee Inv: 181030		238.00	65,322.28
Chg	09/29/2017	CV CC&R Violation		100.00	65,422.28
Chg	10/01/2017	QA Quarterly Assessment		21.48	65,443.76

Resident Transaction Report
Sundance Residential
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Management Co: AAM, LLC
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Type	Date	CC Description	Check No	Amount	Balance
Chg	10/01/2017	S1 Due to Residential		104.78	65,548.54
Chg	10/15/2017	LF Late Fee		15.00	65,563.54
Pay	10/20/2017	CASH PAYMENT 139800		-126.16	65,437.38
Chg	01/01/2018	QA Quarterly Assessment		8.00	65,445.38
Chg	01/01/2018	S1 Due to Residential		115.26	65,560.64
Chg	01/16/2018	LF Late Fee		15.00	65,575.64
Chg	02/01/2018	AF Atty Fee Inv: 191381		1,003.70	66,579.34
Pay	02/08/2018	CASH PAYMENT 203437		-126.16	66,453.18
Chg	03/13/2018	AF Atty Fee Inv:192952		1,338.20	67,791.38
Chg	04/01/2018	QA Quarterly Assessment		8.00	67,799.38
Chg	04/01/2018	S1 Due to Residential		115.26	67,914.64
Chg	04/09/2018	AF Atty Fee Inv: 194736		907.00	68,821.64
Chg	04/09/2018	AF Atty Fee Inv: 194736		304.70	69,126.34
Chg	04/15/2018	LF Late Fee		15.00	69,141.34
Pay	04/27/2018	M.O. 204457		-126.16	69,015.18
Chg	05/09/2018	AF Atty Inv Fee: 196202		37.00	69,052.18
Chg	05/09/2018	AF Atty Inv Fee: 196202		405.52	69,457.70
Cr	05/21/2018	DN Account Write Off		-65.00	69,392.70
Cr	05/21/2018	LN Account Write Off		-195.00	69,197.70
Cr	05/21/2018	C7 Account Write Off		-75.00	69,122.70
Cr	05/21/2018	CV Account Write Off		-200.00	68,922.70
Cr	05/21/2018	AF Account Write Off		-49,276.27	19,646.43
Cr	05/21/2018	LF Account Write Off		-255.00	19,391.43
Chg	06/11/2018	AF Attorney Inv #198055		672.00	20,063.43
Chg	07/01/2018	QA Quarterly Assessment		8.00	20,071.43
Chg	07/01/2018	S1 Due to Residential		115.26	20,186.69
Chg	07/11/2018	AF Attorney Inv# 199768		87.00	20,273.69
Chg	07/15/2018	LF Late Fee		15.00	20,288.69
Pay	07/24/2018	Lckbx Pmt 000090		-123.26	20,165.43
Chg	10/01/2018	S1 Due to Residential		115.26	20,280.69
Chg	10/01/2018	QA Quarterly Assessment		8.00	20,288.69
Chg	10/15/2018	LF Late Fee		15.00	20,303.69
Chg	10/26/2018	AF INV 191379 08.31.17		93.00	20,396.69
				Res Balance	20,396.69



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Curtis G Glawe,

Plaintiff,

v.

Carpenter, Hazlewood, Delgado & Bolen
PLC, et al.,

Defendants.

No. CV-18-01282-PHX-JAS (BPV)

ORDER

Pending before the Court is Plaintiff's Motion for Leave to File Amended Complaint. (Doc. 22.) Defendants filed a Response (Doc. 26), and Plaintiff a Reply (Doc. 27).

Defendants argue that Plaintiff's Amended Complaint does not add any new cause of action or statutory violation, but simply adds Plaintiff's answers to Defendants' discovery requests. (Doc. 26 at 2.) Defendants contend that granting the request to amend would simply be a waste of the Courts' and the parties' time, causing unnecessary work responding to an Amended Answer that adds no new cause of action or statutory violation. *Id.* Defendants further assert that Plaintiff has acted in bad faith, caused undue delay, and violated the Federal Rules regarding pleading. *Id.* at 4. Defendants claim that Plaintiff knew of all the facts alleged in the Amended Complaint at the time of the initial Complaint, and denying the amendment is proper. *Id.* at 5. Furthermore, Defendants state

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1 that granting the amended complaint prejudices them because they will have spent 5 of
2 their 25 interrogatories on issues that would have been addressed had Plaintiff included
3 the facts in his initial Complaint. *Id.* Finally, Defendants argue that the Amended
4 Complaint fails to comport with Rule 8(a) because it is not a short statement of the
5 grounds for relief, but rather a long-winded elaboration of initial Complaint. *Id.* at 5-6.

6 Plaintiff responds that he filed a timely Motion to Amend, and admits that he filed
7 the Amended Complaint in response to Defendants' request for interrogatories. (Doc. 27
8 at 2.) He further concedes that the purpose of the Amended Complaint was to provide
9 clarification and to expound upon the factual basis for the grounds raised in the initial
10 Complaint. *Id.* at 2-3.

11 The Court issued a Rule 16(b) Scheduling Order in this matter, and therefore the
12 Rule 16 standard requiring good cause for amendment applies in lieu of the Rule 15(a)
13 standard allowing for liberal amendment. *Johnson v. Mammoth Recreations, Inc.* 975
14 F.2d 604, 607-08 (9th Cir. 1992). Under this standard the Court considers the amending
15 party's diligence and degree of prejudice to the defendant. *Id.*

16 The Court finds that Plaintiff has not presented good cause for the amendment
17 because the Amended Complaint adds no new claims or parties. Furthermore, permitting
18 the complaint simply to add details unnecessary for pleading is contrary to the purpose of
19 Federal Rule of Civil Procedure 8(a), which requires a "short and plain statement for the
20 claim showing that the pleader is entitled to relief." In addition, requiring an answer and
21 reply to the Amended Complaint would cause undue work and delay for both parties, and
22 would prejudice Defendants—who used several of their interrogatories to obtain the
23 identical facts included in the Amended Complaint. Plaintiff's concern that his initial
24 Complaint lacks specificity can be remedied in his answers to interrogatories and his
25 response to Defendant's Motion to Dismiss—which can incorporate sufficient detail in an

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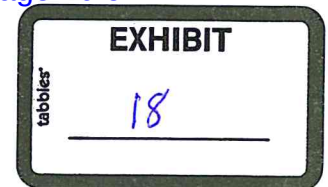
28 ///

1 attached statement of facts and exhibits.

2 IT IS ORDERED Plaintiff's Motion for Leave to File Amended Complaint (Doc.
3 22) is DENIED.

4 Dated this 2nd day of November, 2018.

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8 Bernardo P. Velasco
9 United States Magistrate Judge
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15-1584(L)

Avila v. Riexinger & Associates, LLC

1 UNITED STATES COURT OF APPEALS
2 FOR THE SECOND CIRCUIT
3
4

5 August Term, 2015
6

7 (Argued: December 9, 2015

Decided: March 22, 2016)

8
9 Docket Nos. 15-1584(L), 15-1597(Con)
10
11

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13 ANNMARIE AVILA, an individual; on behalf of herself and all others similarly
14 situated, SARA ELROD, an individual; on behalf of herself and all others
15 similarly situated,

16 *Plaintiffs-Appellants,*

17 v.
18

19 RIEXINGER & ASSOCIATES, LLC, a Georgia Limited Liability Company,
20 CROWN ASSET MANAGEMENT, LLC, a Georgia Limited Liability Company,
21 STEPHEN P. RIEXINGER, an individual and in his official capacity, JOHN AND
22 JANE DOES, NUMBERS 1 THROUGH 25, BUREAUS INVESTMENT GROUP
23 PORTFOLIO NO.15, LLC, an Illinois Limited Liability Company,
24

25 *Defendants-Appellees.*¹
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27

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29 Before: CALABRESI, POOLER, and LYNCH, *Circuit Judges.*

¹ The Clerk of Court is respectfully directed to amend the official caption to conform with the caption above.

1 Appeal from an April 14, 2015 judgment of the United States District Court
2 for the Eastern District of New York (Dearie, J.), dismissing plaintiffs' claims
3 under the Fair Debt Collection Practices Act ("FDCPA"). In this opinion, we
4 address the district court's dismissal of plaintiffs' claim that defendants violated
5 the FDCPA by sending plaintiffs a collection notice stating their "current
6 balance" without disclosing that the balance might increase over time due to
7 interest and fees. We hold that Section 1692e of the FDCPA requires debt
8 collectors, when they notify consumers of their account balance, to disclose that
9 the balance may increase due to interest and fees. Because plaintiffs allege that
10 defendants failed to disclose that information here, they have stated a claim
11 under the FDCPA. Accordingly, we vacate the dismissal of this claim and
12 remand for further proceedings consistent with this opinion. In a summary order
13 issued simultaneously with this opinion, we affirm the district court's dismissal
14 of plaintiffs' other claims.

15 Affirmed in part, vacated in part, and remanded.

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17 _____
18 PHILIP D. STERN (Adam T. Thomasson, *on the brief*),
19 Stern Thomasson LLP, Union, NJ, *for Plaintiffs-*
Appellants.

1
2 WILLIAM G. BALLAINE (Jennifer Ramme, *on the brief*),
3 Landman Corsi Ballaine & Ford P.C., New York, NY, *for*
4 *Defendants-Appellees*.
5

6 POOLER, *Circuit Judge*:

7 The Fair Debt Collection Practices Act (“FDCPA”) prohibits debt collectors
8 from using “any false, deceptive, or misleading representation or means in
9 connection with the collection of any debt.” 15 U.S.C. § 1692e. The question
10 presented is whether a collection notice that states a consumer’s “current
11 balance,” but does not disclose that the balance may increase due to interest and
12 fees, complies with this provision. We hold that Section 1692e requires debt
13 collectors, when they notify consumers of their account balance, to disclose that
14 the balance may increase due to interest and fees.

15 **BACKGROUND**

16 Plaintiffs Annmarie Avila and Sara Elrod both received collection notices
17 from defendant Riexinger & Associates, LLC. The notices stated that plaintiffs’
18 accounts had been “placed with [the firm] for collection and such action as
19 necessary.” App’x at 59, 109. The notices stated each plaintiff’s “current balance”
20 but did not disclose that this balance was continuing to accrue interest or that, if

1 plaintiffs failed to pay the debt within a certain amount of time, they would be
2 charged a late fee. The bottom of the notices contained a detachable section for
3 plaintiffs to provide their credit card information to pay the debt. On Avila's
4 notice, this section again stated her "current balance."

5 Plaintiffs filed this lawsuit, alleging that the collection notices violated the
6 FDCPA. They claimed, among other things, that the collection notices were
7 misleading because they stated the "current balance," but did not disclose that
8 the balance might increase due to interest and fees. They alleged that they
9 believed from reading the notice that the "current balance" was "static" and that
10 their "payment of that amount would satisfy [the debt] irrespective of when [the]
11 payment was remitted." App'x at 31, 100. Avila alleges that in fact interest was
12 accruing daily at a rate equivalent to 500% per year and that defendants have
13 tried to collect this interest from her.

14 Defendants moved to dismiss the complaint, and the district court granted
15 the motion. The court recognized that district courts are divided on the question
16 whether a debt collector must disclose that the amount of the debt will increase
17 over time due to interest or fees. *Compare, e.g., Jones v. Midland Funding, LLC*, 755
18 F. Supp. 2d 393, 397-98 (D. Conn. 2010) (requiring debt collectors to disclose the

fact that interest is accruing and inform consumers of the applicable interest rate), *adhered to on reconsideration*, No. 3:08-CV-802 RNC, 2012 WL 1204716 (D. Conn. Apr. 11, 2012), and *Dragon v. I.C. Sys., Inc.*, 483 F. Supp. 2d 198, 203 (D. Conn. 2007) (holding that collection notice was potentially misleading because least sophisticated consumer could conclude that total amount stated as due was due at any time, when in fact it was increasing), with *Pifko v. CCB Credit Servs., Inc.*, No. 09-CV-3057 (JS), 2010 WL 2771832, at *4 (E.D.N.Y. July 7, 2010) (holding that debt collectors have no obligation to warn a consumer that her debt may increase over time), and *Adlam v. FMS, Inc.*, No. 09 CIV. 9129 (SAS), 2010 WL 1328958, at *3-4 (S.D.N.Y. Apr. 5, 2010) (same); see also *Marucci v. Cawley & Bergmann, LLP*, 66 F. Supp. 3d 559, 565-66 (D.N.J. 2014) (collecting cases). The district court sided with those courts that have held that no disclosures about interest or fees are required. Plaintiffs now appeal from the district court's judgment granting the motion to dismiss.

DISCUSSION

As noted, Section 1692e of the FDCPA provides that "[a] debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt." 15 U.S.C. § 1692e. The sixteen

1 subsections of Section 1692e set forth a non-exhaustive list of practices that fall
2 within this ban, including “the false representation of the character, amount, or
3 legal status of any debt,” *id.* § 1692e(2)(A). “Because the list in the sixteen
4 subsections is non-exhaustive, a debt collection practice can be a ‘false, deceptive,
5 or misleading’ practice in violation of § 1692e even if it does not fall within any of
6 the subsections of § 1692e.” *Clomon v. Jackson*, 988 F.2d 1314, 1318 (2d Cir. 1993).

7 The question presented is whether the sending of a collection notice that
8 states a consumer’s “current balance,” but does not disclose that the balance may
9 increase due to interest and fees, is a “false, misleading, or deceptive” practice
10 prohibited by Section 1692e. In considering this question, we are guided by two
11 principles of statutory construction.

12 The first principle is that, because the FDCPA is “primarily a consumer
13 protection statute,” *Jacobson v. Healthcare Fin. Servs., Inc.*, 516 F.3d 85, 95 (2d Cir.
14 2008), we must construe its terms “in liberal fashion [to achieve] the underlying
15 Congressional purpose.” *Vincent v. The Money Store*, 736 F.3d 88, 98 (2d Cir. 2013)
16 (quoting *N. C. Freed Co. v. Bd. of Governors of Fed. Reserve Sys.*, 473 F.2d 1210, 1214
17 (2d Cir. 1973)). That purpose is to “eliminate abusive debt collection practices by
18 debt collectors, to insure that those debt collectors who refrain from using

1 abusive debt collection practices are not competitively disadvantaged, and to
2 promote consistent State action to protect consumers against debt collection
3 abuses.” 15 U.S.C. § 1692(e). “[W]e have consistently interpreted the statute with
4 [these] congressional object[s] in mind.” *Jacobson*, 516 F.3d at 95 (citing *Russell v.*
5 *Equifax A.R.S.*, 74 F.3d 30, 33-34 (2d Cir. 1996); *Clomon*, 988 F.2d at 1318-20).

6 The second principle is that, in considering whether a collection notice
7 violates Section 1692e, we apply the “least sophisticated consumer” standard.
8 *Clomon*, 988 F.2d at 1318. In other words, we ask how the least sophisticated
9 consumer—“one not having the astuteness of a ‘Philadelphia lawyer’ or even the
10 sophistication of the average, everyday, common consumer”—would
11 understand the collection notice. *Russell*, 74 F.3d at 34. Under this standard, a
12 collection notice can be misleading if it is “open to more than one reasonable
13 interpretation, at least one of which is inaccurate.” *Clomon*, 988 F.2d at 1319.

14 Applying these principles, we hold that plaintiffs have stated a claim that
15 the collection notices at issue here are misleading within the meaning of Section
16 1692e. A reasonable consumer could read the notice and be misled into believing
17 that she could pay her debt in full by paying the amount listed on the notice. In
18 fact, however, if interest is accruing daily, or if there are undisclosed late fees, a

1 consumer who pays the “current balance” stated on the notice will not know
2 whether the debt has been paid in full. The debt collector could still seek the
3 interest and fees that accumulated after the notice was sent but before the
4 balance was paid, or sell the consumer’s debt to a third party, which itself could
5 seek the interest and fees from the consumer.

6 Because the statement of an amount due, without notice that the amount is
7 already increasing due to accruing interest or other charges, can mislead the least
8 sophisticated consumer into believing that payment of the amount stated will
9 clear her account, we hold that the FDCPA requires debt collectors, when they
10 notify consumers of their account balance, to disclose that the balance may
11 increase due to interest and fees. We think that requiring such disclosure best
12 achieves the Congressional purpose of full and fair disclosure to consumers that
13 is embodied in Section 1692e. It also protects consumers such as plaintiffs who
14 may hold the reasonable but mistaken belief that timely payment will satisfy
15 their debts.

16 In reaching the contrary conclusion, the district court noted, first, that
17 another section of the FDCPA—Section 1692g—requires disclosure only of “the
18 amount of the debt,” not the amount of the debt plus whatever interest and fees

1 may accumulate in the future. *See* 15 U.S.C. § 1692g(a)(1). But Section 1692g
2 concerns only the disclosures related to a consumer's need to verify a debt, not
3 the more general disclosures that may be necessary under Section 1692e to
4 ensure that a collection notice is not misleading. The two sections have different
5 aims, and compliance with Section 1692g does not guarantee compliance with
6 Section 1692e, which always applies in connection with the collection of any debt
7 by a debt collector. We do not conclude that Congress's requiring debt collectors
8 to state "the amount of the debt" in Section 1692g evinces Congressional
9 approval of sending collection notices that lack disclosures about accruing
10 interest and fees.

11 The district court also expressed a concern that requiring debt collectors to
12 disclose this information might lead to more abusive practices, as debt collectors
13 could use the threat of interest and fees to coerce consumers into paying their
14 debts. This is a legitimate concern. To alleviate it, we adopt the "safe harbor"
15 approach adopted by the Seventh Circuit in *Miller v. McCalla, Raymer, Padrick,*
16 *Cobb, Nichols, & Clark, L.L.C.*, 214 F.3d 872 (7th Cir. 2000).

17 In *Miller*, the collection notice stated the consumer's "unpaid principal
18 balance," but added that this amount did not include unpaid interest and fees. *Id.*

1 at 875. The *Miller* court held that the notice violated Section 1692g(a)(1), which, as
2 noted, requires debt collectors to state “the amount of the debt.” The court
3 reasoned that the unpaid principal balance was not the “debt” and that the
4 statute requires that debt collectors state “the total amount due—interest and
5 other charges as well as principal—on the date the [collection notice] was sent.”
6 *Id.* at 875-76.

7 To minimize litigation under the FDCPA, the *Miller* court fashioned a “safe
8 harbor” formula for complying with Section 1692g(a)(1). The court held that the
9 following statement would satisfy a debt collector’s duty to state the amount of
10 debt in cases where the amount varies from day to day:

11 As of the date of this letter, you owe \$___ [the exact amount due].
12 Because of interest, late charges, and other charges that may vary
13 from day to day, the amount due on the day you pay may be
14 greater. Hence, if you pay the amount shown above, an adjustment
15 may be necessary after we receive your check, in which event we
16 will inform you before depositing the check for collection. For
17 further information, write the undersigned or call 1-800- [phone
18 number].

19 *Id.* at 876. The court held that a debt collector who used this form would not
20 violate the “amount of the debt” provision, “provided, of course, that the
21 information [the debt collector] furnishes is accurate and [the debt collector] does

1 not obscure it by adding confusing other information (or misinformation).” *Id.*

2 The court did not require debt collectors to use the safe harbor provision, but
3 held only that if the debt collector does (and does not add other words that
4 confuse the message), it will have discharged its duty as a matter of law to state
5 clearly the amount due. *Id.*

6 We hold that a debt collector will not be subject to liability under Section
7 1692e for failing to disclose that the consumer’s balance may increase due to
8 interest and fees if the collection notice either accurately informs the consumer
9 that the amount of the debt stated in the letter will increase over time, or clearly
10 states that the holder of the debt will accept payment of the amount set forth in
11 full satisfaction of the debt if payment is made by a specified date. Like the *Miller*
12 court, we do not hold that a debt collector must use any particular disclaimer.
13 Using the language set forth in *Miller* will qualify for safe-harbor treatment, as
14 would the language suggested in *Jones*, 755 F. Supp. 2d at 397 n.7, which may be
15 preferable to the extent it advises the consumer of the specific rate of increase in
16 the debt over time.² Moreover, a debt collector who is willing to accept a

² The *Jones* court’s proposed language was: “As of today, [date], you owe \$——. This amount consists of a principal of \$——, accrued interest of \$——, and fees

1 specified amount in full satisfaction of the debt if payment is made by a specific
2 date could considerably simplify the consumer's understanding by so stating,
3 while advising that the amount due would increase by the accrual of additional
4 interest or fees if payment is not received by that date.

5 The collection notices at issue here stated only the "current balance" but
6 did not disclose that the balance might increase due to interest and fees. Thus,
7 Plaintiffs have stated a claim that these notices were "misleading" within the
8 meaning of Section 1692e. The district court's dismissal of this claim is vacated,
9 and we remand for further proceedings consistent with this opinion.

10 CONCLUSION

11 For the foregoing reasons, we VACATE the judgment of the district court
12 insofar as it dismissed plaintiffs' claim that defendants violated the FDCPA by
13 sending plaintiffs a collection notice stating their "current balance" without
14 disclosing that the balance might increase over time due to interest and fees. For
15 the reasons given in the accompanying summary order, we AFFIRM the
16 judgment of the district court insofar as it dismissed plaintiffs' other claims.

of \$——. This balance will continue to accrue interest after [date] at a rate of \$——
– per [day/week/month/year]." 755 F. Supp. 2d at 397 n.7.