UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 13-62338-CIV-BLOOM/VALLE

KEVIN PRESCOTT,

Plaintiff,

v.

SETERUS, INC.,

Defendant.
_____/

ORDER

THIS CAUSE came before the Court on four motions: (1) Plaintiff's Motion for Partial Summary Judgment, ECF No. [41]; (2) Defendant's Motion for Summary Judgment, ECF No. [50]; (3) Defendant's Motion to Strike, ECF No. [52]; and (4) Defendant's Motion for Bench Trial, ECF No. [53]. The Court has carefully reviewed the record, the parties' briefs, and the applicable law, and is fully advised with the benefit of oral argument.

I. Background

Bank of America, N.A., extended a loan to Plaintiff in April of 2004. Plaintiff signed a promissory note which was secured by a Mortgage to real property of Plaintiff's. Plaintiff defaulted on the loan in August of 2012. Bank of America, N.A. assigned the Mortgage, and Defendant began servicing the loan in October of 2012. Defendant retained the services of a foreclosure law firm, Kahane and Associates.

In August of 2013, Plaintiff requested to reinstate the mortgage. On September 4, 2013, Defendant sent a dunning letter to Plaintiff stating that "the reinstatement amount if received between 9/4/2013 and 9/27/2013 is $15,569.64." ECF No. [51-1] at 34. The letter stated that: "[t]his communication is from a debt collector as we sometimes act as a debt collector. We are attempting to collect a debt and information obtained will be used for that purpose." *Id.* Under

the heading "Reinstatement Amount," Defendant provided Plaintiff with an itemized list of charges. These charges included $1,125 for "Legal Fees F/C" under the heading "Actual Charges Through 9/27/2013" and $3,175 for "Estimated Legal/Attorney" under the heading "Estimated Charges Through 9/27/2013." *Id.* at 36-37. Plaintiff paid the full $15,569.64 to Defendant on September 26, 2013, and filed the instant action on October 3, 2013 in the Seventeenth Judicial Circuit Court of Florida—alleging violations of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692, *et seq.*, and the Florida Consumer Collection Practices Act ("FCCPA"), Fla. Stat. § 555.72(9). Defendant filed a notice of removal with this Court on October 25, 2013. Defendant sent a check to Plaintiff for $3,175 on November 14, 2013. This case was reassigned to the undersigned on June 30, 2014.

II. Defendant's Motion to Strike

"The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). Granting motions to strike are generally disfavored. *Lake Lucerne Ass'n v. Dolphin Stadium Corp.*, 801 F. Supp. 684, 694 (S.D. Fla. 1992) (citing *Kaiser Aluminum & Chem. Sales, Inc. v. Avondale Shipyards, Inc.*, 677 F.2d 1045, 1057 (5th Cir. 1982)). Defendant seeks to strike the deposition testimony of a representative of Kahane and Associates, P.A. because "counsel's questioning undeniably called for a lay witness to provide a legal conclusion as to the state of the law applicable to this case, which is improper and inadmissible under Fed. R. Evid. 701." ECF No. [52] at 3 (citing *Ojeda v. Louisville Ladder, Inc.*, 410 F. App'x 213, 215 (11th Cir. 2010)). The questioning complained of proceeded as follows:

> Q Did you just become aware of the fact that Seterus, Inc. had billed Kevin Prescott and/or his wife the full $3,175?
>
> A I just recently became aware of that.

Q And it is your position that is proper or improper?

A It is improper if it was not incurred.

ECF No. [49-2] at 17. Another portion includes:

Q Do you agree that it's a violation of the FDCPA to charge a consumer for attorney's fees that have not actually been performed?

A To charge them for work that has not been performed?

Q Yes.

A Or to collect?

Q Charge and collect.

A I would, I believe it probably would be a violation.

Q Do you believe that it would be, likewise, a violation of the Florida Consumer Collection Practices Act to charge and accept, demand payment for work that has not been actually done? . . .

A Yes, I would assume it would be.

Id. at 22.

The first portion, a discussion of whether Defendant's actions were "proper," does not necessarily constitute an attempt to solicit a non-expert witness's legal opinion. The second portion, however, literally does—and the witness's belief as to the legality of Defendant's actions under the FDCPA and FCCPA is not relevant to the outcome of this case. *See, e.g.*, *Cameron v. City of New York*, 598 F.3d 50, 62-66 (2d Cir. 2010) (holding that prosecutors' opinions as to existence of probable cause for arrest is improper under Fed. R. Evid. 701 in malicious prosecution case). Defendant's motion to strike is accordingly granted in part and denied in part, and the testimony about the witness's opinion regarding violations of the FDCPA and FCCPA are stricken.

III. Plaintiff's and Defendant's Motions for Summary Judgment

a. Legal Standard

A party may obtain summary judgment "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The parties may support their positions by citation to the record, including inter alia, depositions, documents, affidavits, or declarations. Fed. R. Civ. P. 56(c). An issue is genuine if "a reasonable trier of fact could return judgment for the non-moving party." *Miccosukee Tribe of Indians of Fla. v. United States*, 516 F.3d 1235, 1243 (11th Cir. 2008) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986)). A fact is material if it "might affect the outcome of the suit under the governing law." *Id.* (quoting *Anderson*, 477 U.S. at 247-48). The Court views the facts in the light most favorable to the non-moving party and draws all reasonable inferences in the party's favor. *See Davis v. Williams*, 451 F.3d 759, 763 (11th Cir. 2006). "The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which a jury could reasonably find for the plaintiff." *Anderson*, 477 U.S. at 252. Further, the Court does not weigh conflicting evidence. *See Skop v. City of Atlanta, Ga.*, 485 F.3d 1130, 1140 (11th Cir. 2007) (*quoting Carlin Comm'n, Inc. v. S. Bell Tel. & Tel. Co.*, 802 F.2d 1352, 1356 (11th Cir. 1986)).

The moving party shoulders the initial burden of showing the absence of a genuine issue of material fact. *Shiver v. Chertoff*, 549 F.3d 1342, 1343 (11th Cir. 2008). Once this burden is satisfied, "the nonmoving party 'must do more than simply show that there is some metaphysical doubt as to the material facts.'" *Ray v. Equifax Info. Servs., L.L.C.*, 327 F. App'x 819, 825 (11th Cir. 2009) (quoting *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)). Instead, "the non-moving party 'must make a sufficient showing on each essential

element of the case for which he has the burden of proof.'" *Id*. (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986)). Accordingly, the non-moving party must produce evidence, going beyond the pleadings, and by its own affidavits, or by depositions, answers to interrogatories, and admissions on file, designating specific facts to suggest that a reasonable jury could find in the non-moving party's favor. *Shiver*, 549 F.3d at 1343. Even "where the parties agree on the basic facts, but disagree about the factual inferences that should be drawn from those facts," summary judgment may be inappropriate. *Warrior Tombigbee Transp. Co., Inc. v. M/V Nan Fung*, 695 F.2d 1294, 1296 (11th Cir. 1983). However, when "there are no disputed facts and the only issue is the application of law to the undisputed facts, a court may decide at the Rule 56 stage that one side or the other is entitled to judgment." *Harris v. Liberty Cmty. Mgmt., Inc.*, 702 F.3d 1298, 1303 (11th Cir. 2012).

b. Discussion

At oral argument, the parties stipulated that Plaintiff is a consumer, the debt is personal in nature, and Defendant acquired the mortgage after it was in default.

In support of his summary judgment motion, Plaintiff argues that there is no genuine issue of material fact that Defendant committed "textbook violations" of the FDCPA, 15 U.S.C. § 1692f(1), and the FCCPA, Fla. Stat. § 559.72(9), when Defendant sent Plaintiff a dunning letter which included $3,175.00 for "estimated legal fees," i.e., fees for services that had not been rendered. Plaintiff cites to an Eleventh Circuit case in support of its FDCPA argument, *Bradley v. Franklin Connection Service, Inc.*, 739 F.3d 606 (11th Cir. 2014), and cites to a Florida trial court opinion in support of its FCCPA argument. *See* ECF No. [41] at 8 (citing *Banner v. Wells Fargo Bank*, No. 502007CA0008, 2011 WL 7501176, at *1 (Fla. 15th Cir. Ct. Oct. 25, 2011)). Plaintiff also seeks recovery of attorney's fees and costs.

In response and in support of its own summary judgment motion, Defendant argues that no violations occurred because Plaintiff agreed to pay reasonable attorney's fees, and Defendant's dunning letter included $1,125 in legal fees already incurred and clearly indicated that the $3,175 were "estimated." *See* ECF No. [50] at 10-11 (citing *Miller v. McCalla, Raymer, Padrick, Cobb, Nichols, and Clark, L.L.C.*, 214 F.3d 872 (7th Cir. 2000)). In fact, Defendant argues, *not* including the estimated attorney's fees it intended to collect, if incurred, may have violated the FDCPA. *See id.* at 11-12 (citing *Farmer v. Buffaloe & Assocs., PLC*, No. 3:12-142, 2012 WL 6045976 (E.D. Tenn. Dec. 5, 2012)).[1]

The FDCPA provides, in pertinent part:

> A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section: (1) the collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

15 U.S.C. § 1692f(1). Also, 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 false representation of (A) the character, amount, or legal status of any debt; or (B) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt" also constitute violations of the FDCPA. 15 U.S.C. § 1692e(2). The relevant portion of the FCCPA provides: "[i]n collecting consumer debts, no person shall: . . . (9) Claim, attempt, or threaten to enforce a debt when such person knows that the debt is not legitimate, or assert the existence of some other legal right when such person knows that the right does not exist." Fla. Stat. § 559.72(9).

The relevant Mortgage provides:

[1] The Court declines to address this argument as it is not necessary to decide the instant Motions.

> **9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument . . . then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument. . . All amounts disbursed by Lender under this Section 9 shall become additional debt of the Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

ECF No. [51-1] at 21-22. With regard to bringing a default current, the Mortgage provides (except for circumstances in which the parties do not argue are present here):

> **19. Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued . . . Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under the Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. . . Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred.

Id. at 25. Plaintiff argues that the agreement only authorizes charges for "services performed in connection with Borrower's default," rather than the imposition of "estimated legal fees." ECF No. [79] at 3-4 (citing ECF No. [51-1] at 24). Plaintiff asserts that "[n]o legal work of any kind was performed to substantiate the $3,175.00 in fees that Plaintiff was charged," ECF No. [83] at 2 (citing ECF No. [41-1] at 32-33), and Defendant would have refused to reinstate Plaintiff's loan if Plaintiff did not pay the $15,569.64, which included the estimated legal fees. *See id.*

Defendant argues that this evidence does not establish that no legal work was actually performed, and only shows that the amount was not incurred at the time the dunning letter was sent. Defendant asserts that "[i]t is possible that Kahane and Associates performed some legal work but did not bill Seterus for that legal work," and that the issuance of a refund check of $3,175.00 to Plaintiff was because this amount was not actually incurred. ECF No. [77] at 3-4.

According to the testimony by Jenny Lee Wan-I, a legal mediation officer for Defendant, the $3,175.00 was a figure that Kahane and Associates, the foreclosure attorney for Defendant, estimated to Defendant. ECF No. [41-1] at 27. Her testimony also explained that "because the reinstatement quote is good for an amount in the future, they have to include a cost that is about to happen in the future, as well. That's where the $3,175 came to." *Id.* Additionally, the legal mediation officer explained that the fee agreement with Kahane and Associates occurs "per stages of foreclosure," *id.*, and the $1,125 represented the fees for the first step of the foreclosure, and Plaintiff was "about to enter in the next step, and that's why the . . . $3,175 was quoted." *Id.* at 45. She explained that the foreclosure never entered into the next step "because [Plaintiff] reinstated the loan fully." *Id.* In response to this statement of fact, Plaintiff asserts he "is without sufficient information to admit or deny . . . and therefore Plaintiff denies the same and demands strict proof thereof." ECF No. [59] at 2.

It is undisputed that on September 4, 2013, Defendant sent a letter to Plaintiff stating that the requested payoff amount was "good through 9/27/2013." It is also undisputed that Plaintiff testified that he understood that the $3,175 amount was an "estimated" legal fee, *see* [51-2] at 41, which he paid, and later received a refund of that exact amount. *See id.* at 47. These facts, in addition to the language of the agreement, are the material facts for deciding the instant Motions. Plaintiff does not dispute the particular amount of $3,175, or how the figure was calculated.

Rather, Plaintiff asserts that the imposition of the charge itself is a violation of the FDCPA and FCCPA because the agreement only authorized payment "for fees for services performed in connection with Borrower's default," not any "estimated legal fees for legal work that was never done." ECF No. [59] at 5. Thus, Plaintiff's denial of the particular reasons why Defendant imposed the $3,175 amount is immaterial to the Court's decision. The issue is the appropriateness of the Defendant charging "estimated legal fees."

Plaintiff cites *Bradley v. Franklin Connection Service, Inc.*, 739 F.3d 606 (11th Cir. 2014) in support of its argument. In *Bradley*, the plaintiff agreed with a medical service provider that "if this account is not paid when due, and the hospital should retain an attorney or collection agency for collection, I agree to pay all costs of collection including reasonable interest, reasonable attorney's fees (even if suit is filed) and reasonable collection agency fees." Once the plaintiff did not pay, the medical services provider retained a collection agency, and the collection contract between the two of them, which did not involve the plaintiff, provided for a 33-and-1/3% collection fee to be added to the balance owed before the account was transferred from the medical services provider to the collection agency. The Eleventh Circuit held this constituted a violation of the FDCPA because "there was no express agreement" between the plaintiff and the medical services provider "allowing for collection of the 33-and-1/3% fee." *Bradley*, 739 F.3d at 610. In so holding, the Court explained that "it is the nature of the agreement between [the plaintiff and the medical services provider], not simply the amount of the fee that is important here." *Id.* The Court agreed that "the collection fee he paid violates [Section 1692f] of the FDCPA because the fee was really liquidated damages rather than the actual cost of collection," *id.* at 609, and the plaintiff "agreed to pay the actual costs of

collection; he did not agree to pay a percentage above the amount of his outstanding debt that was unrelated to the actual costs to collect that debt." *Id.* at 610.

Bradley is distinguishable from the instant case because, here, the imposition of the $3,175 had a direct relation to the actual costs to collect the debt. The letter sent to Plaintiff indicated that the $3,175 was the amount for legal fees that Defendant estimated would be incurred between the date of the letter, Sept. 4, 2013, and the date the statement was good through—Sept. 27, 2013. *See* ECF No. [51-1]. Plaintiff paid Defendant $15,569.64—an amount which included the $3,175—on Sept. 26, 2013, with the understanding that these attorney's fees were, indeed, an estimate.

With the benefit of hindsight, Plaintiff asserts that these fees were never incurred, and indeed is correct, because Defendant refunded Plaintiff that amount in full. However, at the time Defendant was called upon to state the amount of the debt on Sept. 4, 2013, Defendant did not have the benefit of hindsight—and indicated, in a manner that Plaintiff admits he understood, that it estimated incurring $3,175 in legal fees. This estimation applied to the period between Sept. 4, 2013 and Sept. 27, 2013, a period of time during which the foreclosure could have proceeded and Defendant would have incurred $3,175. This was authorized under the agreement, as Defendant's actions were reasonably required to assure Bank of America's interests. The fact that Defendant's estimation was not exact does not mean that it violated the FDCPA and FCCPA in the Sept. 4, 2013 letter—where it clearly, and accurately, marked those fees as "estimates." *Compare Kaymark v. Bank of America, N.A.*, 11 F. Supp. 3d 496, 513-14 (W.D. Pa. 2014) (holding no FDCPA violation occurred where debt collector "itemized fees and costs that were yet-to-be-incurred on work that was yet-to-be-performed" in foreclosure complaint and rejecting "hypertechnical argument that the contract only provides for reasonable

incurred charges for serviced performed"), *and Elyazidi v. SunTrust Bank*, Civ. No. DKC 13-2204, 2014 WL 824129, at *5-*7 (D. Maryland Feb. 28, 2014) (FDCPA complaint did not state claim where "the assertions in documents attached to the warrant in debt as to the amount owed as attorneys' fees were merely estimates of what would be due at the conclusion of the case."), *with McLaughlin v. Phelan Hallinan & Schmieg, LLP*, 756 F.3d 240, 246 (3d Cir. 2014) (holding FDCPA complaint stated claim where Defendant did not distinguish between estimated amounts and accrued amounts: "[i]f [Defendant] wanted to convey that the amounts in the Letter were estimates, then it could have said so. It did not. Instead, its language informs the reader of the specific amounts due for specific items as of a particular date.").

Additionally, the Court notes that Plaintiff does specifically raise an argument, in his Motion nor his Response/Reply, that Defendant's actions violated 15 U.S.C. § 1692e. Even so, the Court finds no genuine issue of material fact regarding whether the pertinent communications satisfy the "least-sophisticated consumer" standard. *See LeBlanc v. Unifund CCR Partners*, 601 F.3d 1185, 1193-94 (11th Cir. 2010). Not only did Plaintiff concede that he knew the amount was estimated, s*ee* [51-2] at 41, Plaintiff's Reply references a phone call Plaintiff made to Defendant "to complain about the jump in his reinstatement amount from $12,000.00 to over $15,000.00." ECF No. [59] at 10. Plaintiff explains "he was specifically advised this was due to the placement of the attorney fees at issue." *Id.*

LeBlanc is distinguishable from the instant case. The plaintiff in *LeBlanc* sued after receiving a dunning letter from a debt collector's "Legal Department," which contained the following express warning: "if we are unable to resolve this issue within 35 days we may refer this matter to an attorney in your area for legal consideration. If suit is filed and if judgment is rendered against you, we will collect payment utilizing all methods legally available to us,

subject to your rights below." The district court found that the dunning letter constituted a threat to take legal action, in violation of §§ 1692e(5) and 1692(f) of the FDCPA, and granted partial summary judgment in favor of the plaintiff. Reversing, the Eleventh Circuit reasoned that "reasonable jurors applying the 'least-sophisticated consumer' standard could disagree as to the inferences to be drawn from Unifund's letter to LeBlanc." *LeBlanc*, 601 F.3d at 1196. The Court explained that a least-sophisticated consumer could read the letter in two possible ways: (1) "more informative than threatening and did not threaten imminent legal action," or (2) "an overt or thinly-veiled threat of suit." *Id.* The Court emphasized though the letter used conditional language, such as "if" and "may," when discussing "the event of suit, the tone of the letter shifts to more forceful language . . . ***we will collect payment utilizing all methods legally available to us***." *Id.* (emphasis in original). The Court found that the parties reasonably disagreed on the proper inferences that can be drawn from the debt collector's letter, and thus, the issue was for the trier of fact. *Id.* at 1197.

Here, the letter separated the incurred charges from the estimated charges, and specifically labelled which charges were estimated and which were incurred. The parties here cannot reasonably disagree that any inference can be drawn from the dunning letter other than that the $3,175 in fees were estimated. *Cf. Pettway v. Harmon Law Offices, P.C.*, No. 03-CV-10932-RGS, 2005 WL 2365331, at *7 (D. Mass. Sept. 27, 2005) (letter "failed to clearly segregate what was owed from would become due and owing" created genuine issue of material fact for "least sophisticated debtor" standard); *Fields v. Wilber Law Firm, P.C.*, 383 F.3d 562, 565-66 (7th Cir. 2004) (reversing district court's dismissal for failure to state a claim of FDCPA claims because "nowhere did [Defendant] explain that it was seeking attorneys' fees of $250,"

and "the unsophisticated consumer would not necessarily understand that [Defendant] was seeking $250 in attorneys' fees, an amount allowed, but not specified, by the contract.").

During oral argument, the Court asked counsel for Plaintiff about which communications Plaintiff relied on when making the $15,569.64 payment to Defendant—the dunning letter or the phone conversation. Counsel for Plaintiff's response gave the Court the impression that the phone call played a significant role—more so than the dunning letter—in Plaintiff deciding to pay for the $3,175 in estimated legal fees in order to reinstate the loan, and that the phone call took place at a point in which it was relatively clear that Defendant was not going to incur those fees. After review of the record, the Court notes with curiosity that this phone call was made just one day after the date of the dunning letter—September 5, 2013. *See* ECF No. [59-10] at 2. The Court does not see a basis for the assertion that the clarity of whether the $3,175 would be incurred was any different during the September 5, 2013 phone call than at the time Defendant estimated the legal fees in the September 4, 2013 dunning letter.

Further, the record does not contain enough evidence that anything during the September 5, 2013 phone call could have changed the only inference that can be gained from the dunning letter—that the $3,175 in fees were estimated. The only evidence in the record of the phone call are the notes by the call center attendant, which do not indicate that any inconsistent information was given. *See* ECF No. [59-10] at 2. Notably, Plaintiff does not mention reliance on the phone call in his briefs, either. Accordingly, this is a case where "the only issue is the application of law to the undisputed facts," making summary judgment appropriate. *See Harris v. Liberty Cmty. Mgmt., Inc.*, 702 F.3d 1298, 1303 (11th Cir. 2012). *See also Caceres v. McCalla Raymer, LLC*, 755 F.3d 1299, 1304 (11th Cir. 2014) (holding as a matter of law that a dunning letter

"would not mislead the least sophisticated consumer" where letter substituted "creditor" for "debt collector" because "the debt collector is obviously the agent of the creditor.").

Finally, because the Court finds no genuine issue of material fact regarding whether Defendant violated the FDCPA, the Court reaches the same conclusion for Plaintiff's FCCPA claim under Florida law. *See* Fla. Stat. § 559.77(5) ("In applying and construing this section, due consideration and great weight shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to the federal Fair Debt Collection Practices Act.") (citing 15 U.S.C. § 1692, *et seq*.).

IV. Conclusion

For these reasons, it is **ORDERED AND ADJUDGED** that:

1. Defendant's Motion to Strike, **ECF No. [52]**, is **GRANTED IN PART and DENIED IN PART**;
2. Plaintiff's Motion for Partial Summary Judgment, **ECF No. [41]**, is **DENIED**;
3. Defendant's Motion for Summary Judgment, **ECF No. [50]**, is **GRANTED**;
4. Defendant's Motion for Bench Trial, **ECF No. [53]**, is **DENIED AS MOOT**;
5. All other pending motions are hereby **DENIED AS MOOT**;
6. The Clerk shall **CLOSE** this case.

DONE AND ORDERED in Chambers at Fort Lauderdale, Florida, this 4th day of December, 2014.

BETH BLOOM
UNITED STATES DISTRICT JUDGE

cc: counsel of record