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NO. 349187

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III

FIRESIDE BANK fka FIRESIDE THRIFT CO.,
(CAVALRY INVESTMENTS, LLC – Appellant of Record),

Appellant,

v.

JOHN W. ASKINS and LISA D. ASKINS,

Respondents.

RESPONDENTS' RESPONSE BRIEF

SCOTT M. KINKLEY, WSBA #42434
JACQUELYN HIGH-EDWARD, WSBA #37065
Northwest Justice Project
1702 W. Broadway
Spokane, WA 99201
(509) 324-9128

Attorneys for Respondents

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I. INTRODUCTION

This case is about debt buyers and collection agencies and the measures the Legislature has put in place to protect consumers in the state of Washington from collection abuses. The Washington Collection Agency Act (WCAA) specifically prohibits collection agencies from collecting or attempting to collect amounts to which they are not entitled. As a sanction for such prohibited behavior, the WCAA allows the court to strip the judgment to principal and prohibit anyone from ever collecting anything over the principal amount.

Here, the trial court, based on Cavalry's own amortizations of John and Lisa Askins' account, found that Cavalry violated the WCAA and stripped the judgment to its principal. Cavalry, recognizing the potentially devastating impact of the finding, urges this Court to find that the trial court abused its discretion in making this finding. It does so by attempting to shift the focus from the statutory penalty of its violation of the WCAA and assigns error under a narrow interpretation of CR 60(b)(6) – despite the fact that this was not the basis for the Court's ruling or the Askins' motion to show cause.

The tortured history of the Askins' judgment and subsequent collection proceedings is indicative of the significant abuses

Washington consumers are subjected to by debt buyers and collection agencies such as Cavalry. It is the exact type of abuses the legislature intended to prohibit through the WCAA.

II. COUNTER STATEMENT OF ISSUES

A. THE COURT DID NOT ERR IN FINDING A VIOLATION OF THE WCAA WHERE CAVALRY ATTEMPTED TO COLLECT AMOUNTS IT WAS NOT ENTITLED TO.

1. The trial court did not err by finding that Cavalry's April 2017 email and amortization is an attempt to collect a debt and violated RCW 19.16.250(21).
2. The court did not err when it found that Cavalry violated the WCAA by collecting or attempting to collect excessive attorney fees and costs through applications for writs of garnishment.
3. The court did not err where Cavalry's writs of garnishment attempted to collect more money than its "Complete and Accurate Amortization" indicated it was entitled.
4. As an assignee, Cavalry assimilated the balance inflated by Fireside's violations and the Askins were entitled to allege these violations against Cavalry.
 - a. Cavalry violated the WCAA when it sought and obtained a judgment based on a writ that requested more money than was owed.
 - b. Cavalry assimilated multiple statutory violations when it collected the judgment balance based on Fireside's accounting.

B. THE COURT WOULD NOT HAVE ERRED IN ORDERING THE JUDGMENT SATISFIED PURSUANT TO CR 60(B)(4), CR 60(B)(6), OR CR 60(B)(11), CR 60(C) OR IN ITS CLERICAL DUTY TO SATISFY PAID JUDGMENTS WHERE THE ASKINS DID NOT CHALLENGE THE UNDERLYING JUDGMENT AND THE ORDER WAS BASED ON CAVALRY'S MISCONDUCT.

III. STATEMENT OF THE CASE

On August 27, 2004, John and Lisa Askins (Askings) purchased a used 2000 Dodge Durango. CP 4-7. Mr. Askins paid \$1,100.00 down and financed the remaining \$13,713.44 with a retail installment contract with East Sprague Motors and R.V.'s, Inc., at 18.95% interest per annum. CP 4-7. East Sprague then sold and assigned its rights, including the right to receive payment under the agreement, to Fireside Bank formerly known as Fireside Thrift Company (Fireside). CP 5.

Over the course of the loan, the Askings paid Fireside Bank \$358.12 per month for 25 of the 60-month loan period from October 2004, through November 2006. CP 366-367. After the November 2006 payment, Mr. Askins contacted Fireside to ask if he could return the vehicle in satisfaction of the loan balance. CP 366-367. Mr. Askins and Fireside agreed on a time and place to return the vehicle and Mr. Askins returned the vehicle. CP 366-367. Neither party provided any written notice of acceptance in satisfaction of the loan.

Fireside did not honor the oral agreement with Mr. Askins and, instead, treated the return as a repossession. CP 1. Over the life of the loan, the Askins paid \$10,053.00 prior to surrendering the vehicle.

On July 25, 2007, Fireside filed a lawsuit against the Askins to collect an auto repossession and sale deficiency. CP 1-2. The Askins did not respond to the lawsuit and, on September 16, 2007, Fireside filed an ex parte motion for default judgment, and supporting affidavit and cost bill. CP 481-488. The order on default judgment requested a principal amount of \$7,754.39, prejudgment interest of \$1,782.93, attorney fees in the amount of \$368.00, and costs of \$275.00. CP 13. The costs included a \$75.00 charge for service of the lawsuit despite the fact that the return of service indicated a service fee of \$53.60. CP 482-488. On September 28, 2007, the court entered a default judgment of \$10,180.32 in favor of Fireside Bank. CP 10.

Over the course of the next five years, Fireside filed 14 affidavits for writs of garnishment against the Askins' wages and successfully recovered funds on 12 of them. CP 17-19, 25-27, 36-37, 53-54, 60-63, 74-76, 81-82, 95-97, 102-103, 119-120, 124-126, 138-140, 149-150, 163-166, 171-172, 182-184, 191-192, 209-210,

215-217, 232-233, 238-240, 251-253, 265-266, 270-272, 283-285, 291-292. In each affidavit, Fireside swore, under oath, that the following balance was due on the account:

Date	Alleged Amount Due ¹	CP
1/10/08	\$10,642.65 (as of 12/18/07)	CP 17-19
4/4/08	\$11,175.01 (as of 3/26/08)	CP 25-27
9/2/08	\$11,997.77 (as of 8/26/08)	CP 60-62
12/4/08	\$11,459.75 (as of 11/24/08)	CP 74-76
4/3/09	\$11,659.01 (as of 3/30/09)	CP 95-97
6/24/09	\$11,597.95 (as of 6/16/09)	CP 124-126
9/16/09	\$11,528.20 (as of 9/9/09)	CP 138-140
11/30/09	\$11,895.22 (as of 11/18/09)	CP 160-162
3/11/10	\$10,569.56 (as of 3/3/10)	CP 182-184
7/12/10	\$10,075.45 (as of 6/23/10)	CP 215-217
3/25/11	\$9,404.53 (as of 3/16/11)	CP 238-240
6/24/11	\$9,758.41 (as of 6/10/11)	CP 251-253
12/5/11	\$9,127.14 (as of 11/30/11)	CP 270-272
2/16/12	\$9760.85 (as of 2/7/12)	CP 283-285

¹ Alleged amount due does not include estimated garnishment fees and costs.

In each writ, Fireside requested an award of attorney fees and costs. CP 17-19, 25-27, 60-63, 74-76, 95-97, 124-126, 138-40, 163-166, 182-184, 215-217, 238-240, 251-253, 270-272, 283-285. However, none of the garnishment judgments entered awarded any attorney fees or costs. CP 36-37, 53-54, 81-82, 102-103, 119-120, 149-150, 171-172, 191-192, 209-210, 232-233, 265-266, 291-292. Nevertheless, eleven of the writs demanded a sum that included the costs and fees associated with prior writs as part of the principal balance even though they were not awarded by the court. CP 75, 96, 125, 139, 161, 183, 216, 239, 252, 271, 284. In addition, after receiving payments on the writs from garnishee defendants, Fireside failed to file a single satisfaction of garnishment judgments or full or partial satisfactions of the underlying judgment after receiving the funds. CP 1-298. In total, Fireside collected an additional \$10,849.16 from the Askins' wages² through garnishment.

In September 2012, the judgment was sold and assigned to Cavalry, a "collection agency." CP 297. At the time of assignment, a writ of garnishment issued to Fireside remained attached to Mr. Askins' wages at Washington State University (WSU). CP 251-253.

² After withholdings, Mr. Askins typically earned under \$3,000 a month. See CP 248.

Pursuant to a writ of garnishment and affidavit issued on June 24, 2011, on October 19, 2012, WSU filed the second answer to the writ served by Fireside. CP 251-253, 300-303. The answer indicated that WSU was withholding Mr. Askins' wages from June 16, 2011, to August 31, 2011, based on an alleged \$10,043.41 judgment balance³. CP 303. WSU then withheld \$984.80 of Mr. Askins' wages. CP 303. After Cavalry appeared, it obtained a garnishment judgment and order to pay and collected the \$984.80 being withheld from Mr. Askins' wages by WSU based on the Fireside writ. CP 313-316.

Cavalry then filed five additional declarations for writs of garnishment:

Date	Alleged Amount Due⁴	CP
4/4/13	\$8,675.00 (as of 3/3/13)	CP 317-318
6/17/13	\$8,831.72 (as of 5/21/13)	CP 325-326
10/1/13	\$9,277.98 (as of 9/18/13)	CP 342-343
2/12/15	\$10,406.80 (as of 1/28/15)	CP 354-355
8/3/15	\$10,772.48 (as of 7/8/15)	CP 359-360

³ It is unknown what caused WSU's delay in filing the 2nd Answer.

⁴ Alleged amount due does not include estimated garnishment fees and costs.

Through these writs, Cavalry collected an additional \$1,200.22 from the Askins, bringing the Askins' total out of pocket for the voluntarily returned used car to approximately \$22,102.38, with Cavalry alleging that over \$10,772.48 was still owed on the judgment. CP 313-314, 337-338, CP 359-360.

Cavalry did not explain how it calculated the sum demanded in any of its affidavits for writ of garnishment. CP 317-318, 325-326, 342-343, 354-355, 359-360. Following the receipt of garnishment funds, Cavalry also did not enter any satisfactions of garnishment judgments or full or partial satisfactions of the underlying judgment. CP 297-363.

In November 2015, for the first time, the Askins obtained counsel. CP 374-375. Through counsel, the Askins sent a letter to Cavalry disputing whether the amount alleged owed was accurate. CP 374-375. In December 2015 and January 2016, counsel for the Askins spoke with counsel for Cavalry about the account, the amount due and demanded to see an amortization. CP 377-378. Cavalry did not respond. After not receiving a response to their request for Cavalry to investigate the account or provide an amortization, on February 16, 2016, the Askins sent another request to Cavalry. CP 377-378. Again, Cavalry did not respond. Counsel for the parties

spoke again in March 2016 but no amortization or accounting was provided. CP 380-381. On April 7, 2016, counsel for the Askins once more sent an email to counsel for Cavalry asking if the account had been investigated and if an amortization was available. CP 422-423. In response, and six months after the initial request, Cavalry in an email stated:

I have received the documents from the Court and have prepared an Amortization of the account from the date the Judgment was entered until it was assigned to our client and transferred to our office. The interest accruing on the Judgment was 18.95% and the prior attorney requested an average of \$285 in costs and \$643 in attorney fees per writ. These costs and fees, combined with the interest that has been accruing since 2007 clearly show that the total amount that still due is higher than your calculation.

CP 422.

The attached amortization indicated the following:

4/7/2016
 Debtor
 Client
 Cause #: 11-2-11012-1

Interest

18.95% as of 9/28/07

Date	Judgment Entered	Payment Amount	Costs Expended	Attorney Fees	Interest Accrued	Principal Balance	Total
9/28/2007			\$ 275.00	\$ 368.00	\$ 1,782.93	\$ 7,754.39	\$ 7,754.39
5/12/2008		\$ 741.28	\$ 280.00	\$ 643.00	\$ 913.88	\$ 7,754.39	\$ 8,849.99
9/2/2008		\$ 560.71	\$ 280.00	\$ 643.00	\$ 1,368.81	\$ 7,754.39	\$ 9,667.21
1/9/2009		\$ 758.30	\$ 280.00	\$ 643.00	\$ 1,888.15	\$ 7,754.39	\$ 10,351.25
5/13/2009		\$ 778.60	\$ 285.00	\$ 643.00	\$ 2,387.36	\$ 7,754.39	\$ 10,999.86
7/10/2009		\$ 785.95	\$ 285.00	\$ 643.00	\$ 2,620.87	\$ 7,754.39	\$ 11,375.42
11/1/2009		\$ 1,023.86	\$ 285.00	\$ 643.00	\$ 3,079.82	\$ 7,754.39	\$ 11,738.51
1/19/2010		\$ 822.85	\$ 285.00	\$ 643.00	\$ 3,397.87	\$ 7,754.39	\$ 12,161.71
4/14/2010		\$ 1,010.58	\$ 285.00	\$ 643.00	\$ 3,740.07	\$ 7,754.39	\$ 12,421.33
8/3/2010		\$ 998.41	\$ 285.00	\$ 643.00	\$ 4,186.95	\$ 7,754.39	\$ 12,797.80
12/16/2010		\$ 798.72	\$ 285.00	\$ 643.00	\$ 4,730.44	\$ 7,754.39	\$ 13,470.57
9/6/2011		\$ 993.37	\$ 285.00	\$ 643.00	\$ 5,793.28	\$ 7,754.39	\$ 14,468.04
3/23/2012		\$ 376.31	\$ 285.00	\$ 643.00	\$ 6,594.44	\$ 7,754.39	\$ 15,820.89

CP 372.

On April 13, 2016, the Askins again requested that Cavalry simply enter a satisfaction of judgment based on the amortization. CP 380-381. On June 24, 2016, after Cavalry again failed to respond, the Askins filed an ex parte motion for order to show cause why a full satisfaction of judgment should not be entered based on (1) payments received over time, (2) accounting irregularities, and (3) repeated misconduct by attempting to collect unlawful sums of money under RCW 19.16.250(21). CP 403-404.

The Askins supported the motion by providing the court with the amortization and email provided by Cavalry on April 7, 2016. CP 372, 388. Based on the motion, declarations in support of the motion, and memorandum of authorities the court entered an order to show cause. CP 405-406.

In response to the order to show cause, Cavalry revised its amortization and provided the court with a new spreadsheet titled the "complete and accurate amortization of the account." CP 408, 412. As described by Cavalry, the new amortization "removed[d] all costs and fees not awarded in prior counsel's Judgments on Answers and changes the interest to 12% beginning in 2012." CP 409. A

summary of the “complete and accurate amortization” showed the following:

Date	Alleged Amount Due
4/18/08	\$10,256.30
8/15/08	\$10,174.67
12/15/08	\$9,907.53
4/21/09	\$9,640.22
6/22/09	\$9,103.88
10/19/09	\$8,557.10
12/28/09	\$8,016.06
3/15/10	\$7,315.48
7/6/10	\$6,746.25
11/16/10	\$6,413.36
7/19/11	\$6,235.76
2/21/12	\$6,561.99
5/23/12	\$6,859.83
10/16/12	\$7,159.15
11/29/12	\$7,249.35
12/2/13	\$7,319.05
1/16/13	\$7,634.25
1/16/13	\$7,633.70
3/4/13	\$6,745.26
5/29/13	\$6,921.57
6/27/13	\$6,981.02
6/28/13	\$6,983.07
7/25/13	\$7,038.42
8/1/13	\$7,441.90
8/1/13	\$7,441.59
9/16/13	\$7,320.48
9/25/13	\$7,338.93
10/11/13	\$7,371.73
12/11/13	\$7,496.79
5/1/14	\$7,785.86
2/6/15	\$8,361.94
3/3/15	\$8,413.19
7/28/15	\$8,714.56
8/20/16	\$8,761.71
3/22/16	\$9,202.48
7/12/16	\$9,432.09

CP 412.

At the hearing, the court found that Cavalry had violated RCW 19.16.250(21) by attempting to collect, through the garnishment process, “amounts of money greater than allowed by law.” CP 427. The court, acting pursuant to RCW 19.16.450, stripped the judgment to principal. The court then found that the Askins had paid more than the principal and satisfied the judgment. CP 427.

On July 21, 2016, Cavalry filed a motion to reconsider the decision. CP 428-431. In support of its motion to reconsider, Cavalry submitted another amortization, which materially conflicted with both of the earlier amortizations Cavalry prepared for the initial show cause hearing. CP 445. The third amortization on reconsideration showed different balances due from the initial April 7, 2016, amortization and the second “complete and accurate amortization.” CP 445. Then on September 1, 2016, one day before the hearing, Cavalry submitted a fourth amortization, which conflicted with each of the first three amortizations. CP 450-457.

On October 21, 2016, the court denied Cavalry’s motion for reconsideration and struck Cavalry’s third and fourth accountings finding that “[i]n support of the Motion for Reconsideration, [Cavalry] submits a new ‘accounting’ wherein it attempts to back out the unauthorized costs in order to cure the various violations of RCW

19.16.250(21) This accounting is not really new evidence, however; it is merely another recalculation of figures that were presented in evidence at the show cause hearing.” CP 462-463. This appeal ensued.

IV. ARGUMENT

Cavalry is a debt buyer and, under Washington state law, a collection agency. *Gray v. Suttell & Associates*, 181 Wn.2d 329, 337, 334 P.3d 14 (2014).⁵ Debt buyers purchase large portfolios of debt at steep discounts and make a profit by collecting amounts greater than the purchase price and overhead. The information received by debt buyers like Cavalry is limited and can be unreliable. *Id.* at 336-337. In 2014, the Supreme Court, in *Gray*, observed that in recent years there has been a tremendous increase in litigation against consumers in Washington and across the country, not by the original creditor, but by debt buyers who purchase the debts, usually for just pennies on the dollar. *Id.* at 336-337.

In *Gray*, the Supreme Court noted that debt buyers purchase “mass portfolios of charged off debt ... with little evidentiary basis” ... obtaining “judgments based on fraudulent or paid-off claims that

⁵ *Gray* involved the same collection attorneys representing Cavalry in the Superior Court.

were sold to debt buyers who did not know they were buying illegitimate claims.” *Gray*, 181 Wn.2d at 337 (citation omitted). As one leading commentator explained, debt buyers “often have only a spreadsheet or database summarizing the hundreds or thousands of accounts they have purchased.” PETER HOLLAND, *Robo-Signing and Lack of Proof in Debt Buyer Cases*, 6 *Journal of Bus. & Tech. Law* 259, 268 (2011) (citations omitted).

Further, data obtained by the Federal Trade Commission (FTC) shows that the vast majority of accounts are sold to debt buyers without critical information necessary to verify the underlying balance. FED. TRADE COMM’N, *THE STRUCTURE AND PRACTICES OF THE DEBT BUYING INDUSTRY* (2013), available at <https://www.ftc.gov/reports/structure-practices-debt-buying-industry>. Studies further show that the majority of contracts between debt buyers and sellers or original creditors are sold “as is,” without representations, warranties, or guarantees from the seller as to the accuracy of amounts claimed owed or the collectability of the debts. *Id.* at 25-26. Yet, despite the known inadequacies, after purchasing debt there is little indication that debt buyers do more than blindly initiate automated attempts to collect the spreadsheet balances. *Id.* at 18. Where balance information is incorrect or tainted by the prior

addition of unlawful or inflated amounts, debt buyers are unlikely to independently interrupt the process to verify accuracy; preferring instead to assume that the balances provided are accurate and legal. *Id.* It appears this is a case in point. After errors in accounting were pointed out by the Askins, Cavalry has been unable to explain the amount it alleges is owed through four competing amortizations it provided to the Askins and to the court. Even giving Cavalry and its counsel the benefit of the doubt, it is apparent that Cavalry never actually knew what was actually owed or that its internal balance information contained illegal fees and inaccuracies.

Cavalry's opening brief only challenges the trial court's order on reconsideration. This Court reviews orders for reconsideration for an abuse of discretion. *River House Dev., Inc. v. Integrus Architecture, P.S.*, 167 Wn. App. 211, 231, 272 P.3d 289 (2012). A court abuses its discretion where its decision is "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *Id.*

A. THE COURT DID NOT ERR IN FINDING A VIOLATION OF THE WCAA WHERE CAVALRY ATTEMPTED TO COLLECT AMOUNTS IT WAS NOT ENTITLED TO.

The WCAA, chapter 19.16 RCW *et seq.*, enacted in 1971, requires collection agencies to obtain a license, follow certain

internal procedures, and adhere to a code of conduct. *Gray v. Suttell & Associates*, 181 Wn.2d 329, 334, 334 P.3d 14 (2014). The WCAA is Washington's counterpart to the Fair Debt Collections Practices Act (FDCPA). *Panag v. Farmers Ins. Co. of Washington*, 166 Wn.2d 27, 53, 204 P.3d 885 (2009). Washington courts have found that because the business of debt collection affects the public interest, "collection agencies are subject to strict regulations to ensure they deal fairly and honestly with alleged debtors." *Id.* at 54. With this mandate in mind, WCAA lists twenty-six prohibited practices that a collection agency is forbidden from undertaking. RCW 19.16.250.

Relevant to the Askins' case⁶, the WCCA provides that no licensee agency shall:

Collect or attempt to collect in addition to the principal amount of a claim *any sum* other than allowable interest, collection costs or handling fees expressly authorized by statute, and, in the case of suit, attorney's fees and taxable court costs.

RCW 19.16.250(21) (emphasis added).

⁶ Initially and alternatively, Cavalry violated RCW 19.16.250(8)(d) by failing to provide post-judgment accounting and balance information in response to Askins' repeated demands. After Cavalry eventually complied with RCW 19.16.250(8) and provided an amortization, the Askins focused their motion for order to show case on the addition of illegal and inflated costs and fees contained in the amortization. CP 372. In response, and again in reconsideration, Cavalry argued its first amortization was in error where it included the illegal fees, which may have formed the basis of a RCW 19.16.250(8)(d) violation.

A violation of any prohibited practice in the WCAA provides a debtor with the statutory remedy, which forever prohibits any person, including the original creditor and subsequent assignees, from ever collecting any amount above principal on the "claim." RCW 19.16.250; RCW 19.16.450. The remedy provides:

If an act or practice in violation of RCW 19.16.250 is committed by a licensee or an employee of a licensee in the collection of a claim, neither the licensee, the customer of the licensee, nor any other person who may thereafter legally seek to collect on such claim shall ever be allowed to recover any interest, service charge, attorneys' fees, collection costs, delinquency charge, or any other fees or charges otherwise legally chargeable to the debtor on such claim: PROVIDED, That any person asserting the claim may nevertheless recover from the debtor the amount of the original claim or obligation.

RCW 19.16.450.

The plain language of RCW 19.16.450 does not require a judicial or agency finding before the remedy is imposed. Instead, it firmly mandates that if a violation occurs then *no one* "shall ever be allowed to recover" anything above the principle amount. RCW 19.16.450 (emphasis added)⁷.

Here, the trial court found that Cavalry repeatedly violated the WCAA by collecting or attempting to collect amounts not permitted

⁷ Cavalry did not challenge the application of the remedy in RCW 19.16.450. See Opening Brief.

under the contract or statute. CP 427, 462-463. This finding is supported by multiple instances in the record beginning with the addition of an inflated service of process fee, which was included in the default judgment. Multiple other illegal fees were requested in Fireside's and then in Cavalry's affidavits for writs of garnishment and finally through Cavalry's amortizations. CP 1-463.

1. The Trial Court Did Not Err by Finding that Cavalry's April 2017 Email and Amortization is an Attempt to Collect a Debt.

Litigation activities of lawyers, as well as communications to a consumer's attorney, that includes an accounting of the debt are attempts to collect under the WCAA, specifically RCW 19.16.250(21). *McCollough v. Johnson Rodenbury Lauinger, LLC*, 637 F.3d 939 (9th Cir. 2011)⁸; *Allen ex rel. Martin v. LaSalle Bank, N.A.*, 629 F.3d 364 (3d Cir. 2011). Cavalry's April 2017 email and amortization was an attempt to collect a debt. Indeed, Cavalry explicitly stated with the amortization "[t]his is an attempt to collect a debt" and demanded payment of the balance "that is still due." CP 372, 422.

⁸ The Honorable Sandra Day O'Connor, Associate Justice of the United States Supreme Court (retired), sitting by designation pursuant to 28 U.S.C. § 294(a).

Cavalry appears to be correct that no Washington state court has interpreted the phrase "attempt to collect" under RCW 19.16.250(21), and the Askins agree that federal case law interpreting the federal FDCPA, 15 U.S.C. § 1692 phrase "attempt to collect" is instructive. However, federal courts have decided against Cavalry's interpretation. *McCullough*, 637 F.3d 939; *Allen*, 629 F.3d at 364; *In re Dubois*, 834 F.3d 522, 527 (4th Cir. 2016); *Gburek v. Litton Loan Servicing LP*, 614 F.3d 380, 385 (7th Cir. 2010); *Grden v. Leiken Ingber & Winters PC*, 643 F.3d 169, 173 (6th Cir. 2011).

The FDCPA's consumer protections are triggered when a communication is made "in an attempt to collect a debt." *Mabe v. G.C. Servs. Ltd. P'ship*, 32 F.3d 86, 88 (4th Cir. 1994). Whether a communication is deemed as such is not subject to a bright-line rule, but is a "'commonsense inquiry' that evaluates the 'nature of the parties' relationship,' the '[objective] purpose and context of the communication [],' and whether the communication includes a demand for payment." *Dubois*, 834 F.3d at 527, quoting *Gburek*, 614 F.3d at 385. Even absent an explicit demand for payment a communication can still be deemed an activity "connected" with the collection of debt in light of the other factors. *Grden*, 643 F.3d at 173.

In *McCollough*, the Ninth Circuit found that a debt collection attorney's use of false or misleading request for admission in a state court debt collection matter was an attempt to collect. *McCollough*, 637 F.3d at 951. In dismissing the debt collector's argument that the FDCPA should not be read to cover discovery procedures such as a request for admission, the Court affirmed the long held principle that the FDCPA "applies to the litigating activities of lawyers." *Id.* The Court did so on two bases. *Id.* First, the Court reasoned that a lawyer who collects debt through litigation clearly falls within the statutory definition of a debt collector. *Id.* Second, the Court found that Congress specifically repealed from the FDCPA, an exemption for lawyers that it used to include. *Id.* The Court also pointed to the fact that the request for admissions plainly stated "[t]his is an attempt to collect a debt." *Id.* at 950, n.3.

On point with this case, in *Allen*, the Third Circuit found that an itemized statement and accounting delivered to the consumer's attorney at the consumer attorney's request violates the FDCPA where it includes amounts of money not allowed by contract or law. *Allen*, 629 F.3d at 368. In *Allen*, the communication from the debt collector included a payoff quote for the principal balance remaining on the loan, other charges due to the servicer of the loan, and

attorney fees and costs assessed. *Id.* at 365-366. A second communication included an itemized statement of attorney fees and costs. *Id.*

In *Allen*, the debt collector argued that communication to the consumer's attorney, regardless of what was in the communication, is not an attempt to collect a debt because the communication was not made directly to the consumer. *Allen*, 629 F.3d at 366. The Court rejected this argument relying, instead, on the plain language of the FDCPA, which states "a 'communication' constitutes 'the conveying of information regarding a debt direct *or indirectly* to any person through any medium.'" *Id.* at 368 (emphasis included in original).

As in *Allen*, Cavalry's attorney sent an amortization of the Askins' account in April 2016. CP 372. As in *McCullough*, this amortization stated "[t]his is an attempt to collect a debt." CP 372. It also included, within the total balance owing, attorney fees and costs in excess of amounts allowed by contract or statute. CP 372. In addition, inherent to the communication from Cavalry's counsel that "[t]hese costs and fees, combined with the interest that has been accrued since 2007 clearly show that the total amount that is still *due* is higher than your calculation ..." is an expectation to be paid, or, in

other words, an attempt to collect on the debt. CP 372, 422 (emphasis added).

The April 2017 email and amortization were inextricably intertwined with Cavalry's August 2016 writ of garnishment that requested \$10,772.48. CP 361-362, 374-381. It is undisputed that the Askins, via counsel, made multiple written and oral demands for a reconciliation of the account based on the August 2016 writ and their dispute of the amount owed⁹. CP 374-381. The April 2016 email and amortization, apart from being a separate demand for payment of the balance due, was also issued in support of the August 2016 writ demand.

Cavalry attempts to remove the April 2016 email and amortization from being categorized as "attempt to collect" a debt by stating that the email and amortization were simply an internal account statement. Opening Br., pp. 28-31. The term "account statement" is defined by the WCAA; though, in context of Cavalry's argument, it is unclear if the WCAA definition of the term was intended.

⁹ See RCW 19.16.250(8) requiring collection agencies to itemize the addition of money to original obligations at various stages of the collection process.

Nevertheless, under the WCAA, account statements or statements of accounts are defined as “a report setting forth only amounts billed, invoices, credits allowed, or aged balance due.” RCW 19.16.100(12). The statute defines this term in aid of exempting individuals or companies who “prepare[] or mail[] monthly or periodic statements of accounts due if all payments are made to that other person and no other collection efforts are made by the person preparing the statements of account”. RCW 19.16.100(5)(d), (12). It is clear from the record that the April 2016 email and amortization were not simply monthly or periodic statements of accounts due, sent by the original creditor or concerning a loan in good standing.

It is undisputed that Cavalry is a debt buyer, “debt collector” and a “collection agency” under the WCAA and FDCPA. CP 425; RCW 19.16.100(4); 15 U.S.C § 1692a(5). The attorneys acting on its behalf are also a “collection agency” under the WCAA. CP 426; RCW 19.16.100(4); 15 U.S.C. § 1692a(5); *Mandelas v. Gordon*, 785 F. Supp. 2d 951 (W.D. Wash. 2011); *Moritz v. Gordon*, 895 F. Supp. 2d 1097 (W.D. Wash. 2012) (collection law firms meet the statutory definition of a “collection agency” under RCW 19.16.100).

Cavalry's reliance on FDCPA case law from the Southern District of Florida and Eastern District of Arkansas, to the exclusion of the 3rd, 4th, 6th, 7th and 9th Circuit case law, is misplaced and factually distinguishable. *Marshall v. Deutsche Bank Nat'l Trust Co.*, 2011 WL 345988 (E.D. Ark. 2011); *Bohringer v. Bayview Loan Servicing, L.L.C.*, 141 F. Supp. 3d 1229 (S.D. Fla. 2015).

Marshall involved a FDCPA suit against a mortgage servicing company who sent out statement of accounts on behalf of the original creditor. *Marshall*, 2011 WL 345988. The court found that the FDCPA did not apply to such mortgage servicing companies and dismissed the suit. *Id.* In dicta, the court acknowledged that loan statements provided by mortgage servicing companies *do not have to comply with the FDCPA because "[a] loan statement is essentially a communication from a creditor to a debtor, not a communication from a debt collector for the purposes of collecting a debt."* *Id.*

Bohringer is also distinguishable and does not stand for the proposition Cavalry has claimed. *Bohringer*, 141 F. Supp. 3d at 1229. *Bohringer* involved a mortgage servicing company and whether it violated the FDCPA by mistakenly determining a loan was in default. *Id.* at 1238. The court found that "statements of accounts are not debt collection activity; rather, they are normal incidents of

loan servicing.” *Id.* at 1242. Cavalry seeks to stretch this finding to include collection agencies such as itself and label its debt collection communications as “statements of account.” Opening Br., pp. 28-31.

As stated before, Cavalry is not a loan servicer and the April 2016 email and amortization of the Askins’ account, exposing significantly inflated attorney fees and costs in the total amount due, is not a statement of account or a loan statement under FDCPA case law or the WCAA. To be sure, Cavalry’s sole business purpose as a debt buyer and a collection agency is to purchase defaulted claims for collection at the lowest possible price and profit by recovering a greater sum. *Gray*, 181 Wn.2d at 329.

Cavalry, a debt buyer, through its collection agency attorney, provided an amortization of the Askins’ account in support of its writ and continued collection activities, which sought to collect an amount that, on its face, included amounts not allowed by law, and specifically stated “[t]his is an attempt to collect a debt.” CP 372.

Based on the record, the trial court did not err in finding that the April 2016 email and amortization was an attempt to collect a debt.

2. The Court Did Not Err When It Found that Cavalry Violated the WCAA by Collecting or Attempting to Collect Excessive Attorney Fees and Costs.

The April 2016 email and amortization attempted to collect amounts Cavalry was not entitled to when it sought payment of both attorney fees and costs not awarded, as well as attorney fees and costs significantly higher than allowed by law. RCW 6.27.090(2); RCW 19.16.250(21). Under the garnishment statute, collection agencies are only allowed to seek recovery of the actual cost incurred for "filing and ex parte fees, service and affidavit fees, postage and costs of certified mail, answer fee or fees, other fees" and attorney fees not to exceed \$300.00. RCW 6.27.090(2). Prior to June 7, 2012, the statute limited attorney fees in garnishment proceedings to a maximum of \$250.00. RCW 6.27.090(2) (2012). While the statute allows a collection agency to recover such fees and costs in a garnishment judgment, such fees and costs still must be awarded by the court, and here they were not. *Watkins v. Peterson Enterprises, Inc.*, 137 Wn.2d 632, 647, 973 P.2d 1037 (1999).

The April 2016 amortization, on its face, shows that, within the balance due, twelve instances of attorney fees of \$643.00 were internally assessed on each writ, \$393.00 more than the statutory maximum garnishment attorney fees. RCW 6.27.090(2); CP 372. In

addition, despite the fact that each writ requested estimated costs of between \$30.00 and \$35.00, the April 2017 amortization reflected costs being internally assessed of between \$280.00 and \$285.00 per writ. CP 18, 26, 61, 75, 96, 125, 139, 161, 183, 216, 239, 252, 271, 284. Finally, none of the excessive attorney fees and costs, demanded in the April 2017 amortization were awarded in the garnishment judgments. CP 36-37, 53-54, 81-82, 102-103, 119-120, 149-150, 171-172, 191-192, 209-210, 232-233, 265-266, 291-292; *Watkins*, 137 Wn.2d at 647. The unawarded costs and fees were, therefore, uncollectable.

The trial court did not abuse its discretion by finding that Cavalry's attempts to collect excessive attorney fees and costs that were not reduced to a judgment violated the WCAA. Cavalry was not entitled to them.

3. The Court Did Not Err Where Cavalry's Writs of Garnishment Attempted to Collect More Money than Its "Complete and Accurate Amortization" Indicated It Was Entitled.

The amounts requested in all five of Cavalry's affidavits for writs of garnishment exceeded the amount that Cavalry's own amortizations prepared for the trial court indicated that it was entitled to. CP 317-321, 325-328, 342-345, 354-358, 359-363, 412.

Requesting such amounts violates the WCAA. RCW 19.16.250(21). Each writ instructed the garnishee defendant to withhold an amount up to the inflated balance amount claimed by Cavalry. The only safeguard preventing Cavalry from recovering the entire inflated balance claimed due on the writs was the size of Mr. Askins' paychecks and the balance of his bank account.

In response to the Askins' Order to Show Cause, Cavalry submitted a second amortization to the court labeled as the "complete and accurate amortization of the account." CP 408, 412¹⁰. The "complete and accurate amortization" shows that all five writs issued by Cavalry sought more money than it was entitled to. CP 412.

For instance, on April 4, 2013, under the penalty of perjury, counsel for Cavalry declared that there was a "balance due of \$8,675.00" as of March 13, 2013. CP 317. The writ of garnishment issued in reliance on this declaration requested that Mr. Askins' employer withhold up to \$8,675.00 of non-exempt funds and

¹⁰ Cavalry's opening brief does not refer to this "complete and accurate amortization" as a basis for the court's findings. However, this is an amortization prepared by Cavalry and submitted to the court for the court's consideration on the order to show cause. CP 412. Cavalry does not now get to ignore or challenge this evidence as it is an invited error. See *Casper v. Esteb Enterprises, Inc.*, 119 Wn. App. 759, 771, 82 P.3d 1223 (2004) ("This doctrine [invited error] applies when a party takes an affirmative and voluntary action that induces the trial court to take an action that a party later challenges on appeal.")

estimated garnishment fees and costs. CP 319. However, the “complete and accurate amortization” submitted by Cavalry shows that on March 4, 2013, the Askins’ account showed a balance due of \$6,745.26. CP 412. It is impossible that the Askins’ account, between March 4, 2013, and March 13, 2013, even with an interest rate of 18.95 percent, could grow approximately \$1,929.74.

A similar pattern existed for the four remaining declarations and writs. CP 325-328, 342-346, 354-358, 359-363. As illustrated:

Date	Balance Due Pursuant to Declaration and Writ¹¹	Complete and Accurate Amortization
6/17/13	\$8,831.72 (as of 5/21/13) CP 325-328	\$6,921.57 (as of 5/29/13) CP 412
10/1/13	\$9,277.98 (as of 9/18/13) CP 342-346	\$7,320.48 (as of 9/16/13) CP 412
2/12/15	\$10,406.80 (as of 1/28/15) CP 354-358	\$8,361.94 (as of 2/6/15) CP 412
8/3/15	\$10,772.48 (as of 7/8/15) CP 359-363	\$8,714.56 (as of 7/28/15) CP 412

By filing declarations and issuing writs requesting more money that it was entitled under its own “complete and accurate

¹¹ Balance due does not include estimated garnishment costs and fees.

amortization” Cavalry violated the WCAA. The trial court did not abuse its discretion in finding a violation of the WCAA.

4. As Cavalry is an Assignee of the Claim, The Askins Were Entitled to Allege WCAA Violations Against Cavalry for its Attempts to Collect a Previously Inflated Balance.

Cavalry violated the WCAA by collecting on a writ issued by the prior judgment holder that attempted to collect more than it was entitled. Cavalry inherited all the defects that the previous writs contained when it purchased the Askins’ account. It is well settled that “... an assignment carries with it the rights *and liabilities* as identified in the assigned contract, but also all applicable statutory rights and liabilities.” *Puget Sound Nat. Bank v. State Dep’t of Revenue*, 123 Wn.2d 284, 292, 868 P.2d 127 (1994) (emphasis added). An assignee, such as Cavalry, “takes the assignment subject to any defenses that could have been asserted against the assignor.” *Fed. Fin. Co. v. Gerard*, 90 Wn. App. 169, 183, 949 P.2d 412 (1998).

a. Cavalry violated the WCAA when it sought and obtained a judgment based on a writ that requested more money than was owed.

The Askins’ judgment was assigned to Cavalry on September 11, 2012. CP 297. Shortly thereafter, on October 19, 2012, Mr.

Askins' employer, WSU, filed a Second Answer to Writ pursuant to a writ issued on June 24, 2011, alleging a balance due of \$10,043.41. CP 251-253, 300-303. The answer indicated that WSU was served with the writ on July 5, 2011, that it covered periods from June 16, 2011, to August 31, 2011, and that the total garnishment amount requested was \$10,043.41¹². CP 303. WSU indicated that it was holding \$984.80 of Mr. Askins' salary pursuant to the writ request. CP 303.

On January 16, 2013, Cavalry obtained a judgment and order to pay in the amount of \$984.80. CP 313-314. Cavalry then collected the money withheld based on Fireside's writ. CP 316.

However, according to Cavalry's "complete and accurate amortization" the amount due on the account on July 19, 2011, was \$6,235.76. CP 412. The discrepancy between the writ claiming a balance due on June 11, 2011, of \$10,043.41 and Cavalry's amortization showing a balance due of \$6,235.76 on July 19, 2011, shows the violation of the WCAA. CP 251, 412. Between June 11, 2011, and July 19, 2011, the Askins made a payment of \$993.37. CP 412. Even taking this payment into account, as well as 18.95

¹² It is unknown what caused WSU's delay in filing the 2nd Answer.

percent interest, the writ requested almost \$3,000.00 more than what Cavalry later acknowledged might actually be due on the account. CP 251-253, 412. Cavalry not only inherited this statutory violation but purposefully ratified it by collecting on the affidavit and writ it knew, or should have known, sought to collect more money than allowed by law.

b. Cavalry assimilated multiple statutory violations when it collected the judgment balance based on Fireside's accounting.

In addition to the multiple statutory violations made by Cavalry on the Askins' account, Cavalry also inherited multiple violations when it was assigned the judgment. In fact, the Askins' account was wrought with violations.

Most of the writs issued prior to the assignment to Cavalry attempted to seek amounts significantly higher than what was alleged due under Cavalry's accounting. For instance, the writ of garnishment filed on September 2, 2008, claimed that the balance due, without estimated garnishment fees, was \$11,997.77 as of August 26, 2008. CP 60-63. The writ also indicated that interest was accruing on the balance at a rate of \$5.38 per day. CP 60. However, Cavalry's "correct and accurate amortization" indicates that as of August 15, 2008, the balance on the account was \$10,174.67. CP

412. No payment was made by the Askins between August 15, 2008, balance and the August 26, 2008, balance. CP 412. Even accruing interest at \$5.38 per day for 11 days, it would only add an additional \$59.18 to the balance for an outstanding balance on August 26, 2008, of \$10,233.85, not \$11,997.77. CP 60, 412. This writ attempted to collect money to which the judgment holder was not entitled and violated the WCAA.

Similarly, on December 4, 2008, Fireside filed a writ of garnishment alleging a balance due of \$11,459.75 as of November 24, 2008. CP 74-76. According to Cavalry's amortization, a payment of \$758.30 was made on the account on December 15, 2008, leaving the account balance at \$9,907.53. CP 412. This results in the writ seeking approximately \$700.00 more than it was entitled and a violation of the WCAA. Several writs suffered the same flaws:

Date	Balance Due Pursuant to Writ¹³	Payment Made	Cavalry's Amortization – Balance Due Post Payment	Amount Not Entitled¹⁴
4/3/09	\$11,659.01 (as of 3/30/09) CP 94-97	\$778.60 (4/21/09) CP 412	\$9,640.22 (as of 4/21/09) CP 412	~\$1,240.19

¹³ Amounts listed do not include estimated garnishment costs.

¹⁴ This amount is a minimum amount in difference between the writ amount and Cavalry's amortization because it does not account interest accruing between the writ date and the date on Cavalry's amortization. If the amount included interest the amount would only increase.

6/24/09	\$11,579.95 (as of 6/16/09) CP 124-126	\$785.96 (6/22/19) CP 412	\$9,103.88 (as of 6/22/09) CP 412	~\$1,690.11
9/16/09	\$11,528.20 (as of 9/9/09) CP 138-140	\$1,025.86 (10/19/09) CP 412	\$8,557.10 (as of 10/19/09) CP 412	~\$1,945.24
11/30/09	\$11,895.22 (as of 11/18/09) CP 160-162	\$822.85 (12/28/09) CP 412	\$8,016.06 (as of 12/28/09) CP 412	~\$3,056.31
3/11/10	\$10,569.56 (as of 3/3/10) CP 182-184	\$1,010.58 (3/15/10) CP 412	\$7,315.48 (as of 3/15/10) CP 412	~\$2,243.50
7/12/10	\$10,080.45 (as of 6/23/10) CP 215-217	\$998.41 (7/6/10) CP 412	\$6,746.25 (as of 7/6/10) CP 412	~\$2,335.79
3/25/11	\$9,404.03 (as of 3/16/11) CP 238-240	\$798.72 (11/16/10) CP 412	\$6,413.36 (as of 11/16/10) CP 412	~\$2,191.95
6/24/11	\$9,758.41 (as of 6/10/11) CP 251-253	\$993.37 (7/19/11) CP 412	\$6,235.76 (as of 7/19/11) CP 412	~\$2,529.28
2/16/12	\$9,760.82 (as of 2/7/12) CP 283-285	\$376.31 (2/21/13) CP 412	\$6,561.98 (as of 2/21/13) CP 412	~\$2,822.53

In addition, 11 of the garnishment writs issued by Fireside included in the balance due, garnishment costs and fees not awarded; a practice formerly widely employed but prohibited by *Watkins*. CP 75, 96, 125, 139, 161, 183, 216, 239, 252, 271, 284; *Watkins*, 137 Wn.2d 632, 973 P.2d 1037 (1999).

The judgment Cavalry bought was toxic. Cavalry inherited these flaws and collected and attempted to collect an inflated

judgment balance. As a well-financed and sophisticated nationwide debt buyer, Cavalry understood the risk of purchasing and attempting to collect bad debt.¹⁵ Yet, Cavalry appears to have made no effort to protect the Askins from its mechanized collection process until after they obtained counsel to investigate. CP 422. In any case, Cavalry and its attorneys had a statutory duty under the WCAA to attempt to collect only amounts actually due, and an ethical duty to the court to make accurate statements under oath in pursuit of writs of garnishment. CR 11; RCP 3.3. It is indisputable that both were breached. It is not excusable that, to some extent, Cavalry can trace its inflated accounting to the prior judgment creditor. The WCAA's remedy at RCW 19.16.450 favors the Askins and simplifies unwinding the addition of unlawful amounts in favor of the debtor where it is the illegal action of the creditor that causes initial harm.

¹⁵ "In 2016, the [debt buying] industry raked in estimated annual revenues of \$11.4 Billion. Large debt buyers' profit margins far surpass those of Walmart." JENNIFER TURNER, AMERICAN CIVIL LIBERTIES UNION, A Pound of Flesh, The Criminalization of Private Debt (2018) available at <https://www.aclu.org/report/pound-flesh-criminalization-private-debt>.

B. THE COURT WOULD NOT HAVE ERRED IN ENTERING THE ORDER PURSUANT TO CR 60(b)(4), CR 60(b)(6) OR CR 60(b)(11) WHERE THE ASKINS DID NOT CHALLENGE THE UNDERLYING JUDGMENT AND WAS BASED ON CAVALRY'S MISCONDUCT

Despite the claim in Cavalry's opening brief, the Askins did not request, and the court did not enter any order based on CR 60(b)(6). Rather, the court's order found the judgment was satisfied based on the violation of RCW 19.16.250(21) and the application of RCW 19.16.450 prohibiting collection of any amount greater than principal. Since the court also found the Askins had already paid an amount greater than principal, the court had a clerical statutory duty to enter a satisfaction and did so. RCW 4.56.100. In the proceedings below, Cavalry did not make any arguments regarding CR 60(b). For the first time, on appeal, Cavalry argues the court erred in ordering the judgment satisfied, pursuant to CR 60(b)(6); this was not the court's holding and the issue was raised for the first time on appeal.

Notwithstanding the foregoing and to the extent the issue is preserved for appeal, Cavalry's argument inappropriately limits the grounds on which a trial court may, in its discretion, allow relief from a judgment to CR 60(b)(6). Cavalry omits the provision of CR 60(b)(6), which provides a judgment may be vacated if it "is no longer equitable that the judgment should have prospective application."

CR 60(b)(6). Cavalry further fails to address CR 60(b) as a whole, which contains multiple provisions empowering the Court to grant the relief it did. CR 60(b)(4); CR 60(b)(11).

For instance, CR 60(b)(4) and (11) provide:

the court may relieve a party ... from final judgment order or proceeding for the following reasons...

(4) Fraud (whether denominated intrinsic or extrinsic),
misrepresentation or other misconduct of an
adverse party

...

(11) Any other reason justifying relief from operation of
the judgment.

Unusual to this case, in comparison with the majority of other published opinions in Washington addressing CR 60(b), is that the Askins did not ask that the underlying judgment to be vacated based on inherent defects in substance or procedure. CP 403-404. Instead, the Askins sought relief from the judgment based on over eight years of post-judgment collection laden with irregularities in accounting, procedure, and WCAA statutory violations. CP 403-404.

There is precedent for modifying a judgment under civil rule 60(b)(4) and (11) for post-judgment activity. *Mitchell v. Washington State Inst. of Pub. Policy*, 153 Wn. App 803, 824-826, 225 P.3d 280 (2009), *rev. denied* 169 Wn.2d 1012 (2010). In *Mitchell*, the court

affirmed a trial court's decision to vacate post-trial inflated costs and fee judgments. *Id.* at 826. In doing so, the court held,

... to satisfy the CR 60(b)(4) requirements WSIPP need not have established the nine elements of common law fraud - although findings and conclusions for all nine elements of would satisfy the rule, 'misrepresentation or other misconduct' would also justify vacation of the judgment under CR 60(b)(4) The only matter affected by Mitchell's fraud, misrepresentation, or misconduct is the penalty phase of the proceedings—specifically, whether to award costs to Mitchell based on his fraudulent pleadings. Here, Mitchell's misconduct resulted in an inflated costs award to his benefit."

Mitchell, 153 Wn. App at 825-826.

Mitchell is similar to this case, where the underlying judgment on the merits is not being challenged, but instead the court was asked to review the equity of allowing post-judgment "penalties" in the form of inflated costs and fees. In this regard, *Mitchell* is axiomatic. Indeed, the *Mitchell* court suggests that a trial court has greater discretion under CR 60(b) where, like here, the relief "would not alter [the] case-in-chief or the trial court's decision on the merits."

Mitchell, 153 Wn. App at 825-826.

This matter is more factually complex given the length of the judgment, the number of garnishments, failure to enter satisfactions of judgments, assignment of the judgment, Cavalry's and Fireside's intertwined accounting issues, numerous intervening violations of the

WCAA's prohibited practice and the application of RCW 19.16.450. The court should not have been required to undertake the impractical task of reconciling Cavalry's judgment balance, on incomplete information with admitted faults, where Cavalry itself was unable to do so. The court had two accountings before it, both prepared by Cavalry, and both plainly exposing attempts to collect unlawful or inflated amounts.

To that end, and in addition to CR 60(b)(6), the “catch-all provision under CR 60(b)(11) states that the court may grant relief from a final judgment for ‘[a]ny other reason justifying relief from the operation of the judgment’ ... “intended to serve the ends of justice in extreme, unexpected situations and when no other subsection of CR 60(b) applies.” *Guardado v. Guardado*, 200 Wn. App. 237, 242, 402 P.3d 357 (2017) quoting *Shandola v. Henry*, 198 Wn. App. 889, 895, 396 P.3d 395 (2017). Rarely used, CR 60(b)(11) provides the court with discretion to allow relief from judgments in “extraordinary circumstances involving irregularities extraneous to the proceeding.” *Shandola*, 198 Wn. App. at 895. Indeed, similar to *Mitchell* the procedural and accounting irregularities, unlawful fees, inflated costs, false declarations, all occurred post judgment are “extraneous to the proceeding.”

The court noted in its order on reconsideration that “the evidence submitted both in support and opposition to the Defendant’s original motion, together with numerous documents in the casefile, supported the Court’s findings.” CP 462. That record, reviewed in detail here as it was before the trial court, overwhelmingly supports the decision to grant relief from the judgment under CR 60(b)(4), (6) and (11) and should not be disturbed.

Finally, CR 60(c) clarifies that CR 60(b) is not a limit of a Court’s power to relieve a party from a judgment by specifically stating, “this rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding.” CR 60(c). The court, therefore, expressly had the power and acted within its discretion in retiring the judgment against the Askins whether pursuant to CR 60(b), CR 60(c), or through its clerical duty to satisfy paid judgments under RCW 4.56.100.

V. CONCLUSION

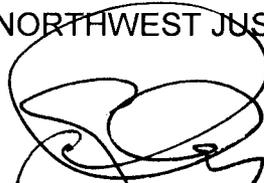
The Askins ask this Court to find that the trial court did not abuse its discretion when it found that Cavalry had violated the WCAA and sanctioned Cavalry by stripping the judgment to its principal. As is apparent from the record, the tortured history of the

Askins' judgment goes well beyond the selective scrutiny of the five writs of garnishment that Cavalry draws to this Court's attention. It showcases and highlights the pervasive abuses that occur in a practice where debt buyers collect on judgments without knowing the actual amount due in order to increase its already significant profit margin.

The trial court did not abuse its discretion by relying on Cavalry's own amortizations that contained blatant violations of the WCAA and entering a finding that Cavalry violated the WCAA by collecting or attempting to collect amounts it was not entitled. The Askins ask this Court to affirm the trial court's ruling.

Respectfully submitted on March 8th, 2018.

NORTHWEST JUSTICE PROJECT



SCOTT M. KINKLEY
WSBA #42434
Attorney for Respondents



JACQUELYN HIGH-EDWARD
WSBA #37065
Attorney for Respondents

CERTIFICATE OF SERVICE

I certify that on the 8th day of March, 2018, I caused a true and correct copy of this document – RESPONDENT'S RESPONSE BRIEF - to be served on the attorneys of record listed below via first class U.S. mail, postage prepaid, with a courtesy copy transmitted by email:

Stephen C. Willey
Brandi B. Balanda
Savitt Bruce & Willey LLP
1425 Fourth Avenue #800
Seattle, WA 98101-2272
swilley@sbwllp.com

Attorneys for Appellant

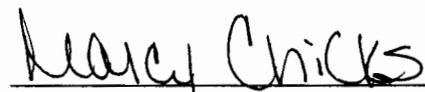
Karen Hammer
Patrick Layman
Suttell, Hammer & White, P.S.
PO Box C-90006
Bellevue, WA 98009

karen@suttelllaw.com
patrick@suttelllaw.com

Attorneys for Appellant

I certify under penalty of perjury under the laws of the state of Washington, that the foregoing is true and correct.

DATED this 8th day of March, 2018, at Spokane, WA.



Marcy Chicks