IN THE MATTER OF:	*	
LYCASTE, LLC **NMLS #2068670**	*	**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**
ARGOLICA, LLC **NMLS #1853224**	*	
LAELIA, LLC **NMLS #1700294**	*	
ISANTHES, LLC **NMLS #1828100**	*	

I. INTRODUCTION

This final decision concludes the above-captioned contested case in which the Department alleged that Lycaste, LLC ("Lycaste"), Argolica, LLC ("Argolica"), Laelia, LLC ("Laelia"), and Isanthes, LLC ("Isanthes") (collectively "Respondents") violated Connecticut law by engaging in unlicensed consumer collection activity in violation of Connecticut General Statutes Section 36a-801(a) ("Section 36a-801(a)"). Based on the evidence in the record and the plain and unambiguous meaning of the relevant statutory provisions, each of the Respondents violated Section 36a-801(a) by engaging in unlicensed consumer collection activity.

II. PROCEDURAL HISTORY

The Banking Commissioner ("Commissioner") is charged with the administration of Part XII of Chapter 669, Sections 36a-800 to Section 36a-814, inclusive, of the Connecticut General Statutes, "Consumer Collection Agencies," and the regulations promulgated thereunder, Sections 36a-809-6 to

Section 36a-809-17, inclusive, of the Regulations of Connecticut State Agencies ("Regulations"). This matter was initiated after an investigation was conducted by the Consumer Credit Division of the Connecticut Department of Banking ("Department"). On February 28, 2023, the Commissioner issued a Temporary Order to Cease and Desist, Notice of Intent to Revoke Consumer Collection Agency License, Notice of Intent to Issue Order to Cease and Desist, Notice of Intent to Impose Civil Penalty and Notice of Right to Hearing ("Notice") against Respondents. The Notice is incorporated by reference and attached herein as HO Exhibit 1.[1]

The Notice alleged the following:

1. Respondents violated Section 36a-801(a) by engaging in unlicensed consumer collection activity.
2. A basis exists to issue an order against Respondents to cease and desist from violating Section 36a-801(a), pursuant to Section 36a-52(b), Section 36a-804(b), and Section 36a-52(a) of the Connecticut General Statutes.
3. A basis exists to impose a civil penalty against Respondents not to exceed One Hundred Thousand Dollars ($100,000) per violation pursuant to Section 36a-804(b) and Section 36a-50(a) of the Connecticut General Statutes.

On March 1, 2023, the Department sent the Notice by certified mail, return receipt requested to Respondents. Notices for Laelia, Isanthes, and Lycaste issued identically, Attention: Eustanik Blanco Castillo, Authorized Representative of Entity Manager, 2003 Western Avenue, Suite 340, Seattle, Washington 98121. The Department issued Notice to Argolica, Attention: Matthew Wells, Authorized Representative of Entity Manager, 2001 Western Blvd, Suite 400, Seattle, Washington, 98121.

On March 21, 2023, Attorney Michael T. McCormack timely filed an Appearance and Request for Hearing on behalf of Respondents. On April 13, 2023, the Commissioner issued a Notification of

[1] The Notice also named Pallida, LLC NMLS #1310880 as a Respondent, but that entity was subsequently removed from this matter.

Hearing and Designation of Hearing Officer, electronically sent to Eric Beckenstein, Esq., Hearing Officer, Melissa M. Desmond, prosecuting staff attorney for the Department, and Attorney Michael T. McCormack, counsel for the Respondents.

In accordance with Chapter 54 of the Connecticut General Statutes, the Uniform Administrative Procedures Act ("UAPA"), and the Department of Banking Hearing Guidelines, an administrative hearing was conducted at the Department of Banking on September 26, 2023.[2] Kaitlyn Morrissey, Associate Financial Examiner, appeared as a witness for the Department. Certified Court Reporter, Robert G. Dixon, participated and subsequently furnished a certified hearing transcript to the parties.

The Department submitted documentary and testimonial evidence, including Department Exhibits ("DOB Exhibits") 1-21 concerning the allegations made against Respondents in the Order and Notice, requesting that the Commissioner issue a Cease-and-Desist Order and impose a civil penalty in an amount not to exceed $100,000 upon each of the Respondents.

The Respondents did not provide witness testimony, but offered 20 proposed exhibits, subsequently admitted as full exhibits. ("Respondents Exhibits").[3] On October 12, 2023, the hearing concluded remotely by teleconference with closing statements presented using Microsoft Teams. As provided by the Regulations of Connecticut State Agencies, Section 36a-1-49, the parties each submitted post-hearing briefs on October 27, 2023, and reply briefs on November 6, 2023.

III. FINDINGS OF FACT

A. Respondents

1. Respondents are Delaware limited liability companies that share the same business address, same common indirect owner trustee (Wilmington Trust, NA), and the same authorized representative and

[2] On September 22, 2023, Respondents served subpoenas to members of the Department seeking their appearance as witnesses during the upcoming hearing on Tuesday September 26, 2023. During the opening of the hearing, the Department filed a *Motion in Limine* in response to the Respondents' subpoenas. On September 29, 2023, the Respondents withdrew the subpoenas.

[3] Respondents submitted 20 of 108 originally proposed Exhibits (Respondents Exhibit Numbers 9-15, 68-75, 76, 77, 88, 91, and 92).

control person, Maria del Rocio Zulueta Dizon. (Transcript at 76-77; DOB post-hearing brief at 2; DOB Exhibits 1, 4, 7, 9, and 19).

2. Each Respondent has described its business activity as "passive debt-buying." (DOB Exhibits 1, 4, 9, and 19; Transcript Pages 49-50, 60-61, 64-65, and 67-69).

B. Legislation and Guidance Regarding "Indirect Collection Activity" and "Debt Buying"

3. In 2017, the General Assembly passed, and the Governor signed, a bill that became Public Act 17-233, and which amended Part XII of Chapter 669, Section 36a-801(a) of the Connecticut General Statutes, "Consumer Collection Agencies." ("2017 amendments").

4. The 2017 amendments became effective on October 1, 2017. As of that date, Section 36a-801(a) provides, in pertinent part, that, "No person shall act within this state as a consumer collection agency, directly or indirectly, unless such person has first obtained a required consumer collection agency license for such person's main office and for each branch office where such person's business is conducted."

5. Subsequently, in 2018, the General Assembly passed, and the Governor signed, a bill that became Public Act 18-173, and which amended Part XII of Chapter 669, Section 36a-800 of the Connecticut General Statutes, "Consumer collection agency. Definitions." ("2018 amendments").

6. The 2018 amendments became effective on October 1, 2018. As of that date, Section 36a-800(3) states, "'Consumer collection agency' means any person . . . engaged in the business of debt buying . . . ." In addition, Section 36a-800(7) added a definition for, "Debt buying" which means, "collecting or receiving payment on any account, bill or other indebtedness from a consumer debtor for such person's own account if the indebtedness was acquired from another person and if the indebtedness was either delinquent or in default at the time it was acquired."

7. The result of the 2017 and 2018 amendments was a significant expansion of the range of collection activity requiring a consumer collection agency license in Connecticut.

8. On August 26, 2020, the Department issued regulatory guidance titled, "Indirect Consumer Collection Activities" ("Memo") which cites the statutory provisions amended by the 2017 and 2018

amendments relating to, "indirect collection activity" and "debt buying" that became effective on October 1, 2017. (DOB Exhibit 15 at 2). Therein, the Department provided regulatory guidance on collection activities that require licensure under Section 36a-801(a), including "indirect consumer collection activity" and "debt buying" that involves such indirect activity. (*Id.*; Transcript 47-49).

9. The Memo states: "The purpose of this memorandum is to advise consumer collection agencies of practices considered to be indirect consumer collection activities requiring licensure by the Department." (DOB Exhibit 15 at 2). Specifically, the Memo advised that, "[P]ersons are acting *indirectly* as consumer collection agencies when they contract out consumer collection activities to licensed consumer collection agencies." (*Id.*).
10. The Memo further advised that, "[P]ersons must be licensed as consumer collection agencies when 'debt buying' and collecting or receiving payment on debts from consumer debtors, whether such collection and receipt of payment is done directly or indirectly through other licensed or exempt persons." (*Id*. at 3).
11. The Memo included a "No Action" position to allow covered persons sufficient time to come into compliance with the statutory licensure requirements. Specifically, the no-action position meant that the Department would not initiate an enforcement action against persons engaged in unlicensed indirect collection activity occurring prior to November 1, 2020, provided such persons submitted a license application by that date. (*Id.*; Transcript at 48:1-21).
12. The Department posted the Memo to its website and sent it directly to all licensed consumer collection agencies, including Laelia.[4] (Transcript at 97).

[4] The Department is authorized to issue regulatory guidance, legal interpretations, and no-action positions pursuant to Section 36a-1-8 of the Regulations of State Agencies.

C. Respondents' License Applications and Interactions with the Department

13. The Department relies on the Nationwide Multistate Licensing System ("NMLS") to regulate consumer collection agency licensing.[5] (Respondent Exhibits 87-90; Transcript at 50). The NMLS MU-1 form is required when applying for a license, transitioning an existing license, surrendering an existing license, or updating records by amendment.[6] New license applications including the MU-1 form and jurisdiction-specific documents are processed and posted on NMLS, available for licensees to view and update. (Transcript at 107-109).

14. Although Laelia had been licensed as a consumer collection agency, by email to the Department dated August 17, 2020, Laelia requested a surrender of its license as a consumer collection agency (DOB Exhibit 7). The Department subsequently accepted the surrender request on or about November 18, 2020.

15. Upon review of Laelia's surrender records, the Department found reason to believe that Laelia had sold defaulted or delinquent Connecticut consumer debt to Isanthes on December 30, 2019. When it purchased the defaulted consumer debt from Laelia on that date, Isanthes was not licensed as a consumer collection agency. (*Id*., DOB Exhibit 16; Transcript at 72-73).

16. Laelia's Compliance Administrator, Eustanik Blanco, and Authorized Representative, Maria del Rocio Zulueta Dizon have acknowledged that Laelia engaged in "debt buying" and sales of debtor accounts while unlicensed. Specifically, an August 17, 2020, email sent by Eustanik Blanco shows that Laelia sold a debtor account it had owned to Isanthes on December 30, 2019. (DOB Exhibit 7).

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[5] "The Nationwide Multistate Licensing System is the system of record for non-depository financial services licensing or registration in participating state agencies . . . . In these jurisdictions, NMLS is the official system for companies and individuals seeking to apply for, amend, renew, and surrender license authorities managed through NMLS." [https://www.csbs.org/nationwide-multistate-licensing -system]

[6] NMLS Company (MU1) Form Filing Instructions. State Regulatory Registry, LLC April 30, 2020, at 7.

17. As described further below, between January and February of 2021, Laelia, Isanthes, Lycaste, and Argolica each submitted applications for consumer collection agency licenses with the Department. (DOB Exhibits 1, 4, 9, and 19). As a result, the Department had reason to believe that these Respondents had engaged in unlicensed indirect collection activity and debt buying. (DOB Exhibits 7 and 16; Transcript 70-73, and 143-147).

18. As part of their license applications, each Respondents submitted an MU-1 form in which they categorized their business activity as, "passive debt buying (does not undertake direct collections on accounts)."[7] (DOB Exhibits 1, 4, 9, and 19; Transcript at 50).

19. NMLS Business Activity Definitions (2024) includes "Passive debt buying", which is defined as follows:

> ***Passive debt buying* (*does not undertake direct collections on accounts***). Purchasing debt *from another* which is *in default* at the time of purchase or acquisition and engaging only in the practice of purchasing delinquent consumer debts for investment purposes *without undertaking any activities to directly collect on the debt*.

(DOB Exhibit 20). (Emphasis added). *See* Transcript at 50-51.

20. On January 6, 2021, "[The Department requested] that [Isanthes] provide each transaction conducted by [the] company, during the last two years, that involves collecting or receiving payment for others of any account, bill, or other indebtedness from Connecticut consumer debtors." (DOB Exhibit 13). "In addition, [the Department requested] the number of Connecticut consumer debtors that have been contacted, including all attempts made, either in written or verbal form." (*Id*.).

21. By letter on January 27, 2021, Isanthes responded to the Department stating that it,

> [H]as not conducted any direct consumer collection activity in Connecticut . . . [but] may, however, have inadvertently come to passively hold a small number of mortgage loans in Connecticut . . . [and that] [a]ny direct contact of consumers in Connecticut relating to these loans would have been made through fully licensed mortgage servicer providers.

(DOB Exhibit 14). *See* Transcript at 45-46.

[7] In addition, Laelia indicated that it also engaged in the business activity of, "Mortgage loan purchasing."

22. The Department responded to Isanthes by email on February 5, 2021, explaining that "debt buying" and "indirect consumer collection" activities in Connecticut require a consumer collection license pursuant to the Department's interpretation of Section 36a-801(a) while attaching the Memo. (DOB Exhibit 15 at 1; Transcript at 105).
23. Also on February 5, 2021, Isanthes submitted a license application to act as a consumer collection agency in Connecticut. (Transcript at 105).
24. As a follow up to the license application it submitted on February 5, 2021, Isanthes provided the Department with a "24 Months Connecticut Report" showing debtor accounts it had purchased during a twenty-four-month period prior to its application ("Isanthes Report"). (DOB Exhibits 12 and 19; Transcript at 54-58).
25. As a follow up to the license application it submitted on February 5, 2021, Lycaste also provided the Department a "24 Months Connecticut Report" showing debtor accounts it had purchased during a twenty-four-month period prior to its application ("Lycaste Report"). (DOB Exhibits 1 and 3; Transcript at 64-65 and 166-169).
26. As a follow up to the license application it submitted on January 28, 2021, Argolica also provided the Department with a "24 Months Connecticut Report" showing debtor accounts it had purchased during a twenty-four-month period prior to its application ("Argolica Report"). (DOB Exhibits 9 and 10).
27. As described further below, the Isanthes, Lycaste, and Argolica Reports provided to the Department each contain a detailed description of consumer collection activity, including ID numbers for each defaulted debtor account, debtor names, the date the defaulted debtor account was purchased, the debt amount at the time it was acquired, names of the third-party licensed consumer collection agencies, information regarding collection activities of the third-party licensed consumer collection agencies, details on related activity including foreclosure actions, and other information. (DOB Exhibits 3, 10, and 12; Transcript at 15).
28. Each of the Respondents' applications remain pending with deficiencies. (Notice at 4; DOB Exhibits 1, 4, 9, and 19).

D. Summary of Respondents' Consumer Collection Activities

Laelia

29. Laelia has not been licensed as a consumer collection agency in Connecticut since November 18, 2020 – the date it surrendered its license.

30. On May 7, 2021, the plaintiff in a pending Connecticut foreclosure action, *Atlanica v. Rossignol,* No: MMX-CV20-6029174-S, moved to substitute Laelia as the plaintiff, stating that, "[Laelia had by assignment] acquired the right to collect the debt due on the loan in foreclosure." (DOB Exhibit 21 at 3). The Superior Court granted the motion on May 24, 2021. (Respondents Exhibit 70). On September 23, 2021, the plaintiff (Laelia) moved for a judgment of strict foreclosure. (Respondents Exhibit 71).

31. Although Laelia acquired, by assignment, the right to collect the debt due on the mortgage loan already in foreclosure, there is no evidence in the record that Laelia engaged in any other direct or indirect consumer collection activity with respect to the debt.

Isanthes

32. The Isanthes Report shows that Isanthes purchased at least two delinquent or defaulted Connecticut consumer debts between March 29, 2019, through December 17, 2019, for which it retained licensed third-party collection agencies for indirect collection activities. (DOB Exhibit 12). In addition, the Isanthes Report shows that the third-party licensed consumer collection agencies made numerous collection attempts on the debts consisting of phone calls, letters, and email messages. (*Id*., Transcript at 56-57).

33. On November 18, 2019, Isanthes filed a mortgage foreclosure action, *Isanthes v. Johnson*, HHD-CV-19-6121116-S, in Connecticut Superior Court to directly collect on a mortgage loan debt of a Connecticut consumer that it had acquired by assignment on August 6, 2019, when the debt was already either delinquent or in default. (DOB Exhibit 17; Transcript at 57-59). Isanthes has acknowledged that it filed the foreclosure action. (Respondent's post hearing brief at 7; Respondents

Exhibits 9-12). The last payment of principal and interest received on the mortgage loan debt was made on September 1, 2018 – prior to the assignment to Isanthes. (DOB Exhibit 17 at 3, Respondent Exhibit 11).

Lycaste

34. The Lycaste Report shows that Lycaste purchased at least 8 delinquent or defaulted Connecticut consumer debts between November 1, 2019, and December 31, 2020, for which it retained licensed third-party collection agencies for indirect collection activities. (DOB Exhibit 3; Transcript at 65-67). In addition, the Lycaste Report shows that the third-party licensed consumer collection agencies made numerous collection attempts on the debts consisting of phone calls, letters, and email messages. (DOB Exhibit 3).

Argolica

35. The Argolica Report shows that Argolica purchased at least 8 delinquent or defaulted Connecticut consumer debts between November 1, 2019, through October 31, 2020, for which it retained licensed third-party collection agencies for indirect collection activities. (DOB Exhibit 10). In addition, the Argolica Report shows that the third-party licensed consumer collection agencies made numerous collection attempts on the debts consisting of phone calls, letters, and email messages. (*Id*., Transcript at 62-63).

IV. CONCLUSIONS OF LAW

A. Jurisdiction and Procedure

1. The Commissioner has jurisdiction over the licensing and regulation of consumer collection agencies pursuant to Part XII of Chapter 669, Sections 36a-800 to Section 36a-814, inclusive, of the Connecticut General Statutes and the regulations promulgated thereunder, Sections 36a-809-6 to Section 36a-809-17, inclusive of the Regulations.
2. The Commissioner, through the Notice, provided Respondents with an opportunity for a hearing in accordance with Section 36a-50(a) of the Connecticut General Statues.

3. The Notice issued by the Commissioner against Respondents comported with the requirements of Section 4-177(b) of Chapter 54 of the Connecticut General Statues.
4. Respondents appeared through an attorney at the September 26, 2023, hearing, and had an opportunity to present evidence, rebuttal evidence, and argument on all issues of fact and law to be considered by the Commissioner. Respondents and the Department both submitted post-hearing briefs along with reply briefs.
5. The Commissioner's broad regulatory authority includes the power to impose civil penalties pursuant to Sections 36a-50(a) and Section 36a-804(b) and of the Connecticut General Statues, and to issue orders to cease and desist pursuant to Sections 36a-52(a), Section 36a-52(b), and Section 36a-804(b) of the Connecticut General Statues.

B. Evidentiary Standard

The applicable standard of review in an appeal from the decision of an administrative agency is governed by the UAPA, General Statutes Section 4-166 et seq. and the scope of that review is very restricted. (New *Haven v. Freedom of Info. Comm'n*, 205 Conn. 767, 773, 535 A.2d 1297 (1988)).

> The substantial evidence rule governs judicial review of administrative fact-finding under the UAPA. An administrative finding is supported by substantial evidence if the record affords a substantial basis of fact from which the fact in issue can be reasonably inferred. The substantial evidence rule imposes an important limitation on the power of the courts to overturn a decision of an administrative agency . . . .

(*Dolgner v. Alander,* 237 Conn. 272, 281, 676 A.2d 865 (1996)). (Citations omitted; internal quotation marks omitted.) *See* General Statutes § 4-183 (j) (5) and (6).

The applicable standard of proof in Connecticut administrative cases, including those involving fraud and severe sanctions, is the preponderance of the evidence standard.
(Goldstar Med. Servs. v. Dep't of Soc. Servs., 288 Conn. 790, 819, 955 A.2d 15 (2008)). The Department in this matter bears the ultimate burden of proving the elements of the offense by a preponderance of the evidence in support of the Commissioner's findings.
See Bialowas v. Comm'r of Motor Vehicles, 44 Conn. App. 702, 692 A.2d 834 (1997).

C. Legal Standards

The rules for interpreting the meaning and application of statutory provisions are well established in Connecticut:

> [O]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature . . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply . . . . In seeking to determine that meaning, General Statutes §1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered . . . . When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter . . . .

(*Vincent v. City of New Haven*, 285 Conn. 778, 784-85, 941 A.2d 932 (2008)).

Intended to protect consumers, "[R]emedial statutes should be construed liberally in favor of those whom the law is intended to protect." (*Solomon v. Gilmore*, 248 Conn. 769, 774-75, 731 A.2d 280 (1999) (quoting *Dysart Corp. v. Seaboard Sur. Co*., 240 Conn. 10, 18, 688 A.2d 306 (1997) and describing statutes governing secondary mortgages as remedial)).

D. Debt Buying and Indirect Collection Activity: Isanthes, Lycaste, and Argolica

1. Legal Analysis

In summary, Isanthes, Lycaste, and Argolica are each alleged to have violated Section 36a-801(a) when acting as a consumer collection agency within this state without having obtained a consumer collection agency license by engaging in the business of "debt buying" and then indirectly collecting on acquired consumer debt through third-party licensed consumer collection agencies. Each of these Respondents is alleged to have acquired such consumer debt from another person at the time the debt was either delinquent or in default.

As discussed above, the 2017 and 2018 amendments significantly expanded the range of collection activity requiring a consumer collection agency license in Connecticut. Specifically, after effective dates of those amendments, acting as a "consumer collection agency" includes (1) "debt buying"

(defined by Section 36a-800(7) to mean, "collecting or receiving payment on any account, bill or other indebtedness from a consumer debtor for such person's own account if the indebtedness was acquired from another person and if the indebtedness was either delinquent or in default at the time it was acquired.") and (2) collecting from a consumer debtor "directly or indirectly."

a. Meaning of "Indirectly"

The term "indirectly" is not defined in Section 36a-800. In the absence of a statutory definition, "[W]ords and phrases shall be construed according to the commonly approved usage of the language; and technical words or phrases, and such as have acquired a peculiar and appropriate meaning in the law, shall be construed and understood accordingly." (General Statutes Section 1-1(a)). The adjective "indirect" is defined by *Merriam-Webster Dictionary* as, "deviating from a direct line or course." (*Merriam Webster Dictionary* online: https://www.merriam-webster.com/dictionary/indirect). Moreover, "indirect" is defined as, "not direct in relation or connection . . . [c]ircuitous, not . . . by plainest course or method . . . ." (*Black's Law Dictionary*, 773 (6th ed. 1990)).

In construing similar statutory language when determining whether persons have acted as a consumer collection agency, courts in other jurisdictions have held that a person who purchases debts in default and then retains a third party to collect on those debts is engaged in "indirect" collection activity. In *Ademiluyi v. PennyMac Mortg. Inv. Tr. Holdings I,* 929 F. Supp 2d 502 (D. Md. 2013), the court construed language in Maryland Collection Agency Licensing Act ("MCALA") similar to the Connecticut statutory provisions relevant to this matter and held that the plaintiff debtors adequately alleged that the defendant had acted as collection agency when it purchased debt and retained third parties to service debt.[8] Similarly, in *LVNV Funding* v. *Finch*, 463 Md. 586, 604-605, 207 A.3d 202 (2019), the

[8] "The MCALA requires that 'a person [ ] have a license whenever the person does business as a collection agency in the State'. B.R. § 7-301(a). 'Collection agency' includes, in relevant part, a 'debt purchaser,' who is 'a person who engages directly or indirectly in the business of . . . collecting a consumer claim the person owns, if the claim was in default when the person acquired it.' Id. § 7-101(c)(1) (the 'debt purchaser provision')." (*Id*. at 519).

Maryland Court of Appeals concluded that an entity had acted as a consumer collection agency and had engaged "indirectly" in consumer debt collection when it retained a third-party licensed consumer collection agency to collect on consumer debt that was in default when the entity acquired it. Accordingly, the court held that the entity had violated the MCALA by engaging in indirect consumer debt collection without the required license. (*Id.)*

Applying Connecticut's well-established principles of statutory construction, acting as a consumer collection agency in an "indirect" manner, as that term is used in Section 36a-801(a), clearly includes instances when a person retains a third-party licensed consumer collection agency to collect on consumer debt that was delinquent or in default when the person acquired it.

b. Claimed Lack of "Notice" Regarding the 2017 and 2018 Legislative Amendments

Isanthes, Lycaste, and Argolica seem to argue[9] that they cannot have violated Section 36a-801(a) because the Department did not (1) timely send the "Indirect Consumer Collection Activities" Memo discussing the effect of the 2017 and 2018 amendments to each of them directly or (2) sufficiently alert them of "possible" or "potential" violations regarding unlicensed consumer collection activity prior to issuing the Notice on February 28, 2023 that initiated this administrative enforcement action. (Respondents post-hearing brief (*passim*), Transcript Part 2 at 10).

As discussed above, however, the 2017 and 2018 amendments were enacted into law by the Connecticut General Assembly and Governor through a well-established transparent and public process. And, at all relevant times the Department has made the entirety of the Banking Law, including Sections 36a-800(7) and Section 36a-801(a), available to the public on its website. In addition, the Department posted the Memo on its website when it was issued on August 26, 2020. Everyone, including persons engaged in highly regulated business activities, are presumed to know the law:

> To permit a [person subject to a law] to avoid the consequences of his [acts] by asserting his ignorance of the law would open the door wide to evasions of the law. The familiar

[9] The Respondents' counsel argued during his closing statement that, "[T]here is no evidence that these entities violated the Connecticut statutes *for which they were provided any notice of any issue* before the Department [initiated] this action for a cease and desist and a financial penalty." (emphasis added). (Transcript Part 2 at 10).

> legal maxims, that everyone is presumed to know the law, and that ignorance of the law excuses no one, are founded upon public policy and in necessity, and the idea back of them is that one's acts must be considered as having been done with knowledge of the law, for otherwise its evasion would be facilitated and the courts burdened with collateral inquiries into the content of men's minds . . . . This rule of public policy has been repeatedly applied by this court.

(Atlas Realty Corp. v. House, 123 Conn. 94, 101, 192 A. 564 (1937). *See also, Provident Bank v. Lewitt*, 84 Conn. App. 204, 209-210, 852 A.2d 852 (2004) (citing *Atlas Realty Corp.*)).

Moreover, the duration of the Department's no-action position (and the decision to issue the Memo and provide the regulatory guidance) was within the discretion of the Department and authorized by Section 36a-1-8 of the Regulations of Connecticut State Agencies. Although these Respondents may have preferred a longer no-action period and may have appreciated some special alert regarding their unlicensed consumer collection activity in advance of the no-action deadline, they were not entitled to either. Rather, these Respondents received all the notice to which they were entitled pursuant to the UAPA, Section 4-177(b) of the General Statutes when the Commissioner issued the Notice on February 28, 2023.

Alternatively, these Respondents had constructive notice of the 2017 and 2018 amendments, the regulatory guidance within the Memo, and the no-action position. "Constructive notice" is defined by Black's Law Dictionary as, "such notice as is implied or imputed by law, usually on the basis that the information is part of a public record or . . . which the law regards as sufficient to give notice and is regarded as a substitute for actual notice." (*Black's Law Dictionary*, 314 (6th ed. 1990)). Isanthes, Lycaste, and Argolica are entities that share the same business address, same common indirect owner trustee, *and the same authorized representative and control person* as Laelia – to which the Department directly sent the Memo on August 26, 2020. These factual findings, along with those regarding the Department's public posting of the statutory provisions and the Memo, demonstrate that Isanthes, Lycaste, and Argolica had constructive notice of each regulatory development.

2. Violations: Debt Buying and Indirect Collection Activity

Isanthes violated Section 36a-801(a) when it acted as a consumer collection agency without having obtained a consumer collection agency license by engaging in the business of buying Connecticut consumer debts when they were delinquent or in default and then indirectly collecting on such debts through third-party licensed consumer collection agencies. As described more fully in the Factual Findings section above, there is evidence in the record to support two [2] such violations.

Lycaste violated Section 36a-801(a) when it acted as a consumer collection agency without having obtained a consumer collection agency license by engaging in the business of buying Connecticut consumer debts when they were delinquent or in default and then indirectly collecting on such debts through third-party licensed consumer collection agencies. As described more fully in the Factual Findings section above, there is evidence in the record to support eight [8] such violations.

Argolica violated Section 36a-801(a) when it acted as a consumer collection agency without having obtained a consumer collection agency license by engaging in the business of buying Connecticut consumer debts when they were delinquent or in default and then indirectly collecting on such debts through third-party licensed consumer collection agencies. As described more fully in the Factual Findings section above, there is evidence in the record to support eight [8] such violations.[10]

E. Debt Buying and Mortgage Foreclosure Actions: Laelia and Isanthes

1. Legal Analysis

In summary, Laelia and Isanthes are each alleged to have acted as an unlicensed consumer collection agency within this state in violation of Section 36a-801(a) by engaging in the business of "debt buying" and then initiating (or becoming a plaintiff in) a mortgage foreclosure action in Connecticut

[10] The evidence in the record also shows that Isanthes, Lycaste, and Argolica were each a consumer collection agency "acting within this state." Pursuant to Section 36a-801(a), "[a] consumer collection agency is acting within this state if it . . . (2) has its place of business located outside this state and . . . (B) collects from consumer debtors . . . who reside within this state for such consumer collection agency's own account . . . ."

Superior Court to collect on consumer mortgage loan debt. These Respondents are alleged to have acquired such debt from another person at the time the debt was either delinquent or in default.[11]

Laelia and Isanthes have admitted they are engaged in the business of "passive" debt buying. (DOB Exhibit 4 and 19 at 1). They have also admitted that each was a plaintiff in the mortgage foreclosure actions described above. (Respondents post-hearing brief at 7 and 13, Respondents Exhibit 69 at 1, 15). The evidence in the record shows that each acquired the mortgage loan debts from another person when such debts were in default. (DOB Exhibits 17 at 3 and 21; Transcript at 57-60). Laelia and Isanthes argue, however, that these activities did not require them to be licensed as a consumer collection agency because they fall outside the definition of, "Consumer collection agency" set forth in Section 36a-800(3).

Notably, Laelia and Isanthes rely on Connecticut Superior Court cases *that predate* several significant legislative changes to the statutes governing consumer collection agencies. For example, these Respondents rely on *Flagstar Bank, FSB* v. *Rodrigues*, No. TTDCV106001272S, 2012 Conn. Super. LEXIS 1596 (Super. June 20, 2012) which held that – *based on the definition of "consumer collection agency" in effect at the time* – the holder of the mortgage loan debt and plaintiff in the foreclosure action was not acting as a consumer collection agency subject to the licensing requirements of Section 36a-801. As the court set forth, at that time, "General Statutes §36a-800 define[d] 'consumer collection agency' as follows: '[A]ny person engaged in the business of collecting or receiving for payment for others of any account, bill or other indebtedness from a consumer debtor . . . .'" (*Id.* at 12-13).

Like the other cases relied upon by Laelia and Isanthes, *Flagstar Bank* predated

[11] To the extent the Department made similar allegations with respect to Lycaste and Argolica, there is insufficient evidence in the record to conclude that either violated Section 36a-801(a) by engaging in the business of "debt buying" and then seeking to collect on any consumer mortgage loan debt as a plaintiff in a mortgage foreclosure action.

Public Act 13-253, which amended the definition of "consumer collection agency" in Section 36a-800 to *also include,* "any person . . . engaged directly or indirectly in the business of collecting any account, bill or other indebtedness from a consumer debtor for such person's own account if the indebtedness was acquired from another person and if the indebtedness was either delinquent or in default at the time it was acquired . . . ." Similarly, the cases relied upon by these Respondents predated Public Act 18-173, also described herein as the 2018 amendments, which substituted "debt buying" for the above-quoted language added by Public Act 13-253. As discussed above, the 2018 amendments also defined "debt buying" to mean, "collecting or receiving payment on any account, bill or other indebtedness from a consumer debtor for such person's own account if the indebtedness was acquired from another person and if the indebtedness was either delinquent or in default at the time it was acquired." (Section 36a-800(7)). Accordingly, the Respondents' reliance on *Flagstar Bank* and the other cases is misguided.

Moreover, although there are numerous persons and entities which are expressly *excluded* from the definition of "consumer collection agency," notably absent from the exclusions are persons engaged in "debt buying" who file mortgage foreclosure actions to collect on consumer mortgage loan debt. *See* Section 36a-800(2). Connecticut courts recognize that, "[I]t is a well settled principle of statutory construction that the legislature knows how to convey its intent expressly . . . or to use broader or limiting terms when it chooses to do so." (internal quotation marks omitted). (*Stafford v. Roadway*, 312 Conn. 184, 194, 93 A.3d 1058 (2014) quoting *Town of Ledyard v. WMS Gaming*, 338 Conn. 687, 699, 258 A.3d 1268 (2021)).

Also instructive are court decisions addressing whether persons seeking to collect mortgage loan debt as plaintiffs in a foreclosure action are exempt from the federal Fair Debt Collection Practices Act ("FDCPA"). In *Ademiluyi v. PennyMac Mortg. Inv. Tr. Holdings I,* 929 F. Supp 2d 502, 523 (D. Md. 2013), the U.S. District Court for the District of Maryland analyzed whether PennyMac Holding, a "passive" debt buyer, was acting as a consumer collection agency under the Maryland Collection Agency Licensing Act ("MCALA"), "with respect to mortgage [loan] debt it seeks to collect, including through judicial foreclosure proceedings or other conduct pertinent to foreclosure." The court concluded

that when a debt buyer, "operates as a 'passive' purchaser of [mortgage loan] debts in default . . . " and then collects on such debts, "through a third party, such as an attorney" that such person must be licensed under the MCALA and if unlicensed, may also be found to have violated the FDCPA. (*Id.).*

In so concluding, the *Ademiluyi* decision also discussed the legislative history of the Maryland General Assembly's amendment expanding the scope of the MCALA's licensure requirements to include persons who collect consumer debts acquired when such debts were in default. (*Id.)* As the court explained, "[T]he amendment [was passed] to cover . . . 'maverick collectors' that had previously taken advantage of the loophole to engage in unlicensed activities." (*Id.)* Accordingly, the court held the following:

> The plain language of the MCALA [licensure requirement] is not ambiguous, and it embraces the conduct in which PennyMac Holdings allegedly engaged . . . . PennyMac Holdings 'does business as a collection agency,' both when it engages in mortgage foreclosure activity and when it retains third parties to service debt it purchases in default. Therefore, . . . it must comply with the MCALA's licensing requirement.

(*Id.* at 524). As already stated above, the MCALA contains language similar to the language used in the relevant Connecticut statutes.

In making the argument that as "note holders" they do not need to be licensed as consumer collection agencies pursuant to Section 36a-801(a), Laelia and Isanthes point to a "creditor exception" provision within the FDCPA[12] (15 USC 1692a(4)) which exempts certain creditors. Indeed, courts have recognized, as that term is defined by the FDCPA that, "[A] creditor collecting its own debt is not a debt collector." (*Saunders v. Stigers*, CV 960054472S, 1999 Conn. Super. LEXIS 2816, 2 (Super. Ct. Oct. 20, 1999). Accordingly, the courts concluded that, "The FDCPA does not apply to [persons] who have become creditors by way of assignment, *as long as the debt was not in default at the time it was assigned*." (Emphasis added). (*Id.* at 3). However, persons in the business of debt buying who *acquire a*

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[12] FDCPA is remedial in nature and should be liberally construed. "The [Consumer Credit protection] Act [of which the FDCPA is a part] is remedial in nature, designed to remedy what Congressional hearings revealed to be unscrupulous and predatory creditor practices throughout the nation. Since the statute is remedial in nature, its terms must be construed in liberal fashion if the underlying Congressional purpose is to be effectuated." *Cirkot v. Diversified Fin. Sys*. 839 F. Supp. 941, 944 (D. Conn. 1993).

mortgage loan debt by assignment when such debt was already in default are not exempt "creditors," but rather are "debt collectors" covered by the FDCPA. (*Id.* at 4).

Although Laelia and Isanthes argue that they are "creditors," they ignore the distinction that the courts have recognized, including in *Saunders* and *Ademiluyi*. Moreover, in making their "creditor" arguments, they rely heavily on court decisions that predate the significant legislative amendments to the relevant consumer collection agency statutes described above. In addition, court decisions relied upon by these Respondents are clearly distinguishable because when the mortgage loan debts at issue were acquired by the "creditors" such debts were not delinquent or in default. *See e.g., Flagstar Bank, FSB v. Rodrigues*, No. TTDCV106001272S, 2012 Conn. Super. LEXIS 1596, 1-2 (Super. June 20, 2012) (bank acquired mortgage loan debt prior to default). Furthermore, decisions relied upon by these Respondents are distinguishable because the "creditors" involved were the *original* creditors who had made the loans to the consumer debtors. *See e.g., Household Fin. Corp. III v. Leslie*, No. CV054001821, 2005 Conn. Super. LEXIS 2225, 4 (Super. Ct. Aug. 19, 2005) (creditor extended a line of credit and made advances pursuant to its credit agreement with consumer debtor).

Applying Connecticut's well-established principles of statutory construction, acting as a consumer collection agency clearly includes engaging in the business of "debt buying," acquiring mortgage loan debt when it was in default, and then seeking to collect on such debt as a plaintiff in a mortgage foreclosure action.

2. Violations: Debt Buying and Mortgage Foreclosure Actions

Laelia violated Section 36a-801(a) when it engaged in "debt buying" as defined by Section 36a-800(7) by acquiring one [1] Connecticut consumer mortgage loan debt via assignment when the debt was delinquent or in default and then collecting on the debt as a plaintiff in a mortgage foreclosure action in Connecticut Superior Court. As more fully described in the factual findings above, Laelia acquired the debt by assignment when it was already in default and was thereafter substituted as a party plaintiff in a pending mortgage foreclosure action.

Isanthes violated Section 36a-801(a) when it engaged in "debt buying" as defined by

Section 36a-800(7) by acquiring one [1] Connecticut consumer mortgage loan debt via assignment when the debt was delinquent or in default and then collecting on the debt as a plaintiff in a mortgage foreclosure action in Connecticut Superior Court. As more fully described in the factual findings above, Isanthes acquired the debt by assignment when the debt was already in default and thereafter, initiated a mortgage foreclosure action.[13]

[13] The evidence in the record also shows that Laelia and Isanthes were each a consumer collection agency "acting within this state." Pursuant to Section 36a-801(a), "[a] consumer collection agency is acting within this state if it . . . (2) has its place of business located outside this state and . . . (B) collects from consumer debtors . . . who reside within this state for such consumer collection agency's own account . . . ."

V. ORDER

Having read the record, I hereby find sufficient evidence to recommend to the Commissioner that the Commissioner **ORDER**, pursuant to Sections 36a-17, 36a-50, 36a-52, and 36a-804(b) of the General Statutes of Connecticut, that:

1. Lycaste LLC, Argolica LLC, Laelia, LLC, and Isanthes, LLC ("Respondents") **CEASE AND DESIST** from violating Section 36a-801(a) of the Connecticut General Statutes.
2. A **CIVIL PENALTY** of Eighty-Thousand Dollars ($80,000) be imposed upon Lycaste, L.L.C.
3. A C**IVIL PENALTY** OF Eighty-Thousand Dollars ($80,000) be imposed upon Argolica, L.L.C.
4. A **CIVIL PENALTY** of Ten-Thousand Dolars ($10,000) be imposed upon Laelia, L.L.C.
5. A **CIVIL PENALTY** of Thirty-Thousand Dollars ($30,000) be imposed upon Isanthes, L.L.C.
6. This Order shall become effective when mailed.

Note: All payments to be remitted to the Department of Banking by electronic funds transfer, cashier's check, certified check or money order, made payable to "Treasurer, State of Connecticut," no later than thirty (30) days from the date this Order is mailed.

Dated at Hartford, Connecticut,
this 13th day of February 2024.

/s/
Jorge L. Perez
Banking Commissioner

CERTIFICATION

I hereby certify that on this 14th day of February 2024, the foregoing Findings of Fact, Conclusions of Law and Order was sent by certified mail, return receipt requested, to Lycaste, LLC, Argolica, LLC, Laelia, LLC, and Isanthes, LLC, Attention: Maria del Rocio Zulueta Dizon, Authorized Representative of Entity Manager, 2003 Western Avenue, Suite 340, Seattle, Washington, 98121, Certified Mail No. 9589 0710 5270 0567 2697 87; a hard copy of the Findings of Fact, Conclusions of Law and Order was hand delivered to Attorney Melissa M. Desmond, State of Connecticut, Department of Banking, Consumer Credit Division, 260 Constitution Plaza, Hartford, Connecticut; and an email attaching a copy of the Findings of Fact, Conclusions of Law and Order was sent to Attorney Michael T. McCormack, O'Sullivan McCormack Jensen & Bliss PC, on behalf of Respondents, at mmccormack@omjblaw.com.

__/s/_____

Sabrina N. Crispim
Paralegal