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Case No. 25-5887

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CATHERINE PALAZZO and PETER HACKINEN, *on their own behalf and on behalf of other similarly situated persons,*

Plaintiffs–Appellants,

v.

NATIONSTAR MORTGAGE LLC and FEDERAL HOME LOAN MORTGAGE ASSOCIATION,

Defendants–Appellees.

On Appeal from the United States District Court
for the Western District of Washington
Case No. 2:24-cv-00444-BJR
Hon. Barbara J. Rothstein

Brief of Amici Curiae National Association of Consumer Advocates, Protect Borrowers, National Fair Housing Alliance, Civil Justice, Inc., and Community Legal Services in Support of Plaintiffs-Appellants

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Disclosure Statements

Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), Amici state that no party's counsel authored this brief in whole or in part; no party or party's counsel contributed money that was intended to fund the preparation or submission of this brief; and no person other than Amici, their members, or their counsel contributed money that was intended to fund the preparation or submission of this brief.

Pursuant to Rules 26.1 and 29(a)(4)(A) of the Federal Rules of Appellate Procedure, Amici Curiae Protect Borrowers, National Fair Housing Alliance, Civil Justice, Inc., and Community Legal Services certify that they are nonprofit entities organized under Section 501(c)(3) of the Internal Revenue Code, that neither have any parent corporation, and that no publicly held company owns 10% or more of its stock (or are non-stock corporations).

Authority to File

Amici curiae file this brief with leave of Court under Federal Rule of Appellate Procedure 29(a)(3), as requested in the accompanying Motion for Leave to File.

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Interest of Amici Curiae

Through their advocacy and direct legal services, Amici work with consumers living paycheck to paycheck. From this vantage point, they have firsthand knowledge of the burdens that junk fees can impose on consumers. The Amici ask this court to construe the legal issues in this case with an eye toward the remedial purposes of federal consumer protection laws and the statute of frauds.

The National Association of Consumer Advocates (NACA) is a nonprofit association of more than 1,600 attorneys and consumer advocates committed to representing consumers' interests. NACA's members are private- and public-sector attorneys, legal services attorneys, law professors, and law students whose primary focus is the protection and representation of consumers. They have represented hundreds of thousands of consumers in small-damages actions and consumer class actions. As a national organization fully committed to promoting justice for consumers, with an emphasis on those of modest means or those who are otherwise especially vulnerable, NACA's members have long advocated for ensuring that consumers have a remedy and means of redress for injuries caused by unfair practices.

Protect Borrowers (a fiscally sponsored project of Shared Ascent Fund) was founded in 2018 by former officials of the Consumer Financial Protection Bureau. Protect Borrowers is a team of experts, lawyers, and advocates fighting to build an economy where debt doesn't limit opportunity. It investigates financial abuses, takes predatory companies to court, and pushes for policies to protect working people from debt traps. Through litigation and policy advocacy, Protect Borrowers has taken action against junk fees that exploit borrowers, and urged regulators to do the same, particularly where such fees target vulnerable consumers at moments of financial distress.

The National Fair Housing Alliance (NFHA), founded in 1988, is a consortium of more than 220 private, non-profit fair housing organizations, state and local civil rights agencies, and individuals throughout the United States. Headquartered in Washington, D.C., NFHA, works to provide fair, open, and equal access to housing for all through public education, advocacy, enforcement, counseling and referral, responsible AI, and community development programs and activities. Since NFHA's founding, its work has involved a special focus on mortgage lending and homeowners insurance.

NFHA and many of its members provide pre-purchase and foreclosure prevention counseling to homeowners. NFHA and its members have seen the devastation wrought by predatory lending, unfair and deceptive lending practices, and the resulting foreclosures, particularly in communities of color, which were targeted for predatory practices. NFHA has provided commentary to Congress and federal agencies on the Real Estate Settlement Procedures Act and the Truth in Lending Act, as well public education and trainings on RESPA and TILA following adoption of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Civil Justice, Inc. (CJ) is a non-profit, public interest organization founded in 1998 to increase the delivery of legal services to low and moderate-income Marylanders. Through its litigation efforts and other advocacy, CJ challenges predatory practices that threaten the stability of neighborhoods and prevent families from achieving economic success. CJ has represented hundreds of Maryland consumers individually and thousands in public interest litigation, who have been victimized by predatory practices in violation of the state and federal statutes designed to protect consumers, including homeowners.

Community Legal Services of Prince George's County, Inc., founded in 1985 and doing business as Community Legal Services ("CLS"), provides free legal services to low-income individuals and families in Prince George's, Anne Arundel, and Montgomery counties. CLS offers advice, counseling, limited-scope representation, and full representation in a range of civil matters. In Fiscal Year 2024, CLS provided civil legal assistance to 13,814 community members. All CLS clients have low incomes, and most are members of minority populations. CLS frequently represents tenants and homeowners who are harmed by the widespread use of "junk fees." These fees place unexpected and often unavoidable burdens on already limited budgets due to unequal bargaining power and a lack of alternative financing options. As a result, junk fees contribute to unaffordable rents and mortgages, leading to housing instability and, in some cases, homelessness. CLS relies on published judicial decisions in cases that interpret and enforce consumer protection laws. Without this body of case law, CLS's clients would face significant harm and be denied meaningful relief.

Summary of Argument

At its core, this case asks whether a mortgage servicer can extract unauthorized fees from captive borrowers while gaining an unfair competitive advantage over servicers who follow the law. Nationstar's payoff statement fees violate federal and state consumer protection laws. Moreover, any "agreements" purportedly authorizing this fee do not comply with the statute of frauds.

The district court erred in three fundamental ways that this Court should correct.

First, junk fees in mortgage servicing cause substantial, documented harm that disproportionately burdens minority and low-income communities. Borrowers are captive consumers who cannot shop for servicers, cannot switch when dissatisfied, and have no market power to discipline misconduct. Those who need payoff statements are often those refinancing to escape high-cost loans, selling due to financial distress, or facing time-sensitive transactions. These categories overlap significantly with communities that have historically been targeted for predatory lending. Permitting these fees would perpetuate systemic inequities in the housing market.

Second, the FDCPA is a remedial statute with a dual purpose: protecting consumers from abusive practices *and* ensuring that law-abiding debt collectors are not competitively disadvantaged. 15 U.S.C. § 1692(e). State consumer protection laws share these goals. *See* e.g., *Anderson v. Hammerman*, 326 A.3d 35, 60 (Md. 2024). By permitting Nationstar to charge a fee that no other major servicer does (5-ER-921-1017), the district court's ruling rewards bad actors and punishes businesses that play by the rules—creating exactly the "race to the bottom" that federal and state consumer protection laws were designed to prevent.

Third, Nationstar's claim that borrowers "agreed" to pay fees through website and phone disclosures violates the statute of frauds in states across the nation. Mortgage obligations are interests in real property that require written, signed agreements to modify. With nearly $1 trillion in servicing rights trading hands annually, allowing servicers to add fees through informal "agreements" would make it impossible to track what borrowers actually owe. Nationstar's "separate agreement" defense is untenable.

For these reasons, the Amici respectfully urge this Court to reverse

the district court's grant of summary judgment and dismissal of this action.

Argument

I. Junk Fees Cause Substantial Harm To Consumers And The Housing Market, With Disproportionate Impact On Vulnerable Communities

Nationstar frames this case as a simple matter of "freedom of contract." 7-ER-1443. But this framing ignores the broader context in which mortgage servicing fees operate: a market characterized by captive consumers, information asymmetries, and documented patterns of abuse that fall hardest on those least able to bear them. Courts interpreting consumer protection statutes must consider not only the text but also the remedial purposes those statutes serve. Federal and state prohibitions on unauthorized fee collection exist precisely to prevent the harms that Nationstar's fee practices cause.

A. *Junk Fees in Mortgage Servicing Cause Documented, Quantifiable Harm*

States have made clear that unauthorized fees in mortgage servicing represent a significant and growing problem. For example, in 2022, nearly two dozen states explained that convenience fees in the mortgage market are "particularly insidious." The states added, "unlike

most marketplaces, homeowners have no choice in their mortgage servicer."[1]

The scale of harm is substantial. The Consumer Financial Protection Bureau's ("CFPB") examination work resulted in $140 million refunded to consumers for unlawful junk fees between February and August 2023 alone.[2] These fees affect an enormous market: Residential mortgage servicers currently handle more than $13 trillion in mortgage balances.[3] Even though these fees appear small individually, they aggregate into large profits for servicers and large losses for borrowers.

The CFPB has documented specific categories of unlawful fees that mirror the payoff fee at issue here:

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[1] Letter from 23 Attorneys General to the CFPB, April 11, 2022 (available at https://ncdoj.gov/wp-content/uploads/2022/04/State-Attorneys-General-Multistate-Comment-Letter-to-CFPB_convenience-fees_4.11.22_final.pdf) (last accessed Dec. 30, 2025).

[2] CFPB, *Supervisory Highlights Junk Fees Update Special Edition*, Issue 31 Fall 2023 (Oct. 2023) (available at: https://files.consumerfinance.gov/f/documents/cfpb_supervisory_highlights_junk_fees-update-special-ed_2023-09.pdf) (last accessed Dec. 30, 2025).

[3] CFPB, *CFPB Takes Action to Stop Illegal Junk Fees in Mortgage Servicing* (April 24, 2024) (available at: https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-to-stop-illegal-junk-fees-in-mortgage-servicing/) (last accessed Dec. 30, 2025).

(i) Property inspection fees, charged even on occupied properties with recent borrower contact;

(ii) "Pay-to-pay" fees per payment for routine online or phone payments; and

(iii) Repossession service fees that far surpass the actual costs.[4]

The payoff statement fee at issue here fits squarely within this pattern: a fee with minimal cost to the servicer, often imposed at a moment when borrowers have no practical alternative, and collected through the mortgage servicing relationship rather than as a genuinely separate transaction.

B. *Borrowers Are Captive Consumers Who Cannot Discipline Servicer Misconduct Through Market Forces*

Nationstar's "freedom of contract" argument is based on the false premise that there is an open market in which borrowers can shop among servicers and reject unfavorable terms. This premise is false. No

[4] CFPB, *CFPB Uncovers Illegal Junk Fees on Bank Accounts, Mortgages, and Student and Auto Loans* (Mar. 03, 2023) (available at: https://www.consumerfinance.gov/about-us/newsroom/cfpb-uncovers-illegal-junk-fees-on-bank-accounts-mortgages-and-student-and-auto-loans/) (last accessed Dec. 30, 2025).

borrower picks their servicer as Nationstar concedes. 3-ER-427.

Servicing transfers are common and accelerating. The market for buying and selling these servicing rights has approached $1 trillion in annual trading volume for four consecutive years.[5] This means millions of borrowers see their loans transferred to new servicers each year—servicers they never chose and cannot fire.

Compounding this instability, many servicers do not perform servicing functions themselves. Instead, they contract out the work to third-party "subservicers." As of Q4 2023, about half of all mortgages for which a nonbank held servicing rights had administrative duties handled by third-party subservicers, up sharply from approximately 25% in 2015.[6] This means a borrower's loan may change hands multiple times during the life of the mortgage (from originator to servicer to

[5] Numerix, *Mortgage Servicing Rights (MSRs): A Promising Opportunity Area for Investors?* (available at: https://www.numerix.com/resources/blog/mortgage-servicing-rights-msrs-promising-opportunity-area-investors) (last accessed Dec. 30, 2025).

[6] Financial Stability Oversight Council, *Report on Nonbank Mortgage Servicing 2024*, At 9 (available at: https://home.treasury.gov/system/files/261/FSOC-2024-Nonbank-Mortgage-Servicing-Report.pdf) (last accessed Dec. 30, 2025).

subservicer), with each transfer creating new opportunities for errors, fee disputes, and consumer harm. As the Treasury Department's 2024 FSOC Report concluded, "large servicing portfolios cannot be transferred quickly because the transfer process is inherently lengthy and complicated."[7] Borrowers are stuck with whoever holds their loan and whatever junk fees the servicer decides to impose.

In this environment, borrowers are truly captive consumers. The borrower has no exit option. The borrower did not choose the servicer. She cannot fire the servicer. She must continue dealing with the servicer until the loan ends or someone else takes over. With this backdrop, the federal and state prohibitions on unauthorized fee collection serve an essential market-correcting function.

C. *Junk Fees Impose Disproportionate Burdens on Minority and Low-Income Borrowers*

The harms from mortgage servicing fees do not fall evenly across the population. A substantial body of research documents that minority and low-income borrowers face systematically higher costs in mortgage markets. Mortgage servicing abuses compound these existing disparities.

[7] *Id*. At 4.

Minority borrowers pay more for mortgages at every stage of the transaction**.** A UC Berkeley study analyzing millions of 30-year mortgages found that Black and Latino applicants were charged higher interest rates compared to white borrowers with similar credit profiles.[8] This disparity transferred $765 millions from minority homeowners to lenders between 2009-2015. A Penn State study found that when minorities seek mortgages from white mortgage agents, they pay approximately 8% more in fees than white borrowers.[9]

Minority borrowers are more likely to hold loans with problematic terms. Research from the Center for Responsible Lending documented that borrowers in high-minority communities face 35% greater odds of receiving prepayment penalties.[10]

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[8] Robert Bartlett, Adair Morse, Richard Stanton & Nancy Wallace, *Consumer-Lending Discrimination in the FinTech Era*, 122 J. Fin. Econ. 3 (2019), available at https://faculty.haas.berkeley.edu/morse/research/papers/discrim.pdf (last accessed Dec. 30, 2025).

[9] Brent W. Ambrose, James N. Conklin & Luis A. Lopez, *Does Borrower and Broker Race Affect the Cost of Mortgage Credit?*, 34 Rev. Fin. Stud. 790 (2021)

[10] Center for Responsible Lending, *Prepayment Penalties in Subprime Loans*, CRL Issue Brief No. 8 (June 2004, updated Mar. 2005), https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/ib008-PPP_in_Subprime_Loans-0604.pdf (last accessed

The subprime crisis devastated minority communities, creating a pipeline to problematic servicing. An estimated 17% of Latino homeowners and 11% of African-American homeowners lost their homes or were at imminent risk of foreclosure, compared with 7% of white homeowners.[11] These loans were disproportionately transferred to specialty servicers, including Nationstar, with documented higher rates of consumer complaints and fee disputes.[12]

These disparities mean that any practice extracting additional fees from mortgage borrowers will, as a statistical matter, disproportionately

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Dec. 30, 2025).

[11] Debbie Gruenstein Bocian, Wei Li & Keith S. Ernst, *Foreclosures by Race and Ethnicity: The Demographics of a Crisis*, Center for Responsible Lending (June 18, 2010) (available at https://sociologyinfocus.com/files/mortgage-lending/research-analysis/foreclosures-by-race-executive-summary.pdf) (last accessed Dec. 30, 2025).

[12] Federal Hous. Fin. Agency Off. of Inspector Gen., *FHFA Actions to Manage Enterprise Risks from Nonbank Servicers Specializing in Troubled Mortgages* 2, Audit Report No. AUD-2014-014 (July 1, 2014) (available at https://www.fhfaoig.gov/Content/Files/AUD-2014-014.pdf) (last accessed December 30, 2025); Am. Civil Liberties Union & MFY Legal Servs., Inc., *Here We Go Again: Communities of Color, the Foreclosure Crisis, and Loan Servicing Failures* at 5 (Feb. 2015), (available at: https://assets.aclu.org/live/uploads/document/aclumfy_mortgage_report.pdf) (last accessed December 30, 2025); Complaint, *Bureau of Consumer Fin. Prot. v. Nationstar Mortg. LLC*, No. 1:20-cv-03550, Dkt. No. 1 (D.D.C. Dec. 7, 2020).

burden minority and low-income communities. The FDCPA and state-law analogs' prohibitions on unauthorized fee collection thus serve fair-lending goals even when no intentional discrimination is present.

D. *Payoff Fees Target Borrowers at Their Most Vulnerable Moments*

Nationstar claims to presents expedited payoff statements as a "convenience" for borrowers who want faster information. But the circumstances in which borrowers need payoff statements reveal that these fees target consumers at moments of maximum vulnerability and minimum bargaining power.

Refinancing borrowers face time pressure and rate-lock deadlines. A borrower refinancing to escape a high-cost loan needs a payoff statement to close the new loan. Mortgage rate locks typically have a short expiration window. If the payoff statement is delayed, the borrower may lose the rate lock, pay extension fees, or accept a higher interest rate.

Home sellers face closing deadlines with significant financial consequences. A borrower selling their home cannot close without a valid payoff figure. If the closing is delayed, the seller may face penalties under the purchase contract, lose the sale entirely, or be forced to carry two

mortgages simultaneously. Practically, the borrower cannot wait for a free statement.

Likewise, distressed borrowers pursuing foreclosure alternatives need payoff information immediately. Borrowers pursuing short sales, loan modifications, or deeds-in-lieu of foreclosure all require current payoff information. These borrowers are, by definition, in financial distress. Charging them for information necessary to avoid foreclosure extracts fees from those least able to pay.

Borrowers facing time-sensitive transactions have no realistic alternative. In all these scenarios, the borrower's need for speed is not a preference, it is a constraint imposed by external deadlines. Nationstar's "offer" of expedited service for a fee is not a genuine choice but an exploitation of circumstances that leave the borrower no alternative.

II. The District Court's Holding Undermines the FDCPA's Dual Purpose of Protecting Consumers from Unfair Debt Collection Practices and Protecting Law-Abiding Businesses From Unfair Competition

A. *Section 1692f(1) Prohibits Collecting Fees Outside the Mortgage Agreement or Not Otherwise Permitted by Law*

Section 1692f(1) provides that a debt collector may not use "unfair or unconscionable means" to collect a debt, including "[t]he collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law." 15 U.S.C. § 1692f(1).

This provision establishes only two bases for charging fees: (1) express authorization in the agreement creating the debt, or (2) permission by law. Nationstar's payoff statement fee satisfies neither requirement.

Here, the "agreement creating the debt" is the mortgage contract. The mortgage contract does not authorize the fee at issue in this case. And Nationstar does not dispute this. Instead, it argues that the fee is "permitted by law" because no statute specifically prohibits it. But "permitted by law" requires *affirmative authorization*, not mere absence

of prohibition. Two other circuits that have interpreted this provision related to fees added by mortgage services agree. See *Glover v. Ocwen Loan Servicing, LLC*, 127 F.4th 1278, 1292 (11th Cir. 2025); *Alexander v. Carrington Mortg. Servs., LLC*, 23 F.4th 370, 377 (4th Cir. 2022).

B. *Courts must interpret the FDCPA in light of its broad remedial purpose*

In interpreting any statute, courts must consider its purpose and context. As the Supreme Court has instructed, statutory interpretation requires examining "the whole statutory text, [and] considering the purpose and context of the statute." *Kasten v. Saint-Gobain Performance Plastics Corp.*, 563 U.S. 1, 7 (2011). A statute's words are "dead weights unless animated by the purpose of the statute." *Favish v. Office of Indep. Counsel*, 217 F.3d 1168, 1171 (9th Cir. 2000).

This Court has recognized that the FDCPA is a "broad remedial statute." *Gonzales v. Arrow Fin. Servs., LLC*, 660 F.3d 1055, 1060 (9th Cir. 2011). As such, it must be construed liberally to effectuate its protective purposes. The district court's cramped interpretation of § 1692f(1) violates this fundamental canon of construction.

C. *The FDCPA Has a Dual Purpose: Protecting Consumers and Businesses That Obey the Law*

Congress articulated two interconnected purposes when enacting the FDCPA. The statute is designed "to eliminate abusive debt collection practices by debt collectors" and "to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged." 15 U.S.C. § 1692(e). The second purpose is critical here. As the Seventh Circuit has explained, the FDCPA is designed to avoid a "'race to the bottom' [by] driving more conservative collectors out of business." *Oliva v. Blatt, Hasenmiller, Leibsker & Moore, LLC*, 864 F.3d 492, 499 (7th Cir. 2017) (en banc) (quoting *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich, L.P.A.*, 559 U.S. 573, 602 (2010)).

State laws incorporating the FDCPA serve the same dual function. In *Anderson*, the Maryland Appellate Court warned that immunizing debt collectors from liability would "prevent consumers from challenging 'unfair or deceptive conduct.'" The court explained that this would result in "'unfair profits for' debt collectors who circumvent the proscriptions" of state consumer protection laws, granting them "competitive advantages over 'honest businesses.'" 326 A.3d at 60.

Courts across the country have reached similar conclusions. The Supreme Court of Pennsylvania, for example, explained that narrowing the application of its consumer protection statute would mean that "honest businesses could be placed at a competitive *disadvantage* competing against a business that generates revenue from unlawful acts that violate the statute." *Danganan v. Guardian Prot. Servs.*, 179 A.3d 9, 13 (Pa. 2018) (emphasis in original); *see also Karlin v. IVF America, Inc.*, 712 N.E.2d 662, 663 (N.Y. 1999); *Ai v. Frank Huff Agency, Ltd.*, 607 P.2d 1304, 1311 (Haw. 1980). *Gov't of Guam v. Kim*, 2015 Guam 15, 62 (Guam 2015).

The district court's interpretation undermines both purposes. By permitting servicers to charge fees not authorized by the mortgage contract or law, the ruling approves the very "unfair" practices Congress and state legislators sought to eliminate. Md. Code Ann., Com. Law § 14-202(11); Wash. Rev. Code 19.16.250(21). And by allowing Nationstar to profit from fees that honest competitors refuse to charge, the ruling creates the competitive distortion these statutes were specifically designed to prevent. If this Court does not reverse, debt collectors who decline to impose unauthorized junk fees will find themselves at a

competitive disadvantage simply for choosing to comply with the law.

III. The District Court's Holding Undermines the Statute of Frauds, which Requires a Signed Writing to Modify Mortgage Obligations

Nationstar claims that borrowers "agreed" to pay expedited delivery fees through website checkboxes, automated phone systems, and verbal disclosures. This argument fails because modifications to mortgage obligations must satisfy the statute of frauds, and Nationstar's purported "agreements" do not.

A. *Adding Fees to a Mortgage Debt Constitutes a Modification Subject to the Statute of Frauds*

Nationstar attempts to characterize its fee collection as a "separate agreement" outside the mortgage contract. But Nationstar's own evidence reveals that these fees are collected *through the mortgage*, not separately. The fee is "assessed to your account and appear[s] on your billing statement as an additional amount to be paid with your regular payment." 8-ER-1621. Plaintiff Palazzo's fee was collected "as part of his monthly mortgage payment." 7-ER-1442. The fee appears on the borrower's mortgage transaction history and is enforced through the mortgage servicing relationship. *Id*.

When a purported agreement increases the amounts a borrower must pay to satisfy their mortgage obligation, it constitutes a modification of the mortgage debt. State law generally requires that contracts involving interests in real property be in writing and signed by the party to be charged. *See, e.g.*, *Regions Bank v. Fletcher*, 67 F.4th 797, 803 (6th Cir. 2023) (finding mortgage modifications must be in writing to satisfy the statute of frauds in Tennessee); *Am. First Fed., Inc. v. Trugon Props., Inc.*, 419 So. 3d 78 (Fla. Dist. Ct. App. 2025) (same under Florida law); *Laney v. Carolco Serv.*, 531 P.3d 1228 (Kan. Ct. App. 2023) (same under Kansas law); *Woodall v. Citizens Banking Co.*, 507 N.E.2d 999, 1000 (Ind. Ct. App. 1987) (same under Indiana law); *D Stadtler Tr. 2015 Tr. v. Gorrie*, No. CV-22-00314-PHX-DWL, 2024 U.S. Dist. LEXIS 154350, at *29 (D. Ariz. Aug. 27, 2024) (citing *Best v. Edwards*, 176 P.3d 695, 698 (Ariz. Ct. App. 2008)) (same under Arizona law).

This principle applies with equal force to agreements that purport to *add* obligations to an existing mortgage. As the Arizona Court of Appeals explained in *Best v. Edwards*, "[T]he statute of frauds applied to a material modification of an agreement that was required to be in writing." 176 P.3d at 698. The court collected cases from California,

Texas, Maryland, Kentucky, and Pennsylvania, all reaching the same conclusion. *Id.* at 698-99.

Indeed, in a case involving similar mortgage servicing junk fees, Attorneys General from thirty-two states and the District of Columbia argued that purported oral or clickwrap "agreements" to modify mortgage obligations violate the statute of frauds "in most states and territories in the Union." Brief of Amici Curiae Attorneys General at 11-14, *Morris v. PHH Mortg. Corp.*, No. 20-cv-60633 (S.D. Fla. Jan. 29, 2021), ECF Doc. 118-2 (available at 2021 WL 386524).

Converting a free service into a paid one is a material modification of the parties' obligations. The question is not whether the fee represents a meaningful percentage of a six-figure mortgage balance; the question is whether the change alters what the borrower must pay to satisfy the debt. It plainly does. This is especially true for the borrowers most likely to need expedited payoff statements: those refinancing out of predatory loans, selling under deadline pressure, or stretching to cover closing costs. For these borrowers, every dollar matters. A fee extracted at a moment of financial stress is anything but immaterial.

B. *Nationstar's Disclosures Do Not Satisfy the Statute of Frauds Because They Aren't in Writing*

Nationstar identifies three methods by which it claims borrowers "agreed" to pay expedited fees: (1) checking a box on a website; (2) proceeding through an automated IVR phone system; or (3) verbal consent to a customer service representative. 8-ER-1442-1444. None of these methods produces a writing signed by the borrower.

Website Checkbox: Nationstar's website requires borrowers to check a box stating they "understand that an expedited delivery fee and/or preparation fee may apply." 8-ER-1621. But understanding that a fee "may apply" is not the same as agreeing to pay it.

IVR System: Nationstar's automated phone system provides a verbal disclosure and requires the borrower to "consent to the fee before the system will authorize expedited delivery." 8-ER-1444. But verbal consent is not a written agreement signed by the borrower. The statute of frauds exists precisely to prevent disputes over the terms of oral agreements regarding real property interests.

Phone Scripts: For calls with live agents, Nationstar's representatives read from scripts that disclose the fee. 8-ER-1443 Again,

this produces no written agreement and no signature from the borrower.

C. *The Purported Agreement Does Not Reference the Mortgage and Therefore Cannot Modify It*

Even if Nationstar could produce a written, signed agreement, that agreement would still fail to satisfy the statute of frauds because it does not reference the original mortgage documents. In *D Stadtler Trust v. Gorrie*, the court rejected an alleged oral modification precisely because there was "nothing in the record suggesting that the parties ever discussed" the loan documents, "let alone agreed to modify them." 2024 U.S. Dist. LEXIS 154350, at *31.

The same defect is fatal here. Nationstar's website disclosure, IVR script, and phone scripts make no reference whatsoever to the borrower's Note, Deed of Trust, or any other loan document. The disclosures do not reference any provision of the mortgage agreement or purport to amend any existing contract term. Under established statute of frauds principles, such an "agreement" cannot modify the obligations under the mortgage.

D. *The Statute of Frauds Bars Nationstar's Collection of Fees Added Without Written Agreement*

Because Nationstar's purported "separate agreements" fail to satisfy the statute of frauds, Nationstar had no legal right to collect the expedited delivery fees as part of Plaintiffs' mortgage obligations. The fees were not "expressly authorized by the agreement creating the debt" because no valid written modification exists. 15 U.S.C. § 1692f(1). Nor are the fees "permitted by law" because the statute of frauds prohibits the enforcement of oral modifications to mortgage obligations.

The statute of frauds protects consumers from exactly what Nationstar has done here: adding fees to a mortgage debt based only on a website checkbox or verbal exchange, then collecting those fees through the mortgage servicing system as if they were part of the original written agreement.

E. *Accepting Nationstar's "Separate Agreement" Theory Would Open the Door to Unlimited Fee Extraction*

If Nationstar's theory prevails, the consequences extend far beyond payoff statement fees. Under this reasoning, any mortgage servicer could use website checkboxes or phone disclosures to add fees to a borrower's mortgage obligations. Nothing would prevent services from increasing those fees from $25 to $250, or more. Servicers could also begin charging for:

(i) answering borrower questions about their accounts;

(ii) providing annual escrow statements;

(iii) communicating with the borrower; and

(iv) maintaining the borrower's account records.

After all, none of these services is explicitly required to be provided free under the mortgage documents. If a website disclosure and checkbox can create a binding "separate agreement" for a payoff statement fee, the same mechanism could authorize any fee a servicer wishes to impose.

This result would eviscerate the letter and purpose of the FDCPA's prohibition on collecting amounts not "expressly authorized by the agreement creating the debt or permitted by law." 15 U.S.C. § 1692f(1).

State debt collection statutes containing identical or analogous language would suffer the same fate. *See, e.g.*, Md. Code Ann., Com. Law § 14-202(11); RCW 19.16.250(21). Under Nationstar's theory, every unauthorized fee becomes authorized the moment a servicer posts a disclosure. If this were true, the statutory protections would be rendered illusory.

The Court should reject this approach and hold that fees collected through the mortgage servicing relationship, appearing on mortgage billing statements, and enforced through mortgage collection mechanisms, must satisfy both the FDCPA's requirements and the statute of frauds.

Conclusion

The question before this Court is whether mortgage servicers can circumvent federal and state consumer protection laws through website checkboxes and phone disclosures, extracting fees from captive borrowers at moments of maximum vulnerability. For the integrity of the statutes, for the protection of honest competitors, and for the millions of borrowers held captive by a servicer they never chose, the answer must be no.

For the reasons above, this Court should reverse the district court's grant of summary judgment.

Date: January 6, 2026

Respectfully submitted,

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Form 8. Certificate of Compliance For Briefs

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I certify that this brief *(select only one)*:

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Signature: */s/ Angel E. Reyes* **Date: January 6, 2026**

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/s/ Angel E. Reyes
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