Nos. 15-2044, 15-2082 and 15-2109

==========

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

ALPHONSE D. OWENS,
Plaintiff-Appellant

v.

LVNV Funding, LLC
Defendant-Appellee,

Appeal from United States District Court for the Southern District of Indiana
No. 1:14-cv-02083-JMS-TAB, Hon. Jane E. Magnus-Stinson, District Judge

---

TIA ROBINSON, individually and on behalf of all others similarly situated
Plaintiff-Appellant,

v.

ECAST SETTLEMENT CORPORATION, A DELAWARE CORPORATION, ET AL.,
Defendants-Appellees,

Appeal from United States District Court for the Northern District of Illinois
No. 1:14-cv-08277, Hon. Manish S. Shah, District Judge

JOSHUA BIRTCHMAN,
Plaintiff-Appellant

v.

LVNV FUNDING, LLC, ET AL.,
Defendants-Appellees,

No. 1:14-cv-00713-JMS-TAB, Hon. Jane E. Magnus-Stinson, District Judge

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BRIEF OF *AMICUS CURIAE* NATIONAL CREDITORS BAR ASSOCIATION IN SUPPORT OF DEFENDANTS-APPELLEES AND AFFIRMING THE COURT BELOW IN ALL THREE CASES

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CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 15-2044

Short Caption: Owens v. LVNV Funding LLC (consolidated with 15-2082 and 15-2109)

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.

[ ] PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

We represent the non-party amicus, National Creditors Bar Association

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Maurice Wutscher, LLP and the following attorneys of that law firm: Donald S. Maurice, Jr., Thomas R. Dominczyk, Shannon P. Miller, Daniel B. Nora and Andrew W. Williamson

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

None

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

None

Attorney's Signature: s/ *Donald S. Maurice, Jr.* Date: April 25, 2016

Attorney's Printed Name: Donald S. Maurice, Jr.

Please indicate if you are Counsel of Record for the above listed parties pursuant to Circuit Rule 3(d). Yes X No

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The National Creditors Bar Association respectfully submits this amicus curiae brief in support of Defendants-Appellees in all three cases involved in this appeal. The National Creditors Bar Association has obtained consent from all parties.

STATEMENT OF IDENTITY AND INTEREST IN CASE

The National Creditors Bar Association is a nationwide, not-for-profit trade association comprised of attorneys and law firms engaged in the practice of debt collection law.[1] National Creditors Bar Association members include more than 700 law firms located in all 50 states, all of whom must meet association standards designed to ensure experience and professionalism. National Creditors Bar Association member attorneys are subject to the various Codes of Professional Ethics adopted in the jurisdictions where they are licensed to practice law. The National Creditors Bar Association has adopted a Code of Professional Conduct and Ethics which imposes professional standards beyond the requirements of state codes of ethics and regulations that govern attorneys.

[1] Additional information concerning the National Creditors Bar Association is available at its website http://www.narca.org/ (last accessed March 5, 2016).

National Creditors Bar Association members are regularly retained by creditors to lawfully collect delinquent debts. In the exercise of their professional skills in the practice of debt collection law they are often subject to the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §§ 1692, *et. seq.* As the only national trade association dedicated solely to the needs of attorneys engaged in debt collection, the National Creditors Bar Association has a significant interest in ensuring that the FDCPA is interpreted in a manner consistent with its members' professional responsibilities to their clients, the courts, their adversaries and the general public.

The National Creditors Bar Association supports Defendants-Appellees' position in this matter and urges this Court to find that neither a debt buyer nor its attorney(s) can be held liable under the Fair Debt Collection Practices Act for filing a proof of claim in a bankruptcy matter for a debt that is determined to be time-barred. The National Creditors Bar Association makes this brief to alert the court that (1) neither the FDCPA nor statutes of limitations extinguish debt; and, (2) debtors are provided with ample protection through the proof of claims procedures in Bankruptcy Court, where

any objections to purportedly "time-barred" claims can be handled more efficiently than in a separate lawsuit in District Court.

STATEMENT PURSUANT TO FEDERAL RULES OF APPELLATE PROCEDURE 29(c)(5)

No party's counsel authored the within brief in whole or in part. No party and no party's counsel contributed money that was intended to fund preparing or submitting this brief. No person other than the *amicus curiae*, the National Creditors Bar Association, contributed money that was intended to fund preparing or submitting this brief.

/s/ Donald S. Maurice, Jr.
Donald S. Maurice, Jr.
Attorney for Amicus Curiae
National Creditors Bar Association

Dated: April 25, 2016

LEGAL ARGUMENT

I. Debts Subject to a Limitations Defense are Still a Claim.

The Bankruptcy Code provides an incredibly broad definition of "claim" which includes a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, legal, equitable, secured, or unsecured." 11 U.S.C. § 101(5)(A). The broad definition of "claim," is intentionally broad. 11 U.S.C. § 101(5) and 1978 Legislative History ("By this broadest possible definition…, the bill contemplates that *all legal obligations of the debtor, no matter how remote or contingent*, will be able to be dealt with in the bankruptcy case." H.R. Rep. No. 595, 95th Con., 1st Sess. 309 (1977), S. Rep. No. 989, 95th Cong., 2d Sess. 21-22 (1978), reprinted in 1978 U.S. Code Cong. & Adm. News, 5787 at 5807-08 and 6266 (emphasis added).

A claim is still a claim even if it is subject to disallowance. *See Glenn v. Cavalry Invs. LLC (In re Glenn)*, 542 B.R. 833, 845 (Bankr. N.D. Ill. 2016); *In re Edge*, 60 B.R. at 699 (Bankr. M.D. Tenn. 1986). Indeed, the Seventh Circuit recently noted that it is not

automatically improper for a debt collector to seek repayment of time-barred debts so long as it does not employ an abusive or deceptive practice. *See McMahon v. LVNV Funding, LLC*, 744 F.3d 1010, 1020 (7th Cir. 2014).

In a Chapter 13 case, a claim which is not scheduled or listed by the debtor and for which no proof of claim is filed is not discharged. 11 U.S.C. §1328(a); *In re Trembath*, 205 B.R. 909, 914 (Bankr. N.D. Ill. 1997); *In re Hall-Walker*, 445 B.R. 873, 878 (Bankr. N.D. Ill. 2011)(citing and quoting *Trembath*). This sets the claim process apart from those who suggest that it is akin to a state-court lawsuit. The claims process is designed to discharge dischargeable debts and give debtors a fresh start. To do this it must capture all claims, regardless of whether the underlying debt can be asserted in a lawsuit. As we demonstrate below, these debts are still collectible. The debts remain subject to a state court's jurisdiction, the defense of an expired limitations period can be waived and the limitations period can be restarted. The bankruptcy code's purpose of providing debtors a fresh start is impaired if the FDCPA is construed to make it a *per se* violation simply by filing a proof of

claim for a debt subject to the defense of an expired limitations period.

A. Neither the FDCPA nor the Illinois or Indiana Statutes of Limitations Extinguish Debts.

The FDCPA does not somehow transform debts subject to an expired limitations period into something uncollectable. The FDCPA does not extinguish debts. *See Shimek v. Forbes*, 374 F.3d 1011, 1013 (11th Cir. 2004)(per curiam), citing *Bartlett v. Heibl*, 128 F.3d 497, 501 (7th Cir. 1997); *see also Vitullo v. Mancini*, 684 F. Supp. 2d 760, 765 (E.D. Va. 2010) (finding the FDCPA contained no provision to cancel or extinguish a debt). It only regulates conduct in collection of a debt.

Moreover, pursuant to both Illinois and Indiana law, statutes of limitations do not extinguish debts. Their statutes of limitations are not self-executing. *See LaPine Scientific Co. v. Lenckos*, 420 N.E.2d 655, 658, 95 Ill. App. 3d 955, 51 Ill. Dec. 241 (Ill. App. Ct. 1981); *Bennett v. Bennet*, 361 N.E.2d 193, 196, 172 Ind. App. 581, 587 (Ind. App. 1977). A statute of limitations defense must be asserted by a defendant or it is waived. *See Shipley v. Hoke*, 22 N.E.3d 469, 480 (Ill. App. Ct. 4th Dist. 2014); *Madison Area Educ.*

Special Servs. Unit v. Daniels by Daniels, 678 N.E.2d 427, 430, 1997 Ind. App. LEXIS 418, **7 (Ind. App. Ct. 1997) (affirming summary judgment where party failed to raise statute of limitations until after trial court ruled on a summary judgment motion).

The result is that the passing of the limitations period does not divest Illinois or Indiana courts of jurisdiction. A debt subject to an expired limitations period remains enforceable under law and within the trial court's subject matter jurisdiction. *See Shipley v. Hoke,* 22 N.E.3d at 480 citing *John Doe A. v. Diocese of Dallas*, 234 Ill. 2d 393, 413, 917 N.E.2d 475, 487, 334 Ill. Dec. 649 (2009) ("[T]he bar of a statute of limitations does not go to the court's jurisdiction to hear a case."); *see also Town Council of New Harmony v. Parker*, 726 N.E.2d 1217, 1223, n.8, 2000 Ind. LEXIS 300, *12, n. 8 (Ind. 2000) (noting lack of subject matter jurisdiction cannot be waived).

Here, the running of the limitations periods with respect to Plaintiff-Appellants' alleged debts did nothing more than provide an affirmative defense to a collection lawsuit. The state courts still had jurisdiction to hear the lawsuits and enter judgment. While the

FDCPA may prohibit a debt collector from seeking judgment, it does not bar access to the courts and neither do the limitations statutes.

B. "Time-barred" Debts Can Be Revived Under Illinois and Indiana Law.

Further, pursuant to Illinois and Indiana law, debts subject to an expired limitations period may be revived. *See Schmidt v. Desser,* 401 N.E.2d 1299, 1300-01 (Ill. App. Ct. 1980) (collecting cases); *Spencer v. McCune*, 126 N.E. 30, 31, 73 Ind. App. 484, 488 (Ind. App. Ct. 1920); *Barrett v. Sipp*, 98 N.E. 310, 50 Ind. App. 304 (Ind. App. Ct. 1912); *Weidenhammer v. McAdams*, 98 N.E. 883, 52 Ind. App. 98 (Ind. App. Ct. 1912); *see also McMahon*, 744 F.3d at 1015 (discussing the FTC's acknowledgment that debts may be revived). Thus the Illinois and Indiana statutes here, (like most state law limitations periods, are not absolute because a new promise to pay can restart the limitations period. *See, e.g., Schmidt,* 401 N.E.2d at 1300-01; *Spencer*, 126, N.E. at 31, 73 Ind. App. at 488; *Barrett,* 98 N.E. at 315, 50 Ind. App. at 314.

Likewise, in certain instances, Illinois and Indiana law also permit causes of action subject to expired limitations periods to be asserted as counterclaims or set-offs. *See Barragan v. Casco Design*

Corp., 837 N.E.2d 16, 24 (Ill. 2005) (Noting that 735 ILCS 5/13-207 is a "'saving' provision that allows a counterclaim to proceed despite the failure to comply with the appropriate statute of limitations period."); *Crivaro v. Rader,* 469 N.E.2d 1184, 1187, 1984 Ind. App. LEXIS 3002, *10 (Ind. App. Ct. 1982) (noting that Indiana Trial Rule 13(J)(1) gives the holder of a time-barred counterclaim the opportunity to avoid the operation of a statute of limitations to the extent the time-barred claim defeats or diminishes plaintiff's recovery).

The filing of a proof of claim concerning a debt subject to expired limitations period does not misrepresent the debt's character or legal status under Illinois or Indiana law. The state court has jurisdiction to hear a claim on the debt. The limitations period can be restarted by a payment. The debt can even be asserted as a counterclaim or set-off. The FDCPA does not alter how state law treats the debt and certainly does not extinguish it. Indeed, the FDCPA allows a debt collector to collect the debt, so long as it does not employ abusive or deceptive tactics. *McMahon,* 744 F.3d at 1020.

The Chapter 13 case is designed to capture these claims and discharge them. Making it unlawful for creditors who hold such claims to participate in the Chapter 13 claims process undermines the goal of bankruptcy code because it does not provide a fresh start from otherwise dischargeable debts.

C. Claims Under the Code are Not Limited to Obligations Which May Only be Enforced by a Civil Lawsuit.

A person can possess a "claim" under the Bankruptcy Code even if the right to payment cannot be asserted in a civil lawsuit. "Congress established that the existence of a right to payment is more extensive than the existence of a cause of action that entitles an entity to bring suit." *In re Remington Rand Corp.*, 836 F.2d 825, 831-32 (3d Cir. 1988). Under 11 U.S.C. § 101(5)(A), claims include rights to payment that are contingent, unliquidated or disputed.

A debtor's credit obligations which are not in default are an example. These debts are still claims, even though the creditor has no basis to bring a lawsuit absent a default. It is the existence of the credit obligation, not the available remedy, which forms the basis for a claim. *See, e.g., In re Keeler*, 440 B.R. 354,

363 (E.D. Pa. 2009). "Under the Bankruptcy Code, contract-based claims arise at the time the contract is entered into rather than upon subsequent events such as termination or performance." *In re Griffin*, 313 B.R. 757, 762 (Bankr. N.D. Ill. 2004).

Each of the proofs of claim here was made upon an unpaid credit obligation. Plaintiff-Appellants' Brief ("PBR") 8-12. These claims arose at the time each Plaintiff-Appellant made their credit contract. So long as those credit obligations remain unpaid, they constitute a claim, regardless of whether a civil lawsuit could be filed to enforce the claim.

II. Accepting Appellants' Argument Would Require Attorneys to Take Positions Adverse to their Clients in Bankruptcy and Undermines the Administration of Bankruptcy Estates by Attorneys, Trustees and Bankruptcy Judges.

As a nationwide, not-for-profit trade association comprised of attorneys and law firms engaged in the practice of debt collection law, National Creditors Bar Association members often file proofs of claim for their clients and have been subjected to the deluge of complaints similar to the ones at issue on this appeal.

Numerous courts that have examined this issue and have rejected Appellant's arguments have done so because of the simple

fact that debtors in bankruptcy have much greater protections than those in collections outside of bankruptcy. In *Simmons v. Roundup Funding, LLC*, 622 F.3d 93, 96 (2d Cir. 2010) the Second Circuit held that "[t]he FDCPA is designed to protect defenseless debtors and to give them remedies against abuse by creditors. There is no need to protect debtors who are already under the protection of the bankruptcy court, and there is no need to supplement the remedies afforded by bankruptcy itself." *See also Gatewood v. CP Med., LLC*, 533 B.R. 905, 908-09 (8th Cir. B.A.P. 2015); *Torres v. Cavalry SPV I, LLC*, 530 B.R. 268, 276 (Bankr. E.D. Pa. 2015) (citing *Simmons* with favor); *Broadrick v. LVNV Funding, LLC*, 532 B.R. 60, 70-73 (Bankr. M.D. Tenn. 2015) (discussing the "special protections" afforded to bankruptcy debtors); *Lagrone v. LVNV Funding, LLC*, 525 B.R. 419, 426 (Bankr. N.D. Ill. 2015).

As noted above, a proof of claim on a debt that is subject to a statute of limitations defense is still unequivocally a valid claim and fully authorized and contemplated by the bankruptcy code. Appellants mistakenly argue that these claims are not valid claims. PBR, pp. 23-24. As part of the claims process these valid claims will either be allowed or disallowed. *See* 11 U.S.C. § 502;

Bankruptcy Rule 3007. The claims process involves bankruptcy judges, Chapter 13 trustees with fiduciary duty owed to the estate, parties in interest (such as other creditors), debtors' attorneys and creditors' attorneys. As Judge Barnes from the Bankruptcy Court for the Northern District of Illinois recently held, "bankruptcy is a collective process, designed to gather together the assets and debts of the debtor and to effect an equitable distribution of those assets on account of the debts." *Glenn*, 542 B.R. at 841.

Appellants seek a determination that the filing of a claim that is subject to a statute of limitation defense is a *per se* violation of the FDCPA. Such a ruling would pose a unique problem to attorneys who are exercising their professional judgment on behalf of their clients. For example, if a particular claim was based upon a debt that may be subject to two different statutes of limitations, one of which is expired and one of which has not, a debt collector attorney is faced with the dilemma of advocating on behalf of his client by filing the proof of claim or protecting himself from exposure to liability under the FDCPA, by declining representation. *See, e.g., Rawson v. Credigy Receivables, Inc.,* No. 05 C 6032, 2006 U.S. Dist. LEXIS 6450 (N.D. Ill. Feb. 16, 2006) (denying a debt

collector's motion to dismiss an FDCPA claim where the defendant debt collector believed the debt was subject to Illinois' ten-year limitation period under 735 ILCS 5/13-206 (for written contracts), but the debtor plaintiff asserted the debt was not subject to a writing and Illinois' five-year limitations period under 735 ILCS 5/13-205 was applicable).

In addition, creditors of consumer debtors generally do not initiate bankruptcy proceedings.[2] Rather, it is the debtor who initiates the bankruptcy process. In many situations, a creditor will retain an attorney to protect the *creditor's* interests with regard to its claims. In exercising his or her professional judgment an attorney, recognizing that a claim exists if a credit contract remains unpaid, will file a proof of claim on behalf of the creditor and participate in the claims process. The attorney recognizes that the process contemplates (and encourages) the filing of valid claims, but that even valid claims can be disallowed because of various defenses, including the bar of an expired limitations period.

[2] 11 U.S.C. § 303 provides for the initiation of an involuntary case under chapter 7 or 11.

Plaintiff-Appellants seek to disrupt this process by putting the cart before the horse. Under their interpretation a claim can only exist if it is not subject to a defense. Claims subject to defenses can be disallowed, but the claim is still a valid one and its inclusion in the bankruptcy case means it can be ultimately discharged. 11 U.S.C. § 1328(a); *In re Edge*, 60 B.R. at 699 ("That a claim is not allowable because a statute of limitation has expired does not defeat the existence of the claim in bankruptcy."). Here, Plaintiff-Appellants reap no monetary benefit from disallowed claims.[3] But, they do obtain a discharge of allowed and disallowed claims once their bankruptcy case is completed. *Dilg v. Greenburgh*, 151 B.R. 709, 716 (Bankr. E.D. Pa. 1993).

An attorney subject to the FDCPA will be faced with the dilemma of knowing that her client has a valid claim, but that the claim may be disallowed, which could personally subject her to FDCPA liability. On one hand an interpretation that the claim is not time-barred would lead the attorney to file the claim on behalf of its

[3] It is 11 U.S.C. § 1325(b), and it alone, which requires a debtor to provide all "disposable" income to pay her creditors. Unless the plan proposes to pay 100% to all creditors, which is not the case for Plaintiff-Appellants, the allowance or disallowance of a claim does not change the amount a debtor is required to pay.

client without fear of being swept up in this new deluge.[4] On the other hand, an attorney may err on the side that the claim *is* time-barred and refrain from filing in order to protect his own interests and to avoid an FDCPA suit. This inherent conflict runs contrary to an attorney's professional responsibilities toward his client.

In his dissent in *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich, LPA*, 559 U.S. 573, 621 (2010), Justice Kennedy warned of the dangers of holding attorneys liable for otherwise taking reasonable legal positions in good faith on behalf of their clients. Now Appellants are asking this court to further erode the ability of debt collector attorneys to represent their creditor clients and protect their interests in bankruptcy cases. Such a holding is inconsistent with the plain language of the bankruptcy code and cannot be permitted.

[4] As noted in *Glenn*, "the Chicago Bar Association held a seminar for the express purpose of training attorneys on how to bring FDCPA claims in bankruptcy entitled "Statute of Limitations on Debt Collection & More." *Glenn*, 542 B.R. 833, n. 2.

III. Amici Arguing in Support of Increased FDCPA Liability Ignore the Existing Protections of Bankruptcy Court and Seek to Unduly Burden both the District Courts and Creditors with Unnecessary FDCPA Litigation.

In their *Amicus* Brief, the National Association of Consumer Bankruptcy Attorneys ("NACBA") and the Legal Assistance Foundation ("LAF") argue that the District Courts below erred "because they did not have a full appreciation of how the claims allowance process is meant to work and how the defendants' actions make the process less efficient…." *See* Brief of Plaintiff-Appellants' Amicus ("Brief PA"), at p. 5. In addition, LAF and NACBA claim that the "**flood**" of purportedly "unenforceable claims" by debt buyers and their attorneys "burdens" the Bankruptcy Courts in "the federal court system." *See id.* (emphasis added).

Yet, their solution is to instead **flood** the District Courts in the federal court system with an increased deluge of FDCPA claims related to proofs of claim for purportedly time-barred debts.

This makes little sense. As noted above (and summarized below) a purportedly "time-barred" claim can be dealt with more easily and efficiently with an objection in bankruptcy court as opposed to a *separate* full blown lawsuit in District Court.

Indeed, as noted above, it is not as if the debtor is not afforded additional protections in bankruptcy. Rather, after a proof of claim is filed, the debtor can object to it as provided under the Bankruptcy Rules. *See* 11 U.S.C. § 502; Bankruptcy Rule 3007. As part of the claims process these valid claims will either be allowed or disallowed. *See* 11 U.S.C. § 502; Bankruptcy Rule 3007.

Further, noted previously, numerous courts have examined this issue and have rejected LAF's and NACBA's arguments. In doing so, these Courts have repeatedly recognized that debtors in bankruptcy have much greater protections than those in collections outside of bankruptcy. *See, e.g., Simmons,* 622 F.3d at 96 (holding no need to protect debtors who are already under bankruptcy protection); *see also Gatewood,* 533 B.R. at 908-09; *Torres,* 530 B.R. at 276 (citing *Simmons* with favor); *Lagrone,* 525 B.R. at 426.

Moreover LAF and NACBA repeatedly and mistakenly argue that these "time-barred" claims are somehow not valid claims. *See generally* Brief PA. Yet, in many jurisdictions (such as in Illinois and Indiana) the expiration of the limitations period does not *extinguish* a claim—rather it provides a defense to a claim. *See, e.g., Bennett,* 361 N.E.2d at 196. Also, as noted above, there are

times where it is unclear *which* statute of limitations applies and thus a creditor and its debt collector attorney can in good faith file a proof of claim (and should be allowed to do so) under the belief the debt is *not* "time-barred" without fearing for FDCPA liability. In sum, although a debt *might* be time-barred, the debt is not actually extinguished and thus it is not "illegal" to file a proof of claim on that debt—especially when the debtor includes that debt in his or her bankruptcy schedules.

Finally, LAF and NACBA also admit (and appear to overlook) that these somehow invalid claims are often brought to the attention of the claimant debt-holder when *a debtor* lists the debt on one of his or her schedules, and then someone files a proof of claim on the debt. *Cf.* Brief PA, pp. 8-9.

Following LAF's and NACBA's logic, if a debt were purportedly "time-barred" and in no way could anyone "legally" collect on it, then there would be no need to schedule it or discharge it through bankruptcy. Yet, debtors—often, according to LAF and NACBA—schedule debts that are "time-barred."

A debtor cannot have it both ways. She cannot seek bankruptcy protection, request the discharge of her debts and then

sue those creditors who participate in the bankruptcy case on the debt she scheduled, merely because a proof of claim was filed.

CONCLUSION

In sum, rather than burden the District Courts with FDCPA lawsuits that are really objections-to-proofs-of-claims, those objections should remain in Bankruptcy Courts where the claims process is far more efficient than filing a complaint, engaging in discovery, motions practice, etc. in a separate lawsuit. Moreover, as the question of whether a claim is time-barred is not always black and white, and because statutes of limitations (and the FDCPA) do not "extinguish" time-barred debts, or somehow make them uncollectable (as a debt can be revived), imposing FDCPA strict liability on proofs of claim will have a chilling effect on the normal bankruptcy claims process and will lead to an increase in unnecessary FDCPA litigation in the District Courts.

Making it unlawful for the debt collectors to file proofs of claim on debts subject to the defense of an expired limitations period will also result in unscheduled debts not being discharged, a result contrary to the very relief debtors seek from the bankruptcy process in the first place.

The decision of the Courts below should be affirmed.

Respectfully submitted,

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Dated: April 25, 2016

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(C), the undersigned certifies that this brief complies with the type-volume limitations of Fed. R. App. P. 29(d). Exclusive of the exempted portions of the brief, as provided by Fed. R. App. P. 32(a)(7)(B)(iii), this brief contains 3,434 words, including footnotes and headings, as counted by the word-count function provided by Microsoft Word, the word-processing system used to prepare the brief. This brief has been prepared in 14-point Bookman Old Style font.

/s/ Donald S. Maurice, Jr.
Donald S. Maurice, Jr.
Attorney for Amicus Curiae
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Dated: April 25, 2016

CERTIFICATE OF SERVICE

I hereby certify that on April 25, 2016, the foregoing Brief of Amicus Curiae National Creditors Bar Association in Support of Defendant-Appellee and Affirming the Court Below was filed electronically through the Court's CM/ECF system. Notice of this filing will be sent to all registered parties by operation of the Court's electronic filing system.

/s/ Donald S. Maurice, Jr.
Donald S. Maurice, Jr.
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Dated: April 25, 2016