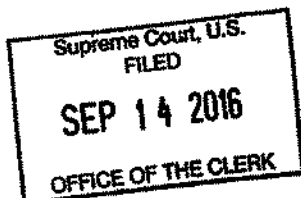


16-348



No.

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**In the Supreme Court of the United States**

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MIDLAND FUNDING, LLC, PETITIONER

*v.*

ALEIDA JOHNSON

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**ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

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**PETITION FOR A WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

1. Whether the filing of an accurate proof of claim for an unextinguished time-barred debt in a bankruptcy proceeding violates the Fair Debt Collection Practices Act.

2. Whether the Bankruptcy Code, which governs the filing of proofs of claim in bankruptcy, precludes the application of the Fair Debt Collection Practices Act to the filing of an accurate proof of claim for an unextinguished time-barred debt.

## **CORPORATE DISCLOSURE STATEMENT**

**Petitioner Midland Funding, LLC, is a subsidiary of Encore Capital Group, Inc., a publicly held company. Encore Capital Group has no parent corporation, and no publicly held company owns 10% or more of its stock.**

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**PETITION FOR A WRIT OF CERTIORARI**

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Midland Funding, LLC, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

**OPINIONS BELOW**

The opinion of the court of appeals (App., *infra*, 1a-15a) is reported at 823 F.3d 1334. The order of the district court granting petitioner's motion to dismiss (App., *infra*, 18a-37a) is reported at 528 B.R. 462.



## JURISDICTION

The judgment of the court of appeals was entered on May 24, 2016. A petition for rehearing was denied on August 19, 2016 (App., *infra*, 16a-17a). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## STATUTORY PROVISIONS AND RULES INVOLVED

Relevant provisions of the Bankruptcy Code, 11 U.S.C. 101-1532; the Fair Debt Collection Practices Act, 15 U.S.C. 1692-1692p; and the Federal Rules of Bankruptcy Procedure are reproduced in the appendix to this petition (App., *infra*, 38a-43a).

## STATEMENT

This case presents two closely related questions concerning the relationship between two federal statutory schemes. The Bankruptcy Code (Code) entitles a creditor to file a proof of claim in a bankruptcy proceeding; the Code and accompanying rules require the creditor to include certain information in order to enable parties in interest to assess the claim's timeliness, and they provide a remedial scheme to address improper filings. The earlier-enacted Fair Debt Collection Practices Act (FDCPA) prohibits debt collectors from engaging in unfair, deceptive, or misleading debt-collection practices. The questions presented by this case are, first, whether a debt collector violates the FDCPA by filing an accurate proof of claim for an unextinguished time-barred debt in a bankruptcy proceeding, and, second, whether the Bankruptcy Code precludes such an application of the FDCPA.

Petitioner is a debt purchaser who acquired respondent's defaulted credit card account. When respondent filed for bankruptcy, petitioner filed a proof of claim in respondent's bankruptcy case. The proof of claim accurately listed the amount of the debt and other required

information, including the date of the last transaction on respondent's account. Because the date of the last transaction was more than six years before petitioner's filing, the debt was time-barred under the relevant state law. Respondent objected to petitioner's claim, and the bankruptcy court disallowed it.

Respondent then sued petitioner, alleging that the filing of a proof of claim on a time-barred debt violated the FDCPA. The district court granted petitioner's motion to dismiss. It held, first, that under binding circuit precedent, the filing of a proof of claim on a time-barred debt in a bankruptcy proceeding violates the FDCPA, but, second, that such an application of the FDCPA is precluded by the later-enacted Bankruptcy Code, which allows creditors to file such claims.

The Eleventh Circuit reversed and remanded. Despite agreeing with the district court that the Code allows creditors to file proofs of claim on time-barred debts, the Eleventh Circuit reiterated its prior holding that debt collectors violate the FDCPA when they file such claims, then further held that applying the FDCPA to such conduct does not give rise to an irreconcilable conflict with the Code. The Eleventh Circuit's decision in this case conflicts with decisions of the Fourth, Seventh, and Eighth Circuits, which hold that filing an accurate proof of claim for a time-barred debt in a bankruptcy proceeding does not violate the FDCPA, and is inconsistent with a decision of the Second Circuit holding that the filing of even an invalid proof of claim is not actionable under the FDCPA. The Eleventh Circuit's decision further conflicts with a decision of the Ninth Circuit holding that the Bankruptcy Code broadly precludes the application of the FDCPA to conduct occurring within bankruptcy proceedings, as well as decisions of the Ninth Circuit's Bankruptcy Appellate

Panel applying that holding to reach the specific conclusion that the Code precludes an FDCPA action based on filing a proof of claim for a time-barred debt.

Because the Eleventh Circuit's decision squarely conflicts with the decisions of other circuits on two important questions of federal law, and because this case is an optimal vehicle in which to address those closely related questions, the petition for a writ of certiorari should be granted.

#### A. Background

1. Enacted in 1978, the Bankruptcy Code governs the distribution of a debtor's estate. Under the Code, "[w]hen a debtor declares bankruptcy, each of its creditors is entitled to file a proof of claim" against the debtor's estate. *Travelers Casualty & Surety Co. v. Pacific Gas & Electric Co.*, 549 U.S. 443, 449 (2007); see 11 U.S.C. 501. As is relevant here, the Code defines a "claim" as a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." 11 U.S.C. 101(5)(A). As this Court has repeatedly recognized, that language gives "claim" the "broadest available definition." *Johnson v. Home State Bank*, 501 U.S. 78, 83 (1991); see *FCC v. NextWave Personal Communications Inc.*, 537 U.S. 293, 302 (2003).

"Once a proof of claim has been filed, the court must determine whether the claim is 'allowed' under [Section] 502(a) of the Bankruptcy Code." *Travelers*, 549 U.S. at 449. By default, a claim is "deemed allowed" unless a party in interest objects. 11 U.S.C. 502(a). In consumer bankruptcies, moreover, the Code provides for the appointment of a trustee, who is required to "examine proofs of claims and object to the allowance of any claim that is improper." 11 U.S.C. 704(a)(5); 11 U.S.C. 1302(b)(1). If a

trustee or other party in interest objects to a claim, the bankruptcy court must determine whether the claim should be disallowed under any of the “exceptions” listed in the Code. *Travelers*, 549 U.S. at 449; see 11 U.S.C. 502(b).

A debt may be disallowed because it is “unenforceable \* \* \* under any \* \* \* applicable law for a reason other than because such claim is contingent or unmatured.” 11 U.S.C. 502(b)(1). In particular, the Code provides that the estate is entitled to any “defense” available to the debtor, “including statutes of limitation.” 11 U.S.C. 558. For claims based on open-ended or revolving consumer credit agreements, in order to aid interested parties in “assessing the timeliness of the claim,” Fed. R. Bankr. P. 3001 advisory committee’s notes (2012), the Federal Rules of Bankruptcy Procedure require the creditor to include certain information in the proof of claim, including the date of the account holder’s last transaction; the date of the last payment on the account; and the date the account was charged to profit and loss. See Fed. R. Bankr. P. 3001(c)(3)(A)(iii)-(v).

The Bankruptcy Code has a comprehensive remedial scheme for actions taken in bankruptcy proceedings that bankruptcy courts view as improper. The Code permits a bankruptcy court to “tak[e] any action or mak[e] any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.” 11 U.S.C. 105(a). And the Federal Rules of Bankruptcy Procedure specifically provide that presenting any document to the court constitutes a certification that the document is not presented “for any improper purpose” and that any “legal contentions \* \* \* are warranted by existing law” or by an argument for modifying the law. Fed. R. Bankr. P. 9011(b).

2. This case concerns the interplay between the Bankruptcy Code and the Fair Debt Collection Practices Act, enacted a year earlier in 1977. The FDCPA bars debt collectors—that is, entities that “regularly collect[] or attempt[] to collect, directly or indirectly,” debts owed to another, 15 U.S.C. 1692a(6)—from engaging in certain practices. Specifically, the FDCPA bars debt collectors from using “unfair or unconscionable means to collect or attempt to collect any debt,” including “collect[ing] \* \* \* any amount” that is not “expressly \* \* \* permitted by law.” 15 U.S.C. 1692f. It also bars debt collectors from using “any false, deceptive, or misleading representation or means in connection with the collection of any debt,” including “false[ly] represent[ing] \* \* \* the character, amount, or legal status of any debt.” 15 U.S.C. 1692e. The FDCPA creates a private right of action for consumers against debt collectors for actual and statutory damages as well as costs (including attorney’s fees). See 15 U.S.C. 1692k.

### **B. Facts And Procedural History**

1. In 2014, respondent filed a petition for bankruptcy in the United States Bankruptcy Court for the Southern District of Alabama under Chapter 13 of the Bankruptcy Code. Respondent was represented by counsel in the bankruptcy proceeding, and the bankruptcy court duly assigned a trustee to respondent’s case. Petitioner, which had previously purchased a \$1,879.71 debt incurred by respondent, filed a corresponding proof of claim in respondent’s bankruptcy proceeding. As required by Federal Rule of Bankruptcy Procedure 3001, petitioner’s proof of claim accurately listed the date of the last transaction on respondent’s account as May 2003. The relevant State for choice-of-law purposes was Alabama, which has a six-year

limitations period, Ala. Code § 6-2-34; that period had expired by the time petitioner filed its proof of claim. Respondent's counsel objected to petitioner's claim, and the bankruptcy court disallowed it. App., *infra*, 3a.

2. Three days after the bankruptcy court disallowed the claim, respondent brought suit against petitioner in the United States District Court for the Southern District of Alabama under the Fair Debt Collection Practices Act. Respondent alleged that, because petitioner's proof of claim related to a time-barred debt, the filing of the proof of claim in respondent's bankruptcy proceeding constituted an unfair, deceptive, or misleading debt-collection practice under the FDCPA. App., *infra*, 3a-4a.

Petitioner moved to dismiss, and the district court granted the motion. App., *infra*, 18a-37a. The district court recognized that it was bound by the Eleventh Circuit's decision in *Crawford v. LVNV Funding, LLC*, 758 F.3d 1254 (2014), cert. denied, 135 S. Ct. 1844 (2015), which held that the filing of a proof of claim for a time-barred debt violates the FDCPA. App., *infra*, 19a-20a. But the district court observed that the Eleventh Circuit had left open the question whether the Code precludes such an application of the FDCPA. *Id.* at 20a. The district court agreed with petitioner that it does. *Id.* at 20a-37a. In answering that question, the court observed that, under the relevant state law, the statute of limitations does not extinguish a creditor's right to payment, but instead simply eliminates the creditor's legal remedy to obtain a civil judgment against the debtor. *Id.* at 22a. Analyzing the text of the Code, this Court's precedents, and past bankruptcy practice, the district court determined that the Code permits a creditor to file a proof of claim for an unextinguished time-barred debt. *Id.* at 21a-30a. The district court then determined that there is an irreconcilable

conflict between the Code and the FDCPA, because “comply[ing] with the [FDCPA]” requires “surrendering [petitioner’s] right under the Code.” *Id.* at 33a. Accordingly, the court concluded that the earlier-enacted FDCPA “must give way to the Code.” *Id.* at 37a.

3. The court of appeals reversed and remanded. App., *infra*, 1a-15a.\*

The court of appeals first explained that it had decided a “nearly identical” question in *Crawford* and had held, in that case, that “a debt collector violates the FDCPA when it files a proof of claim in a bankruptcy case on a debt that it knows to be time-barred.” App., *infra*, 2a, 5a. The court reapplied its holding in *Crawford* on that question. *Id.* at 5a-6a.

The court of appeals then turned to a question it had expressly “left open” in *Crawford*: namely, whether the Bankruptcy Code “preclude[s] an FDCPA claim in the context of a Chapter 13 bankruptcy when a debt collector files a proof of claim it knows to be time-barred.” App., *infra*, 7a. At the outset, the court of appeals agreed with the district court that, under the Code, a creditor has a “‘right’ to file a time-barred claim.” *Id.* at 8a. The court explained that “the Code allows creditors to file proofs of claim that appear on their face to be barred by the statute of limitations.” *Id.* at 7a.

The court of appeals nevertheless concluded that the Code and the FDCPA “can coexist.” App., *infra*, 13a. According to the court, the Code and the FDCPA could be “reconciled,” because the FDCPA “dictates the behavior

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\* The court of appeals considered this case together with another case in which the same district court had subsequently relied on the reasoning of its decision in this case. See App., *infra*, 4a. While the court of appeals addressed both cases in a single opinion, it entered separate judgments in each case. Petitioner is serving courtesy copies of this petition on the parties to that case. Cf. S. Ct. R. 12.6.

of only 'debt collectors,'” a subcategory of the “creditors” covered by the Code, and because the Code “establishes the ability to file a proof of claim,” while the FDCPA “addresses the later ramifications of filing a claim.” *Id.* at 12a. The court reasoned that there was no “positive repugnancy” between the statutes, because a debt collector that files a proof of claim for a time-barred debt (as authorized under the Code) “is simply opening himself up to a potential lawsuit for an FDCPA violation.” *Id.* at 14a (internal quotation marks omitted). In the court of appeals’ view, subjecting conduct permitted under the Bankruptcy Code to civil liability under the FDCPA does not give rise to an irreconcilable conflict between the two statutes. *Id.* at 15a.

4. Petitioner filed a petition for rehearing, arguing that the court of appeals’ decision in this case (like its prior decision in *Crawford*) conflicted with the decisions of several other circuits. While the rehearing petition was pending, petitioner notified the court of appeals of recent decisions from two other circuits that had expressly declined to follow its reasoning. The court of appeals nevertheless denied rehearing without a single judge calling for a vote on the petition. App., *infra*, 16a-17a.

#### REASONS FOR GRANTING THE PETITION

The Eleventh Circuit’s decision in this case conflicts with the decisions of at least three other courts of appeals on the question whether the filing of an accurate proof of claim on a time-barred debt violates the FDCPA. The Eleventh Circuit’s decision further conflicts with the decision of another court of appeals on the closely related question whether the Bankruptcy Code precludes such an application of the FDCPA. Those conflicts create intolerable discord on important issues of bankruptcy law and



federal statutory interpretation, and they cannot be resolved without the Court's review. Because this case presents an optimal vehicle for addressing and resolving both conflicts, the petition for a writ of certiorari should be granted.

**A. The Decision Below Conflicts With The Decisions Of Other Courts Of Appeals**

As multiple courts of appeals have recognized, “[t]here is a circuit split on the issue of whether filing a proof of claim on a stale debt in bankruptcy is a misleading or deceptive act prohibited by the FDCPA.” *Owens v. LVNV Funding, LLC*, \_\_\_ F.3d \_\_\_, 2016 WL 4207965, at \*5 (7th Cir. Aug. 10, 2016), petition for cert. pending, No. 16-315 (filed Aug. 26, 2016); see *In re Dubois*, \_\_\_ F.3d \_\_\_, 2016 WL 4474156, at \*6 & n.6 (4th Cir. Aug. 25, 2016); *Nelson v. Midland Credit Management, Inc.*, \_\_\_ F.3d \_\_\_, 2016 WL 3672073, at \*2 (8th Cir. July 11, 2016). The Fourth, Seventh, and Eighth Circuits have all expressly considered and rejected the Eleventh Circuit's holding in *Crawford* that the filing of a proof of claim for a time-barred debt in a bankruptcy proceeding is actionable under the FDCPA. See *Nelson*, 2016 WL 3672073, at \*2; *Owens*, 2016 WL 4207965, at \*5-\*6; *Dubois*, 2016 WL 4474156, at \*6 & n.6. And respondent has expressly conceded the existence of a circuit conflict. See C.A. Resp. Opp. to Mot. to Stay 1 (agreeing that “[petitioner] is correct that the circuits have squarely divided over these issues, and there is at least a ‘reasonable probability’ of Supreme Court review” (citation omitted)).

In this case, the Eleventh Circuit reinforced the existing circuit conflict by adhering to its holding in *Crawford*, and it created a new circuit conflict by further holding that the Bankruptcy Code does not preclude the application of the FDCPA to the filing of an accurate proof of claim for

a time-barred debt. At least three other courts of appeals would not even recognize an FDCPA claim in such circumstances, and another court of appeals would hold such a claim precluded by the Bankruptcy Code. The district and bankruptcy courts that routinely confront these questions, moreover, are hopelessly divided. This Court's review is thus sorely needed.

1. As to the first question presented—whether the filing of an accurate proof of claim for an unextinguished time-barred debt in a bankruptcy proceeding violates the FDCPA—the Eleventh Circuit's decision in this case (like its prior decision in *Crawford*) squarely conflicts with decisions of the Fourth, Seventh, and Eighth Circuits, and it cannot be reconciled with a decision from the Second Circuit that resolved a similar, albeit broader, question.

a. The Eighth Circuit—the first court of appeals to address the issue after the Eleventh—faced a materially identical factual scenario but reached the opposite conclusion. In *Nelson, supra*, an affiliate of the petitioner in this case was sued under the FDCPA for filing a proof of claim on a time-barred debt in a bankruptcy proceeding. See 2016 WL 3672073, at \*1. The Eighth Circuit expressly declined to follow the Eleventh Circuit's reasoning, noting that the Eleventh Circuit had “ignore[d] the differences between a bankruptcy claim and actual or threatened litigation.” *Id.* at \*2. Instead, citing the “protections against harassment and deception” inherent in the bankruptcy process, the Eighth Circuit concluded that “[a]n accurate and complete proof of claim on a time-barred debt is not false, deceptive, misleading, unfair, or unconscionable under the FDCPA.” *Ibid.*

The Seventh Circuit addressed the same question in *Owens, supra*. Like the Eighth Circuit, the Seventh Circuit “decline[d] to follow the Eleventh Circuit's approach.” 2016 WL 4207965, at \*6. The Seventh Circuit

first observed that a proof of claim filed under the Bankruptcy Code “does not purport to be anything other than a claim subject to dispute in the bankruptcy case.” *Id.* at \*5. The court then reasoned that, in light of the various protections for debtors under the Code, concerns about filing a time-barred claim “are less acute” in bankruptcy proceedings than in a lawsuit, and the inclusion of required information about the amount of the claim and the date of the last transaction ensures that the proofs of claim are “not deceptive or misleading.” *Id.* at \*6. Dissenting, Chief Judge Wood would have held that filing a time-barred proof of claim “violates the FDCPA” and so “would [have] align[ed] th[e] court with the Eleventh Circuit” in the “existing circuit split.” *Id.* at \*10.

In the most recent circuit decision on this question, the Fourth Circuit joined the majority side of the conflict. In *Dubois, supra*, the Fourth Circuit noted that the Eleventh Circuit was “the only court of appeals to hold that filing a proof of claim on a time-barred debt in a Chapter 13 proceeding violates the FDCPA.” 2016 WL 4474156, at \*6 n.6. The Fourth Circuit began by explaining that, when a statute of limitations does not “extinguish debts” but simply eliminates the remedy, “a time-barred debt falls within the Bankruptcy Code’s broad definition of a claim,” with the result that the Code “permits such filing.” *Id.* at \*6. Indeed, the court observed that, from a bankruptcy perspective, the “optimal scenario” is for time-barred proofs of claim to be filed and for “the Bankruptcy Code to operate as written,” bringing those claims into the bankruptcy proceeding and then disallowing them. *Ibid.* Describing the myriad differences between a state-court lawsuit filed by a creditor and bankruptcy proceedings initiated by a debtor, the court explained that “the reasons why it is ‘unfair’ and ‘misleading’ to sue on a time-barred

debt are considerably diminished in the bankruptcy context.” *Id.* at \*7. Accordingly, the court disagreed with the Eleventh Circuit and concluded that the filing of such a proof of claim does not violate the FDCPA. See *id.* at \*8. Dissenting, Judge Diaz concluded that the conduct was actionable under the FDCPA and, addressing a question not reached by the majority (but resolved in the decision below in this case), further concluded that the Bankruptcy Code does not preclude such an application of the FDCPA. See *id.* at \*8-\*11.

b. The Eleventh Circuit’s decision in this case also cannot be reconciled with a decision of the Second Circuit, which has left no doubt that it would reach the opposite conclusion on the facts presented here. In *Simmons v. Roundup Funding, LLC*, 622 F.3d 93 (2d Cir. 2010), the creditor filed an inflated proof of claim in the debtor’s bankruptcy proceeding, misstating the amount of the debt owed, and the debtor sued the creditor under the FDCPA. See *id.* at 94-95. The Second Circuit held that the debtor had failed to state a claim. See *id.* at 94. The Second Circuit explained that “[t]here 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.” *Id.* at 96. The Second Circuit concluded that “filing a proof of claim in bankruptcy court (even one that is somehow invalid) cannot constitute the sort of abusive debt collection practice proscribed by the FDCPA.” *Id.* at 95. In light of its holding and reasoning in a case involving a proof of claim that was affirmatively misleading, there can be little doubt that the Second Circuit would reach the same result in a case such as this one, where the proof of claim was in fact accurate.

2. In addition to the widely acknowledged conflict on the first question presented, the Eleventh Circuit’s deci-

sion in this case created a further conflict on a closely related second question—whether, if the filing of a proof of claim on a time-barred debt violates the FDCPA, the Bankruptcy Code precludes the FDCPA’s application.

In the decision under review, the Eleventh Circuit held that the Bankruptcy Code can coexist with an FDCPA claim based on a time-barred proof of claim. See App., *infra*, 10a-15a. The Ninth Circuit, however, has reached the opposite conclusion, broadly holding that the Code displaces the FDCPA in the context of bankruptcy proceedings. In *Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502 (9th Cir. 2002), the debtor sued a creditor under the FDCPA for attempting to collect a discharged debt in a Chapter 7 bankruptcy. See *id.* at 504. The Ninth Circuit held that no claim would lie, on the ground that “permit[ting] a simultaneous claim under the FDCPA” would “circumvent the remedial scheme of the Code under which Congress struck a balance between the interests of debtors and creditors by permitting (and limiting) debtors’ remedies.” *Id.* at 510. The court explained that, once a debtor is in bankruptcy, “the debtor’s protection and remedy remain under the Bankruptcy Code,” and “[n]othing in either [the Code or the FDCPA] persuades us that Congress intended to allow debtors to bypass the Code’s remedial scheme when it enacted the FDCPA.” *Ibid.*

Under the Ninth Circuit’s reasoning in *Walls*, application of the FDCPA to the filing of a proof of claim—conduct similarly governed by the Code—would plainly be precluded. Indeed, applying *Walls*, the Ninth Circuit Bankruptcy Appellate Panel has so held in two separate cases. The first case involved a creditor’s proof of claim for a debt that the debtor maintained was time-barred and invalid. See *In re Chaussee*, 399 B.R. 225, 227 (B.A.P. 9th Cir. 2008). After “assum[ing]” that the conduct at issue constituted a violation of the FDCPA, see *id.* at 235 n.12,

the Bankruptcy Appellate Panel held that the “Code precludes the application of the FDCPA under these facts.” *Id.* at 235. The court reasoned that the Code and the FDCPA have different and conflicting requirements for asserting a debt, see *id.* at 237-238, and it observed that “the [Bankruptcy] Code and Rules are up to the task of compensating a debtor for any damages or costs occasioned by, and to punish and deter, those who would abuse the bankruptcy claims process,” *id.* at 241.

The second case, *In re McCarther-Morgan*, No. 08-1093, 2009 WL 7810817 (B.A.P. 9th Cir. Jan. 27, 2009), *aff’d*, 373 Fed. Appx. 778 (9th Cir. 2010) (mem.), similarly considered a proof of claim for a debt that, according to the debtor, was time-barred and invalid. See *id.* at \*1. The Bankruptcy Appellate Panel held that the Code precluded the application of the FDCPA, reasoning that “it is not possible to reconcile both the Bankruptcy Code[,] which authorizes the filing of proofs of claim, and the FDCPA[,] which, [the debtor] argues, prohibits the filing of certain proofs of claim.” *Id.* at \*13.

In addition, while the second question presented generally arises in courts that have held, as to the first question, that the filing of a proof of claim on a time-barred debt violates the FDCPA, numerous district and bankruptcy courts have addressed the second question and reached conflicting results—including several courts whose decisions were effectively reversed by the Eleventh Circuit in the opinion below. Compare, *e.g.*, *Mears v. LVNV Funding, LLC*, 541 B.R. 899, 905 (M.D. Fla. 2015); *Lewis v. LVNV Funding, LLC*, Civ. No. 15-61313, 2015 WL 5819992, at \*1 (S.D. Fla. Oct. 6, 2015); *Middlebrooks v. Interstate Credit Controls, Inc.*, 391 B.R. 434, 437 (D. Minn. 2008); *In re Moses*, 542 B.R. 5, 12 (Bankr. N.D. Ala. 2015) (holding that the Code precludes such an application of the FDCPA), with, *e.g.*, *Carranza v. Midland Funding*,

*LLC*, Civ. No. 15-559, 2015 WL 5008462, at \*5 (E.D. Mo. Aug. 20, 2015); *Grandidier v. Quantum3 Group, LLC*, Civ. No. 14-138, 2014 WL 6908482, at \*2 (S.D. Ind. Dec. 8, 2014); *In re Perkins*, 533 B.R. 242, 255 (Bankr. W.D. Mich. 2015); *In re Marcinowski*, No. 13-33571, 2015 WL 3524977, at \*4 (Bankr. N.D. Ill. June 2, 2015) (holding that the Code does not preclude such an application of the FDCPA). In light of that substantial body of authority, the reasoning on both sides of the second question, as with the first, is thoroughly developed.

3. The circuit conflicts on the closely related questions presented in this case are ripe for the Court's review. In its decision in this case, the Eleventh Circuit reaffirmed its position on the first question and unambiguously staked out its position on the second. In seeking rehearing, moreover, petitioner informed the Eleventh Circuit of all the decisions from other circuits discussed above (with the exception of the Fourth Circuit's subsequent decision in *Dubois*), yet the Eleventh Circuit denied rehearing without a single judge calling for a vote on the petition. See App., *infra*, 16a-17a. As a result, there is no realistic prospect that the circuit conflicts will resolve without the Court's intervention. Further review is therefore warranted.

#### **B. The Questions Presented Are Important Ones That Warrant Review In This Case**

The questions presented in this case are of exceptional legal and practical importance for debtors, creditors, and the bankruptcy system. This case, which cleanly and clearly presents both relevant questions, is the optimal vehicle for the Court's review.

1. As an initial matter, the existence of disparate rules in different circuits governing the same conduct is of significant practical importance for institutional creditors

such as petitioner. As matters currently stand, petitioner would be shielded from FDCPA liability for filing an accurate proof of claim on a time-barred debt as allowed by the Bankruptcy Code in the Fourth, Seventh, Eighth, and Ninth Circuits (and likely the Second Circuit as well), but would be exposed to liability in the Eleventh Circuit. In fact, petitioner and its affiliates are defendants in cases on both sides of the conflict: the Eighth and Eleventh Circuits have explicitly disagreed on whether Midland entities may be subject to FDCPA liability for materially identical conduct. Compare *Nelson*, 2016 WL 3672073, at \*2, with App., *infra*, 15a.

As commentators have observed, “the bankruptcy system cannot continue to proceed with such significant rifts between circuits.” Sean Peter Doran, *Bringing Bankruptcy Back: Reconciling the Bankruptcy Code and the Fair Debt Collection Practices Act*, Norton Annual Survey of Bankruptcy Law (Sept. 2016); see Brittany M. Dant, Comment, *Down the Rabbit Hole: Crawford v. LVNV Funding, LLC, Upends the Role of the Fair Debt Collection Practices Act in Consumer Bankruptcy*, 66 Mercer L. Rev. 1067, 1079 (2015) (warning of the potential for “major ramifications throughout the field of bankruptcy law” from the Eleventh Circuit’s decision in *Crawford*). That situation is particularly untenable for nationwide entities such as petitioner and its affiliates, which file tens of thousands of claims in bankruptcies across the country every year. See American InfoSource, *AIS Insight 2015 Year in Review* 14 <[tinyurl.com/AISTopCreditors](http://tinyurl.com/AISTopCreditors)> (noting that petitioner and its affiliates filed 92,580 claims in bankruptcies in 2015, amounting to more than \$300 million).

Indeed, uniform interpretation is fundamental to the proper administration of the bankruptcy system, as the Constitution acknowledges by granting Congress power



“[t]o establish \* \* \* uniform Laws on the subject of Bankruptcies throughout the United States.” U.S. Const. Art. I, § 8, cl. 4; see *Railway Labor Executives’ Association v. Gibbons*, 455 U.S. 457, 471-472 (1982). Accordingly, this Court routinely grants review even on shallow circuit conflicts where the question presented concerns the correct interpretation or application of the Bankruptcy Code. See, e.g., *Harris v. Viegelahn*, 135 S. Ct. 1829, 1836 (2015); *Clark v. Rameker*, 134 S. Ct. 2242, 2246 (2014); *Hall v. United States*, 132 S. Ct. 1882, 1886 & n.1 (2012). Here, the Eleventh Circuit’s approach is out of step with at least four other circuits, resulting in intolerable disuniformity. The significance of the questions presented in both practical and legal terms is undeniable.

2. This case constitutes an optimal vehicle for resolving the circuit conflicts. It easily satisfies the standard criteria for certiorari: the relevant facts are undisputed, the questions presented were raised below, and the court of appeals passed upon both questions in reaching its decision. There is thus no impediment to this Court’s reaching and resolving the questions in this case.

Perhaps most importantly, this case presents both of the questions squarely and in depth. Because this case arises from the only court of appeals to have held that the filing of a proof of claim for a time-barred debt is actionable under the FDCPA, the decision below uniquely presents both the question whether the filing of such a claim violates the FDCPA and the question whether the Bankruptcy Code precludes such application of the FDCPA. These questions are closely related and involve the interpretation of overlapping statutory provisions.

It is essential to review both legal questions in order to answer the real-world question that underlies them: can a debtor sue a creditor under the FDCPA for filing an accurate proof of claim for a time-barred debt? Should

the Court resolve the circuit conflict on the first legal question in debtors' favor, it would have to address the second legal question in order conclusively to resolve the real-world question and provide the clarity that debtors, creditors, and courts sorely need. There would be little value (except perhaps for authors of law-review notes) in resolving the first question but leaving the second one hanging. And in addition to the Eleventh Circuit's prior decision analyzing the first question, the Eleventh Circuit and the district court in this case thoroughly analyzed the second question, setting out the opposing viewpoints and analysis in detail.

In short, the Eleventh Circuit's decision in this case solidifies a widely recognized conflict on the question whether the filing of an accurate proof of claim for a time-barred debt in a bankruptcy proceeding violates the FDCPA, and it creates a conflict on the closely related question whether such an application of the FDCPA is precluded by the Bankruptcy Code. Those questions are undeniably important and recurring, and this case is an optimal vehicle for considering them. The Court should grant the petition for certiorari and conclusively resolve whether a debtor can sue a creditor under the FDCPA for filing an accurate proof of claim for a time-barred debt.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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