

No. 16-757

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

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DOMICK NELSON, PETITIONER

*v.*

MIDLAND CREDIT MANAGEMENT, INC.

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

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**BRIEF FOR THE RESPONDENT**

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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**

Respondent Midland Credit Management, Inc., 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.

## TABLE OF CONTENTS

	Page
Opinions below .....	1
Jurisdiction .....	1
Statement.....	2
A. Background .....	2
B. Facts and procedural history.....	5
Argument.....	7
Conclusion.....	7

## TABLE OF AUTHORITIES

### Cases:

<i>Crawford v. LVNV Funding, LLC</i> , 758 F.3d 1254 (11th Cir. 2014), cert. denied, 135 S. Ct. 1844 (2015).....	6
<i>FCC v. NextWave Personal Communications Inc.</i> , 537 U.S. 293 (2003).....	3
<i>Johnson v. Home State Bank</i> , 501 U.S. 78 (1991) .....	3
<i>Travelers Casualty &amp; Surety Co. v. Pacific Gas &amp; Electric Co.</i> , 549 U.S. 443 (2007).....	2, 3
<i>Ward v. Midland Credit Management, Inc.</i> , Civ. No. 15-814, 2015 WL 4876221 (E.D. Mo. Aug. 14, 2015) .....	5

### Statutes and rules:

Bankruptcy Code, 11 U.S.C. 101-1532 .....	2, 3, 4, 7
11 U.S.C. 101(5)(A) .....	3
11 U.S.C. 105(a).....	4
11 U.S.C. 501 .....	2
11 U.S.C. 502(a).....	3
11 U.S.C. 502(b).....	3
11 U.S.C. 502(b)(1).....	3
11 U.S.C. 558 .....	3
11 U.S.C. 704(a)(5) .....	3
11 U.S.C. 1302(b)(1).....	3

IV

	Page
Statutes and rules—continued:	
Fair Debt Collection Practices Act,	
15 U.S.C. 1692-1692p.....	<i>passim</i>
15 U.S.C. 1692a(6).....	4
15 U.S.C. 1692e .....	4
15 U.S.C. 1692f.....	4
15 U.S.C. 1692k .....	4
28 U.S.C. 1254(1) .....	1
Fed. R. Bankr. P. 3001 .....	3, 4, 5
Fed. R. Bankr. P. 3001(c)(3)(A)(iii).....	3
Fed. R. Bankr. P. 3001(c)(3)(A)(iv).....	3
Fed. R. Bankr. P. 3001(c)(3)(A)(v).....	3
Fed. R. Bankr. P. 9011(b) .....	4

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**BRIEF FOR THE RESPONDENT**

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**OPINIONS BELOW**

The opinion of the court of appeals (Pet. App. 1a-6a) is reported at 828 F.3d 749. The opinion of the district court (Pet. App. 9a-14a) is unreported.

**JURISDICTION**

The judgment of the court of appeals was entered on July 11, 2016. A petition for rehearing (Pet. App. 7a-8a) was denied on September 15, 2016, and a petition for a writ of certiorari was filed on December 12, 2016. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

**STATEMENT**

This case presents the same two closely related questions as *Midland Funding, LLC v. Johnson*, No. 16-348 (argued Jan. 17, 2017), 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 Bankruptcy 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 both here and in *Midland Funding* 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. Because *Midland Funding* has already been argued and submitted, the Court should hold the petition for a writ of certiorari in this case pending the decision in *Midland Funding*.

**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, most claims are “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 accountholder’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 2015, petitioner filed a petition for bankruptcy in the United States Bankruptcy Court for the Eastern District of Missouri under Chapter 13 of the Bankruptcy Code. Petitioner was represented by counsel in the bankruptcy proceeding, and the bankruptcy court duly assigned a trustee to petitioner's case. Respondent, which had previously purchased a \$751.87 debt incurred by petitioner, filed a corresponding proof of claim in petitioner's bankruptcy proceeding. As required by Federal Rule of Bankruptcy Procedure 3001, respondent's proof of claim accurately listed the date of the last payment on petitioner's account as November 2006. Petitioner's counsel objected to respondent's claim on the basis that it was time-barred, but did not specify which statute of limitations governed the claim. Respondent did not respond to the objection, however, so the bankruptcy court disallowed the claim. Bankr. Ct. Dkt. 13; see Pet. App. 2a.

2. Sixteen days after the bankruptcy court disallowed the claim, petitioner brought suit against respondent in the Circuit Court of St. Louis County, Missouri. Petitioner alleged that, because respondent's proof of claim related to a time-barred debt, the filing of the proof of claim in petitioner's bankruptcy proceeding constituted an unfair, deceptive, or misleading debt-collection practice under the FDCPA. Pet. App. 3a. Respondent removed the action to the United States District Court for the Eastern District of Missouri. *Id.* at 9a-10a.

Respondent moved to dismiss, and the district court granted the motion. Pet. App. 9a-14a. The court noted that it had recently resolved "this exact same issue" in a case involving the same plaintiffs' attorneys and "a nearly identical [c]omplaint." *Id.* at 13a (citing *Ward v. Midland Credit Management, Inc.*, Civ. No. 15-814, 2015 WL 4876221 (E.D. Mo. Aug. 14, 2015)). The court determined

that, as in the prior case, Missouri law supplied the applicable limitations period. *Id.* at 14a & n.3. And under Missouri law, the court continued, 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. *Ibid.* When that is so, the court explained, “the FDCPA should not be implicated” as long as the proof of claim was accurate and contained all of the information required by the Bankruptcy Rules. *Id.* at 13a. Because respondent’s proof of claim satisfied those requirements, the district court held that the filing of the proof of claim did not give rise to FDCPA liability. *Id.* at 14a.

3. The court of appeals affirmed. Pet. App. 1a-6a. The court’s analysis centered on the Eleventh Circuit’s decision in *Crawford v. LVNV Funding, LLC*, 758 F.3d 1254 (2014), cert. denied, 135 S. Ct. 1844 (2015), which petitioner asked the court of appeals to follow. In *Crawford*, the Eleventh Circuit had held that the filing of a proof of claim for a time-barred debt violates the FDCPA. *Id.* at 1262. As the court of appeals explained, the Eleventh Circuit relied in *Crawford* on the notion that filing a civil lawsuit to collect a time-barred debt violates the FDCPA and that “the same concerns underlying” that rule “apply equally” to the filing of a proof of claim in bankruptcy to collect a time-barred debt. Pet. App. 4a.

The court of appeals rejected the Eleventh Circuit’s approach in *Crawford*. That decision, the court of appeals reasoned, “ignores the differences between a bankruptcy claim and actual or threatened litigation.” Pet. App. 4a. The court identified three such differences. First, a debtor, unlike a civil defendant, is “aided by” the bankruptcy trustee, who has “a statutory obligation to object to unenforceable claims.” *Id.* at 5a. Second, the process of objecting to a stale claim in bankruptcy is “a more

streamlined and less unnerving prospect for a debtor than facing a collection lawsuit.” *Ibid.* Third, “debtors have less at stake than a collection defendant,” because the allowance of a bankruptcy claim does not force the debtor to pay any additional funds beyond those already necessary to obtain a discharge. *Ibid.* With those protections in place, the court of appeals saw “no need to protect debtors” through the imposition of FDCPA liability. *Ibid.* Accordingly, the court of appeals held that “an accurate and complete proof of claim on a time-barred debt is not false, deceptive, misleading, unfair, or unconscionable under the FDCPA.” *Ibid.*

4. A petition for rehearing was denied without recorded dissent. Pet. App. 7a-8a.

#### ARGUMENT

This petition presents the same two questions as *Midland Funding, LLC v. Johnson*, No. 16-348—namely, 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 whether the Bankruptcy Code precludes such an application of the FDCPA. This Court held oral argument in *Midland Funding* on January 17, 2017, and the case remains pending. Because the Court’s decision in *Midland Funding* will likely affect the outcome here, the Court should hold the petition for a writ of certiorari until it resolves *Midland Funding*. Petitioner agrees that holding the petition is the proper course of action. See Pet. 6.

#### CONCLUSION

The petition for a writ of certiorari should be held pending this Court’s resolution of *Midland Funding, LLC v. Johnson*, No. 16-348, and then disposed of as appropriate in light of that decision.

Respectfully submitted.

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