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DEC 18 2008

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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No.	WW-08-1114-PaJuKa
)		
DAWN J. CHAUSSEE,)	Bk. No.	07-11392-KAO
)		
Debtor.)	Adv. No.	07-01266-KAO
)		
_____)		
B-REAL, LLC,)		
)		
Appellant,)		
)		
v.)	O P I N I O N	
)		
DAWN J. CHAUSSEE,)		
)		
Appellee.)		
_____)		

Argued and Submitted on October 17, 2008
at Seattle, Washington

Filed - December 18, 2008

Appeal from the United States Bankruptcy Court
for the Western District of Washington

Hon. Karen A. Overstreet, Chief Bankruptcy Judge, Presiding.

Before: PAPPAS, JURY and KAUFMAN,¹ Bankruptcy Judges.

¹ The Honorable Victoria S. Kaufman, Bankruptcy Judge for
the Central District of California, sitting by designation.

1 PAPPAS, Bankruptcy Judge:
2

3 **I. INTRODUCTION**

4 In this appeal, the Panel is called upon to decide an issue
5 of first impression in our circuit: whether the act of filing a
6 proof of claim in a bankruptcy case may, alone, subject the
7 claimant to liability for violation of state and federal fair
8 debt collection laws.

9 The appellee, chapter 13² debtor Dawn Chaussee ("Debtor"),
10 commenced an adversary proceeding alleging that appellant B-Real,
11 LLC ("B-Real") violated the Washington Consumer Protection Act,
12 WASH. REV. CODE § 19.86, et seq. (West 2008) ("CPA") and the Fair
13 Debt Collection Practices Act, 15 U.S.C. § 1601, et seq. (2008)
14 ("FDCPA") by filing two proofs of claim in Debtor's bankruptcy
15 case for debts Debtor maintains she did not owe and were time-
16 barred under state law. B-Real appeals the bankruptcy court's
17 order denying its motion to dismiss Debtor's complaint for
18 failure to state a claim under Civil Rule 12(b)(6), incorporated
19 by Rule 7012.

20 Based upon the Ninth Circuit's decisions in MSR Exploration,
21 Ltd. v. Meridian Oil, Inc., 74 F.3d 910 (9th Cir. 1996) and Walls
22 v. Wells Fargo Bank, N.A., 276 F.3d 502 (9th Cir. 2002), we
23 conclude that the Code (1) preempts Debtor's state law CPA claim
24 against B-Real, and (2) precludes her FDCPA claim. We therefore
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26 ² Unless otherwise indicated, all Code, chapter, section
27 and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-
28 1532, and to the Federal Rules of Bankruptcy Procedure, Rules
1001-9037. "Civil Rule" refers to the Federal Rules of Civil
Procedure 1-86.

1 REVERSE the bankruptcy court's denial of B-Real's motion to
2 dismiss and REMAND to the bankruptcy court for entry of an order
3 dismissing Debtor's complaint.

4
5 **II. FACTS**

6 Debtor filed a chapter 13 petition and plan on March 29,
7 2007. Her five-year debt repayment plan proposed a six percent
8 distribution to the holders of allowed unsecured claims.

9 NCO Portfolio Management, Inc., a collection agency,
10 assigned two claims to B-Real: a Citibank credit card account in
11 the amount of \$5,269.05, and a Sears credit card account in the
12 amount of \$843.74. Both accounts were listed in the name of
13 "Dawn Gonzales" and referenced a partial social security number
14 of "XXX-XX-8514." B-Real maintains that it confirmed through the
15 postal service and an internet web site³ that Debtor was also
16 known as Dawn Gonzales. In addition, the last four digits of
17 Debtor's social security number match those on the assigned
18 accounts.

19 In July 2007, B-Real filed two unsecured proofs of claim in
20 Debtor's bankruptcy case based upon the assigned accounts. The
21 claims listed Dawn Gonzales as debtor/obligee and included no
22 documentation for the claims other than an account summary
23 listing the balances alleged to be due and referring to the last
24 four digits of Debtor's social security number.

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³ B-Real alleges it relied upon information in Accurint, an
27 internet database that uses public records and non-public
28 information and provides fraud detection and identity solutions
for the public and private sectors.

1 On September 17, 2007, Debtor filed an adversary proceeding
2 complaint against B-Real, alleging it violated the CPA and FDCPA
3 by filing the two proofs of claim when the debts were barred by
4 the statute of limitations. She further alleged that B-Real's
5 claims indicated that the account-debtor was "Dawn Gonzales," and
6 that by filing the claims in her bankruptcy case, B-Real was
7 attempting to collect debts she did not owe.

8 On October 8, 2007, B-Real moved to dismiss Debtor's
9 complaint under Civil Rule 12(b)(6) contending that Debtor failed
10 to state a claim for relief under the CPA or FDCPA because
11 neither statute applied to the filing of proofs of claim in a
12 bankruptcy case. B-Real further argued that the CPA was
13 preempted by the Code's claims process. B-Real maintained that
14 Debtor's exclusive remedy for disputing the validity of its
15 proofs of claim in the bankruptcy case was to object to them.⁴

16 On November 16, 2007, as B-Real had suggested in its motion,
17 Debtor objected to the allowance of B-Real's claims under
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19 ⁴ On October 4, 2007, B-Real had filed an answer to
20 Debtor's complaint denying its allegations and asserting
21 defenses, including that the complaint failed to state a claim
22 upon which relief could be granted. B-Real also asserted a
23 counterclaim against Debtor and her counsel seeking to recover
24 its attorney's fees and costs for their alleged violation of Rule
25 9011 and FDCPA § 1692k(a)(3). Of course, B-Real's request for
26 sanctions under Rule 9011 is procedurally deficient as that Rule
27 requires such a motion be made separately from other motions or
28 requests for relief. See Rule 9011(c)(1)(A); Miller v. Cardinale
(In re DeVille), 280 B.R. 483, 493 (9th Cir. BAP 2002). FDCPA
§ 1692k(a)(3) provides in relevant part: "On a finding by the
court that an action under this section was brought in bad faith
and for the purpose of harassment, the court may award to the
defendant attorney's fees reasonable in relation to the work
expended and costs."

1 § 502(b)(1).⁵ She alleged that the debts upon which the claims
2 were based were not owed or, alternatively, were barred by the
3 applicable state statutes of limitation. B-Real did not respond
4 to this objection, and an order was entered by the bankruptcy
5 court on December 18, 2007, sustaining the objection and
6 disallowing B-Real's claims.

7 On March 5, 2008, the bankruptcy court conducted a hearing
8 concerning B-Real's motion to dismiss Debtor's complaint. After
9 further briefing from both parties, the court entered a
10 Memorandum Decision on March 26, 2008, denying B-Real's motion in
11 its entirety. The court concluded that Debtor had sufficiently
12 pled claims against B-Real under both the CPA and FDCPA. The
13 court distinguished the Ninth Circuit's decisions upon which B-
14 Real relied and held that the Code neither preempted Debtor's
15 state law CPA claim, nor precluded Debtor's FDCPA claim against
16 B-Real.

17 An order denying B-Real's motion was entered on April 11,
18 2008. B-Real timely filed a notice of appeal and a request for
19 leave to appeal the bankruptcy court's interlocutory order, which
20 the Panel granted on July 6, 2008.

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26 ⁵ Section 502(b)(1) requires the bankruptcy court to
27 disallow any claim that "is unenforceable against the debtor and
28 property of the debtor, under any agreement or applicable law for
a reason other than because such claim is contingent or unmatured
. . . ."

1 **III. JURISDICTION**

2 The bankruptcy court had jurisdiction over this action
3 pursuant to 28 U.S.C. § 1334(b) and § 157(b) (2) (A) and (B). We
4 have appellate jurisdiction under 28 U.S.C. § 158(a) (3) and (b).

5
6 **IV. ISSUES**

- 7 A. Whether the Code preempts Debtor's state law CPA claim.
8 B. Whether the Code precludes Debtor's federal FDCPA
9 claim.

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11 **V. STANDARDS OF REVIEW**

12 "A dismissal for failure to state a claim pursuant to
13 Federal Rule of Civil Procedure 12(b) (6) is reviewed de novo.
14 All allegations of material fact in the complaint are taken as
15 true and construed in the light most favorable to the plaintiff."
16 Williams v. Gerber Prods. Co., 523 F.3d 934, 937 (9th Cir. 2008)
17 (quoting Stoner v. Santa Clara County Office of Educ., 502 F.3d
18 1116, 1120 (9th Cir. 2007)); Naert v. Daff (In re Wash. Trust
19 Deed Serv. Corp.), 224 B.R. 109, 112 (9th Cir. BAP 1998).

20 Whether state law is preempted by the Code is a question of
21 law we also review de novo. MSR Exploration, 74 F.3d at 912.

22 We review issues of statutory construction and conclusions
23 of law de novo. Ransom v. MBNA Am. Bank, N.A. (In re Ransom),
24 380 B.R. 799, 802 (9th Cir. BAP 2007). De novo review requires
25 that we consider a matter anew, as if it had not been heard
26 before, and as if no decision had been previously rendered.
27 United States v. Silverman, 861 F.2d 571, 576 (9th Cir. 1988).

1 **VI. DISCUSSION**

2 **A. The CPA Claim**

3 While it was the second claim for relief against B-Real in
4 Debtor's complaint, we first dispose of Debtor's state law claim
5 against B-Real under the CPA because the outcome is so clearly
6 compelled.

7 The CPA prohibits "[u]nfair methods of competition and
8 unfair or deceptive acts or practices in the conduct of any trade
9 or commerce" in Washington. CPA § 19.86.020. Debtor's complaint
10 alleges that B-Real violated the CPA by filing a proof of claim
11 in the bankruptcy court based on a debt that she did not owe or
12 that was time-barred. In analyzing Debtor's claim, we assume
13 these allegations are true.⁶ Debtor's complaint did not specify
14 which provisions of the CPA she alleges that B-Real had violated.
15 For the alleged violation, Debtor seeks to recover treble damages
16 and attorney's fees and costs from B-Real pursuant to CPA
17 19.86.090.⁷

18 _____
19 ⁶ Our concurring colleague suggests that B-Real's filing of
20 the proofs of claim in Debtor's bankruptcy case cannot constitute
21 "trade or commerce" for purposes of the CPA. Because we conclude
22 the CPA is preempted by the Code under these circumstances, we
23 decline to explore this question.

24 ⁷ **§ 19.86.090. Civil action for damages -- Treble damages
25 authorized -- Action by governmental entities**

26 Any person who is injured in his or her business or
27 property by a violation of RCW 19.86.020, 19.86.030,
28 19.86.040, 19.86.050, or 19.86.060, or any person so
injured because he or she refuses to accede to a
proposal for an arrangement which, if consummated,
would be in violation of RCW 19.86.030, 19.86.040,
19.86.050, or 19.86.060, may bring a civil action in

(continued...)

1 B-Real contends that the bankruptcy court erred when it
2 refused to dismiss Debtor's claim and decided that the Code did
3 not preempt the CPA under these facts. We agree.

4 The preemption doctrine has its roots in the Supremacy
5 Clause of the United States Constitution⁸ and is implicated only
6 when there is a conflict between federal and state regulations.
7 MSR Exploration, 74 F.3d at 913. Under this doctrine, state laws
8 interfering with, or contrary to, federal law are preempted. See
9 Perez v. Campbell, 402 U.S. 637, 652 (1971). Our task in
10 resolving the preemption issue here is to determine whether the
11 CPA, as a state regulation, is consistent with the structure,
12 purpose, and operation of the Code as a whole. Gade v. Nat'l
13 Solid Wastes Mgmt. Ass'n, 505 U.S. 88, 98 (1992). We conclude it
14 is not.

15 The Ninth Circuit and this Panel have previously addressed
16 whether the Code preempts state law substantive claims and
17 remedies stemming from alleged misconduct by parties occurring in
18 bankruptcy cases. Miles v. Okun (In re Miles), 430 F.3d 1083
19 (9th Cir. 2005); MSR Exploration 74 F.3d 910; Bassett v. Am. Gen.

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21 ⁷(...continued)

22 the superior court to enjoin further violations, to
23 recover the actual damages sustained by him or her, or
24 both, together with the costs of the suit, including a
reasonable attorney's fee, and the court may in its
discretion, increase the award of damages to an amount
not to exceed three times the actual damages sustained

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26 ⁸ "This Constitution, and the Laws of the United States
27 which shall be made in Pursuance thereof; and all Treaties made,
28 or which shall be made, under the Authority of the United States,
shall be the supreme Law of the Land;..." U.S. CONST., Art. VI,
cl. 2.

1 Fin., Inc. (In re Bassett), 255 B.R. 747 (9th Cir. BAP 2000),
2 rev'd on other grounds, 285 F.3d. 882 (9th Cir. 2002).

3 In MSR Exploration, creditors filed proofs of claim in the
4 debtor's chapter 11 bankruptcy case. The debtor objected to the
5 claims, which were disallowed by the bankruptcy court. The
6 debtor did not pursue sanctions, attorney's fees, or any other
7 remedy in the bankruptcy court. Instead, after the debtor's
8 reorganization plan was confirmed and substantially consummated,
9 it sued the creditors for malicious prosecution in federal
10 district court. MSR Exploration, 74 F.3d at 912. The district
11 court dismissed the action and the Ninth Circuit affirmed,
12 holding that the debtor's state law malicious prosecution claim
13 against the creditors was completely preempted by the structure
14 and purpose of the Code.

15 The court of appeals offered several justifications for its
16 conclusion. First, it reasoned that in adopting 28 U.S.C.
17 § 1334, which grants the federal district courts exclusive
18 jurisdiction over bankruptcy matters, Congress intended to
19 completely preempt state law malicious prosecution actions
20 against creditors. Id. at 913-14.

21 Next, the court pointed to the "complex, detailed, and
22 comprehensive provisions of the lengthy Bankruptcy Code" as
23 evidence that Congress had created a "whole system under federal
24 control which is designed to bring together and adjust all of the
25 rights and duties of creditors and . . . debtors alike." Id. at
26 914. The court observed that if state law claims targeting
27 conduct by parties in bankruptcy cases were allowed, the
28 opportunities for asserting them would "only be limited by the

1 fertility of the pleader's mind and the laws of the state in
2 which the [bankruptcy] proceeding took place." Id. To the
3 court, this "underscore[d] the need to jealously guard the
4 bankruptcy process from even slight incursions and disruptions
5 brought about by state malicious prosecution actions." Id.

6 The Ninth Circuit next highlighted the need for uniformity
7 in bankruptcy law as a factor militating against allowing the
8 assertion of state law claims against actors in bankruptcy cases.
9 Id. In the court's view, the numerous remedies provided in the
10 Code and Rules designed to prevent the misuse of the bankruptcy
11 process suggested that "Congress has considered the need to deter
12 misuse of the process and has not merely overlooked the creation
13 of additional deterrents." Id. at 915.

14 Finally, the court observed that it had previously
15 recognized the need for preemption of state law claims in the
16 area of bankruptcy law. Id. (citing Gonzales v. Parks, 830 F.2d
17 1033 (9th Cir. 1987)). In Gonzales, the court rejected a
18 creditor's contention that a debtor's filing of a bankruptcy
19 petition allegedly in bad faith could support an action for abuse
20 of process under state law. The court was concerned that the
21 threat of later state litigation may well deter debtors and
22 creditors alike from participating in bankruptcy cases, and that
23 deterring inappropriate conduct in those cases is "a matter
24 solely within the hands of the federal courts." Id. at 916.

25 Four years later, relying upon MSR Exploration, this Panel
26 affirmed a bankruptcy court's dismissal of a debtor's claims for
27 relief against a creditor under the CPA, the very statute Debtor
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1 invokes here. In re Bassett, 255 B.R. 747.⁹ In Bassett, the
2 debtor sued a creditor for accepting payments from the debtor
3 under an allegedly unenforceable reaffirmation agreement. In
4 holding that the debtor's claim against the creditor under the
5 CPA must be dismissed, the Panel reiterated that "Congress
6 established its own remedies for abuse of the bankruptcy process,
7 and that Congress intended those remedies to occupy the field,"
8 Id. at 758-59, and held that "the federal statutory scheme
9 entailed in the Bankruptcy Code is so pervasive with respect to
10 the regulation of reaffirmation agreements that Congress intended
11 to occupy the field to the exclusion of state law." Id. at 759.

12 The Ninth Circuit later confirmed the vitality of the MSR
13 Exploration rationale in Miles. 430 F.3d 1083. In that case,
14 creditors had filed ten involuntary bankruptcy petitions against
15 the alleged debtor. Following dismissal of the petitions by the
16 bankruptcy court, the debtor's wife and daughter filed actions in
17 state court against the petitioning creditors and their
18 attorneys, alleging various state law causes of action. The
19 actions were removed to bankruptcy court, where they were
20 dismissed on the ground that the Code did not provide for third-
21 party damages. We affirmed. Miles v. Okun (In re Miles), 294
22 B.R. 756 (9th Cir. BAP 2003), aff'd 430 F.3d 1083 (9th Cir.
23 2005).

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27 ⁹ The debtor also asserted state law claims for unjust
28 enrichment and constructive trust, which were also dismissed.
Id. at 758.

1 On appeal to the Ninth Circuit, the court of appeals framed
2 the issue as whether, in enacting § 303(i),¹⁰ Congress had
3 provided an exclusive remedy for recovery of damages by an
4 alleged debtor from the creditor resulting from a dismissed
5 involuntary bankruptcy petition. The court acknowledged that,
6 while the Code and legislative history were silent on the issue,
7 the reasoning in MSR Exploration compelled it to conclude that
8 § 303(i) was indeed an exclusive remedy for recovery of damages
9 flowing from an involuntary petition filed in bad faith. Miles,
10 430 F.3d at 1089-1091. In its holding, the court noted that
11 “[w]e do not hold all state actions related to bankruptcy
12 proceedings are subject to the complete preemption doctrine,” but
13 that “[r]emedies and sanctions for improper behavior and filings
14 in bankruptcy court . . . are matters on which the Bankruptcy
15 Code is far from silent and on which uniform rules are
16 particularly important.” Id. at 1092 (quoting Koffman v.
17 Osteoimplant Tech., Inc., 182 B.R. 115, 124 (D. Md. 1995)).

18 In sum, while Miles suggests that not all state claims
19 “related to bankruptcy” may be preempted by the Code, in these
20 decisions the Ninth Circuit and this Panel have steadfastly held
21 that the Code preempts substantive state law claims and remedies
22 for alleged misconduct that occurs in connection with a
23 bankruptcy case. And although not precisely on all fours, the
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26 ¹⁰ Section 303(i) allows the bankruptcy court, under
27 appropriate circumstances, to award costs, attorney’s fees and
28 damages to an alleged debtor against a petitioning creditor when
the court dismisses an involuntary petition.

1 holdings of MSR Exploration, Bassett, and Miles provide clear
2 guidance that we should reject Debtor's CPA claim in this case.

3 The bankruptcy court attempted to distinguish MSR
4 Exploration because, unlike the facts involved in that decision,
5 B-Real had not shown that Debtor was indebted on the assigned
6 accounts, and so B-Real had no right to invoke the protection of
7 the laws governing bankruptcy cases because it was asserting
8 claims against the wrong debtor. The court observed that the
9 bankruptcy laws do not generally apply to parties who have no
10 relationship to the debtor or the debtor's assets. It was also
11 the bankruptcy court's view that Debtor's claim against B-Real
12 did not present any obstacle to the administration and objectives
13 of her bankruptcy proceeding. We respectfully disagree with this
14 analysis.¹¹

15 The bankruptcy court's view that, under these facts, B-Real
16 was not a "creditor" puts considerable strain on the Code's
17 definition of that term, as well as on the meaning the Code
18 assigns to the term "claim." Under § 101(10)(A), "creditor"
19 means an "entity that has a claim against the debtor that arose
20 at the time of or before the order for relief concerning the
21 debtor." § 101(10)(A). The Code in turn defines a claim as a
22 "right to payment, whether or not such right is reduced to
23 judgment, liquidated, unliquidated, fixed, contingent, matured,

24
25 ¹¹ Debtor alleged in the complaint that she did not list
26 debts owing to the subject creditors bearing the account numbers
27 in the proofs of claim in her bankruptcy schedules. She also
28 alleged that the proofs of claim show the account-debtor to be
"Dawn Gonzales." But, to be precise, Debtor's complaint did not
allege that she was not the "Dawn Gonzales" nor that she did not
incur the debts.

1 unmatured, disputed, undisputed, legal, equitable, secured, or
2 unsecured." § 101(5)(A). Obviously, Congress intended that the
3 term "claim" be construed in its broadest sense, and expressly
4 provided that the holder of a disputed claim against the debtor
5 is, nonetheless, to be treated as a creditor in a bankruptcy
6 case. Johnson v. Home State Bank, 501 U.S. 78, 83 (1991)
7 ("Congress intended . . . to adopt the broadest available
8 definition of 'claim'."); In re Knight, 55 F.3d 231, 234 (7th
9 Cir. 1995) ("a disputed claim is nevertheless a claim" and its
10 holder a creditor); Korte v. United States (In re Korte), 262
11 B.R. 464, 471 (8th Cir. BAP 2001) (holder of a disputed claim is
12 a creditor). The bankruptcy court's conclusion that B-Real was
13 not a "creditor" places an undue limitation on these deliberately
14 broad definitions.

15 Moreover, the bankruptcy court's attempt to distinguish MSR
16 Exploration on its facts is unpersuasive. That the holding in
17 MSR Exploration applies in this case was demonstrated by this
18 Panel in Bassett, and the Ninth Circuit's later decision in
19 Miles. In MSR Exploration, as here, the alleged wrongful conduct
20 arose in connection with the bankruptcy claims process; however,
21 the cause of action asserted by the debtor against the purported
22 creditors was for malicious prosecution. MSR Exploration, 74
23 F.3d 910. In Bassett, the alleged wrongful conduct was based
24 upon a defective reaffirmation agreement, and the debtor's claim
25 against the creditor was founded upon the CPA. 255 B.R. at 758.
26 And in Miles, the wrongful conduct targeted the creditors'
27 alleged bad faith filing of an involuntary petition under § 303,
28 a statute which provides express remedies in the event the

1 bankruptcy court determines that the petition was wrongfully
2 filed and dismissed. The causes of action asserted by the
3 alleged debtor against the creditors, however, were all premised
4 upon state law for negligence, defamation, false light, abuse of
5 process, intentional and negligent infliction of emotional
6 distress, and negligent misrepresentation. 430 F.3d at 1086.

7 In each of these cases, the factual predicate for the state
8 law claim hinged upon the alleged wrongful conduct of a party in
9 a bankruptcy case. Indeed, the prebankruptcy relationship of the
10 parties as debtor and creditor was of no discernable import to
11 the courts in reaching their decisions. As in those cases, here
12 the factual foundation of Debtor's allegations is, solely, that
13 in filing of proofs of claim in the bankruptcy court, B-Real
14 violated the state consumer protection laws. Because B-Real's
15 conduct occurred in a bankruptcy case, we disagree with the
16 bankruptcy court's conclusion that the facts of this case are
17 distinguishable from those in the case law.

18 As in MSR Exploration, Miles, and Bassett, we conclude that
19 the Code, and the Rules implementing its terms, provide the
20 exclusive remedies should the bankruptcy court eventually find
21 B-Real's conduct in Debtor's bankruptcy case to have been
22 wrongful. The statutory analysis and policy considerations
23 espoused in those decisions apply with equal force here.

24 Only creditors filing proofs of claim were to receive
25 distributions in this bankruptcy case. Rule 3002(a) (providing
26 that, with exceptions not applicable here, an "unsecured creditor
27 . . . must file a proof of claim . . . for the claim . . . to be
28 allowed"). In a very pragmatic sense, then, the act of filing a

1 claim constitutes the foundation for creditor participation in
2 this case. Allowing debtors to recover under the CPA solely
3 because a creditor filed a proof of claim may skew the incentive
4 structure of the Code and its remedial scheme and could
5 discourage creditors from filing a claim. See MSR Exploration,
6 74 F.3d at 916 (noting that “[e]ven the mere possibility of being
7 sued in tort . . . could in some instances deter persons from
8 exercising their rights in bankruptcy.”).

9 In addition, permitting prosecution of a CPA action for
10 statutory damages, attorney’s fees, and costs might encourage
11 debtors to dispense with the claim objection process in favor of
12 an adversary proceeding, needlessly casting all concerned into
13 costly litigation. See Williams v. Asset Acceptance, LLC (In re
14 Williams), 392 B.R. 882, 887 (Bankr. M.D. Fla. 2008). In our
15 view, granting a debtor access to the remedies under the CPA
16 could present an obstacle to the accomplishment and execution of
17 the purposes and objectives of Congress in its intricate design
18 of the claims process in the bankruptcy court.

19 Bankruptcy courts require full control of the remedies
20 available for addressing improprieties occurring in the cases on
21 their dockets. As the Panel explained in Miles, “[t]he risk of
22 subverting the bankruptcy process also warrants the conclusion
23 that the bankruptcy courts must have control over remedies for
24 the improper filing of bankruptcy petitions[.]” 294 B.R. at 761.
25 That same rationale is applicable to the remedies for the
26 improper filing of a proof of claim.

27 Finally, “the unique, historical, and even constitutional
28 need for uniformity in the administration of the bankruptcy laws

1 is another indication that Congress wished to leave the
2 regulation of the parties before the bankruptcy court in the
3 hands of the federal courts alone." MSR Exploration, 74 F.3d at
4 915. The claims procedure set forth in the Code and Rules
5 provides debtors with the opportunity to object to improper or
6 unenforceable claims. If a claim is unenforceable against the
7 debtor, it can be promptly disallowed under § 502(b)(1), just as
8 occurred in this case. Rule 3007 (prescribing the process for
9 objecting to proofs of claim). Further, the availability of
10 sanctions for the filing of an improper claim in a bankruptcy
11 proceeding, whether through the use of Rule 9011 or § 105(a),
12 reflects Congress's intent that the law relating to bad faith and
13 willful misconduct in bankruptcy proceedings be developed case-
14 by-case in the context of the federal bankruptcy law, not by
15 application of state law.

16 Consistent with the teachings of our circuit's case law, we
17 fear that the purposes and policies of the Code, together with
18 the need for its uniform application, may be undercut if debtors
19 can pursue state law claims under the CPA against those accused
20 of filing an improper proof of claim. MSR Exploration, 74 F.3d
21 at 914 (observing that "[i]t is very unlikely that Congress
22 intended to permit the superimposition of state remedies on the
23 many activities that might be undertaken in the management of the
24 bankruptcy process."). We therefore hold that, because Debtor's
25 state law claim against B-Real under the CPA is preempted by the
26 Code, Debtor's complaint failed to state a claim against B-Real
27 upon which relief could be granted. As a result, the bankruptcy
28 court erred when it did not dismiss that claim.

1 **B. The FDCPA Claim**

2 In the complaint, Debtor's first claim for relief alleges
3 that, in filing the proofs of claim in her bankruptcy case, B-
4 Real violated FDCPA § 1692f, which prohibits a debt collector
5 from using unfair or unconscionable means to collect, or attempt
6 to collect, any debt. While Debtor's complaint did not specify
7 which of the various subsections of FDCPA § 1692f B-Real
8 violated, the bankruptcy court decided that the statutory
9 restriction most likely implicated was FDCPA § 1692f(1), which
10 prohibits "the collection of any amount . . . unless such amount
11 is expressly authorized by the agreement creating the debt or
12 permitted by law." FDCPA § 1692f. For this violation, Debtor
13 sought to recover from B-Real her actual damages, statutory
14 damages in an amount up to \$1,000, and attorney's fees and costs.
15 FDCPA § 1692k(a)(1)-(3).

16 In refusing to dismiss Debtor's claim, B-Real contends the
17 bankruptcy court erred in two respects. First, relying on the
18 Ninth Circuit's decision in Walls, B-Real argues that the Code
19 and Rules preclude application of the FDCPA in the context of the
20 bankruptcy claims process. Second, B-Real contends that the
21 filing of a proof of claim in a bankruptcy case is not an attempt
22 to collect a debt against the debtor and, therefore, cannot be a
23 violation of the FDCPA. For both reasons, B-Real urges the Panel
24 to hold that the filing of a proof of claim cannot, as a matter
25 of law, violate FDCPA. We hold that the Ninth Circuit's decision
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1 in Walls controls the outcome here, and that the Code precludes
2 the application of the FDCPA under these facts.¹²

3 In Walls, a chapter 7 debtor continued to make payments to
4 the creditor holding the mortgage on her house after receiving a
5 discharge in her bankruptcy case to enable her to keep the home
6 under the so-called "ride-through" doctrine. Walls, 276 F.3d at
7 505 (citing In re Parker, 139 F.3d 668, 672-73 (9th Cir. 1998)).
8 When the debtor later stopped making payments, the creditor
9 foreclosed. The debtor responded by commencing a class action in
10 federal district court on behalf of chapter 7 debtors to recover
11 damages, alleging, among other theories, that the creditor had
12 violated FDCPA in attempting to collect a debt after it had been
13 discharged in the debtor's bankruptcy case.¹³ The district court
14 dismissed this claim, and the debtor appealed. On appeal, the
15 Ninth Circuit affirmed the dismissal, deciding that the debtor's
16 FDCPA claim based upon the creditor's alleged violation of the
17 § 524 discharge was precluded by the Code.

18 The court began its analysis by noting that "[t]here is no
19 escaping that Wall's FDCPA claim is based on an alleged violation
20

21 ¹² Again, in reaching our decision, and unlike our
22 colleague, we assume, but decline to decide, that filing a proof
23 of claim in a bankruptcy case can, alone, constitute a FDCPA
violation.

24 ¹³ The debtor also alleged that the Code's discharge
25 provisions, coupled with the powers granted to the court under
26 § 105(a) to implement the Code and prevent an abuse of process,
27 created a private right of action in favor of debtors against
28 collecting creditors. The district court disagreed, holding that
the debtor's remedy was limited to asking the bankruptcy court to
find the creditor in contempt. On appeal, the Ninth Circuit
affirmed. Walls, 276 F.3d at 506-10.

1 of § 524." Id. at 510. Therefore, the court explained, in order
2 to adjudicate the debtor's FDCPA claim, the district court would
3 have been required to engage in a series of "bankruptcy-laden"
4 determinations: whether the debtor's payments to the creditor had
5 been voluntary under § 524(f); whether the creditor was required
6 to enter into a reaffirmation agreement with the debtor pursuant
7 to § 524(c) in order to accept the payments; and whether the so-
8 called "ride-through" precluded the creditor from engaging in
9 foreclosing. Id. These bankruptcy issues were, according to the
10 court, unrelated to FDCPA. In light of this, the court reasoned:

11 The Bankruptcy Code provides its own remedy for
12 violating § 524, civil contempt under § 105. To permit
13 a simultaneous claim under the FDCPA would allow
14 through the back door what Walls cannot accomplish
15 through the front door—a private right of action. This
16 would circumvent the remedial scheme of the Code under
17 which Congress struck a balance between the interests
18 of debtors and creditors by permitting (and limiting)
19 debtor's remedies for violating the discharge
20 injunction to contempt. "[A] mere browse through the
21 complex, detailed, and comprehensive provisions of the
22 lengthy Bankruptcy Code . . . demonstrates Congress's
23 intent to create a whole system under federal control
24 which is designed to bring together and adjust all the
25 rights and duties of creditors and embarrassed debtors
26 alike." MSR Exploration, 74 F.3d at 914. . . .
27 Nothing in either Act persuades us that Congress
28 intended to allow debtors to bypass the Code's remedial
scheme when it enacted the FDCPA. While the FDCPA's
purpose is to avoid bankruptcy, if bankruptcy
nevertheless occurs, the debtor's protection and remedy
remain under the Bankruptcy Code. See Kokoszka v.
Belford, 417 U.S. 642, 651, 94 S. Ct. 2431, 41 L. Ed.
2d 374 (1974).

24 Walls, 276 F.3d at 510.

25 In its decision, while discussing Walls, the bankruptcy
26 court noted several differences in the facts. Here, (1) Debtor
27 was not trying to bypass remedies under the Code; (2) Debtor had
28 already exercised her remedy of objecting to the claim; (3)

1 unlike in Walls where the debtor's bankruptcy case was completed
2 before the relevant acts were taken by the creditor, B-Real's
3 offensive action occurred during the pendency of Debtor's
4 bankruptcy case; and (4) the simultaneous assertion of Debtor's
5 rights under the FDCPA and the Code would not interfere with any
6 pending bankruptcy proceedings.¹⁴

7 The bankruptcy court's attempt to differentiate Walls is
8 unconvincing. While Walls involved an FDCPA claim based upon an
9 alleged discharge violation, the rationale for its holding that
10 the Code precluded application of the FDCPA was based in large
11 part upon the reasoning in the court's prior decision in MSR
12 Exploration. We believe reliance upon MSR Exploration in this
13 case is appropriate because, as noted above, that decision dealt
14 with precisely the type of creditor conduct involved here, the
15 filing of a disputed proof of claim in a bankruptcy case. MSR
16 Exploration carefully explained the reasons for holding that a
17 state law claim based on wrongful conduct occurring in a
18 bankruptcy case was preempted by the Code; the Code represents a
19 "whole system" designed to comprehensively define all rights and
20 remedies of debtors and creditors. Walls, 276 F.3d at 510
21 (quoting MSR Exploration, 74 F.3d at 914). That reasoning is, we
22 believe, also applicable in analyzing whether Debtor's FDCPA
23 claim is precluded under these facts.

24
25 ¹⁴ The bankruptcy court also observed that after Walls,
26 "confusion regarding the preemption doctrine continues in the
27 Ninth Circuit." However, Walls did not discuss nor apply the
28 preemption doctrine because the Supremacy Clause operates only
when there is a conflict between federal and state regulation.
In other words, Walls is not a preemption case.

1 Walls notes that wherever possible, competing federal
2 statutes should be read jointly. Walls, 276 F.3d at 510 (citing
3 Ruckelshaus v. Monsanto Co., 467 U.S. 986 (1984)). However, the
4 court concluded, to “permit a simultaneous claim under the FDCPA
5 would . . . circumvent the remedial scheme of the Code under
6 which Congress struck a balance between the interests of debtors
7 and creditors” Id. And while its earlier decision
8 invoked the preemption doctrine, we find the conclusion to be
9 drawn from the court’s reliance on MSR Exploration in Walls and
10 other decisions to be inescapable: where the Code and Rules
11 provide a remedy for acts taken in violation of their terms,
12 debtors may not resort to other state and federal remedies to
13 redress their claims lest the congressional scheme behind the
14 bankruptcy laws and their enforcement be frustrated. The same
15 concerns we articulate above in rejecting Debtor’s state CPA
16 claim justify a similar result as to her FDCPA action. Put
17 simply, Congress did not intend to allow a debtor to bypass the
18 statutory scheme clearly embodied in the language of the Code.
19 See also Wan v. Discover Fin. Servs., Inc. (In re Wan), 324 B.R.
20 124, 127 (N.D. Cal. 2005) (communication alleged to be in
21 violation of the FDCPA made to the debtor’s counsel during the
22 pendency of the bankruptcy case raised an even greater concern
23 about potential overlap and conflict between the Code and the
24 FDCPA than was present in Walls).

25 Spurning Walls, both Debtor and the bankruptcy court would
26 urge us to invoke the reasoning espoused in Randolph v. IMBS,
27 Inc., 368 F.3d 726 (7th Cir. 2004), a case in which a debtor’s
28 FDCPA claim for violating the Code was allowed to proceed. In

1 Randolph, a creditor sent a post-discharge letter to the debtor,
2 allegedly in violation of the § 524 discharge. Noting that one
3 federal statute should be found to have impliedly repealed
4 another only when an irreconcilable conflict occurs when both co-
5 exist, Randolph asserts that a court must evaluate whether
6 competing statutes conflict before deciding whether preclusion
7 applies. Id. at 730-31. Finding no direct conflict between the
8 Code and FDCPA under the facts before it, the Seventh Circuit
9 ruled that the statutes could both be applied, and the debtor
10 could therefore pursue a claim for relief against the creditor
11 under FDCPA outside the bankruptcy court. Id. at 733.

12 Of course, as a decision of the Ninth Circuit, this Panel is
13 bound to apply Walls even were we inclined to agree with the
14 logic and reasoning of Randolph. McDonald v. Checks-N-Advance,
15 Inc. (In re Ferrell), 358 B.R. 777, 791 (9th Cir. BAP 2006). But
16 even if not so constrained, we would respectfully reject
17 Randolph's analysis in this context and conclude, as in Walls,
18 that the Code precludes application of the FDCPA under our facts.

19 Unlike in Randolph, where the debtor's claim against the
20 creditor was based upon the creditor's actions taken after
21 conclusion of the bankruptcy case, the purported FDCPA violation
22 targets B-Real's act of filing a proof of claim in the pending
23 bankruptcy case. Application of the FDCPA to this conduct would
24 certainly conflict with the Code.

25 Under § 501(a), if a creditor desires to share in
26 distributions in the bankruptcy case, a creditor may file a proof
27 of claim. If the proof of claim is executed and filed in
28 accordance with the Rules, it "shall constitute prima facie

1 evidence of the validity and amount of the claim." Rule 3001(f).
2 Under § 502(a), the claim is "deemed allowed, unless a party in
3 interest . . . objects." The Rules prescribe the procedure for
4 filing and resolving an objection to allowance of a claim. Rule
5 3007 (specifying that an objection to a claim be in writing,
6 filed with the bankruptcy court, and that creditor receive at
7 least 30-days notice of any hearing concerning the objection).

8 In contrast to the Code's claims process, FDCPA requires a
9 debt collector and the debtor to conform to a debt validation
10 procedure. FDCPA § 1692g provides that within five days after
11 the initial communication with a consumer in connection with the
12 collection of any debt, a debt collector shall provide a written
13 notice to the consumer that includes a statement that unless the
14 consumer within thirty days after receipt of the notice disputes
15 the validity of the debt or any portion thereof, the debt will be
16 assumed to be valid by the debt collector. FDCPA § 1692g(a)(3).
17 The notice must also include a statement that if the consumer
18 notifies the debt collector in writing within the thirty-day
19 period that the debt, or any portion thereof, is disputed, the
20 debt collector must obtain verification of the debt or a copy of
21 a judgment against the consumer and mail a copy of such
22 verification or judgment to the consumer. FDCPA § 1692g(a)(4).

23 FDCPA further provides:

24 If the consumer notifies the debt collector in writing
25 within the thirty-day period described in subsection
26 (a) of this section that the debt, or any portion
27 thereof, is disputed . . . the debt collector shall
28 cease collection of the debt, or any disputed portion
thereof, until the debt collector obtains verification
of the debt or a copy of a judgment, or the name and
address of the original creditor, and a copy of such
verification or judgment, or name and address of the

1 original creditor, is mailed to the consumer by the
2 debt collector.

3 FDCPA § 1692g(b). If the consumer fails to dispute the validity
4 of a debt, that failure may not be construed by any court as an
5 admission of liability by the consumer. FDCPA § 1692g(c).
6 Finally, a communication in the form of a formal pleading in a
7 civil action is not to be treated as an initial communication for
8 purposes of subsection (a) of this section. FDCPA § 1692g(d).

9 "Through this [debt validation] process, the debt collector
10 learns whether the debt is contested and the reasons, if any, for
11 the debtor's refusal to pay. The statutory scheme of the FDCPA
12 thus . . . ensures a cost effective means by which a debtor and
13 debt collector can exchange information. This is an important
14 part of the FDCPA's statutory scheme." Hubbard v. Nat'l Bond
15 & Collection Assocs., Inc., 126 B.R. 422, 428 (D. Del. 1991).

16 "After the validation procedure of § 1692g, a debt collector
17 would have actual knowledge of the facts relevant to a particular
18 debt and could be held liable under the FDCPA for any further
19 debt collection efforts that violate the letter of the act.
20 Therefore, under § 1692g, the debtor bears a responsibility to
21 notify the debt collector of facts which the debt collector would
22 not otherwise be aware." Id.

23 In our opinion, the debt validation provisions required by
24 FDCPA clearly conflict with the claims processing procedures
25 contemplated by the Code and Rules. Simply put, we find that the
26 provisions of both statutes cannot compatibly operate.

27 For example, as noted above, a proof of claim filed in a
28 bankruptcy case constitutes prima facie evidence of its validity

1 and is deemed allowed unless and until the debtor objects to it.
2 § 502(a); Rule 3001(f). If an objection is filed, the bankruptcy
3 court resolves that objection after notice and a hearing. Rule
4 3007.

5 In contrast, under FDCPA, a debt is presumed valid if the
6 debtor does not dispute the debt within thirty days after receipt
7 of an "initial communication." Even then, FDCPA provides that,
8 if the consumer fails to dispute the validity of a debt, that
9 failure may not be construed by any court as an admission of
10 liability by the consumer. FDCPA § 1692g(c).

11 Moreover, under the FDCPA, a "communication in the form of a
12 formal pleading" shall not be treated as an initial
13 communication. We question whether the filing of a proof of
14 claim by a creditor constitutes an initial communication. If it
15 is not an initial communication, then in order to comply with
16 FDCPA, the debt collector must send another communication to the
17 debtor containing the required statutory notice. However,
18 sending such a notice to a debtor in a pending bankruptcy case
19 has been held to violate the automatic stay. Maloy v. Philips,
20 197 B.R. 721, 723 (M.D. Ga. 1996). We are therefore puzzled as
21 to how creditors can comply with both statutory schemes when the
22 Code dictates they cease all collection actions, whereas FDCPA
23 requires them to communicate with the debtor in connection with
24 the collection of a debt.

25 Creditors likely would fare no better by placing the FDCPA
26 required notice on a proof of claim form. Such a notice would
27 undoubtedly cause confusion. If the notice is placed on the
28 proof of claim, must the debtor, who may or may not be

1 represented by counsel, comply with the requirements of FDCPA to
2 dispute the debt? Or is it sufficient that the debtor follow the
3 § 502/Rule 3007 procedure for objecting to a claim?¹⁵

4 The writing and timing requirements for objecting to a proof
5 of claim further illustrate the conflict between the statutes.
6 Rule 3007 requires that a debtor object to allowance of a claim
7 in writing. However, there is disagreement in the courts whether
8 a consumer must dispute a debt in writing under FDCPA § 1692g.
9 Compare Graziano v. Harrison, 950 F.2d 107 (3d Cir. 1991)
10 (dispute must be in writing) with Sanchez v. Robert E. Weiss,
11 Inc. (In re Sanchez), 173 F. Supp. 2d 1029 (N.D. Cal. 2001) (no
12 writing required). The Code requires the debtor to serve the
13 claimant with a copy of the objection and notice of hearing at
14 least thirty days prior to the hearing. Yet, under the FDCPA, a
15 debtor has but thirty days to dispute the claim, which in turn
16 commences an informal debt validation procedure.

17 Attempting to reconcile the debt validation procedure
18 contemplated by FDCPA with the claims objection process under the
19 Code results in the sort of confusion and conflicts that
20 persuades us that Congress intended that FDCPA be precluded in
21 the context of bankruptcy cases. We fail to understand how B-
22 Real could comply with FDCPA § 1692g and its various notice and
23 informational requirements because those provisions conflict with
24 the Code and Rules. Yet, if Debtor is correct, presumably debt

25
26 ¹⁵ Anecdotally, the members of the Panel agree that it is
27 not uncommon in bankruptcy cases to encounter creditor proofs of
28 claim, or even motions, that display an FDCPA notice on their
face. As noted, perhaps in the Seventh Circuit after Randolph,
this phenomenon is required.

1 collectors must comply with all the provisions of FDCPA when
2 attempting to collect debts in bankruptcy cases. We think
3 avoiding this sort of disorder provides a solid basis for
4 application of the Ninth Circuit's reasoning in MSR Exploration
5 and Walls. Whatever shortcomings the Seventh Circuit in Randolph
6 perceived in the Ninth Circuit's analysis, they are unpersuasive
7 when viewed under our facts.

8 Debtor also urges that there is a shortage of appropriate
9 remedies under the Code and Rules to address a creditor's
10 misconduct in filing an improper proof of claim. Other than
11 objecting to B-Real's proof of claim, Debtor suggests there are
12 no adequate protections afforded under the bankruptcy laws. She
13 maintains it is unfair to allow a creditor to assert
14 unenforceable claims in a bankruptcy court and to require her to
15 shoulder the burden of the costs and fees in objecting to such
16 claims.

17 We may quickly dispense with Debtor's contention that she
18 will be treated unfairly if she cannot sue B-Real under FDCPA.
19 As explained by one court:

20 Certainly [it] is something of a burden [to object to
21 improper creditor claims], but, why would it be an
22 unfair burden? Debtors in chapter 13 voluntarily file
23 their cases, submitting themselves to an adjustment of
24 their debts. A part of this voluntary process
25 necessarily involves them in a claims analysis, making
26 any argument by a debtor that it is burdensome for the
27 debtor to examine proofs of claims a hollow one. . . .
28 This Debtor, through counsel, did object to one claim
in the case, demonstrating that an objection is a
relatively simple pleading. The one filed is a
single-page document. There is nothing to indicate
that the proofs of claim in this or other chapter 13
cases in this district are difficult to see or review.
Certainly, they are not difficult to review for one of
the Plaintiffs, the trustee.

1 Yancey v. Citifinancial, Inc. (In re Yancey), 301 B.R. 861, 870
2 (Bankr. W.D. Tenn. 2003). As in Yancey, in this case, it was a
3 fairly simple process for Debtor to object to B-Real's proofs of
4 claim, and the bankruptcy court disposed of that objection
5 without apparent complication, undue delay or expense. Under the
6 circumstances, the claims objection process was not unfair to
7 Debtor.¹⁶

8 Debtor shuns Rule 9011 as an inadequate remedy for B-Real's
9 alleged misconduct, because that rule allows a creditor to
10 withdraw a bogus proof of claim under the safe-harbor provisions
11 when challenged.¹⁷ Debtor also complains that it is more
12 difficult to recover sanctions under the standards incorporated
13 by Rule 9011 as compared to the "strict liability" approach for
14 recovery of damages, attorney's fees, and costs for violations of
15 FDCPA.

16 While Debtor's lament may be true, her reluctance to pursue
17 sanctions rings hollow considering that, instead, she and her
18 counsel elected to follow the more procedurally complicated route
19 of filing an adversary complaint. We are confident that Rule

20
21 ¹⁶ Because the statute of limitations is an affirmative
22 defense, a debtor is indeed burdened by the requirement that an
23 objection be filed to a proof of claim that is, on its face,
24 clearly time-barred. In deeming uncontested proofs of claim
25 which otherwise comply with the Code and Rules prima facie valid
26 and allowed, Congress and rule-makers arguably elevated the need
for efficiency in bankruptcy cases too far. But while we
understand a debtor's procedural predicament, any solution must
come via an amendment to the Code and Rules, not by resort to an
action under FDCPA.

27 ¹⁷ There is no indication in the record that Debtor served
28 B-Real with a proposed sanctions motion as required by Rule
9011(c)(1)(A) prior to objecting to its proofs of claim.

1 9011 provides an adequate remedy for dealing with baseless proofs
2 of claim. See In re Wingerter, 394 B.R. 859, 868 (6th Cir. BAP
3 2008) (Rule 9011 applies to proof of claim abuse and court
4 "should test the signer's conduct by inquiring what was
5 reasonable to believe at the time the [claim] was submitted.");
6 Rogers v. B-Real, L.L.C. (In re Rogers), 391 B.R. 317, 323
7 (Bankr. M.D. La. 2008) ("Rule 9011 can be used to sanction a
8 creditor that files a proof of claim without proper prefiling
9 investigation and support."); In re Dansereau, 274 B.R. 686, 688-
10 89 (Bankr. W.D. Tex. 2002); In re McAllister, 123 B.R. 393, 395
11 (Bankr. D. Or. 1991); cf. Adair v. Sherman, 230 F.3d 890, 895 n.8
12 (7th Cir. 2000) (Rule 9011 applies to filing fraudulent proofs of
13 claim).

14 As an alternative response to a groundless claim, Debtor
15 should also remember that bankruptcy courts possess authority
16 pursuant to § 105(a)¹⁸ "to impose sanctions for a pattern of bad
17 faith conduct that transcends conduct addressed by particular
18 rules or statutes." Price v. Lehtinen (In re Lehtinen), 332 B.R.
19 404, 412 (9th Cir. BAP 2005) (citation omitted). While § 105(a)

21 ¹⁸ Section 105(a) provides that:

22 The court may issue any order, process, or judgment
23 that is necessary or appropriate to carry out the
24 provisions of this title. No provision of this title
25 providing for the raising of an issue by a party in
26 interest shall be construed to preclude the court from,
27 sua sponte, taking any action or making any
determination necessary or appropriate to enforce or
implement court orders or rules, or to prevent an abuse
of process.

28 (Emphasis added).

1 empowers bankruptcy courts to impose civil, but not criminal or
2 punitive sanctions, Id., if a purported creditor abuses the
3 claims process, we are confident that § 105(a) provides an
4 effective mechanism for addressing that misconduct.¹⁹

5 In short, we are convinced that the Code and Rules are up to
6 the task of compensating a debtor for any damages or costs
7 occasioned by, and to punish and deter, those who would abuse the
8 bankruptcy claims process.²⁰ For all of the above reasons, we
9 believe Walls compels our holding that Debtor's claim against B-
10 Real under FDCPA is precluded by the Code.²¹ It was error for
11

12 ¹⁹ Of course, there are also criminal penalties prescribed
13 for truly egregious conduct in filing proofs of claim. See 18
14 U.S.C. § 152 and § 3571.

15 ²⁰ Again, we note our concern that prosecution of FDCPA
16 actions against creditors for filing defective proofs of claim,
17 with the attendant burden so imposed on creditors and the
18 bankruptcy courts, be viewed as a source of profits for debtors
19 and their counsel. While one court noted that FDCPA arms
20 "consumers with a shield against the overly zealous debt
21 collector [and that] this shield is particularly important in our
22 modern computer-driven world," Russell v. Equifax A.R.S., 74 F.3d
23 30, 32 (2d Cir. 1996), others have warned that it would be absurd
24 to allow the statute to become a "sword in the hands of the
25 debtor." Ignatowski v. GC Servs., 3 F. Supp. 2d 187, 191
26 (D. Conn. 1998).

27 ²¹ Our beacon is Ninth Circuit case law. But in concluding
28 that the Code precludes Debtor's FDCPA claim, we join what
appears to be a significant majority of courts from across the
country that have come to the same conclusion. In re Varona, 388
B.R. 705, 719 (Bankr. E.D. Va. 2008) ("It appears a majority of
courts that have considered whether a proof of claim may be the
subject of a FDCPA violation have concluded the FDCPA is not
intended to provide a remedy for claims filed in a bankruptcy
proceeding." (citing cases)); see also Williams v. Asset
Acceptance, LLC, (In re Williams), 392 B.R. 882, 886 (Bankr. M.D.
Fla. 2008) (relying on the "overwhelming authorities" supporting
(continued...)

1 the bankruptcy court to deny B-Real's motion to dismiss Debtor's
2 FDCPA claim.

3 **VII. CONCLUSION**

4 We REVERSE the bankruptcy court's order denying B-Real's
5 motion to dismiss debtor's complaint. We REMAND this matter to
6 the bankruptcy court for entry of an order and further
7 proceedings consistent with this Opinion.

8
9 JURY, Bankruptcy Judge, Concurring:

10 I agree that debtor's complaint should have been dismissed
11 and join in the majority's conclusions on preemption of the CPA
12 and preclusion of the FDCPA by the Code on these facts. However,
13 because I believe that the act of filing a proof of claim is
14 neither a violation of the CPA by definition nor a debt
15 collection act under the FDCPA, I write separately. Also, I
16 write to note an ambiguity in the breadth of the Ninth Circuit's
17 holding in Walls, 276 F.3d 502.

18 **I. The Scope of the CPA**

19 I start with the language of the statute itself in
20 determining its scope. United States v. Turkette, 452 U.S. 576,
21 580 (1981). "If the statutory language is unambiguous, in the
22 absence of 'a clearly expressed legislative intent to the
23

24 ²¹ (...continued)
25 preclusion of FDCPA claims based upon the filing of a proof of
26 claim in a bankruptcy case); Middlebrooks v. Interstate Credit
27 Control, Inc., 391 B.R. 434, 437 (D. Minn. 2008) (holding that an
28 FDCPA claim cannot be premised on an unmeritorious, time-barred
proof of claim filed during bankruptcy proceedings); but see In
re Rogers, 391 B.R. at 325-26 (following Randolph and declining
to follow Walls).

1 contrary, that language must ordinarily be regarded as
2 conclusive.'" Id.; see also United States v. Ron Pair Enters.
3 Inc., 489 U.S. 235, 241-42 (1989) (if the words are clear, the
4 court must apply the statute by its terms unless to do so would
5 lead to absurd results). I also look to the design of the
6 statute as a whole and to its object and policy in determining
7 the meaning of a statute. Crandon v. United States, 494 U.S.
8 152, 158 (1990).

9 The express purpose of the CPA is to complement the body of
10 federal law governing restraints of trade, unfair competition and
11 unfair, deceptive, and fraudulent acts or practices in order to
12 protect the public and foster fair and honest competition. CPA
13 § 19.86.920. The CPA declares that "[u]nfair methods of
14 competition²² and unfair or deceptive acts or practices in the
15 conduct of any trade or commerce" are unlawful. CPA § 19.86.020.
16 What constitutes "unfair or deceptive acts or practices" is not
17 defined in the statute. "[T]rade or commerce" is defined as "the
18 sale of assets or services, and any commerce directly or
19 indirectly affecting the people of the state of Washington." CPA
20 § 19.86.010(2).

21 Any doubt that the CPA is inapplicable under the
22 circumstances here is eliminated by examining the requirement
23 that the unfair acts or practices occur in the conduct of any

24
25 ²² The filing of a proof of claim cannot constitute unfair
26 competition under the CPA by any stretch of the imagination. In
27 Boggs v. Whitaker, Lipp & Helea, Inc., P.S., 56 Wash. App. 583,
28 586-87, 784 P.2d 1273, 1274-75 (Wash Ct. App. 1990), the court
found that unfair competition did not include false
representations and sale of investments to consumers; the term
applied only to acts against competitors.

1 trade or business. The filing of a proof of claim cannot
2 reasonably be construed as conduct occurring in the sale of
3 assets or services or in commerce within the ordinary meaning of
4 those terms.²³ I thus conclude that the conduct debtor complains
5 of here – the filing of a proof of claim – does not fall within
6 the express language of the statute, reasonably construed.
7 Courts in other jurisdictions with similar state law consumer
8 protection statutes have so concluded. See Williams v. Asset
9 Acceptance, LLC (In re Williams), 392 B.R. 882, 887-88 (Bankr.
10 M.D. Fla. 2008) (filing a proof of claim not a “trade” or
11 “commerce” within the meaning of the Florida Deceptive and Unfair
12 Trade Practices Act); Rogers v. B-Real, L.L.C. (In re Rogers),
13 391 B.R. 317, 326-327 (Bankr. M.D. La. 2008) (dismissing debtor's
14 claim for violation of Louisiana's Unfair Trade Practice's Laws
15 on grounds that the statute did not apply to the proof of claim
16 process).

17 The standard applicable to a motion to dismiss is whether
18 debtor has properly stated a claim under the CPA, which entails
19 five elements: (1) an unfair or deceptive practice; (2) in trade
20 or commerce; (3) that impacts the public interest; (4) which
21 causes injury to the party in his business or property; and (5)
22 which injury is causally linked to the unfair or deceptive act.
23 Indus. Indem. Co. of the N.W., Inc. v. Kallevig, 114 Wash. 2d

24
25 ²³ Judicial construction of the term trade is limited. For
26 example, one court found the term trade, as used by the CPA, only
27 includes the entrepreneurial or commercial aspects of
28 professional services, not the substantive quality of services
provided. Ramos v. Arnold, 141 Wash. App. 11, 20, 169 P.3d 482,
486 (2007). This construction is not helpful applied to the
facts of the present case.

1 907, 920-921, 792 P.2d 520, 528 (1990). Failure to meet any one
2 of these elements under the CPA is fatal to the claim. Sorrel v.
3 Eagle Healthcare, Inc., 110 Wash. App. 290, 298, 38 P.3d 1024,
4 1028 (Wash Ct. App. 2002). Because debtor cannot demonstrate
5 that filing a proof of claim is an act or practice in trade or
6 commerce, I believe that debtor is unable to state a claim under
7 the CPA as a matter of law. I would dismiss the second claim for
8 relief on that alternative ground.

9 **II. The Scope of the FDCPA**

10 The declared purpose of the FDCPA is "to eliminate abusive
11 debt collection practices by debt collectors" FDCPA
12 § 1692(e). Congress sought to eliminate such practices because
13 they contributed "to the number of personal bankruptcies, to
14 marital instability, to the loss of jobs, and to invasions of
15 individual privacy." FDCPA § 1692(a). Notably, the statute is
16 applicable only to debt collectors and not to creditors.²⁴

17 The FDCPA regulates many aspects of debt collection. Under
18 the statute, debt collectors are prohibited from making false or
19 misleading representations and from engaging in various abusive
20 and unfair practices. For example, a debt collector may not use

21
22 ²⁴ Under the FDCPA, the term "creditor" means "any person
23 who offers or extends credit creating a debt or to whom a debt is
24 owed, but such term does not include any person to the extent
25 that he receives an assignment or transfer of a debt in default
26 solely for the purpose of facilitating collection of such debt
27 for another." FDCPA § 1692a(4). The term "debt collector" is
28 defined as "any person who uses any instrumentality of interstate
commerce or the mails in any business the principal purpose of
which is the collection of any debts, or who regularly collects
or attempts to collect, directly or indirectly, debts owed or due
or asserted to be owed or due another." The statute provides
examples of some exclusions. FDCPA § 1692a(6).

1 violence, obscenity, or repeated annoying phone calls, and may
2 not falsely represent the character, amount or legal status of
3 the debt. FDCPA §§ 1692d; 1692e(2)(A). A debt collector is also
4 prohibited from using certain enumerated methods in its efforts
5 to collect a debt owed by a consumer to a creditor. FDCPA
6 §§ 1692e; 1692f. Lastly, the FDCPA sets out rules that a debt
7 collector must follow for "acquiring location information" about
8 the debtor, communicating about the debtor (and the debt) with
9 third parties, and bringing legal actions. FDCPA §§ 1692b;
10 1692c(b); and 1692i.

11 On this last point, the FDCPA does not explicitly regulate
12 the content of complaints or other pleadings that are transmitted
13 in connection with an actual legal proceeding and only prohibits
14 the use of the courts as a means to collect a debt in a few
15 specific ways, none of which are at issue here. See FDCPA
16 § 1692i(a) (proscribing the debt collector's use of judicial
17 proceedings in judicial districts other than where the real
18 property is located, where the consumer signed a contract sued
19 upon and where the consumer resides); § 1692e(13) & (15)
20 (proscribing a debt collector's false representation that
21 documents are, or are not, legal process). There is also no
22 express indication in the statutory language that a proof of
23 claim filed in a bankruptcy court is, as a matter of law,
24 excluded from the statute's reach.

25 What is evident from the name of the statute itself, its
26 express purpose, and the express language of the various
27 statutory provisions, including § 1692f which is referenced by
28 debtor in her complaint, is that Congress meant to prohibit

1 certain types of conduct used for debt collection. In light of
2 the conduct regulated by the statute, it makes no sense to extend
3 its reach to include the filing of a proof of claim in a
4 bankruptcy case for the reasons set forth below.

5
6 **A. The Filing of a Proof of Claim is Not a Debt Collection
7 Activity Within the Meaning of the FDCPA**

8 The FDCPA's purpose is to govern the methods used to collect
9 debts. The claims process, on the other hand, is a process in
10 which the amount and validity of a debt is established for
11 purposes of obtaining a distribution from a bankruptcy estate.²⁵
12 To be sure, there are real differences between the methods used
13 to collect a debt and the claims process which is used to
14 establish the amount and validity of the debt.

15 A "FDCPA claim has nothing to do with whether the underlying
16 debt is valid," as it concerns the method of collection. Green
17 v. Ford Motor Credit Co., 152 Md. App. 32, 58-60, 828 A.2d 821,
18 836-38 (2003); Baker v. G.C. Servs. Corp., 677 F.2d 775, 777 (9th
19 Cir. 1982) ("The Act is designed to protect consumers who have
20 been victimized by unscrupulous debt collectors, regardless of
21 _____

22 ²⁵ The filing of a proof of claim in a bankruptcy case is
23 authorized by § 501 of the Bankruptcy Code: "A creditor ... may
24 file a proof of claim." § 501(a). The requirements of a proof of
25 claim are provided in Rule 3001, which mandates, among other
26 things, that a proof of claim be in writing and conform
27 substantially to the appropriate Official Form 10, be executed by
28 the creditor or the creditor's authorized agent, and, where based
on a writing, filed with the original or a duplicate of that
writing. Rule 3001(a)-(c). The evidentiary effect of a proof of
claim filed and executed in accordance with the Rules is that it
constitutes prima facie evidence of the validity and amount of
the debt. Rule 3001(f).

1 whether a valid debt actually exists."); see also Schroyer v.
2 Frankel, 197 F.3d 1170, 1178 (6th Cir. 1999) (plaintiff's claim
3 that debt was invalid irrelevant to FDCPA claim).

4 Under the FDCPA, the "abusive method of collection" applies
5 regardless of the debt's validity because the focus is on the
6 method of collection. "The statute does not make an exception
7 for liability under section 1692g when the debtor does in fact
8 owe the entire debt." Baker, 677 F.2d at 777. Outside
9 bankruptcy, if the method of collection is improper, the debt
10 collector will be subject to the FDCPA regardless of the debt's
11 validity. However, in bankruptcy, if appellant had a valid
12 claim, a violation of the FDCPA could never occur simply by
13 filing a proof of claim.

14 Adopting debtor's position would result in a construction of
15 the statute that would yield inconsistent results. The FDCPA
16 cannot be exclusively procedural in one class of cases that
17 happen outside bankruptcy and entirely substantive in bankruptcy.
18 One court observed the distinction between the wrongful conduct
19 associated with the bankruptcy claims process and abusive methods
20 of collection that could be addressed by the FDCPA:

21 [T]he appropriate standard for judgment of whether
22 sanctions should be imposed in the bankruptcy claim
23 process is whether the proof of claim is 'false or
24 fraudulent,' reflecting the essence of the purpose of
25 the bankruptcy code to assemble and validate claims
against a debtor's estate, in contradistinction of the
purpose of FDCPA, which is to provide an action to
contest the method of debt collection.

26 In re Varona, 388 B.R. 705, 721 (Bankr. E.D. Va. 2008) (emphasis
27 in original).

1 Moreover, I do not see how furnishing the type of
2 information contained in a proof of claim would, in any sense, be
3 an "unfair or unconscionable means" of debt collection when filed
4 in the bankruptcy court. On the contrary, by filing a proof of
5 claim, appellant was merely following the claims procedure
6 prescribed by the Code and Rules. While the proof of claim may
7 have been based on a debt that debtor did not owe, it does not
8 logically follow that whenever a debt collector files a proof of
9 claim in bankruptcy proceedings that this constitutes an unlawful
10 attempt to collect a debt in violation of FDCPA § 1692f. The
11 FDCPA regulates a method of procedure of collection; filing a
12 proof of claim is not an impermissible procedure.

13
14 **B. The Purpose of the FDCPA to Protect Consumers From Abusive**
15 **Debt Collection Is Not Implicated in the Claims Process**

16 Debtors in bankruptcy proceedings do not need protection
17 from abusive collection methods that are covered under the FDCPA
18 because the claims process is highly regulated and court
19 controlled. Upon the filing of chapter 7 petition, all of the
20 property of the debtor (with some exceptions) becomes property of
21 the estate, which the trustee takes over and administers for the
22 benefit of creditors. See §§ 541 and 701. Distributions are
23 made from the estate according to a specific statutory scheme.
24 See § 726. Likewise, upon the filing of a chapter 13 petition,
25 all of the debtor's property, including that specified in § 541
26 and property which the debtor acquires after the filing (such as
27 earnings), become property of the estate, subject to distribution
28

1 by the chapter 13 trustee pursuant to the plan. See §§ 541,
2 1306, 1325, 1326; Rule 3021.

3 A bankruptcy estate, whether in a chapter 7 or 13, exists
4 under the auspices of the court and its officers. The filing of
5 a proof of claim is thus a request to share in the distribution
6 of that estate under court control.

7 The statutory purpose of the FDCPA, as well as common sense,
8 leads me to conclude that there is nothing "unfair" or
9 "unconscionable" about filing a proof of claim in a bankruptcy
10 case even if it could be construed as a debt collection activity.
11 The FDCPA's purpose of protecting unsophisticated consumers from
12 unscrupulous debt collectors is simply not implicated at all.
13 See Travieso v. Gutman, Mintz, Baker & Sonnenfeldt, P.C., NO. 94
14 CV5756, 1995 WL 704778, at *4 (E.D.N.Y. Nov. 16, 1995) (noting
15 that the FDCPA is intended to protect persons from abusive debt
16 collection practices at the earliest stage and, therefore, once
17 the dispute reaches the courts, the purposes behind the FDCPA are
18 moot). Simply put, except for the instances cited above, the
19 FDCPA does not impact court controlled procedures such as the
20 claims allowance process.²⁶

21 This conclusion is consistent with Congress's intent in
22 enacting the FDCPA to eliminate the abusive practices that
23 contributed to the number of personal bankruptcies. FDCPA
24 § 1692(a). In Kokoszka v. Belford, 417 U.S. 642 (1974), the
25 United States Supreme Court observed:

26 An examination of the legislative history of the
27 Consumer Protection Act makes it clear that, while it

28 ²⁶ See FDCPA §§ 1692i(a), 1692e(13).

1 was enacted against the background of the Bankruptcy
2 Act, it was not intended to alter the clear purpose of
3 the latter Act to assemble, once a bankruptcy petition
4 is filed, all of the debtor's assets for the benefit of
his creditors. Indeed, Congress' concern was not the
administration of a bankrupt's estate but the
prevention of bankruptcy in the first place

5 Id. at 650. The Supreme Court concluded: "[i]n short, the
6 Consumer Credit Protection Act sought to prevent consumers from
7 entering bankruptcy in the first place. However, if, despite its
8 protection, bankruptcy did occur, the debtor's protection and
9 remedy remained under the Bankruptcy Act." Id. at 651.

10 I find that the express purpose and language in the FDCPA
11 indicate that Congress did not intend to extend its provisions to
12 the filing of a proof of claim in a bankruptcy case. This
13 finding does not undermine the goals and purpose of the FDCPA,
14 which is to protect consumers from abusive methods of collection.
15 The filing of a proof of claim does not implicate such collection
16 methods, as discussed above. Accordingly, even taking debtor's
17 allegations as true, I conclude that she has failed to state a
18 claim for relief against appellant under the FDCPA.

19 **III. Walls vs. Randolph Dichotomy**

20 The parties and the bankruptcy court highlight an apparent
21 disagreement between the Ninth Circuit in Walls v. Wells Fargo
22 Bank, N.A. and the Seventh Circuit in Randolph v. IMBS, Inc. on
23 whether the Code precludes or impliedly repeals the FDCPA where
24 the underlying allegedly wrongful act arises from or is related
25 to a bankruptcy proceeding of the debtor. In Randolph, after
26 thoughtful analysis, the Seventh Circuit addresses "[w]hether
27 overlapping and not entirely congruent remedial systems [the
28 FDCPA versus the Code] can coexist" and concludes the Code "does

1 not work an implied repeal of the FDCPA.” Randolph, 368 F.3d at
2 731-732. It concludes that the two federal statutes can coexist
3 so long as the overlap does not create an irreconcilable
4 conflict.²⁷

5 To the contrary, the Ninth Circuit in Walls addresses facts
6 similar to those in Randolph²⁸ and, without the thorough analysis
7 of Randolph, appears to broadly conclude that any remedy under
8 FDCPA would circumvent the Code’s remedial scheme. Walls, 276
9 F.3d 502. In doing so, the Ninth circuit relies heavily on its
10 ruling in MSR Exploration, Ltd. v. Meridian Oil, Inc., 74 F.3d
11 910 (9th Cir. 1996) including adopting an extensive quote about
12 the comprehensive nature of the Code. Walls, 276 F.3d at 510.
13 However, MSR Exploration is a preemption case, holding that the
14 Code preempts a state law cause of action (malicious prosecution)
15 arising under California law. Because of the reliance on MSR
16 Exploration and the lack of any discussion in Walls of whether
17 the Code impliedly repeals a competing federal statute, i.e. the
18 FDCPA, I question whether the Ninth Circuit intended the holding
19 of Walls to apply to any overlap between the two statutes or be
20 limited to its facts: whether a violation of the discharge
21 injunction of § 524 creates an FDCPA claim.

23
24 ²⁷ The majority here finds that the filing of a proof of
25 claim does create such an irreconcilable conflict such that the
26 Code precludes the creation of a claim for relief under FDCPA
27 under our facts and I do not disagree.

28 ²⁸ Both cases deal with a circumstance where a creditor
attempted to collect on a debt post discharge, although using
dissimilar methods since one was an unsecured debt and the other
was secured.

1 For this reason, I do not believe the holding of this case
2 is controlled by Walls so much as based on our thorough analysis
3 above.

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