No. 18-1042

In the United States Court of Appeals for the Third Circuit

MARY BARBATO
ON BEHALF OF HERSELF AND A CLASS
Plaintiff-Appellee,

v.

GREYSTONE ALLIANCE, LLC *ET AL.*
Defendant-Appellee.

On Appeal from the United States District Court
for the Middle District of Pennsylvania
in Civil Action No. 3:13-cv-2748-MEM

BRIEF FOR PLAINTIFF-APPELLEE MARY BARBATO

Carlo Sabatini (PA 83831)
Brett Freeman (PA 308834)
SABATINI FREEMAN, LLC
216 N. Blakely St
Dunmore, PA 18512
(570) 341-9000

Daniel A. Edelman (IL 00712094)
Francis R. Greene (IL 6272313)
EDELMAN, COMBS, LATTURNER & GOODWIN, LLC.
20 South Clark St., Suite 1500
Chicago, IL 60603
(312) 739-4200

Attorneys for Appellee

April 26, 2018

Table of Contents

Table of Authorities

Cases

Statutes

Other Authorities

Rules

Jurisdictional Statement

This case was filed by Appellee, Mary Barbato n/k/a Mary Meade ("Plaintiff" or "Barbato"), in the Wayne County Court of Common Pleas, and was subsequently removed pursuant to 28 U.S.C. § 1441 to the United States District Court for the Middle District of Pennsylvania.

The Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq*. ("FDCPA"), permits an action to be brought in any appropriate United States district court. 15 U.S.C. § 1692k(d). Thus, the district court had "federal question" jurisdiction under 28 U.S.C. § 1331.

On November 16, 2017, the district court re-issued its decision denying Appellant's motion for reconsideration. The district court also certified that decision for an interlocutory appeal. Appellant, Crown Asset Management, LLC ("Crown" or "Defendant"), thereafter filed a petition seeking leave for an interlocutory appeal, and this Court granted the petition on January 4, 2018. As a result, this Court has jurisdiction pursuant to 28 U.S.C. § 1292(b).

Statement of Issues Presented for Review

1. Whether an entity is a "debt collector" as defined by the FDCPA if it: (1) buys portfolios of defaulted debts, and (2) collects those

debts either by referring them to third parties for collection or by filing suit on them directly.

Suggested Answer: Yes. This Court has long held that purchasing debt constitutes debt collection activity. Furthermore, the only reason for a debt buyer to purchase defaulted debt is to try to collect it for a profit.

2. Whether the terms "debt collector" and "creditor," as they are defined and used in the FDCPA, are mutually exclusive.

Suggested Answer: No. While this Court had previously held that those terms were mutually exclusive, it reached that holding based on a statutory interpretation that the Supreme Court subsequently rejected.

Statement of Related Cases and Proceedings

This case has not previously been before this Court. A similar set of issues is presented in *Tepper v. Amos Financial, LLC*, No. 17-2851. Both parties to this case have filed *amicus* briefs in *Tepper*. Other than *Tepper*, Barbato is not aware of any case or proceeding, completed, pending, or about to be presented before this Court or any other court or agency, state or federal, that is in any way related to this matter.

Concise Statement of the Case

1. Statutory and Regulatory Background

Congress enacted the FDCPA in response to the widespread use of abusive, deceptive, and unfair debt collection practices. 15 U.S.C. § 1692(a). Congress determined that these practices contributed to marital instability, loss of jobs, invasions of privacy, and personal bankruptcies. *Id.* The FDPCA seeks to remedy these problems by protecting consumers from abusive debt collection practices, while at the same time ensuring that compliant debt collectors are not competitively disadvantaged. 15 U.S.C. § 1692(e).

2. Facts and Proceedings Below

Facts

Crown purchases charged-off accounts and attempts to collect them. (Deposition of Jessica Foster, Appx., 241, pp. 5-6.) Crown collects them by filing lawsuits in state courts and by referring the accounts to third-party debt collectors for collection.

With respect to Crown's collection efforts through suit, the record shows, by way of example, that between June 30, 2005 and May 20, 2016, Crown had filed at least 275 collection suits in Pennsylvania and

650 collection actions in Cook County, Illinois. Through May 20, 2016, Crown had filed 214 actions in Illinois counties outside of Cook, as well as 118 actions in Indiana. On May 20, 2016, Crown had 664 pending collection cases in New York. In the years overlapping the class period in this case—2012-2014—Crown filed 825 collection actions in New York: 156 cases in 2012; 215 cases in 2013; and 454 cases in 2014. (Appx. 460-461; R. 94; Plaintiff's Response to Defendant, Crown Asset Management, LLC Statement of Material Facts, ¶ 6, and Exhibits thereto.)[1]

For an account which is referred to a third-party debt collector for collection, Crown first validates it, and checks to see whether the debtor has filed for bankruptcy or died. (Appx. 241, p. 6.) In this case, Crown purchased a debt allegedly owed by Barbato and referred the debt to a now-defunct debt collector, Turning Point Capital, Inc. ("Turning Point"). Turning Point undertook to collect Plaintiff's debt pursuant to a "Service Agreement" with Crown. The Service Agreement stated, *inter alia*, that Crown "seeks to procure certain collection services from"

[1] All references to the documents contained on the District Court's docket are designated by the abbreviation "R."

Turning Point; that Turning Point "seeks to provide certain collection services" to Crown; that Turning Point "will undertake collection on each Account" placed by Crown; and that Turning Point "shall remit [to Crown] all amounts collected . . . in connection with the Accounts less its fee . . . ." (Service Agreement, Appx. 376, p. 1; Appx. 379, ¶ 3.5.)

The Service Agreement also stated, *inter alia*, that: (1) Crown has the sole and absolute discretion as to which accounts it will forward; (2) Crown's obligation to pay the third-party collector is contingent upon collection of the forwarded accounts; (3) all amounts collected on the forwarded accounts belong to Crown; (4) Crown has the discretion to refund amounts paid by consumers; (5) Crown may establish settlement guidelines that the collector cannot deviate from without obtaining prior written approval from Crown; (6) Crown shall forward relevant information that is reasonably necessary to collect the accounts; (7) Crown shall have the right to audit the collector, including through on-site visits; and (8) the collector may only report account information to a credit reporting agency with written approval from Crown. (Appx. 376-388; R 80-8.)

Upon receiving the referral of Plaintiff's debt from Crown, Turning Point sent her a collection letter (Appx. 175), and then called and left voice messages for her.

Proceedings Below

Plaintiff brought this action on October 7, 2013 in the Court of Common Pleas of Wayne County, Pennsylvania. Plaintiff asserted an individual claim against a debt collector, Greystone Alliance, LLC ("Greystone"), for leaving voice messages which violated § 1692e(11) of the FDCPA because the messages failed to identify the caller as a debt collector. (R. 2.)

Plaintiff filed an Amended Complaint on June 13, 2014, in which she named two additional debt collectors: Turning Point and Crown. (R. 21.) She alleged that Turning Point—and not Greystone—had left the unlawful voice messages; she also asserted a class claim against all Defendants in connection with a letter Turning Point had sent to her which overshadowed the disclosures required by §§ 1692g(a)(3)-(5) of the FDCPA. (R. 21.)

Although served, Turning Point never answered. Greystone and Crown answered the Amended Complaint but, on December 18, 2014,

their attorney's motion to withdraw was granted by the district court. (R. 35.) On March 30, 2015, that same attorney, Michael J. Palumbo, reappeared for Crown only. (R. 37.) On January 12, 2016, Plaintiff voluntarily dismissed Turning Point and Greystone. (R. 62.)

On April 15, 2016, Plaintiff and Crown filed cross-motions for summary judgment. (R. 77-78.) On March 30, 2017, the district court denied Crown's motion, finding that Crown was a debt collector under the FDCPA. (R. 100-101, Appx. 95-141.) The district court also denied Plaintiff's motion for summary judgment, finding that Plaintiff had failed to establish that Turning Point was a debt collector under the FDCPA. *Id.*

On June 23, 2017, subsequent to the Supreme Court's decision in *Henson v. Santander Consumer USA Inc.*, 137 S. Ct. 1718 (2017), Crown moved for reconsideration of the district court's finding that it was a debt collector under the FDCPA. (R. 107.) On November 16, 2017, the district court reissued an earlier decision denying Crown's motion, and certified that decision for an interlocutory appeal. (R. 119-120; Appx. 65-94.) On January 4, 2018, this Court thereafter granted Crown's request for leave to file an interlocutory appeal.

Summary of Argument

The FDCPA generally defines a "debt collector" as either: (1) any person "who uses any instrumentality of commerce or the mails in any business the principal purpose of which is the collection of any debts," or (2) any person "who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another." 15 U.S.C. § 1692a(6). Recently, the Supreme Court clarified that the second definition does not apply to an entity that seeks to collect only debts that it purchases. *Henson v. Santander Consumer USA Inc.*, 137 S. Ct. 1718 (2017). However, the Supreme Court specifically declined to address whether such an entity would fit within the first definition. Here, Crown satisfies that first definition because the principal purpose of its business *is* the collection of debts—both through litigation that it initiates and also through the use of other debt collectors that it hires to collect on its behalf.

Crown also argues that the terms "creditor" and "debt collector" are mutually exclusive. However, while this Court has held as much—*F.T.C. v. Check Investors, Inc.*, 502 F.3d 159 (3d Cir. 2007) and *Pollice v.*

Nat'l Tax Funding, L.P., 225 F.3d 379 (3d Cir. 2000)—those holdings were abrogated by *Henson*.

There also can be no legitimate dispute that an entity's principal purpose is the collection of debts if its entire business model revolves around purchasing debts and then liquidating them by: (1) hiring debt collectors, or (2) hiring lawyers to initiate suit in the name of the entity. This Court has already held that purchasing debts and referring those debts to third parties constitutes debt collection. *See Pollice v. Nat'l Tax Funding, L.P.*, 225 F.3d 379 (3d Cir. 2000).[2] And, there is sufficient record evidence to demonstrate that the principal purpose of Crown's business is the collection of debts.

Additionally, as this Court has previously recognized, there is a significant difference between an actual creditor, which seeks to obtain business directly from members of the public, and a debt buyer/debt collector. *See F.T.C. v. Check Investors, Inc.*, 502 F.3d 159 (3d Cir. 2007). Specifically, the creditor's conduct is constrained by its desire to protect

[2] While Barbato recognizes that some of *Pollice* was abrogated by *Henson*, the portion of the decision that she relies on here involved only the principal purpose test. That language in *Pollice* has not been impacted by *Henson*.

its reputation in order to maintain or increase sales, whereas the debt buyer does not have those same market-based concerns. If Crown's position were adopted, a debt buyer would be encouraged to hire the most unscrupulous debt collectors available to it. After all, the more abusive the debt collection practice, the more effective the debt collector is likely to be. And, the debt buyer could hire these aggressive entities without having to fear repercussions under either the FDCPA or from the market. Such a result would be inconsistent with the Congressional purpose of "eliminat[ing] abusive debt collection practices by debt collectors[and] insur[ing] that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged . . . ." 15 U.S.C. § 1692(e).

Finally, the cases relied upon by Crown do not support its position. Most of those cases involved situations where a consumer had either: (1) not alleged sufficient facts at the pleading stage, or (2) not introduced sufficient evidence at summary judgment. The cases do *not* support Crown's proposed theory that purchasing debts for the purpose of referring them to third-party collectors and filing lawsuits is not debt collection activity.

On the other hand, a number of post-*Henson* courts have embraced the arguments advanced by Barbato—namely that *Henson* does not involve the principal purpose test, and that an entity which purchases debts can still be a debt collector if its principal purpose is the collection of debts.

Standard of Review

This Court reviews an "order granting summary judgment de novo both as to factual and legal questions." *Massachusetts Sch. of Law at Andover, Inc. v. Am. Bar Ass'n*, 107 F.3d 1026, 1032 (3d Cir. 1997). A court should "grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

Argument

1. *The FDCPA contains two separate definitions for the term "debt collector," and Henson addressed only one of them.*

The FDCPA generally defines a "debt collector" as either: (1) any person "who uses any instrumentality of commerce or the mails in any business the principal purpose of which is the collection of any debts," or (2) any person "who regularly collects or attempts to collect, directly

or indirectly, debts owed or due or asserted to be owed or due another." 15 U.S.C. § 1692a(6); *see Goldstein v. Hutton, Ingram, Yuzek, Gainen, Carroll & Bertolotti*, 374 F.3d 56, 61 (2d Cir. 2004)("The FDCPA establishes two ***alternative*** predicates for 'debt collector' status—engaging in such activity as the 'principal purpose' of the entity's business and 'regularly' engaging in such activity. 15 U.S.C. § 1692a(6).")(emphasis added).

The Supreme Court recently examined the definition of "debt collector" in *Henson v. Santander Consumer USA Inc.*, 137 S. Ct. 1718 (2017). However, the *Henson* court addressed only the second of these alternative definitions—particularly with regard to the phrase "owed or due or asserted to be owed or due another." The Court expressly declined to address the first definition, stating:

> [W]e pause to note two related questions we do not attempt to answer today. . . . Second, the parties briefly allude to another statutory definition of the term "debt collector"—one that encompasses those engaged "in any business the principal purpose of which is the collection of any debts." § 1692a(6). **But the parties haven't much litigated that alternative definition and in granting certiorari we didn't agree to address it either.**

Id. at 1721 (emphasis added). Thus, *Henson* did not address a situation like the present case, where the first definition is at issue.[3]

Barbato concedes that post-*Henson*, the second definition does not make Crown a debt collector—in other words Crown was not collecting a debt "owed or due another." However, Crown is a debt collector under the first prong because it "uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts . . . ." The principal purpose of Crown's business—in fact its *only* purpose—is the collection of debts. And, if the principal purpose of Crown's business is the collection of debts, then it is a debt collector.[4] This is true even if Crown is the owner of the debt.

---

[3] Although *Henson* specifically refused to address the "principal purpose" test for a debt collector, the Court did note that Santander "says that its primary business is loan origination and not the purchase of defaulted debt . . . ." *Henson,* 137 S. Ct. at 1725. Thus, it is likely that Santander would not qualify as a debt collector under the principal purpose test.

[4] The statute does contain a number of exceptions under which certain entities are not "debt collectors" even if they satisfy either prong of the above-described test. *See* 15 U.S.C. § 1692a(6)(A)-(F). However, these exclusions clearly do not apply here, and Crown has never argued to the contrary.

2. Debt purchasing and liquidation has long been considered a form of debt collection.

There should be no legitimate dispute that the principal purpose of Crown's business is the collection of debts. As the district court originally held, "[t]he summary judgment record supports Plaintiff's position [that the principal purpose of Crown's business is the collection of debts]." (Appx. 120.) In reaching this holding, the court referred to record evidence, such as the undisputed fact that Crown "'refers all charged-off receivables to third party, independent servicers' for collection." (Appx. 120.) And, the court noted that approximately 90 to 95% of Crown's receivables involved consumer accounts. (Appx. 120.) And, "[a]fter Crown buys consumer accounts, it validates the account, checks them for bankruptcy and deceased consumers, and then forwards them out to a collection agency to collect on the accounts." (Appx. 90.)

Crown also attempts to collect the debts directly through lawsuits. For example, between June 30, 2005 and May 20, 2016, Crown had filed 275 collection suits in Pennsylvania and 650 collection actions in Cook County, Illinois. Through May 20, 2016, Crown had filed 214 actions in

Illinois counties outside of Cook as well as 118 actions in Indiana. On May 20, 2016, Crown had 664 pending collection cases in New York. In the years overlapping the class period in this case—2012-2014—Crown filed 825 collection actions in New York: 156 cases in 2012; 215 cases in 2013; and 454 cases in 2014. (Appx. 460-461; R. 94; Plaintiff's Response to Defendant, Crown Asset Management, LLC Statement of Material Facts, ¶ 6, and Exhibits thereto.)

Nevertheless, Crown argues that "[t]here is a significant difference between the purchase and acquisition of defaulted debts and the collection thereof." (Blue Br. at p. 15.) However, Crown's argument is misplaced. First, where debts are held solely for liquidation, Crown's argument is directly contrary to this Court's decision in *Pollice v. Nat'l Tax Funding, L.P.*, 225 F.3d 379 (3d Cir. 2000). In *Pollice*, the Court held that an entity was a debt collector under *both* the "regularly collects" and the "principal purpose" definitions. The Court first held that a defendant (National Tax Funding or "NTF") was a debt collector because "there is no dispute that the various claims assigned to NTF were in default prior to their assignment to NTF." *Id.* at 404. Barbato concedes that this holding is no longer valid after *Henson*. However, the

Pollice court also held that "***[f]urther***, there is no question that the 'principal purpose' of NTF's business is the 'collection of any debts,' namely, defaulted obligations which it purchases from municipalities."[5] *Id.* (emphasis and brackets added). As a result, this Court has already held that purchasing an account is debt collection activity.

However, even if the Court were to disregard *Pollice*, Crown's argument is not tied to the statutory language of the FDCPA. The statutory language requires an inquiry into the principal purpose of the "business." 15 U.S.C. § 1692a(6). It has long been the law that a "business" is an activity engaged in for the purpose of deriving profit. *See Smith v. Commissioner of Internal Revenue,* 78 F.2d 408 (3d Cir. 1935). The definition of "business" is "a usually commercial or mercantile activity engaged in as a means of livelihood." Merriam-

[5] The *Pollice* decision also states that "'NTF exists solely for the purpose of holding claims for delinquent taxes and municipal obligations.' Further, an affidavit . . . provides that 'NTF purchases liens and claims from municipal entities across the country' and it refers to 'the delinquent liens and claims [NTF] owns.'" *Id.* at 404 n.27 (internal citations omitted). Thus, NTF performed the same function as Crown does here: it purchased the accounts and then referred them to third parties for additional collection work.

Webster, Business.[6] "Business" is defined as "a commercial enterprise carried on for *profit*." *Black's Law Dictionary* 211 (8th ed. 2004) (emphasis added). *See also Drobny v. C.I.R*, 113 F.3d 670, 673 n.5 (7th Cir. 1996)(citations omitted) ("[I]n order to constitute a 'trade or business,' the activity in question must have had the 'actual and honest objective of making a profit.'").

The "purchase and acquisition of defaulted debts" is not, by itself, an activity which is capable of producing a profit or livelihood. Instead, it is merely a step in the course of some other, broadly defined, endeavor. In order to determine whether Crown is engaged in a business—and what that business is—it is necessary to look at the source of its revenue. For example, if one were to acquire defaulted debts for the purpose of forgiving them, which has occasionally been done,[7] that would be a charitable endeavor, but would not be a business activity. Or, if one were to acquire defaulted debts for the sole purpose

---

[6] Available at https://www.merriam-webster.com/dictionary/business, *last visited* April 19, 2018.

[7] For example, in 2016, comedian John Oliver's television show Last Week Tonight purchased approximately $15 million in medical debt to be forgiven, paying less than one-half of one-percent of its face value, to draw attention to the debt buying industry.

of reselling them to unrelated parties at a profit, although that would be a business, it would not be collection.

In the case of Crown, the principal source of revenue is derived from obtaining payment from debtors on the defaulted debts. Whether this process of liquidating the debts is effectuated by filing suit on the debts and using the judicial process to seize the debtors' money or by hiring others to dun consumers, the "business"—the source of monetary gain—is still "the collection of any debts." And that inquiry into the source of the monetary gain is the one required by the statutory language. *See Scott v. Jones*, 964 F.2d 314, 316 (4th Cir. 1992)(finding that an entity's principal purpose was the collection of debts, rather than the practice of law, when 70-80% of the legal fees generated were related to debt collection); s*ee generally Goldstein v. Hutton, Ingram, Yuzek, Gainen, Carroll & Bertolotti*, 374 F.3d 56, 61 (2d Cir. 2004)(noting that the district court's focus on, *inter alia*, the percentage of resources devoted to and revenues derived from debt collection were "pertinent to the first prong of the statutory debt collector definition—debt collection as principal business . . . .").

In addition to the textual analysis of the phrase "principal purpose," one other justification for treating an entity such as Crown as a debt collector subject to the FDCPA is the fact that Crown, like other debt collectors, does not need to preserve consumer "goodwill." According to the legislative history of the FDCPA, creditors, "who generally are restrained by the desire to protect their good will when collecting past due accounts," are not covered by the FDCPA, but entities who may have "no future contact with the consumer and often are unconcerned with the consumer's opinion of them," are covered. S. Rep. 95–382, at 2 (1977), 1977 WL 16047, *2, reprinted in 1977 U.S.C.C.A.N. 1695, 1696. *See also F.T.C. v. Check Investors, Inc.*, 502 F.3d 159, 173 (3d Cir. 2007); *Aubert v. American General Finance, Inc.*, 137 F.3d 976, 978 (7th Cir. 1998)("Because creditors are generally presumed to restrain their abusive collection practices out of a desire to protect their corporate goodwill," creditors who attempt to collect debts "in their own name and whose principal business is not debt collection ... are not subject to the [FDCPA].")

Prior to *Henson*, in this Circuit nearly any entity that purchased a debt that was in default at the time of the purchase would fit the

definition of a debt collector. However, there can be no doubt that *Henson* abrogated this rule, now requiring something more than just the purchase of a defaulted debt before an entity would be classified as a debt collector. But, the abrogation of this one test does not mean that the goodwill analysis is no longer relevant. On the contrary, the analysis is even more critical now than it was before.

This Court addressed the importance of goodwill in *Check Investors*, when the Court noted that "[n]o merchant worried about goodwill or the future of his/her business would have engaged in the kind of conduct that was the daily fare of the collectors at Check Investors." *Check Investors*, 502 F.3d at 174. And, "[n]either Check Investors nor [its attorney] intended any future contact with the payees of the [defaulted debts] they acquired, and their collection practices reflected as much." *Id.* This freedom from concerns about preserving goodwill meant that "[t]he collectors working there resorted to whatever harassment appeared likely to succeed; the only limit appears to have been a given tactic's likelihood of bearing fruit by yielding a profit." *Id.* Therefore, the Court was able to conclude that "[i]f the future of [the debt collectors'] business was in any way dependent upon their goodwill,

they would not have dreamed of unleashing their collectors in this manner." *Id.*

The goodwill analysis also demonstrates the justness of applying the principal purpose test to debt buyers. Consider, an auto-finance company like Santander, the appellee in *Henson*, which was primarily a credit grantor but which acquired defaulted debts with sufficient frequency to meet the "regularly" test.[8] Santander ***did*** have "goodwill" concerns and ***did*** want to obtain further business from consumers. Even if Santander purchased an account that was in default, it would be constrained by its goodwill concerns because of the multitude of *other* banking services that it provided. Santander would not want to unleash overly aggressive debt collectors on its customers for fear that it would

[8] "[A] person may regularly render debt collection services, even if these services are not a principal purpose of his business. Indeed, if the volume of a person's debt collection services is great enough, it is irrelevant that these services only amount to a small fraction of his total business activity; the person still renders them 'regularly.'" *Garrett v. Derbes*, 110 F.3d 317, 318 (5th Cir. 1997); *accord Goldstein v. Hutton, Ingram, Yuzek, Gainen, Carroll & Bertolotti,* 374 F.3d 56, 61 (2d Cir. 2004); *Oppong v. First Union Mortgage Corp.*, 215 Fed.Appx. 114 (3d Cir. 2007).

have hurt the other areas of its business. As a result, the market would constrain the aggressiveness of Santander's collection methods.

Debt buyers such as Crown, in contrast, do not have such concerns. Such insulation from market-based forces and constraints may explain, at least in part, the unfortunate history of predatory and unlawful collection misconduct documented by the Federal Trade Commission ("FTC") and the Consumer Financial Protection Bureau ("CFPB") while enforcing the FDCPA against members of the debt-portfolio-buyer industry. See 15 U.S.C. § 1692l. Among those enforcement actions is the following sampling that illustrates the critical need for FDCPA coverage of the debt-portfolio-buyer industry: *United States v. Capital Acquisitions & Management Corp.*, 2004 WL 577482 (2004)(FTC News Release, Consent Decree);[9] *In re Encore Capital Group, Inc., Midland Funding, LLC, Midland Credit Management, Inc., and Asset Acceptance Capital Corp.*, 2015 WL 5667140 (Sept. 9, 2015) (CFPB Consent Order); *In re Portfolio Recovery*

[9] Available at https://www.ftc.gov/sites/default/files/documents/cases/2004/03/040324cag0223222.pdf.

Associates, *LLC,* 2015 WL 5667141 (Sept. 9, 2015)(CFPB Consent Order); *see also* FTC, Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration (July 2010);[10] FTC, The Structure and Practices of the Debt Buying Industry (Jan. 2013).[11] Because Crown is insulated from these market-based forces, it is free to hire the most unscrupulous debt collectors to collect its accounts.

Other courts have long recognized the importance of the goodwill consideration. As one court explained:

> [T]here exists a logical distinction between the two types of entities identified in the alternative segments of the [debt collector] definition. The primary activity of an ordinary retailer (for example) is not the collection of debts, though it may regularly try to collect debts from its own customers. Such a company is constrained naturally in its debt collection activities with its own customers by concern over the effect of generating adversarial relationships. No such

[10] Available at https://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-bureau-consumer-protection-staff-report-repairing-broken-system-protecting/debtcollectionreport.pdf.

[11] Available at https://www.ftc.gov/sites/default/files/documents/reports/structure-and-practices-debt-buying-industry/debtbuyingreport.pdf.

> natural constraints exist if a company whose primary purpose is not debt collecting, such as a retailer, regularly collects debts for other companies, however, since any adversarial relationships stemming from debt collecting are generated with other companies' customers, and do not affect that company's primary activity. Furthermore, if a company's primary purpose is debt collection, then the natural constraints also do not apply, since that company's primary purpose is not dependent upon favorable relationships with customers. Thus, there are two situations where natural constraints do not protect against objectionable debt collection practices. The statutory definition of debt collector covered by the Act's prohibitions precisely identifies these two situations.

Little v. World Fin. Network, Inc., 1990 WL 516554, *2–4 (D. Conn. July 26, 1990); *accord Davidson v. Capital One Bank (USA), N.A.*, 797 F.3d 1309, 1316 at n.8 (11th Cir. 2015).

If, a company like Crown is deemed *not* to be a debt collector, then anyone who purchased a debt would not be a debt collector with respect to that debt. As a result, entities such as Crown would gain a significant advantage over more traditional creditors, such as Santander, because they would be able to hire the most aggressive—and therefore probably the most effective—debt collectors, while goodwill-driven entities would

be constrained by the fear of consumers taking their business elsewhere.

But this result is only possible if entities like Crown are deemed *not* to be debt collectors under the FDCPA. In contrast, if the FDCPA also encompasses entities whose principal business purpose *is* the purchase and collection of debts—a test which captures Crown, but not an entity such as Santander—then debt buyers, even if they are not constrained by the need to maintain goodwill, will at least be constrained by the prohibitions imposed on debt collectors by the FDCPA. They would have an incentive to ensure that debt collectors working on their behalf did not violate the FDCPA—a result clearly consistent with the stated intention of Congress in passing the FDCPA to "eliminate abusive debt collection practices by debt collectors, [and] to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged . . . ." 15 U.S.C. § 1692(e). Holding otherwise would promote a race to the bottom, and entities like Crown would be insulated from any liability resulting from the unscrupulous collection practices of the debt collectors working on their behalf.

3. The terms "debt collector" and "creditor" are not mutually exclusive.

Crown spends much of its brief arguing that, after *Henson*, it now qualifies as a "creditor." And, pursuant to Third Circuit precedent, Crown asserts that it cannot be *both* a debt collector and a creditor. Barbato concedes that this Court previously stated that the terms "debt collector" and "creditor" are mutually exclusive. *See F.T.C. v. Check Inv'rs, Inc.*, 502 F.3d 159, 173 (3d Cir. 2007) *abrogated by Henson v. Santander Consumer USA Inc.*, 137 S. Ct. 1718 (2017)("as to a specific debt, one cannot be both a "creditor" and a "debt collector," as defined in the FDCPA, because those terms are mutually exclusive."). Thus, prior to *Henson*, Crown would have been correct that an entity could not wear both hats with respect to the same debt. However, Crown's argument that the terms "debt collector" and "creditor" are mutually exclusive is premised on judicial interpretations that are no longer sound after *Henson*.

In *Check Investors*, this Court held that an entity which purchases a defaulted debt is a debt collector. However, it did not reach this conclusion using the analysis now required by *Henson—i.e.*, by applying

either of the two alternative tests in the first sentence of § 1692a(6). Instead, it reached this holding by "focus[ing] on the status of the debt at the time it was acquired." *Id.* at 173. In doing so, the court cited 15 U.S.C. § 1692a(6)(F)(iii), which excludes from the definition of "debt collector" a person attempting to collect "a debt which was not in default at the time it was obtained by such person . . . ." *Id.*

Because the default status of every debt is binary—a debt either is in default or it is not—this Court held that it would be impossible for an entity to be *both* a "creditor"—*i.e.* someone who obtained the debt before default—and a "debt collector"—*i.e.* someone who obtained the debt after default. *Id.* ("In *Pollice,* we relied on this provision of the FDCPA to hold that one attempting to collect a debt is a 'debt collector' under the FDCPA if the debt in question was in default when acquired. Conversely, we concluded that § 1692a means that an entity is a creditor if the debt it is attempting to collect was not in default when it was acquired."). However, after *Henson*, an entity can no longer be deemed a debt collector simply by the defaulted status of a debt it acquires. As a result, the foundation for the mutually exclusive doctrine is no longer sound.

In *Pollice v. Nat'l Tax Funding, L.P.*, 225 F.3d 379, 403 (3d Cir. 2000), this Court followed two other circuits that had already adopted the mutually exclusive doctrine. Specifically, it stated that "[c]ourts have indicated that an assignee of an obligation is not a 'debt collector' if the obligation is not in default at the time of the assignment; conversely, an assignee may be deemed a 'debt collector' if the obligation is already in default when it is assigned." *Id.* at 403-04 (citing *Bailey v. Security Nat'l Servicing Corp.*, 154 F.3d 384, 387–88 (7th Cir. 1998); *Whitaker v. Ameritech Corp.*, 129 F.3d 952, 958–59 (7th Cir. 1997); and *Wadlington v. Credit Acceptance Corp.*, 76 F.3d 103, 106–07 (6th Cir. 1996)). Thus, the Court held that the entity was a debt collector because "there [wa]s no dispute that the various claims assigned to [the defendant] were in default prior to their assignment to [the defendant]." *Id.*

In developing its "mutually exclusive" jurisprudence, this Court cited a number of decisions from its sister circuits. And, a review of those cases show that those courts also erroneously focused on the "default status" of a debt in determining whether an entity was a debt collector. For example, in *Schlosser v. Fairbanks Capital Corp.*, 323

F.3d 534, 536 (7th Cir. 2003), the Seventh Circuit held that the terms creditor and debt collector were mutually exclusive, and, in doing so, it stated that "[i]n other words, the Act treats assignees as debt collectors if the debt sought to be collected was in default when acquired by the assignee, and as creditors if it was not." Thus, *Schlosser's* holding was also based on the mistaken application of the "default status" of the debt.

The other cases cited in *Pollice* reached similar conclusions. *See Bailey v. Sec. Nat. Servicing Corp.*, 154 F.3d 384 (7th Cir. 1998)(noting the importance of default status in determining if an entity is acting as a debt collector); *Whitaker v. Ameritech Corp.*, 129 F.3d 952, 959 (7th Cir. 1997)(holding that an entity was not a debt collector because the debt was not in default at the time the debt was obtained); *Wadlington v. Credit Acceptance Corp.*, 76 F.3d 103 (6th Cir. 1996)(same); *McKinney v. Cadleway Properties, Inc.*, 548 F.3d 496, 501 (7th Cir. 2008)(holding that the terms creditor and debt collector were mutually exclusive because "one who acquires a 'debt in default' is categorically *not* a creditor; one who acquires a 'debt not in default' is categorically *not* a debt collector.")(emphasis in original).

As a result, it is clear that the Third, Sixth, and Seventh Circuits' "mutually exclusive" jurisprudence was based entirely on the misunderstanding that an entity which purchases a debt in default must be a debt collector. Prior to *Henson*, at least one other circuit, which did not focus on the default status of the debt to determine whether an entity was a debt collector, rejected the mutually exclusive rule. In *Schlegel v. Wells Fargo Bank, NA*, 720 F.3d 1204, 1208 (9th Cir. 2013), the court noted that "out-of-circuit decisions [had held] that a person who meets the FDCPA definition of 'creditor' is per se not a 'debt collector.'" (citations omitted). However, the court "reject[ed] this per se rule, which finds no support in the text of the FDCPA . . . ." *Id.*

And, in *Henson*, the Supreme Court expressly disagreed with the focus on the default status of a debt. In doing so, it held that "while the statute surely excludes from the debt collector definition certain persons who acquire a debt before default, it doesn't necessarily follow that the definition must include anyone who regularly collects debts acquired after default." *Henson*, 137 S. Ct. at 1724.[12] The Court made this

[12] In *Henson*, the Court treated the loan as having been in default based on the procedural posture of the case. The case had been disposed of

statement when it was discussing arguments raised by the consumer and his *amici* that "the Act treats everyone who attempts to collect a debt as either a 'debt collector" or a 'creditor,' but not both." *Id.* However, the court declined to address the "mutually exclusive" argument. Instead, it stated that "even spotting (without granting) the premise that a person cannot be both a creditor and a debt collector with respect to a particular debt, we don't see why a defaulted debt purchaser like Santander couldn't qualify as a creditor." *Id.*

Rather than relying on the status of the debt, *Henson* instead focused exclusively on the statutory language. Following *Henson*'s instruction, the relevant text here is "any business the principal purpose of which is the collection of any debts . . . ." 15 U.S.C. § 1692a(6). Notably, the word "creditor" does not appear anywhere in this portion of the definition.

Thus, it is clear that the Supreme Court never blessed the interpretation that an entity cannot be both a debt collector and a

---

through a motion to dismiss, and the consumer's complaint had alleged that default status.

creditor. And, because the Supreme Court disagreed with this Court's earlier holding that a purchaser of a defaulted debt will be a debt collector, there is no reason to believe that this Court's "mutually exclusive" precedent survives *Henson*.[13]

4. The post-Henson caselaw favors Barbato.

In its brief, Crown cites to *Skinner v. LVNV Funding, LLC*, 2018 WL 319320 (N.D. Ill. Jan. 8, 2018). However, in *Skinner*, the court granted a debt buyer's summary judgment motion simply because the plaintiff's evidence failed to create a material issue of fact as to whether the debt buyer's principal business was debt collection. The court observed that under *Henson* "a debt purchaser can still qualify as a debt collector under § 1692a(6) if its principal purpose is the collection of

[13] Recently, post-*Henson*, the D.C. Circuit stated that "[t]he FDCPA creates two 'mutually exclusive' categories, debt collectors and creditors, but only debt collectors are regulated by the statute." *Bank of New York Mellon Tr. Co., N.A. v. Henderson*, 862 F.3d 29, 34 (D.C. Cir. 2017). However, in that case, the court held that "[t]he Bank is neither type of debt collector. There is no evidence to indicate the Bank's "principal" business is debt collection." Thus, the circuit's statement that "debt collectors" and "creditors" are mutually exclusive was nothing more than an unfortunate use of *dicta*. The actual holding in *Bank of New York Mellon* was simply that there was no evidence to determine that the bank was a debt collector under *either* definition.

debts," but further found that the "record lacks any evidence establishing the primary purpose of Defendant's business, debt collection or otherwise." This decision rested on a failure of proof and nothing more.

Defendant also relies on *Gold v. Midland Credit Mgmt., Inc.*, 82 F. Supp. 3d 1064 (N.D. Cal. 2015), where the court held that a debt buyer was not a debt collector. However, *Gold* also involved a situation where the consumer simply did not introduce any evidence on the "debt collector" issue other than the fact that the debt buyer purchased debts. Thus, "[i]n the absence of evidence showing a purpose to *collect* on those debts, Plaintiff's legal arguments are insufficient to create a triable issue of fact" as to whether the defendant was "in a 'business the principal purpose of which is the *collection* of any debts.'" *Id.* at 1071 (emphasis added).

Additionally, *Gold* cited to only one case for the proposition that "purchasing a debt" is different than collecting a debt. And that case, *Kasalo v. Trident Asset Mgmt., LLC*, 53 F. Supp. 3d 1072, 1079 (N.D. Ill. 2014), does not cite to a single case supporting that theory. Thus,

the legal authority Crown relies on to distinguish *purchasing* a debt from *collecting* a debt is suspect at best.[14]

Even if Crown's reliance on *Gold* and *Kasalo* was not questionable, the record here is much more developed than the record in *Gold*. Barbato has done more than show that Crown purchases consumer accounts. She has also shown that "[a]fter Crown buys consumer accounts, it validates the account, checks them for bankruptcy and deceased consumers, and then forwards them out to a collection agency to collect on the accounts." (Appx. 90.)

Additionally, the record contains the agreement between Crown and the third-party that it hired to collect the debt. The relevant portions of the agreement state, *inter alia*, that: (1) Crown has the sole and absolute discretion as to which accounts it will forward; (2) Crown's obligation to pay the third-party collector is contingent upon collection of the forwarded accounts; (3) all amounts collected on the forwarded

[14] Crown also cites to *McAdory v. M.N.S. & Assocs., LLC*, 2017 WL 5071263, at *1 (D. Or. Nov. 3, 2017) for this same point. However, *McAdory* relied upon only *Gold* and *Kasalo* when reaching its holding. And, as discussed above, there is no other authority supporting this proposition.

accounts belong to Crown; (4) Crown has the discretion to refund amounts paid by consumers; (5) Crown may establish settlement guidelines that the collector cannot deviate from without obtaining prior written approval from Crown; (6) Crown shall forward relevant information that is reasonably necessary to collect on the accounts; (7) Crown shall have the right to audit the collector, including through on-site visits; and (8) the collector may only report account information to a credit reporting agency with written approval from Crown. (Appx. 376-388; R 80-8.)

Finally, the record shows that Crown also attempts to collect thousands of debts directly through lawsuits. For example, between June 30, 2005 and May 20, 2016, Crown had filed 275 collection suits in Pennsylvania and 650 collection actions in Cook County, Illinois. Through May 20, 2016, Crown had filed 214 actions in Illinois counties outside of Cook as well as 118 actions in Indiana. On May 20, 2016, Crown had 664 pending collection cases in New York. In the years overlapping the class period in this case—2012-2014—Crown filed 825 collection actions in New York: 156 cases in 2012; 215 cases in 2013; and 454 cases in 2014. (Appx. 460-461; R. 94; Plaintiff's Response to

Defendant, Crown Asset Management, LLC Statement of Material Facts, ¶ 6, and Exhibits thereto.)

Thus, the record evidence demonstrates that Crown is actively involved in the collection of accounts. As a result, even if the reasoning in *Gold* was sound, it should have no bearing on this case.

Crown also cites to a Pennsylvania Superior Court case for the proposition that businesses are not permitted to represent themselves in court. Barbato, of course, does not contest this point. But Crown then argues that because it is the *lawyer*, not Crown, which performs the litigation activities, Crown itself is not engaged in any collection activity. But an attorney is merely the client's agent. The Pennsylvania Rules of Professional Conduct state that generally "a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued." Pa. R. Prof. Cond. 1.2(a).[15] There can be no legitimate doubt that the client has the final say on the representation, and that the lawyer's duty is to follow his client's

[15] Pennsylvania Rule of Professional Conduct 1.2(a) is substantively identical to Model Rule of Professional Conduct 1.2(a).

wishes. Thus, Crown's argument that it does not attempt to collect debts when it is the plaintiff in thousands of collection actions is baseless. Even though its attorneys actually file the lawsuits, they do so on Crown's behalf in an attempt to obtain a recovery for Crown.

Crown also cites to *Swango v. Nationstar Sub1, LLC*, 2018 WL 709959 (D. Or. Feb. 5, 2018). However, the relevant portion of this decision merely states that the complaint did "not contain any nonconclusory factual allegations from which the Court could plausibly infer that either Nationstar or MetLife are 'debt collectors' under [the principal purpose] definition." Nationstar is a mortgage company; MetLife is an insurance company. Unlike Crown, each of these business has a "principal purpose" that is plainly not debt collection. As a result, *Swango* is not at all relevant here, where the Court is reviewing a summary judgment motion based on a well-developed factual record.

Defendant's reliance on *Capozio v. JP Morgan Chase Bank, NA*, 2017 WL 5157532 (E.D. Pa. Nov. 7, 2017) is no more persuasive. In *Capozio*, the consumer merely alleged that the defendant had purchased its debt after default. After *Henson* abrogated this test for whether an entity is a "debt collector," the consumer argued that

"Defendant is a 'debt collector' under the first definition . . . as [Defendant's] main business is the making of loans and the collection of the indebtedness evidenced by its loan portfolio." *Id.* at *4 (ellipses and brackets in original). But, the court held that even if it considered this allegation, the assertion would merely reaffirm the conclusion that the defendant was not a debt collector. This holding is not surprising, as the consumer's allegation clearly stated that the main business of JP Morgan Chase Bank, one of the largest banks in the world, was the *making* of loans and the collection of indebtedness of *its* loan portfolio. Thus, unlike Crown, which does not originate any loans, the defendant in *Capozio* generally issued the loans which it sought to collect.[16] Thus, the principal purpose of the *Capozio* defendant was not the collection of debts.

Crown's reliance on *Brutsky v. Capital One, N.A.* is likewise unpersuasive, because in that case the plaintiff failed to provide any

[16] Additionally, an entity is exempt from the FDCPA if it collects a debt which it originates. *See* 15 U.S.C. § 1692a(6)(F). Again, as Crown does not originate any loans, this exemption could not apply to it, while it would likely have applied to the defendant in *Capozio*.

factual allegations regarding the principal purpose of a defendant whose business purpose was plainly not debt collection. 2018 WL 513586, at *5 (W.D. Wash. Jan. 23, 2018) ("Plaintiffs do not make any allegations supporting their assertion that the principal purpose of Defendant's business is debt collection.").[17]

Pearson v. Specialized Loan Servicing, LLC, 2017 WL 3167648, at *7 (E.D. Tenn. July 24, 2017), also does not help Crown. The portion Crown quotes is from a footnote, which merely restates the holding in *Henson*, and notes that the opinion may have been useful authority to the debt collector during the briefing of the motion. Any implication Crown makes regarding this statement is baseless.

In contrast to the cases cited by Crown, a number of courts since *Henson* have held that the Supreme Court did *not* reach the principal purpose test, and consequently that the decision does not preclude a finding that debt buyers are debt collectors under that test. For example, in *Schweer v. HOVG, LLC*, the court noted that

[17] Likewise, *Niborg v. CitiMortgage, Inc.*, 2017 WL 3017633 (W.D. Wash. July 17, 2017), should be given no weight. In that case, pro-se plaintiffs alleged that the defendant was a debt collector. But, it does not appear that they provided any facts to support that assertion.

"the *Henson* Court also made clear that its holding in that matter was narrow, and did not address the applicability of 'in any business the principal purpose of which is the collection of any debts.'" 2017 WL 2906504 (M.D. Pa. July 7, 2017)(quoting *Henson*). Crown attempts to distinguish *Schweer* by noting that there the debt buyer had stipulated that it was a debt collector. This observation is correct, but it nevertheless misses the point. *Schweer* thoroughly analyzed whether *Henson* held that a debt buyer is exempt from the FDCPA simply because it had purchased the debt. If the *Schweer* court had merely been holding the debt buyer to its stipulation, no such analysis would have been necessary.

Another case directly on point is *Tepper v. Amos Fin., LLC*, 2017 WL 3446886 (E.D. Pa. Aug. 11, 2017).[18] In *Tepper*, the defendant was a debt buyer. And, even though it argued that after *Henson* it could no longer be considered a debt collector, the court disagreed. In doing so, it stated:

> Plaintiff appropriately directs our attention then to the first possible path provided by § 1692a,

[18] As discussed above, the appeal in *Tepper* is currently pending before this Court.

> which the Supreme Court explicitly noted was outside the scope of its review. And on the first path, Plaintiff's footing is more sure. While the second definition is limited to "debts owed ... another," the first definition applies to "*any* debts," provided only that the entity's *principal purpose* is the collection of such debt. We agree with Plaintiff that the evidence shows that Defendant meets that first definition. Indeed, any other conclusion is untenable in light of Mr. Korogluyan's testimony that Defendant's business focuses exclusively on acquiring and servicing non-performing and semi-performing loans.

Id. at *8. Here, the exact same analysis applies. Crown's only business purpose is purchasing defaulted debt and collecting that debt—either through the use of third-party collection agencies or by filing thousands of lawsuits. (Deposition of Jessica Foster, Appx., 241, pp. 5-6; Service Agreement, Appx., 376-388; Plaintiff's Response to Defendant, Crown Asset Management, LLC Statement of Material Facts, ¶6, and Exhibits thereto, R. 94, and Appx. 460-461.)

Crown attempts to distinguish *Tepper* by arguing that the debt buyer in *Tepper* was not a "passive" debt buyer like Crown claims to be. However, filing lawsuits is certainly not "passive" collection behavior. Additionally, Crown's involvement in the collection process was very active, as it maintained significant discretion over how its debts were

collected. (*See* Servicing Agreement at Appx. 376-388; R 80-8, discussed *supra* at p. 37.) There is no way for Crown to meaningfully distinguish *Tepper*.

Another case supporting Barbato is *Torres v. LVNV Funding, LLC*, 2018 WL 1508535 (N.D. Ill. March 27, 2018), where the court held that the debt buyer was a debt collector as a matter of law:

> Finally, LVNV's own deposition witness admits that the only service LVNV provides is as a debt owner. . . . LVNV cannot hide behind *Henson* because Torres clearly sought to utilize the "principal purpose" of "debt collector" within § 1692(a)(6), and she submits undisputed evidence that LVNV's principal purpose is the collection of a debt.

Id. at *5. As in *Torres*, Crown's only purpose is to purchase debts and attempt to liquidate them. Accordingly, it is a "principal purpose" debt collector subject to the FDCPA.

Similarly, in *Mitchell v. LVNV Funding, LLC*, 2017 WL 6406594 (N.D. Ind. Dec. 15, 2017), the district court had issued an opinion in which it had held that the debt buyer was not a debt collector after *Henson*. But, on reconsideration, the court vacated that holding. Instead, it held that by producing evidence that the debt buyer, *inter*

alia: purchased debts, retained a third-party collection agency, and filed lawsuits to collect on the debts that it purchased, the consumer had raised a genuine issue of material fact as to whether the debt buyer's principal purpose was debt collection. *Accord McMahon v. LVNV Funding, LLC*, 2018 WL 1316736 (N.D. Ill. March 14, 2018)(debt buyer's status as a debt collector was a trial question). Here, the record contains the same type of evidence. As a result, this Court should affirm the holding that Crown is a debt collector.

Conclusion

Thus, for the foregoing reasons, Plaintiff respectfully requests that the Court affirm the district court's holding that Crown is a debt collector and remand for further proceedings consistent with its determination.

Respectfully submitted,

/s/Carlo Sabatini
Carlo Sabatini

Carlo Sabatini (PA 83831)
Brett Freeman (PA 308834)
SABATINI FREEMAN, LLC
216 N. Blakely St

Daniel A. Edelman (IL 00712094)
Francis R. Greene (IL 6272313)
EDELMAN, COMBS, LATTURNER & GOODWIN, LLC.

Dunmore, PA 18512
(570) 341-9000

20 South Clark St., Suite 1500
Chicago, IL 60603
(312) 739-4200

Counsel for Appellee Mary Barbato

CERTIFICATION OF BAR MEMBERSHIP

I, Carlo Sabatini, hereby certify that I am a member in good standing of the Bar of the United States Court of Appeals for the Third Circuit.

s/ Carlo Sabatini
Carlo Sabatini

CERTIFICATION OF COMPLIANCE

Pursuant to Fed. R. App. P. 28.1(e), the undersigned counsel of record for the Appellee certifies that the foregoing brief complies with the type-volume limitations of Federal Rules of Appellate Procedure 28.1(e)(2)(B) and Third Circuit Local Appellate Rules 32.1, 32.2, and 28.2. Exclusive of the portions exempted pursuant to Fed. R. App. P. 32(a)(7)(B), the foregoing brief contains 8,616 words. This brief was prepared in a proportionally spaced typeface in Microsoft Office Professional Plus 2013 using 14 point Century Schoolbook.

s/ Carlo Sabatini
Carlo Sabatini

CERTIFICATION OF IDENTICAL TEXT

I, Carlo Sabatini, hereby certify that the text of the electronic copy and the hard copies of the foregoing document are identical.

s/ Carlo Sabatini
Carlo Sabatini

CERTIFICATION OF VIRUS CHECK

I, Carlo Sabatini, hereby certify that a virus check was performed on the PDF file of the foregoing document prior to electronic filing using Windows Defender version 1.1.14800.3 with antivirus definition version 1.267.359.0.

s/ Carlo Sabatini
Carlo Sabatini

CERTIFICATION OF SERVICE

I, Carlo Sabatini, that, on April 26, 2018, I caused seven copies the foregoing brief to be served, via United States First Class Mail, on the following:

Clerk's Office
U.S. Court of Appeals
21400 U.S. Courthouse
601 Market St.
Philadelphia, PA 19106-1790

and I served a copy of the foregoing brief electronically on counsel for Appellant.

s/ Carlo Sabatini
Carlo Sabatini