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VIA ELECTRONIC MAIL ONLY

09-BK-142

Peter J. McCabe, Secretary
Administration Office of the United States
Thurgood Marshall Federal Judiciary Building
Washington, D.C. 20544

Re: ACA International Comment Regarding Proposed Amendments to Bankruptcy Rule 3001

Dear Secretary McCabe:

The following comments are submitted on behalf of ACA International ("ACA") in response to the request for comments concerning the proposed amendments to Bankruptcy Rule 3001.

ACA welcomes the opportunity to comment on the proposed amendments. As you are aware, the amendments would substantially increase the documentation required to establish a proof of claim in open-ended or revolving consumer credit transactions. Specifically, Rule 3001 would be amended to require the proof of claim to be supported with the last account statement sent to a consumer debtor prior to filing bankruptcy, regardless whether the statement was sent by the entity filing the proof of claim or some prior holder of the claim. In addition, Rule 3001 would require the proof of claim to include a statement itemizing any interest, fees, expenses, or other charges apart from the principal amount of the debt with sufficient specificity to make clear the basis of the non-principal amount. The proposed rule would impose sanctions for not including this additional information including preclusion from later submitting the omitted information in a contested proceeding and expenses and attorney's fees.

For the reasons stated herein, the proposed amendments to Rule 3001 should not be adopted. ACA's opposition is three-fold. First, the proposed rule amendments are at odds

with Federal laws governing the record retention policies of financial institutions. Second, requiring a proof of claim to include the last statement and an itemized statement of non-principal charges is out of keeping with the type of documentation routinely stored by financial institutions under Federal laws. And third, existing statutory and administrative filing requirements create a clear obligation on any party filing a proof of claim to properly evidence the claim. Failing to file a supported claim subjects the filing party to the risk of liability. Thus, the existing rules contemplate the opportunity to reasonably dispute a claim that is not properly supported.

I. Background On ACA International.

ACA International is an international trade organization originally formed in 1939 and composed of credit and collection companies that provide a wide variety of accounts receivable management services. Headquartered in Minneapolis, Minnesota, ACA represents approximately 5,500 members based in more than 55 countries and ranging from credit grantors, third-party collection agencies, debt purchasers, attorneys, and vendor affiliates. ACA has numerous divisions or sections accommodating the specific compliance and regulatory issues of its members' business practices.

The company-members of ACA are subject to applicable Federal and state laws and regulations regarding debt collection, as well as ethical standards and guidelines established by ACA. Specifically, the collection activity of ACA members is regulated primarily by the Federal Trade Commission under the Federal Trade Commission Act, 15 U.S.C. § 45 et seq., the FDCPA, the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., and the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 et seq., in addition to numerous other Federal and state laws. Indeed, the accounts receivable management industry is unique because it is one of the few industries in which Congress enacted a specific statute governing all manner of communications with consumers when recovering payments.

ACA members range in size from small businesses with a few employees to large, publicly held corporations. Together, ACA members employ in excess of 150,000 workers. These members include the very smallest of businesses that operate within a limited geographic range of a single town, city or state, and the very largest of national corporations doing business in every state. The majority of ACA members, however, are small businesses. Approximately 2,000 of the company members maintain fewer than ten employees, and more than 2,500 of the members employ fewer than twenty persons.

Debt purchasers are members of ACA. These entities purchase open-ended or revolving consumer credit accounts for an amount less than the face value of the debt in open market transactions. Typically there are three categories of debt purchasers:

1. Companies that purchase receivables but do not perform direct collection activity on the accounts. Instead, the accounts are forwarded to third-party collection agencies or collection attorneys for collection. This type of debt purchaser, with the exception of complying with the Gramm-Leach-Bliley Act ("GLBA"), 15 U.S.C. § 6801-6809, has no direct communication with the debtor.

2. Companies that purchase receivables and perform collection activity on the accounts internally. This type of debt purchaser has direct communication with the debtor and must at all times comply with the Fair Debt Collection Practices Act, the GLBA and state consumer protection laws.

3. Hybrid companies that select only certain accounts for internal collections and refers the remaining to third-party collection agencies or collection attorneys.

Regardless of type, analysts of this large and growing industry agree that debt sales benefit originators by reducing their levels of bad debt. The economy likewise is served by creating a sub-market focused on assuring debtors' responsibility for their financial obligations.

The primary market for debt purchasers historically has been credit card debt. Credit originators are interested in the quick cash flow solution inherent in selling non-performing accounts receivable. Many accounts are acquired long after they have been charged off the originators' books as uncollectible (24-48 months). Others are acquired within 60 to 90 days of the first date of delinquency.

Significant for the proof of claim requirements under the Bankruptcy rules, it is common for portfolios of accounts to be repackaged by debt purchasers and sold several times to other purchasers. This has important implications for the underlying documentation of the accounts. The documentation accompanying the sale of a portfolio of accounts varies by seller greatly. Some originators do not maintain full documentation for the accounts after a period of two years. This is because Federal banking regulations do not require these financial institutions to retain account histories more than two years. This means that for certain types of debts with the exception of business loans, mortgage loans secured by real property and student loans, it is often difficult, if not impossible, to distinguish the amount of principal due

on the account from the amount of interest, charges or fees due on the account at the time of sale.

In addition to the documentation issues stemming from Federal banking regulations, experience has shown that the original principal and interest and any subsequent charges lose their distinctiveness once the original creditor has written the accounts off internally and sold them to a debt purchaser. This is because, in most cases as a practical matter, the seller of the account either (1) does not itemize principal, interest, charges and fees due on the accounts once they are charged off to bad debt, bundled and sold as a portfolio; or (2) in the case of open-end lines of credit, the unpaid interest becomes principal each month. In either circumstance, the accumulation of amounts owed on an account is commonly referred to as the "face value of the account."

II. ACA's Comments.

ACA respectfully submits that the proposed amendments to Rule 3001 should not be adopted for three reasons.

First, the proposed amendment to Rule 3001 to require the proof of claim to be supported with the last account statement sent to a consumer debtor prior to filing bankruptcy is at odds with the Federal laws governing the record retention policies of financial institutions. Record retention components of Federal laws such as the Federal Reserve Regulations B (Equal Credit Opportunity Act), E (Electronic Fund Transfers Act) and Z (Truth in Lending Act) impose a finite period of time to retain account information. These laws generally impose a requirement on financial institutions to maintain records of open-ended or revolving credit transactions for a period of two years. To illustrate these requirements, Truth in Lending regulations codified at 12 C.F.R. § 226.25 require records of compliance to be maintained for two years. Regulation B, which implements the Equal Credit Opportunity Act, generally requires the retention of documents for 25 months.

To the extent that filing a proof of claim would require a statement for an account older than two years, the proposed amendments to Rule 3001 create an inconsistency between the Federal laws that underpin the creation of the underlying consumer credit transaction and the bankruptcy rules designed to facilitate the orderly administration of legitimate claims against the bankruptcy estate. The proposed amendments to Rule 3001, in effect, would result in a *de facto* amendment of the record retention requirements imposed by these Federal laws and related implementing regulations. Where the failure to comply with the proposed amendment exposes the filing party to a risk of sanctions even though the filing party is in full compliance

with regulations promulgated by Federal banking agencies pursuant to notice and comment provisions of the Administrative Procedure Act, we do not believe that the proposed amendment to Rule 3001 is authorized.

Further, as noted above, amending the rule as proposed would have devastating impacts on the multi-billion dollar debt purchasing market. Credit card accounts compose a large percentage of this market. Typically the credit card accounts are sold by the original credit grantor after charge off and under circumstances in which the last statement is no longer available from the credit grantor due to Federal regulations on the retention of records. Documentation other than the last statement may be available to substantiate liability for the account, but requiring by rule the inclusion of the last statement as part of the proof of claim would assure that large segments of these debts could not participate in the bankruptcy process. ACA predicts that, in reaction to the propose rule change, debt purchasers would be forced into the position of having to file suit against the account holder prior to the debtor petitioning for bankruptcy. In effect, the proposed amendment would result in more collection litigation against debtors.

Second, requiring a proof of claim to include the last statement and an itemized statement of non-principal charges is out of step with the type of documentation routinely stored by financial institutions under Federal laws. For example, debt purchasers charged with reporting discharged debt frequently are unable to separately itemize principal and interest. This is due to no failing of debt purchasers, but instead it is a function of the records maintained or not maintained by original creditors who have no obligation in Federal law to maintain transactional account records more than two years. Consequently, when debt is purchased and the original credit grantor lacks account history records, the amount of principal and interest is included in a lump sum and not itemized. In the vast majority of bankruptcy transactions, debtors are not burdened in any way as a consequence of the combination of principal and interest.

ACA recognizes the need for accurate evidence of indebtedness in filing a proof of claim. However, the proposed amendment requiring an itemized statement of non-principal charges is overly rigid and fails to account for the manner in which financial records are maintained by credit grantors consistent with Federal laws. Similar to the approach taken by the Internal Revenue Service in the context of 1099C reporting, the amendment should recognize that the filing party should submit the best available information on the breakdown of principal, interest, charges, and fees. Where the original credit grantor has not maintained this information and the account is sold, the entity filing the proof of claim should be permitted to identify the principal as the total face amount of the debt that is purchased and the interest is

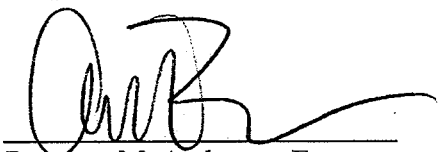
any interest that accrues after the date of purchase.

Finally, we note that existing statutory and administrative filing requirements create a clear obligation on any party filing a proof of claim to properly evidence the claim. Failing to file a supported claim subjects the filing party to the risk of liability. Thus, the existing rules contemplate the opportunity to reasonably dispute a claim that is not properly supported.

V. Conclusion

ACA appreciates the opportunity to comment on the proposed amendments. If you have any questions, please contact Andrew Beato at 202-737-7777.

Respectfully submitted,



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