



Honorable August B. Landis
United States Bankruptcy Judge



Entered on Docket
March 31, 2021

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:)	Case No.: 17-15277-abl
)	
)	Chapter 13
ANTONIA ANDRADE-GARCIA,)	
)	
Debtor.)	Hearing Date: March 4, 2020
)	Hearing Time: 9:30 a.m.
)	
)	

**MEMORANDUM AND ORDER SUSTAINING DEBTOR’S CLAIM OBJECTIONS AND
AWARDING ATTORNEY’S FEES UNDER NRS 18.010**

This matter came on for hearing before the Court on March 4, 2020, pursuant to three separate claim objections¹ filed by debtor Antonia Andrade-Garcia (“Debtor”). The Objections were directed to Claim Nos. 4-1, 5-1, and 6-1 (collectively “Claims”).² All of the Claims were filed by creditor LVNV Funding, LLC (“LVNV”).

¹ ECF No. 84, 86, and 88 (collectively “Objections”). In this Memorandum, all references to “ECF No.” are to the numbers assigned to the documents filed in this case as they appear on the official court docket maintained by the clerk of court.

²References to “Claim No.” are to the numbers assigned to the proofs of claim filed in this case as they appear on the official claims register maintained by the clerk of court.

1 At the conclusion of the March 4, 2020 hearing on Debtor's Objections, the Court set this
2 matter over for additional argument on March 17, 2020. Attorney Richard E. Hawkins appeared
3 and argued for Debtor at both hearings. Attorney Steven L. Yarmy appeared and argued for
4 LVNV at both hearings. At the conclusion of the March 17, 2020 hearing, the Court closed the
5 record and took this claim dispute under submission.
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7 The Court takes judicial notice of the official court docket and claims register in Debtor's
8 case to the extent appropriate under and permitted by FED. R. EVID. 201(b) and (c). In preparing
9 this Memorandum, the Court has reviewed Debtor's Objections, LVNV's replies to the
10 Objections,³ and Debtor's omnibus response to LVNV's replies.⁴ The Court has also considered
11 the arguments of counsel at the March 4 and 17, 2020 hearings. The issues presented by this
12 claim dispute are fully submitted. Based upon the record before it, the Court enters the following
13 findings of fact and conclusions of law.
14

15 **FINDINGS OF FACT**

16 This case commenced on September 29, 2017, when Debtor filed a voluntary petition for
17 relief under Chapter 7 of the Bankruptcy Code.⁵ Debtor subsequently filed a motion seeking
18 conversion of her case to proceedings under Chapter 13 of the Code. The Court's order granting
19 her conversion motion was granted on December 6, 2017.⁶ Her case has been administered
20 under Chapter 13 of the Code at all times since then.
21

22 On February 13, 2018, the Claims were filed by LVNV in writing on Official Form 410.
23 LVNV is not the original creditor on any of the accounts that are referenced in the Claims. All
24

25
26 ³ECF No. 93-95, inclusive.

27 ⁴ECF No. 99.

28 ⁵11 U.S.C. §§ 101-1532 ("Code"). Unless otherwise noted, the words "Chapter" and "Section"
as used in this memorandum refer to the corresponding chapter and section within the Code.

⁶ECF No. 29.

1 of the Claims identify “LVNV Funding, LLC its successors and assigns as assignee of Arrow
 2 Financial Services, LLC” as the current creditor. More particularly:

- 3 • **Claim 4-1:** Identifies LVNV as assignee of Arrow Financial Services, LLC,
 4 with documents including a bill of sale, assignment, declaration of account
 5 transfer, and limited power of attorney attached in support at pages 5-12 of 12.
 6
- 7 • **Claim 5-1:** Identifies LVNV as assignee of NCOP Capital II, LLC, with
 8 documents including a bill of sale, assignment, declaration of account transfer,
 9 and limited power of attorney attached in support at pages 5-13 of 13.
- 10 • **Claim 6-1:** Identifies LVNV as assignee of North Star Capital Acquisition
 11 LLC, with documents including a bill of sale, assignment, declaration of
 12 account transfer, and limited power of attorney attached in support at pages 5-
 13 10 of 10.
 14

15 An Account Detail form is also attached to each of the Claims which confirms that the
 16 underlying account is in the Debtor’s name.⁷ The Account Detail forms attached to the Claims
 17 also plainly show that both the charge off date by the original credit provider, and the last
 18 transaction on the relevant account, occurred more than a decade prior to the commencement of
 19 Debtor’s case on September 29, 2017. More specifically, the Account Detail forms appended to
 20 the Claims reveal the following information:
 21

- 22 • **Claim 4-1:** Charged off: January 30, 2004
 23 Last transaction date: September 28, 2006
 24
- 25 • **Claim 5-1:** Charged off: September 1, 2002
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28 ⁷Claim 4-1, p. 4 of 12; Claim 5-1, p. 4 of 13; Claim 6-1, p. 4 of 10.

1 Last transaction date: December 16, 2003

- 2 • **Claim 6-1:** Charged off: April 21, 2003

3 Last transaction date: December 17, 2003

4 A review of the docket confirms that the Chapter 13 trustee overseeing the administration
5 of Debtor's bankruptcy case did not object to any of LVNV's Claims. On January 7, 2020,
6 Debtor filed the Objections asserting that LVNV's Claims were all filed at a point in time when
7 they were obviously barred by the applicable Nevada statute of limitations. See NRS
8 11.190(1)(a), NRS 11.190(2)(a), and (b).⁸ On February 6, 2020, LVNV filed replies to each of
9 Debtor's Objections, citing the United States Supreme Court's decision in Midland Funding,
10 LLC v. Johnson, ___ U.S. ___, 137 S. Ct. 1407, 197 L. Ed. 2d (2017) as supporting authority.⁹

11
12 On February 13, 2020, Debtor filed an omnibus response to LVNV's replies to the
13 Objections, noting that LVNV had conceded in its replies that all of the Claims were time barred
14 under Nevada law when they were filed; that LVNV Funding had been afforded plenty of time to
15 withdraw the Claims since they were filed on February 13, 2018 and Debtor's Objections were
16 filed almost two years later on January 7, 2020; and that if Debtor's Objections were sustained,
17 Debtor was entitled to recover the attorney's fees she had incurred in successfully prosecuting
18 the Objections from LVNV - - not as a sanction, but as the prevailing party under a Nevada state
19 law fee shifting statute, NRS 18.010(2)(b).¹⁰ While Debtor's Objections to LVNV's Claims
20 were pending, the Court entered its confirming Debtor's Chapter 13 plan on March 11, 2020.¹¹

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26 ⁸As used in this memorandum, "NRS" refers to the Nevada Revised Statutes in effect as of the
27 filing of Debtor's bankruptcy petition on September 29, 2017.

28 ⁹ECF Nos. 93 – 95, inclusive.

¹⁰ECF No. 99.

¹¹ECF No.109.

CONCLUSIONS OF LAW

A. Jurisdiction; Venue; Core Proceeding

The Court has jurisdiction over Debtor’s Chapter 13 bankruptcy case. 28 U.S.C. §§ 1334(a) and 157(a), and LR 1001(b)(1).¹² Venue of Debtor’s Chapter 13 bankruptcy case is proper in the District of Nevada under 28 U.S.C. § 1408(1). Debtor’s Objections to LVNV’s Claims are statutorily core proceedings. 28 U.S.C. § 157(b)(2)(a) and (b). Debtor’s Objections to LVNV’s Claims are also constitutionally core proceedings because they arise under Section 502 of the Code. See Certain Underwriters at Lloyds v. GACN, Inc. (In re GACN, Inc.), 555 B.R. 684, 692–93 (9th Cir. BAP 2016), appeal dismissed, No. 16-60079, 2017 WL 4513499 (9th Cir. May 10, 2017) (noting that the phrase “arising under title 11” as used in 28 U.S.C. § 157(a) and (b) is a term of art meaning a proceeding that “presents claims for relief created or controlled by title 11.”), citing Wilshire Courtyard v. Cal. Franchise Tax Bd. (In re Wilshire Courtyard), 729 F.3d 1279, 1285 (9th Cir. 2013).

B. Controlling Statutory Provisions

The analytical starting point in resolving Debtor’s Objections to LVNV’s Claims is the statutory text of the Code and NRS. It is well established that when the language of a statute is plain, the sole function of the courts, at least where the disposition required by the text is not absurd, is to enforce it according to its terms. Dale v. Maney (In re Dale), 505 B.R. 8, 11 (9th Cir. BAP 2014), citing Lamie v. U.S. Trustee, 540 U.S. 526, 534 (2004).

1. As to Claims Disputes in Bankruptcy Cases Generally

¹²As used in this memorandum, “LR” refers to the Local Rules of Bankruptcy Practice for the District of Nevada, available on the Court’s website at this link:
https://www.nvb.uscourts.gov/downloads/rules/local-rules-2021_final.pdf

1 Section 502 of the Code governs Debtor’s Objections to LVNV’s Claims and provides in
2 pertinent part:

3 **Section 502. Allowance of claims or interest**

4 (a) A claim or interest, proof of which is filed under section 501 of
5 this title, is deemed allowed, unless a party in interest, including a
6 creditor of a general partner in a partnership that is a debtor in a
7 case under chapter 7 of this title, objects.

8 (b) Except as provided in subsections (e)(2), (f), (g), (h) and (i) of this
9 section, if such objection to a claim is made, the court, after notice
10 and a hearing, shall determine the amount of such claim in lawful
11 currency of the United States as of the date of the filing of the
12 petition, and shall allow such claim in such amount, except to the
13 extent that —

14 (1) such claim is unenforceable against the debtor and property
15 of the debtor, *under any* agreement or *applicable law for a*
16 *reason other than because such claim is contingent or*
17 *unmatured*[.] (emphasis added)
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21 The Federal Rules of Bankruptcy Procedure¹³ further inform the analytical calculus.
22 Rule 3001 addresses the requisite content and evidentiary effect of a properly filed proof of
23 claim, and reads in relevant part:
24

25 **Rule 3001. Proof of Claim**

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28 ¹³FED. R. BANKR. P. 1001- 9037, inclusive. Unless otherwise noted, in this memorandum
the words “Rule” and “Rules” refer to the Federal Rules of Bankruptcy Procedure.

1 (a) **Form and Content.** A proof of claim is a written statement setting
2 forth a creditor's claim. A proof of claim shall conform
3 substantially to the appropriate Official Form.

4 [.]

5 (c) **Supporting Information.**

6 (1) **Claim Based on a Writing.** Except for a claim governed
7 by paragraph (3) of this subdivision, when a claim, or an
8 interest in property of the debtor securing the claim, is
9 based on a writing, a copy of the writing shall be filed with
10 the proof of claim. If the writing has been lost or destroyed,
11 a statement of the circumstances of the loss or destruction
12 shall be filed with the claim.

13 [.]

14 (3) **Claim Based on an Open-End or Revolving Consumer
15 Credit Agreement.**

16 (A) When a claim is based on an open-end or revolving
17 consumer credit agreement – except one for which a
18 security interest is claimed in the debtor's real
19 property – a statement shall be filed with the proof
20 of claim, including all of the following information
21 that applies to the account:

22 (i) the name of the entity from whom the
23 creditor purchased the account;
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- (ii) the name of the entity to whom the debt was owed at the time of an account holder's last transaction on the account;
- (iii) the date of an account holder's last transaction;
- (iv) the date of the last payment on the account; and
- (v) the date on which the account was charged to profit and loss.

[. . . .]

(f) Evidentiary Effect. A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim.

2. As to the Relevant Statute of Limitations Under Nevada Law

The statute of limitations for commencing an action based on contract in Nevada is set forth in NRS 11.190, which reads in relevant part:

NRS 11.190. Periods of limitation. Except as otherwise provided in NRS 125B.050 and 217.007, actions other than those for the recovery of real property, unless further limited by specific statute, may only be commenced as follows:

- 1. Within 6 years:

[. . . .]

1 (b) An action upon a contract, obligation or liability founded
2 upon an instrument in writing, except those mentioned in
3 the preceding sections of this chapter.

4 2. Within 4 years:

5 (a) An action on an open account for goods, wares and
6 merchandise sold and delivered.

7 (b) An action for any article charged on an account in a
8 store.
9

10 [.]

11 **C. Debtor's Objections to the Claims are Sustained**

12 The Court will sustain Debtor's Objections to LVNV's Claims. The reasons follow.

13 **1. The Analytical Framework and Burden of Proof in Resolving Claim**
14 **Objections**

15 The analytical course to be charted by bankruptcy courts in resolving claim objections is
16 the subject of well-established case law within the Ninth Circuit. Rules 3001 and 3002 also
17 provide relevant procedural guidance.
18

19 A creditor's proper filing of a proof of claim constitutes *prima facie* evidence of the
20 validity and amount of the claim pursuant to Section 502(a) and Rule 3001(f), so long as the
21 claim is filed in writing using the proper official form. See Branch Banking & Trust Co. v. R&S
22 St. Rose Lenders, LLC, 2014 WL 4929506 at *3 (D. Nev. Oct. 1, 2014), appeal dismissed, 621
23 Fed. App'x 497 (9th Cir. Nov. 2, 2015). "It is generally held that failure to attach writings to a
24 proof of claim does not require a bankruptcy court to disallow a claim on that basis alone.
25 Rather, the claim is not entitled to be considered as *prima facie* evidence of the claim's validity."
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1 Heath v. Am. Express Travel Related Serv. Co. (In re Heath), 331 B.R. 424, 433 (9th Cir. BAP
2 2005), citing Ashford v. Consol. Pioneer Mortg. (In re Consol. Pioneer Mortg.), 178 B.R. 222,
3 226 (9th Cir. BAP 1995), aff'd, 91 F.3d 151 (9th Cir. 1996).

4 Under Rule 3007(a), a claim objection must be filed in writing. A claim objection is a
5 “contested matter” governed by Rule 9014 and is regarded as a motion for purposes of FED. R.
6 CIV. P. 43(e). “Should objection be taken, the objector is then called upon to produce evidence
7 and show facts tending to defeat the claim by probative force equal to that of the allegations of
8 the proofs of claim themselves. A proof of claim is strong enough to carry over a mere formal
9 objection without more. ***The ultimate burden of persuasion is, however, always on the***
10 ***claimant.***” Branch Banking at *3, citing Wright v. Holm (In re Holm), 931 F.2d 620, 623 (9th
11 Cir. 1991) (emphasis added).

12 Under Section 502(b), if an objection to a claim is made by a party in interest, the court,
13 after notice and a hearing, shall determine the amount of such claim. Any dispute over the
14 validity of a proof of claim is governed by state law. Branch Banking at *3, citing Johnson v.
15 Righetti (In re Johnson), 756 F.2d 738, 741 (9th Cir. 1985), cert. denied, 474 U.S. 828 (1985).
16 Application of that legal framework to the facts of Debtor’s case is the next step in resolving
17 Debtor’s Objections to LVNV’s Claims.
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21 **2. LVNV’s Claims are Entitled to *Prima Facie* Validity in the First**
22 **Instance**
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24 LVNV’s Claims were filed with the Court in writing on the appropriate official form,
25 with appropriate supporting documentation attached. Debtor makes no argument to the contrary.
26 The Court therefore concludes that LVNV’s Claims are entitled to *prima facie* validity in the
27 first instance. See Rule 3001(f); see also Branch Banking at *3.
28

1 of LVNV's Claims are "unenforceable against the debtor [. . .] under [. . .] applicable law for a
2 reason other than because [those] claims are contingent or unmatured."¹⁵ The Court therefore
3 concludes that Debtor's Objections are sufficient to overcome the *prima facie* validity of each
4 and all of LVNV's Claims, exposing them to disallowance under Section 502(b)(1).

5 But that isn't the end of the inquiry. The burden of proof simply shifts back to LVNV,
6 affording LVNV an opportunity to satisfy its ultimate burden of persuading the Court that the
7 Claims should be allowed. See Branch Banking at *3 (noting that in the claim objection context,
8 "[t]he ultimate burden of persuasion is [. . . .] always on the claimant."), citing Holm, 931 F.2d
9 at 623.
10

11 **4. LVNV Failed to Carry its Ultimate Burden of Proof of Persuading**
12 **this Court that the Claims Should Be Allowed Under Section 502.**
13

14 Faced with Debtor's Objections, LVNV did not offer even a scintilla of evidence to
15 persuade this Court that the stale Claims it filed in this case should be allowed and paid under
16 Debtor's Chapter 13 plan. The fact that LVNV did not, and in fact could not, carry its ultimate
17 burden under Section 502 regarding allowance of the Claims is readily apparent from its own
18 papers: "The Creditor does not dispute that the [Claims are] time barred."¹⁶
19

20 As LVNV failed to carry its ultimate burden of persuading the Court that the stale Claims
21 it filed in this case should be allowed, the Court concludes that Debtor's Objections to each and
22 all of LVNV's Claims must be **SUSTAINED**. Each and all of LVNV's Claims are
23 **DISALLOWED** in their entirety.
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27 ¹⁵11 U.S.C. § 502(b)(1).

28 ¹⁶ECF No. 93, p. 2 of 5; ECF No. 94, p. 2 of 5; ECF No. 95, p. 2 of 5.

1 As a result, the Debtor is the prevailing party in the contested matter arising from
2 LVNV's filing of the stale Claims and Debtor's Objections to them. The remaining question is
3 whether Debtor, having prevailed on her Objections to LVNV's obviously stale Claims, is
4 entitled to recover the attorney's fees she incurred in prosecuting those Objections from LVNV.

5 **D. As the Prevailing Party in the Contested Matter Arising From LVNV's**
6 **Filing of the Stale Claims and Debtor's Objections to Them, Debtor is**
7 **Entitled to An Award of Attorney Fees Under the Fee Shifting Provisions of**
8 **NRS 18.010**

10 The trustee in Debtor's case did not object to LVNV's stale Claims. As a result, Debtor
11 effectively had two choices: (1) file the Objections in order to avoid paying money to LVNV
12 for the obviously stale Claims it had filed in her case; or (2) do nothing and have money from her
13 plan payments remitted to LVNV for its time barred Claims at the expense of her other creditors.
14 Debtor filed and successfully prosecuted the Objections to LVNV's patently stale Claims. She is
15 therefore entitled to recover the attorney fees incurred in prosecuting the Objections to LVNV's
16 stale Claims under Nevada law, not as a sanction, but by operation of the fee shifting provisions
17 of NRS 18.010. The reasons follow.

20 **1. The General Rule: Attorney's Fees are Not Recoverable in**
21 **Bankruptcy**

22 No general right to recover attorney fees exists under the Code. Hosseini v. Key Bank,
23 N.A. (In re Hosseini), 504 B.R. 558, 563-568 (9th Cir. BAP 2014). Nothing in the text of 11
24 U.S.C. § 502 provides for recovery of attorney's fees incurred in successfully objecting to a
25 proof of claim, either. So, to obtain an award of the attorney fees incurred in successfully
26 prosecuting her Objections to LVNV's stale Claims, Debtor must look elsewhere.
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1 **2. The American Rule**

2 Under what is colloquially known as the “American Rule,” a prevailing party may not
3 recover attorney’s fees except as provided for by contract or by statute. Travelers Cas. & Sur.
4 Co. v. Pac. Gas & Elec. Co., 549 U.S. 443, 448 (2007); see also, Fry v. Dinan (*In re Dinan*), 448
5 B.R. 775, 784 (9th Cir. BAP 2011). Debtor does not claim she is entitled to recover the
6 attorney’s fees she incurred in successfully prosecuting the Objections to LVNV’s time barred
7 Claims pursuant to a contract. The reason for that is simple. There is no contract containing an
8 attorney’s fee clause in the record before the Court.
9

10 Since there is no evidence of a contract containing an attorney’s fee clause, nor any right
11 to recover attorney’s fees under Section 502 or the Code generally, Debtor’s ability to recover
12 her attorney’s fees for successfully prosecuting her Oppositions to LVNV’s stale Claims hinges
13 on the existence of another applicable statute that would allow such a recovery. Debtor contends
14 that such a statute exists, and points specifically to NRS 18.010(2)(b).
15

16 **3. Attorney’s Fees Under the Fee Shifting Provisions of NRS**

17 **18.010(2)(b)**

18 NRS 18.010 is a fee shifting statute that departs from the American Rule. NRS 18.010
19 sets forth specific parameters under which attorney’s fees may be awarded to a party who has
20 prevailed in a contested legal matter. As relevant here, NRS 18.010(2) provides, in pertinent
21 part:
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23 **NRS 18.010. Award of attorney’s fees**

24 [.....]
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1 2. In addition to the cases where an allowance is authorized by specific
2 statute, the court may make an allowance of attorney's fees to a prevailing
3 party:

4 a. When the prevailing party has not recovered more than \$20,000; or

5 b. Without regard to the recovery sought, *when the court finds that*
6 *the claim*, counterclaim, cross-claim or third-party complaint or
7 defense *of the opposing party was brought or maintained without*
8 *reasonable ground* or to harass the prevailing party. *The court*
9 *shall liberally construe the provisions of this paragraph in favor*
10 *of awarding attorney's fees in all appropriate situations. It is the*
11 *intent of the Legislature that the court award attorney's fees*
12 *pursuant to this paragraph* and impose sanctions pursuant to Rule
13 *11 of the Nevada Rules of Civil Procedure in all appropriate*
14 *situations to punish for and deter frivolous or vexatious claims*
15 *and defenses because such claims and defenses overburden*
16 *limited judicial resources, hinder the timely resolution of*
17 *meritorious claims and increase the costs of engaging in business*
18 *and providing professional services to the public.*

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22 3. In awarding attorney's fees, the court may pronounce its decision on the
23 fees at the conclusion of the trial or special proceeding without written
24 motion and with or without presentation of additional evidence.
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1 4. Subsections 2 and 3 do not apply to any action arising out of a written
2 instrument or agreement which entitles the prevailing party to an award of
3 reasonable attorney's fees.

4 NRS 18.010(2)(b) (emphasis added). In this Court's view, NRS 18.010(2)(b) is compelling
5 under the facts present in this case.

6 NRS 18.010(2)(b) expressly provides that courts in Nevada "*shall* liberally construe the
7 provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations."
8 (emphasis added). Additionally, NRS 18.010(2)(b) expressly states that it was the intent of
9 Legislature for the courts in Nevada to "award attorney's fees pursuant to this paragraph in all
10 appropriate situations to punish for and deter frivolous or vexatious claims [. . . .] because such
11 claims [. . . .] overburden limited judicial resources, hinder the timely resolution of meritorious
12 claims and increase the costs of engaging in business and providing professional services to the
13 public."

14 Each of those legislative concerns is implicated by the facts before the Court in this case.
15 The filing of multiple and obviously time barred claims in a Nevada Chapter 13 bankruptcy case
16 is precisely the type of frivolous claim that overburdens the limited judicial resources of this
17 Court, hinders the timely resolution of meritorious claims, and increases the costs of professional
18 services rendered by debtor's counsel to their clients in having to object. That is particularly true
19 because a claim objection is in effect an affirmative defense which must be raised in order to
20 avoid the allowance and payment of that stale claim through the debtor's Chapter 13 repayment
21 plan.

22 As observed by Justice Sotomayor in her dissenting opinion in Midland Funding, LLC v.
23 Johnson, ___ U.S. ___, 137 S. Ct. 1407, 197 L. Ed. 2d 790 (2017), the filing of obviously stale
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1 claims in bankruptcy cases has become common practice among debt buyers, so much so that
2 “debt buyers have “deluge[d]” the bankruptcy courts with claims “on debts deemed
3 unenforceable under state statutes of limitations.”” Midland Funding, ___ U.S. ___, 137 S. Ct. at
4 1418 (Sotomayor, J., dissenting), quoting Crawford v. LVNV Funding, LLC, 758 F.3d 1254,
5 1256 (11th Cir. 2014) (other citations omitted). As Justice Sotomayor noted, this practice is a
6 systemic abuse of the bankruptcy system that overburdens the limited judicial resources available
7 to debtors and creditors alike. Id. (“This practice [. . . .] ‘manipulates the bankruptcy process by
8 systematically shifting the burden’ to trustees and debtors to object even to ‘frivolous claims’—
9 especially given that filing an objection is costly, time consuming, and easy to overlook.”).

10
11 The dissent in Midland Funding further describes the filing of stale claims as “unfair” and
12 “unconscionable” in addition to being detrimental to debtors. Midland Funding, ___ U.S. ___,
13 137 S. Ct. at 1419 (Sotomayor, J., dissenting) (“Debt collectors do not file these claims in good
14 faith; they file them hoping and expecting that the bankruptcy system will fail. Such a practice is
15 “unfair” and “unconscionable” [. . . .].”). Justice Sotomayor summed up the abusive nature of
16 debt collectors’ systemic filing of time barred claims in bankruptcy cases this way:
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19 [M]ost debtors who fail to object to a stale claim will end up worse off than had
20 they never entered bankruptcy at all: They will make payments on the stale debts,
21 thereby resuscitating them, [. . .] and may thus walk out of bankruptcy court
22 owing more to their creditors than they did when they entered it. There is no
23 benefit to anyone in such a proceeding – except the debt collectors.

24
25 Midland Funding, ___ U.S. ___, 137 S. Ct. at 1421 (Sotomayor, J., dissenting) (internal
26 citation omitted).

1 The facts and issues in this case are the precise embodiment of the concerns described by
2 Justice Sotomayor in her Midland Funding dissent, and they implicate each and every one of
3 concerns plainly expressed by the Nevada legislature in the text of NRS 18.010(2)(b). The next
4 question is whether the Court may properly apply NRS 18.010(2)(b) in this case.

5 **4. NRS 18.010(2)(b) is Applicable in This Case**

6
7 The Ninth Circuit Court of Appeals has addressed the question of whether and when a
8 bankruptcy court may properly make an award of attorney's fees in bankruptcy proceedings:

9 [. . . .] It is true that the bankruptcy court has authority to apply either state
10 substantive law or federal substantive law, but the choice depends on the nature of
11 the action involved. *See, e.g., In re Sparkman*, 703 F.2d 1097, 1100 (9th Cir.1983)
12 (because California state law governed the substantive issues involved in
13 Sparkman's counterclaim filed in proof of claim litigation, it was appropriate to
14 award attorney's fees under state statute); *In re Sonoma V*, 23 B.R. 789, 796
15 (Bankr. 9th Cir. 1982) (when a federal bankruptcy court exercises jurisdiction
16 over a dispute involving state law (breach of contract action), state law with
17 respect to attorney's fees applies). When, as here, federal and not state law
18 governed the substantive issues involved in the Righetis' motion, the bankruptcy
19 court should not have awarded attorney's fees pursuant to a state statute. *Cf.*
20 *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240, 259 n. 31, 95 S.
21 Ct. 1612, 1622 n. 31, 44 L.Ed.2d 141 (1975) (award of attorney's fees in federal
22 litigation reversed as contrary to the "American Rule" followed by federal courts
23 under which attorney's fees are not recoverable by prevailing litigant in the
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1 absence of contrary federal statutory authorization—however, in diversity cases
2 where state law governs, state provisions for such fees may be applied).

3
4 The Johnsons contend that this circuit applied section 1717 in a
5 bankruptcy case, *In re Eastview Estates II*, 713 F.2d 443 (9th Cir.1983),
6 brought under a federal statute—*i.e.*, 11 U.S.C. § 502(b)(1). ***Section***
7 ***502(b)(1), however, provides that a court “shall allow” a claim, proof of***
8 ***which has been filed, “except to the extent that ... such claim is***
9 ***unenforceable against the debtor ... under any ... applicable law....” 11***
10 ***U.S.C. § 502(b)(1). Thus, in proof of claim litigation under 11 U.S.C. §***
11 ***502(b)(1), the validity of the claim is determined under state law.***

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14 Johnson v. Righetti (*In re Johnson*), 756 F.2d 738, 740-41 (9th Cir.), cert. denied, 474 U.S. 828
15 (1985) (emphasis added); see also Travelers Cas. & Sur. Co. v. Pac. Gas & Elec. Co., 549 U.S.
16 443, 453 (2007) (noting that a request for attorney’s fees is not precluded simply because the
17 attorney’s fees sought were incurred while litigating issues of federal bankruptcy law).

18
19 The Ninth Circuit’s holding in Johnson is on all fours with this case. Certiorari was
20 sought and denied in Johnson, and it is still good law. This Court was required to resolve
21 Debtor’s Objections to LVNV’s patently stale Claims under Section 502(b)(1). Section
22 502(b)(1) provides that bankruptcy courts “shall allow” a proof of claim ““except to the extent
23 that ... such claim is unenforceable against the debtor ... under any ... applicable law....” It is well
24 established that “[a]ny dispute over the validity of a proof of claim is governed by state law.”¹⁷
25 The validity (or more properly invalidity) of LVNV’s Claims was determined by this Court
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¹⁷Branch Banking at *3, citing Johnson, 756 F.2d at 741.

1 under Nevada state law, and more specifically under the statutes of limitations set forth in NRS
2 11.190 discussed above. As a result, the Court concludes that it is proper to apply the fee
3 shifting provisions of NRS 18.010(2)(b) in this case, such that LVNV bears the burden of the
4 attorney's fees Debtor incurred in successfully prosecuting her Oppositions to LVNV's patently
5 stale Claims.

6
7 **5. The Supreme Court's Decision in Midland Funding is Readily**
8 **Distinguishable**

9 LVNV Funding's replies to Debtor's Objections and her related request for attorney's
10 fees rely heavily on the majority opinion in Midland Funding, LLC v. Johnson, ___ U.S. ___,
11 137 S. Ct. 1407, 197 L. Ed. 2d 790 (2017). In Midland Funding, the Supreme Court addressed
12 the issue of whether a creditor violates the Fair Debt Collection Practices Act ("FDCPA") by
13 filing a proof of claim that discloses on its face that the underlying debt is barred by the relevant
14 statute of limitations. Specifically, the debtor in Midland Funding brought suit against Midland
15 seeking actual damages, statutory damages, attorney's fees, and costs, asserting that Midland had
16 violated the FDCPA by filing its stale claims.
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19 By contrast, in this case, Debtor's Objections to LVNV's stale Claims and related request
20 for attorney's fees do not rely upon or invoke the FDCPA in any way. Debtor's Objections to
21 LVNV's time barred Claims are predicated upon Section 502(b)(1), a matter that was ultimately
22 resolved under Nevada state law, and in particular, NRS 11.190. Debtor's request for attorney's
23 fees is properly predicated upon Nevada's fee shifting statute, NRS 18.010(2)(b). In summary,
24 because Debtor is not requesting fees under the FDCPA, but instead under the fee shifting
25 provisions of NRS 18.010(2)(b) following the successful prosecution of her Oppositions to
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1 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Debtor's Objection
2 to LVNV's Claim 5-1 in the amount of \$924.84 is **SUSTAINED** and that claim is
3 **DISALLOWED** in its entirety under 11 U.S.C. § 502(b)(1).

4 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Debtor's Objection
5 to LVNV's Claim 6-1 in the amount of \$845.08 is **SUSTAINED** and that claim is
6 **DISALLOWED** in its entirety under 11 U.S.C. § 502(b)(1).

7 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that under NRS
8 18.010(2)(b), Debtor is awarded, and LVNV shall remit to Debtor through her counsel, all
9 attorney's fees and expenses incurred by Debtor in successfully prosecuting the Oppositions to
10 LVNV's time barred Claims. Counsel for the Debtor shall file a declaration as to the amount of
11 fees incurred as a result of Debtor's successful prosecution of the Oppositions to the stale Claims
12 filed by LVNV. That declaration shall be filed within 14 days from the docketing of this
13 memorandum. The Court will enter a supplemental order establishing the amount of fees
14 awarded to Debtor to be paid by LVNV thereafter.

15 **IT IS SO ORDERED.**

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20 Copies sent to all parties via CM/ECF ELECTRONIC NOTICE
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