

**IN THE COURT OF APPEALS OF VIRGINIA
AT RICHMOND**

Record No. 0144-22-3

MAZIE GREEN

Defendant-Appellant,

v.

PORTFOLIO RECOVERY ASSOCIATES, LLC

Plaintiff-Appellee.

**BRIEF OF *AMICI CURIAE* LEGAL SERVICES OF
NORTHERN VIRGINIA, VIRGINIA POVERTY LAW CENTER,
LEGAL AID SOCIETY OF EASTERN VIRGINIA, LEGAL AID
JUSTICE CENTER, LEGAL AID WORKS, CENTRAL VIRGINIA
LEGAL AID, VIRGINIA LEGAL AID SOCIETY, LEGAL AID
SOCIETY OF ROANOKE VALLEY, VIRGINIA TRIAL LAWYERS
ASSOCIATION, AND BLUE RIDGE LEGAL SERVICES
IN SUPPORT OF APPELLANT UPON REHEARING EN BANC**

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I. INTEREST OF AMICUS GROUPS

Amicus Legal Aid Justice Center (LAJC) partners with communities and clients to achieve justice by dismantling systems that create and perpetuate poverty. LAJC provides legal advice and direct legal representation each year to thousands of low-income individuals who cannot afford private counsel in civil practice areas such as consumer protection, landlord-tenant, employment, immigration, and civil rights. LAJC's interest in this appeal flows from its decades-long history of representing consumers who have been sued by debt buyers who do not have the admissible evidence necessary to prove that they are owed a debt.

Amicus Legal Aid Works, founded in 1973, is a nonprofit law firm representing indigent persons in civil legal matters, including family, housing, consumer, and public benefits. It serves a seventeen-county region of mostly rural communities with offices in Fredericksburg, Culpeper and Tappahannock. Legal Aid Works is extremely interested in this case because it often represents clients similar to Ms. Green, and while it is waiting for its cases to be heard, it regularly often sees debt buyers come to court with no evidence, no shred of proof, and walk out with a judgment, either by default or because the debtor is unaware of his or her rights. Over

its 50-year history, Legal Aid Works has represented many debtors in circumstances akin to Ms. Green's.

Amicus Legal Services of Northern Virginia ("LSNV") is a full service, nonprofit law firm that serves clients throughout Northern Virginia. It is the largest legal aid organization in Virginia, helping thousands of clients each year in civil legal matters. LSNV opens the door to justice by providing services in a variety of substantive civil legal areas, including family law, housing law, elder law, public benefits claims, access to health care, consumer law, tax law, veterans' issues, and legal assistance for those living with AIDS/HIV. It partners closely with other legal aid organizations, state and local bar associations, as well as the courts to serve the region's low-income and neediest populations.

LSNV is interested in this case because it is one of the largest legal aid organizations in Virginia, where it assists low-income families with its consumer practice. That practice includes defending against debt collection actions, enforcing the Virginia Consumer Protection Act, enforcing the Fair Debt Collections Practices Act, and assisting with bankruptcy filings and student loan discharges. A large part of defending against debt collection actions includes assisting families with debt buyer litigation across Northern Virginia. That debt buyer assistance consists of giving advice and counsel,

or drafting pleadings, or negotiating settlements or monthly repayment arrangements, or entering an appearance to defend low-income families in General District Courts and Circuit Courts. When defending families from debt buyer litigation, LSNV has consistently argued that the debt buyers are unable to prove the chain title back to the original creditor once the debt has been transferred more than once.

Amicus Virginia Poverty Law Center (VPLC) uses advocacy, education, and litigation to break down systemic barriers that keep low-income Virginians in the cycle of poverty. VPLC has extensive experience dealing with the problems caused by the debt buying industry in Virginia. For decades, it has provided education and support to Virginia legal aid programs and private attorneys representing many Virginians sued and garnished by debt buyers. It has advised hundreds of callers to its predatory loan hotline and many of these callers are pursued by debt buyers who purchase predatory loan debt. VPLC has also advocated extensively for many years for a fair court process in Virginia that provides justice to all, including those that are not able to appear in court to defend their rights.

Amicus Central Virginia Legal Aid Society (CVLAS) provides free legal advice and representation to low-income individuals and senior citizens in central Virginia. It helps clients with a variety of issues including consumer, housing, elder, health, and family law. It also serves clients through a robust pro bono network, farmworker's program, and medical-legal partnership. Its consumer practice group's primary goal is to help consumers fight illegal and unfair debt collection. CVLAS's attorneys defend against warrant in debt lawsuits, foreclosures, bank and wage garnishments, and automobile repossessions. CVLAS has represented consumers in approximately 20 debt buyer cases within the past year. Typically, when CVLAS makes an appearance on behalf of a consumer, the debt buyer will immediately nonsuit. On the rare occasions when debt buyers respond to its subpoenas duces tecum, the documents provided are nonsensical and do not prove a chain of title. While CVLAS usually succeeds in its cases against debt buyers, it knows that many who appear pro se are not. Each year, it sees numerous clients whose wages or bank accounts are being garnished by debt buyers.

Amicus Virginia Legal Aid Society (VLAS) is a nonprofit law firm established in 1977 to provide free civil legal services to eligible low-income residents in 20 counties and six cities in Central, Southside, and Western

Tidewater Virginia. Its mission is to resolve the serious legal problems of low-income people, promote economic and family stability, reduce poverty through effective legal assistance, and to champion equal justice. VLAS serves primarily rural communities by providing free information, advice, and representation in such areas as consumer, housing, healthcare, income and benefits, family issues, and education. VLAS assists consumers in preventing illegal and aggressive debt collection tactics either by recovering money improperly taken or by blocking efforts to improperly collect money from them.

For more than 50 years, *Amicus* Legal Aid Society of Roanoke Valley (LASRV) has demonstrated its commitment to providing equal access to justice to the poor and disenfranchised in the Roanoke Valley and surrounding areas of Appalachia. Its attorneys and staff provide a full range of free expert legal services to help identify and resolve the most critical civil injustices facing low-income individuals and their families. LASRV is the only unrestricted legal aid program serving the southwestern part of the Commonwealth, meaning it can provide legal services to incarcerated persons and undocumented immigrants, and that it is not prohibited from filing class actions. Protecting low-income consumers from unfair and unlawful debt collection is a major part of its practice.

Amicus Blue Ridge Legal Services (BRLS) is the legal aid society serving the 25 cities and counties in the Shenandoah Valley, Roanoke Valley, and Alleghany Highlands, from Frederick County in the north to Franklin County in the south. BRLS has four small offices, in Winchester, Harrisonburg, Lexington, and Roanoke. BRLS receives requests for free civil legal assistance from thousands of low-income Valley residents each year, including those facing lawsuits brought by debt buyers. Unfortunately, BRLS does not have the capacity to provide representation to every qualified applicant with a serious legal problem. As a result, many low-income households in the Valley needing civil legal representation go unserved or underserved, with disastrous consequences, as described below. For instance, based on the data presented by VPLC, in its service area, five debt buyers filed 16,942 cases in a four year period. Despite that number of filings over four years, BRLS found that these five debt buyers appear in its case management database as the opposing party in 142 cases, dating back as far as 2002, more than 20 years. Of those, seven are currently pending, and the remainder are closed. See Figure 1.

Figure 1.

Clients Seeking Legal Assistance from Blue Ridge Legal Services on Lawsuits Brought by Five Debt Buyers in Virginia Court System

Debt Buyer Bringing Lawsuit	Total Number of Clients Seeking Legal Assistance	Cases Currently Pending	Cases Closed
Portfolio Recovery Associates	36	2	34
LVNV	38	4	34
Midland Funding	65	1	64
Jefferson Capital	2	0	2
Velocity Investments	1	0	1
TOTAL	142	7	135

BRLS Case Management Database and Virginia Judicial System online Case Data (earliest case closed in 2002). Of those 135 closed cases involving the five debt buyers, BRLS was unable to provide representation in 70 of them. In a search of the Virginia Judicial System's on-line case information database, 31 of these cases where it did not provide representation were located. In 30 of the 31 cases, i.e., 96.8%, judgment for the debt buyer was entered. Only one case was nonsuited. See Figure 2.

Figure 2.

Clients Not Provided Representation from Blue Ridge Legal Services in Lawsuits Brought by Five Debt Buyers in Virginia Court System

Debt Buyer Bringing Lawsuit	Total Number of Clients Not Provided Representation	Outcome		
		Unknown - Unable to Still Locate in Court database	Judgment for Plaintiff	Non-Suited
Portfolio Recovery Associates	20	11	9	0

LVNV	15	4	11	0
Midland Funding	33	23	9	1
Jefferson Capital	2	1	1	0
Velocity Investments	0	0	0	0
TOTAL	70	39	30	1
			96.8%	3.2%

BRLS was able to provide representation for 65 clients facing lawsuits from the five debt buyers in Virginia's courts. For these clients, the case outcomes were dramatically different. In almost 88% of the cases, the debt buyers took nonsuits rather than attempt to prove their cases in contested hearings. In the 8 cases that did go to trial, the debt buyers obtained judgments in only two of them. In all the cases where BRLS was able to provide representation, the debt buyers obtained judgments in only 3.1% of them—almost the exact inverse of the success rate they experienced when the defendants were unrepresented. See Figure 3.

Figure 3.

Clients Provided Representation from Blue Ridge Legal Services in Lawsuits Brought by Five Debt Buyers in Virginia Court System

Debt Buyer Bringing Lawsuit	Total Number of Clients Provided Representation	Outcome		
		Dismissed after Hearing/Judgment for Defendant	Judgment for Plaintiff	Non-Suited
Portfolio Recovery Associates	14	1	1	12
LVNV	19	1	0	18
Midland Funding	31	4	1	26

Jefferson Capital	0	0	0	0
Velocity Investments	1	0	0	1
TOTAL	65	6	2	57
		9.2%	3.1%	87.7%

Amicus The Legal Aid Society of Eastern Virginia (LASEV) provides representation in federal and state courts to low-income residents of Hampton Roads. LASEV's mission is to promote the equal application of justice and remove impediments to fairness for low-income and vulnerable families. LASEV focuses on both the individual legal needs of clients as well as challenging systemic injustice and the root causes of poverty and inequality. LASEV handles many types of civil matters including landlord/tenant cases, consumer cases, public benefits cases, domestic violence matters, family law cases, estate planning, education issues, and other civil rights and discrimination matters. Recognizing the importance of protecting its client's finances and equal access to credit, LASEV is building its consumer law practice. From January 1, 2023 through May 15, 2024, LASEV has provided services on 541 consumer matters, including debt buyer cases.

Amicus Virginia Trial Lawyers Association (VTLA) is a voluntary bar association dedicated to enhancing the knowledge, skills and professionalism of trial lawyers and committed to improving the law and the

fairness of Virginia's system of justice. VTLA has approximately 2,200 members across the Commonwealth, representing clients in a large number of practice areas. The vast majority of VTLA members own or work in small to midsized firms and spend a substantial portion of their time in the courtroom. VTLA conducts a variety of continuing legal education seminars throughout the Commonwealth for trial lawyers and their support staff designed to enhance competency and provide currency in the law. VTLA also works to educate the public about the role of trial lawyers and the importance of the jury in our justice system. VTLA is dedicated to promoting professionalism within the trial bar, enhancing the competence of trial lawyers, and protecting and preserving individual liberties and rights. It seeks and supports an efficient and constitutionally sound judicial system, and promotes equal access to justice for all Virginians.

II. INTRODUCTION AND ISSUES ON REVIEW

Pursuant to Rule 5A.35(b)(1), “[o]nly the issues raised in the petition for rehearing en banc and granted for rehearing or included in the grant by this Court on its own motion are available for briefing, argument, and review by the en banc Court.” This Court granted rehearing en banc on “those issues” raised in the petition for rehearing filed by Portfolio Recovery

Associates, LLC (PRA). *Amici* agree with Ms. Green's understanding that the issues are as follows:

1. Whether the panel's decision mistakenly equated standing and the merits of the case in finding that PRA lacked standing when it failed to establish ownership of the specific debt on which it sued.

2. Whether the panel improperly considered the merits of Green's counterclaim under the FDCPA in a manner that exceeded the scope of Green's assignments of error.

Amici present this brief on the first issue above. *Amici* from the legal aid community in Virginia possess deep experience with how the legal system adjudicates debts purportedly owed by low-income individuals. They know that debt buyers flood the General District Courts with debt collection actions, obtain default judgments, and then regularly issue garnishments on those default judgments. Their data shows approximately 90% of the judgments that debt buyers obtain are default judgments and that over 90% of the garnishments they issue are based on those default judgments. In this way, debt buyers marshal the power of the state to seize wages from hard working Virginians.

As an industry, debt buyers purchase portfolios of data regarding alleged debts and seek to collect on that data. When the debt buyers do

not buy sufficient data to prove a debt in court, the debt buyers have no right to turn that legally insufficient data into a judgment. Because default judgments undergird debt buyers' business models, they hope to avoid having their allegations questioned.

Ms. Green disrupted PRA's business model by challenging PRA's proof that it owned any interest in the contract on which it sued. PRA had to present admissible evidence that it owned the debt. But PRA failed to do so, and could only show it had received some unidentified debts from third parties, none of which were necessarily the debt it asserted against Ms. Green.

The panel rightly determined that PRA had failed to establish its standing to sue. That opinion applied basic and longstanding legal principles applicable to all litigants—it presents no risk of disrupting the ordinary functioning of our courts. Instead, it is the necessary response to a plaintiff unable to prove that it even owns the purported debt on which it seeks to collect. PRA's position, by contrast, risks overturning decades of binding precedent establishing that a plaintiff must establish standing at each successive stage of litigation.

III. STATEMENT OF THE CASE

Regarding the panel's supposed conflation of standing and the merits, the facts are straightforward. PRA is not challenging the panel's decision that it failed to prove ownership of the debt but has claimed that the absence of such proof is not a standing issue. *Amici* have nothing to add to Ms. Green's presentation of the procedural history, her appeal, and the panel's decision, and therefore will briefly summarize it.

In December 2020, PRA filed a warrant in debt against Ms. Green asserting that it was owed \$8,914.31 on an alleged debt for an unpaid credit card account with CIT Bank/PayPal (R. 117-18.) The evidence presented by PRA showed that Ms. Green had an account that ended in 8616, but that PRA was claiming to sue on an account ending in 7068. (*Compare* R. 15, 19, 48 (PRA's bill of particulars alleging debt owed on 7068 account), *with* R. 50-99 (billing statements for account in name of a Mazie Green with 8616 account number).) The district court issued judgment against Ms. Green in the amount of \$8,914.31 plus \$63 in costs. (*Id.* 5.)

Ms. Green subsequently appealed to the Circuit Court of Alleghany County and posted bond for the full amount of the judgment and costs. (*Id.* 125-26.) As she had before the district court, Ms. Green argued to the

circuit court that PRA had failed to establish it had rights to the account on which any alleged debt had accumulated (the 8616 account) and PRA thus had no right to collect anything against her. (*Id.* 127.) Ms. Green also moved for summary judgment on the grounds that PRA lacked standing to sue. (*Id.* 177-214.). After denying summary judgment, the Circuit Court held an evidentiary hearing and then issued judgment in the amount of \$8,914.31 for PRA, plus costs. (R. 225-26.)

Ms. Green continued representing herself pro se and filed a notice of appeal. (R. 228-30.) Amongst other assignments of error, she asserted that the “trial court erred as a matter of law by finding that PRA was entitled to judgment against [her],” because “PRA lacked standing to sue” (Assignments of Error, Mar. 18, 2022.) On February 20, 2024, a panel of this Court found that PRA lacked standing to sue because PRA’s failure to establish its ownership of the debt allegedly owed by Ms. Green deprived it of a “legally cognizable interest in the alleged controversy.” (Appellant’s App. 1 (“Op.”) at 10.) PRA successfully sought a rehearing en banc. PRA claims the panel mistakenly equated standing with the merits of the case and speculates the decision will “generate an earthquake in practical application,” causing the “duration and cost of litigation [to] explode.”

(Petition for En Banc Review, pg. 6.) Ms. Green filed her opening brief for this Court’s en banc review on May 17, 2024.

IV. ARGUMENT

Standard of Review

“Whether a litigant has standing presents ‘a question of law subject to de novo review on appeal.’” *Shaw-McDonald v. Eye Consultants of N. Va.*, P.C., 79 Va. App. 576, 582 (2024) (quoting *Biddison v. Va. Marine Res. Comm’n*, 54 Va. App. 521, 527 (2009)).

A. An Overview of the Debt Buyer Industry

The modern business of buying delinquent or charged-off debts from creditors and other debt buyers “on a large scale [basis] has its origins in the savings and loan crisis of the late 1980s and early 1990s.” Fed. Trade Comm’n, *The Structure and Practices of the Debt Buying Industry* 12 (Jan. 2013), <https://perma.cc/FLV2-FTQ4> [hereinafter, “*Structure and Practices*”]. Within the past two decades, this business has become commonplace within our society and courts. See, e.g., *id.* at 14 (observing that the “number and type of debt buyers expanded rapidly in the 2000s.”); Fed. Trade Comm’n, *Collecting Consumer Debts: The Challenges of Change—A Workshop Report* 13–14 (2009), <https://perma.cc/6ENW-F95M> (similar); Consumer Financial Protection Bureau (“CFPB”), *Fair Debt Collection*

Practices Act: Annual Report 2023 17 (Nov. 2023), <https://perma.cc/9MT3-4DSM> (observing that a “major source of [debt collection] industry revenue comes from debt buyers”). In fact, “the buying and selling of delinquent consumer debt has become so routine that tens of millions of people across the [United States] either owe money to a debt buyer or have in the past.” Human Rights Watch, *Rubber Stamp Justice: US Courts, Debt Buying Corporations, and the Poor* 10–11 (Jan. 2016), <https://perma.cc/AN5C-ERCP> [hereinafter, “*Rubber Stamp Justice*”].

Debt sellers and buyers have notoriously fought tooth and nail to conceal the details of these transactions from the public. See, e.g., Dalié Jiménez, *Dirty Debts Sold Dirt Cheap*, 52 HARV. J. ON LEGIS. 41, 55 (2015) (observing that, with some exceptions, “[t]here was very little indication of the content of [these purchase and sale agreements] until 2013, when the FTC issued a report on the debt buying industry.”) (footnote omitted). Yet the business of debt buying—and why it is so lucrative—has long been clear and straightforward.

Because debt buyers mostly purchase defaulted credit card accounts, the original creditor is often a bank or similar financial institution.¹ See, e.g.,

¹ That said, “all kinds of consumer debt is being bought and sold today, including mortgage foreclosure deficiencies.” Peter A. Holland, *Junk*

Rubber Stamp Justice, *supra*, at 1; *Structure and Practices*, *supra*, at 13 (industry data submitted to FTC showed “bank sales of credit card debt directly to debt buyers has consistently comprised about 75% of the debt sold to debt buyers.”) (footnote omitted). Generally, the banks first attempt to collect the debts themselves or through a third party. *Dirty Debts Sold Dirt Cheap*, *supra*, at 49–55 (describing the various steps creditors initially take to collect the debts themselves); *Structure and Practices*, *supra*, at 11, 17 (similar).

“When a borrower goes long enough without making a payment, federal regulations require banks to ‘charge off’ the debts, meaning that they no longer count as assets on their balance sheets.”² *Rubber Stamp Justice*, *supra*, at 10. Although a ‘charge-off’ does not affect the validity of debts, “creditors often conclude that it is no longer worth the effort and expense of continuing to try to collect them.” *Id.* So “[r]ather than accept a

Justice: A Statistical Analysis of 4,400 Lawsuits Filed by Debt Buyers, 26 LOY. CONSUMER L. REV. 179, 193 (2014) [hereinafter, “*Junk Justice*”] (footnote omitted); see also *Structure and Practices*, *supra*, at 7 (noting that debt buyers in 2008 also purchased medical, utility, auto, and mortgage debt).

² For credit cards, the Office of the Comptroller of the Currency (“OCC”) typically requires that the debt be charged-off within 180 days of the account being past due. See Uniform Retail Classification and Account Management Policy, 65 Fed. Reg. 36903, 36904 (June 12, 2000).

total loss, creditors roll many of [these bad debts] into large portfolios that they sell on to debt buyers.” *Id.*; see also *Structure and Practices, supra*, at 17–19 (explaining how debt buyers and original creditors group these debts into mass portfolios that share common attributes). In so doing, the only information debt sellers typically provide to debt buyers is a spreadsheet that includes basic information about the purchased accounts, such as the debtor’s name, account number, Social Security number, address, and current balance. See, e.g., *Structure and Practices, supra*, at 20–21. Absent default by a defendant, the dearth of admissible evidence obtained by debt buyers through their purchases should preclude entry of a legal judgment enforceable through garnishment.

Debt buyers “purchase [these] vast portfolios of bad debts” from original creditors or other debt buyers for “just pennies on the dollar” *Rubber Stamp Justice, supra*, at 1; see also, e.g., Peter A. Holland, *The One Hundred Billion Dollar Problem in Small Claims Court: Robo-Signing and Lack of Proof in Debt Buyer Cases*, 6 J. BUS. & TECH. L. 259, 260 (2011) [hereinafter, “*The One Hundred Billion Dollar Problem in Small Claims Court*”] (“[T]hese debts are bought and sold, often several times over, sometimes for a just a fraction of a penny on the dollar.”); The PEW

Charitable Trusts, *How Debt Collectors are Transforming the Business of State Courts* 11 (May 2020), <https://perma.cc/YBK7-38SK> (similar).

To put this into perspective, the Court should consider the FTC’s analysis of 3,400 portfolios—consisting of 76 million individual consumer debts—that were provided by six of the largest debt buyers, including PRA. *Structure and Practices*, *supra*, at 22. From this information, the FTC concluded that, “[o]n average, debt buyers paid 4.0 cents for each dollar of debt.” *Id.* at 23 (footnote omitted). Put another way, the FTC found that over a three-year period these firms spent about \$6.5 billion for 90 million accounts with a face value of about \$143 billion. *Id.* at D-1 (Technical Appendix D). And these considerable potential profit margins have shown no sign of stopping. Indeed, PRA indicated that, for the year ending on December 31, 2023, it purchased defaulted consumer accounts with a face value of \$8,384,936,000. Portfolio Recovery Associates, Inc., *2023 Annual Report* (Form 10-K) 58 (Feb. 28, 2024), <https://perma.cc/ND4J-TEP4>. Adding to this considerable potential profit margin is the fact that “debt buyers are [often] legally entitled to continue accruing interest at contract rates on the debts they purchase up until they secure a court judgment.” *Rubber Stamp Justice*, *supra*, at 48 (footnote omitted). Debt buyers realize profits only through voluntary payments from consumers, or by marshaling

the power of the state and forcing employers and banks to turn over money to the debt buyer under the compulsion of garnishment orders.

Once debt buyers acquire these debts for pennies on the dollar—and as borne out in Virginia—they file lawsuits en masse in state small claims courts, where they are then typically able to obtain an enforceable default judgment for the debts’ face value with little to no effort. See, e.g., *Rubber Stamp Justice*, *supra*, at 11–19; *id.* at 13 (“A key element of the industry’s overall business model is the large-scale procurement of court judgments against debtors at minimal expense.”) (footnote omitted); *How Debt Collectors Are Transforming the Business of State Courts*, *supra*, at 12 (observing that PRA’s use of litigation to collect debts grew 220 percent from 2008 to 2018); *id.* at 13–14, 16, 22 (observing that many consumers do not respond to lawsuits either because they do not think they can prevail against a represented corporation pro se; they were not properly served; they think they already paid the debt; or they did not recognize the name of the debt buyer suing them).

The garnishment that then follows a judgment is enforced by the police power of the state. The garnishment summons imposes a state-enforced mandate to turn over money otherwise rightfully the property of a consumer. This process puts the police power of the state (which at its core

is the power of the shield on the officer who can be ordered by a judge to enforce any contempt orders issued by a court) under the control of the debt buyer. Ms. Green's case exemplifies the simple premise that before a court grants a litigant such power, the litigant must first have standing to ask the court to find that it has rights that should be adjudicated and enforced.

B. The Debt Buyer Industry is Premised on Acquiring Debts With Little to No Corroborative Documentation or Information About the Underlying Debts, Which Predictably Results in Errors.

You get what you pay for, goes the adage, and debt buyers are no exception. The steep discounts at which debt buyers purchase debts reflect consumers' inability to repay and the poor quality of documents—or more accurately, the lack thereof—and information that they receive about the underlying debts. See, e.g., U.S. Gov't Accountability Office, *Credit Cards: Fair Debt Collection Practices Act Could Better Reflect the Evolving Debt Collection Marketplace and Use of Technology* 28 (Sept. 2009), <https://perma.cc/6SKH-PFF7> (observing that, in addition to other criteria, “the amount of documentation available [] can affect the price of a portfolio” in the debt buyer industry). In fact, any given portfolio is rarely accompanied by the “underlying documentation about the debt,” such as “the agreements that established the debt (containing information about

applicable interest rates, fees, availability of fee shifting, choice of law, and other critical terms) as well as information on the consumer's history of payments against the debt." Note, *Improving Relief from Abusive Debt Collection Practices*, 127 HARV. L. REV. 1447, 1448 (2014). And even if a debt buyer later requests a given document, documentation "often" disappears during the endless cycle of selling and reselling the debt. *Taylor v. First Resol. Inv.. Corp.*, 148 Ohio St. 3d 627, 628, 72 N.E.3d 573, 578 (Oh. 2016). As the initial majority opinion in this case correctly observed, "[a] predictable result of debt buyers filing a high volume of lawsuits based on [this] imperfect information is that lawsuits are regularly filed after the right to collect debts has expired or that seek to collect a debt that is not owed." *Green v. Portfolio Recovery Assocs., LLC*, 80 Va. App. 119, 134 (2024) (quoting *Taylor*, 148 Ohio St. 3d at 629, 72 N.E.3d at 579), *reh'g en banc granted*, 80 Va. App. 472 (2024); accord *Structure and Practices*, *supra*, at i (observing that because debt buyers "may have insufficient or inaccurate information when they collect on debts," debt buyers can end up "seeking to recover from the wrong consumer or recover the wrong amount.").

Regulators, scholars, public interest groups, and even some within the industry itself have long recognized this troubling reality. With respect to

regulators, in 2013 the FTC issued a comprehensive report based in substantial part on the extensive information and documentation it obtained from six of the nation's largest debt buyers, including PRA. *Structure and Practices*, *supra*, at 7–9. The FTC analyzed about 3,400 portfolios that consisted of nearly 76 million consumer accounts, *id.* at 22, as well as extensive documentation, including approximately 350 contracts, *id.* at C-1 & n.1 (Technical Appendix C); *id.* at 35. From this data and documentation, the FTC found that “[f]or most portfolios, buyers did not receive *any* documents at the time of purchase,” and that “[o]nly a small percentage of portfolios included documents, such as account statements or the terms and conditions of credit.” *Id.* at iii (emphasis added); *see also id.* at 35. This, of course, increases the likelihood of mistakes. Indeed, the FTC found consumers disputed “about 1 million debts each year that debt buyers purchased, that is, about 3 million debts during the three-year period the [FTC] studied.” *Id.* at 38 (footnote omitted). And this estimate, for a variety of reasons, likely “understate[d] these problems.” *Id.*³

³ The FTC notably observed that “[a]s the debt buyer industry has expanded . . . [it] has seen a significant rise in the number of debt collection complaints it received directly from consumers.” *Structure and Practices*, *supra*, at 1; *see also id.* at 50. And it is likewise notable that, in 2023, the most common consumer complaint submitted to the CFPB was that “the

These findings concerned the FTC in several respects. The lack of documentation prevents debt buyers and consumers from verifying a debt's accuracy. *See, e.g., id.* at 36 (“Most significantly, debt buyers often did not receive the information needed to break down outstanding balances on accounts into principal, interest, and fees.”) (footnotes omitted). Making matters worse, “sellers generally disclaimed all warranties and representations with respect to the accuracy of this information.” *Id.* at 36; *see also id.* at 36–37 (examining other issues caused by the lack of documentation and information). Equally problematic was that most debt sellers limited the availability of key documents post-sale, such as account statements and credit agreements. *See id.* at 26. By way of example, debt sellers typically gave debt buyers only between six months and three years to request “a defined maximum number of documents at no charge” *Id.* Some agreements even limited the “frequency with which” these requests could be submitted during that period. *Id.* And once the debt buyer reached their limit of requesting documents free of charge, all contracts usually specified the price per request as being “between five and ten dollars and sometimes higher per document” *Id.* In any event, even

debt [was] not their debt (51 percent).” *Fair Debt Collection Practices Act: Annual Report 2023, supra*, at 22.

when a debt buyer requested documents post-sale, which was not often, see *id.* at 40, the agreements “often” gave the debt sellers “substantial time, typically up to sixty days, to comply with [the] requests,” *id.* at 26. As the Supreme Court of Ohio aptly observed, such terms and conditions “can prove prohibitively expensive or encourage debt collectors to gather detailed evidence only in sporadic cases.” *Taylor*, 148 Ohio St. 3d at 628, 72 N.E.3d at 578 (internal quotation marks and citation omitted). Of course, if a debt buyer wanted to pay more money for debt portfolios that contained the full evidence necessary to prove that such alleged debts warrant enforcement through the state’s police power, the debt buyer could always choose to limit its purchases to those creditors selling such information; but this would also mean less potential profit.

Several scholars have recognized and extensively examined this problem, too. A study released by Professor Peter A. Holland in 2011, for instance, focused on the widespread problem of “robo-signing” in the debt buyer industry. *The One Hundred Billion Dollar Problem in Small Claims Court*, *supra*, at 268. “Robo-signing refers to the practice of signing affidavits and other documents so quickly that [those signing them] could not possibly have verified the information in the document under review.” *Id.* (footnote and internal quotations marks omitted). Professor Holland

found that “robo-signing and fraud [were] rampant in this industry, and that the debt buyers who pursue these claims often lack proof necessary to show that they own the debt, and often lack proof even that debt was ever owed in the first place.” *Id.* at 259. *See also, e.g., Pelzer v. Vassalle*, 655 F. App’x 352, 355, 356 (6th Cir. 2016) (approving class action settlement against Midland Funding LLC, a debt buyer, whose employees “had been signing between 200 and 400 computer-generated affidavits per day for use in debt-collection actions, without personal knowledge of the accounts.”).

In 2014, Professor Holland released a study of 4,400 lawsuits filed by debt buyers in Maryland courts. Peter A. Holland, *Junk Justice supra*, at 185. His “empirical findings . . . confirm[ed] . . . that in litigation, debt buyers employ a high volume default judgment model, and that their legal pleadings, evidence and tactics are rarely exposed to the adversary process.” *Id.* at 186.

Finally, another independent study released by Professor Dalié Jiménez in 2015 examined a set of 84 purchase and sale agreements she obtained “between large banks and debt buyers, along with data from the FTC to examine the prototypical consumer debt sale transaction.” *Dirty Debts Sold Dirt Cheap, supra*, at 46 (footnote omitted). Like the prior FTC

report, Professor Jiménez found that “in many contracts, sellers disclaim all warranties about the underlying debts sold or the information transferred. *Id.* at 41 (italics removed). She found, for example, that many contracts did not even warrant that the sellers had title to sell the accounts in the first place. See *id.* at 47.

Non-profit public interest organizations have thoroughly examined the phenomenon closely as well. Most notably, in 2016 Human Rights Watch issued a detailed report based in substantial part on extensive quantitative and qualitative data that it compiled from individuals with “diverse perspectives on debt buyer litigation.” *Rubber Stamp Justice*, *supra*, at 8. Like the FTC’s report, this report concluded that “[m]any debt buyer lawsuits rest on a foundation of highly questionable information and evidence.” *Id.* at 2. In particular, the report found that debt buyers “have sued the wrong people, sued debtors for the wrong amounts, [] sued to collect debts that had already been paid [or filed lawsuits that were] barred by the applicable statutes of limitations or were otherwise legally deficient.” *Id.* And despite these glaring defects, the report found that debt buyers had “been consistently able to secure large numbers of illegitimate judgments against alleged debtors on the strength of evidence that is later

exposed as inadequate, deceptive, or inaccurate.” *Id.* at 31 (footnote omitted).

Similarly, but on a smaller scale, in 2010 a group of non-profits examined two sets of data from New York city: (1) a 451-case sample of callers to the local legal aid’s hotline who were sued by a creditor or debt buyer in 2008; and (2) 365 lawsuits that were brought by 26 debt buyers “who filed the greatest number of cases in New York city between January 2006 and July 2008” The Legal Aid Society et. al., *Debt Deception: How Debt Buyers Abuse the Legal System to Prey on Lower-Income New Yorkers* 1 (May 2010), <https://perma.cc/6PZN-HKRB>. From this data, the authors concluded that 35% of the cases brought by debt buyers were “clearly meritless.” *Id.* at 2. A case was categorized as “clearly meritless” if “the debt was the result of mistaken identity or identity theft, the debt had been previously paid, the debt had been discharged in bankruptcy, or the statute of limitations on the debt had expired.” *Id.* at 10 & n. 91; accord New Economy Project, *The Debt Collection Racket in New York: How the Industry Violates Due Process and Perpetuates Economic Inequality* 1–4 (June 2013), <https://perma.cc/UW4G-W7C6> (less comprehensive study that examined data from across state of New York and reached similar conclusions).

These findings by regulators, scholars, and non-profits have been borne out in the courts and administrative enforcement actions. In many instances, “state and federal officials have forced leading debt buyers to pay fines, to vacate thousands of legally deficient or improperly obtained judgments, and/or to agree to reform their collections practices.” *Rubber Stamp Justice, supra*, at 28; *see also id.* at 28–31 (collecting settlements and lawsuits brought against debt buyers by state attorneys general, the United States Department of Justice, and the CFPB between 2011 and September 2015); *id.* at 44 (similar). During these lawsuits and similar ones initiated by private litigants, several state and federal judges have observed that debt buyers routinely lack the requisite documentation to prove they own the debt or that the amount sought is correct. *See, e.g., Stratton v. Portfolio Recovery Assocs., LLC*, 770 F.3d 443, 446 (6th Cir. 2014) (reversing lower court’s dismissal of Federal Fair Debt Collections Practice Act (“FDCPA”) class action against PRA and, in so doing, observing that debt buyers “usually purchase bad debts in bulk portfolios, often in the form of a spreadsheet, and rarely obtain the underlying documents relating to the debt.”) (citation omitted), *as amended on denial of reh’g en banc* (Dec. 11, 2014); *CFPB v. Frederick J. Hanna & Assocs., P.C.*, 114 F. Supp. 3d 1342, 1374 (N.D. Ga. 2015) (denying debt buyer’s motion to dismiss

FDCPA claim and, in so doing, taking “judicial notice” of fact that “debt buyers often or may routinely lack evidence of the debt they seek to recover.”); *Henggeler v. Brumbaugh & Quandahl, P.C., LLO*, 894 F. Supp. 2d 1180, 1188 (D. Neb. 2012) (“[T]he possibility of a debt collector attempting to collect a debt that it does not actually own, either through assignment or otherwise, is very real.”) (quoting *Webb v. Midland Credit Mgmt., Inc.*, No. 11-cv-5111, 2012 WL 2022013, at *5 & n.8 (N.D. Ill. May 31, 2012) (citation omitted)); cf. *Taylor*, 148 Ohio St. 3d at 629, 72 N.E.3d at 578 (in action initiated by debt buyer against consumer, observing that the debt buyer industry “is dependent in large part on the acquiescence, ambivalence, or ignorance of consumers.”).

As for administrative enforcement actions, the CFPB has been the most active regulator in this sphere. In September 2015, the CFPB entered into consent decrees with Encore Capital Group and PRA. See CFPB, *CFPB Takes Action Against the Two Largest Debt Buyers for Using Deceptive Tactics to Collect Bad Debts* (Sept. 9, 2015), <https://perma.cc/YK9L-2XYK>.⁴ The CFPB found that PRA and Encore

⁴ See Consent Order, *In Re: Portfolio Recovery Associates, LLC*, No. 2015-CFPB-0023 (CFPB Sept. 9, 2015), <https://perma.cc/SF37-EE5Q>; Consent Order, *In Re: Encore Capital Group, Inc., et. al.*, No. 2015-CFPB-0022 (CFPB Sept. 9, 2015), <https://perma.cc/F29B-WMRT>.

Capital Group “bought debts that were potentially inaccurate, lacking documentation, or unenforceable.” *Id.* Specifically, the CFPB found that both debt buyers “purchased large portfolios of consumer debt with balances that sellers claimed were ‘approximate’”; the CFPB also found that debt sellers “represented that documents were not available for some of the accounts.” *Id.* Despite these glaring defects, these entities continued to collect on such debts “without first conducting any investigation to determine whether the debts were accurate and enforceable.” *Id.* As a result, the CFPB ordered them to “refund millions [to consumers] and [to] overhaul their practices.” *Id.*

Unfortunately, these problems—the result of entities like PRA suing without adequate documentation—continue unabated. To give just one example, in March 2023 the CFPB brought its second enforcement action—this time in federal court—against PRA due to its “numerous” violations of the consent order. *CFPB v. PRA*, Compl., ECF No.1, at ¶ 4, No. 2:23-cv-00110 (E.D. Va. Mar. 23, 2023), <https://perma.cc/CQ9G-WEYS>. Amongst other blatant violations of federal law and the consent order, the CFPB found that PRA “made at least tens of thousands of representations about unsubstantiated, disputed debts” and that, in so doing, failed “to review the required documentation to support the claim[s].”

CFPB, *CFPB Orders Repeat Offender PRA to Pay More Than \$24 Million for Continued Illegal Debt Collection Practices and Consumer Reporting Violations* (Mar. 23, 2023), <https://perma.cc/R97J-ARJT>. The CFPB and PRA executed a stipulated final judgment and order on April 13, 2023. See *CFPB v. PRA*, ECF No. 10, No. 2:23-cv-00110 (E.D. Va. Apr. 13, 2023), <https://perma.cc/FW2M-AZAJ>. As this case illustrates, however, PRA continues to seek to collect on debts without the requisite documentation.⁵

Lastly, it warrants mention that while industry leaders may not agree with the extent of the problems, they certainly agree that these problems exist. PRA, for instance, has conceded—in what can fairly be called an understatement—that they “may be unable to obtain accurate and authentic accounts that [they] purchase . . . [and that they could not] be certain that all of the documents [they] provide[d] [were] error free.” Portfolio Recovery Associates, Inc., *2015 Annual Report (Form 10-K)* 19 (Mar. 2015), <https://perma.cc/ECB6-5YQW>.⁶ Even more bluntly, a

⁵ Encore Capital Group was likewise sued in federal court by the CFPB in 2020 for failing to comply with the 2015 consent order and other provisions of federal law. See CFPB, *Encore Capital Group, Midland Funding, Midland Credit Management, and Asset Acceptance Capital Corp.* (Sept. 8, 2020), <https://perma.cc/4WT9-PA4K>.

⁶ Human Rights Watch included this disclaimer from PRA’s 2015 10-K filing in its 2016 report. *Rubber Stamp Justice*, *supra*, at 42. Such a

representative for the largest trade association for debt collectors, Association of Credit and Collection Professionals (“ACA International”), told the Maryland Court of Appeals’ Standing Committee on Rules of Practice and Procedure that “‘proof [that] the consumer debt at issue existed’ is often lacking.” *The One Hundred Billion Dollar Problem in Small Claims Court*, *supra*, at 262 (quoting Letter from ACA International to the Maryland Court of Appeals Standing Committee on Rules of Practice and Procedure District Court Subcommittee (Jan. 19, 2011)).

All that is not to say that debt buyers should not be able to enforce their claims in court. If they choose to pay the cost to buy pools of debt supported by the evidence necessary to convert them into judgments, they are entitled to receive judgment. In fact, the majority went out of its way to note that “[d]ebt buying has a role to play in the consumer lending industry.” *Green*, 80 Va. App. at 133. As Ms. Green correctly observes, the majority opinion merely “holds PRA and other debt buyers to the same standard as every other plaintiff in the Commonwealth” Appellant’s Op. En Banc Br. at 5. But, when PRA and other debt buyers choose to pay pennies on a

disclaimer was conspicuously absent from PRA’s 2016 10-K filing. See *generally* Portfolio Recovery Associates, Inc., *2016 Annual Report (Form 10-K)* (Feb. 2017), <https://perma.cc/N4AQ-E5J9>.

dollar for inadequate documentation, they are entitled to no more than they bought. PRA improperly asks courts to create valuable judgments predicated on nothing more than cheaply bought and legally insufficient data.

Perhaps recognizing the difficulties it would encounter moving forward if the majority opinion were to stand, PRA asks this Court for special treatment. This sense of entitlement is indicative of a larger trend that some scholars have referred to as the “assembly-line plaintiffs” phenomenon, where entities like PRA have grown accustomed to not having to support their claims with admissible evidence. See Daniel Wilf-Townsend, *Assembly-Line Plaintiffs*, 135 HARV. L. REV. 1704, 1706–07 (2022) (noting that in “something like 12 million out of the roughly 16 million civil cases filed in state courts each year,” only the large corporate plaintiffs are represented, and stating that this trend “raises serious concerns about the adequacy of our civil justice system for reaching accurate results”). This Court should decline PRA’s invitation to craft a special rule for entities like it who rely on shabby documentation to procure en masse default judgments against consumers.

C. As One of the Major Debt Buyers in Virginia, PRA Has Contributed to a Flood of Lawsuits in Which it Harvests Default Judgments That it Enforces Through Garnishments.

Amicus VPLC has obtained data about the four largest debt buyers in Virginia. It has included in its data set a smaller debt buyer to show that the big debt buyers are no different than the small ones. Appendix A includes the declaration prepared by Steven M. Fischbach of the VPLC. His declaration explains the methodology he used. The complete data set is available at <https://perma.cc/EEB7-DEW6> (click on “View the live page”). The results show the massive number of cases filed by these five debt buyers, and that approximately 90% of their judgments are by default. Furthermore, over 90% of the garnishments that they issue arise from default judgments.

As explained by Steven M. Fischbach, the four largest debt buyers plus a smaller one included comprised 18.46% of all warrant in debt cases filed between March 11, 2020 to March 11, 2024. They also comprised 22.54% of all default judgments obtained in all warrant in debt cases filed during the same period. The total dollar amount awarded to these debt buyers by default in cases filed between March 11, 2020, to March 11, 2024, was more than \$217,000,000.

As for PRA specifically, between March 11, 2020, to March 11, 2024, it filed almost 15% of the cases filed by these five debt buyers. In that time period, 89.27% of its money judgments were awarded by default. The total dollar amount awarded to PRA by default for cases filed between March 11, 2020, to March 11, 2024, was \$30,610,707.37. Of the garnishments filed by PRA in warrant in debt cases filed between March 11, 2020 to March 11, 2024, 90.39% of garnishments were in cases where the underlying judgment was also obtained by default. This data shows that, as one of the top debt buyers in Virginia, PRA successfully obtains huge numbers of default judgments on which it then seeks garnishments.

As set forth by the tables from the records of BRLS (*see supra* at 6-8), an unrepresented, low-income individual almost always loses to a debt buyer. By contrast, when a low-income defendant obtains counsel, 87.7% of the cases were non-suited and 9.2% were dismissed at a hearing, meaning the debt buyer obtained a judgment in only 3.1% of such cases. The *amici* from the legal aid community agree that a normal business practice of a debt buyer is to non-suit a case when a consumer has a lawyer who is challenging the debt buyer's evidence.

These statistics demonstrate the enormous importance of this case to the fair administration of justice in Virginia's courts, as debt buyer cases

pervade our court system and affect hundreds of thousands of consumers. While these statistics do not show the income or race of those affected by these practices, studies universally confirm that those that bear the brunt of these harms are poor or on the margins of poverty. See, e.g., *Rubber Stamp Justice*, *supra*, at 1 (explaining that while the amounts at issue “rarely exceeds a few thousand dollars,” the “stakes are often higher than they seem” because “[m]any of the defendants . . . are poor or living at the margins of poverty . . .”). Furthermore, studies elsewhere have shown that this harm is inflicted disproportionately on people of color. See, e.g., ProPublica, *Racial Disparity in Debt Collection Lawsuits: A Study of Three Metro Areas* 1 (Oct. 8, 2015), <https://perma.cc/U7MW-QFHA> (conducting a quantitative study of three large metropolitan areas and finding a “clear[] . . . disparate impact of debt collection lawsuits on black neighborhoods.”); *Junk Justice*, *supra*, at 185–87 (conducting a study of 4,400 debt buyer cases filed in Maryland collection courts and observing that “there appear[ed] to be a disparate impact on racial minorities.”).

For such defendants who are financially able to afford counsel, or lucky enough to secure a legal aid lawyer if they cannot, their chances of successfully defending themselves from a debt buyer’s alleged claims are excellent. But very few defendants ever obtain counsel, underscoring the

critical importance of the panel's standing decision in reaffirming the application of longstanding standing principles to all litigants, including debt buyers. The panel's decision will prove immensely helpful to the Commonwealth's general district court judges who face a flood of debt buyer cases, in which the vast majority involve defendants who are unable to effectively put the debt buyers to their proofs otherwise.

Rather than the "earthquake" which PRA asserts will result from it having to show standing by proving it has an actual ownership interest in the debt which it wants adjudicated, the panel's decision will help ensure that the police power of the state is not used improperly to seize wages or savings. The legal system merely asks that a party who seeks to use the police power in this way first show that it has the right to ask for that remedy.

As Ms. Green's brief explains, establishing that one has a right to a contract is a standing issue that must be met before asking any court to adjudicate that contract. Far from being an outlier, the panel's decision accords with other cases around the country. *See, e.g., Portfolio Recovery Assocs., L.L.C. v. VanLeeuwen*, 2016 WL 2840930, at *11-12 (Ohio Ct. App. May 13, 2016) (explaining that "[i]t is fundamental that a party commencing litigation must have standing to sue in order to present a

justiciable controversy” and informing PRA that it “was required to establish, not merely allege, that it had standing to obtain a judgment” before reversing trial court’s judgment in PRA’s favor); *Unifund CCR, L.L.C. v. Ekpo*, 335 P.3d 271, 273 (Okla. Civ. App. 2014) (“Standing, as a jurisdictional question, may be correctly raised at any level of the judicial process or by the Court on its own motion. Standing determines whether the person is the proper party to request adjudication of a certain issue and does not decide the issue itself. The key element is whether the party whose standing is challenged has sufficient interest or stake in the outcome.”) (citation omitted); *Unifund CCR Assignee of Providian v. Ayhan*, 2008 WL 2974639, at *5 (Wash. Ct. App. Aug. 5, 2008) (“Unifund must establish its standing to sue Ayhan on the Providian debt by showing that it had purchased or been assigned Providian's rights under the contract as a matter of law.”); *Portfolio Recovery Assocs., L.L.C. v. Klaneski*, 2016 WL 6603524, at *2 (Conn. Super. Ct. Oct. 11, 2016) (denying PRA summary judgment because it had “not provided [] the court with any admissible documentary evidence that the debt it purchased from the Bank was the same debt created by the issuance of a credit card to the defendant.”); *Credit Corp Solutions Inc. v. Wafer*, at Para. 12 (Okla. Civ. App. Aug. 29, 2022) (unreported on Westlaw), <https://perma.cc/UC8R-9XY9> (holding that

“[w]ithout evidentiary support showing it is the party in interest, Credit Corp does not have standing to bring this lawsuit.”).

The overall problem of debt buyers’ questionable practices in Virginia courts have not gone unnoticed by the lower courts. In 2009, for instance, then Fairfax General District Court Judge Lorraine Nordlund submitted comments to the FTC, in which she observed the “growing issue [of the] . . . sufficiency of evidence required to support a judgment in purchased debt cases.” Hon. Lorraine Nordlund, FTC Comments 1 (2009), <https://perma.cc/CD6P-JBEQ>. To combat this issue, her court compiled a “[b]est [p]ractices document” for debt buyers to adhere to. *Id.* at 5. The debt buyers objected to being held to their burden of proof, just as PRA does here. *See id.* Despite their objections, Judge Nordlund correctly observed that it is not the courts’ “responsibility to accommodate their business model.” *Id.* This Court should follow suit and decline PRA’s request to craft a rule that accommodates its business model.

CONCLUSION

For the foregoing reasons, *Amici* respectfully request this Court affirm the panel’s decision and find that PRA failed to establish standing.

Respectfully submitted,

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RULE 5A:35(b)(2) CERTIFICATE
AND CERTIFICATE OF SERVICE

Pursuant to Va. Sup. Ct. Rule 5A:35(b)(2), I hereby certify that the Amicus Curiae Brief in Support of Appellant complies with the type volume limitation of Rule 5A:35(b)(2).

The word count was 8669.

I also certify that on May 24, 2024, I filed an electronic pdf copy of the foregoing motion via VACES with the Clerk of the Court of Appeals of Virginia and, on the same day, emailed a copy of this document to:

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APPENDIX 1

DECLARATION

I, Steven Marc Fischbach, declare under penalty of perjury of the laws of the Commonwealth of Virginia, that the following facts are true and correct to the best of my information and belief:

1. I am the Litigation Director for the Virginia Poverty Law Center (“VPLC”). VPLC is the statewide support center for all civil legal aid programs in the Commonwealth of Virginia.
2. I am proficient in using Excel software to develop spreadsheets and to analyze data contained on spreadsheets I develop, or spreadsheets developed by others. I have used Excel for these purposes since the late 1980s.
3. In the Spring of 2022, I began partnering with the national Legal Services Corporation’s (“LSC”) Civil Courts Data Initiative (“CCDI”) on a series of projects involving the collection and analysis of data from the Virginia Judiciary’s On-Line Case Information System (“OCIS”). CCDI is staffed in part by data engineers, who design software to collect information contained on the websites of judicial systems across the country, including OCIS. My primary contact at CCDI is Logan Practico, whose title is Data Engineer II. Additional information about CCDI is available on the Internet at <https://www.lsc.gov/initiatives/civil-court-data-initiative>.
4. My first project with CCDI was to develop an early warning system for

unlawful detainers filed in Virginia. It was intended for use by Virginia's civil legal aid programs especially once the Virginia Covid-19 evictions restrictions expired on July 1, 2022. Every week beginning sometime in June of 2022, CCDI collects information from OCIS and provides reports to Virginia's civil legal aid programs on the number of unlawful detainers filed in discrete time periods, as well as the current docket of future unlawful detainer cases scheduled for hearing during the upcoming eight weeks in every General District Court in the Commonwealth.

5. My second project with CCDI began in the fall of 2022, when I worked with Practico to collect unlawful detainer case data from OCIS in connection with a Writ of Prohibition I filed in the Supreme Court of Virginia, *In re Pam Bonner et al.*, Record No. 220628. The data Practico collected included unlawful detainer actions filed statewide and in Richmond City General District Court involving properties covered by the federal CARES Act. The data was used to demonstrate the high number of unlawful detainer actions statewide filed by owners of properties subject to the federal CARES Act, and the outcomes of unlawful detainer actions filed by a specific landlord subject to the CARES Act in Richmond City General District Court.
6. My third project with CCDI began in the Fall of 2023, when I sought data on the number of warrants in debt and garnishments filed in Virginia. I asked

Practico to provide me with data on the top filers of both warrants in debt and garnishment cases for the year 2022. On or about November 2, 2023, Practico produced a spreadsheet in response to my request, available as Exhibit 1 at <https://perma.cc/EEB7-DEW6> (click on “view the live page”).

7. Exhibit 1 shows the top 50 filers statewide of both garnishments and warrant in debt cases for the year 2022. I highlighted in yellow on the spreadsheet the names of several entities known by me to be debt buyers. Four debt buyers appeared in the top 20 filers: Jefferson Capital LLC (“Jefferson”), LVNV Funding LLC, (“LVNV”) Midland Credit Management LLC (“Midland”), and Portfolio Recovery Associates LLC (“PRA”). Both LVNV and Midland filed cases under slightly different names, which also appeared on the list of top 50 filers.
8. As part of preparing the brief *amici curiae* that this affidavit is appended to, I asked Practico to provide me with data from OCIS relating to the four debt buyers referenced in paragraph 7, as well as a fifth debt buyer, Velocity Investments LLC (“Velocity”). Hereafter, Jefferson, LVNV, Midland, PRA and Velocity are collectively referred to as the “four top debt buyers + Velocity.”
9. Specifically, I asked Practico to provide me with a list of cases filed in Virginia by the four top debt buyers plus Velocity between March 11, 2020

and March 11, 2024, that included the following information: case number, jurisdiction where case was filed, date case was filed, Plaintiff's and Defendant's names (using the name listed in OCIS as first plaintiff and first defendant as often there are more than one in a single case), Plaintiff's attorney, disposition of the case, any money judgment amounts, whether the judgment amount was obtained by default, and information on garnishment activity.

10. I also asked Practico to compile the data on the case list I requested and produce 3 tables showing certain information for: i) all warrant in debt cases filed statewide (this dataset is a larger dataset than the case list I requested in paragraph 9), ii) cases filed by the four top debt buyers plus Velocity statewide, and iii) cases filed by PRA statewide, and broken down by each jurisdiction in Virginia. The information I asked Practico to compile included the number of cases filed, number of default judgments obtained, total judgment amount awarded to the plaintiff, total judgment amounts awarded to the plaintiff by default judgment, number of garnishments, and number of garnishments on default judgments.
11. On or about May 15, 2024, Practico supplied me with the case list I requested in paragraph 9. When I receive case lists from Practico the cases are not organized in any specific manner. Therefore, I sorted the case list

using the “sort” function in Excel so that the cases are listed alphabetically by jurisdiction, then alphabetically by First Plaintiff, and then in numerical order by case number. The sorted case list is available as Exhibit 2 at <https://perma.cc/EEB7-DEW6> (click on “view the live page”).

12. In Exhibit 2, there are two columns where the data listed below each column heading is either “True” or “False”. This was done for the purpose of counting the number of money judgments and the number of money judgments obtained by default. Practico entered the “True/False” information for the number of money judgments obtained by default. I added a column for the number of money judgments and attached a “True” value to all cases where a money judgment was indicated, and a “False” value to the remaining cases.
13. Using the information in Exhibit 2, I isolated the cases filed by PRA and developed the case list of PRA only cases, available as Exhibit 3 at <https://perma.cc/EEB7-DEW6> (click on “view the live page”).
14. On or about May 15, 2024, Practico supplied me with the compiled data in three tables I requested in paragraph 10. The second table, containing data on the top four debt buyers plus Velocity had separate rows for each First Plaintiff sorted by jurisdiction.
15. Often, the name of the same debt buyer is indicated differently in OCIS, due

to spelling errors or by how the Plaintiff's name was entered into OCIS.

Therefore, the second table provided by Practico was very long and hard to follow. To make it easier to read the second table, I combined the data for each of the top four debt buyers and Velocity for each jurisdiction into a single row.

16. I also added to the second and third tables containing the compiled data a column for the number of money judgments. I calculated the data contained in that column for both tables 2 and 3 from the data contained in Exhibits 2 and 3, respectively, using both the "Analyze Data" and "CountIf" functions in Excel.
17. Using the compiled data supplied by Practico, I added three new columns showing certain percentages I calculated including: money judgment default rate (dividing the number of defaults by the number of money judgments), the default rate (dividing the number of defaults by the number of cases), and the garnishment default rate (dividing the number of garnishments granted on default judgments by number of garnishments). Next, I tabulated each column to get statewide totals using the Σ key (Auto sum function in Excel).
18. The 3 tables of compiled data is available as Exhibit 4 at <https://perma.cc/EEB7-DEW6> (click on "view the live page"). The three

tables are in separate tabs listed on the bottom of the spreadsheet as follows: All Debt – 3.2020 to 3.2024 (“Table 1”), Top 4 Filers + V (“Table 2”), and PRA cases (“Table 3”). At the bottom of the second table (Top4 Filers + V) I copied the tabulated data at the bottom of the first table (All Debt – 3.2020 to 3.2024) to make it easier to compare the data in the two tables. The key takeaways from Exhibit 4 are summarized below.

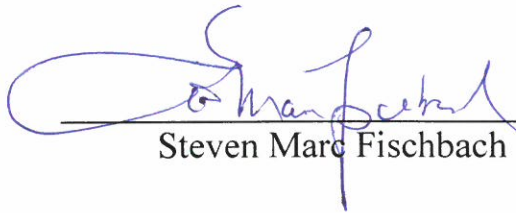
19. The filings made by the top four debt buyers plus Velocity comprised 18.46% of all warrant in debt cases filed between March 11, 2020 to March 11, 2024, and comprised 22.54% of all default judgments obtained in all warrant in debt cases filed during the same period. Table 2 of Exhibit 4.
20. The number of garnishments filed by the top four debt buyers plus Velocity comprised 21.42% of all garnishments filed in warrant in debt cases between March 11, 2020 to March 11, 2024, and comprised 22.34% of all garnishments based on default judgments in all warrant in debt cases filed during the same period. Table 2 of Exhibit 4.
21. The filings made by PRA comprised 14.55% of all warrant in debt cases filed by the four top debt buyers plus Velocity filed between March 11, 2020 to March 11, 2024, and comprised 13.47% of all default judgments obtained by the four top debt buyers plus Velocity in warrant in debt cases filed during the same period. Table 3 of Exhibit 4.

22. The number of garnishments filed by PRA comprised 8.91% of all garnishments obtained by the top four debt buyers plus Velocity in warrant in debt cases filed between March 11, 2020 to March 11, 2024, and the garnishments PRA filed on default judgments comprised 8.76% of all similar garnishments on default judgments filed by the top four debt buyers plus Velocity during the same period. Table 3 of Exhibit 4.
23. The top four debt buyers plus Velocity obtained default judgments in 90.51% of cases where money judgments were awarded to the Plaintiff/Debt Buyer in warrant in debt cases they filed in Virginia between March 11, 2020 to March 11, 2024. Table 2 of Exhibit 4. The total dollar amount awarded to these debt buyers by default in cases filed between March 11, 2020 to March 11, 2024 was \$217,777,246.93. Table 2 of Exhibit 4.
24. Of the garnishments filed by the top four debt buyers plus Velocity in warrant in debt cases filed between March 11, 2020 to March 11, 2024, 91.93% of garnishments were in cases where the underlying judgment was also obtained by default. Table 2 of Exhibit 4.
25. PRA obtained default judgments in 89.27% of cases where money judgments were awarded to PRA in warrant in debt cases it filed in Virginia between March 11, 2020 to March 11, 2024. Table 3 of Exhibit 4. The total dollar amount awarded to PRA by default in cases it filed between March

11, 2020 to March 11, 2024 was \$30,610,707.37. Table 3 of Exhibit 4.

26. Of the garnishments filed by PRA in warrant in debt cases filed between March 11, 2020 to March 11, 2024, 90.39% of garnishments were in cases where the underlying judgment was also obtained by default. Table 3 of Exhibit 4.
27. Practico advised me that the data he collected may not be complete, as he did not have time to check if additional cases should have been added to the case list, due to the inconsistent way Plaintiffs' names are entered into OCIS. See paragraph 15. Thus, the data supplied by Practico may represent an undercount of the total number of warrant in debt and garnishment cases filed by the four top debt buyers plus Velocity, as well as those filed by PRA.

5/22/24
Date


Steven Marc Fischbach

Richmond, Virginia

APPENDIX 2

Credit Corp Solutions Inc. V. Wafer Opinion

AUG 29 2022

JOHN D. HADDEN
CLERK

NOT FOR OFFICIAL PUBLICATION

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION III

CREDIT CORP SOLUTIONS INC.,)

)

Plaintiff/Appellee,)

)

vs.)

Case No. 120,368

)

ROBERT WAFER,)

)

Defendant/Appellant.)

APPEAL FROM THE DISTRICT COURT OF
CANADIAN COUNTY, OKLAHOMA

HONORABLE PAUL HESSE, JUDGE

REVERSED AND REMANDED

Jenifer A. Gani,
LOVE, BEAL & NIXON, P.C.,
Oklahoma City, Oklahoma,

For Plaintiff/Appellee,

Sherry Doyle,
LEGAL AID SERVICES OF
OKLAHOMA INC.,
Oklahoma City, Oklahoma,

For Defendant/Appellant.

Opinion by Bay Mitchell, Vice-Chief Judge:

¶1 Defendant/Appellant Robert Wafer (Wafer) appeals from the trial court's grant of summary judgment in favor of Plaintiff/Appellee Credit Corp Solutions Inc. (Credit Corp) on its claim against Wafer for indebtedness.¹ In its petition for relief, Credit Corp stated that WebBank, a Utah-chartered industrial bank using the web-based platform LendingClub Corporation (WebBank), provided a loan to Wafer. Credit Corp asserts it purchased Wafer's loan from WebBank, then subsequently, Wafer defaulted on the loan and is indebted to Credit Corp in the amount of \$14,700.75. After *de novo* review, we reverse the trial court's grant of summary judgment to Credit Corp, finding that Credit Corp failed to provide authenticated exhibits to prove that Wafer had a valid contract with WebBank and failed to prove that Credit Corp became the proper party in interest by purchasing the contract from WebBank.

STANDARD OF REVIEW

¶2 We review orders of summary judgment *de novo* giving no deference to the trial court. *Lowery v. Echostar Satellite Corp.*, 2007 OK 38, ¶11, 160 P.3d 959, 963. Under *de novo* review, we have plenary, independent and nondeferential authority to determine whether the trial court erred in its legal ruling." *Fanning v. Brown*, 2004 OK 7, ¶8, 85 P.3d 841, 845 (internal citations omitted). Summary judgment is appropriate

¹ Wafer also filed a motion for summary judgment which the trial court denied. The denial of a motion for summary judgment is not an appealable order. See *Myers v. Missouri Pac. R. Co.*, 2002 OK 60, ¶40, 52 P.3d 1014, 1034.

where the record establishes no genuine issue of material fact, and the prevailing party is entitled to judgment as a matter of law. *Brown v. Alliance Real Estate Group*, 1999 OK 7, ¶7, 976 P.2d 1043, 1045 (citations omitted).

AUTHENTICATION OF EXHIBITS

¶3 One inquiry on a motion for summary judgment is whether the evidentiary materials as a whole show undisputed material facts that will support but a single inference in favor of the movant's quest for relief. *Tarrant v. Capstone Oil & Gas Co.*, 2008 OK CIV APP 17, ¶12, 178 P.3d 866, 869.

¶4 Credit Corp attached seven exhibits to its Motion for Summary Judgment providing the evidentiary basis for its alleged “undisputed” facts. Wafer disputed those as inadmissible hearsay. Credit Corp claims the exhibits fall under the business records exception to the hearsay rule². The business records exception requires, in part, that the exhibits be verified through written declaration of the records’ custodian or other qualified witness. 12 O.S. 2011 §2803(6); 12 O.S. 2011 §2902(11). Because Credit Corp failed to authenticate its exhibits with written declarations, those exhibits do not qualify for the business records exception and are inadmissible hearsay. As such, they cannot provide evidentiary support for a summary judgment in this case.

² “Hearsay means a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” 12 O.S. 2011 §2801(A)(3). Hearsay is inadmissible unless it falls within one of the exceptions to the rule. 12 O.S. 2011 §2802.

PROOF OF A VALID CONTRACT

¶5 Credit Corp's cause of action is for breach of contract. To prevail on its motion for summary judgment, the record must not present any genuine issue of material fact with regard to the elements of breach of contract: formation of the contract, breach of the contract, and damages as a result of the breach. See *Morgan v. State Farm Mut. Auto. Ins. Co.*, 2021 OK 27, ¶21, 488 P.3d 743, 748. Credit Corp must prove that Wafer and WebBank had a valid contract and that Credit Corp acquired rights in the same. Based on the evidence before this court,³ Credit Corp failed to prove the first element – formation of a contract.

¶6 A contract that, by its terms, is not to be performed within a year from its making, as we have here, is invalid unless it is in writing and signed by the party to be charged. See 15 O.S. Supp. 2013 §136(1). The truth in lending disclosure, attached to Credit Corp's motion as Exhibit D, indicates that Wafer agreed to pay \$521.46 beginning January 16, 2015 and continuing each month thereafter for 59 months, ending on December 16, 2019. The length of the agreement necessitated that Wafer sign a contract, and none of the exhibits Credit Corp attached to its motion include Wafer's signature.

³ The court may only consider the record presented and not a record which is potentially possible. *Weeks v. Wedgewood Vill., Inc.*, 1976 OK 72, ¶12, 554 P.2d 780, 784 (citation omitted).

¶7 Whether Wafer signed a contract is a material fact, and, for summary judgment purposes, that fact must be supported by acceptable evidentiary material. See District Court Rule 13(b), 12 O.S. Supp. 2013, Ch. 2, App. Without Wafer's signature, the contract is invalid, and Credit Corp cannot prevail on its motion.

¶8 Further, taken together, the exhibits do not provide consistent contractual terms. For example, the loan agreement, Exhibit A, includes a principal balance "between \$1,000 and \$35,000", a loan term of either three or five years, and the truth in lending disclosure, Exhibit D, includes an interest rate of 21.69% while the interest rate on the purported payment schedule, Exhibit G, includes an interest rate of 19.24%. The loan agreement, and all the exhibits taken together, lack a principal balance, loan term, and interest rate. "[A] contract that is indefinite and uncertain in its terms cannot be enforced and therefore is invalid." *Edwards v. Bd. of Ed. of Oklahoma City*, 1946 OK 183, ¶4, 169 P.2d 1015, 1016. However, "[i]n determining whether a contractual promise is fatally defective for indefiniteness, it is important to observe that the law frowns upon invalidating the agreement of the parties upon this consideration especially where there has been a part performance." *Webb v. Moran*, 1939 OK 369, ¶19, 96 P.2d 308, 312 (citation omitted). It is a question of fact with regard to whether Wafer partially performed and made payments on the contract. Disputed questions of material fact preclude summary adjudication. See *Brown*, 1999 OK 7, ¶7, 976 P.2d 1043, 1045 (citation omitted).

PROPER PARTY IN INTEREST

¶9 Additionally, Credit Corp cannot prevail on its motion for summary judgment because it has not provided evidence to establish its standing as the rightful party to bring this lawsuit. “Standing has traditionally been defined as whether a party has a sufficient interest in an otherwise justiciable controversy to obtain judicial resolution of the controversy.” *Independent School Dist. No. 9 of Tulsa County v. Glass*, 1982 OK 2, ¶8, 639 P.2d 1233, 1237. Standing ensures a party has a personal stake in the outcome of the case. *J.P. Morgan Chase Bank, Nat’l Ass’n v. Eldridge*, 2012 OK 24, ¶7, 273 P.3d 62 (citation omitted); *Oklahoma Educ. Ass’n v. State ex rel. Oklahoma Legislature*, 2007 OK 30, ¶16, 158 P.3d 1058, 1064. Standing determines whether the person is the proper party to request adjudication of a certain issue and does not decide the issue itself. *Deutsche Bank Nat’l Trust Co. v. Matthews*, 2012 OK 14, ¶4, 273 P.3d 43, 45 (citation omitted).

¶10 Standing must be established before the case may proceed on the merits. *Toxic Waste Impact Grp., Inc. v. Leavitt*, 1994 OK 148, ¶9, 890 P.2d 906, 911 (citation omitted). When contested, the party invoking the court’s jurisdiction carries the burden of establishing its standing to pursue the action. *Id.* at ¶8, 910 (citation omitted). Credit Corp’s exhibits fail to show that it is the proper party in interest.

¶11 Specifically, Credit Corp provided a bill of sale, attached to its motion as Exhibit F, showing it purchased certain accounts from WebBank. Wafer objected to the exhibit

stating that it is not supported by an affidavit showing that the signer on the agreement had authority to act on behalf of WebBank and the exhibit lacks specific reference to Wafer's alleged loan. Credit Corp then supplemented its exhibit with information specific to Wafer's loan; however, the exhibit is not authenticated as required by the business exception to the hearsay rule. Like the other exhibits, this exhibit is inadmissible hearsay because it has not been authenticated and, therefore, cannot be used as a basis for summary adjudication.

¶12 Credit Corp cites *Asset Acceptance, L.L.C. v. White*, 2014 OK CIV APP 96, 340 P.3d 19 for the proposition that its exhibits are sufficient to establish standing. This case is distinguishable for several reasons. In *White*, the creditor produced an application signed by the debtor showing the existence of a contract, as well as, an affidavit in support of the bill of sale and assignment of loan establishing that the creditor was the successor in interest on the debtor's specific loan. *Id.* Here, there is no contract or verified evidence that Wafer's alleged loan was purchased by Credit Corp. Without evidentiary support showing it is the party in interest, Credit Corp does not have standing to bring this lawsuit.

¶13 For the reasons set forth above, the summary judgment in favor of Credit Corp is reversed. REVERSED AND REMANDED.

PRINCE, P.J., and SWINTON, J., concur.