No. 24-2745

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

IN RE: JOHNIE LEE NANCE,
Debtor.

JOHNIE LEE NANCE,
Appellant,
v.

LAWRENCE J. WARFIELD, TRUSTEE,
Appellee.

On Appeal from the United States District Court
for the District of Arizona
No. 2:23-cv-00504-DWL
Hon. Dominic W Lanza

AMICI CURIAE BRIEF OF THE NATIONAL CONSUMER BANKRUPTCY RIGHTS CENTER AND THE NATIONAL ASSOCIATION OF CONSUMER BANKRUPTCY ATTORNEYS IN SUPPORT OF APPELLANT

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RULE 26.1 CORPORATE DISCLOSURE STATEMENT

Warfield v. Nance, No. 24-2745

Pursuant to Fed. R. App. P. 26.1, Amici Curiae, the National Consumer Bankruptcy Rights Center and the National Association of Consumer Bankruptcy Attorneys, makes the following disclosure:

1) Is party/amicus a subsidiary or affiliate of a publicly owned corporation? If yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party. NO

2) Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list below the identity of the corporation and the nature of the financial interest. NO

This day of 24th July, 2024.

/s/ *James J. Haller*
James J. Haller
Attorney for Amici Curiae

RULE 29(a)(2) STATEMENT

Counsel for *Amici* has contemporaneously filed a motion seeking leave of this Court to file this brief in support of the Appellant. Movants endeavored to obtain the consent of all parties to the filing of the brief before moving the Court for permission to file the proposed brief. Appellant consents to the filing of this brief. Appellee does not consent.

This day of 24th July, 2024.

/s/ *James J. Haller*
James J. Haller
Attorney for Amici Curiae

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INTEREST OF *AMICI CURIAE*

Incorporated in 1992, the National Association of Consumer Bankruptcy Attorneys ("NACBA") is a non-profit organization of more than 2000 consumer bankruptcy attorneys nationwide. NACBA advocates nationally on issues that cannot adequately be addressed by individual member attorneys. It is the only national association of attorneys organized for the specific purpose of protecting the rights of consumer bankruptcy debtors.

The National Consumer Bankruptcy Rights Center ("NCBRC") is a non-profit organization dedicated to protecting the integrity of the bankruptcy system and preserving the rights of consumer bankruptcy debtors. To those ends, it provides assistance to consumer debtors and their counsel in cases likely to impact consumer bankruptcy law importantly. Among other things, it submits amicus curiae briefs when in its view resolution of a particular case may affect consumer debtors throughout the country, so that the larger legal effects of courts' decisions will not depend solely on the parties directly involved in the case.

NCBRC and NACBA have filed amicus curiae briefs in numerous cases seeking to protect the rights of consumer bankruptcy debtors. See, e.g., *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin*, 143 S. Ct. 1689 (2023); *Evans v. McCallister* (*In re Evans*), 69 F.4th 1101 (9th Cir. 2023); *Numa Corp. v. Diven*, 2022 U.S. App. LEXIS 32224, 2022 WL 17102361 (9th Cir. 2022).

NCBRC, NACBA and NACBA's members have a vital interest in the outcome of this case to ensure the fair and just application of bankruptcy laws. A ruling in the case at bar will affect the administration of many consumer cases in this Circuit. If this court were to render a ruling that debtors may not liberally amend exemptions to protect their property, it would dramatically affect many debtors who claim exemptions to protect property.

The district court's decision to apply claim preclusion to the debtor's amendments to his exemptions is a significant misapplication of the doctrine, one that undermines the very foundation of consumer bankruptcy protections. The ruling fails to recognize the unique nature of exemption claims in bankruptcy cases, as opposed to general civil litigation, and disregards the fundamental principles that exemptions are to be liberally construed in favor of debtors. This misapplication, if left uncorrected, will set a dangerous precedent that could strip countless debtors of their rightful exemptions, thereby denying them the fresh start that bankruptcy law is designed to provide.

Reversal by the circuit court is imperative to protect consumer debtors and uphold the integrity of bankruptcy proceedings. The district court's decision disregards established policies that ensure debtors emerge from bankruptcy with sufficient assets to support a minimal lifestyle, a principle affirmed in numerous cases. By reversing the lower court's decision, the circuit court will reaffirm the

proper application of exemption laws, ensuring that debtors can amend their schedules to claim the exemptions necessary to protect their essential assets. This reversal is not only a matter of legal correctness but also a vital step in safeguarding the fundamental rights of consumer debtors across the Ninth Circuit.

Amici believe that, in their roles as a national advocates for consumer debtors, they bring a unique perspective to this case that will be helpful to the court in deciding this matter.

SUMMARY OF ARGUMENT

Reversing the bankruptcy court, the district court applied a de novo standard of review to conclude that the doctrine of claim preclusion barred the debtor Johnie Lee Nance (the Debtor) from claiming any exemptions in his real property and RV in which he resided on the petition date. Using elements for claim preclusion established by this Circuit in dissimilar cases, the district court applied "sound bites" of preclusion law to determine the doctrine applied to amendments to claims of exemption in this case and to such amendments on a broader scale.

Amici submit that this ruling misapplies claim preclusion because of the difference between amending an exemption and asserting new claims in general civil litigation, from which the doctrine is derived. The doctrine was developed to promote judicial efficiency, conserve judicial resources, and avoid vexatious litigation by preventing a party from later asserting a claim which could have been

asserted in a prior action "arising out of the same nucleus of facts." *Taylor v. Sturgell*, 553 U.S. 880, 891-92 (2008). In a bankruptcy case, a debtor may not assert more than one exemption scheme in Schedule C[1] as a matter of law, so the core purpose of the doctrine misses the mark. Moreover, as ably articulated in the debtor's opening brief, each statute which provides for an exemption, whether under applicable state law or federal law, applies different criteria for allowing exemptions, criteria which turn on a unique set of operative facts. To suggest that the claims arise under the same nucleus of facts is myopic and inaccurate.

Amici do not argue that claim preclusion can never apply when debtors amend their bankruptcy exemptions. Certainly, if a debtor tries to assert for a second time the exact same state law exemptions on the same assets that the bankruptcy court disallowed in response to a prior objection, the doctrine would apply because the nucleus of operative facts and the legal right to an exemption would be identical. *See*, for example, *Albert v. Golden* (*In re Albert*), 998 F.3d 1088 (9th Cir. 2021). However, whenever a debtor amends exemptions to claim them under different federal or state statutes, the merits of the claim will be different and the significant facts will vary. A prior ruling will not be a decision on the merits of a like claim, preventing the application of the doctrine. Claim

[1] Schedule C is the mandatory bankruptcy schedule, part of Official Bankruptcy Form 106, filed in individual cases in which debtors claim exemptions for their assets.

preclusion does not apply in this case and it should not apply broadly to exemption amendments as a matter of law.

Strong policy concerns also support a narrow application of the doctrine. Case law establishes three relevant principles: (1) that exemptions are allowed to ensure that a debtor exiting a bankruptcy proceeding has the assets and means to support a minimal lifestyle. *Wolfson v. Watts* (*In re Watts*), 298 F.3d 1077, 1080-81 (9th Cir. 2002); (2) that exemptions are to be liberally construed in favor of debtors. *Webb v. Trippet*, 235 Cal. App. 3d 647, 650 (1991); and (3) that the right to amend schedules as a matter of course set forth in Rule 1009(a)[2] shall be liberally applied. *Gray v. Warfield* (*In re Gray*), 523 B.R. 170, 173 (B.A.P. 9th Cir. 2014). The district court decision fails to acknowledge those important principles.

The case before the Circuit highlights the dire outcome if those policies are ignored. The debtor, a stroke victim, will lose his RV and land where he resides, leaving him without the assets to support a minimal lifestyle, *even though they fit within the types of property that the law permits the debtor to exempt*. Moreover, claim preclusion cannot be applied as a matter of law to strip him of these assets. The first order denying exemptions (referred to as the Arizona Schedule by the district court) was ineffective, void for lack of jurisdiction because the Debtor had

[2] Unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and all Rule references are to the Federal Rules of Bankruptcy Procedure.

already amended Schedule C before the order was entered. Therefore, the first order cannot be a "prior ruling" to support claim preclusion. The second order, sustaining the objection to the Washington exemptions because they were not extraterritorial, could not have addressed the merits of the federal exemptions later claimed. Those federal exemptions became available under § 522(b)(3) *only because* the Washington exemptions were not available to the debtor. The bankruptcy court had to make an entirely different analysis to allow the federal exemptions. The second order was not a ruling on the merits of that eventual decision.

Finally, the threat of trustees using claim preclusion to restrain debtors from amending Schedule C would wreak havoc on consumer bankruptcy practice. It is commonplace for chapter 7 debtors to make initial errors or discover later facts which require them to amend their exemptions in order to protect their homes, cars, personal property, and minimal cash in accounts. For example, a debtor might initially exempt a truck as a vehicle. The trustee objects because he argues the equity in the truck exceeds the exemption amount. Rather than litigating, which the debtor cannot afford to do, he amends his exemptions to claim a tool of trade exemption to protect the work truck. Or another example: in California, one set of state exemptions provides a better homestead exemption but the debtor, thinking the house has no equity, opts for the second set because its wildcard exemption

would protect his savings account. The trustee might overvalue the house, putting it in jeopardy. Debtor may amend to claim the more liberal homestead exemption because he cannot afford to present expert testimony on value at an evidentiary hearing. The list of like reasons to amend is endless in practice. If claim preclusion applies to block these amendments, debtors will be routinely denied exemptions to which they are entitled to protect their most critical assets for the fresh start which they hope to achieve through bankruptcy. Any broad ruling from the Circuit affirming the district court will have profound repercussions on consumer debtors and the practice of consumer bankruptcy law.

ARGUMENT

A. The Statutory Scheme for Claiming and Objecting to Exemptions

Section 522(d) authorizes individual debtors to exempt property from the bankruptcy estate. In chapter 7 cases, exempt property is the only property that debtors may keep. Debtors claim their exemptions in Schedule C and are only allowed to assert one exemption scheme at a time. § 522(b)(2). Section 522(d) specifies the property that may be exempted from the debtor's estate utilizing federal exemptions. Under § 522(b)(2), the debtor may choose to exempt either the property listed in § 522(d) ("federal exemptions") or "any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable." The debtor may choose the federal exemptions

"unless the State law that is applicable to the debtor under subparagraph (3)(A) specifically does not so authorize." § 522(b)(2). This "opt out" provision has been adopted by Arizona, so Arizona debtors usually are limited to claiming only Arizona exemptions. *Drummond v. Urban (In re Urban)*, 375 B.R. 882, 888 (B.A.P. 9th Cir. 2007).

The "[s]tate law that is applicable to the debtor" is determined by where the debtor was "domiciled" for the 730 days (two years) immediately preceding the bankruptcy filing. § 522(b)(3)(A). If the debtor was not domiciled in a single state during that period, then the applicable state law is that of the state in which the debtor was domiciled for the 180 days immediately preceding the 730-day period, or for the longest portion of that 180-day period. *Id.* If the domiciliary requirement renders a debtor ineligible for any state exemptions, the debtor may use the federal exemptions under the "catch-all" provision of § 522(b)(3).[3] *Id* at 889; *Ku v. Brown (In re Shiu-Jeng Ku),* 2024 WL 2705301 at *3. (BAP 9th Cir. 2017).

The combined effect of the 730-day domicile period for determining the applicable state exemption law and the 180-day period for determining venue is that the law for exemptions may be different from the law of the forum, as happened in this case. *In re Urban,* 375 B.R. at 889.

[3] This circumstance allowed the Debtor to claim the federal exemptions after he learned that neither the Arizona nor Washington state exemptions were available to him.

Claims of exemptions are to be construed liberally in favor of the debtor. *Norwest Bank Neb., N.A. v. Tveten* (*In re Tveten*), 848 F.2d 871, 875 (8th Cir. 1988). The trustee bears the burden of proving that the debtor did not properly claim the exemption. Federal Rule of Bankruptcy Procedure 4003(c). Where relevant facts must be determined, the trustee first puts forth evidence in support of the objection. Then the burden of production shifts to the debtor to show that the claimed exemption is proper. *Danduran v. Kaler* (*In re Danduran*), 657 F.3d 749, 754 (8th Cir. 2011). Rule 1009(a) allows a debtor to amend any schedule "as a matter of course at any time before the case is closed." In the past, courts used only bad faith or prejudice to creditors as reasons to deny routine amendments to Schedule C, but, as discussed below, even those reasons died with the Supreme Court's ruling in *Law v. Siegel*, 570 U.S. 904 (2013).[4] *In re Gray*, 523 B.R. at 173.

B. Application of Claim Preclusion to Amendments to Exemptions is Improper

Claim preclusion (referred to in many earlier cases as res judicata) "'provides that a final judgment on the merits of an action precludes the parties from *relitigating all issues connected with the action that were or could have been raised in that action.' Rein v. Providian Fin'l Corp.* 270 F. 3d 895, 898-99 (9th Cir.

[4] In *Law v. Siegel*, 571 U.S. 415 (2014), the Supreme Court held that bad faith or prejudice is not a valid reason to deny a debtor's exemptions or to surcharge exempt property.

2001) (emphasis added)." *Bankruptcy Recovery Network v. Garcia (In re Garcia),* 313 B.R. 307, 310-311 (BAP 9th Cir. 2004). It includes the doctrines of merger and bar that foreclose litigation of matters that have never been litigated. *Id.* at 310. Claim preclusion is applicable where (1) the parties are identical; (2) the judgment in the prior action was rendered by a court of competent jurisdiction; (3) there was a final judgment on the merits, and (4) the same claim or cause of action was involved in both suits. *Rein v. Providian Fin'l Corp.* at 270 F. 3d at 899, *Garcia* at 313 B.R. at 311.

These authorities, from the Ninth Circuit or its BAP, all word the elements a little differently than the district court did in this case. We use them to highlight the need for a final judgment *on the merits* and that the *same claim or cause of action was involved* in both suits. *In re Jenson*, 980 F. 2d 1254, 1256 (9th Cir. 1992). The purpose of the doctrine is to prevent parties "from relitigating *issues* that were or could have been raised in the prior proceeding." *Id.* citing *Federated Dep't Stores, Inc. v Moitie*, 452 U.S. 394, 398 (1981) (emphasis added). The Supreme Court has the ultimate authority to determine uniform application of the doctrine of res judicata. *Taylor v. Sturgell* 553 U.S. at 891. The doctrine of claim preclusion "forecloses successive litigation of the *very same claim.*" *Id.* (emphasis added). Claim preclusion protects "against 'the expense and vexation attending multiple lawsuits, conserves judicial resources, and fosters reliance on judicial

action by minimizing the possibility of inconsistent decisions.' [citation omitted]." *Id.* at 892. These purposes, as articulated by the Supreme Court, are not met when amendments to exemptions are at issue.

Two things make application of claim preclusion improper when addressing amendments to exemptions. First, the second set of exemptions could not have been raised in the original Schedule C, nor could the federal exemptions have been claimed when the debtor claimed Washington exemptions. Debtors may only claim one set of exemptions (either a state's exemptions or federal exemptions) at a time, so it would not be possible to include the second claim of exemptions in the initial Schedule C. Second, the issue decided in the first ruling (see *Rein* above) on a claim of exemption will never be identical to the issue decided on the application of a different set of exemptions.

To use this case as an example, whether Arizona exemptions are available to the debtor is *not the same merits issue* as whether the debtor may claim Washington state exemptions on Arizona property. The merits of the order disallowing the Arizona exemptions are not the same merits asserted against on the Washington exemptions. The district court mechanically applied its choice of elements to decide that the claims "arising out of the same transactional nucleus of facts" controlled in evaluating whether there was an identity of claims for the ruling on the merits. This just doesn't work when talking about bankruptcy

amendments to Schedule C. The issues are not the same; the claims are not identical; the merits were not previously decided in order to bar the second set of exemptions. Even assuming the transactional nucleus of facts is identical (which the Debtor's Opening Brief shows is untrue), that the 730-day residency period denied the debtor the right to assert Arizona exemptions had absolutely nothing to do with whether Washington state exemptions may be applied to Arizona property. Similarly, the analysis needed to allow the federal exemptions – that no other exemptions are available to the Debtor (§ 522(b)(3)) – has nothing in common with the analysis or facts that supported denial of the Washington exemptions. Where is the identity of claim? Application of claim preclusion to the right to liberally amend exemptions "as a matter of course" is like trying to fit a square peg into a round hole.

The procedural posture of this case creates a second consideration regarding the application of claim preclusion, which should have an impact on the use of claim preclusion here and in other cases involving exemption amendments. The trustee objected to the Arizona schedule on September 20, 2022 and on the same day the debtor amended schedule C to claim the Washington exemptions.[5] On October 17, 2022, the bankruptcy court issued an order sustaining the trustee's objection to the Arizona exemptions. This order was improper. When the debtor

[5] District Court Order, p. 3.

amended his Schedule C, he was no longer claiming Arizona exemptions, making the first objection moot. Every federal court has an obligation to make certain that it has jurisdiction to decide a claim. *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 340 (2006). A case becomes moot when it is impossible for the court to grant any effectual relief. *Chafin v. Chafin*, 568 U.S. 165, 172 (2013). To invoke jurisdiction of a federal court, a litigant must have suffered, or be threatened with, an actual injury which can be addressed by a favorable judicial decision. *U.S. Const. Article III; Lewis v Continental Bank Corp.*, 494 U.S. 472, 477 (1990). There is no case or controversy, and a suit becomes moot, "when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91, 133 S. Ct. 721, 726 (2013). Thus, the first order relied upon by the trustee to establish claim preclusion was void for lack of jurisdiction. This leaves only the second order to bar the federal exemptions. And, as noted above, only when Washington exemptions were deemed unavailable was the Debtor able to argue that § 522(b)(3) allowed him to assert the federal exemptions. No prior ruling by the bankruptcy court was on the merits of the Debtor's right to use the federal exemptions.

C. The District Court's Ninth Circuit Authority is Misplaced when Considering Schedule C Amendments

The Ninth Circuit may reverse the district court's decision without altering its general precedents that address the application of claim preclusion in the

Circuit. The district court relied on *Mpoyo v Litton Electro-Optical Systems,* 430 F. 3d 985 (9th Cir. 2005), *Owens v. Kaiser Foundation Health Plan, Inc.*, 244 F. 3d 708 (9th Cir. 2001); *Albert v Golden (In re Albert),* 998 F. 3d 1088 (9th Cir. 2021) as circuit authority and referenced *Lucore v. Bank of America, N.A.*, 2022 WL 4181007 (S.D. CA. 2022) as district court authority and *Rickert v. Specialized Loan Servicing, LLC,* 2020 WL 7043609 (BAP 9th Cir. 2020) from the Ninth Circuit BAP to further provide foundation for its analysis. Each of these cases is distinguishable from a case about amending Schedule C.

Mpoyo arose from the termination of plaintiff, allegedly wrongful because of harassment, defamation, race and retaliation. Plaintiff initially asserted claims under Title VII and belatedly unsuccessfully tried to amend to also assert claims arising under the Fair Labor Standards Act (FLSA) and the Family and Medical Leave Act (FMLA). The district court denied the late amendments and granted summary judgment for the defendant on the Title VII claim. Plaintiff then filed a second suit, alleging wrongful termination under the FLSA and FMLA. The Ninth Circuit affirmed the district court's application of claim preclusion to bar the second suit. The elements of claim preclusion fit neatly to this fact and pleading pattern, where the transactional nucleus of facts supported the exact same claim – wrongful termination - which could have been pled in the first complaint. As discussed above, the Debtor here could not have claimed both the Arizona and

Washington exemptions in his first Schedule C, let alone two different states' and the federal exemptions all at one time. This significant difference makes *Mpoyo* of no relevance.

Owens suffers from the same distinction as pertinent authority. There, plaintiff employees were terminated when the defendant moved locations and first asserted state law claims for wrongful termination. After a stipulated dismissal in federal court and receiving a right to sue letter from the EEOC, plaintiffs filed a new suit in federal court alleging Title VII violations. As in *Mpoyo,* the district court dismissed based on claim preclusion and the Ninth Circuit affirmed, holding that plaintiffs could have raised the Title VII theory for recovery in the first suit and because they failed to do so the claim was barred. There the claim was the same – wrongful termination – and the nucleus of facts identical. Neither ground applies to the Debtor's amendments.

Albert, discussed in the Summary of Argument above, was a bankruptcy exemption case but it demonstrates the exact circumstance when *Amici* admit claim preclusion may apply. The debtor, while in a chapter 13, had claimed exemptions of assets under California law which the bankruptcy court disallowed. After the case converted to chapter 7, debtor tried to assert the exact same exemptions for the same assets. The application of claim preclusion was proper because Schedule

C was identical. There was no meaningful amendment to consider, making *Albert* inapplicable to a case about amendments to Schedule C.

Lucore was an alleged wrongful foreclosure action where the plaintiff had made unsuccessful state law claims, then sought the same relief under federal law. The district court relied on authority which stated that "a plaintiff must bring all related claims together" to bar the second suit because the plaintiff had not done so. *Lucore*, 2022 WL 4181007 at *8. The Debtor here was not permitted to "bring" the amendments in the original Schedule C. In *Rickert*, the debtor had challenged the standing of a servicer when it filed a proof of claim in her chapter 13. After the bankruptcy court overruled the debtor's objection to the claim, the debtor filed an adversary complaint against the servicer, asserting once again that it lacked standing. The bankruptcy court applied claim preclusion, as did the BAP. This ruling, like the others, is not precedent for denying a debtor the right to amend his exemptions.

Amici urge the Ninth Circuit to take the approach to exemption amendments that the Eighth Circuit did in *Ladd v. Ries (In re Ladd),* 450 F. 3d 751 (8th Cir. 2006), the only court of appeals decision on this issue. One year after the bankruptcy court sustained the trustee's objection to the federal exemptions which debtor had initially claimed, the debtor amended Schedule C to claim the Minnesota homestead exemption. When the trustee objected again, this time

asserting claim preclusion, the bankruptcy court sustained the objection and the Eighth Circuit BAP affirmed. The BAP relied on an analysis of claim preclusion under Eighth Circuit cases similar to the analysis the district court here used under Ninth Circuit cases, drawing the same mechanical conclusions. *Id.* at 753. The Eighth Circuit reversed, concluding there were significant differences between the federal exemption statute and the Minnesota exemption. *Id* at 754. Significantly, it recognized that "debtors could not have raised the Minnesota exemption as an 'alternate' theory at the same time the federal exemption was asserted. [citations omitted]." *Id.* at 755. It noted that in other bankruptcy matters it had been reluctant to invoked "the principle of res judicata…because it blocks 'unexplored paths that may lead to truth." *Id.* It also relied on strong public policy: "[m]aximization of exemptions, especially the homestead exemption, is a fundamental policy of the Bankruptcy Code, *In re Johnson*, 880 F. 2d at 83, which is likely why Rule 1009 allows liberal amendment." *Id.*

This Circuit should follow the enlightened approach of the Eighth Circuit and allow liberal amendments to exemptions as has always been the practice in the bankruptcy courts.

D. Sound Public Policy and Practical Concerns Dictate that any Application of Claim Preclusion to Schedule C Amendments Must be Strictly Limited

It is a long-accepted principle that the honest but unfortunate debtor is entitled to the fresh start which a chapter 7 bankruptcy accords. *Lamar, Archer & Cofrin, LLP v. Appling*, 584 U.S. 709, 715 (2018). To ensure that such debtors emerge from bankruptcy with sufficient assets to support a minimal lifestyle, the Bankruptcy Code in § 522 and all states have adopted statutory exemptions to protect those necessary assets from creditors. *In re Watt*, 298 F. 3d at 1080-81. Equally entrenched in both California and federal law is that exemptions are to be construed liberally in favor of debtors. *Webb v. Tripet*, 235 Cal. App. 3d at 65; *Kendall v. Pladson* (*In re Pladson*), 35 F.3d 462, 465 (9th Cir. 1994). Relevant to that maxim is that amendments to all schedules, including Schedule C, under Federal Rule of Bankruptcy Procedure 1009(a),[6] are always allowed "as a matter of course." Thus, the decision of the district court also directly contradicts the Federal Rules of Bankruptcy Procedure. For many years only bad faith or prejudice were grounds to object to such amendments to exemptions, until *Law v. Siegel*, 571 U.S. 415, 134 S. Ct. 1188 (2014) struck even those reasons down. The Supreme Court has held clearly that a debtor should not be denied exemptions to which he is entitled under the exemption statutes. *In re Gray*, 523 B.R. at 173. *See also Rucker v. Belew* (*In re Belew*), *943* F.3d 395 (8th Cir. 2019) (*Law v. Siegel*

[6] Fed. R. Bankr. P. 1009(a) provides in part: A voluntary petition, list, schedule, or statement may be amended by the debtor as a matter of course at any time before the case is closed.

decision precludes court from denying debtor right to amend exemptions for equitable reasons); *Ellman v. Baker (In re Baker),* 791 F.3d 677 (6th Cir. 2015) (same); *Elliott v. Weil (In re Elliott),* 523 B.R. 188 (B.A.P. 9th Cir. 2014) (same).

Now raising its ugly head is a new argument -- that claim preclusion may be routinely used to bar debtors from amending their exemptions as a matter of course if necessary to protect those minimal assets. This concept is contrary to the Federal Rules of Bankruptcy Procedure, Supreme Court precedent and sound policy. It also ignores the practical aspects of consumer bankruptcy cases.

Claim preclusion is a judge-made doctrine, established to prevent parties from litigating claims piece-meal. Its purpose is to encourage judicial efficiency and prevent vexatious litigants from filing seriatim lawsuits on the same merits claims. How are these principles reinforced by preventing debtors, who can only claim one set of exemptions at a time, from amending their Schedule C when their claimed exemption is denied, and they see an alternative path to protect their home or their car from liquidation in a chapter 7? Such use of the doctrine strays from its foundation.

To be sure, a crafty debtor might try to manipulate the system by playing "catch me if you can" with a chapter 7 trustee, but few would have the legal resources to play that game. In fact, in many of the cited cases where debtors amended their exemptions, it was not because they thought their original

exemptions were wrongly claimed but rather that they had neither the funds nor the time to fight when a cheaper path beckoned. Additionally, there will always be that rare debtor, often pro se, who will assert the same claim again and again, despite defeat. In that circumstance, specific facts might dictate that the claims are indeed identical and further action should be barred. But those instances are few. Most debtors would be like Mr. Nance here, struggling to find any applicable exemption that will allow him to keep his property and RV so that he has housing.

Broad application of claim preclusion to exemption amendments would overlook many practical aspects of consumer practice. It is not realistic to think that debtors will always claim the proper exemptions on the original Schedule C. No matter how hard attorneys work to gather all the information from their clients to file their initial schedules, assets are overlooked, values are misconstrued, dates of residency in prior houses or states might be mistaken, and terms of communication are misunderstood. Consumer debtors are not "professional" clients; their lives are often less than orderly because of family, time, or economic impacts which make living from day to day a chore. They might not keep any, much less good, records. In other words, mistakes or incompleteness can happen in initially filed schedules. Amendments to schedules, as Rule 1009(a) dictates, should be routinely allowed as a matter of course. If such an amendment occurs after a bankruptcy court has ruled that a claimed exemption doesn't work, must

debtors and their counsel now fear their trustee will threaten claim preclusion if they attempt to assert the exemption to which they are entitled?

Amendments to exemptions occur routinely for many reasons, most not the least bit nefarious. Pro se filers often need to amend frequently because they claim two sets of exemptions at once, they claim federal exemptions when their state only allows the use of state ones, or they don't realize that one set of exemptions will better protect their house, car, or tools of their trade than another. As shown by this case, sometimes the complex venue/residency requirements lead to errors because debtors don't remember when they moved to their current state, or how long they lived in any one state over the past three years. Sometimes amendments are made because a trustee has objected to the current ones and the path of least resistance – i.e. the least costly one – is to amend and adjust. This list could go on indefinitely and none of the reasons would equate to the vexatious litigation behavior that the doctrine of claim preclusion was intended to address. If trustees have Ninth Circuit authority to begin routinely objecting to an amended Schedule C because rulings against the original exemptions are preclusive, debtors in economic purgatory will rarely have the means to defend. They will lose valuable exemptions and thus crucial assets needed for their fresh start.

Only a very narrow application of claim preclusion to exemption amendments will prevent injustice to the honest but unfortunate debtor who needs

to preserve some assets for a minimal lifestyle post-bankruptcy. The bankruptcy court here recognized those principles and articulated why the legal elements of claim preclusion are inapplicable when exemptions are claimed under different statutes. It noted that the Washington state and Arizona state exemptions could not be relitigated and that the federal exemptions were "a different theory."[7] Justice will only be assured to debtor Johnie Lee Nance if this court reverses the district court and reinstates that bankruptcy court ruling.

CONCLUSION

For the reasons stated above, *Amici* respectfully request the Ninth Circuit to reverse the district court decision and reinstate the bankruptcy court's ruling in this matter.

Respectfully submitted this 24th Day of July, 2024,

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[7] Transcript, March 15, 2023 hearing, page 8-9.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FORM 8. CERTIFICATE OF COMPLIANCE FOR BRIEFS
9th Cir. Case Number(s) 24-2745

I am the attorney or self-represented party.

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[ ] a party or parties are filing a single brief in response to a longer joint brief.

[ ] complies with the length limit designated by court order dated _____.

[ ] is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

Signature /s/ *James J. Haller* **Date July 24, 2024**

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on July 24, 2024. All participants that are registered as CM/ECF users will receive service via appellate CM/ECF system.

In addition, I hereby certify that that I served the brief via email to all registered case participants on this date.

s/ James J. Haller
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STATEMENT UNDER FED. R. APP. P. 29(a)(4)(E)

No party's counsel authored this amicus curiae brief in whole or in part; no party or party's counsel contributed money that was intended to fund preparing or submitting this brief; and no person, other than the amici curiae, its members, or its counsel, contributed money that was intended to fund preparing or submitting this brief.

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