UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

IN RE:

ROBERT BAMBRICK SANDRA BAMBRICK	CASE NO. 06-33045 (Prev. Case No. 05-63671) Chapter 13
Debtors	

APPEARANCES:

BODOW LAW FIRM, PLLC Attorneys for Debtor 1925 Park Street Syracuse, NY 13208	THEODORE L. ARAUJO, ESQ. Of Counsel
FELT EVANS, LLP Attorneys for eCAST Settlement Corporation 4-6 North Park Row Clinton, New York 13323	EDWARD D. EARL, ESQ. Of Counsel
LYNN HARPER WILSON, ESQ. Staff Attorney, Chapter 13 Trustee 250 South Clinton Street, Suite 203 Syracuse, NY 13202	

Hon. Stephen D. Gerling, Chief U.S. Bankruptcy Judge

MEMORANDUM-DECISION, FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This matter comes before the Court on the objections of Robert E. and Sandra L. Bambrick ("Debtors") to nine proofs of claim filed in the above-referenced case.[1] Debtors' objections were filed on July 11, 2006, and noticed for a hearing scheduled for September 19,

[1] Although originally filed under Case No. 05-63671, the case was transferred to the Syracuse Division of the Northern District of New York by Order dated December 20, 2006, and assigned a new number, namely Case No. 06-33045.

2006. Responses to the Debtors' objections were filed on September 14, 2006 on behalf of eCAST Settlement Corp. ("eCAST") and LVNV Funding, LLC ("LVNV") (collectively the "Claimants").

The Court heard oral argument on the objections at its regular motion term in Syracuse, New York, on September 19, 2006. The Court adjourned the matter to October 17, 2006, in order to allow the parties an opportunity to submit memoranda of law on certain discrete issues identified by the Court. Following further argument on October 17, 2006, the Court again adjourned the matter to November 21, 2006, at which time it was taken under submission by the Court on the sole issue of whether the information listed by the Debtors in their schedules constituted judicial admissions.[2]

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[2] As of the date that the matter was submitted for decision, the Court had pending before it objections filed by the same attorney representing debtors, as well as responses by the same creditors in the following cases: Harry Wilbur Adams (Case No. 05-62452/06-32974), Daniel E. and April D. Alfred (Case No. 05-72989/06-31579), Lorrie E. Anderson (Case No. 05-70465/06-33506), Marie E. Benkovics (Case No. 05-68704/06-33371), Karen S. Besaw (Case No. 05-67117/06-33262), Morris H. and Janice J. Bigness (Case No. 04-62357/06-31385), Roger Lee Booker, Jr. (Case No. 05-60760/06-32886), Jessica Y. Boshak (Case No. 05-73124/06-33726), Nancy L. Brisson (Case No. 04-64997/06-32536), William E. and Patricia A. Brown (Case No. 04-68119), Tania T. and Christopher C. Budge (Case No. 05-66023/06-30842), Anthony B. Bullock (Case No. 05-65869/06-33179), Robert P. and Rebecca E. Bye (Case No. 05-67047), Tosha M. and Kenneth D. Canterbury (Case No. 04-68681/06-32796), Thomas G. and Gloria R. Cole (Case No. 05-67395/06-33283), John Willie Cooper, Sr. (Case No. 05-60469/06-32860), Albert C. DeJohn (Case No. 05-70048/06-33470), James DiNicola (Case No. 05-63752/06-33051), Brian P. Duffy (Case No. 05-68181/06-33326), Chris Dzierzanowski (Case No. 05-68644/06-33368), Debra K. Eipp, (Case No. 04-65245/06-32547), Michael D. and Bridget J. English (Case No. 05-70119/06-33476), Valentina M. Fabrizio (Case No. 05-69100/06-33401), James A. and Lori A. Francis (Case No. 05-61850/06-32936), David P. and Lynn Fratello (Case No. 05-69051/06-30902), Theodore F. and Kathleen Gibbons (Case No. 05-68696/06-33370), Judy A. Gotch (Case No. 05-73059/06-33720), Jean A. and James M. Grimes (Case No. 05-68758), Samuel A. Grosso, Jr. (Case No. 05-65630/06-33152), Steven P. and Cheryl A. Halliwell (Case No. 05-67946/06-33313), Lorna V. Hyman (Case No. 05-66638/06-33230), Samuel A. Mullett (Case No. 05-66689/06-33234), Paul Anthony and Michele Christine Nicotra (Case No. 05-61346/06-32912), Scott F. and Stefanie L. Schimpff (Case No. 05-67026/06-33252), Rodney

JURISDICTIONAL STATEMENT

The Court has core jurisdiction over the parties and subject matter of this contested matter pursuant to 28 U.S.C. §§ 1334, 157(a), (b)(1), (b)(2)(A), (B) and (O).

FACTS

Debtors filed a voluntary Chapter 13 petition (the "Petition") on May 7, 2005. Debtors' chapter 13 plan ("Plan") was confirmed by the Court on August 15, 2005. The Plan provides for a dividend of not less than 27% to unsecured creditors. Of relevance to the matter herein is the following information:

Claim Nos. 10 and 12

The Debtors listed in their schedules an unsecured debt owed to Chase Bank, Account No. 5260 3123 6005 1786, for credit card purchases. *See* Schedule F of Debtors' Petition, Sheet no. 7 of 22. The claim of $4,176.39 is listed as undisputed. *Id.* On June 23, 2005, Sherman Acquisition L.P., as agent for Citifinancial, Inc. with an address c/o Resurgent Capital Services,

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J. and Tracy L. Smith (Case No. 04-64611/06-32520), Edward G. Ten Eyck (Case No. 05-69107/06-33403), Michael A. and Melody M. Verrillo (Case No. 04-64196/06-32498) and Cathy Zoll (Case No. 03-68228/06-32253).

The Court originally indicated that it would take the matter under submission in the case of Lorrie Anderson. However, upon review of the debtor's schedules in the Anderson case, the Court concluded that the discrete issue under consideration did not arise in that particular case and rather than render an advisory opinion, the Court has elected to render its decision in the context of the case of Robert E. and Sandra L. Bambrick. This Memorandum-Decision will also constitute a decision with respect to the pending contested matters in the above-referenced cases to the extent applicable.

filed a proof of claim in the amount of $4,343.54. *See* Claim No. 10. The proof of claim identifies the account number as 5260312360051786. *Id.* Attached to the proof of claim is an "Account Detail" identifying the previous creditor as Chase Manhattan Bank. *Id.* On June 23, 2005, an amended proof of claim was filed, which simply identified the account number as 1786 and the creditor as Chase Bank USA, N.A. [rather than Citifinancial] with an address of Resurgent Capital Services. *See* Claim No. 12. The Account Detail, attached to the amended proof of claim, identifies the "Previous Creditor" as Chase Manhattan Bank. *Id.* On October 10, 2006, a "Notice of Transfer of Claim" was filed identifying LVNV Funding LLC, c/o Resurgent Capital Services, as assignee or purchaser. Attached to the Notice is a Bill of Sale transferring the account from Chase Manhattan Bank USA, N.A. to Sherman Originator LLC. The Debtors object to both Claim No. 10, identified as being held by Resurgent Capital Services/Sherman Acquisition/Citifinancial, and Claim No. 12, identified as being held by Resurgent Capital Services/Chase Bank.

Claim Nos. 14 and 24

Listed on Schedule F of the Debtors' Petition is a debt owed to JC Penney, Account No. 148-199-052-9 on a "store card." *See* Schedule F at Sheet no. 15 of 22. The claim of $565.22 is listed as undisputed. *Id.* On July 20, 2005, eCAST, as assignee of General Electric/JCP Consumer, filed a proof of claim in the amount of $606.34 with respect to Account **********0529. *See* Claim No. 14. Attached to the proof of claim was simply an Account Summary showing a balance at filing date of $606.34. On September 12, 2006, eCAST filed an amended proof of claim, which included account statements for January 10, 2005 through April 10, 2005, listing late fees and interest or finance charges. *See* Claim No. 24. The account

statement dated March 10, 2005, shows a balance of $565.22. The account statement dated April 10, 2005, shows a balance of $606.34. Also attached is an Acceptance Certificate signed by Sandra Bambrick on November 20, 2000. *Id.* There are also copies of a Bill of Sale, dated June 24, 2002, attached, although no specific accounts are identified therein.

Claim Nos. 15 and 25

Debtors list a debt to Old Navy on Schedule F in the undisputed amount of $352.73, identified as Account No. 6018 5960 6112 8124. *See* Schedule F at Sheet no. 16 of 22. On July 20, 2005, eCAST, as assignee of General Electric/Old Navy, filed a proof of claim in the amount of $363.12 with respect to Account *********8124. *See* Proof of Claim No. 15. Attached to the proof of claim was simply an Account Summary showing a balance at filing date of $363.12. *Id.* On September 12, 2006, eCAST filed an amended proof of claim, which included account statements for January 14, 2005 through April 14, 2005, listing late fees and interest or finance charges. *See* Claim No. 25. The account statement dated March 14, 2005, shows a balance of $352.73. The account statement dated April 14, 2005, shows a balance of $363.12. Also attached is an Old Navy Account Application signed by Sandra Bambrick on March 26, 2001. *Id.* There are also copies of a Bill of Sale, dated June 24, 2002, attached, although no specific accounts are identified therein.

Claim Nos. 16 and 26

Debtors' Schedule F lists an undisputed debt owed to Direct Merchants Bank, Account 5458 0038 0301 5866, in the amount of $3,060.47 and identified as credit card purchases. *See* Schedule F at Sheet no. 10 of 22. On August 8, 2005, eCAST, as agent for Metris Receivables, Inc./Direct Merchants Credit Card Bank, filed a proof of claim in the amount of $3,135.78 with

respect to Account **********5866. *See* Proof of Claim No. 16. Attached to the proof of claim is an Account Summary showing balances on the account from February 18, 2005, through May 19, 2005. *See* Claim No. 16. On September 12, 2006, eCAST filed an amended proof of claim, which included account statements for December 21, 2004 through April 20, 2005, listing late fees and interest or finance charges. *See* Claim No. 26. The account statement dated March 22, 2005, shows a balance of $3,060.47. The account statement dated April 20, 2005, shows a balance of $3,135.78. Also attached is an Acceptance Certificate signed by Sandra Bambrick, although undated. *Id.* There is also a copy of a Transfer Statement, dated June 30, 2004, between Metris Receivables, Inc. and eCAST attached transferring unidentified accounts to eCAST. *Id.*

Claim No. 17-1 and 17-2

The Debtors also listed a debt owed to Citi Cards, Account No. 5419 3108 6089 9126, for credit card purchases. *See* Schedule F at Sheet no. 9 of 22. The claim of $1,084.31 is listed as undisputed. *Id.* On August 11, 2005, eCAST, "assignee of Citibank SD, NA, Successor to Associates National Bank, filed a proof of claim in the amount of $1,111.83. *See* Claim No. 17-1. The proof of claim identifies the account number as **********9126. Attached to the proof of claim is an Account Summary simply indicating a "Balance at Filing Date" of $1,111.83. On October 16, 2006, eCAST filed an amended proof of claim to which it attached copies of statements from January 10, 2005 through April 8, 2005, listing late fees and interest or finance charges. *See* Claim No. 17-2. According to the account statement dated March 9, 2005, the balance owing on the account was $1,084.31. According to the account statement dated April 8, 2005, the balance owing was $1,111.83. Attached to the amended proof of claim is an Assignment of Accounts, dated November 30, 2001, showing a transfer by Associates National

Bank (Delaware) to eCAST with reference to "unsecured consumer bank accounts" but without any reference to a particular account numbers.

Claim No. 20

Schedule F includes a claim of HSBC Retail Services (COMP USA), Account No. 0007001115103798518, in the undisputed amount of $2,138.77. *See* Schedule F at Sheet no. 14 of 22. On August 19, 2005, eCAST, as assignee of Houshold Bank (COMP USA), filed a proof of claim in the amount of $2,217.74 with respect to Account ********** 8518. *See* Proof of Claim No. 20. There are no attachments to the proof of claim and no amendments filed by eCAST. In addition, in its response to the Debtors' objection, filed on behalf of eCAST on September 14, 2006, no mention is made to Claim No. 20.[3]

Claim No. 23

On Schedule F, the Debtors list a claim of Citgo/Citi with respect to Account No. 501872022 as disputed in an unknown amount. *See* Schedule F at Sheet no. 8 of 22. On September 9, 2005, LVNV, c/o Resurgent Capital Services,[4] filed a proof of claim in the amount

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[3] At the hearing on October 17, 2006, Patrick J. Haber, Esq. appeared as local counsel on behalf of Household Bank and eCAST, but had filed no papers in response to the Debtors' objection.

[4] LVNV also filed a proof of claim on September 8, 2005, in the amount of $1,322.61, identified as an "Unsecured Charge Off" with respect to Account No. 1150052885466. *See* Claim No. 22. According to the unsworn declaration of Michael A. Keaton, Senior Vice President of Resurgent Capital Services, Sherman Originator, LLC and Sherman Acquisition, LP and authorized representative of LVNV Funding, LLC, executed on September 11, 2006, Account No. 1150052885466 was an account previously owned by Sears, Roebuck and Co. and Citibank USA. *See* Amended Response, filed on behalf of LVNV on October 12, 2006. Although LVNV asserts that the Debtors scheduled the claim, the Court is unable to identify any such claim under that account number in Schedule F. For purposes of this decision, which addresses a discrete issue not implicated by Claim No. 22, the Court need not make any specific findings with respect to that particular claim.

of $331.98 with respect to an Associates National Bank Oil & Gas Card, Account No. 501872022. *See* Claim No. 23. Attached to the proof of claim is a Bill of Sale and Assignment of Accounts between Citibank (South Dakota), N.A. and Sherman Originator LLC, dated June 15, 2005. *Id.* There is no identification of what accounts were assigned.

Summary of Claims

Claim No.	Amount of Proof of Claim	Amount Listed by Debtors
10 & 12	$4,343.54	$4,176.39
14 & 24	$ 565.22	$ 565.22 (Same as Statement with billing date of 3/10/2005)
15 & 25	$ 363.12 (Same as Acct. Statement, dated 4/14/2005)	$ 352.73 (Same as Acct. Statement, dated 3/14/2005)
16 & 26	$3,135.78 (Same as Acct. Summary for April 2005)	$3,060.47(Same as Acct. Summary for March 2005)
17-1 & 17-2	$1,111.83 (Same as Acct. Statement, dated May 3, 2005)	$1,084.3 (Same as Acct. Statement dated April 4, 2005)
20	$2,217.74	$2,138.77
23	$ 331.98	Unknown/Disputed

DISCUSSION

The Debtors originally argued that Claim Nos. 10, 12, 14, 15, 16, 17, 20, 22 and 23 failed to provide *prima facie* evidence of their validity and amount based on the Court's prior decision in *In re Irons*, 343 B.R. 32 (Bankr. N.D.N.Y. March 13, 2006).[5] In *Irons* the Court relied on the

[5] The Debtors also rely on *In re Henry*, 311 B.R. 813 (Bankr. W.D. Wash. 2004) (B.J. K. Overstreet) for the proposition that a proof of claim for a credit card obligation is not entitled to a presumption of validity if not accompanied by a copy of the credit card agreement or loan contract. *See* Debtors' Objection at ¶ 16. The Court would note that in several subsequent decisions, Judge Overstreet has clarified her holding in *Henry* and indicated that she adopts the holding in *In re Cluff,* 313 B.R. 323 (Bankr. D.Utah 2004), *aff'd sub nom. Cluff v. eCast Settlement*, Case No. 2:04-CV-078 TS, 2006 WL 2820005 (D.Utah Sept. 29, 2006). *See, e.g.*,

decision in *Cluff* in which the bankruptcy court reasoned that a summary prepared in support of a proof of claim involving credit card debt should

> "(i) include the amount of the debts; (ii) indicate the name and account number of the debtor; (iii) be in the form of a business record or some other equally reliable format; and (iv) if the claim includes charges such as interest, late fees and attorney's fees, the summary should include a statement giving the breakdown of those elements."

Irons, 343 B.R. at 40, quoting *Cluff*, 313 B.R. at 335. Satisfying the first three requirements constituted *prima facie* evidence of the validity of the claim; satisfying the fourth requirement constituted *prima facie* evidence of the amount of the claim. *Irons*, 343 B.R. at 40-41. The Court noted that even if the proofs of claim did not constitute *prima facie* evidence of the amount of the claim, they "are some evidence of eCAST's claims and, in the absence of any evidence to contradict the amounts of the claims, there is no basis to disallow the claims pursuant to Code § 502(b).[6] *Id.* at 41.

In re Vann, 321 B.R. 734, 736 (Bankr. W.D. Wash. 2005).

[6] Debtors' counsel in this case asserts that his objections are not based on Code § 502(b). Rather, he asserts that he is basing them on Code § 502(j). The Debtors' Notice of Motion, seeking to vacate the proofs of claims, makes reference only to Rule 7055(2) and Rule 3001 of the Federal Rules of Bankruptcy Procedure ("Fed.R.Bankr.P."). The Court makes no findings concerning whether Code § 502(j) is an appropriate basis for the relief currently being sought, except to note that Code § 502(j) generally authorizes reconsideration of claims for cause based on the standards set forth in Rule 60 of the Federal Rules of Civil Procedure, incorporated by reference into Fed.R.Bankr.P. 9024. *See In re Williams*, 276 B.R. 899, 906 (C.D.Ill. 1999). In *In re Habiballa*, 337 B.R. 911 (Bankr. E.D.Wis. 2006), the court overruled the debtor's objection, which was based on a lack of supporting documentation, and allowed the claim of Jefferson Capital on the grounds that the debtor had failed to rebut the prima facie validity of Jefferson Capital's claim. *Id.* at 917. The court indicated that the debtor was free to move for reconsideration of the allowed claim under Code § 502(j) by providing evidence of "equal probative value to the prima facie evidence presented by the claim." *Id.* In fact, Fed.R.Bankr.P. 3008 specifies that "[a] party in interest may move for reconsideration of an order allowing or disallowing a claim . . . ." At the time the various objections were filed by the Debtors, there had been no such order.

Both eCAST and LVNV take the position that the Debtors' listing of the claims in their schedules as undisputed in approximately the same amount as found in the applicable proofs of claim constitutes a judicial admission of their validity and amount. This was an argument made in *Irons* by eCAST which the Court chose not to address. The Claimants contend that a break out of interest and late charges by the creditor, as required in *Irons*, is unnecessary to establish the *prima facie* validity and amount of the claims if a debtor has listed the claims as undisputed in his/her schedules. In support of their position, the Claimants rely on a decision of the Hon. Robert A. Mark, Chief Judge of the United States Bankruptcy Court for the Southern District of Florida, in which he points out that

> if a debt is scheduled, particularly where it is scheduled for an amount equal to or exceeding the amount of the proof of claim,[7] this Court will not tolerate attempts to obtain orders disallowing these claims if the only basis for the objection is lack of documentation.

In re Moreno, 341 B.R. 813, 819 (Bankr. S.D.Fla. 2006).

The Debtors contend that by listing the claims in their schedules as undisputed, they are admitting to the existence of the claims but not to their validity or amount. They point out that there is nothing to prevent the Debtors from amending their schedules to indicate that a claim is disputed.[8] Furthermore, the Debtors assert that it is not an admission that would preclude them

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[7] In the matter under consideration, the claims are scheduled by the Debtors in amounts equal to or <u>less than</u> the amounts listed on the proofs of claim.

[8] Debtors' counsel represented to the Court that he had been requested by the chapter 13 trustee, as well as by the office of the United States Trustee, not to dispute the claims on a "wholesale basis" because it would interfere with the administration of the cases. According to Debtors' counsel, many of the claims listed in the schedules were derived from credit reports compiled from information provided by the creditors themselves and not based on any independent investigation by the credit reporting agencies.

from later attacking the proofs of claim and compelling the Claimants to provide evidence in support of their claims by way of amendment or an evidentiary hearing.[9] While they acknowledge that an obligation exists, they argue that they may challenge the claim for "cause" pursuant to Code § 502(j) on the basis that the creditors have failed to provide detailed information sufficient to confirm the validity and, more importantly, the amount of their claims. It is the Debtors' position that the only way for them to obtain that information is to object to the proofs of claim.

The Court notes that with respect to the objections under consideration, eCAST filed amendments to Claims 14, 15, 16 and 17 prior to the completion of the hearing on the Debtors' objections, providing them with account statements for several months prepetition. The question raised by the Claimants is whether such account statements are even necessary in order for their claims to be deemed presumptively valid. The Claimants take the position that by listing the claims in their schedules as undisputed in amounts that approximate those identified in the proofs of claim, the Debtors have made judicial admissions concerning the validity and amount of such claims.

In support of their argument that the Debtors' schedules should be construed as judicial admissions, the Claimants direct the Court to its prior holding in *In re Leonard*, 151 B.R. 639

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[9] Fed.R.Bankr.P. 3007 requires that an objection to the allowance of a claim be mailed to a claimant at least 30 days prior to the hearing. Debtors' counsel explained that in objecting to various proofs of claim, it is the practice of his office to schedule the hearing on the objection sixty days after filing the objection in order to afford the claimants an opportunity to amend their proofs of claim to comply with the Court's prior holding in *Irons*, making an evidentiary hearing unnecessary if the additional information is satisfactory to the Debtors. Indeed, the proofs of claim under consideration by this Court in this particular case were initially filed without the benefit of the Court's decision in *Irons*.

(Bankr. N.D.N.Y. 1992). In that case, the Court found that the debtors' listing of a secured debt in their schedules constituted an admission under Rule 801(d)(2) of the Federal Rules of Evidence "that such a debt was in fact owed to SSI as of the filing of the petition." *Id.* at 643. The Court made no finding, however, that it was a judicial admission on the part of the debtors. Furthermore, the Court, rather than relying on the amount listed in the debtors' schedules, separately calculated the amount of the debt. *Id.* at 644, n.3.

A judicial admission is defined as "[a] formal waiver of proof that relieves an opposing party from having to prove the admitted fact and bars the party who made the admission from disputing it." BLACK'S LAW DICTIONARY 51(8th ed. 2004). In some instances, courts have concluded that statements in bankruptcy schedules, which are executed under the penalty of perjury, are judicial admissions that are binding on the debtor and may not be explained or controverted. *See, e.g., In re Jacobson*, Case No. 04-51572, Adv. Pro. No. 04-5084, 2006 WL 2796672, *17 (W.D. Tex. Sept. 26, 2006); *In re Musgrove*, 187 B.R. 808, 812-13 (Bankr. N.D. Ga. 1995). Other courts have concluded that the schedules constitute an evidentiary admission, rather than a judicial admission. *See, e.g., In re Bohrer*, 266 B.R. 200, 201 (Bankr. N.D.Cal. 2001).

As discussed in a leading treatise on evidence,

> [w]hen the term admission is used without any qualifying adjective, the customary meaning is an evidentiary admission, that is, words in oral or written form or conduct of a party or a representative offered in evidence against the party. *Evidentiary* admissions are to be distinguished from *judicial* admissions. Judicial admissions are not evidence at all. Rather, they are formal concessions in the pleadings in the case or stipulations by a party or its counsel that have the effect of withdrawing a fact from issue and dispensing wholly with the need for proof of the fact. Thus, the judicial admission, unless allowed by the court to be withdrawn, is conclusive in the case, whereas the evidentiary admission is not conclusive but is always subject to contradiction or explanation.

2 John William Strong, McCormick on Evidence §254 at 142 (4th ed. 1992). Of particular relevance to the matter under consideration is a statement made by the United States Court of Appeals for the Second Circuit some 65 years ago:

> Admissions may always be explained by the party against whom they are used. (citations omitted). Such a rule has particularly cogent reasons for application when the admission is a schedule in bankruptcy. In view of the severe penalties for false statements, . . . the denial of a discharge for the same reason, . . . and the failure of a discharge to apply to unscheduled debts, . . . a bankrupt is well advised to put down every conceivable obligation without any reservation. When later confronted by his statement, he should obviously be permitted to explain all the extenuating circumstances."

Commercial Banking Corp. v. Martel, 123 F.2d 846, 847 (2d Cir. 1941).

In the matter under consideration, the Court finds that the Debtors' schedules do not constitute judicial admissions; rather, they are evidentiary admissions made by the Debtors. In response to a debtor's objection, "the bankruptcy court may properly consider as admissions or evidence any information contained in the debtor's bankruptcy schedules, and may also consider the creditor's failure to provide relevant documentation." *In re Campbell*, 336 B.R. 430, 436 (9th Cir. BAP 2005); *see also In re Burkett*, 329 B.R. 820, 829 (Bankr S.D. Ohio 2005) (commenting that "[i]n many instances, a claim verified by a debtor's schedules may require no documentation whatsoever. If a proof of claim correlates to a debt listed by the debtor in his or her schedules, this may be sufficient, by itself, to establish the prima facie validity of the proof of claim" (emphasis supplied)); *In re Jorczak*, 314 B.R. 474, 481-82 (Bankr. D. Conn. 2004) (indicating that under certain circumstances admissions contained in the debtor's filed schedules may establish at least a *prima facie* case with respect to a proof of claim insofar as the debtor's liability was concerned). In addition, where the Debtors' schedules approximate the amount set forth in a proof of claim, which nonetheless lacks the documents necessary to establish the

presumption of *prima facie* status under the *Irons* analysis, and the Debtors have not indicated that the amount is disputed in their schedules, the Court would be inclined to allow the claim in the amount set forth in those schedules, absent any documentation attached to the proof of claim to the contrary. If there is information attached to the proof of claim such as several recent account statements to support the higher amount, the Debtors are still entitled to provide substantive evidence to overcome their prior admission. *See In re Relford*, 323 B.R. 669, 676 (Bankr. S.D. Ind. 2004).

Based on the information before the Court, it will allow Claim Nos. 10, 12, 14, 15, 16, and 17-1. Not only have Claim Nos. 14, 15, 16 and 17-1 been amended since the objections were filed so as to give them prima facie status, but also the Debtors' listings in their schedules closely approximates the amount listed in the proofs of claim. It appears that the higher amounts found in the proofs of claim simply represent additional charges that were incurred in the month prior to the filing date that were not known to the Debtors when their schedules were completed.

The Court concludes that Claim Nos. 20, 22 and 23 lack prima facie evidence to support their validity and amount; however, that is not a basis for their disallowance. Claim No. 20, which refers to Account No. **********8518 and identifies the original creditor as COMP USA, is a claim listed in the Debtors' schedules. However, the Debtors identify the claim as that of HSBC Retail Services, not Household Bank as identified in the proof of claim. No additional documentation has been provided to support the amount and the actual creditor. The amount listed in Claim No. 20, namely $2,217.74, closely approximates the amount listed in the Debtors' schedules, namely $2,138.77. The proof of claim, as filed, does not provide prima facie evidence to warrant a presumption of validity and amount. The Debtors clearly have identified a debt

owed with respect to an account identified with the last four digits of "8518," giving some credence to the validity of the claim. However, the Debtors are certainly entitled to request additional documentation to support the difference in the two amounts and the rightful claimant. If, after receiving the additional documentation, they believe that the debt has been paid or that the amount of the claim, as well as the identity of the claimant, have not been established to their satisfaction, they are certainly within their rights to file an affidavit to that effect.

Because the debt asserted in Claim No. 22, referencing Account No. 1150052885466, does not appear to be listed in the Debtors' schedules, there has been no acknowledgment by the Debtors of either the validity or amount of that claim. Additional information is certainly necessary if the claim is to be allowed. With respect to Claim No. 23, the Debtors have acknowledged the validity of the claim by listing it in their schedules; however, the amount is apparently in dispute. The Debtors are certainly entitled to request additional documentation. *See Irons*, 343 B.R. at 40. Upon receipt of such documentation, the Debtors are entitled to submit an affidavit in support of an objection, indicating that the basis for their belief that the amount of claim is not correct or that the debt has been satisfied.

Based on the foregoing, it is hereby

ORDERED that the Debtors' objections requesting that Claim Nos. 10, 12, 14, 15, 16, 17-1, 20, 22 and 23 be disallowed or "vacated" are denied without prejudice.[10]

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[10] With respect to the other contested matters pending in the cases referenced at Footnote 2, *supra*, the Court would request that the debtors' counsel, upon review of the Decision, herein, submit an affidavit to the Court, as well as the respective parties, indicating his intention with respect to the objections previously filed, i.e. whether the objections are being withdrawn, whether additional documentation will be requested, or whether the Court should schedule them to be heard at a subsequent motion calendar and, possibly, an evidentiary hearing. The requested affidavit shall be filed and served not later than 45 days from the date of this Order.

Dated at Utica, New York

this 5th day of February 2007

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STEPHEN D. GERLING
Chief U.S. Bankruptcy Judge