

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

In re:)
)
JOSEPHINE McCARTHY) Case No. 04-10493-SSM
) Chapter 13
Debtor)

MEMORANDUM OPINION

A hearing was held in open court on June 9, 2004, on the debtor's objection to three proofs of claim, two by eCAST Settlement Corporation as assignee of Providian National Bank ("eCAST"), and one by Direct Merchants Credit Card Bank ("Direct Merchants"), totaling \$15,659.98. eCAST filed a response to the objection and was present by counsel. Direct Merchants neither responded nor appeared. The issue with respect to all three claims is the same, namely, whether a claim based on the debtor's use of a credit card should be disallowed because the proof of claim does not set forth the amount of interest or other charges included in the account balance and because copies of the cardholder agreement and account statements are not attached.

Background

Josephine McCarthy ("the debtor") filed a voluntary petition in this court on February 5, 2004, for adjustment of her debts under chapter 13 of the Bankruptcy Code. The debtor owns two parcels of real estate. She resides in one ("the Jackson Avenue property") and proposes to sell the other ("the Coriander Circle property"). Her plan, filed on February 24, 2004, provides for the payment to the trustee of \$100 per month for six

months plus \$52,803 from the sale of the Coriander Circle property, with a projected dividend on unsecured claims of 100 cents on the dollar. The plan was confirmed without objection on June 15, 2004.

On her schedules, the debtor lists \$26,710.95 in unsecured claims. Included among these are a \$7,260.43 debt to Direct Merchants Bank and debts of \$5,498.98 and \$2,509.93 to Providian National Bank. Neither the Direct Merchants nor the Providian debts are scheduled as disputed, unliquidated, or contingent. Direct Merchants filed a timely proof of claim on June 7, 2004 in the amount of \$7,553.34. eCAST filed timely proofs of claim on April 23, 2004, in the amounts of \$5,498.98 and \$2,607.66 as assignee of Providian National Bank. Both Direct Merchants and eCAST left unchecked the block on the proof of claim form that instructs, "Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges." No itemization was attached to either the Direct Merchants or the eCAST proofs of claim breaking out interest or other charges, nor were copies of account statements, credit card applications, or cardholder agreements attached. The eCast proofs of claim each have attached a one-page document entitled "Accounting Summary." This sheet simply sets forth the debtor's name, address, and redacted social security number; the bankruptcy case number, filing date, and chapter; the redacted account number; and a dollar figure labeled "Balance at Filing Date." The sheet concludes with this statement:

The above account information was derived from the information contained in the account database of the assignor, as well as information from other sources, including the Bankruptcy Court.

On the proof of claim itself, eCAST has modified the language of the official form.

Section 8 of the official form instructs as follows:

8. Supporting Documents: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of liens. **DO NOT SEND ORIGINAL DOCUMENTS.** If the documents are not available, explain. If the documents are voluminous, attach a summary.

Official Form 10. eCAST has replaced this language with the following:

8. SUPPORTING DOCUMENTS. Itemized monthly statements of account were mailed to the debtor pre-petition; claimant maintains copies of such statements on microfilm or image processing and reproduction of same absent a dispute as to the balance would be unduly time consuming and burdensome; nevertheless, where an interested party so requests, claimant will search its records to provide copies of said month [*sic*] accounts statements. To request further documentation, please call Becket & Lee, LLP at 1-800-962-6030 and ask to speak to the Claims Servicing Supervisor. Claims may include contractual interest and/or late charges.

After the debtor filed her objections to the claims, Becket & Lee sent the debtor's attorney copies of the monthly statements for the two Providian accounts for the two-year period leading up to the bankruptcy filing but did not provide copies of the cardholder agreements.

Copies of the statements for both accounts were provided to the court at the hearing, although not formally introduced into evidence. The court has nevertheless reviewed both sets of statements for such light as they may shed on the controversy.¹ Although one set is incomplete (statements for two months are missing), the statements show that for the last

¹ A summary of the statements has been prepared by the court and is attached to this opinion.

two years (during which the balance of the account increased from \$4,888 to \$5,357), the debtor made only \$218.16 (net of store credits) in purchases on her Providian Visa card while making \$3,058.00 in payments, all of which have gone to pay finance charges (at a whopping 29.99%),² late charges, over-limit fees, bad check fees, and phone payment fees. On the Providian Mastercard for the same period (during which the account balance increased from \$2,020.90 to \$2,607.66) she made only \$203.06 in purchases while making \$2,008.00 in payments. Again, all of the payments have gone to pay finance and other charges. Although the statements do not go sufficiently far back to determine what portion of the current balances consist of finance and other charges, it is possible to set a floor on that figure. That is, even if one generously assumes that the January 2002 opening balance consists only of purchases, cash advances, or balance transfers, the current balance on the Visa account includes at least \$393.07 in finance and other charges.³ For the MasterCard, the figure is at least \$383.70.

Discussion

I.

Except in chapter 9 and chapter 11 cases – where certain claims listed on the debtor’s schedules are “deemed filed” – a creditor must file a proof of claim in order to receive

² The court is unable to determine if this is a default rate. The issue could be relevant in a chapter 7 case – or in applying the best interest of creditors test in a chapter 13 case – because debts in the nature of penalties are paid only after compensatory debts are paid in full. § 726(a)(4), Bankruptcy Code.

³ The calculation is straight-forward. The account balance grew \$611.23 over the two year period. The debtor made only \$218.16 in purchases net of store credits. The difference of \$393.07 necessarily consists of finance and other charges.

distributions in a bankruptcy case. Fed.R.Bankr.P. 3002(a). A claim, if filed, is allowed unless a party in interest objects, in which event the court, after notice and a hearing, is required to determine the amount of the claim as of the date of the filing of the petition. § 502(a) & (b), Bankruptcy Code.

A proof of claim is “a written statement setting forth a creditor’s claim” and must “conform substantially” to Official Form 10. Fed.R.Bankr.P. 3001(a). *See also* Fed.R.Bankr.P. 9009 (requiring that the Official Forms “be observed and used with alterations as may be appropriate.”). The rules provide that when a creditor’s claim “is based on a writing,” the original or duplicate of the writing must be filed with the proof of claim unless it has been lost or destroyed, in which event a statement of the circumstances of the loss or destruction must be filed with the claim. Fed.R.Bankr.P. 3001(c). Official Form 10 instructs the creditor to attach “copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of liens,” but also states, “If the documents are not available, explain. If the documents are voluminous, attach a summary.” As noted, the Official Form also requires the creditor to specify whether the claim includes “any interest or other charges in addition to the principal amount of the claim” and to attach an “itemized statement of all interest or additional charges.”

A proof of claim executed and filed in accordance with the Rules is “prima facie evidence of the validity and amount of the claim.” Fed.R.Bankr.P. 3001(f). As a result, the party objecting to such a claim has the initial burden of presenting evidence to overcome the prima facie showing made by the proof of claim. *In re C-4 Media Cable South, L.P.*, 150

B.R. 374, 377 (Bankr. E.D. Va. 1992). Once the party has done so, the burden of proof shifts to the creditor to establish the validity and amount of its claim, unless the objecting party would have had the burden of proof outside of bankruptcy, in which case the burden remains with the objecting party. *Raleigh v. Ill. Dep't of Rev.*, 530 U.S. 15, 120 S.Ct 1951, 147 L.Ed.2d 13 (2000); *In re C-4 Media Cable South, L.P.*, 150 B.R. at 377.

II.

The debtor's position is that the claims in question should be disallowed because the creditor did not attach the writing upon which the claim is based and did not state the amount of interest or other charges included in the claim. The issue appears to be one of first impression in this district, although it is one that is drawing increasing attention across the country in consumer cases. See S. Andrew Jurs, *Unsecured Claims and Rule 3001: How Much 'Writing' or Supporting Information is Required?*, Am. Bankr. Inst. J., June 2004, at 10. eCast does not really address the failure to itemize the amount of interest or other charges included in its claims but asserts that the "summary" it has attached to its two proofs of claim is sufficient to satisfy the "writing" requirement.

A.

As a threshold matter, the court must address eCast's argument that the debtor is precluded from objecting to its claims because she has judicially admitted their validity. On her schedules, the debtor listed unsecured debts owed to Providian National Bank in amounts that are the same or close to the same as those set forth on the eCast proofs of claim. (The amount for the Visa account is identical, while the proof of claim for the Mastercard account is \$97.73 higher than the amount shown on the schedules). The

schedules do not list either of the Providian debts as disputed, contingent, or unliquidated. Those schedules, eCast argues, are “judicial admissions” binding upon the debtor, and the debtor should therefore not be heard to challenge the underlying validity of the claims.

The argument certainly has some appeal. Schedules in bankruptcy cases are required to be filed under penalty of perjury, and the entire functioning of the bankruptcy system assumes and depends upon the accuracy of the schedules. Not surprisingly, many courts have held that the listing of a debt on the schedules - without also describing it as disputed, contingent, or unliquidated - is a judicial admission, or alternatively, an evidentiary admission. See *In re Musgrove*, 187 B.R. 808 (N.D. Ga. 1995) (debtor could not argue in adversary proceeding to determine the dischargeability of a debt that he was not liable to the creditor, since his listing of the debt on his schedules as undisputed was a judicial admission); *In re Standfield*, 152 B.R. 528, 531 (Bankr. N.D. Ill. 1993) (holding that in chapter 13 case “[v]erified schedules and statements filed by [d]ebtors are not just pleadings, motions, or exhibits, they contain evidentiary admissions.”); *Larson v. Groos Bank, N.A.*, 204 B.R. 502 (W.D. Tex. 1996) (noting that bankruptcy schedules “are executed under penalty of perjury and when offered against a debtor are eligible for treatment as judicial admissions.”); *In re Leonard*, 151 B.R. 639 (Bankr. N.D. N.Y. 1992) (debtor’s scheduling of a secured debt as undisputed was an admission under Fed.R.Evid. 801(d)(2) of its validity, with the court characterizing the filing of schedules by the debtor as “a solemn admission which, *unless corrected, binds him.*”) (quoting *Sovran Bank, N.A. v. Anderson*, 743 F.2d 223, 225 n.1 (4th Cir. 1984) (emphasis in original)).

It is true, as one court has observed, that the amount listed on the schedules for a credit card debt may simply represent what is shown on the last account statement the debtor received. *In re Henry*, No. 03-25104, 2004 Bankr. LEXIS 727, * at 4 (Bankr. W.D. Wash., April 14, 2004). Because schedules must be filed early in the case, debtor's counsel will rarely have had an opportunity to confirm the lawfulness of interest, fees and other charges included in the account balance. Such charges, moreover, may represent a significant portion of the account balance. See Mitchell Pacelle, *Growing Profit Source for Banks: Fees From Riskiest Card Holders*, Wall St. J., July 6, 2004 at A1 (reporting that credit card fees in 2003 rose to 33.4% of total credit card revenue, and that the credit card industry reaped \$11.7 billion from penalty fees). The increasing prevalence of such fees, according to some critics, has come about because banks, in an effort "to squeeze more and more revenue from consumers struggling to make ends meet," are letting them spend rather than cutting them off as bad credit risks and are then "hitting them with larger and larger penalties for running up their credit, going over their credit limits, paying late and getting cash advances from their credit cards." *Id.* The rules by which finance charges and other charges are computed and imposed are typically quite complicated and beyond the ready understanding of the average consumer debtor. *Id.* at A8 (noting that credit card disclosures "have ballooned from little more than a page 20 years ago to 30 pages or more of small print today").

Although the court readily sympathizes with these concerns, to allow debtors to contradict their sworn schedules would plainly be contrary to sound bankruptcy policy. Of course, to the extent that a debtor was genuinely mistaken as to the validity or amount of the debt at the time the schedules were signed, he or she has the right to amend the schedules at

any time before the case is closed. Fed.R.Bankr.P. 1009(a). Absent such amendment, however, the court concludes that the scheduling of the debt as undisputed, non-contingent, and unliquidated should be binding on the debtor.⁴

This conclusion, however, does not entirely dispose of the objections. Only one of the three challenged claims – eCast’s claim for \$5,498.98 – is in the same amount as the debtor has listed on her schedules.⁵ eCast’s other claim and the claim filed by Direct Merchants are in amounts greater than those admitted on the schedules. For that reason, the debtor’s scheduling of those two claims as undisputed does not prevent her from contesting them.

B.

The general trend of the reported decisions is that a creditor’s failure to attach supporting documents to its proof of claim will not ordinarily result in disallowance of the claim but will at most deprive the proof of claim of its prima facie effect. *In re Trails End Lodge, Inc.*, 51 B.R. 209, 210 (D.Vt. 1985) (failure to attach state court judgment to proof of claim was not fatal, since purpose of Rule 3001(c) is to provide debtor with adequate information to determine the validity of the claim and whether it should be contested, and debtor had already listed claim on its schedules as disputed); *In re Motels of Am., Inc.*, 146 B.R. 544, 545-46 (Bankr. D. Del. 1992) (failure to attach private placement memorandum not fatal where proof of claim mentioned the document and debtor already had a copy, since

⁴ The debtor’s admission would not, of course, be binding on a chapter 7 or chapter 13 trustee or on another creditor seeking to have the claim disallowed.

⁵ To be sure, eCast is not the same creditor shown on the schedules, but the court does not understand the debtor to be disputing eCast’s status as assignee of Providian’s claim.

purpose of Rule 3001(c) is to provide debtor with sufficient information to determine whether it should object to claim); *In re Lindell Drop Forge Co.*, 111 B.R. 137, 140 (Bankr. W.D. Mich. 1990) (\$8.5 million claim filed by union not entitled to prima facie validity under Rule 3001(f) where it contained no information as to how amounts were calculated and did not attach relevant supporting documents); *In re Stoecker*, 143 B.R. 879, 883 (N.D. Ill. 1992), *vacated on other grounds*, 5 F.3d 1022 (7th Cir. 1993) (creditor's failure to attach judgment or executions perfecting liens is not basis for disallowance but simply deprives the proof of claim of the prima facie validity accorded by Rule 3001(f), and creditor should be given leave to amend claim or the opportunity to come forward with evidence supporting the claim); *In re Consol. Pioneer Mort.*, 178 B.R. 222 (9th Cir. B.A.P. 1995), *aff'd* 91 F.3d 151 (9th Cir. 1996) (claim properly denied where creditors did not attach copy of executory sales contract upon which claim was based, thereby depriving the proof of claim of its prima facie validity, and creditors did not respond to the objection by providing evidence that supported the existence of a sales contract); *In re Manchester Gas Storage, Inc.*, 309 B.R. 354 (Bankr. N.D. Okla. 2004) (proof of claim for unpaid bonus and rejection damages not entitled to prima facie validity where creditor did not attach copies of employment contract and agreement for bonus).

Of course, this begs the question of just what kind of “writing” or supporting documents *are* required for a creditor – and in particular a credit card creditor – to have the benefit of the prima facie validity rule. Typically, there will be an application (which however may not be in writing, as some credit cards are issued based on telephone applications), a card holder agreement, and monthly account statements. At least one court

has held that it is sufficient to attach the most recent billing statement showing the account number, billing cycle, minimum payment due, and the balance. *In re Thompson*, 260 B.R. 484 (Bankr. W.D. Mo. 2001). A recent opinion by the United States Bankruptcy Court for the Western District of Washington goes further and requires that a credit card creditor, at a minimum, attach to its proof of claim, or provide no later than in response to a claims objection, (i) a sufficient number of monthly account statements to show how the total amount asserted has been calculated, and (ii) a copy of the agreement authorizing the charges and fees included in the claim. *In re Henry*, 2004 Bankr. LEXIS 727, at *8.

In *Henry*, the chapter 13 debtors objected to ten claims, including two that had been assigned to eCast.⁶ As here, eCast – after receiving the objection – supplied copies of the billing statements together with a one-page “Accounting Summary” showing the total amount charged. *Id.* at *10. The court held that such documents were not sufficient to comply with the “writing” requirement of Rule 3001(c) because without the card holder agreement the debtors could not determine from the statements the legality of the charges. *Id.* at *11. The court accordingly struck the claims but allowed eCast 30 days in which to file amended claims “that include copies of the relevant credit agreements authorizing the charges shown on the account statements.” *Id.*

C.

Regardless of whether this court were to go so far as the holding in *Henry*, the court has little difficulty in concluding that the two claims filed by eCast in this case utterly fail to

⁶ A third claim had also been assigned to eCast, but since the order disallowing that claim was final, the court declined to revisit the matter.

satisfy the requirement of Rule 3001(c) that the “writing” – or, in the case of voluminous or missing documents, a summary or explanation – be attached to the proof of claim. The so-called “summary” which eCast has attached is in fact no summary at all: it is simply an extraneous piece of paper that supplies no more information than is already set forth on the face of the claim (i.e., the debtor’s name and address, the case number, the account number, and the gross amount claimed). Contrary to the argument made by eCast in its brief, what is required by Rule 3001(c) is not a summary of the *debt* but a summary of the *documents* supporting the debt. And the short of the matter is that the eCast exhibit fails even as a meaningful summary of the debt, since it does not break out what amount is principal, what amount is finance charge, what interest rate is being charged, and what “other” charges (such as overlimit fees) are included in the claim, nor does it state over what period the charges were incurred – all information that should be readily available in an age in which credit card accounts are maintained on large and sophisticated computer systems. Even simply attaching a copy of the most recent account statement sent to the debtor prior to the filing of the bankruptcy petition would provide more meaningful information than is set forth in the purported “Account Summary.”

eCast, however, points to a recent unpublished decision by the United States Bankruptcy Court for the Middle District of Pennsylvania as supporting the adequacy of its “summary.” *In re Bledsoe*, No. 1-03-1609 (Bankr. M.D. Pa., February 25, 2004). The debtors in that case objected to two claims eCast had filed. The only “writing” attached to either claim was a computer-generated statement (slightly different in format for each claim) setting forth the debtor’s name, account number, account balance, and a statement that the

claim had been, or was in the process of being, assigned to eCast. The court held that a claim was entitled to prima facie effect “if it alleges facts sufficient to support the claim.” *Id.* at 4. Since the debtors’ objection centered on the lack of documents supporting the alleged assignments to eCast, and since the debtors failed to present any evidence to show that the claims were still held by the original creditors, the court overruled the objections. The opinion notes, however, that eCast, in response to the objection, “adduced” evidence (not otherwise described) “which amply demonstrates that the claims are valid.”

To the extent *Bledsoe* can be read as holding that *any* piece of paper – so long as it has some type of writing on it – satisfies Rule 3001(c) and entitles the proof of claim to prima facie validity, this court declines to follow it. Additionally, the debtors’ challenge in *Bledsoe* did not go to the underlying amount or legality of the claim but only to eCast’s standing as assignee. Even then, it appears from the opinion that eCast, in response to the objection, “amply” carried its evidentiary burden of proving its status as assignee. Thus, *Bledsoe* does not really answer the question of whether – had eCast *not* supplied evidence of the assignment in response to the objection – its claim would still have been allowed over the debtors’ objection.

D.

Since eCast has not attached *any* meaningful writing or document summary to its proof of claim, the court need not determine exactly what documentation would be sufficient to satisfy Rule 3001(c). Nevertheless, some discussion is appropriate for the guidance of the parties. Obviously, competing interests are at stake. Trustees and other parties with standing to object need sufficient information to determine whether to object to a particular claim. In

the case of credit card debts, for example, there may well be a concern whether the interest rate and other charges are supported by the contract between the debtor and the card issuer and whether those rates are legal under applicable law. At the same time, the requirement should not be interpreted in such a way as to place an undue burden on creditors.

Additionally, as bankruptcy courts move toward electronic claims submission, there are practical and technical concerns as well, since scanned documents not only take up substantial storage space on the court's servers but sometimes cannot be uploaded or downloaded over dial-up connections without the electronic filing system timing out.

These competing concerns, the court believes, would be satisfied by attaching to the proof of claim (1) a copy of the most recent billing statement sent to the debtor prior to the date of the bankruptcy filing and (2) either a copy of the most-recently issued cardholder agreement or a summary that states the date of the agreement and its essential terms, such as the interest rate, how the finance charge is computed, minimum payment, due date, late charges, and other permitted charges. If even these minimal documents cannot be located, the creditor must, at the very least, attach a statement explaining "the circumstances of the loss or destruction."

E.

eCast's proofs of claim, as noted, are infirm not only in failing to attach supporting documents or a meaningful summary of them, but also in failing to itemize, as required, the amount of interest or other charges included in the claims. In fact, by leaving unchecked the box stating that such charges *are* included in the claim, the proofs of claim effectively represent that the claims consist *only* of principal. That misrepresentation is not cured by the

inclusion – in a totally different section of the claim form – of the language, “Claims *may* include contractual interest and/or late charges.”(Emphasis added). Either the claim does or it does not include such charges – “may” is not a sufficient response, unless eCast truly had no way of knowing or finding out. Additionally, the statements reflect that the claims include more than simply “contractual interest and/or late charges.” They also include overlimit fees, bad check fees, phone payment fees and (for one of the cards) annual fees. Why a proper breakdown has not been furnished, when the proof of claim form clearly requires it, is unexplained. It has not been contended – and it would certainly be difficult to believe – that credit card issuers do not have the ability, based on their computerized accounting records, to break the account balance down and to say what part consists of accrued finance charges, late charges, overlimit charges, and the like.

III.

Although the proofs of claim filed by eCast and Direct Merchants fail to properly comply with Rule 3001, it by no means follows that the claims should be disallowed solely on that basis. For one thing, bankruptcy courts have traditionally been liberal in allowing defective claims to be amended after the claims bar date to cure a defect in the claim as filed or to describe the claim with greater particularity. *In re Marohn*, No. 96-10340-SSM, 1997 WL 866612, at *4 (Bankr. E.D. Va., September 26, 1997). Indeed, courts have liberally allowed pleadings other than proofs of claim to be treated as informal amendable proofs of claim when the creditor failed to timely file a formal proof of claim. *In re Davis*, 936 F.2d 771 (4th Cir. 1991). Thus, where objection is made to a proof of claim based on the creditor’s failure to attach the writing on which the claim is based, the creditor, prior to the

hearing on the objection, should be allowed to file an amended proof of claim that cures the deficiency or, even without so amending, to appear at the hearing and present evidence to prove its claim. But unless the claim is amended to comply with Rule 3001, it does not have the benefit of the prima facie validity conferred by Rule 3001(f). This means that if the creditor presents *no* evidence in support of its claim, it has necessarily failed to carry its burden of proof, and the claim must be disallowed.

A.

With respect to Direct Merchants, there has been no response to the debtor's objection, nor did the creditor appear at the hearing to prove its claim. Because *no* writing was attached to the proof of claim, it is not entitled to prima facie validity, and the creditor, in response to the objection, was required to prove its claim. The creditor was given proper notice of the hearing on the objection and failed to file a response to the objection, amend its proof of claim, or appear to offer evidence. Accordingly, an order will be entered disallowing the claim, subject to the creditor's right to seek reconsideration under § 502(j), Bankruptcy Code.

B.

A different result follows with respect to the eCast claims. As discussed, the \$5,498.98 claim will be allowed because the debtor admitted owing it on her schedules. With respect to the \$2,607.66 claim, eCast filed a response to the objection and appeared at the hearing. Unfortunately, as is often the case, neither party had any witnesses and neither party presented evidence in a formal sense. Documents were simply handed up to the court, while other documents (notably the debtor's schedules) were simply referred to. Although

no objection was made to the court's consideration of any of this information, the court is not inclined to make a ruling without a proper evidentiary record, particularly since both parties appeared to treat the scheduled hearing as more in the nature of legal argument than a true evidentiary hearing. Accordingly, the court will set a further hearing at which the parties may present evidence.

At the hearing, eCast should of course be prepared to prove, not merely the total amount of its claim, but also what portion is principal and what portion consists of interest and other charges. It should also be prepared to prove its status as assignee of the claims. If eCast intends to offer the debtor's schedules into evidence under Federal Rule of Evidence 801(d)(2) as an admission by a party opponent, it should obtain a certified copy (unless the debtor stipulates as to the authenticity of a plain copy). Additionally, if eCast intends to authenticate business records, such as account statements, card applications, or cardholder agreements under Federal Rule of Evidence 902(11), the declaration and copies must be supplied to the debtor at least 15 days in advance of the hearing. Of course, to the extent relevant facts are undisputed, the parties are both expected and encouraged to stipulate to them. The same is true with respect to the authenticity and admissibility of documents.

C.

Separate orders will be entered consistent with this opinion (a) disallowing the claim of Direct Merchants, (b) allowing eCast's \$5,498.98 claim, and (c) setting an evidentiary hearing on the eCast's \$2,607.66 claim.

Date: _____

Alexandria, Virginia

Stephen S. Mitchell
United States Bankruptcy Judge

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Summary of Account Statements
Providian Visa acct #xxxx-xxxx-xxxx-3588

<u>Statement Date</u>	<u>Starting Balance</u>	<u>Charges</u>	<u>Credits</u>	<u>Payments</u>	<u>Finance Charge</u>	<u>Late Charge</u>	<u>Other Fees</u>	<u>Ending Balance</u>
01/22/2002	\$4,887.75			\$150.00	\$103.21		\$9.95	\$4,850.91
02/20/2002	\$4,850.91			\$146.00	\$92.35			\$4,797.26
03/22/2002	\$4,797.26			\$144.00	\$95.15		\$9.95	\$4,758.36
04/22/2002	\$4,758.36			\$143.00	\$97.47		\$9.95	\$4,722.78
05/21/2002	\$4,722.78			\$142.00	\$90.51		\$9.95	\$4,681.24
06/20/2002	\$4,681.24			\$145.00	\$92.52			\$4,628.76
07/19/2002	\$4,628.76			\$0.00	\$115.93		\$20.00	\$4,764.69
08/19/2002	\$4,764.69			\$143.00	\$121.33			\$4,743.02
09/19/2002	\$4,743.02	\$25.94		\$160.00	\$122.02		\$9.95	\$4,740.93
10/21/2002	\$4,740.93	\$209.99		\$142.00	\$127.50		\$9.95	\$4,946.37
11/19/2002	\$4,946.37				\$119.22	\$35.00	\$35.00	\$5,135.59
12/19/2002	\$5,135.59			\$148.00	\$127.94	\$35.00	\$94.00	\$5,244.53
01/19/2003		<missing statement>						
02/18/2003	\$5,279.53			\$349.00	\$136.03		\$55.00	\$5,121.56
03/20/2003	\$5,121.56			\$153.00	\$126.62		\$35.00	\$5,130.18
04/19/2003		<missing statement>						
05/19/2003	\$5,135.20			\$153.00	\$131.67		\$35.00	\$5,148.87
06/19/2003	\$5,148.87			\$153.00	\$131.89		\$35.00	\$5,162.76
07/16/2003	\$5,162.76				\$124.43	\$35.00		\$5,322.19
08/19/2003	\$5,322.19			\$313.00	\$137.20			\$5,146.39
09/19/2003	\$5,146.39				\$132.89	\$35.00		\$5,314.28
10/20/2003	\$5,314.28			\$154.00	\$134.79	\$35.00		\$5,330.07
11/19/2003	\$5,330.07			\$160.00	\$130.06	\$35.00		\$5,335.13
12/19/2003	\$5,335.13		\$17.77	\$160.00	\$129.68	\$35.00		\$5,322.04
01/20/2004	\$5,322.04				\$141.94	\$35.00		\$5,498.98
02/18/2004	\$5,498.98							\$5,498.98
Totals		\$235.93	\$17.77	\$3,058.00	\$2,762.35	\$280.00	\$368.70	

Josephine McCarthy
Summary of Account Statements
Providian Mastercard acct. #xxxx-xxxx-xxxx-2572

<u>Statement Date</u>	<u>Starting Balance</u>	<u>Charges</u>	<u>Credits</u>	<u>Payments</u>	<u>Finance Charge</u>	<u>Late Charge</u>	<u>Other Fees</u>	<u>Ending Balance</u>
01/03/2002	\$2,020.90	\$188.06		\$60.00	\$45.82		\$59.00	\$2,253.78
02/04/2002	\$2,253.78			\$68.00	\$47.66		\$9.95	\$2,243.39
03/05/2002	\$2,243.39				\$54.07	\$35.00		\$2,332.46
04/06/2002	\$2,332.46			\$213.00	\$57.71		\$9.95	\$2,187.12
05/06/2002	\$2,187.12			\$66.00	\$56.17		\$9.95	\$2,187.24
06/04/2002	\$2,187.24				\$52.71	\$35.00		\$2,274.95
07/05/2002	\$2,274.95				\$58.66	\$35.00		\$2,368.61
08/06/2002	\$2,368.61			\$203.00	\$59.27			\$2,224.88
09/04/2002	\$2,224.88				\$53.62	\$35.00		\$2,313.50
10/04/2002	\$2,313.50	\$15.00		\$135.00	\$55.31			\$2,248.81
11/05/2002	\$2,248.81			\$67.00	\$59.60		\$9.95	\$2,251.36
12/05/2002	\$2,251.36				\$56.16	\$70.00		\$2,377.52
01/05/2003	\$2,377.52			\$205.00	\$62.09	\$35.00	\$94.00	\$2,363.61
02/04/2003	\$2,363.61				\$56.97	\$35.00	\$35.00	\$2,490.58
03/06/2003	\$2,490.58			\$236.00	\$59.31			\$2,313.89
04/04/2003	\$2,313.89			\$69.00	\$55.49		\$35.00	\$2,335.38
05/05/2003	\$2,335.38			\$104.00	\$59.54			\$2,290.92
06/04/2003	\$2,290.92				\$57.14	\$35.00	\$35.00	\$2,418.06
07/03/2003	\$2,418.06			\$243.00	\$55.06			\$2,230.12
08/05/2003	\$2,230.12			\$67.00	\$60.55			\$2,223.67
09/04/2003	\$2,223.67			\$67.00	\$55.33			\$2,212.00
10/03/2003	\$2,212.00				\$53.40	\$35.00	\$35.00	\$2,335.40
11/04/2003	\$2,335.40			\$67.00	\$60.69	\$35.00	\$35.00	\$2,399.09
12/05/2003	\$2,399.09			\$138.00	\$58.92		\$35.00	\$2,355.01
01/05/2004	\$2,355.01				\$60.92	\$35.00	\$59.00	\$2,509.93
02/04/2004	\$2,509.93				\$62.73	\$35.00		\$2,607.66
03/04/2004	\$2,607.66							\$2,607.66
Totals		\$203.06	\$0.00	\$2,008.00	\$1,474.90	\$455.00	\$461.80	