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Bankruptcy Judge
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4

5 UNITED STATES BANKRUPTCY COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 In re)
9) Chapter 13
ROBERT SCHRANER and)
ELAINE K. SCHRANER,)
10) Bankruptcy No. 03-23465
Debtors.)
11) **MEMORANDUM DECISION**
12) **AND ORDER ON**
13) **OBJECTIONS TO CLAIMS AND**
REQUEST FOR FEES

14 This matter came before the Court on the debtors' objections
15 to proofs of claim filed in the above case by Sonoma County
16 Credit Service (Claim No. 1 in the amount of \$1,388.23), Eel
17 River Valley Surgical Group (Claim No. 2 in the amount of
18 \$7,422.16), Discover Financial Services (Claim No. 4 in the
19 amount of \$8,899.99), American Express Centurion Bank (Claim
20 No. 5 in the amount of \$1,102.54), and Garry Montanari for
21 Elizabeth Weglarz (Claim No. 7 in the amount of \$55,057.98). The
22 creditors did not respond to the debtors' objections and the
23 debtors have submitted a declaration of no response and a
24 proposed order disallowing each claim on the ground that no
25 response to the objection has been filed. For the following
26 reasons, the Court will deny the debtors' request to disallow
27 these claims, with the exception of the claim filed by Garry

1 Montanari for Elizabeth Weglarz.

2 **I. BACKGROUND**

3 The debtors commenced this case under Chapter 13 of the
4 Bankruptcy Code¹ on October 17, 2003, and confirmed their Amended
5 Chapter 13 plan on September 17, 2004. The confirmed plan states
6 that the anticipated dividend to unsecured creditors will be 1%
7 of the amount of their claims and that \$633.75 is the liquidation
8 value of the estate. On October 28, 2004, the Chapter 13 trustee
9 filed his Report of Filed Claims, showing every claim filed in
10 the case as of that date.

11 The claims objections were filed on October 27, 2004. The
12 next day, October 28, counsel for the debtors filed an
13 application for fees in the amount of \$1,315. No one objected to
14 the fee application and the debtors have submitted a proposed
15 order allowing the fees as requested.

16 **II. DISCUSSION**

17 **A. Summary of the Court's Decision in *Henry*.**

18 This Court issued the decision in *In re Henry*, 311 B.R. 813
19 (Bankr. W.D. Wash. 2004) in an effort to establish reasonable and
20 cost-effective guidelines for dealing with small proofs of claim,
21 including credit card claims, in Chapter 13 cases. In *Henry*,
22 this Court held that the failure to comply with Rule 3001(c) by
23 attaching the writing upon which the claim is based negates the
24

25
26 ¹ Unless otherwise indicated, all Chapter, Section and Rule
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*
and to the Federal Rules of Bankruptcy Procedure, Rules 1001 *et*
seq.

1 *prima facie* validity of the claim under Bankruptcy Code § 502(a).
2 See *In re Consolidated Pioneer Mortgage*, 178 B.R. 222, 226 (9th
3 Cir. BAP 1995); *In re Stoecker*, 143 B.R. 879, 883 (N.D. Ill.
4 1992); *In re Petrich*, 43 F.2d 435, 437 (S.D. Cal. 1930); *In re*
5 *Lindell Drop Forge Co.*, 111 B.R. 137, 142-43 (Bankr. W.D. Mich.
6 1990). This Court also held that a credit card debt is a claim
7 based upon a writing and that to maintain *prima facie* validity, a
8 creditor should attach to its proof of claim form or file in
9 response to a claims objection (i) a sufficient number of monthly
10 account statements to show how the total amount asserted has been
11 calculated, and (ii) a copy of the agreement authorizing the
12 charges and fees included in the claim. Finally, this Court held
13 in *Henry* that in the absence of that minimum evidentiary
14 presentation, the creditor's claim could be disallowed.

15 Recently, the Court clarified its decision in *Henry* in a
16 case entitled *In re Crowe*, Bankruptcy Case No. 02-21809 (Bankr.
17 W.D. Wash. 1/18/05). In *Crowe*, this Court confirmed the ability
18 of a creditor to file a summary of its claim when the
19 documentation supporting the claim is voluminous. The Court
20 adopts the holding of the court in *In re Cluff*, 313 B.R. 323
21 (Bankr. D. Utah 2004), which established the following guidelines
22 for the form of the summary: (i) it should include the amount of
23 the debt(s), (ii) it should identify the name and account number
24 of the debtor, (iii) it should be in the form of a business
25 record or some other equally reliable format, and (iv) if the
26 claim includes charges such as interest, late fees and attorneys'
27 fees, the summary should break down each of those charges by

1 category. *Id.* at 335. The filing of a summary, however, does
2 not relieve a creditor of its obligation to provide all documents
3 supporting the claim to the debtor upon request. *In re Shank*,
4 315 B.R. 799, 816 (Bankr. N.D. Ga. 2004); *In re Kemmer*, 315 B.R.
5 706, 715 (Bankr. E.D. Tenn. 2004); *In re Cluff*, 313 B.R. at 335-
6 36. Nor does the filing of a summary negate the requirement that
7 a creditor check the box in paragraph 4 of the proof of claim
8 form if the claim includes interest or other charges in addition
9 to the principal amount of the claim and to attach, if
10 applicable, an "itemized statement of all interest or additional
11 charges." Official Bankruptcy Form 10, ¶ 4(Proof of Claim).

12 **B. Application of *Henry* and *Crowe* to the Facts.**

13 The Court has reviewed each of the claims and the substance
14 of the debtors' objection to each claim.

15 The debtors have objected to Claim No. 1 filed by Sonoma
16 County Credit Service in the amount of \$1,388.23. The objection
17 is based solely on noncompliance with *Henry*. The claim was
18 timely filed and it contains a complete summary of the debt,
19 including the account number, the date that medical services were
20 provided to the debtors, and the amount of interest that has been
21 charged. If the debtors have a substantive objection to the
22 amount of interest or to the validity of the claim, that
23 objection should be made. The debtors can certainly determine
24 from what has been filed whether the services were actually
25 provided. This Court concludes that the creditor has provided
26 information sufficient under *Henry* to enable the debtors to make
27 a substantive objection to the claim.

1 The debtors have objected to Claim No. 2 filed by Eel River
2 Valley Surgical Group in the amount of \$7,422.16. The claim is
3 for medical services and the statement attached shows the date of
4 the procedure, the type of the procedure, the patient (Robert
5 Schraner), the doctor who performed the procedure, and the charge
6 for the service. The debtors' objection asserts that the claim
7 "seems to suggest that interest has accrued since the date of the
8 original cost assessment." This Court sees no evidence of that -
9 it does not appear that any interest or other charges have been
10 added. The debtors contend that the creditor should be required
11 to submit a signed contract for these services. This claim is
12 sufficient - the debtors should be able to determine whether
13 these services were provided to them. They do not need a signed
14 contract from the creditor to determine that. This claim will
15 not be disallowed.

16 The debtors have objected to Claim No. 4 filed by Discover
17 Financial Services in the amount of \$8,899.99. The objection is
18 based solely on noncompliance with *Henry*. The creditor has
19 attached a summary of the debt to the proof of claim form, but
20 that summary does not itemize the amount of principal, interest
21 or other charges. Accordingly, the creditor will be allowed
22 additional time to supplement its claim with that information as
23 well as to provide proof of its right to collect any interest or
24 other charges.

25 The debtors have objected to Claim No. 5 of American Express
26 Centurion Bank filed in the amount of \$1,102.54. The objection
27 is based solely on noncompliance with *Henry*. This proof of claim

1 complies with *Henry* and will not be disallowed. Attached to the
2 proof of claim is a statement showing each and every purchase
3 made separately by Robert and Elaine Schraner, including the date
4 of the charge, the vendor, and the amount of the charge. No
5 interest or other fees have been included in the claim.

6 Finally, the debtors have objected to Claim No. 7 filed by
7 Garry Montanari on behalf of Elizabeth Weglarz, Mr. Schraner's
8 former wife. The claim states that it is for unpaid child
9 support and maintenance; specifically, medical services provided
10 to a minor child of Mr. Schraner. A detailed statement of how
11 the claim arose is attached to the proof of claim form. Although
12 the statement indicates that a judgment against Mr. Schraner for
13 the claim amount, \$55,057.98, is attached to the proof of claim,
14 the judgment is not attached. Even without a copy of the
15 judgment, however, the proof of claim with the detailed statement
16 is more than sufficient to survive an attack under *Henry*. The
17 debtors have made a substantive objection to the claim, however,
18 contending that it is a duplicate of Claim no. 6 filed by Palmer
19 Systems, Inc. As neither Ms. Weglarz nor Mr. Montanari have
20 filed a response to the objection, the Court will disallow the
21 claim on the ground that it is a duplicate of Claim No. 6.

22 **C. The Debtors' Request for Attorneys Fees.**

23 Counsel for the debtors has filed a fee application
24 requesting reimbursement of \$1,315 for legal fees incurred in the
25 case. The fee application includes a \$250 charge for each of the
26 claims objections filed. For the foregoing reasons, the Court
27 finds that the objections to all but two of the claims are not

1 well taken and should not have been filed. The Court will not
2 further reduce the dividend to be paid to unsecured creditors by
3 permitting recovery of the fees incurred in making these
4 objections. Accordingly, \$1,000 of the fees requested
5 (representing \$250 for each of the four objections being denied)
6 will be disallowed,² leaving a balance of \$315 for allowance.

7 **CONCLUSION**

8 Based upon the foregoing analysis, the Court will enter the
9 subjoined order denying the debtors' objections to Claim Nos. 1,
10 2, and 5, granting Discover Financial Services (Claim No. 4)
11 additional time to provide support for its claim, and granting
12 the debtors' objection to Claim No. 7 of Elizabeth Weglarz.

13 **ORDER**

14 For the foregoing reasons, it is hereby ORDERED that:

15 1. The debtors' objections to Claim No. 1 (Sonoma County
16 Credit Service), Claim No. 2 (Eel River Valley Surgical Group),
17 and Claim No. 5 (American Express Centurion Bank) are DENIED;

18 2. Discover Financial Services (Claim No. 4) shall be given
19 45 days from the date of this Order to supplement its claim with
20 additional information or supporting documentation, which must
21 include at a minimum (i) a statement itemizing the total amount
22 of the debt, including principal, interest and other charges; and
23 (ii) if such creditor is seeking interest or other charges in
24 addition to principal, the agreement or other authority for the
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26 ² If the debtors' objection to Claim No. 4 is ultimately
27 sustained, counsel for the debtors may reapply for the fees
incurred in making the objection to that claim.

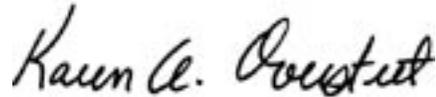
1 amount or validity of the interest or charge. In the event that
2 Discover Financial Services fails to provide the foregoing
3 information, the Court may determine the amount of the claim
4 based upon the documents on file with the Court or disallow the
5 claim in its entirety;

6 3. The debtors' objection to Claim No. 7 of Elizabeth
7 Weglarz is GRANTED and that claim is DISALLOWED;

8 4. The debtors shall promptly serve a copy of this
9 Memorandum Decision and Order on each creditor at the address set
10 forth in the proof of claim. In addition, the debtors shall
11 provide notice of this Order to Discover Financial Services at an
12 address that complies with Bankruptcy Rules 9014(b) and 7004; and

13 5. The application for fees by counsel for the debtors is
14 allowed in the amount of \$315 and the balance of the fee request
15 is DENIED.

16 DATED this 21st day of January, 2005.

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KAREN A. OVERSTREET
19 UNITED STATES BANKRUPTCY JUDGE