

**DEC 14 2005**

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OF THE NINTH CIRCUIT**

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**UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT**

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In re: )  
)  
ERIC JAMES CAMPBELL and )  
DAVIA CAMPBELL, )  
)  
Debtors. )

BAP Nos. SC-05-1012-MoPaN  
SC-05-1013-MoPaN  
SC-05-1014-MoPaN  
SC-05-1015-MoPaN

Bk. Nos. 04-00772-JM13  
03-11231-JM13

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In re: )  
)  
BRENT MILLMAN and KERRY )  
MILLMAN, )  
)  
Debtors. )

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ERIC JAMES CAMPBELL; DAVIA )  
CAMPBELL, )  
)  
Appellants, )

**O P I N I O N**

v. )  
)  
VERIZON WIRELESS S-CA; THE )  
FINANCE COMPANY; DAVID )  
SKELTON, Chapter 13 Trustee, )  
)  
Appellees. )

\_\_\_\_\_  
BRENT MILLMAN; KERRY MILLMAN, )  
)  
Appellants, )

v. )  
)  
CAPITAL ONE BANK; ROBINSON'S )  
MAY; THOMAS H. BILLINGSLEA, )  
Jr., Chapter 13 Trustee, )  
)  
Appellees. )

\_\_\_\_\_ )

1 Argued and Submitted on October 20, 2005  
2 at Santa Ana, California

3 Filed - December 14, 2005

4 Appeal from the United States Bankruptcy Court  
5 for the Southern District of California

6  
7 Honorable James W. Meyers, Bankruptcy Judge, Presiding.

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9 Before: MONTALI, PAPPAS, and NIELSEN,<sup>1</sup> Bankruptcy Judges.

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<sup>1</sup> Hon. George B. Nielsen, Jr., United States Bankruptcy Judge for the District of Arizona, sitting by designation.

1 MONTALI, Bankruptcy Judge:

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3 As we held in In re Heath, 331 B.R. 424 (9th Cir. BAP 2005),  
4 a claim objection that does not actually contest the debtor's  
5 liability or the amount of the debt is insufficient to disallow a  
6 proof of claim, even if the proof of claim lacks the documentation  
7 required by Rule 3001(c).<sup>2</sup> The bankruptcy court overruled several  
8 claims objections on this basis. We AFFIRM.

9 We publish to clarify that Heath is narrower than both the  
10 creditor-advocates and the debtor-advocates in these appeals  
11 appear to believe. On the one hand, a proof of claim filed  
12 without sufficient documentation does lack prima facie validity:  
13 the claim very likely will not survive a bona fide legal or  
14 factual objection absent an adequate response by the creditor. On  
15 the other hand, a debtor's admission of liability on the  
16 bankruptcy schedules also has consequences: the debtor might be  
17 able to withdraw that admission, but the legal and evidentiary  
18 consequences will depend on the normal rules governing admissions  
19 and estoppel.

20

#### I. FACTS

21 The above-captioned debtors ("Debtors") filed two separate  
22 Chapter 13 cases but are represented by the same attorneys and  
23 filed nearly identical objections to four claims. Each objection  
24 states that the creditor did not "provide proper documentation to  
25 support its claim." Each objection concedes that the debt was  
26 scheduled as undisputed. Each objection then alleges:

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<sup>2</sup> Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9036, as enacted and promulgated prior to the effective date of The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. 109-8, Apr. 20, 2005, 119 Stat. 23.

1 [Debtors] had no way to verify the amount of or the  
2 validity of the interest being charged, the amount  
3 [or] validity of other charges, or the validity of  
4 any other term of the account because [Debtors] did  
5 not have copies of the writings on which the  
6 account was based. Debtors, by their nature, are  
7 typically unsophisticated consumers who lack the  
8 knowledge and ability to understand credit  
9 transactions, average daily balance computations,  
10 and the precise method to determine accrued  
11 interest on an account.

12 The objections are supported by Debtors' declarations with  
13 boxes checked next to the following statements:

14 [X] Proof of claim fails to contain supporting  
15 documents (FRPB 3001c [sic])

16 [X] Creditor has not attached proof of legally  
17 enforceable contract satisfying the statute of frauds  
18 ([California Civil Code §] 1624).

19 \* \* \*

20 [X] Debtor(s) need proof of purchases and statements  
21 of account to verify whether charges were authorized  
22 or made by [D]ebtor(s). [Emphasis added.]

23 The declarations thus focus on lack of documentation. They  
24 do not actually allege any reason to believe that some charges  
25 might be unauthorized, or that Debtors did not enter into  
26 contracts, or any other reason to question their liability or the  
27 amounts claimed. Nor do the declarations suggest that Debtors  
28 have lost their monthly credit card statements or have attempted  
to obtain copies of those statements or other information from  
their creditors.

Nevertheless, no creditors filed an opposition. Nor was any  
opposition filed by Thomas H. Billingslea, Jr., Chapter 13  
Trustee for Brent and Kerry Millman, ("Millmans' Trustee"). An  
opposition was filed by David L. Skelton, Chapter 13 Trustee for  
Eric and Davia Campbell ("Campbells' Trustee"), but that opposition

1 was later withdrawn. The bankruptcy court nevertheless sua sponte  
2 issued a Notice of Prove-Up Hearing re Objection to Claims in each  
3 case (the "Prove-Up Notices").

4 The Prove-Up Notices state that a hearing will be held "to  
5 determine the appropriateness of limiting or disallowing the  
6 claim," and:

7 The debtor must be prepared to come forward with  
8 independent evidence as to why they [sic] do not owe  
9 the debt asserted in the proof of claim. The court  
10 will not sustain an objection based solely on an  
11 alleged technical defect in the proof of claim, where  
12 the debtor has a good faith belief that, as of the  
13 petition date, there was a legitimate debt owed to the  
14 creditor.

15 Therefore, the Court requires the following  
16 information be filed at least seven days prior to the  
17 hearing:

18 1) A declaration from the debtor indicating their  
19 [sic] belief as of the petition date as to the amount  
20 that was owed to the creditor in question, independent  
21 of any issues raised about the adequacy of the proof  
22 of claim itself. If the debtor believes that the  
23 amount owed is different from what is set forth in the  
24 proof of claim, they [sic] shall provide an  
25 explanation to justify the discrepancy. [Emphasis in  
26 original.]

27 Hearings on all of Debtors' objections were held on the same  
28 morning. No creditors appeared but there were appearances by an  
attorney for Debtors and attorneys for the Chapter 13 trustees.  
The Millmans' attorney stated "we will submit based on the  
pleadings" and confirmed that, in the words of the bankruptcy  
court, "this is the same scenario as just the previous case."  
Transcript Dec. 21, 2004 (Millmans), p.3:12-16. There is no  
transcript of this previous case in the excerpts of record. The  
same attorney appeared for the Campbells and stated that once  
again they would submit on the pleadings. Transcript Dec. 21,

1 2004 (Campbells), p. 3:6-7. The bankruptcy court entered orders  
2 overruling Debtors' objections to claims.<sup>3</sup>

3 Debtors filed timely notices of appeal in both bankruptcy  
4 cases and filed joint, consolidated briefs regarding both of these  
5 closely related appeals, as permitted by orders of the BAP Clerk.<sup>4</sup>  
6 Separate briefs were filed by the Campbells' Trustee, the  
7 Millmans' Trustee, and creditor Verizon Wireless S-CA ("Verizon")  
8 (collectively, "Appellees").<sup>5</sup> On October 3, 2005, the parties were

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10 <sup>3</sup> The orders are on forms submitted by Debtors. Those  
11 forms would have sustained the objections to claims but they are  
12 stamped "not approved" and signed by the court. We interpret  
13 these as orders overruling the objections to claims.

14 The Campbells' attorney did not address one of their written  
15 grounds for disallowance of some claims: the alleged discharge of  
16 debts in their bankruptcy cases in 2001 and 2002. The attorney  
17 for Millmans' Trustee suggested that there was insufficient  
18 evidence of such discharge. The bankruptcy court stated to the  
19 Campbells' attorney, "So in this scenario where I will not sign  
20 this order [disallowing a claim], this is not prejudice to your  
21 client deciding to seek to address this claim on another basis at  
22 a future time after proper notice." Transcript Dec. 21, 2004  
23 (Campbells), p. 4:16-19. We interpret this comment to mean that  
24 the Campbells could file claims objections in the future based on  
25 the alleged discharge of debts in their prior bankruptcy cases,  
26 but such objections would have to be supported by proper  
27 declarations and argument. See 11 U.S.C. § 502(j); Fed. R. Bankr.  
28 P. 3008.

21 <sup>4</sup> No party has questioned the finality of the orders on  
22 appeal, and we are satisfied that we have jurisdiction. See  
23 generally, In re Los Gatos Lodge, Inc., 278 F.3d 890, 894 (9th  
24 Cir. 2002).

25 <sup>5</sup> It is not clear that Verizon is a proper party to this  
26 appeal because it did not participate in proceedings before the  
27 bankruptcy court. See generally Heath, 331 B.R. at 429-430. On  
28 the other hand, Verizon's brief on this appeal suggests that  
29 Verizon was not properly served with the claims objection in the  
30 Campbells' present or earlier bankruptcy cases. We assume without  
31 deciding that Verizon can participate because we would reach the  
32 same result with or without its brief.

33 We also believe that both Chapter 13 trustees can argue on  
34 this appeal in support of the bankruptcy court's orders even  
35 though they did not oppose Debtors' objections to claims until the  
36 bankruptcy court issued its Prove-Up Notice. See generally Heath,  
37 331 B.R. at 429-430. No party has suggested otherwise.

1 directed to be prepared to discuss the impact of Heath, 331 B.R.  
2 424, on these appeals.

## 3 **II. ISSUE**

4 Does Heath require affirmance?<sup>6</sup>

## 5 **III. STANDARDS OF REVIEW**

6 The proper interpretations of statutes and rules are legal  
7 questions that we review de novo. In re LPM Corp., 300 F.3d 1134,  
8 1136 (9th Cir. 2002). Whether compliance with a given statute or  
9 rule has been established is generally a question of fact, which  
10 we review for clear error. In re Consol. Pioneer Mortgage, 178  
11 B.R. 222, 225 (9th Cir. BAP 1995) (compliance with Rule 3001 is a  
12 question of fact reviewed for clear error), aff'd, 91 F.3d 151  
13 (9th Cir. 1996) (table). If there are no genuine disputes of  
14 material fact and the bankruptcy court essentially treats the  
15 matter as a summary judgment proceeding then we review the matter  
16 as such, under the de novo standard. In re Aquaslide 'N' Dive  
17 Corp., 85 B.R. 545, 547 (9th Cir. BAP 1987).

## 18 **IV. DISCUSSION**

19 We recently held that a claim objection that does not  
20 actually contest the debtor's liability or the amount of the debt  
21 is not enough to disallow a proof of claim, even if the proof of  
22 claim lacks the documentation required by Rule 3001(c). Heath,  
23 331 B.R. 424. "We will not overrule our prior rulings unless a  
24 Ninth Circuit Court of Appeals decision, Supreme Court decision or  
25 subsequent legislation has undermined those rulings." In re Ball,  
26 185 B.R. 595, 597 (9th Cir. BAP 1995).

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28 <sup>6</sup> Debtors raise other issues that we will not consider because they were not raised before the bankruptcy court. "The rule in this circuit is that appellate courts will not consider arguments that are not 'properly raise[d]' in the trial courts." In re E.R. Fegert, Inc., 887 F.2d 955, 957 (9th Cir. 1989) (citations omitted).

1           On this appeal Debtors raise the same arguments rejected by  
2 Heath: that the proofs of claim lack prima facie validity and  
3 must be disallowed under Rules 3001(c) and (f); and that it would  
4 be inequitable and would violate due process to put the burden on  
5 Debtors to investigate the possible grounds to disallow claims  
6 when creditors have not complied with Rule 3001 by attaching  
7 various documents. Appellees advance many of the arguments that  
8 we found persuasive in Heath: that under Section 502 the grounds  
9 for objection to claims do not include a lack of compliance with  
10 Rule 3001(c); that the procedure for claims allowance or  
11 disallowance is designed to be speedy and inexpensive; that  
12 Section 502(a) deems claims allowed; that Debtors cannot overcome  
13 that presumption by filing objections that do not actually dispute  
14 the liability or amount of the claim; and that nothing in this  
15 statutory scheme violates due process or equitable principles.  
16 Heath, 331 B.R. at 431-438.<sup>7</sup>

17           Debtors raise one factual matter that might distinguish their  
18 situation from that in Heath if it were true. They allege that in  
19 fact they did submit "evidence of non-enforceability" of their  
20 creditors' claims sufficient for disallowance under Section  
21 502(b). Debtors' Reply Brief on this appeal alleges that each of  
22 them declared under penalty of perjury that "there was no  
23 underlying contract." This mischaracterizes the declarations.  
24 The declarations do not deny that Debtors incurred charges

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26           <sup>7</sup> Verizon also alleges that with all relevant documents  
27 attached its proof of claim "would have included over 65 pages of  
28 itemized charges," and it argues that it would have had to  
manually redact each account statement to remove account numbers  
in accordance with federal regulations, citing 15 U.S.C. § 1637(b)  
and 12 C.F.R. 226.7. Even then, it argues, Debtors' privacy  
rights could be compromised by filing the types of documentation  
that Debtors demand because account statements can show personal  
charging habits and, potentially, medical information.



1 pursuant to credit card agreements or other contracts. They only  
2 assert that no "proof of [a] legally enforceable contract  
3 satisfying the statute of frauds" is "attached" to the proofs of  
4 claim. That is either a legal conclusion that all credit card  
5 agreements and other revolving credit arrangements violate the  
6 statute of frauds or it is just another way of advancing the  
7 argument, rejected in Heath, that Rule 3001(c) requires copies of  
8 all such agreements to be attached and that noncompliance with  
9 Rule 3001(c) is sufficient by itself to disallow a claim.

10 Debtors' Reply Brief also alleges that their declarations  
11 "disputed the charges were actually [theirs]." Again, this  
12 mischaracterizes the declarations. Debtors do not allege that  
13 they were charged for goods or services they did not receive, or  
14 that there was a mathematical error in computing an interest  
15 charge or fee. The declarations only state that "Debtor(s) need  
16 proof of purchases and statements of account to verify whether  
17 charges were authorized or made by debtor(s)." (Emphasis added.)

18 The declarations' vague assertions and legal conclusions do  
19 not actually contest liability or the amount of the claims. There  
20 is no factual basis to distinguish Heath. See Heath, 331 B.R. at  
21 431-438. See also In re Guidry, 321 B.R. 712, 715 (Bankr. N.D.  
22 Ill. 2005).

23 In the alternative Debtors raise a legal argument that is a  
24 slight variation on those raised in Heath. They argue that  
25 Section 502(b)(1) requires disallowance of claims that are  
26 unenforceable under applicable law, which is true,<sup>8</sup> and that such

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28 <sup>8</sup> Section 502 states in relevant part:

(a) A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects.

(continued...)

1 applicable law "necessarily incorporates [Rule] 3001," which is  
2 incorrect. Rules cannot expand the statute; they are not law;  
3 and as we stated in Heath, noncompliance with Rule 3001(c) is not  
4 one of the statutory grounds for disallowance. Heath, 331 B.R. at  
5 435 (citing In re Dove-Nation, 318 B.R. 147, 150-51 (8th Cir. BAP  
6 2004)). See also 28 U.S.C. § 2075 (rules "shall not abridge,  
7 enlarge, or modify any substantive right").

8 For all of these reasons Heath applies and we affirm the  
9 bankruptcy court's orders overruling Debtors' objections to  
10 claims.

11 We emphasize, as we did in Heath, that a creditor who files a  
12 proof of claim that lacks sufficient support under Rule 3001(c)  
13 and (f) does so at its own risk. That proof of claim will lack  
14 prima facie validity, so any objection that raises a legal or  
15 factual ground to disallow the claim will likely prevail absent an  
16 adequate response by the creditor. Moreover, a creditor's lack of  
17 adequate response to a debtor's formal or informal inquiries "in  
18 itself may raise an evidentiary basis to object to the unsupported  
19 aspects of the claim, or even a basis for evidentiary sanctions,  
20 thereby coming within Section 502(b)'s grounds to disallow the  
21 claim." Heath, 331 B.R. at 437 (citations omitted).

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22  
23 <sup>8</sup>(...continued)

24 (b) Except as provided [in inapplicable subsections], if such  
25 objection to a claim is made, the court, after notice and a  
26 hearing, shall determine the amount of such claim in lawful  
27 currency of the United States as of the date of the filing of  
28 the petition, and shall allow such claim in such amount,  
except to the extent that --

(1) such claim is unenforceable against the debtor and  
property of the debtor, under any agreement or  
applicable law for a reason other than because such  
claim is contingent or unmatured;

11 U.S.C. § 502(a) and (b) (1).

1 We also emphasize, as we did in Heath, that although Debtors'  
2 admissions in their bankruptcy schedules can be binding that is  
3 not the basis of our decision. The bankruptcy court did not rely  
4 on those admissions and we need not decide whether they would bar  
5 Debtors' claims objections, or whether Debtors can amend their  
6 bankruptcy schedules to withdraw their admissions, or whether even  
7 after such withdrawal there might be some residual evidentiary  
8 effect of having once admitted the liability and amount of the  
9 debt, or whether some form of estoppel would apply if reliance and  
10 other elements were shown. See generally Heath, 331 B.R. at 431.  
11 Neither Heath nor this opinion should be construed as implying any  
12 change in the law regarding admissions, withdrawal of admissions,  
13 and the legal or evidentiary effect of such.

14 In other words, when a debtor objects to a creditor's proof  
15 of claim that does not conform with Rule 3001(c) by including  
16 copies of the documentation on which it is based, the bankruptcy  
17 court should resolve the issues by reference to the usual burdens  
18 of proof associated with claims litigation. In doing so, the  
19 bankruptcy court may properly consider as admissions or evidence  
20 any information contained in debtor's bankruptcy schedules, and  
21 may also consider the creditor's failure to provide relevant  
22 documentation.

23 Ultimately, as in Heath, the issue is quite narrow:

24 [Debtors] filed objections that relied solely on the  
25 alleged lack of prima facie validity of the proofs of  
26 claim. That is not a sufficient objection recognized  
27 by Section 502, which deems claims allowed and directs  
that the bankruptcy court "shall" allow claims with  
limited exceptions that were not alleged by Debtors.

28 Heath, 331 B.R. at 437-438.

1 **V. CONCLUSION**

2       Objections without substance are inadequate to disallow  
3 claims, even if those claims lack the documentation required by  
4 Rule 3001(c). Debtors have not shown any actual disagreement as  
5 to their liability or the amounts claimed by their creditors. The  
6 bankruptcy court's orders overruling their objections are  
7 AFFIRMED.

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