



Entered on Docket
January 11, 2008

Hon. Mike K. Nakagawa
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re)	Case No. BK-S-04-21029-MKN
MITCHELL H. THIBODEAUX and)	Chapter 13
VICKI LYNN THIBODEAUX,)	Date: October 23, 2007
)	Time: 9:30 a.m.
Debtors.)	

**MEMORANDUM DECISION ON DEBTORS' OBJECTION TO
AMENDED PROOF OF CLAIM OF SHERMAN ACQUISITIONS II, L.P.**

An evidentiary hearing was conducted on October 23, 2007. The appearances of counsel were noted on the record. After closing arguments were presented, the Court took the matter under submission.

BACKGROUND

Mitchell H. Thibodeaux and Vicki Lynn Thibodeaux ("Debtors") filed a voluntary Chapter 7 petition on October 26, 2004, along with their Schedules of Assets and Liabilities, and a Statement of Financial Affairs. (Dkt# 1) Amongst the unsecured creditors listed on Debtors' Schedule "F" is Bank of America with one claim in the scheduled amount of \$16,290.89 and another in the scheduled amount of \$3,427.15. Another listed unsecured creditor is Sherman

1 Acquisitions II, L.P. (“Sherman Acquisitions”) whose claim is scheduled in the amount of \$0.00.

2 On December 27, 2004, Sherman Acquisitions filed a proof of claim (“First Proof of
3 Claim”) which identified itself “as purchaser from and assignee of Bank of America.” The First
4 Proof of Claim indicated that Sherman Acquisitions is owed \$17,384.88 as a general unsecured
5 claim and the amount of \$17,588.72 as a priority unsecured claim.

6 On February 2, 2005, Debtors’ motion to convert the case (Dkt# 8) to Chapter 13 was
7 granted. (Dkt# 13) On June 15, 2005, an order was entered confirming Debtors’ Chapter 13
8 plan. (Dkt# 43) On June 15, 2005, the Chapter 13 trustee assigned in the case filed a Notice of
9 Intent to Pay Claims, which identified Sherman Acquisitions as having a total claim in the
10 amount of \$34,973.60 on a priority unsecured basis. (Dkt# 44). On August 22, 2005, Debtor
11 filed an objection to the claim of Sherman Acquisitions as assignee of Bank of America. (“First
12 Claim Objection”)(Dkt# 49) The First Claim Objection sought to deny Sherman Acquisitions’
13 claim in its entirety on grounds that the claim was not accompanied by an itemized statement
14 showing the computation of interest, that no basis for priority status was identified, that the form
15 was completed incorrectly, and that the apparent interest calculation included postpetition
16 interest on an unsecured claim. See First Claim Objection at 2:2 to 3:19.

17 At a hearing on September 29, 2005, the First Claim Objection was sustained inasmuch
18 as no response was ever filed. A written order sustaining the objection (“First Claim Objection
19 Order”) was entered on December 20, 2005 (Dkt# 61).

20 On May 15, 2007, Sherman Acquisitions filed a Motion for Reconsideration of Order
21 Granting Debtor’s Objection to Proof of Claim or, in the Alternative, to Modify Order to Reflect
22 Sherman Acquisitions II as a General Unsecured Creditor (“Reconsideration Motion”)(Dkt# 85).
23 Written opposition was filed by the Debtors on June 7, 2007. (Dkt# 90 and 91) The Chapter 13
24 trustee filed a “joinder” in the Reconsideration Motion on June 13, 2007. (Dkt# 93) Sherman
25 Acquisitions filed a reply on June 19, 2007. (Dkt# 94)

26 On August 2, 2007, the Court entered its order granting Sherman Acquisitions’
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1 Reconsideration Motion (“Reconsideration Order”)(Dkt# 96) in conjunction with a
2 Memorandum Decision thereon (“Memorandum Decision re Reconsideration”). (Dkt# 95) The
3 Reconsideration Order allowed Debtors to recover their attorney’s fees and costs in connection
4 with the First Claim Objection and in responding to the Reconsideration Motion. Sherman
5 Acquisitions filed an amended proof of claim on August 16, 2007 (“Second Proof of Claim”),
6 asserting the amount of \$16,810.16 as a general unsecured claim against the Debtors’ Chapter 13
7 estate.

8 On August 24, 2007, Debtors filed an objection to the Second Proof of Claim (“Second
9 Claim Objection”)(Dkt# 103) which includes their request for attorneys’ fees and costs pursuant
10 to First Claim Objection Order, and which objects to Sherman Acquisitions’ substantive claim on
11 various grounds. Sherman Acquisitions filed written opposition to the Second Claim Objection
12 (“Sherman Opposition”)(Dkt# 109) which included a motion to strike copies of certain e-mail
13 correspondence that was attached as Exhibit “A” to the Second Claim Objection. A written reply
14 was filed by the Debtors that included a response to the motion to strike. (“Debtors’ Reply”)
15 (Dkt# 110). The Second Claim Objection was initially heard on September 10, 2007, at which
16 time an evidentiary hearing was scheduled.

17 **DISCUSSION¹**

18 At the evidentiary hearing, Sherman Acquisitions presented the testimony of Jean Paul
19 Torres and offered into evidence three exhibits. Exhibit “A” consists of two pages, the first of
20 which is entitled “Bill of Sale”, ostensibly between Bank of America, N.A., as the seller of the
21 credit card account and Sherman Originator LLC as the buyer of the account.² Exhibit “B”
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23 ¹ In the text and footnotes of this Memorandum Decision, all references to “Section”
24 shall be to provisions of the Bankruptcy Code appearing in Title 11 of the United States Code
25 unless otherwise indicated. All references to “Rule” shall be to provisions of the Federal Rules
26 of Bankruptcy Procedure unless otherwise indicated. The Federal Rules of Civil Procedure shall
27 be referred to as “FRCP” and the Federal Rules of Evidence shall be referred to as “FRE”.

28 ² For ease of reference, a copy of Exhibit “A” offered by Sherman Acquisitions is
attached to this Memorandum Decision. Because the exhibit stamp obscures the page number

1 consists of copies of various Bank of America credit card statements on the account reflecting
2 payment due dates from September 20, 2003 through January 20, 2004.³ Exhibit “C” is a
3 payment history statement reflecting transactions on the account from June 1, 2004 through April
4 12, 2007.⁴ No other evidence was offered and Debtors’ counsel objected to the admission of
5 each exhibit. The Court reserved ruling on the admission of each exhibit.

6 At the request of Debtors’ counsel, the Court took judicial notice of the June 6, 2005
7 claims bar date in the case⁵. Similarly, the Court took judicial notice that proofs of claim had
8 been filed by Sherman Acquisitions and not by any entity related to Sherman Acquisitions.⁶
9 Other than the testimony of one witness and the proposed exhibits, no other evidence was
10 presented.⁷

11 **1. The Burden of Proof on a Claim Objection.**

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13 appearing in the bottom right corner of the first page of Exhibit “A”, an additional copy of that
14 first page is included. That additional copy was attached as Exhibit “D” to the Sherman
Opposition and was referred to at the evidentiary hearing.

15 ³ For ease of reference, a copy of the first page of Exhibit “B” offered by Sherman
16 Acquisitions is attached to this Memorandum Decision as well as the account statement payable
on January 20, 2004.

17 ⁴ For ease of reference, a copy of Exhibit “C” offered by Sherman Acquisitions is
18 attached to this Memorandum Decision.

19 ⁵ Under Rule 3002(c), proofs of claim must be filed within 90 days after the first date set
20 for the first meeting of creditors conducted pursuant to Section 341(a). After Debtors’ case was
21 converted to Chapter 13, a first meeting of creditors was scheduled for March 8, 2005. At the
22 evidentiary hearing, Debtors’ counsel stated that the claims bar date was June 5, 2005. The
Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors, & Deadlines issued on February 2,
2005 (Dkt# 14), correctly indicated that the claims bar date in the case was June 6, 2005.

23 ⁶ Debtors’ counsel made an oral motion for a “nonsuit” after all of the evidence was
24 presented, ostensibly pursuant to Rule 7052 incorporating by reference FRCP 52(c). Since the
25 evidentiary record was closed as to both parties, a judgment on partial findings was unnecessary
and counsel was directed to present closing argument.

26 ⁷ After the matter was taken under submission and the evidentiary record was closed,
27 Debtors’ counsel filed a “Request for Judicial Notice” on October 24, 2007, that was neither
requested nor permitted by the Court.

1 A properly completed proof of claim constitutes prima facie evidence of its
2 validity. See Fed.R Bankr.P. 3001(f). This is true even if the proof of claim is executed by the
3 creditor's attorney rather than the creditor or a principal of the creditor. See In re Garner, 246
4 B.R. 617, 622 (9th Cir.B.A.P. 2000). Rule 3001(c) governs claims that are based on a writing. It
5 states in pertinent part as follows: "When a claim...is based on a writing, the original or a
6 duplicate shall be filed with the proof of claim. If the writing has been lost or destroyed, a
7 statement of the circumstances of the loss or destruction shall be filed with the claim."⁸
8 Fed.R.Bankr.P. 3001(c).

9 Where a proof of claim is submitted with respect to amounts claimed on a credit card
10 account, courts have required at least a summary of the credit card agreement and the actual
11 transactions creating the debt on the account. See In re Heath, 331 B.R. 424, 432-33 (9th Cir.
12 B.A.P. 2005). A proof of claim that does not have at least a summary of the terms governing the
13 account and of the transactions in question does not meet the standard required under Rule
14 3001(c) and is not accorded prima facie validity under Rule 3001(f). Id., 331 B.R. at 433.
15 Where the proof of claim lacks prima facie validity, objections that raise a factual or legal ground
16 likely will prevail absent an adequate response by the creditor. See In re Campbell, 336 B.R.
17 430, 436 (9th Cir. B.A.P. 2005).

18 In this case, there is attached to the Second Proof of Claim a copy of an unverified
19 complaint that Sherman Acquisitions filed on June 29, 2004, in the District Court for the Eighth
20 Judicial District for Clark County, Nevada, commencing Case No. A487970 ("Collection
21 Complaint"). The only attachment to the Collection Complaint is a disclosure of the filing fee
22 paid to commence the case. While the caption of the Collection Complaint identifies Sherman
23 Acquisitions "as purchaser from and assignee of Bank of America", there is no summary of the
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25 ⁸ Claims based on a writing must be contrasted with obligations based on statute. See
26 State Board of Equalization v. Los Angeles International Airport Hotel Associates (In re Los
27 Angeles International Hotel Associates), 106 F.3d 1479, 1480 (9th Cir. 1997)(tax claim is based
on a statute, rather than a writing).

1 terms of any underlying credit agreement or of the transactions that formed the basis for the
2 amounts sought in the prayer. Likewise, other than the reference in the caption to Sherman
3 Acquisitions being the assignee of Bank of America, there are no allegations in the Collection
4 Complaint and nothing attached that addresses the purported assignment.

5 Because the Second Proof of Claim was not completed in accordance with Rule 3001(c),
6 it does not have prima facie validity under Rule 3001(f). While the absence of correct
7 documents will not alone serve as a basis to sustain an objection to the claim, See In re Heath,
8 supra, Sherman Acquisitions bears the burden of proof on the validity of the claim. See In re
9 Garner, supra, 246 B.R. at 622-23.

10 **2. The Testimony of Sherman Acquisitions' Witness.**

11 Torres was the only witness Sherman Acquisitions called to testify at the evidentiary
12 hearing. He was subject to direct and re-direct examination by counsel for Sherman
13 Acquisitions, as well as cross and re-cross examination by Debtors' counsel.

14 Torres testified that he is the legal administrator and authorized representative of LVNV
15 Funding ("LVNV"), which is a debt purchaser that acquires accounts that have been charged off
16 by creditors such as Citibank, Household, and Bank of America. The debt purchaser then places
17 the accounts with collection agencies to "recoup" the amount owed from the original borrowers.
18 He testified that he started working for LVNV on May 10, 2004 and also that LVNV was formed
19 as a Delaware entity on June 1, 2005⁹. His duties as the legal administrator entails assisting law

21 ⁹ The date of formation of LVNV was revealed on cross-examination while the
22 beginning date of Torres's employment by LVNV was disclosed on re-direct. Neither counsel
23 questioned how he could have started working for LVNV in May 2004 when it was not formed
24 until June 2005. Moreover, no explanation was sought as to how Exhibit "C" could show that
25 LVNV purchased the account on January 27, 2004, when it was not formed until June 2005.
26 Torres also was not asked how Sherman Acquisitions could have filed the Collection Complaint
27 on June 29, 2004, when Exhibit "C" showed that LVNV owned the account after January 27,
28 2004. On re-cross examination, however, Torres testified that LVNV acquired the account on
June 1, 2005, which coincides with the date he testified that LVNV was formed in Delaware.
The best that can be said about this discrepancy is that Exhibit "C" might not accurately reflect
the date that the account was acquired by LVNV.

1 firms with anything that is needed to collect the accounts that have been acquired. Although
2 Torres was never asked about his legal education, or whether he is a member, officer, or director
3 of LVNV, it appears that his function as a legal administrator are equivalent to that of a
4 paralegal.

5 Torres testified that an entity known as Sherman Originator purchased a portfolio of
6 credit card accounts from Bank of America on January 23, 2004, which included the account of
7 the Debtors. He also testified that Sherman Originator, and apparently Sherman Acquisitions,
8 are affiliates or “sister” companies to LVNV that are run by the same individuals and
9 administered through the same offices. Torres testified that all three entities are debt purchasers,
10 but that none of them are debt collection firms. He stated that he does not personally do any debt
11 collection. While he testified that he knew when and where LVNV was formed, Torres also
12 testified that he did not know where, when or under what legal forms Sherman Originator and
13 Sherman Acquisitions were created, or whether either of them is an existing legal entity¹⁰.

14 While he is employed only by LVNV and has never been an employee of Sherman
15 Originator or Sherman Acquisitions, Torres testified that he is familiar with the Debtors’
16 account. He said he performs work on a regular basis for Sherman Originator and Sherman
17 Acquisitions, with roughly five to ten percent of his time on Sherman Acquisitions accounts and
18 less than that for Sherman Originator accounts. Based on his familiarity with the Debtors’
19 account, Torres testified that the Debtors owed a principal balance of \$18,396.58 that has been
20 reduced to \$4,867.09 from payments received through the confirmed Chapter 13 plan.¹¹ That

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22 ¹⁰ While Debtors’ counsel explored this issue on cross-examination, the meaning of the
23 phrase “existing legal entity” or Torres’s understanding or lack of understanding of that phrase
was never developed.

24 ¹¹ Exhibit “C” lists as “payment” or “principal payment” various amounts that total
25 \$13,529.49. When subtracted from the \$18,396.58 figure, the resulting sum is \$4,867.09, which
26 allegedly is the amount currently due on the account. Included in the same list, however, are line
27 items for “Service Process Cost” and “Suit Filing Cost” in the amounts of \$28.50 and \$133.00,
respectively. It is not clear whether those two figures were included in the \$18,396.58 amount
since the column of Exhibit “C” for sums “Owing” show no amounts for interest, attorneys fees,

1 testimony was based on figures taken from Exhibit "C" which apparently is an internally
2 generated document created by LVNV to show payments made to an account after it is acquired
3 from the original creditor. Torres testified on cross-examination that the information appearing
4 on Exhibit "C" was taken from Bank of America billing statements but he does not know who
5 prepared Exhibit "C."

6 While he testified that \$18,396.58 was originally owed on the account, Torres was also
7 asked to explain the difference between that figure and the sum appearing in the copies of the
8 account statements submitted by Sherman Acquisitions as its Exhibit "B." The oldest of those
9 credit account statements shows an amount owed of \$14,072.03¹² as of January 20, 2004. It also
10 shows that finance charges accrue at an annual rate of 23.990 percent. Torres had testified that
11 Sherman Originator acquired a portfolio of accounts, included the Debtors' account, on January
12 23, 2004. Debtors filed their voluntary Chapter 13 petition on October 26, 2004.

13 When asked to explain the \$4,324.55 difference between the \$14,072.03 that was due on
14 January 20, 2004, and the amount of \$18,396.58 that Exhibit "C" indicates was due on the
15 October 26, 2004 petition date, Torres speculated that the difference might represent additional
16 accrued interest. According to Exhibit "C", a "Suit Filing Cost" of \$133.00 was charged to the
17 account on June 1, 2004¹³, and a "Service Process Cost" of \$28.50 was charged to the account on
18 August 27, 2004. Deducting those amounts from the \$4,324.55 difference leaves \$4,163.05.
19 Since the bankruptcy petition was filed on October 26, 2004, the remaining amount can only be
20 explained by attorneys fees charged to the account or accrual of interest.

21 But even the possibility of attorney's fees does not satisfactorily explain this difference.

22 _____
23 or miscellaneous costs.

24 ¹² That account statement reflects that the previous balance owing was \$16,290.08, but
25 that the account was credited for \$2,576.33 in various charges that Bank of America previously
had assessed against the account.

26 ¹³ According to the copy of the Collection Complaint attached to the Second Proof of
27 Claim, the lawsuit was not filed until June 29, 2004.

1 The Second Proof of Claim asserts that the amount of \$16,810.16 is owed on the petition date as
2 a nonpriority unsecured claim. Attached to the Second Proof of Claim is a copy of the Collection
3 Complaint, Paragraph 6 of which alleges that “there is currently due...the sum of \$16,648.66,
4 inclusive of interest up to and including February 28, 2004.” The difference between the amount
5 set forth in the Collection Complaint and the amount stated on the Second Proof of Claim is
6 \$161.50, which matches the sum total of the “Suit Filing Cost” and the “Service Process Cost”
7 shown on Exhibit “C.” The prayer of the complaint seeks “reasonable attorneys’ fees.” Even if
8 there is a basis for such fees in the credit agreement or a statute that allows for such fees, the
9 attorney’s fees for filing the Collection Complaint would not approach the \$4,163.05 remaining
10 difference.

11 A comparison of the \$14,072.03 amount owing on January 20, 2004 according to the last
12 Bank of America billing statement, and the amount of \$16,648.66 that was alleged in the
13 Collection Complaint to be owed through February 28, 2004, is equally troubling. During the
14 thirty-nine day period between those dates, an additional \$2,576.63 apparently was assessed
15 against the account.¹⁴ Clearly the 23.990 percent annual percentage rate shown on the account
16 statement would not explain this additional amount.

17 The Collection Complaint attached to the Second Proof of Claim bears a file stamp of
18 June 29, 2004, even though a filing fee of \$133.00 was assessed against the Debtors’ account on
19 June 1, 2004, according to Exhibit “C.” It appears that the fee was charged to the account before
20 the Collection Complaint was even filed. When asked whether legal counsel was ever provided
21 with a copy of a written assignment of accounts from Bank of America to Sherman Acquisitions
22 prior to the Collection Complaint being filed, Torres testified that he does not know because he
23 was not employed at that time. This contradicts his prior testimony where Torres stated that he
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25 ¹⁴ Nothing in the record was provided to show that the Debtors ever used the account
26 after January 20, 2004. Moreover, the other Bank of America billing statements included in
27 Exhibit “B” show only late payment fees, finance charges and over limit fee assessments rather
28 than purchases or cash advances by the Debtors.

1 started working for LVNV on May 10, 2004, and never has been employed by Sherman
2 Originator or Sherman Acquisitions.¹⁵

3 Torres' testimony as to the original amount owed on the account and the balance owed
4 after receipt of the Chapter 13 plan payments is of dubious value. His testimony as to the
5 underlying transaction also is suspect at best. This is especially true since Torres further testified
6 that he does not have a copy of the credit agreement between Bank of America and the Debtors,
7 does not have copies of any of the charges made by the Debtors to the account, and does not
8 know why Bank of America made credit adjustments to the account.

9 As to whether Sherman Acquisitions currently owns the account, Torres' testimony is that
10 LVNV owns it, not Sherman Acquisitions. Apparently, this was the case as early as January 27,
11 2004, or possibly as late as June 1, 2005. Either way, Sherman Acquisitions does not have any
12 rights in the account and its successor in interest to the account, LVNV, has never filed a proof of
13 claim. Sherman Acquisitions' First Proof of Claim was filed on December 27, 2004. As
14 previously noted, Debtors' First Claim Objection was sustained. On August 2, 2007, the
15 Reconsideration Order was entered that allowed Sherman Acquisitions to file an amended proof
16 of claim. On August 16, 2007, Sherman Acquisitions filed the Second Proof of Claim. Torres
17 testified that LVNV acquired Debtors' account from Sherman Acquisitions¹⁶ on June 1, 2005,
18 even though Exhibit "C" indicates that LVNV purchased the claim on January 27, 2004. Torres
19 could not explain why a proof of claim was not filed by LVNV prior to the June 6, 2005 claims
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21 ¹⁵ Since Torres's job function as the legal administrator is to assist attorneys with
22 documents and to answer questions and concerns, perhaps his lack of knowledge was due to his
23 recent hiring prior to the state court complaint being filed.

24 ¹⁶ Included in the Sherman Opposition as Exhibit "F" is the Affidavit of Nikki Rambo
25 dated August 30, 2007. In that affidavit, Ms. Rambo indicates that she is, like Torres, an
26 authorized representative of LVNV. She states under oath that the Debtors' account was
27 acquired by LVNV from its affiliate, Sherman Originator, rather than from Sherman Acquisitions
as testified by Torres. The Rambo affidavit was not offered into evidence at the hearing,
however, and Torres was never asked to explain why two separate authorized representatives of
LVNV would give such contradictory testimony under oath.

1 bar date if LVNV acquired the Debtors' account on June 1, 2005. If LVNV had in fact
2 purchased the claim on January 27, 2004, it is questionable how Sherman Acquisitions could
3 ever have filed a proof of claim in Debtors' bankruptcy case at all.¹⁷

4 As to whether Sherman Acquisitions ever previously acquired Debtors' account through
5 Bank of America, Torres has no personal knowledge. His testimony that the acquisition did
6 occur, however, is based on his review of (1) Exhibit "A" that purports to be a bill of sale of various
7 accounts from Bank of America to Sherman Originator, (2) the copies of the various Bank of
8 America billing statements submitted as Exhibit "B", and (3) a copy of an affidavit of Brett
9 Hildebrand, where the affiant represents that Sherman Originator obtained Debtors' account from
10 Bank of America, immediately transferred it to Sherman Acquisitions, which then transferred all
11 right, title and interest in the account to LVNV.

12 As previously mentioned, Exhibit "A" is a two page exhibit, the first page of which is
13 entitled "Bill of Sale" allegedly representing the sale of accounts by Bank of America to Sherman
14 Originator. The Bill of Sale purports to sell "all right, title and interest of Seller in and to those
15 certain Accounts listed on the attached Exhibit "A"..." The Exhibit "A" offered as evidence by
16 Sherman Acquisitions, however, does not include a copy of the "Exhibit "A"" referenced in the
17 Bill of Sale. The Bill of Sale does not mention any specific account, including the Debtors'
18 account. Without the missing exhibit, there is no way to tell if the Debtors' account was
19 included.

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21 ¹⁷ While acknowledging that LVNV had never filed a proof of claim in the case and has
22 never made an appearance, Torres claimed that LVNV is a party in the Debtors' bankruptcy case
23 because Sherman Acquisitions transferred Debtors' account to it. He also testified that LVNV
24 obtained the claim while providing nothing in exchange to Sherman Acquisitions and also had no
25 explanation why LVNV did not file its own proof of claim in the case. At closing argument,
26 Sherman Acquisitions' counsel explained that the "comedy of errors" that necessitated relief
27 from the First Claim Objection Order also explained why no proof of claim was filed by LVNV,
28 i.e., that LVNV never filed a proof of claim because counsel was not aware that the First Claim
Objection Order had been entered. Even if Sherman Acquisitions' counsel never had knowledge
of the First Claim Objection Order, it does not explain why LVNV did not at least file evidence
of transfer of the claim in compliance with Rule 3001(e)(2).

1 In spite of the absence of the attached exhibit, Torres testified that Debtors' account was
2 included. Torres testified that the Bill of Sale shows that accounts were sold and that typically
3 2,000 to 4,000 accounts would be sold at a single time. He stated that the exhibit listing all of the
4 accounts was not included with the Bill of Sale because of Sherman Acquisitions' concern for
5 the privacy of account holders other than the Debtors. Torres acknowledged, however, that the
6 information for other accounts could have been blacked out, or that a copy of the missing exhibit
7 could have been provided for in camera review by the Court. He testified that he saw no reason
8 why this could have been done.

9 In addition to missing the list of accounts sold, Exhibit "A" offered by Sherman appears
10 to be missing other pages. As mentioned, the first page of Exhibit "A" is entitled "Bill of Sale",
11 but in the bottom right corner of that page it is paginated as being page "2 of 2".¹⁸ On the second
12 page of Exhibit "A", at the bottom and in the certain, it is paginated as being page "12". On
13 cross-examination, Torres could not explain the discrepancy in the pagination of the offered
14 exhibit. In the Court's view, however, the obvious explanation is that the second page of Exhibit
15 "A" comes from a different document since what little language appears on that page refers to
16 "this Account Sale Agreement..." To the degree Torres' personal knowledge of the sale of
17 accounts by Bank of America is based on Exhibit "A", the testimony is entitled to little weight.¹⁹

18 The copies of the Bank of America billing statements offered as Exhibit "B" do not
19 address at all the issue of whether Debtors' account was transferred. Torres acknowledged that
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21 ¹⁸ Because the exhibit stamp obscured the bottom of the page, a copy of the same page
22 taken from Exhibit "D" to the Sherman Opposition was shown to the witness.

23 ¹⁹ The Court's best guess is that there may exist a twelve page document entitled
24 "Account Sale Agreement" to which is attached as Exhibit "A" a "Bill of Sale", and in turn there
25 is a separate Exhibit "A" attached to the Bill of Sale that lists the accounts encompassed by the
26 Account Sale Agreement. This is pure speculation, however, and Sherman Acquisitions' sole
27 witness has so little familiarity with the document that he could not even offer such an
28 explanation. Sherman Acquisitions also never produced a witness from Bank of America to
testify as to the transaction even though both the pages of Sherman Acquisitions' proffered
exhibit includes the signature of the same officer from Bank of America.

1 none of the statements reference an assignment or transfer of the Debtors' account from Bank of
2 America to Sherman Originator or any other party. He also testified that neither Sherman
3 Originator, Sherman Acquisitions, or LVNV ever notified the Debtors that the account had been
4 purchased.²⁰ However, in the upper left corner of the first billing statement in Exhibit "B", there
5 is an information stamp with blanks to be filled in for the following: "Sherman ID", "Portfolio
6 ID", "Agency" and "Debtor#". There are handwritten numbers close to the lines for Sherman ID
7 and Portfolio ID as well as a signature on the line for Agency. The line for "Debtor #" is not
8 filled in. In the middle of the stamped area also appears a date stamp of August 6, 2007. Torres
9 testified that the date stamp reflects the date that those billing statements were received from
10 Bank of America. In other words, for the accounts allegedly encompassed by the Bill of Sale that
11 were sold on January 23, 2004, the copies of the billing statements for Debtors' account were not
12 received by the buyer's transferee until August 6, 2007, more than three and a half years later.
13 While Torres agreed that the information stamp does not by itself prove that Sherman
14 Acquisitions purchased the account from Bank of America, he testified that he is aware of no
15 situation where the information stamp appeared on billing statements for accounts not acquired
16 by an entity related to Sherman Acquisitions.

17 The billing statements offered as Exhibit "B", however, do not evidence any personal
18 knowledge of Torres as to the acquisition of the Debtors' account. According to Torres, none of
19 the statements were received from Bank of America until August 6, 2007. This was after the
20 Collection Complaint was filed on June 29, 2004, after the First Proof of Claim was filed on
21 December 27, 2004, after LVNV purportedly acquired the account as late as June 1, 2005, after
22 Sherman Acquisitions filed its Reconsideration Motion on May 24, 2007, and after the Court
23 issued its Reconsideration Order on August 2, 2007. That Sherman Acquisitions put its own
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25 ²⁰ Under Nevada Revised Statute section 104.9406(3), an assignee of an account must, if
26 requested by the account debtor, "seasonably furnish reasonable proof that the assignment has
27 been made." Debtors' counsel argued that such proof was requested but no evidence of such a
28 request or its timing was ever presented.

1 information stamp on the billing statements is not persuasive. Moreover, the act of putting its
2 information stamp on the document would be hearsay to the extent such conduct is offered to
3 prove that Sherman Acquisitions purchased the Debtors' account.

4 On redirect examination, Sherman Acquisitions' counsel attempted to establish Torres'
5 personal knowledge of the transaction through Torres' testimony that he had reviewed the
6 Affidavit of Brett Hildebrand. In that document, the affiant attests that Sherman Originator
7 acquired Debtors' account from Bank of America, that Sherman Originator immediately
8 transferred the account to Sherman Acquisitions, and that the account thereafter was transferred
9 from Sherman Acquisitions to LVNV in the ordinary course of business. Based on his review of
10 the Hildebrand affidavit, Torres testified to his belief that the Debtors' account had been
11 purchased from Bank of America by Sherman Originator and ultimately ended up being owned
12 by LVNV. Since the affiant was not available for cross-examination, Debtors' counsel properly
13 objected to admission of the affidavit as hearsay.

14 The Hildebrand affidavit was hearsay because it was being offered through Torres to
15 prove the truth of the matters asserted. If Torres was an expert witness, his testimony could be
16 based on hearsay statements of third parties or otherwise inadmissible evidence. See Fed.R.Evid.
17 703. See, e.g., In re Colonial Realty Co., 209 B.R. 819, 822 (Bkrcty.D.Conn.1997)(an expert
18 witness on insolvency issue may rely on hearsay and documentary evidence not available to
19 defendant). Torres, however, was never offered as an expert witness and was never permitted to
20 testify as an expert witness. FRE 602 is clear that a witness may not testify as to matters unless it
21 is shown that he has personal knowledge. If the witness's purported knowledge is based on what
22 he was told by another person, the witness's testimony is hearsay. See generally, B. Russell,
23 Bankruptcy Evidence Manual § 602.1 (2007 ed.). Thus, to the extent Torres's testimony is based
24 on the Hildebrand affidavit, it is not admissible to establish the transfer of the Debtors' account
25 from Bank of America to Sherman Originator and then to Sherman Acquisitions.

26 To the extent Torres is attempting to offer his opinion as a lay witness, he is required to
27 have personal knowledge of the facts upon which the opinion is based. See Fed.R.Evid.701. In
28

1 this case, no evidence was adduced independently or from Torres himself, that he has any
2 personal knowledge on which his opinions are based. The sale between Bank of America and
3 Sherman Originator took place on January 23, 2004, before Torres ever started working for
4 LVNV. He testified that he never has worked for Sherman Originator or Sherman Acquisitions,
5 and does not know if they currently exist. He also testified that he has never worked for Bank of
6 America. Thus, he has no personal knowledge at all as to what Bank of America sold to
7 Sherman Originator. For the same reason, he has no personal knowledge of what Sherman
8 Originator may have transferred to Sherman Acquisitions and what the latter may have
9 transferred to LVNV if that transfer took place on January 27, 2004.

10 The testimony of Torres is not admissible to establish that Sherman Acquisitions acquired
11 or owns the Debtors' credit card account that is the subject of the Second Proof of Claim. Even
12 if the testimony were admissible, it is not credible and is entitled to no weight.

13 **3. The Admissibility of Sherman Acquisitions' Exhibits.**

14 Exhibits "A", "B" and "C" are offered as business records to establish the Second Proof
15 of Claim. Debtors objected to the admissibility of each exhibit on grounds of lack of foundation,
16 best evidence, relevance, and hearsay.

17 To be admissible under FRE 803(6), business records "must be: (1) made at or near the
18 time by, or from information transmitted by, a person with knowledge; (2) made pursuant to a
19 regular practice of the business activity; (3) kept in the course of regularly conducted business
20 activity; and (4) the source, method, or circumstances of preparation must not indicate lack of
21 trustworthiness." In re Vee Vinhnee, 336 B.R. 437, 444 (9th Cir. B.A.P. 2005). FRE 803(6)
22 specifies that these requirements must be shown through testimony of the custodian of the
23 business records or other qualified witness, or by certification of the records under FRE 902(11
24 or 12). None of the offered exhibits are certified copies. Torres is not a custodian of records for
25 Sherman Acquisitions and he has never been employed by Sherman Acquisitions or by Sherman
26 Originator. No evidence or testimony was offered that Torres is the custodian of records for
27 LVNV.

1 Exhibit "A" is not admissible under FRE 803(6) for the additional reason that neither
2 page of the exhibit is complete and no showing has been made that either page was created by a
3 person with knowledge close to the time of the transaction. There are no indicia of
4 trustworthiness. Exhibit "A" is not admissible as a business record and is properly objected to as
5 hearsay. To the degree the Exhibit "A" is relevant, the Court also would accord it zero weight.

6 Exhibit "B" also would not be admissible under FRE 803(6) as the business records of
7 Bank of America. Torres testified that he has never worked for Bank of America. No evidence
8 or testimony was offered to establish that he is the custodian of records for Bank of America and
9 he cannot verify whether the billing statements offered as Exhibit "B" are true and accurate copies
10 of Bank of America's records. While the billing statements in Exhibit "B" are relevant, they
11 would be entitled to no weight as to the assignment of the Debtor's account and to little weight as
12 to the amount of any claim.

13 Exhibit "C" is not admissible under FRE 803(6) for the additional reason that it lacks
14 trustworthiness. Torres testified that he testified that he does not know who prepared it. Torres
15 testified that the figures shown on Exhibit "C" were taken from the Bank of America billing
16 statements. He could not explain why the initial balance shown on Exhibit "C" differs from the
17 balance owing on the last account statement from Bank of America. While Torres speculated
18 that the balance figures might be different due to accumulated interest, he could not explain why
19 the interest accumulation was not shown on Exhibit "C" in the line for interest. The information
20 contained in Exhibit "C" is relevant, but it is entitled to no weight.

21 The "best evidence" rule provides that "to prove the contents of a writing...the original
22 writing...is required, except as otherwise required by the Federal Rules of Evidence..."
23 Fed.R.Evid. 1002. Under FRE 1003, a duplicate meeting the requirements under FRE 1001(4),
24 is admissible to the same extent as an original unless there is a genuine question as to the
25 authenticity of the original or if it would be unfair to admit the duplicate in lieu of the original
26 under the circumstances. FRE 901(a) provides that the authentication requirement is satisfied
27 "by evidence sufficient to support a finding that the matter in question is what its proponent
28

1 claims.” Sherman Acquisitions has not satisfied the authentication requirement with respect to
2 Exhibit “A” since it is not a complete copy of the alleged Bill of Sale between Bank of America
3 and Sherman Originator and appears to be pages from two different documents. Torres could
4 not have prepared either of the pages of Exhibit “A” and was not employed by any of the parties
5 to the transaction. Because Exhibit “A” is not an accurate reproduction of the original, it is not a
6 duplicate within the meaning of FRE 1001(4) and is not admissible under FRE 1003 to prove the
7 content of the Bill of Sale under FRE 1002. The best evidence rule has not been met with respect
8 to Exhibit “A”. Because the contents of the original billing statements offered as Exhibit “B”
9 and the account summary offered as Exhibit “C” are not at issue, FRE 1002 is not applicable.

10 None of the exhibits offered by Sherman Acquisitions are admissible. Debtors’
11 objections to their admission therefore must be sustained.

12 **4. The Disallowance of Sherman Acquisitions’ Claim.**

13 Sherman Acquisitions failed to establish the validity of its Second Proof of Claim. Torres
14 has no personal knowledge of the Debtors’ account with Bank of America and lacks personal
15 knowledge of the sale of Debtors’ account from Bank of America to Sherman Originator. He
16 also has no personal knowledge of any transfer of Debtors’ account from Sherman Originator to
17 Sherman Acquisitions and in fact testified that Sherman Acquisitions did not own the account
18 when Sherman Acquisitions filed the Second Proof of Claim.

19 The exhibits offered by Sherman Acquisitions are inadmissible to establish the terms of
20 Debtors’ account with Bank of America or to establish that the Debtors’ account was transferred
21 to Sherman Acquisitions. LVNV has never filed a proof of claim in this proceeding and has no
22 timely filed proof of claim against the bankruptcy estate.

23 Debtors’ objection to Sherman Acquisitions’ Second Proof of Claim must be sustained.

24 **5. Debtors’ Attorney’s Fees and Costs on the First Claim Objection.**

25 The Reconsideration Order permitted Sherman Acquisitions to file the Second Proof of
26 Claim conditioned on its payment of Debtors’ reasonable attorneys fees and costs incurred on the
27 First Claim Objection as well as in responding to the Reconsideration Motion. Debtors’

1 objection to the Second Proof of Claim seeks \$1,085.40 for the First Claim Objection and
2 \$2,059.20 in opposing the Reconsideration Motion, for total fees and costs of \$3,144.60. A
3 detailed description of counsel's services and the time expended, as well as the costs advanced
4 ("Debtors' Fee Statement"), appears in Exhibit "B" attached to the Second Claim Objection.

5 Sherman Acquisitions' response to the Second Claim Objection seeks only to strike
6 certain e-mails messages between counsel, copies of which are attached as Exhibit "A" to the
7 Second Claim Objection. Those messages appear to involve counsel's efforts to settle the issues
8 regarding Sherman Acquisitions' claim and Debtors' attorney's fees. Sherman Acquisitions'
9 motion to strike that Exhibit therefore will be granted under FRE 408(a).

10 Sherman Acquisitions has not objected to the fees requested by Debtors' counsel in any
11 fashion. Nonetheless, the Court has reviewed the fees for reasonableness under the standards set
12 forth under Section 330(a)(3).

13 It appears Debtors' Fee Statement that their counsel has been an attorney since 1986 and
14 is licensed to practice in both Nevada and California. He is admitted to practice before various
15 United States District Courts, and has served as an arbitrator and a judge pro tem in the District
16 Court for Clark County, Nevada. He has a civil practice that includes bankruptcy matters. The
17 rate charged by Debtors' counsel for services in this case is \$150.00 per hour.

18 According to Debtors' Fee Statement, counsel's services included a number of tasks that
19 might be characterized as clerical rather than legal in nature, such as photocopying, scanning,
20 electronic filing, and serving various documents. The actual time spent on such matters,
21 however, appears to be minimal. The total amount of time spent on the First Claim Objection
22 was 7.0 hours, including counsel's appearance at the hearing on the matter. The total amount of
23 time spent on the Reconsideration Motion, including counsel's appearance at the hearing, was
24 13.6 hours. For each of the hearings, it appears that counsel has included his travel time as well
25 as a \$3.00 parking fee.

26 The Court has considered the nature, the extent, and the value of counsel's services under
27 all of the circumstances of the case, including the factors set forth under Section 330(a)(3).

1 Ordinarily, the Court would not allow full or partial compensation for clerical tasks, travel time,
2 or for parking expenses absent a showing of extraordinary circumstances. Such items should be
3 regarded as overhead and should be reflected in the hourly rate charged to the client. Counsel's
4 hourly rate, however, is at the lowest end of the spectrum for legal services and is even lower
5 than what many law firms charge for paralegals, much less an attorney that has been licensed to
6 practice for more than 20 years. The modesty of the hourly rate more than offsets tasks and costs
7 that are in question.

8 Based on the foregoing, the Court concludes that the fees and costs requested by Debtors'
9 counsel are reasonable and must be paid by Sherman Acquisitions.

10 **6. Debtors' Request for Sanctions.**

11 Debtors have requested an award of attorney's fees and costs in connection with their
12 objection to the Second Proof of Claim as well. See Second Claim Objection at 9:24-28. A
13 minimum of \$5,000 in attorney's fees and sanctions are sought by the Debtors. See Debtors'
14 Reply at 18. Apparently, Debtors seek additional sanctions for an alleged violation of the
15 Court's Memorandum Decision re Reconsideration Motion, for violation of FRCP 11, and for
16 violation of the Federal Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 et seq.
17 See Debtors' Reply at 19.

18 At the initial hearing on September 10, 2007, the Court informed Debtors' counsel that
19 Sherman Acquisitions' filing of the Second Proof of Claim did not violate the Reconsideration
20 Order. Although Sherman Acquisitions filed the Second Proof of Claim before paying Debtors'
21 reasonable attorney's fees and costs, the Order does not require Sherman Acquisitions to pay
22 those fees and costs in advance. While the Memorandum Decision re Reconsideration Motion
23 indicated the Court's desire to have the attorney's fees and costs paid in advance, the Order did
24 not require it. Sherman Acquisitions did not violate the Order and will not be sanctioned for the
25 discrepancy between the language of the Memorandum Decision and the Reconsideration Order.

26 With respect to Debtors' request for sanctions under FRCP 11, the Court has reviewed
27 the request within the context of Rule 9011 which provides that the filing of a document

1 constitutes a certification that “to the best of the person’s knowledge, information, and belief,
2 formed after an inquiry reasonable under the circumstances, (1) it is not being presented for any
3 improper purpose,....; (2) the claims....therein are warranted by existing law.....; (3) the
4 allegations and other factual contentions have evidentiary support or, if specifically so identified,
5 are likely to have evidentiary support after a reasonable opportunity for further investigation or
6 discovery; and (4) the denials of factual contentions are warranted on the evidence or, if
7 specifically so identified, are reasonably based on a lack of information or belief.”

8 Fed.R.Bankr.P. 9011(b). If a violation of Rule 9011(b) is found, the court may impose
9 appropriate sanctions, both monetary and non-monetary, on the attorneys or parties responsible.

10 See Fed.R.Bankr.P. 9011(c)(2).

11 Where a party seeks sanctions under Rule 9011(b), it must be by a motion “made
12 separately from other motions or requests and shall describe the specific conduct alleged to be in
13 violation of [9011(b)].” Fed.R.Bankr.P 9011(c)(1)(A). In addition to the requirement of a
14 separate motion, the motion also “may not be filed....unless, within 21 days after service of the
15 motion [for sanctions]...the challenged...claim...is not withdrawn or appropriately corrected....”

16 Id. The requirement that the sanctions motion be served on the opposing party 21 days in
17 advance of it actually being filed creates a “safe harbor” for the opposing party to correct the
18 conduct that offends Rule 9011(b). See In re Markus, 313 F.3d 1146, 1151 (9th Cir. 2002), citing
19 Barber v. Miller, 146 F.3d 707, 710 (9th Cir. 1998). In this case, Debtors have not filed a separate
20 motion for sanctions under Rule 9011(c)(1)(A) nor was any such motion served on Sherman
21 Acquisitions at least 21 days prior to filing.

22 Sanctions under Rule 9011 also may be entered by the court sua sponte, but only after
23 issuance of an order to show cause. See Fed.R.Bankr.P. 9011(c)(1)(B) and 9011(c)(2)(B). Faced
24 with an order to show cause, the respondent must demonstrate why its conduct is not in violation
25 of Rule 9011. Id. Only non-monetary sanctions may be ordered when a court acts sua sponte
26 under Rule 9011(c)(2). See In re Loyd, 304 B.R. 372, 374 (9th Cir.B.A.P. 2003).

27 At this point, no order to show cause has been issued by the Court with respect to this
28

1 matter. Based on the testimony of Torres, however, the Court is deeply concerned that Sherman
2 Acquisitions' counsel filed a Collection Complaint, filed the First Proof of Claim in this
3 proceeding, and also filed the Second Proof of Claim, solely on the word of the client. All of
4 those documents were signed by counsel, rather than the client. In its Memorandum Decision re
5 Reconsideration, the Court expressed in no uncertain terms that great care that must be taken in
6 filing a proof of claim. See Memorandum Decision re Reconsideration at 8:1 to 9:13. In spite of
7 that admonition, the Second Proof of Claim was filed with the same attachment as the First Proof
8 of Claim, apparently in the hope that the client would provide the documents evidencing that
9 Debtors' account had been included in the sale from Bank of America to Sherman Originator.

10 As previously discussed, Exhibit "A" offered by Sherman Acquisitions, purporting to be
11 a Bill of Sale between Bank of America and Sherman Originator, was incomplete and
12 inadmissible. Perhaps that deficiency could have been overcome at the evidentiary hearing
13 through testimony from witnesses with personal knowledge of the sale between Bank of America
14 and Sherman Originator. Instead, only the largely incompetent testimony of Torres was
15 presented. While there may be a document or other evidence somewhere that validates counsel's
16 faith in the representations made to it by its client, none of that evidence was presented at the
17 time and place for it.

18 In connection with the Reconsideration Motion, the Court was reluctant to punish the
19 client for failure of its counsel. At the moment, the Court is reluctant to punish counsel for the
20 failure of its client. That reluctance will evaporate in the future, however, if counsel is shown to
21 have filed claims, pleadings or other documents in cases before this Court without having an
22 evidentiary basis at the time the claim, pleading or document is filed. No sanctions under Rule
23 9011(c)(2) will be issued at this time.

24 Debtors' request for sanctions under the FDCPA will be denied in absence of a showing
25 that sanctions or damages can be awarded without the commencement of an adversary
26 proceeding. See Fed.R.Bankr.P. 7001(1)(adversary proceedings include a proceeding to recovery
27 money or property). Moreover, it appears that the FDCPA may not apply at all when the dispute
28

1 involves the filing of a proof of claim in bankruptcy. See, e.g., Gray-Mapp v. Sherman, 100
2 F.Supp.2d 810, 814 (N.D.Ill. 1999). But cf., In re Forsberg, 2004 WL 3510771 (S.D.Cal.
3 2004)(denying motion to dismiss for failure to state a claim for relief under FDCPA) and Molloy
4 v. Primus Automotive Financial Services, 247 B.R. 804 (Bkrcty.C.D.Cal. 2000)(denying motion
5 to dismiss post-discharge suit for damages under FDCPA). The denial of the Debtors' request for
6 sanctions under the FDCPA is without prejudice to the Debtors' pursuit of such a claim in a
7 separate proceeding or to any defenses that may be presented by Sherman Acquisitions.

8 **CONCLUSION**

9 Debtors' Objection to the Second Proof of Claim will be sustained. Any payments
10 previously received by Sherman Acquisitions or its affiliates must be disgorged to the Chapter 13
11 trustee. Debtors are awarded attorneys fees and costs in the amount of \$3,144.60 pursuant to the
12 Reconsideration Order. A separate order has been entered concurrently herewith.

13 Copies noticed through ECF to:

14 RICK A. YARNALL ecfmail@LasVegas13.com
15 MELVIN J. GOLDBERG melvinjgoldberg@cox.net
16 JEFFREY G. SLOANE gjklepel@yahoo.com, rmconnell@kssattorneys.com
17 U.S. TRUSTEE - LV - 7 USTPRegion17.LV.ECF@usdoj.gov
18 THOMAS J. HOLTHUS bknotice@mccarthy-holthus.com
19 JAMES E. SHIVELY nevadabk@poliball.com

20 and sent to BNC to:

21 All parties on BNC mailing list

22 MARIANNE GATTI
23 701 BRIDGER AVE., STE. 820
24 LAS VEGAS, NV 89101

25 WINSTON BOWMAN
26 1389 GALLERIA DRIVE SUITE 200
27 HENDERSON, NV 89104

28 # # #



EXHIBIT "A"

BILL OF SALE

Bank of America, N. A. (USA) ("Seller") for value received and pursuant to the terms and conditions of an Account Sale Agreement ("Agreement") between Seller and Sherman Originator LLC ("Buyer"), dated January 23, 2004 does hereby sell, assign and convey to Buyer, its successor and assigns, all right, title and interest of Seller in and to those certain Accounts listed on the attached Exhibit "A", without recourse and without presentation of, or warranty of, collectibility, or otherwise, except to the extent provided for in the Agreement.

EXECUTED DATE this 23rd day of January 23, 2004

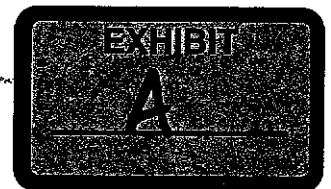
FILE TRANSFER DATE this 23rd day of January 23, 2004

BY: Raymarie Sarsfield
Raymarie Sarsfield, Risk Operations Team Manager, Officer

ACKNOWLEDGMENT

This instrument was acknowledged before me on the 23rd day of January by Raymarie Sarsfield, as Risk Operations Team Manager, Officer of Bank of America NA. (USA)

Hollie Friedrich
SIGNATURE OF NOTARIAL OFFICER
Associate Operations Analyst
TITLE AND RANK
My Commission Expires Aug 31, 2007



IN WITNESS whereof, the parties hereto have executed this Account Sale Agreement as of the date first set forth above.

BUYER:

SHERMAN ORIGINATOR LLC

By: _____

Benjamin W. Navarro
Authorized Signatory

SELLER:

BANK OF AMERICA, N.A. (USA)

By: _____


RayMarie Sarsfield
Bank Officer

Bank of America

EXHIBIT "A"

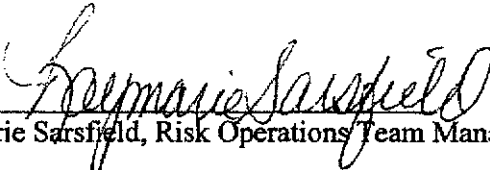
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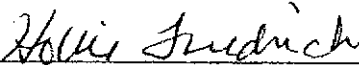
EXECUTED DATE this 23rd day of January 23, 2004

FILE TRANSFER DATE this 23rd day of January 23, 2004

BY:


Raymarie Sarsfield, Risk Operations Team Manager, OfficerACKNOWLEDGMENT

This instrument was acknowledged before me on the 23rd day of January by Raymarie Sarsfield, as Risk Operations Team Manager, Officer of Bank of America NA. (USA)


SIGNATURE OF NOTARIAL OFFICERAssociate Operations Analyst
TITLE AND RANK

My Commission Expires Aug 31, 2007

2000-2004
US Olympic Team

Page 2 of 2

002407001117999351820030628



0010303 0147483 1514171 4070011179993518

Payment Coupon

Account Number	4070 0111 7999 3518
New Balance	\$15,141.71
Past Due Amount	\$ 933.92
Payment Due Date	09/20/03
Total Minimum Payment Due	\$ 1,474.83

Amount Enclosed



Make check or money order payable to Bank of America.

95469742

BANK OF AMERICA
P.O. BOX 53132
PHOENIX, AZ 85072-3132

SHERMAN ID
PORTFOLIO ID

3291 MITCHELL H THIBODEAUX
6725 PAPYRUS CIR
LAS VEGAS, NV 89107-2481

AGENCY H. Nau
DEBTOR # _____

MITCHELL H THIBODEAUX

Account Number: 4070 0111 7999 3518

Your Bank of America Visa Account

Total Credit Line	\$0.00	Available Credit	\$0.00
Cash Limit	\$0.00	Available Cash	\$0.00
Overlimit Amount	\$1,109.71	Billing Date	08/28/03
Minimum Payment Due	\$1,474.83	Payment Due Date	09/20/03

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1.800.848.6090

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Transactions View recent transactions and pay your bill online at www.bankofamerica.com.

POST. DATE	TRANS. DATE	REF. NO.	DESCRIPTION	AMOUNT CR=CREDIT
AUG 20	AUG 20		LATE PAYMENT FEE	\$ 35.00
AUG 26	AUG 26		PERIODIC FINANCE CHARGE	\$ 304.12
AUG 26	AUG 28		OVERLIMIT FEE ASSESSED FOR AUG 26, 2003	\$ 32.00

Account Summary

Previous Balance		\$ 14,770.59
Purchases	+	\$ 0.00
Cash Advances	+	\$ 0.00
Other Debits	+	\$ 67.00
Credits	-	\$ 0.00
FINANCE CHARGE	+	\$ 304.12
Payments	-	\$ 0.00
New Balance	=	\$ 15,141.71

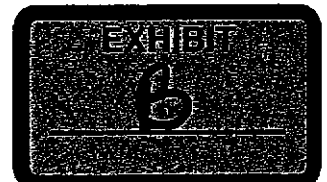
Finance Charge Summary

	Corresponding APR	Daily Periodic Rate(DPR)	Average Daily Balance(ADB)	Minimum (M) / Periodic (P) Charge
Purchases	23.990%	0.06573%v	\$ 1,233.82	\$ 25.14P
Cash	23.990%	0.06573%v	\$ 13,691.25	\$ 278.98P

ANNUAL PERCENTAGE RATE 23.990%

v=Variable

YOUR ACCOUNT IS OVER 60 DAYS PAST DUE AND CLOSED TO FUTURE USE. THE PAST DUE RATING IS BEING REPORTED TO THE CREDIT BUREAUS. TO AVOID FURTHER ACTION, REMIT THE "MIN PAYMENT DUE" IMMEDIATELY. CALL OUR COLLECTIONS DEPARTMENT AT 1-(800)-236-6497.



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0010303 1407203 1407203 4070011179993518

BANK OF AMERICA
P.O. BOX 53132
PHOENIX AZ 85072-3132

MITCHELL H THIBODEAUX
6725 PAPHYRUS CIR
LAS VEGAS, NV 89107-2481

Payment Coupon

Account Number	4070 0111 7999 3518
New Balance	\$ 14,072.03
Past Due Amount	\$ 2,316.62
Payment Due Date	01/20/04
Total Minimum Payment Due	\$ 14,072.03

Amount Enclosed



Make check or money order payable to Bank of America.

MITCHELL H THIBODEAUX

Account Number: 4070 0111 7999 3518

Your Bank of America Visa Account

Total Credit Line	\$ 0.00	Available Credit	\$ 0.00
Cash Limit	\$ 0.00	Available Cash	\$ 0.00
Overlimit Amount	\$ 72.03	Billing Date	12/26/03
Minimum Payment Due	\$ 14,072.03	Payment Due Date	01/20/04

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1.800.848.6090

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Transactions View recent transactions and pay your bill online at www.bankofamerica.com.

POST. DATE	TRANS. DATE	REF. NO.	DESCRIPTION	AMOUNT CR=CREDIT
DEC 21	DEC 21		LATE PAYMENT FEE	\$ 35.00
DEC 26	DEC 26		PURCHASE FIN CHG CREDIT	CR\$ 148.15
DEC 26	DEC 26		LATE FEE CREDIT	CR\$ 250.00
DEC 26	DEC 26		PURCHASE FIN CHG CREDIT	CR\$ 13.46
DEC 26	DEC 26		OVERLIMIT FEE CREDIT	CR\$ 182.00
DEC 26	DEC 26		PURCHASE FIN CHG CREDIT	CR\$ 10.61
DEC 26	DEC 26		RETURN CHECK FEE CREDIT	CR\$ 29.00
DEC 26	DEC 26		PURCHASE FIN CHG CREDIT	CR\$ 3.75
DEC 26	DEC 26		PURCHASE FINANCE CHARGE C	CR\$ 16.39
DEC 26	DEC 26		CASH FINANCE CHARGE CREDI	CR\$ 1,913.27
DEC 26	DEC 26		PERIODIC FINANCE CHARGE	\$ 322.77

Account Summary

Previous Balance		\$ 16,290.89
Purchases	+	\$ 0.00
Cash Advances	+	\$ 0.00
Other Debits	+	\$ 35.00
Credits	-	\$ 2,576.83
FINANCE CHARGE	+	\$ 322.77
Payments	-	\$ 0.00
New Balance	=	\$ 14,072.03



Customer Corner

IN ACCORDANCE WITH YOUR CARDHOLDER AGREEMENT, YOUR ACCOUNT WILL REMAIN IN PENALTY PRICING FOR GOING OVERLIMIT ON YOUR LAST STATEMENT. YOUR ACCOUNT WILL RETURN TO THE REGULAR INTEREST RATE UPON RECEIVING SEVEN (7) CONSECUTIVE MONTHS OF ON-TIME MINIMUM PAYMENTS WITHOUT GOING OVERLIMIT.

YOU'RE PROBABLY PAYING TOO MUCH FOR CELLULAR SERVICE. SAVE UP TO \$100.00...\$200.00...EVEN \$500.00 ANNUALLY WITH ONE EASY PHONE CALL. CALL INPHONIC TOLL FREE AT 1-800-249-7615 TODAY. (BONUS CODE:20276)

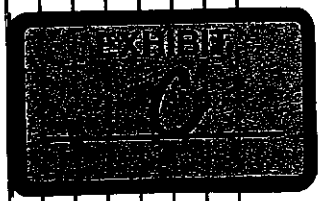
Current Owner: LVNV Funding LLC
 Original Creditor: Bank of America
 Previous Owner: Bank of America
 Statement Closing Date: 8/30/2007 12:00:00 AM
 LVNV Purchase Date: 01/27/2004
 Account Origination Date: 08/13/1993

Account number		407001179993518	
	Owing	Collected	Balance
Principal	\$ 18,396.58	\$ 13,529.49	\$ 4,867.09
Interest	\$ -	\$ -	\$ -
Atty Fee	\$ -	\$ -	\$ -
Misc Cost	\$ -	\$ -	\$ -
New Balance	\$ 18,396.58	\$ 13,529.49	\$ 4,867.09

MITCHELL H THIBODEAUX
 ***-**-6508
 6725 POPYRUS CIR
 LAS VEGAS, NV 89107

TRANSACTIONS	Description	Amount
	12/01/2006 Principal Payment	\$ 777.29
	12/01/2005 Principal Payment	\$ 778.15
	11/18/2005 Payment	\$ 778.15
	10/17/2005 Payment	\$ 813.94
	10/02/2006 Principal Payment	\$ 777.29
	09/11/2006 Payment	\$ 811.46
	08/27/2004 Service Process Cost	\$ 28.50
	08/01/2006 Principal Payment	\$ 811.46
	07/03/2006 Principal Payment	\$ 782.69
	06/01/2006 Payment	\$ 791.51
	06/01/2004 Suit Filing Cost	\$ 133.00
	05/01/2006 Principal Payment	\$ 772.44
	04/12/2007 Principal Payment	\$ 777.29
	04/03/2006 Principal Payment	\$ 115.81
	03/01/2006 Principal Payment	\$ 778.14
	02/01/2007 Principal Payment	\$ 777.31
	02/01/2006 Principal Payment	\$ 778.15
	01/13/2006 Principal Payment	\$ 653.84

This statement is not an original.



01/11/2006	Principal Payment	\$	976.42
01/11/2006	Principal Payment	\$	778.15

This statement is not an original.

This statement has been generated on behalf of LVNV Funding LLC, account owner.