SO ORDERED.

SIGNED this 15th day of June, 2023.

LENA MANSORI JAMES
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION

IN RE:	)	
	)	
Donald G. Jones and	)	Case No. 22-50121
Janet K. Jones,	)	
	)	Chapter 13
Debtors.	)	
	)	

ORDER
OVERRULING OBJECTION TO CLAIM NO. 2 OF U.S. BANK NATIONAL ASSOCIATION

THIS MATTER came before the Court on the Debtors' Objection to Claim Number 2 of U.S. Bank National Association filed February 13, 2023. (Docket No. 54). U.S. Bank filed a Response in opposition on March 2, 2023. (Docket No. 64). For the reasons stated at the hearing held on May 10, 2013, and as explained in further detail below, the Court overrules the Debtors' Objection.

BACKGROUND

The Debtors filed a joint petition under chapter 13 of the Bankruptcy Code on March 11, 2022.[1] U.S. Bank timely filed a proof of claim on May 20, 2022, which it amended on February 3, 2023, asserting a claim of $78,942.71 fully secured by a

[1] Co-debtor Janet K. Jones passed away in August 2022.

deed of trust on the Debtors' residential real property located at 283 Grove Court, Thomasville, NC (the "Claim"). This debt arose out of a home equity line of credit ("HELOC") originated in October 2008, from which a $50,000.00 draw was immediately taken. The Claim includes a facially complete Form 410, Form 410A for mortgage claims, the Form 410A Part 5 loan payment history from first date of default to the petition date, the HELOC agreement (the "Agreement"), deed of trust, corporate assignment documents, and an escrow account statement. The principal balance on August 1, 2013, is stated on Form 410A as $49,855.38, while the principal balance on the petition date is stated as $49,841.23.

The Debtors filed the Objection seeking disallowance of the Claim contending that (1) it does not accurately reflect the Debtors' payments to U.S. Bank from November 2008 through June 2013, and (2) it shows an improper application of payments to interest and fees because the principal balance decreased by only $14.15 between 2013 and 2022.

U.S. Bank filed an initial response opposing the Objection, asserting that the Claim constituted prima facie evidence of the validity and amount of the claim under Federal Rule of Bankruptcy Procedure 3001(f). While reserving its right to supplement its response after further review of its records, U.S. Bank maintained that the Claim was correct, properly filed, and enforceable against the Debtors, their bankruptcy estate, and the subject real property.

The Court held a hearing on the Objection on May 10, 2023, at which Kathryn Bringle, Chapter 13 Trustee; B. Peter Jarvis, counsel for the Debtors; and

James D. Nave, counsel for U.S. Bank, appeared. Donald G. Jones was also present and testified as to the payments he made toward the Claim as well as his understanding of the Agreement.

LEGAL STANDARDS GOVERNING OBJECTIONS TO PROOFS OF CLAIM

Assessing the merits of the Debtors' Objection necessitates a brief recounting of the procedural rules and evidentiary principles at issue when resolving claim objections. Although the holder of a claim always bears "the ultimate burden of proof respecting allowance of the claim," 4 COLLIER ON BANKRUPTCY ¶ 501.02(3)(d) (16th ed. 2023), the outcome of claim objections is greatly influenced by the burden-shifting effect of the Federal Rules of Bankruptcy Procedure.

Proofs of claim and objections to proofs of claim are generally governed by Rules 3001 to 3008 and, subject to certain exceptions, "[a] secured creditor, unsecured creditor or equity security holder must file a proof of claim or interest for the claim or interest to be allowed." Fed. R. Bankr. P. 3002(a). As a threshold matter, a proof of claim is deemed allowed unless a party in interest objects to the claim. *See* 11 U.S.C. § 502(a). Only an objection to claim will trigger a bankruptcy court's responsibility to determine the amount and status of a claim. *See id.* § 502(b). After such an objection, the court "shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount," unless the claim is disallowed by falling into one of the nine exceptions listed in § 502(b)(1)-(9). *Id.*

The requisite degree of evidence required to sustain an objection to claim depends in turn upon whether the claim is treated as presumptively valid. If a proof of claim is filed "in accordance" with Bankruptcy Rule 3001, the allegations in the proof of claim are treated as "prima facie evidence of the validity and amount of the claim." Fed. R. Bankr. P. 3001(f). "In order for a proof of claim to be filed 'in accordance' with Bankruptcy Rule 3001, it must be in writing and conform substantially to the Official Form." *In re F-Squared Inv. Mgmt., LLC*, 546 B.R. 538, 543 (Bankr. D. Del. 2016); s*ee also* Fed. R. Bankr. P. 3001 advisory committee's note to 2012 amendment. Rule 3001 further requires a claimant "to submit specific documentation in support of certain types of claims," such as those "claims 'based on a writing,' individual debtor claims, claims 'based on an open-end or revolving consumer credit agreement,' or claims involving a perfected security interest." *Iatrou v. Darr (In re TelexFree, LLC)*, No. 20-40112-DPW, 2022 WL 220323, at *6 (D. Mass. Jan. 25, 2022) (quoting Fed. R. Bankr. P. 3001(c), (d)). If the claimant meets this standard and attaches the required documentation, the claim is entitled to prima facie validity under the Federal Bankruptcy Rules.

A claim's prima facie validity under Rule 3001(f), or lack thereof, impacts the nature and extent of evidence an objector must produce. A creditor who files a proof of claim lacking prima facie validity "does so at its own risk" because "any objection that raises a legal or factual ground to disallow the claim will likely prevail absent an adequate response by the creditor." *Campbell v. Verizon Wireless S-CA (In re Campbell)*, 336 B.R. 430, 436 (B.A.P. 9th Cir. 2005). A proof of claim entitled to

prima facie validity presents a greater obstacle to an objector seeking to disallow the claim. Once the presumption of validity attaches, the burden shifts to the objector "to produce evidence sufficient to negate the prima facie validity and amount of the claim." *In re Wright*, 438 B.R. 550, 553 (Bankr. M.D.N.C. 2010) (citing *Stancil v. Harford Sands, Inc. (In re Harford Sands Inc.)*, 372 F.3d 637, 640-41 (4th Cir. 2004)). "Except for objections on purely legal grounds, the objector must come forward with sufficient evidence to rebut the presumption" or else the objection will be overruled. *In re S-Tek 1, LLC*, No. 20-12241-J11, 2022 WL 2133980, at *49 (Bankr. D.N.M. June 13, 2022); *see In re F-Squared*, 546 B.R. at 544. "In order to satisfy this burden, 'the objector must produce evidence equal in force to the prima facie case . . . which, if believed, would refute at least one of the allegations that is essential to the claim's legal validity.'" *In re Wright*, 438 B.R. at 553 (quoting *In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992)); *see also* 4 COLLIER ON BANKRUPTCY ¶ 501.02(3)(d). If the objector does meet that burden of production, "the creditor has the ultimate burden of proving the amount and validity of the claim by a preponderance of the evidence." *Stancil*, 372 F.3d at 640 (citing 4 COLLIER ON BANKRUPTCY ¶ 502.02(3)(e)).

While the ultimate burden of persuasion remains with the creditor, the effect of Rule 3001(f) is to shift the initial burden of production to the objector; the objector must "produce evidence equal in force to the prima facie case" to rebut the presumption or the claim will be allowed as filed. *See In re Wright*, 438 B.R. at 553. As with many evidentiary presumptions, however, it is difficult to articulate the

precise quantum of evidence required to rebut the Rule 3001(f) presumption. *See* 1 WEINSTEIN'S FEDERAL EVIDENCE § 301.02(3)(a) (2023) ("Rule 301 says nothing about how much evidence is needed to rebut a presumption, although the evidence necessary to rebut will be less than the burden of persuasion in the case."). And as with many burden-shifting presumptions, the amount of evidence necessary to rebut a presumption "will vary depending upon such factors as the policy reasons favoring the presumption, the strength of the evidence supporting the presumption, and the quality and believability of the rebutting evidence." BANKRUPTCY EVIDENCE MANUAL § 301:4 (2022 ed.). In any event, the objector "must produce actual evidence; mere allegations, unsupported by evidence, are insufficient to rebut the movant's prima facie case." *In re F-Squared*, 546 B.R. at 544 (citing *In re Transamerican Natural Gas Corp.*, 978 F.2d 1049, 1416 (5th Cir. 1992)).

Although lacking precise demarcations, the presumptive validity of a claim raises the bar on the evidence an objector must produce to shift the burden back to the claimant. A debtor's testimony may be enough on its own to defeat a claim lacking the protective shield of presumptive validity. *See, e.g.*, *In re Cluff*, 313 B.R. 323, 338, 340 (Bankr. D. Utah 2004); *In re Muller*, 479 B.R. 508, 514 (Bankr. W.D. Ark. 2012). For claims imbued with prima facie validity, however, that same testimony, without further documentation or evidentiary support, is unlikely to satisfy an objector's burden of production. *See, e.g.*, *In re Muller*, 479 B.R. at 517 (overruling objection to creditor's presumptively valid claim where "debtor did not present any evidence" other than testimony regarding "his lack of recognition");

Foster v. Homeward Residential Inc. (In re Foster), 500 B.R. 197, 203 (Bankr. N.D. Ga. 2013) (finding "debtor's mere testimony" regarding mortgage modification with a prior loan servicer, with no documentary evidence showing that such a modification had occurred, was insufficient to disrupt prima facie validity of lender's properly executed and filed proof of claim); *Lundell v. Anchor Const. Specialists, Inc.*, 223 F.3d 1035, 1040-41 (9th Cir. 2000) (finding debtor's "incredible" testimony was insufficient to rebut the presumptive validity of a signed partnership agreement); *In re Protected Vehicles, Inc.*, No. 08-00783-dd, 2009 Bankr. LEXIS 1689, at *4 (Bankr. D.S.C. Jan. 29, 2009) (finding debtor produced no evidence to rebut the presumptive validity other than a "bald assertion" that its books and records reflected a different amount).

Because the amount of evidence necessary to rebut a claim's prima facie validity will vary depending upon the creditor's supporting documentation and the "quality and believability" of the objector's evidence, *see* BANKRUPTCY EVIDENCE MANUAL § 301:4, there may be occasions where a debtor's testimony on its own could serve to rebut the presumption so long as that testimony is credible and contradicts a presumed fact. *See, e.g.*, *In re Carrazco*, No. 02-52925, 2003 WL 22231720, at *3 (Bankr. M.D.N.C. Sept. 26, 2003) (finding debtor's testimonial evidence at the hearing sufficient to rebut the prima facie effect of claim); *In re Tufts*, No. 09-18809, 2022 WL 1750725, at *10 (Bankr. D. Mass. May 31, 2022) ("Prior to the evidentiary hearing, this Court found that the Debtor, based on his direct testimony via affidavit, had met his burden of producing substantial evidence

to rebut the presumption of prima facie evidence of both claims . . . ."); *In re Braughton*, No. 10-41742-H3-13, 2011 WL 2945828, at *1 (Bankr. S.D. Tex. July 21, 2011) ("In the instant case, Debtor's testimony that Reliant Energy was his electric provider is sufficient to rebut the presumption that the claim is valid."). The better approach for objectors, however, is to bolster testimony with additional documentation and evidentiary support.[2] *See, e.g.*, *In re Pruden*, No. 04-36026, 2007 WL 4590251, at *10 (Bankr. N.D. Ohio Dec. 28, 2007) (finding debtors presented "substantial evidence and testimony" that the deposits to a joint checking fund consisted of funds provided by the debtor, including documentation of money received, copies of checks, and a copy of a lease agreement); *Litton Loan Servicing, LP v. Garvida (In re Garvida)*, 347 B.R. 697, 707 (B.A.P. 9th Cir. 2006) (finding debtors rebutted any prima facie presumption through counter-evidence such as declarations attached with supporting tables of payments, a loan modification statement, and closing documents); *In re Protected Vehicles*, 2009 Bankr. LEXIS 1689, at *5 (noting that evidence shifting the burden of production could include "a recital from an officer, employee or financial professional for the debtor asserting a specific defense to liability, countervailing accounting summaries reflecting payments or other credits not acknowledged by the creditor, and similar evidence"); *In re F-Squared*, 546 B.R. at 546 (finding objector did not carry its burden where it

[2] Courts have taken a similar approach in considering the evidence necessary to rebut the presumption of receipt in the context of bankruptcy, with most jurisdictions, including the Fourth Circuit of Appeals, finding that a general denial of receipt, without additional objective evidence, is insufficient to rebut the presumption. *See Bosiger v. US Airways, Inc.*, 510 F.3d 442, 452-53 (4th Cir. 2007).

did not include affidavits, operating agreements, or any other relevant documents that could rebut prima facie validity). For certain types of claims, such as claims for mortgage arrears "where the detailed evidence supporting the validity of particular charges . . . is within the claimant's control," an objector may also overcome prima facie validity by "demonstrating that the claimant has not responded to formal or informal requests for documentation or other evidence supporting the amount, reasonableness, or other factors relevant to the validity of the charges at issue." *In re Sacko*, 394 B.R. 90, 100, 101 (Bankr. E.D. Pa. 2008); *see also Campbell*, 336 B.R. at 436 ("Moreover, a creditor's lack of adequate response to a debtor's formal or informal inquiries 'in itself may raise an evidentiary basis to object to the unsupported aspects of the claim . . . .'" (cleaned up)).

U.S. BANK CLAIM AND THE DEBTORS' BURDEN OF PRODUCTION

With this procedural and evidentiary background in mind, the Court turns to the Debtors' Objection to determine whether the Claim is entitled to prima facie validity and, if so, whether the Debtors presented sufficient evidence to rebut that presumption. Only if the Debtors meet this burden of production will it be necessary for the Court to determine whether U.S. Bank has met its ultimate burden of proving the amount and validity of the Claim.

Initially, the Court finds that the Claim and its attachments contain all information required by Rule 3001(c)–(e) and is regular on its face, rendering it presumptively valid under Rule 3001(f) and shifting the burden to the Debtors to offer evidence rebutting that presumption. *See In re Nussman*, 501 B.R. 297, 301

(Bankr. E.D.N.C. 2013). At the hearing on the Objection, the only evidence introduced by the Debtors was the direct testimony of Mr. Jones, unsupported by additional documentary evidence.[3] The Court must determine whether this testimonial evidence is sufficient to rebut the presumptive validity of the Claim.

The Debtors first argue that U.S. Bank overstated the principal balance of the debt as of the alleged first date of default on August 1, 2013. The Agreement was entered into on October 8, 2008 and the Debtors drew the full amount of credit, $50,000.00, on that day. As stated on U.S. Bank's Form 410A, the principal balance as of August 1, 2013, was $49,855.38. Mr. Jones disputed the accuracy of that amount, testifying that the Debtors made payments on the account of $594.94 per month from November 2008 to summer 2013, totaling approximately $35,000.00. While U.S. Bank did not dispute that the Debtors made payments during that time,[4] the Debtors provided no documentary evidence to show the number and amount of these alleged payments. Moreover, the Debtors did not allege or prove, either in the Objection or through evidence introduced at the hearing, that U.S. Bank has failed to respond to any requests for additional documentation.

The Court finds the Debtors' arguments and evidence challenging the accuracy of the $49,841.23 principal balance of August 1, 2013 fail to rebut the prima facie validity of the Claim. First, and most importantly, the Debtors conceded

[3] In contrast, U.S. Bank introduced numerous documents into evidence at the hearing, including the payment histories and other documentation attached to its proof of claim as well as papers from the Debtors' prior bankruptcy cases.

[4] U.S. Bank's assertion that the first date of contractual default was August 1, 2013 also supports a finding that Debtors were making minimum payments until that date.

the accuracy of that calculation during Mr. Jones' testimony. When presented with U.S. Bank's 2014 proof of claim (Exhibit O), Mr. Jones conceded that he did not object to that claim and that he still agrees with amounts set forth in that claim, including the principal balance of $49,855.38 as of June 14, 2013. That figure is identical to the amount stated in the Claim in this case during the same time period.

Even setting aside Mr. Jones's admission that the principal balance stated on US Bank's 2014 proof of claim, which is identical to the amount in the Claim, appears correct, the Court finds that the Debtors' uncorroborated testimony does not constitute "evidence equal in force to the prima facie case" of U.S. Bank's Claim. The Court reaches this conclusion by comparing the operative language of the HELOC Agreement with the unsupported assertions of the Debtors.

The Agreement shows that the Debtors' payments prior to their initial default were made during the HELOC's "Draw Period"—which began on October 8, 2008 and ended on October 7, 2013. During this period, the Debtors could make additional draws on the account, not to exceed the credit limit of $50,000.00. After the Draw Period ended, a "Repayment Period" began based on the Debtors' selection of the "Assumed Term Option" of 15 years. *See* POC 2-2, pp. 15, 17 (defining the Repayment Period and the Assumed Term Option). This option calculated payments based on an amortization of the principal and finance charges (including interest and other fees outlined in Section 10 of the Agreement) over 15 years, adjusted monthly to account for any additional draws or fees. Therefore, U.S. Bank contends

that, based on the language of the Agreement, the Debtors' selection of the Assumed Term Option led to payments before October 2013 being applied primarily to interest and fees, not to principal. While the Debtors do not agree with that reading, the language of the Draw Period/Repayment Period sections along with the Assumed Term Option supports this interpretation.

As an alternative basis for the Objection, the Debtors argue that payments on the account during their two prior bankruptcy cases, MDNC Case Nos. 13-51176 and 14-50639, were misapplied and should have also substantially reduced the principal balance. The Debtors did not provide any evidence to support this contention apart from Mr. Jones's testimony that he made plan payments during the course of those cases. Conversely, and in further support of its Claim, U.S. Bank presented into evidence the Trustee's final reports in the prior cases, which indicate how much the Trustee disbursed to creditors. The Debtors' 2013 case lasted less than a year and was dismissed for failure to make plan payments as proposed; the Final Report and Account (Case No. 13-51176, Docket No. 55) indicates that only $16.84 was disbursed to Springleaf Financial Services, the prior holder of this account. The Debtors' 2014 case lasted almost four years but ultimately was also dismissed for failure to make plan payments; the Final Report and Account (Case No. 14-50639, Docket No. 41) indicates that $26,004.32 was disbursed to U.S. Bank on this claim, with $3,391.11 of that being disbursed to cure mortgage arrears. The final reports in both prior cases show that the arrears were not paid in full. Mr.

Jones did not object to the admission of the final reports into evidence nor dispute their content.

Mr. Jones does not challenge the underlying facts of what payments were made in the Debtors' prior bankruptcy cases or the amounts distributed by the Trustee to U.S. Bank. Although he disputes how U.S. Bank applied the payments, Mr. Jones's position reflects a misunderstanding of what happens upon dismissal of a chapter 13 bankruptcy case. Under 11 U.S.C. § 349(b), "the pre-discharge dismissal of a bankruptcy case returns the parties to the positions they were in before the case was initiated." *Wells Fargo Bank, N.A. v. Oparaji (In re Oparaji)*, 698 F.3d 231, 238 (5th Cir. 2012); *accord Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 456 (2017) (noting that dismissal aims to return parties to their prepetition "financial status quo"). In the context of mortgage claims, if a chapter 13 case "is dismissed before the plan payments are completed or before the prepetition delinquency is otherwise paid, the mortgage creditor may recalculate the application of all payments received during the case (both the prepetition delinquency and postpetition maintenance installments) in accordance with the original mortgage contract, as if the bankruptcy had not intervened." *In re Carlton*, 437 B.R. 412, 418 n.7 (Bankr. N.D. Ala. 2010); *see also In re Pettit*, No. 05-19986-TA7, 2019 WL 1975844, at *6 (Bankr. D.N.M. Apr. 30, 2019) ("Similarly, after conversion of this case [to chapter 7], PHH was free to apply loan payments in accordance with the loan documents, rather than as directed by the chapter 13 plan and the Code."); *In re Maupin*, 384 B.R. 421, 428 (Bankr. W.D. Va. 2007) ("If the

case is dismissed or converted, then the order confirming the plan, and the plan, will no longer be binding on the creditor."). Here, because both of the Debtors' bankruptcy cases were dismissed without discharge, payments made during the cases were ultimately applied to the account according to the terms of the Agreement, not as they would be under the Bankruptcy Code and the Debtors' confirmed plan.[5]

U.S. Bank asserts that applying the Debtors' payments according to the Agreement did not lead to a significant decrease in the principal balance because, as arrears were never fully cured, payments were instead allocated to fees, interest, and the past due balance; the payment history attached to the Claim reflects exactly that. The Debtors presented no evidence to support a finding that U.S. Bank did not apply payments in accordance with the Agreement and did not identify any errors or anomalies on the payment history. Finally, Mr. Jones admits that no payments were made on the account from 2018, when the 2014 case was dismissed due to payment default, until sometime in 2022, after the present case was filed. As shown on the Form 410A payment history, given the 11.84% interest rate, the lack of payments for more than three years has led to a significant increase in the interest balance in addition to fees.

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[5] **Allocation of Payments**. Account payments will be applied first to any Late Fee, then to any Returned Check Fee, any credit life insurance premiums billed (where applicable), any credit involuntary unemployment insurance premiums billed (where applicable), then to finance charges assessed on my Account, and finally to the Principal Balance of my Account, unless otherwise required by law.

POC 2-2, p. 18.

Based on the record before it and the relevant law, the Court finds the Debtors' Objection fails to rebut the prima facie validity of U.S. Bank's Claim for three reasons, listed in reverse order of importance. First, there is no indication that U.S. Bank has not "responded to formal or informal requests for documentation or other evidence supporting the amount, reasonableness, or other factors relevant to the validity of the charges at issue." *In re Sacko*, 394 B.R. at 100-01; *see also Campbell*, 336 B.R. at 436. U.S. Bank provided all information required to entitle the Claim to prima facie validity and the Debtors did not assert in their Objection that further information was requested and not provided.

Second, the Debtors provided no additional evidence beyond the testimony of Mr. Jones. As discussed above, where a claim is treated as presumptively valid, objections relying solely upon testimonial evidence from debtors are unlikely to find success. Given the relative strength of the evidence supporting U.S. Bank's Claim, which it bolstered during the hearing through the introduction of additional documents, compared with the completely unsupported nature of Mr. Jones's testimony, this is not one of the rare instances in which a debtor's testimony on its own would serve to rebut the presumption.

Third, and most importantly, the Debtors' Objection and the testimony of Mr. Jones fails to challenge any of the facts supporting U.S. Bank's claim. Although Mr. Jones struggled at times to recall specific payments, the Court does not find his testimony on the whole to be lacking in credibility. Rather, the fatal flaw in Mr. Jones's testimony is that it does not contradict any presumed facts regarding the

amount owed to U.S. Bank. Mr. Jones conceded in his testimony that the principal balance owed on August 1, 2013, which was reflected in both the Claim and in U.S. Bank's proof of claim from the Debtors' 2014 bankruptcy case, was accurate. Mr. Jones also did not challenge the payments made to the chapter 13 trustee during the prior bankruptcy cases or the amounts distributed to U.S. Bank. Mr. Jones also agreed that he made no payments on the account from 2018 until 2022. The Debtors' testimonial evidence simply does not contradict *any* facts supporting U.S. Bank's Claim; instead, the Debtors' dispute amounts to misunderstandings of how payments are applied under the Agreement and the ramifications of dismissing a confirmed chapter 13 case. Therefore, the Court must overrule the Objection.

CONCLUSION

For the reasons discussed, the Court finds the Debtors have not met their burden of presenting sufficient evidence to rebut the presumption of validity of U.S. Bank's Claim.

Accordingly, IT IS HEREBY ORDERED that the Debtors' Objection to U.S. Bank's Claim is OVERRULED and the Claim is allowed as filed.

END OF DOCUMENT

PARTIES TO BE SERVED

Donald G Jones and Janet K Jones

(CH 13)

22-50121

Bradley Peter Jarvis
via cm/ecf

James David Nave
via cm/ecf

Kathryn L. Bringle, Trustee
via cm/ecf

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