



SO ORDERED,

Judge Neil P. Olack  
United States Bankruptcy Judge  
Date Signed: March 29, 2018

The Order of the Court is set forth below. The docket reflects the date entered.

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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF MISSISSIPPI**

**IN RE:**

**HERITAGE REAL ESTATE  
INVESTMENT, INC.,**

**CASE NO. 14-03603-NPO**

**DEBTOR.**

**CHAPTER 7**

**IN RE:**

**ALABAMA-MISSISSIPPI FARM, INC.,**

**CASE NO. 16-01156-NPO**

**DEBTOR.**

**CHAPTER 7**

**ORDER DISMISSING  
ORDER TO SHOW CAUSE;  
SUSTAINING TRUSTEE'S OBJECTION  
TO PROOF OF CLAIM NO. 11 FILED BY  
BRUCE L. JOHNSON; SUSTAINING TRUSTEE'S  
OBJECTION TO PROOF OF CLAIM NO. 13 FILED BY  
WILLIAM HARRISON ON BEHALF OF JOHNSON, ET AL; AND  
SUSTAINING TRUSTEE'S OBJECTION TO PROOF OF CLAIM NO. 2 FILED  
ON BEHALF OF WILLIAM HARRISON, BRUCE JOHNSON AND MICHAEL L. KING**

This matter came before the Court for hearing on January 10, 2018 (the "Hearing"), on the Order to Show Cause (the "Show Cause Order") (H. Bankr. Dkt. 314)<sup>1</sup> issued to Bruce L. Johnson

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<sup>1</sup> Citations to the record are as follows: (1) citations to docket entries in the first above-referenced bankruptcy case (the "Heritage Bankruptcy Case") are cited as "(H. Bankr. Dkt. \_\_\_)"; and (2) citations to docket entries in the second above-referenced bankruptcy case (the "AL-MS Farm Bankruptcy Case") are cited as "(AMF Bankr. Dkt. \_\_\_)".

(“Johnson”) to show cause why the Secured Creditor Response and In Opposition to the Chapter’ [sic] 7 Trustee Motions for Reuction [sic] in Claim and Requests Joint Administration and U S [sic] Marshal Service for Writ of Execution in State Court Proceeding (the “Johnson Response”) (H. Bankr. Dkt. 313) should not be stricken from the Heritage Bankruptcy Case for failure to be signed by one of Johnson’s attorneys of record; the Trustee’s Objection to Proof of Claim No. 11 Filed by Bruce L. Johnson (the “Trustee’s Objection to POC 11”) (H. Bankr. Dkt. 308) filed by the trustee, J. Stephen Smith (the “Trustee”), in the Heritage Bankruptcy Case; the Johnson Response (H. Bankr. Dkt. 313) filed by Johnson in the Heritage Bankruptcy Case; the Trustee’s Objection to Proof of Claim No. 13 Filed by William Harrison on Behalf of Johnson, et al (the “Trustee’s Objection to POC 13”) (H. Bankr. Dkt. 309) filed by the Trustee in the Heritage Bankruptcy Case; the Response of William Harrison to Trustee’s Objection to Proof of Claim No. 13 (the “Harrison Response to POC 13”) (H. Bankr. Dkt. 312) filed by William Harrison (“Harrison”) in the Heritage Bankruptcy Case; the Trustee’s Objection to Proof of Claim No. 2 Filed on Behalf of William Harrison, Bruce Johnson and Michael L. King (the “Trustee’s Objection to POC 2”) (AMF Bankr. Dkt. 192) filed by the Trustee in the AL-MS Farm Bankruptcy Case; Reach Inc.’s Response to Trustee’s Objection to Proof of Claim #2 Filed by William Harrison (the “Reach Response”) (AMF Bankr. Dkt. 196) filed by the creditor, Reach, Inc. (“Reach”), in the AL-MS Farm Bankruptcy Case; and the Response of William Harrison to Trustee’s Objection to Proof of Claim No. 2 (the “Harrison Response to POC 2”) (AMF Bankr. Dkt. 202) filed by Harrison in the AL-MS Farm Bankruptcy Case. At the Hearing, Eileen N. Shaffer represented the Trustee, Johnson acted without the assistance of counsel, Jeff D. Rawlings (“Rawlings”) represented Harrison, and Henry L. Penick and Jerald D. Crawford represented Reach. During the Hearing, the Trustee introduced into evidence seven (7) exhibits. With respect

to the Show Cause Order, the Court instructed Johnson to file a pleading informing the Court about the status of his legal representation by January 24, 2018. Johnson filed the pleading in response to the Show Cause Order (the “Johnson Response to Show Cause Order”) as required. (H. Bankr. Dkt. 326). After fully considering the matter, the Court finds as follows:

### **Jurisdiction**

This Court has jurisdiction over the parties to and the subject matter of this proceeding pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (B). Notice of the Hearing was proper under the circumstances.

### **Facts**

#### **A. Heritage Bankruptcy Case**

1. On November 6, 2014, Heritage Real Estate Investment, Inc. (“Heritage”) filed a petition for relief under chapter 11 of the U.S. Bankruptcy Code (the “Code”). (H. Bankr. Dkt. 1).

2. On January 21, 2015, the Court converted the Heritage Bankruptcy Case to chapter 7 (H. Bankr. Dkt. 75) and appointed the Trustee to administer Heritage’s bankruptcy estate.

3. On May 21, 2015, Johnson filed a proof of claim in the Heritage Bankruptcy Case asserting a secured claim in the amount of \$9,094,862.00 (the “Johnson POC”) (H. Bankr. Cl. 11-1), consisting of the principal amount of \$6,489,648.00, plus interest at the rate of seven and one-half percent (7.5%) per annum<sup>2</sup> in the amount of \$2,143,154.95, a “recording fee” of \$84.00, and \$461,975.00 in “other” charges. The basis for the Johnson POC is a default judgment in the

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<sup>2</sup> Johnson attached the First Harrison POC handwritten calculations to support his claim. While Official Form 10 shows an annual interest rate of “.075%,” the handwritten attachment shows an annual interest rate of “\$.075.” The Court is unable to determine whether Harrison intended to calculate interest owed at a rate of 0.075% or 7.5%. Because it makes no difference in the outcome, the Court uses the interest rate of 7.5%.

amount of \$6,599,648.00, of which \$110,000.00 has been paid,<sup>3</sup> entered in the Circuit Court of Greene County, Alabama on August 25, 2011 in *Johnson v. Edwards*, No. CV-2010-32 (Ala. Cir. Ct. 2011) on behalf of himself, Michael L. King (“King”), and Harrison (the “Default Judgment”). The claim is purportedly secured by “Default Judgments.” (H. Bankr. Cl. 11-1).

4. That same day, on May 21, 2015, Harrison filed a proof of claim in the Heritage Bankruptcy Case on behalf of “Johnson, et al” asserting a secured claim in the amount of \$9,094,862.00 (the “First Harrison POC”) (H. Bankr. Cl. 13-1), consisting of the principal amount of \$6,489,648.00, plus interest at the rate of seven and one-half percent (7.5%) per annum<sup>4</sup> in the amount of \$2,143,154.95, a “recording fee” of \$84.00, and \$461,975.00 in “other” charges. The basis for the First Harrison POC is the Default Judgment in the amount of \$6,599,648.00 of which \$110,000.00 had been paid.<sup>5</sup> The claim is purportedly secured by the “Judgment.” (H. Bankr. Cl. 13-1).

5. Johnson attached the First Harrison POC to the Johnson POC. (H. Bankr. Cl. 11-1).

6. On November 10, 2017, the Trustee filed the Trustee’s Objection to POC 11 asserting “[t]hat if [the Johnson POC] is allowed, it will serve as a duplication of the [First Harrison POC], and should be disallowed.” (H. Bankr. Dkt. 308).

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<sup>3</sup> \$9,094,862.00 = \$6,599,648.00 - \$110,000.00 + \$2,143,154.95 + \$84.00 + \$461,975.00.

<sup>4</sup> Harrison attached to the First Harrison POC handwritten calculations to support his claim. While Official Form 10 shows an annual interest rate of “.075%,” the handwritten attachment shows an annual interest rate of “\$.075.” The Court is unable to determine whether Harrison intended to calculate interest owed at a rate of 0.075% or 7.5%. Because it makes no difference in the outcome, the Court uses the interest rate of 7.5%.

<sup>5</sup> \$9,094,862.00 = \$6,599,648.00 - \$110,000.00 + \$2,143,154.95 + \$84.00 + \$461,975.00.

7. On December 28, 2017, Johnson filed the Johnson Response requesting that the Court “issue an order for Joint Administration, Consolidation (separation of this Secured Creditor claim from other Claimants) and issue an order U S Marshal Service to serve the Writ of Execution on file in the Alabama state court. Alternatively, to Levy, Possess and sell the real estate described in the Johnson V. Edward, Writ of Execution order to help satisfy the judgment of Judgment Creditors.” (H. Bankr. Dkt. 313). Only Johnson signed the Johnson Response.

8. On December 29, 2017, the Court issued the Show Cause Order to Johnson and his attorneys of record, Pat A. Catchings (“Catchings”) and Roderick B. Amos (“Amos”), requiring them to show cause why the Johnson Response should not be stricken from the Heritage Bankruptcy Case for failure to be signed by one of Johnson’s attorneys of record. (H. Bankr. Dkt. 314).

9. On January 24, 2018, Johnson filed the Johnson Response to Show Cause Order (H. Bankr. Dkt. 326) asserting that he “could not afford to pay the requested retainer fees” for Amos and that Catchings told him “she was in bad health and was closing her office.” (*Id.*)

10. On November 13, 2017, the Trustee filed the Trustee’s Objection to POC 13 asserting that he “is unaware of any basis for [the First Harrison POC] to be allowed as a secured claim.” (H. Bankr. Dkt. 309). Additionally, the First Harrison POC “asserts that an additional \$461,875.00<sup>6</sup> is owed, but there is no description on the claim form reflecting the basis for that amount.” (*Id.*) Accordingly, the Trustee asserted “[t]hat the amount of the [First Harrison POC] should be \$8,047,163.52.” (*Id.*) The Trustee further noted that a claim on behalf of Johnson,

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<sup>6</sup> As noted, Harrison attached to the First Harrison POC handwritten calculations to support his claim. While the handwritten attachment shows an additional amount owed of \$461,975.00 on the principal amount of the Default Judgment, the Trustee interpreted the handwritten amount to be \$461,875.00. Since Harrison did not provide a basis to determine whether an additional amount is owed, the Court finds that the inconsistency is irrelevant.

Harrison, and King also has been filed in the AL-MS Farm Bankruptcy Case. Thus, “[a]ny disbursement of funds from [the Heritage Bankruptcy Case] to the parties, or from the AL-MS [Farm Bankruptcy Case] should be applied to the balance owed under the [Default] Judgment, in order to prevent any duplication of recovery on behalf of Johnson, Harrison and King.” (*Id.*) Finally, any disbursement made to Johnson, Harrison, and King should “be made in equal shares of one-third (1/3) of the total disbursement.” (*Id.*)

11. On December 11, 2017, Harrison filed the Harrison Response to POC 13, asserting that the First Harrison POC “is identical in all respects to claim no. 2 filed in [the AL-MS Farm Bankruptcy Case] and should be allowed in the same amount.” (H. Bankr. Dkt. 312). Harrison did not object to the Trustee’s proposal to treat the First Harrison POC as a general unsecured claim, and he “request[ed] that the claim evidenced by the [Default] Judgment be separated into 3 separate and equal claims” with respect to Johnson, Harrison, and King. (*Id.*)

**B. AL-MS Farm Bankruptcy Case**

12. On March 31, 2016, Alabama-Mississippi Farm, Inc. (“AL-MS Farm”) filed a petition for relief under chapter 11 of the Code. (AMF Bankr. Dkt. 1).

13. On June 29, 2016, the Court converted the AL-MS Farm Bankruptcy Case to chapter 7 (AMF Bankr. Dkt. 57) and appointed the Trustee to administer AL-MS Farm’s bankruptcy estate.

14. On November 3, 2016, a proof of claim was filed in the AL-MS Farm Bankruptcy Case on behalf of Harrison, Johnson, and King, asserting a secured claim in the amount of \$10,074,062.00 (the “Second Harrison POC”) (AMF Bankr. Cl. 2-1), consisting of the principal amount of \$6,489,648.00, plus interest at the rate of twelve percent (12%) per annum in the amount of \$3,584,414.00. The basis for the Second Harrison POC is the Default Judgment in the amount

of \$6,599,648.00 of which \$110,000.00 has been paid.<sup>7</sup> The claim is purportedly secured by a “judgment lien on all real and personal property.” (AMF Bankr. Cl. 2-1). Ostensibly, the Second Harrison POC is signed by Rawlings on behalf of all three claimants.

15. On November 13, 2017, the Trustee filed the Trustee’s Objection to POC 2 asserting that he “is unaware of any collateral securing this indebtedness and any allowed claim should be classified as a general unsecured claim.” (AMF Bankr. Dkt. 192). The Trustee requests that: (1) the Second Harrison POC be allowed as a general unsecured claim in the amount of \$10,069,800.11; (2) Johnson, King, and Harrison be identified as the claimants; (3) any disbursement made to the claimants “be made in equal shares of one-third (1/3) of the total disbursement”; and (4) “any disbursement of funds from [the AL-MS Farm Bankruptcy Case] to the parties, or from the [Heritage Bankruptcy Case] should be applied to the balance of the [Default] Judgment to prevent any duplication of recovery on behalf of Johnson, Harrison and King.” (*Id.*) The amount of the Second Harrison POC is \$4,261.89 more than the amount the Trustee proposes to be allowed as a general unsecured claim. The discrepancy is the result of a difference in the calculation of interest due.

16. On November 28, 2017, Reach filed the Reach Response asserting that it “concur[s] with the [Trustee’s Objection to POC 2], but objects to any disbursement being made prior to the determination of Reach, Inc.’s appeal of the denial of its secured claim (Claim #3) which is pending in the United States District Court for the Southern District of Mississippi. (Case No.: 3:17-CV-00564-HSO-JGC).” (AMF Bankr. Dkt. 196).

17. Previously, on May 11, 2017, Reach filed a proof of claim in the AL-MS Farm Bankruptcy Case asserting a claim in the amount of \$2,356,000.00 (the “Reach POC”) (AMF

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<sup>7</sup> \$10,074,062.00 = \$6,599,648.00 - \$110,000.00 + \$3,584,414.00.

Bankr. Cl. 3-1). The basis for the Reach POC was a purported loan agreement between Reach and AL-MS Farm (the “Reach Loan Agreement”), a copy of which Reach attached to the Reach POC. (AMF Bankr. Cl. 3-1 at 4). The terms of the Reach Loan Agreement required AL-MS Farm to pay Reach \$950,000.00 plus interest at the rate of six percent (6%) per annum in monthly installments of \$5,000.00, with the first payment being due on September 1, 1992. The Reach POC indicated that the claim is secured by real property in the amount of \$1 million and unsecured in the amount of \$1,356,000.00. The Trustee filed the Amended Objection to Proof of Claim No. 3 Filed by Reach, Inc. (the “Objection to Reach POC”) (AMF Bankr. Dkt. 136) on May 23, 2017. The Trustee asserted that the Reach POC failed to provide documentation reflecting what payments had been made under the Reach Loan Agreement and did not provide any documentation supporting the secured status of the claim. The Trustee also alleged in the Objection to Reach POC that the Reach Loan Agreement was recorded in the Chancery Court of Newton County, Mississippi, on May 3, 2017, in violation of the automatic stay.

18. Reach did not file a response to the Objection to Reach POC in the AL-MS Farm Bankruptcy Case, and on July 5, 2017, the Court entered the Order Regarding Trustee’s Amended Objection to Proof of Claim No. 3 Filed by Reach, Inc. (the “Order Disallowing Reach POC”) (AMF Bankr. Dkt. 158), disallowing the Reach POC.<sup>8</sup>

19. On December 11, 2017, Harrison filed the Harrison Response to POC 2, requesting “that the claim evidenced by the [Default] Judgment be separated into 3 separate and equal claims” with respect to Johnson, Harrison, and King so that “[e]ach claimant would then be responsible

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<sup>8</sup> Counsel for Reach has argued elsewhere that Reach actually did respond to the Objection to Reach POC on June 13, 2017, by filing the Complaint to Stay Sale of Real Property in adversary proceeding 17-00038-NPO. (AMF Bankr. Dkt. 188).



for his own recovery and prosecution of his claim.” (AMF Bankr. Dkt. 202). Harrison asserted that he had no objection to the Trustee’s proposal to treat the Second Harrison POC as a general unsecured claim in the amount of \$10,069,800.11 or “to any disbursements being applied to the claim.” (*Id.*)

## **Discussion**

### **A. Show Cause Order in the Heritage Bankruptcy Case**

On December 29, 2017, the Court entered the Show Cause Order to show cause why the Johnson Response should not be stricken from the Heritage Bankruptcy Case for failure to be signed by one of Johnson’s attorneys of record. (H. Bankr. Dkt. 314). The docket shows that both Amos and Catchings serve as legal counsel for Johnson.<sup>9</sup> (H. Bankr. Dkt. 78 & 103). At the Hearing, Johnson appeared on his own behalf and testified that he has not been in contact with Amos and that Catchings told him she closed her law practice. As a result, Johnson stated that he wished to release his attorneys and proceed without the assistance of counsel (“*pro se*”). The Court instructed Johnson to file a pleading informing the Court about the status of his legal representation by January 24, 2018. Johnson’s pleading was filed as required. (H. Bankr. Dkt. 326).

On January 24, 2018, Johnson filed the Johnson Response to Show Cause Order. (H. Bankr. Dkt. 326). In the Johnson Response to Show Cause Order, Johnson attached a letter from Amos, addressed to Harrison and dated February 2, 2015, in which Amos requested an additional \$3,000.00 in exchange for further legal representation. (*Id.*) Johnson asserted that he “could not afford to pay the requested retainer fees” for Amos and had “not heard or had any communication with [Amos] since the date on the letter.” (*Id.*) With respect to Catchings, Johnson asserted that

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<sup>9</sup> Amos and Catchings also served as legal counsel for Harrison. (H. Bankr. Dkt. 78 & 103). On December 23, 2015, the Court issued the Order Granting Request to Proceed *Pro Se* and released Amos and Catchings as Harrison’s attorneys. (H. Bankr. Dkt. 221).

she told him “she was in bad health and was closing her office.” (*Id.*) Johnson also attached to the Johnson Response to Show Cause Order a copy of the \$5,000.00 check “paid to the Logan Law firm in Newton, Miss. for representation in the [AL-MS Farm Bankruptcy Case].” (*Id.*) Johnson noted, however, that he has been unable to secure legal representation in the Heritage Bankruptcy Case. Thus, Johnson asked the Court to consider the Johnson Response and to not strike it from the Heritage Bankruptcy Case. (*Id.*)

After fully considering the matter, the Court finds that the Show Cause Order should be dismissed, both Amos and Catchings should be released as Johnson’s attorneys, and Johnson is acting *pro se* retroactive to the Hearing in the Heritage Bankruptcy Case. Johnson will be proceeding *pro se*, which requires some leniency, but “[t]he right of self-representation does not exempt a party from compliance with relevant rules of procedural and substantive law.” *Birl v. Estelle*, 660 F.2d 592, 593 (5th Cir. 1981) (citing *Faretta v. California*, 422 U.S. 806, 834 n.46 (1975)). Accordingly, Johnson must comply with all applicable rules of procedure and substantive law, and he must act in good faith throughout the Heritage Bankruptcy Case. Johnson is granted an exception to the requirement for filing documents electronically under Miss. Bankr. L.R. 5005-1(a)(2)(B). All parties involved in the Heritage Bankruptcy Case needing to contact Johnson or serve notice upon him should do so at his mailing address: 439 W. Northside Dr., Apt. 105, Jackson, MS 39206. Since Johnson is proceeding *pro se*, the Court will not strike the Johnson Response and will consider it with the Trustee’s Objection to POC 11.

## **B. Claims Allowance Process**

Sections 501 and 502 of the Code<sup>10</sup> govern the filing and allowance of creditor claims. Pursuant to § 502(a), a proof of claim filed by a creditor under § 501 is deemed allowed unless a party in interest, often the trustee, objects to the claim. *See* 11 U.S.C. § 501(a) (providing that proofs of claim may be filed by a creditor and, in some cases, by other entities on the creditor's behalf). Section 502(b) provides that once an objection is made, the Court, after notice and a hearing "shall allow such claim in such amount" as of the date of the bankruptcy petition except to the extent the claim falls within one of the nine grounds for disallowance set forth in § 502(b)(1)-(9). 11 U.S.C. § 502(b). The present dispute concerns § 502(b)(1), which disallows a claim if "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(b)(1).

The Federal Rules of Bankruptcy Procedure<sup>11</sup> govern the procedure for filing and allowance of claims. Rule 3001 sets forth the following requirements for proofs of claim: (1) they must be in writing, (2) they must "be executed by the creditor or the creditor's authorized agent," and (3) they must "conform substantially to the appropriate Official Form." FED. R. BANKR. P. 3001. Official Form 401, in turn, requires a claimant to specify the amount of his or her claim. If the amount of the claim includes interest or other charges, the claimant must "[a]ttach a statement itemizing interest, fees, expenses, or other charges." Rule 3001(f) deems a proof of claim, filed in accordance with Rule 3001 and Official Form 410, to "constitute prima facie evidence of the

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<sup>10</sup> Hereinafter, all code sections refer to the Code found at Title 11 of the United States Code, unless otherwise noted.

<sup>11</sup> Hereinafter, all rules refer to the Federal Rules of Bankruptcy Procedure, unless otherwise noted.

validity and amount of the claim.” FED. R. BANKR. P. 3001(f). Unless a party in interest objects to the claim, the claim is deemed allowed, and the trustee may distribute assets of the estate based on that claim without the need for an evidentiary hearing. *Cal. State Bd. Of Equalization v. Official Unsecured Creditors’ Comm. (In re Fidelity Holding Co.)*, 837 F.2d 696, 698 (5th Cir. 1988).

There is a burden-shifting process under § 502 and Rule 3001 during a proof of claim dispute. *In re Pursue Energy Corp.*, 379 B.R. 100, 105-06 (Bankr. S.D. Miss. 2006), *aff’d*, No. 3:06CV405, 2007 WL 2900483 (S.D. Miss. Sept. 28, 2007). Under the procedural framework provided by the Federal Rules of Bankruptcy Procedure, the claimant will prevail unless the party who objects to the proof of claim produces evidence that is at least equal in probative force to that offered by the proof of claim. *In re Britt*, 199 B.R. 1000, 1008 (Bankr. N.D. Ala. 1996). In other words, “[b]y producing ‘evidence in equal force to the prima facie case,’ an objector can negate a claim’s presumptive legal validity, thereby shifting the burden back to the claimant to ‘prove by a preponderance of the evidence that under applicable law the claim should be allowed.’” *In re Residential Capital, LLC*, 523 B.R. 24, 39 (Bankr. S.D.N.Y. 2014) (quoting *Creamer v. Motors Liquidation Co. Guc Tr. (In re Motors Liquidation Co.)*, No. 12 Civ. 6074, 2013 WL 5549643, at \*3 (S.D.N.Y. Sept. 26, 2013)). If, however, the objecting party fails to offer sufficient evidence to overcome the evidentiary effect of the properly filed proof of claim, the objection will be overruled, and the claim will be allowed as filed. *In re Britt*, 199 B.R. at 1008; *see In re Narragansett Clothing Co.*, 143 B.R. 582, 583 (Bankr. D.R.I. 1992) (overruling the trustee’s objection and holding that the “[m]ere denial of the claim’s validity or amount is not sufficient to meet that burden, and not until that obligation is met does the burden of production shift to the claimant”) (internal citation omitted).

In short, although Rule 3001(f) places the burden of going forward on the objecting party, the burden of ultimate persuasion always rests with the claimant. *In re Century Inns, Inc.*, 59 B.R. 507, 522 (Bankr. S.D. Miss. 1986). This allocation of the burden of going forward “provides a proper balancing of burdens, assuring that the objecting party does not underprove its objections, while, at the same time, assuring that the claimant filing the proof of claim need not over-prove his claim at the mere cry of inequity by the objecting party.” *Id.* (citing *Mach. Rental, Inc. v. Herpel (In re Multiponics, Inc.)*, 622 F.2d 709, 714 (5th Cir. 1980)). The effect of Rule 3001(f) is to analogize the filing of a proof of claim to the filing of a verified complaint in a civil action and, similarly, to analogize the filing of an objection to the filing of an answer to the complaint. *See Pursue Energy*, 379 B.R. at 105 (quoting *Simmons v. Savell (In re Simmons)*, 765 F.2d 547, 552 (5th Cir. 1985)). Here, the Trustee objected to the allowance of the Johnson POC and the First Harrison POC in the Heritage Bankruptcy Case, and the Second Harrison POC in the AL-MS Farm Bankruptcy Case. In addition, Reach filed the Reach Response objecting to the Second Harrison POC.

## **1. Heritage Bankruptcy Case**

### **a. Trustee’s Objection to POC 11**

On May 21, 2015, Harrison filed the First Harrison POC on behalf of “Johnson, et al” asserting a secured claim for \$9,094,862.00 based upon the Default Judgment. (H. Bankr. Cl. 13-1). That same day, Johnson filed the Johnson POC also based upon the Default Judgment. (H. Bankr. Cl. 11-1). Johnson attached the First Harrison POC to the Johnson POC. As a result of these proofs of claim, the Trustee filed the Trustee’s Objection to POC 11 asserting “[t]hat if [the Johnson POC] is allowed, it will serve as a duplication of the [First Harrison POC], and should be disallowed.” (H. Bankr. Dkt. 308). In response, Johnson filed the Johnson Response requesting

that the Court “issue an order for Joint Administration, Consolidation (separation of this Secured Creditor claim from other Claimants) and issue an order U S Marshal Service to serve the Writ of Execution on file in the Alabama state court. Alternatively, to Levy, Possess and sell the real estate described in the Johnson V. Edward, Writ of Execution order to help satisfy the judgment of Judgment Creditors.” (H. Bankr. Dkt. 313).

Since Johnson does not disagree with or otherwise rebut the Trustee’s assertion that the Johnson POC duplicates the First Harrison POC, the Court finds that the Trustee’s Objection to POC 11 should be sustained. In the Johnson Response, Johnson seeks affirmative relief that is not properly before the Court. Rule 9013 provides,

A request for an order . . . shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Every written motion . . . shall be served by the moving party within the time determined under Rule 9006(d). The moving party shall serve the motion on:

- (a) the trustee or debtor in possession and on those entities specified by these rules;
- or
- (b) the entities the court directs if these rules do not require service or specify the entities to be served.

FED. R. BANKR. P. 9013; *see also Advanced Recovery Sys., Inc. v. Clemons (In re Clemons)*, No. 11-00127-EE, 2013 WL 828282, at \*6-7 (Bankr. S.D. Miss. Mar. 6, 2013). Accordingly, the Johnson POC should be disallowed and the relief sought in the Johnson Response should be denied. If Johnson would like the Court to consider the relief requested in the Johnson Response, Johnson should file the appropriate pleading<sup>12</sup> in the Heritage Bankruptcy Case. *See In re Cini*, No. 10-62715-11, 2012 WL 2374224, at \*9 (Bankr. D. Mont. June 22, 2012) (“It is not this Court’s

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<sup>12</sup> The Court makes no ruling as to whether the relief should be requested in the form of a contested matter or adversary proceeding.

job to draft parties' pleadings, or their docket entries . . . The Court requires parties requesting affirmative relief to comply with Rules 9013 and 9014 and file a motion."). Allowing Johnson "to depart from the motion requirement . . . would undermine and invite departure from compliance with the rules by other practitioners." *Id.*

**b. Trustee's Objection to POC 13**

The Trustee requests that the First Harrison POC be allowed as a general unsecured claim in the amount of \$8,047,163.52; that Johnson, King, and Harrison be identified as the claimants; that any disbursement made to the claimants "be made in equal shares of one-third (1/3) of the total disbursement"; that any disbursement made in the Heritage Bankruptcy Case to Johnson, King, and Harrison be applied to the balance owed to the claimants under the Default Judgment; and that the debt owed to Johnson, King, and Harrison in the Heritage Bankruptcy Case be included in the total debt asserted by the claimants in the AL-MS Farm Bankruptcy Case. (H. Bankr. Dkt. 309). In the Harrison Response to POC 13, Harrison asserts that the First Harrison POC "is identical in all respects to claim no. 2 filed in [the AL-MS Farm Bankruptcy Case] and should be allowed in the same amount." (H. Bankr. Dkt. 312).

With respect to the First Harrison POC, the Court finds that the amount of interest applied will differ from the amount applied to the Second Harrison POC filed in the AL-MS Farm Bankruptcy Case because Heritage filed for bankruptcy relief approximately sixteen (16) months before the commencement of the AL-MS Farm Bankruptcy Case. Further, in the Harrison Response to POC 13, Harrison did not provide a basis to determine whether an additional \$461,975.00 is owed on the principal amount of the Default Judgment.<sup>13</sup> Since Harrison did not

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<sup>13</sup> This amount is not included in the Second Harrison POC filed in the AL-MS Farm Bankruptcy Case.

otherwise object to the Trustee's calculation of the First Harrison POC or the Trustee's proposal to treat the First Harrison POC as a general unsecured claim, the Court sustains the Trustee's Objection to POC 13 as to the amount of the First Harrison POC. It also appears that Harrison has no objection to the Trustee's request to make disbursements to Johnson, Harrison, and King in equal shares and to credit the balance of the Default Judgment with any funds received in the AL-MS Farm Bankruptcy Case. (*Id.*) The Court, therefore, sustains the Trustee's Objection to POC 13 as to the remaining relief he seeks.

In the Harrison Response to POC 13, Harrison seeks additional relief, including that the Court separate the Default Judgment into three "separate and equal claims for all purposes in this proceeding." Additionally, Harrison requests that the Court hold each claimant "responsible for his own recovery and prosecution of his claim" so that if Harrison succeeds in recovering any amount, he will not have to share that amount with Johnson or King. (*Id.*) Under Rule 9014(a), "[i]n a contested matter not otherwise governed by these rules, relief shall be requested by motion, and reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought." FED. R. BANKR. P. 9014(a). Thus, to the extent that Harrison seeks separate relief, the Harrison Response to POC 13 is procedurally inappropriate. Moreover, Harrison requests similar, if not identical, relief in the Motion for Division of Claim (the "Heritage Motion for Division of Claim") (H. Bankr. Dkt. 337) filed on February 19, 2018, and set for hearing on April 19, 2018 (H. Bankr. Dkt. 339). The Court finds that these matters are better resolved in the context of a hearing on the Heritage Motion for Division of Claim. Unlike the Harrison Response to POC 13, the Heritage Motion for Division of Claim follows the applicable rules for motion practice.<sup>14</sup>

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<sup>14</sup> The Court makes no ruling as to whether the relief should be requested in the form of a motion as opposed to a contested matter or adversary proceeding.



Accordingly, the Court overrules the Harrison Response to POC 13 on procedural grounds, to the extent Harrison seeks separate relief, without prejudice to Harrison's right to pursue the same relief in the Heritage Motion for Division of Claim.

**2. AL-MS Farm Bankruptcy Case**

The Court considers the Trustee's Objection to POC 2 and the Harrison Response to POC 2 in the same discussion below. Because it raises a standing issue, the Court addresses the Reach Response separately.

**a. Trustee's Objection to POC 2 & Harrison Response to POC 2**

The Trustee requests that the Second Harrison POC be allowed as a general unsecured claim in the amount of \$10,069,800.11; that Johnson, King, and Harrison be identified as the claimants; that any disbursement made to the claimants "be made in equal shares of one-third (1/3) of the total disbursement"; and "[t]hat any disbursement of funds from [the AL-MS Farm Bankruptcy Case] to the parties, or from the [Heritage Bankruptcy Case] should be applied to the balance of the [Default] Judgment to prevent any duplication of recovery on behalf of Johnson, Harrison and King." (AMF Bankr. Dkt. 192). In the Harrison Response to POC 2, Harrison asserts that he has no objection to the Trustee's proposal to treat the Second Harrison POC as a general unsecured claim in the amount of \$10,069,800.11 or "to any disbursements being applied to the claim." (AMF Bankr. Dkt. 202). Accordingly, the Court overrules the Harrison Response to POC 2 and sustains the Trustee's Objection to POC 2 as to the amount of the Second Harrison POC. It also appears that Harrison has no objection to the Trustee's request to make disbursements to the three claimants in equal shares and to credit the balance of the Default Judgment with any funds received in the Heritage Bankruptcy Case. (AMF Bankr. Dkt. 202). The Court, therefore,

overrules the Harrison Response to POC 2 and sustains the Trustee's Objection to POC 2 as to all remaining relief requested by the Trustee.

In the Harrison Response to POC 2, Harrison appears to seek relief that is separate from the relief requested by the Trustee. For example, Harrison asks the Court to separate the Default Judgment into three "separate and equal claims for all purposes in this proceeding" and to hold each claimant "responsible for his own recovery and prosecution of his claim" so that if Harrison succeeds in recovering any amount he will not be required to share that amount with Johnson or King. (AMF Bankr. Dkt. 202). Under Rule 9014(a), "[i]n a contested matter not otherwise governed by these rules, relief shall be requested by motion, and reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought." FED. R. BANKR. P. 9014(a). Thus, to the extent that Harrison seeks separate relief, the Harrison Response to POC 2 is procedurally inappropriate. Moreover, Harrison requests similar, if not identical, relief in the Motion for Division of Claim (the "AL-MS Farm Motion for Division of Claim") (AMF Bankr. Dkt. 224) filed on February 19, 2018, and set for hearing on April 19, 2018 (AMF Bankr. Dkt. 226). The Court finds that these matters are better resolved in the context of a hearing on the AL-MS Farm Motion for Division of Claim. Unlike the Harrison Response to POC 2, the AL-MS Farm Motion for Division of Claim follows the applicable rules for motion practice.<sup>15</sup> Accordingly, the Court overrules the Harrison Response to POC 2 on procedural grounds, to the extent Harrison seeks separate relief, without prejudice to Harrison's right to pursue the same relief in the AL-MS Farm Motion for Division of Claim.

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<sup>15</sup> The Court makes no ruling as to whether the relief should be requested in the form of a motion as opposed to a contested matter or adversary proceeding.

**b. Standing of Reach to Object to Second Harrison POC**

Before considering the Reach Response, the Court considers whether Reach has standing to object to the Second Harrison POC. Section 502(a) provides that a claim is allowed unless a “party in interest” objects. 11 U.S.C. § 502(a). Although a “party in interest” has standing to object to claims, the Code does not define “party in interest.” Because the chapter 7 trustee has a statutory duty to examine proofs of claim and, if necessary, to object to improper claims, it is generally the chapter 7 trustee who exercises the right to object to claims. *See* 11 U.S.C. § 704(a)(5); *In re Toms*, 229 B.R. 646, 650 (Bankr. E.D. Pa. 1999). The issue here is the extent to which other entities have standing to pursue such objections.

Many courts have held that only a chapter 7 trustee may file objections to proofs of claim. *See Kowal v. Malkemus (In re Thompson)*, 965 F.2d 1136, 1147 (1st Cir. 1992); *Lawrence v. Steinfeld Holding B.V. (In re Dominelli)*, 820 F.2d 313, 317 (9th Cir. 1987). “The needs of orderly and expeditious administration do not permit the full and unfettered exercise of [a creditor’s] right to object to the allowance of another creditor’s claim. The most important qualification attached to the right of a creditor to object is that it is the trustee who acts as the spokesman for all the creditors in discharge of the trustee’s duty unless the trustee refuses to take action.” *Thompson*, 965 F.2d at 1147 (quoting *In re Morrison*, 69 B.R. 586, 589 (Bankr. E.D. Pa. 1987)). Some courts have recognized an exception to the general rule that only a chapter 7 trustee may object to claims and have allowed a creditor to object to another creditor’s claim, but only when there is evidence that the trustee refused to act and the objection, if sustained, would benefit the estate. *Id.* (“Leave to object is not generally accorded an individual creditor unless the chapter 7 trustee refuses to object[.]”). Here, however, the exception to the general rule would not apply because the Trustee exercised his authority and has standing to object to the Second Harrison POC. The Reach

Response is the second objection to the Second Harrison POC. Moreover, the Reach POC has been disallowed. For all of these reasons, the Court concludes that Reach lacks standing to object to the Second Harrison POC.

Even assuming Reach has standing, the Court finds no basis for granting Reach the relief it seeks. In the Reach Response, Reach asks the Court to delay any disbursement of funds until after the determination of Reach's appeal of the Order Disallowing Reach POC, which Reach alleges is still pending, in the U.S. District Court for the Southern District of Mississippi (the "District Court") in Case No.: 3:17-CV-00564-HSO-JGC. (AMF Bankr. Dkt. 196). Since the Reach Response was filed, the District Court dismissed that appeal as well as an appeal of the Order Approving Motion for Confirmation of Sale and Approval to Pay Auctioneer's Fees and Expenses (the "Sale Order") (AMF Bankr. Dkt. 154) on December 21, 2017, pursuant to the Memorandum Opinion and Order Granting Appellee Alabama-Mississippi Farm, Inc.'s Motion to Dismiss Appeal (the "Order Dismissing Appeal") (Case No.: 3:17-CV-00564-HSO-JGC, Dkt. 7).

In the original Notice of Appeal (the "Notice of Appeal") (AMF Bankr. Dkt. 162), filed by Reach in the AL-MS Bankruptcy Case on July 13, 2017, Reach appealed the Sale Order entered by this Court on June 22, 2017. Later, on October 23, 2017, Reach filed Reach's Amended Notice of Appeal (the "Amended Notice of Appeal") (AMF Bankr. Dkt. 188), appealing the Order Disallowing Reach POC. In the Order Dismissing Appeal, the District Court concluded that the Notice of Appeal was untimely because it was filed more than fourteen (14) days after entry of the Sale Order. (Case No.: 3:17-CV-00564-HSO-JGC, Dkt. 7); *see* FED. R. BANKR. P. 8002(a)(1). The District Court specifically rejected Reach's argument that the Notice of Appeal mistakenly referred to the Sale Order when instead Reach had intended to appeal the Order Disallowing Reach POC. The District Court described the Amended Notice of Appeal as "nothing more than an

untimely attempt to appeal the [Sale] Order denying Reach's claim that it held a secured claim on the real property sold." (Case No.: 3:17-CV-00564-HSO-JGC, Dkt. 7 at 3). The District Court also ruled that the purported Amended Notice of Appeal, filed on October 23, 2017, which was well after entry of the Order Disallowing Reach POC on July 5, 2017, was untimely. No other matter was pending before the District Court, and the appeal was closed on December 21, 2017. To the extent Reach has standing to object to the Second Harrison POC, the Court overrules the Reach Response, given that the reason for the requested delay no longer exists.

### **Conclusion**

For the above and foregoing reasons, the Court concludes that both Amos and Catchings should be released as Johnson's attorneys. Additionally, the Show Cause Order should be dismissed, and Johnson will be acting *pro se* retroactive to the Hearing in the Heritage Bankruptcy Case. The Court further concludes that the Trustee's Objection to POC 11 should be sustained, the Johnson POC should be disallowed, and the Johnson Response should be overruled. Moreover, the Trustee's Objection to POC 13 should be sustained and the Harrison Response to POC 13 should be overruled. Finally, the Court finds that the Trustee's Objection to POC 2 should be sustained, and the Harrison Response to POC 2 and the Reach Response should be overruled.

IT IS, THEREFORE, ORDERED that Amos is hereby released as Johnson's attorney.

IT IS FURTHER ORDERED that Catchings is hereby released as Johnson's attorney.

IT IS FURTHER ORDERED that the Show Cause Order is hereby dismissed, and Johnson's request to proceed *pro se* in the Heritage Bankruptcy Case is hereby granted.

IT IS FURTHER ORDERED that the Trustee's Objection to POC 11 is hereby sustained, the Johnson POC is hereby disallowed, and the Johnson Response is hereby overruled.

IT IS FURTHER ORDERED that the Trustee's Objection to POC 13 is hereby sustained, the Harrison Response to POC 13 is hereby overruled, and the First Harrison POC is allowed only to the extent that:

1. The claimants, Johnson, King, and Harrison, have a general unsecured claim in the amount of \$8,047,163.52;
2. Any disbursement made to the claimants shall be made in equal shares of one-third (1/3) of the total disbursement; and
3. Any disbursement of funds from the Heritage Bankruptcy Case to the claimants or from the AL-MS Farm Bankruptcy Case shall be applied to the balance of the Default Judgment to prevent any duplication of recovery.

IT IS FURTHER ORDERED that the Trustee's Objection to POC 2 is hereby sustained, the Harrison Response to POC 2 and the Reach Response are hereby overruled, and the Second Harrison POC is allowed only to the extent that:

1. The claimants, Johnson, King, and Harrison, have a general unsecured claim in the amount of \$10,069,800.11;
2. Any disbursement made to the claimants shall be made in equal shares of one-third (1/3) of the total disbursement; and
3. Any disbursement of funds from the AL-MS Farm Bankruptcy Case to the claimants or from the Heritage Bankruptcy Case shall be applied to the balance of the Default Judgment to prevent any duplication of recovery.

##END OF ORDER##