

1
2
3 UNITED STATES BANKRUPTCY COURT
4 EASTERN DISTRICT OF CALIFORNIA
5 SACRAMENTO DIVISION
6
7

8 In re:)
9) Case No. 05-35472-B-13J
10 ROBERT/MARIA MORGAN,)
11 Debtors.) Docket Control No. MET-1
12) Date: September 19, 2006
Time: 9:30 a.m.

13 On or after the calendar set forth above, the court issued
14 the following ruling. The official record of the ruling is
appended to the minutes of the hearing.

15 Because the ruling constitutes a "reasoned explanation" of
16 the court's decision under the E-Government Act of 2002 (the
17 "Act"), a copy of the ruling is hereby posted on the court's
Internet site, www.caeb.uscourts.gov, in a text-searchable
18 format, as required by the Act. However, this posting does not
constitute the official record, which is always the ruling
appended to the minutes of the hearing.

19 **DISPOSITION AFTER ORAL ARGUMENT**

20 This objection has been filed pursuant to LBR 3007-1(d)(1). The
21 failure of any party in interest to file timely written opposition as
22 required by this local rule is considered consent to the granting of
23 the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR
24 3007-1(d)(1). Therefore, the objection to claim No. 10 on the court's
25 claims register, filed by Asset Acceptance LLC assignee of Levitz,
26 ("Claim") is resolved without oral argument.

27 The objection is sustained and the Claim is disallowed, except to
28 the extent already paid by the trustee. The debtors question the

1 validity and nature of this claim. A properly completed and filed
2 proof of claim is prima facie evidence of the validity and amount of a
3 claim [B.R. 3001(f)]. However, when an objection is made and that
4 objection is supported by evidence sufficient to rebut the prima facie
5 evidence of the proof of claim, then the burden is on the creditor to
6 prove the claim.

7 Here, the debtors point to the Claim itself which indicates that
8 the debt was incurred and the last payment was made on or about
9 December 3, 1990. The statute of limitations for commencing
10 collection actions on debts of this type is four (4) years pursuant to
11 California Code of Civil Procedure Section 337. A state statute of
12 limitations constitutes "applicable law" under 11 U.S.C. § 502(b)(1).
13 By failing to respond to the objection, the creditor has failed to
14 carry its burden. Accordingly, the objection is sustained and the
15 Claim is disallowed, except to the extent already paid by the trustee.

16 The court will issue a minute order.

17
18
19
20
21
22
23
24
25
26
27
28