THE FOLLOWING ORDER
IS APPROVED AND ENTERED
AS THE ORDER OF THIS COURT:

DATED: October 4, 2013

G. Michael Halfenger
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

In the matter:

Ericka D. Perry,	Case No. 13-23897-GMH
Mario D. Williams,	Case No. 13-25157-GMH
Terece Hayes,	Case No. 13-27781-GMH
Debtors.	Chapter 13

ORDER OVERRULING DEBTORS' OBJECTIONS TO CLAIMS

Several debtors, all of whom are represented by the same counsel, each have confirmed chapter 13 plans that modify the rights of holders of secured claims. The plans either cram down the secured claim to the collateral's replacement value or modify the interest rate: both modifications are allowed under the circumstances in these cases by 11 U.S.C. §1322(b)(2). Following confirmation, the debtors objected to the claims on the sole ground that the plans' terms that modify those claims control over the proofs of claim. The objections, all unopposed, request orders allowing the claims in the amount and at the interest rate provided for in the confirmed plans.

I held hearings on September 10 and September 17, 2013, at which time both

chapter 13 standing trustees and debtors' counsel appeared. After considering the arguments, I overrule the objections.

I.

Ericka D. Perry

Ericka Perry borrowed money from Santander Consumer USA to buy a car. She promised to repay Santander the $18,242.35 principal plus interest at 14.99% over 72 months.

On April 1, 2013, she proposed a chapter 13 plan. Because Perry obtained her car loan within 910 days of filing for bankruptcy, Santander's claim is protected from being reduced to the car's replacement value by 11 U.S.C. §1325(a)(9)'s hanging paragraph. Perry's plan provides that she will pay Santander the debt amount stated in Santander's claim plus 4.25% interest—a rate calculated under *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). Notice of the plan was served on all creditors. No one objected. The plan was confirmed on July 24, 2013.

On July 31, 2013, Perry filed an objection to Santander's proof of claim. The objection asked for an order allowing Santander's claim in the amount of $16,044.29, the amount Santander contends was due when Perry filed her petition, plus interest at 4.25%, as stated in the plan, rather than at the 14.99% interest rate stated in Santander's claim.

Mario D. Williams

Mario Williams also borrowed money from Santander to buy a car. He promised to repay Santander the $15,712.79 principal plus interest at 24.99% over 72 months.

On April 19, 2013, Williams proposed a chapter 13 plan. Like Perry, Williams obtained the car loan within 910 days of filing for bankruptcy, so §1325(a)(9)'s hanging paragraph protects Santander's claim from cram down. Williams's plan provides that

Santander will be paid the debt amount stated in Santander's claim, plus *Till* interest at 4.25%. Notice of the plan was served on all creditors. No one objected. The plan was confirmed on August 6, 2013.

On August 8, 2013, Williams filed an objection to Santander's proof of claim. The objection sought an order allowing Santander's claim in the amount of $17,362.21, the amount Santander claims was due when Williams filed for bankruptcy, plus interest at 4.25%, as stated in the plan, rather than at the 24.99% interest rate stated in Santander's claim.

Terece Hayes

Terece Hayes borrowed from Franklin Financial Corporation to buy a 2002 GMC Yukon. He still owed Franklin Financial $14,895.26 when he filed his bankruptcy petition. In addition, on the eve of filing for bankruptcy, Hayes took out a title loan from Wisconsin Auto Title Loans, Inc., and pledged his 2001 BMW 740 as security. Hayes was obligated to repay Wisconsin Auto Title Loans the $1,510 principal plus interest at 360.41% over 7 months.

On June 4, 2013, Hayes proposed a chapter 13 plan. Hayes obtained his car loan from Franklin Financial more than 910 days before he filed for bankruptcy, so §1322(b)(2) allows Hayes's plan to reduce Franklin Financial's secured claim to the Yukon's replacement value. Hayes's plan provides that he will pay Franklin Financial the replacement value, which the plan lists as $1,500, plus 3.25% *Till* interest. Hayes can also reduce Wisconsin Auto Title Loans' secured claim to the BMW's replacement value because Wisconsin Auto Title Loans lacks a purchase money security interest. See 11 U.S.C. §1325(a)(9), hanging paragraph. Hayes's plan provides that Wisconsin Auto Title Loans will be paid $500, which the plan states is the BMW's replacement value, plus 3.25% *Till* interest. Notice of the plan was served on all creditors. No one objected. The

plan was confirmed on August 8, 2013.

On August 12, 2013, Hayes filed objections to Franklin Financial's and Wisconsin Auto Title Loans' claims. The objections asked for an order allowing the claims in their respective replacement-value amounts, plus 3.25% interest.

II.

Section 502(b) provides nine bases on which a party in interest may object to a creditor's claim. If a party in interest does object, §502(b) directs the court to "determine the amount of such claim . . . *as of the date of the filing of the petition*, and allow . . . such claim in such amount" unless one of the nine possible bases to object to a claim are satisfied. 11 U.S.C. §502(b) (emphasis added). The debtors do not dispute the amount of the claims as of the petition dates. The debtors instead object on the grounds that the post-petition modifications of the claims effectuated by the orders confirming their chapter 13 plans control over the proofs of claim.

Counsel for the debtors relies on §502(b)(1), which disallows claims that are "unenforceable against the debtor and property of the debtor, under any agreement or applicable law". 11 U.S.C. §502(b)(1). According to counsel, the objections are proper under this provision because after plan confirmation the claims became unenforceable against the debtor, or property of the debtor, in the amount or at the interest rate listed in the proofs of claim.

Section 502(b)(1), however, is not an instrument for making pre-petition claims conform to the modifications of claim-holder rights effectuated by plan confirmation. Section 502(b)(1) instead affords a party in interest the right to benefit from defenses that would have been available to a debtor absent bankruptcy, such as "fraud, lack of consideration, unconscionability or the expiration of a statute of limitations". See 4 COLLIER ON BANKRUPTCY ¶ 502.03[2][b], at 502-21 (Alan N. Resnick & Henry J. Sommer

eds., 16th ed.). A claim modification effectuated through §1322(b)(2) does not alter the enforceability or amount of the claim as it existed when the bankruptcy petition was filed, nor is it a "defense" that would have been available to a debtor absent bankruptcy. Counsel for the debtors concedes that these objections do not satisfy any of the other eight possible grounds to disallow a claim under §502(b). Section 502(b), therefore, does not authorize the debtors' objections.

In addition to being unauthorized, the objections are unnecessary: "The provisions of a confirmed plan bind the debtor and each creditor . . . ." 11 U.S.C. §1327(a). Confirmation of the debtors' plans, all of which state that they control over proofs of claim filed by creditors, is a final determination of issues such as replacement value and interest, and that determination is immune from later challenge based on grounds that a creditor could have raised before confirmation. *Adair v. Sherman*, 230 F.3d 890, 894–95 (7th Cir. 2000); *Matter of Pence*, 905 F.2d 1107, 1110 (7th Cir. 1990). The claims to which debtors object were all filed before confirmation; thus, each creditor had ample opportunity to object to confirmation if it thought a proposed plan improperly modified its rights. Cf. *Nissan Motor Acceptance Corp. v. Smith*, No. 07-C-0698, 2010 WL 4005056, at *3 (E.D. Wis. Oct. 12, 2010) (citing *Pence*, 905 F.2d at 1109).

Consequently, the debtors' post-confirmation requests for orders directing that the claims be paid in accordance with the confirmed plans serve no purpose. The confirmation orders already require payment of the claims according to the plans' terms. Nothing more is needed—a point reinforced as a practical matter by both chapter 13 standing trustees who reported that when a confirmed plan provides that it controls the replacement value and interest rate of a secured claim, they pay creditors based on the terms of the plan.

Not content to rely on plan confirmation, the debtors argue that orders granting

post-confirmation claim objections address two concerns arising from possible future contentions by creditors. The first concern is that if a claim is not objected to, it must be paid according to its terms, a possibility the debtors find portended by *In re Averhart*, 372 B.R. 441 (Bankr. E.D. Wis. 2007). *Averhart*, however, recognized that "as a general rule" a confirmed plan controls over a proof of claim. *Id.* at 443–44. *Averhart* presumed in *dicta* that exceptions to this rule might exist, where, for example, "fraud [was] involved", or plan terms were "ambiguous or . . . raise[d] an unexpected problem at some point in the future". *Id.* at 444. True, a timely discovery of fraud can be grounds to revoke confirmation under 11 U.S.C. §1330, and ambiguities or other unexpected future problems may need to be addressed in a post-confirmation modification under 11 U.S.C. §1329. The debtors here, however, do not suggest the presence of fraud, ambiguity or any other problem that might be cause to revoke confirmation or modify the plans. And, if a creditor has notice of the plan and can identify a "problem" before confirmation, the creditor must object before the plan is confirmed or forfeit the objection. See *In re Harvey*, 213 F.3d 318, 323 (7th Cir. 2000).

The debtors' second concern is that a creditor who was not properly served with the proposed plan might someday argue that the lack of adequate notice requires payment based on the terms stated in its proof of claim. Perhaps so, but the debtors' post-confirmation claim objections provide no aegis against those creditors. If a creditor lacked adequate notice of a proposed plan purporting to modify its rights, then the court's confirmation of that plan could not provide a basis for disallowing all or part of that creditor's claim, even if §502 contemplated the type of objection the debtors press here (which, as explained above, it does not). Yet, plan confirmation is all the debtors rely on in objecting to the claims.

Accordingly,

IT IS ORDERED that the debtors' objections are overruled.

IT IS FURTHER ORDERED that the claims must be paid pursuant to the terms of the confirmed plans.

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