

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

8 In re:)
9) Case No. 05-25952-B-13J
10 Edward/Sarah Cusato) Docket Control No. RBP-3
11 Debtors.) Date: January 17, 2007
12) 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
"Act"), a copy of the ruling is hereby posted on the court's
17 Internet site, www.caeb.uscourts.gov, in a text-searchable
format, as required by the Act. However, this posting does not
18 constitute the official record, which is always the ruling
appended to the minutes of the hearing.

19 **DISPOSITION WITHOUT 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. 5, filed by Asset
25 Acceptance/Fingerhut, ("Claim") is resolved without oral argument.

26 The objection is sustained and the Claim is disallowed. The
27 debtors question the validity and nature of this claim. A properly
28 completed and filed proof of claim is prima facie evidence of the

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

5 Here, the debtors provides evidence that the debt underlying the
6 Claim was discharged in their prior chapter 7 bankruptcy case. The
7 debtors filed the petition in that case on March 5, 2002, and were
8 discharged from all dischargeable debts on June 7, 2002. Debtors
9 argue that as the debt underlying the Claim was incurred on September
10 27, 1992, prior to the filing of their prior case, it was discharged
11 on June 7, 2002. The debtors persuasively argue that even though they
12 did not schedule the debt owed the claimant in their previous case,
13 the debt was nevertheless discharged because their previous case was a
14 "no-asset, no bar date" case. See In re Beezley, 994 F.2d 1433, 1434
15 (9th Cir. 1992).

16 By failing to respond to the objection, the creditor has failed
17 to carry its burden. Accordingly, the objection is sustained and the
18 Claim is disallowed, except to the extent already paid by the trustee.