

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

8 In re:)
9) Case No. 06-22307-B-13J
10 KENNETH BROWN,) Docket Control No. SLL-1
11 Debtor.) Date: October 31, 2006
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 AFTER ORAL ARGUMENT**

20 The court issues no tentative on the merits of the motion. It
21 awaits trustee's response to the solution proposed by debtor to
22 trustee's first objection. The trustee's second objection is
23 conditionally overruled provided that any order confirming the plan
24 provides for the secured claim of Capital One Auto Finance/Ascension
25 Capital Group in the amount of \$699.04 in Class 4. All the objections
26 filed by Integral Financial Services ("Integral") are overruled.

27 Integral's first objection is overruled. This case is governed
28 by the Bankruptcy Abuse Prevention and Consumer Protection Act of

1 2005. Section 1322(d) has been altered to create a two tier scheme.
2 The former 36-month limitation does not exist in this case. It is
3 undisputed that the debtor's annual income of \$85,680 is greater than
4 the applicable median family income of \$43,436.00. This case is
5 therefore governed by 11 U.S.C. § 1322(d)(1). The only restriction
6 placed by Section 1322(d)(1) is that debtor may not propose a plan
7 exceeding 5 years in duration. This plan is for a 60 month (5 year)
8 term. Debtor has not violated Section 1322(d).

9 Integral's second objection is overruled. The plan contains no
10 provision that would adversely affect Integral's right, if any, to
11 continue from time to time its pending non-judicial foreclosure sale.

12 Integral's third and fourth objections are overruled. Integral
13 is no longer entitled to contractual payments. It's claim has been
14 modified by this plan through class 2 treatment. Such treatment is
15 permissible because Section 1322(b)(2) is inapplicable to Integral's
16 claim. Creditor admits that its debt becomes fully due and payable in
17 December 2006. This plan term extends through and including June
18 2011. Creditor's claim may be modified pursuant to the exception
19 found in 11 U.S.C. § 1322(c)(2). Furthermore, the court has no
20 evidence that the debtor is delinquent on plan payments. The court
21 notes that the trustee raised no such objection.

22 Integral's fifth objection is overruled. This objection is
23 unripe and is frivolous. First of all, the plan makes no attempt to
24 value creditor's claim. Therefore any objection to a valuation is
25 unripe. Second, the case cited by Integral, In re Hobdy, 130 B.R.
26 318 (9th Cir. BAP 1991), does not stand for the proposition put forth
27 by movant. It does NOT require an adversary proceeding for a
28

1 valuation of movant's collateral. Hobdy stands for the general due
2 process requirement that notice "must be 'reasonably calculated' to
3 apprise interested parties of the pendency of an action and to afford
4 them an opportunity to present objections. Mullane v. Central Hanover
5 Bank & Trust Co., 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.Ed. 865
6 (1950)." Hobdy, 130 B.R. at 320. Section 506(a) and Federal Rule of
7 Bankruptcy Procedure 3012 do now and have always permitted valuation
8 of collateral by noticed motion.