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3 UNITED STATES BANKRUPTCY COURT
4 EASTERN DISTRICT OF CALIFORNIA
5 SACRAMENTO DIVISION
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8 In re:)
9) Case No. 06-21441-B-13
10 RICHARD WILCOX and)
PERI THOMPSON,) Docket Control No. CRR-1
11 Debtor(s).) Date: December 5, 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 trustee's objections are sustained. The objections of
21 creditor Citifinancial Auto are sustained in part and overruled
22 in part. The motion is denied.

23 The trustee's objections are sustained for the reasons
24 stated in the chapter 13 trustee's opposition. Citifinancial
25 Auto's first objection that the modified plan reduces the
26 dividend to the creditor is sustained pursuant to 11 U.S.C.
27 Section 1325(a) (5) (b) (iii) (I). The modified plan does not
28 propose to pay the creditor in equal payments. Citifinancial

1 Auto's second objection that the debtors have not provided proof
2 of insurance on the secured property is sustained under Section
3 1325(a)(6). Pursuant to Paragraph 6.02(b) of the modified plan,
4 the debtors shall maintain insurance according to the
5 requirements of the contract with the creditor. By failing to
6 provide proof of insurance, the debtors have not carried their
7 burden of showing that they can comply with the plan.

8 Citifinancial Auto's third objection is overruled. The
9 debtors are not required to pay a "market rate" of interest as
10 asserted by creditor. Debtors are required to pay a rate of
11 interest that results in payment of the present value of the
12 creditor's claim. 11 U.S.C. § 1325(a)(5)(B)(ii). That rate of
13 interest is calculated pursuant to the United States Supreme
14 Court's holding in Till v. SCS Credit Corp., 541 U.S. 465 (2004).
15 Till places the burden of establishing factors justifying upward
16 adjustment of the interest rate from the national prime rate on
17 the creditor, not the debtor. Creditor has not made the
18 necessary showing here.

19 Citifinancial Auto's fourth objection is overruled.
20 Creditor misreads the holding in In re Bernal, 189 BR 507 (Bankr.
21 SD Cal. 1995). Bernal held that a debtor could not separately
22 classify a nondischargeable unsecured debt any pay it in full
23 while paying only a percentage of other unsecured debt, absent a
24 reasonable basis for the disparate treatment, a showing of the
25 necessity of the discrimination, and the debtor's good faith in
26 proposing disparate treatment. Bernal, 189 B.R. at 510.
27 Creditor here does not complain that it has been discriminated
28

1 against as a result of debtors' classification of its claim, only
2 that debtors have not proposed to pay creditor the same interest
3 rate as that of another creditor in the same class. Creditor's
4 argument that all creditors in the same class should be paid at
5 the same rate of interest is unpersuasive. As risk factors may
6 vary from one creditor to another, interest rates can also
7 reasonably vary among creditors, even those in the same class.

8 Accordingly, the debtors have failed to carry their burden
9 of establishing the requirements of 11 U.S.C. §§ 1325(a)(5) and
10 (a)(6). Plan confirmation can be denied for failing to satisfy
11 one or more of the prerequisites of 11 U.S.C. § 1325. In re
12 Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin,
13 Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2004).