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3 UNITED STATES BANKRUPTCY COURT
4 EASTERN DISTRICT OF CALIFORNIA
5 MODESTO DIVISION
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8 In re)
9) Case No. 06-90415-A-13G
10 ANTHONY and CALISTA BROOKS,)
11) Docket Control No. FW-2
12 Debtors.) Date: November 13, 2006
Time: 2:00 p.m.
_____)

13 On November 13, 2006 at 2:00 p.m., the court considered the
14 debtor's motion to confirm a modified plan. The chapter 13
15 trustee objected to confirmation of that plan. The court's
16 ruling on the motion and the objection is appended to the minutes
17 of the hearing. Because that ruling constitutes a "reasoned
18 explanation" of the court's decision, it is also posted on the
19 court's Internet site, www.caeb.uscourts.gov, in a text-
20 searchable format as required by the E-Government Act of 2002.
21 The official record, however, remains the ruling appended to the
22 minutes of the hearing.

23 **Final Ruling**

24 The motion will be denied and the objection will be
25 sustained.

26 This case was filed on August 8, 2006. The debtor has not
27 filed income tax returns for 2003, 2004, and 2005. According to
28 the Statement of Financial Affairs, the debtor had taxable income
in, at least, 2004 and 2005.

Prior to BAPCPA, the Bankruptcy Code did not require chapter
13 debtors to file delinquent tax returns. If a debtor did not
file tax returns, the trustee might object to the plan on the

1 grounds of lack of feasibility or that the plan was not proposed
2 in good faith. See, e.g., Greatwood v. United States (In re
3 Greatwood), 194 B.R. 637 (9th Cir. B.A.P. 1996), *affirmed*, 120
4 F.3d. 268 (9th Cir. 1997).

5 Since BAPCPA became effective, the debtor must file all pre-
6 petition tax returns. See 11 U.S.C. §§ 1308 & 1325(a)(9).

7 Section 1308(a) requires a chapter 13 debtor who has failed to
8 file tax returns under applicable nonbankruptcy law to file all
9 such returns if they were due for tax periods during the 4-year
10 period ending on the date of the filing of the petition. If not
11 filed by the meeting of creditors, and if the trustee moves for
12 dismissal, the petition must be dismissed. See 11 U.S.C. §
13 1308(b).

14 More germane here is the fact that the failure to file these
15 returns means that the plan cannot be confirmed. Both 11 U.S.C.
16 § 1329(a)(9) and an uncodified provision of the BAPCPA found at
17 section 1228(a), prevent the debtor from confirming a chapter 13
18 plan unless requested returns have been filed. This has not been
19 done.

20 Second, the plan is not feasible as witnessed by the failure
21 of the debtor to make plan payments totaling \$3,641. The plan
22 does not comply with 11 U.S.C. § 1325(a)(6).
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