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3 UNITED STATES BANKRUPTCY COURT
4 EASTERN DISTRICT OF CALIFORNIA
5 SACRAMENTO DIVISION
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7 In re)
8) Case No. 06-24263-A-13G
9 JOHN and PEGGY DISTEFANO,)
10) Docket Control No. RDG-1
11) Date: April 30, 2007
Debtors.)
Time: 9:00 a.m.
_____)

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13 *On April 30, 2007 at 9:00 a.m., the court considered the*
14 *chapter 13 trustee's objection to the confirmation of the*
15 *debtors' proposed plan as well as the debtors' response to that*
16 *objection. The court's ruling on the objection and the*
17 *opposition is appended to the minutes of the hearing. Because*
18 *that ruling constitutes a "reasoned explanation" of the court's*
19 *decision, it is also posted on the court's Internet site,*
20 *www.caeb.uscourts.gov, in a text-searchable format as required by*
21 *the E-Government Act of 2002. The official record, however,*
22 *remains the ruling appended to the minutes of the hearing.*

23 **FINAL RULING**

24 The objection will be sustained.

25 The debtor proposes to pay two claims secured by vehicles
26 directly to the two claimholders. These claims, then, are
27 provided for in Class 4. While these claims are not in default,
28 both will mature during the period the debtor is performing the
plan.

Because these claims will mature during the case, the plan
may not treat the claims as long-term debt pursuant to 11 U.S.C.
§ 1322(b)(5). Section 1322(b)(5) permits the maintenance of
contract payments only if the "the last payment is due after the

1 date on which the final payment under the plan is due."

2 Instead, the claims must be paid in full through the plan as
3 a Class 2 secured claim. All arrears on secured claims, modified
4 secured claims, and secured claims maturing during the term of
5 the plan must be paid by the trustee rather than directly by the
6 debtor. This can be inferred from 11 U.S.C. § 1322(a)(1) which
7 requires the plan to provide for the submission of a portion of
8 the debtor's future earnings "to the supervision and control of
9 the trustee as is necessary for the execution of the plan." In
10 other words, the debtor must pay the trustee and the trustee must
11 pay the creditors.

12 In In re Fulkrod, 973 F.2d 801 (9th Cir. 1992), the 9th
13 Circuit considered whether chapter 12 "authorizes a debtor to
14 make payments directly to creditors with claims modified by a
15 plan...." The court noted that there is nothing in chapter 12
16 that explicitly authorizes a debtor to make direct payments to
17 impaired creditors. The court held that section 1226(c), which
18 is identical to section 1326(c), did not authorize payment of
19 impaired claims by the debtor.

20 Also, 11 U.S.C. § 1322(b)(5) permits maintenance by the
21 debtor of payments of long-term debt only if the last payment on
22 the contract comes due after the final plan payment. See also 11
23 U.S.C. § 1326(c); Local Bankruptcy Rule 3015-1(f); In re Fulkrod,
24 973 F.2d 801 (9th Cir. 1992) (all payments to creditors, other
25 than long term debt not modified by the plan, must be through the
26 trustee).

27 To the extent the court has the discretion pursuant to 11
28 U.S.C. § 1326(c) to permit the debtor to make payments directly

1 to the creditor, the court declines to exercise that discretion
2 in favor of the debtor due to the debtor's pre-petition inability
3 to make timely payments to all creditors.

4 The plan does not comply with 11 U.S.C. § 1325(a)(4) because
5 unsecured creditors would receive a 5.5% dividend in a chapter 7
6 liquidation as of the effective date of the plan. This plan will
7 pay only a 2.5% dividend to unsecured creditors.

8 Finally, the debtor sold a vehicle for \$9,000 during the
9 year preceding the filing of this petition. The debtor has not
10 provided the trustee with records and information regarding the
11 disposition of these sale proceeds. This is a breach of the
12 debtor's duties imposed by 11 U.S.C. § 521(a)(3) & (a)(4). To
13 confirm a plan while withholding relevant financial information
14 and records is bad faith. See 11 U.S.C. § 1325(a)(3).