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2
3 UNITED STATES BANKRUPTCY COURT
4 EASTERN DISTRICT OF CALIFORNIA
5 SACRAMENTO DIVISION
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7 In re) Case No. 06-23011-A-13G
8 WILLIAM and JACQUELINE) Docket Control No. LRR-1
9 MALBROUGH,)
10 Debtors.) Date: November 13, 2006
11) Time: 9:00 a.m.
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12 On November 13, 2006 at 9:00 a.m., the court considered the
13 debtor's motion to confirm a modified plan. Both the chapter 13
14 trustee and creditor Homeq Servicing Corporation objected to
15 confirmation of that plan. The court's ruling on the motion and
16 the objections is appended to the minutes of the hearing.
17 Because that ruling constitutes a "reasoned explanation" of the
18 court's decision, it is also posted on the court's Internet site,
19 www.caeb.uscourts.gov, in a text-searchable format as required by
20 the E-Government Act of 2002. The official record, however,
21 remains the ruling appended to the minutes of the hearing.

18 **Final Ruling**

19 The motion will be denied and the objections will be
20 sustained in part.

21 The debtor has failed to commence making plan payments. The
22 debtor did not make the first plan payment that fell due on
23 September 25. Nor did the debtor make the plan payment due on
24 October 25.

25 The court further notes that the debtor filed two earlier
26 chapter 13 petitions in this court. Both were dismissed within
27 the year preceding this case. Both petitions, Case Nos. 05-24752
28 and 06-21642, were dismissed, the first because the debtor failed

1 to make payments as required by the confirmed plan, and the
2 second because the debtor failed to make plan payments as
3 required by a proposed plan. It seems, then, that nothing has
4 changed. The debtor has not and cannot make plan payments. The
5 plan is not feasible as required by 11 U.S.C. § 1325(a)(6).

6 The court also agrees with Homeq that the debtor's plan
7 impermissibly attempts to reimpose the automatic stay. Because
8 the debtor had two prior cases dismissed within one year of the
9 filing of the current case, the automatic stay was not triggered
10 when this case was filed. See 11 U.S.C. § 362(c)(4). Section
11 362(c)(4) makes the automatic stay inapplicable whenever the
12 debtor has filed multiple petitions that were pending and
13 dismissed within one year of the filing of another petition.

14 A party in interest may request that the court impose the
15 automatic stay despite the filing and dismissal of multiple prior
16 petitions. See 11 U.S.C. § 362(c)(4)(B). Such a request must be
17 made within 30 days of the filing of the petition. Here, the
18 debtor made no such request. Instead, the debtor is attempting
19 to impose the automatic stay by providing for such in the plan.
20 This is impermissible. The sole means for imposing the stay is
21 via section 362(c)(4)(B).

22 That is not to say that confirmation of a plan that was
23 silent as to the automatic stay would not help the debtor vis a
24 vis Homeq. When the automatic stay expires pursuant to section
25 362(c)(3), or when it fails to go into effect pursuant to section
26 362(c)(4), confirmation of a chapter 13 plan will prevent a
27 secured creditor from thereafter enforcing its rights against its
28 collateral if the plan provides for payment of that claim.

1 This issue is discussed in In re Kurtzahn, 342 B.R. 581
2 (Bankr. D. Minn. 2006). Although the bankruptcy court declined
3 to extend the automatic stay beyond the 30th day of the case
4 pursuant to section 362(c)(3)(B), the debtor proposed and
5 confirmed a chapter 13 plan. That plan provided for the payment
6 of a creditor's secured claim. Despite confirmation of the plan,
7 the creditor proceeded in state court with a claim and delivery
8 action. The debtor made no appearance and a judgment was entered
9 for the creditor. The bankruptcy court concluded that
10 confirmation of the plan bound the creditor and it had no right
11 to pursue its collateral as long as the debtor performed the
12 chapter 13 plan. See 11 U.S.C. § 1327(a). See, also In re
13 Fleming, 2006 WL 2529587 (Bankr. D.S.C. 2006). However, because
14 the debtor failed to participate in the claim and delivery
15 action, and because the automatic stay did not preclude its
16 prosecution, the debtor could not ask the bankruptcy court to
17 enjoin the enforcement of the state court judgment.