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3 UNITED STATES BANKRUPTCY COURT
4 EASTERN DISTRICT OF CALIFORNIA
5 SACRAMENTO DIVISION

6 In re)
7) Case No. 07-26018-A-13G
8 ROBERT PELLEGRINI,)
9) Docket Control No. SW-2
10) Date: October 9, 2007
Debtor.) Time: 9:00 a.m.
)

11 On October 9, 2007 at 9:00 a.m., the court considered the
12 objection to confirmation by Wachovia Dealer Services to the
13 debtor's proposed chapter 13 plan. The court's ruling on this
14 motion is appended to the minutes of the hearing. Because that
15 ruling constitutes a "reasoned explanation" of the court's
16 decision, it is also posted on the court's Internet site,
17 www.caeb.uscourts.gov, in a text-searchable format as required by
18 the E-Government Act of 2002. The official record, however,
19 remains the ruling appended to the minutes of the hearing.

16 **FINAL RULING**

17 The objection will be overruled without prejudice to the
18 creditor's right to defend any objection to its proof of claim by
19 asserting any unsecured deficiency claim owed to it is not barred
20 by the "hanging paragraph."

21 The creditor complains that the plan impermissibly provides
22 that the surrender of its collateral, a vehicle that is subject
23 to the hanging paragraph following 11 U.S.C. § 1325(a)(9),
24 satisfies its entire claim including any deficiency claim. The
25 plan, however, does not so provide.

26 The plan provides at section 3.14 that the surrender of the
27 collateral for a claim satisfies the "secured claim[]." A claim
28 is secured to the extent specified in 11 U.S.C. § 506(a). The

1 plan does not bar the creditor from bifurcating its claim into
2 its secured and unsecured constituent parts as permitted by 11
3 U.S.C. § 506 nor does it prevent the creditor from amending a
4 secured proof of claim to assert an unsecured deficiency after it
5 repossesses and sells its collateral.

6 While the plan also indicates that the creditor's estimated
7 deficiency is "none," this is not binding on the creditor because
8 the plan also provides at section 3.04 that:

9 *"The proof of claim, not this plan or the schedules,*
10 *shall determine the amount and classification of a*
11 *claim. If a claim is provided for by this plan and a*
12 *proof of claim is filed, dividends shall be paid based*
13 *upon the proof of claim unless the granting of a*
valuation or a lien avoidance motion, or the sustaining
of a claim objection, affects the amount or
classification of the claim."

14 Hence, if the creditor files a proof of claim bifurcating
15 its demand into its secured and unsecured components, or if it
16 later (but in a timely fashion) amends a secured proof of claim
17 to assert an unsecured deficiency, that claim is deemed allowed
18 unless and until the debtor or some other party in interest
19 objects to it. See 11 U.S.C. § 502(a). If there is no
20 objection, the unsecured claim will be paid as a Class 7
21 unsecured claim.

22 If a proof of claim demanding an unsecured claim is filed,
23 and if there an objection to that proof of claim is filed, and if
24 the objection asserts that the hanging paragraph prevents the
25 creditor from asserting an unsecured deficiency, the court will
26 resolve the controversy. See In re Rodriguez, 2007 WL 2701295
27 (B.A.P. 9th Cir. 2007). At this point, the controversy is not
28 before the court.