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MAR 05 2005

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

U.S. BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re:) Chapter 13
JOSE M. CARBAJAL and SYLVIA A.)
CARBAJAL,) No. 4-04-BK-04200-JMM
Debtors.) **MEMORANDUM DECISION**

The Debtors filed a joint chapter 13 petition on August 23, 2004. In their schedules they listed:

Secured debt (all undisputed)	\$ 226,167
Priority unsecured claims (all undisputed)	24,015
Unsecured claims	483,041

As for the unsecured claims, only one was listed as disputed, but with a "zero" balance. Therefore, that claim (to the IRS) is not included within the \$483,041 total set forth above. (Docket #9.)

On February 1, 2005, the Trustee filed a motion to dismiss, alleging that the Debtors had unsecured, undisputed debt which exceeded the \$290,525 limit of 11 U.S.C. § 109(e).

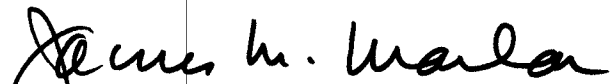
The Debtors argue that this status must exist "on the day of filing," and states several challenges that they might have to various filed claims. The filed claims, noted the trustee, were in the sum of \$505,591.40. (Docket #17.) However, to date, no objections to claims have been filed. *See* FED. R. BANKR. P. 3007.

Debtors' argument fails because on the date of filing, the Debtors' own schedules reflect undisputed, non-contingent status totaling:

Priority unsecured debt	\$ 24,015
Unsecured debt	<u>483,041</u>
	\$ 507,056

1 Accordingly, this court has no alternative but to dismiss their chapter 13 case. However,
2 the Debtors will be given ten (10) days from the entry of this order to elect to voluntarily convert their
3 case to one either under chapter 7 or chapter 11.

4 DATED: April 5th, 2005.

5
6 
7 JAMES M. MARLAR
UNITED STATES BANKRUPTCY JUDGE

8 COPIES served as indicated below this 5th
9 day of April, 2005, upon:

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