

1 NICOLAS DALUIO, #163553
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7 Attorneys for Secured Creditor Saxon Mortgage,

8 UNITED STATES BANKRUPTCY COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11 In Re:

12 RICHARD SOUZA CAPORALE and
13 ISABEL ANN CAPORALE,

14 Debtors,

BANKRUPTCY NO. 07-54109

CHAPTER NO. 13

**SAXON MORTGAGE'S OBJECTION TO
CONFIRMATION OF CHAPTER 13 PLAN**

341(a) HEARING:

DATE: January 28, 2008

TIME: 11:30 a.m.

LOCATION: 280 South First Street
Room 130
San Jose, CA

CONFIRMATION HEARING:

DATE: February 11, 2008

TIME: 2:00 p.m.

LOCATION: 280 South First Street
Ctrm. 3020
San Jose, CA

24 TO THE HONORABLE ARTHUR S. WEISSBRODT, UNITED STATES BANKRUPTCY COURT
25 JUDGE, TO THE CHAPTER 13 TRUSTEE, THE UNITED STATES TRUSTEE, THE DEBTOR, AND
26 THE DEBTOR'S ATTORNEY:
27
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OBJECTION TO CONFIRMATION OF
CHAPTER 13 PLAN - 1
60152-3360-BK6OBJECTION

Law Offices
ROBINSON TAIT, P.S.

616 First Avenue, Suite 550
Seattle, WA, 98104
(206) 676-9640

1 SAXON MORTGAGE is the holder of the secured claim in this case. SAXON MORTGAGE is,
2 therefore, a party in interest and has standing to object to the Debtors' Chapter 13 Plan.

3 SAXON MORTGAGE is the holder of a "claim secured by a security interest in real property
4 that is the above-named Debtors' principal residence". [Bankruptcy Code § 1322 (b)(2)] The pre-
5 petition amount that is due and owing under the Note is \$54,131.88 and is itemized on Exhibit "A"
6 attached and incorporated hereto. SAXON MORTGAGE objects to the Plan on the following grounds:
7

- 8 1. The Debtors' Plan is not adequately funded to cure arrearages owed to SAXON
9 MORTGAGE.
- 10 2. The Debtors' Plan understates the amount of arrearages owed to creditor. The correct amount
11 should be \$54,131.88.
- 12 3. The Debtors' Plan lists an incorrect regular monthly payment of \$1000.00. The correct
13 regular ongoing monthly payment should be \$6,161.25.
- 14 4. SAXON MORTGAGE requests the Debtor's Plan to be amended to list payments sufficient
15 for curing arrearages owed to SAXON MORTGAGE, provide for the correct amount of
16 arrearages owed to SAXON MORTGAGE, and list the appropriate monthly payment
17 amount.
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19
20

21 DATED this 5th day of February, 2008.

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23
24 /s/Nicolas Daluiso
25 NICOLAS DALUIISO, #163553
26 Robinson Tait, P.S.
27 Attorneys for Saxon Mortgage
28 and its successors and assignees

United States Bankruptcy Court Northern District of California		PROOF OF CLAIM
Name of Debtor: Richard Caporale and Isabel Caporale		Case Number: 07-54109
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C §503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): Saxon Mortgage		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim. Court Claim Number: <i>(If known)</i> Filed on:
Name and address where notices should be sent: Saxon Mortgage 1270 Northland Drive Suite 200 Mendota Heights, MN, 55120 Telephone number:		
Name and address where payment should be sent (if different from above): Saxon Mortgage 4708 Mercantile Dr Fort Worth, TX, 76137 Telephone number:		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.
1. Amount of Claim as of Date Case Filed: <u>\$985,980.26</u> If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of you claim is entitled to priority, complete item 5. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		5. Amount of Claim Entitled to Priority under 11 U.S.C §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount. Specify the priority of the claim.
2. Basis for Claim: Money loaned (See instruction #2 on reverse side.)		<input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).
3. Last four digits of any number by which creditor identifies debtor: <u>*****1548</u> 3a. Debtor may have scheduled account as : _____ (See instruction #3a on reverse side.)		<input type="checkbox"/> Wages, salaries, or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. §507(a)(4).
4. Secured Claims (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information. Nature of property or right of setoff: <input checked="" type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: Value of Property: \$ _____ Annual Interest Rate _____ % Amount of arrearage and other charges as of time case filed included in secured claim, if any: <u>\$54,131.88</u> Basis for perfection: _____ Amount of Secured Claim: <u>\$985,980.26</u> Amount Unsecured: <u>\$0.00</u>		<input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. §507(a)(5). <input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. §507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. §507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507 (a)(____). Amount entitled to priority: \$ _____
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim. 7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgements, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See definition of "redacted" on reversed side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain:		* Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.
Date: 01/15/2008	Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any. /s/ Maria Borresen Authorized Agent for the Creditor Saxon Mortgage	FOR COURT USE ONLY

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

United States Bankruptcy Court

IN RE: Richard Caporale
Isabel Caporale

Case: 07-54109
Chapter #: 13

EXHIBIT "A"

ITEMIZATION OF TOTAL DEBT AND ARREARAGES AS OF THE TIME OF FILING.

Total Debt: (not to be used as a payoff)	
Interest rate:	7.95%
Principal Balance:	\$930,000.00
Interest:	\$51,138.38
Escrow Advances:	\$0.00
Payment Late Charges:	\$2,156.42
Accrued Late Charges:	\$0.00
Property Inspections and Preservation:	\$38.00
Property Appraisal Costs:	\$250.00
Insufficient Funds / NSF:	\$0.00
Previous Foreclosure Fees:	\$575.00
Previous Foreclosure Costs:	\$1,815.46
Previous Bankruptcy Fees:	\$0.00
Previous Bankruptcy Costs:	\$0.00
Other Unpaid Fees:	\$7.00
Suspense Balance (Subtracted):	\$0.00
Total Debt:	\$985,980.26

Pre-Petition Arrearage

Mortgage Payments from 05/01/2007 to 12/01/2007:	\$49,290.00
Payment Late Charges:	\$2,156.42
Accrued Late Charges:	\$0.00
Escrow Shortage (not recouped through payments):	\$0.00
Property Inspections and Preservation:	\$38.00
Property Appraisal Costs:	\$250.00
Insufficient Funds / NSF:	\$0.00
Previous Foreclosure Fees:	\$575.00
Previous Foreclosure Costs:	\$1,815.46
Previous Bankruptcy Fees:	\$0.00
Previous Bankruptcy Costs:	\$0.00
Other Unpaid Fees:	\$7.00
Suspense Balance (Subtracted):	\$0.00
Total Pre-Petition Arrearage:	\$54,131.88

Current Mortgage Payment: \$6161.25 beginning January 01, 2008

* Please be advised that additional fees and costs have been incurred for the post-petition preparation and filing of this Proof of Claim. These fees and costs have not been included in the Proof of Claim. If the debtor(s) want these fees and costs included in the Proof of Claim so that the subject loan is current upon completion of the Bankruptcy Plan, please contact Moss Codilis, L.L.P. at (303) 799-6966

PROOF OF SERVICE

I, Casee L. James, declare as follows:

1. That I am a citizen of the United States, over the age of 21, and competent to be a witness herein.
2. That I am a paralegal employed at the office of Robinson Tait, P.S. located at 616 First Avenue, Suite 550, Seattle, WA, 98104
3. That on February 5, 2008, I transmitted electronically and/or by depositing in the United States mail, postage prepaid (as indicated herein), copies of the Saxon Mortgage's Objection to Confirmation of Chapter 13 Plan to the addressed as follows:

Richard Souza Caporale
Isabel Ann Caporale
14943 Conway Avenue
San Jose, CA, 95124

Marc Voisenat
1330 Broadway #1035
Oakland, CA, 94612

Devin Derham-Burk
PO Box 50013
San Jose, CA, 95150

United States Trustee (SJ)
US Federal Bldg.
280 S. 1st St. #268
San Jose, CA, 95113

I declare under the penalty of perjury under the laws of United States of America that the foregoing is true and correct.

Dated: February 5, 2008 at Seattle, WA.

/s/Casee L. James
Casee L. James
Robinson Tait, P.S.