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5 UNITED STATES BANKRUPTCY COURT  
6 EASTERN DISTRICT OF CALIFORNIA  
7 FRESNO DIVISION

8 In re ) Case No. 06-10598-B-13  
9 Aurelio Barajas and ) DC No. PBB-2  
10 Celia J. Ramirez Rodriguez )  
11 Debtors. )  
\_\_\_\_\_ )

12 **MEMORANDUM DECISION REGARDING THE DEBTORS' MOTION FOR**  
13 **CONFIRMATION OF SECOND MODIFIED CHAPTER 13 PLAN AND**  
14 **CREDITOR'S OBJECTION TO CONFIRMATION**

15 **This memorandum decision is not approved for publication and may not be cited**  
16 **except when relevant under the doctrine of law of the case or the rules of res**  
17 **judicata and claim preclusion.**

18 Peter B. Bunting, Esq., appeared on behalf of the debtors, Aurelio Barajas and Celia J.  
19 Ramirez Rodriguez (the "Debtors").

20 M. Nelson Enmark, Esq., appeared in his capacity as the chapter 13 trustee (the  
21 "Trustee").

22 Ralph Friesen appeared pro se ("Mr. Friesen").

23 Before the court is the Debtors' Motion to Confirm their Second Modified Chapter  
24 13 Plan (the "Second Modified Plan"). Mr. Friesen objected to confirmation on various  
25 grounds addressed herein. For the reasons set forth below, Mr. Friesen's objections will  
26 be overruled and the Debtors' motion will be granted.

27 The court has jurisdiction over this matter under 28 U.S.C. § 1334, 11 U.S.C.  
28 § 1325,<sup>1</sup> and General Orders 182 and 330 of the U.S. District Court for the Eastern

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27 <sup>1</sup>Unless otherwise indicated, all chapter, section and rule references are to the  
28 Bankruptcy Code, 11 U.S.C. §§ 101-1330, and to the Federal Rules of Bankruptcy  
Procedure, Rules 1001-9036, as enacted and promulgated on or after October 17, 2005,  
the effective date of The Bankruptcy Abuse Prevention and Consumer Protection Act of

1 District of California. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(L). This  
2 memorandum decision contains findings of fact and conclusions of law required by  
3 Federal Rule of Bankruptcy Procedure 7052, made applicable to this contested matter by  
4 Federal Rule of Civil Procedure 52.

5 **Facts.**

6 In October 2004, Mr. Friesen was injured in an automobile accident involving co-  
7 debtor Celia Rodriguez. In February 2005, Mr. Friesen filed a civil lawsuit in Fresno  
8 County Superior Court against Ms. Rodriguez for personal injuries resulting from the  
9 accident (the “State Court Litigation”). Mr. Friesen prayed for damages in the amount of  
10 \$500,000.

11 Debtors filed their petition for chapter 13 relief on May 8, 2006. The State Court  
12 Litigation was automatically stayed upon the filing of this bankruptcy petition. The  
13 section 341(a) meeting of creditors was concluded in June 2006. On June 8, 2006, Mr.  
14 Friesen filed a proof of claim in the bankruptcy case, alleging an unsecured nonpriority  
15 claim in the amount of \$500,000 (the “Friesen Claim”). In their schedules, the Debtors  
16 listed Mr. Friesen as a creditor holding an unsecured nonpriority claim in the amount of  
17 \$25,000 based on the State Court Litigation. The Debtors’ Schedule F lists the claim as  
18 “unliquidated.”

19 The Debtors filed their initial chapter 13 plan on May 8, 2006. In that plan, the  
20 Debtors proposed to pay \$145 per month for 60 months, with a 12% dividend to  
21 unsecured creditors. That plan was withdrawn following the Debtors’ 341(a) meeting and  
22 replaced by a first modified plan. The first modified plan contained the same terms in all  
23 respects, except that it proposed to pay a 0.5% dividend to unsecured creditors. Mr.  
24 Friesen objected to the first modified plan and it was withdrawn on September 20, 2006.  
25 Mr. Friesen also filed a motion to dismiss based on eligibility and bad faith, a motion for  
26 relief from the automatic stay, and an objection to exemptions. Those matters were heard  
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2005, Pub. L. 109-8, Apr. 20, 2005, 119 Stat. 23.

1 by this court at different times and resolved in favor of the Debtors in a Memorandum  
2 Decision filed herein on November 8, 2006 (the “Prior Ruling”).<sup>2</sup>

3 On September 20, 2006, the Debtors filed this motion for confirmation of their  
4 Second Modified Plan as well as second amended Schedules I and J. The Second  
5 Modified Plan proposes that the Debtors pay \$145 per month for the first two months,  
6 then \$545 per month for the remaining 58 months of a 60-month plan. Based on their  
7 amended Schedule J, the Debtors’ monthly net income is approximately \$545. The  
8 Second Modified Plan proposes to pay a 5% dividend to unsecured creditors. The  
9 Trustee filed a declaration in support of the Second Modified Plan (the “Trustee’s  
10 Declaration”).

11 Mr. Friesen again objected to the Second Modified Plan. Many of the arguments  
12 raised by Mr. Friesen were addressed in his previous objections and have been resolved in  
13 the Prior Ruling. The court, therefore, will not revisit those issues. This decision is  
14 intended to address only the new arguments raised in Mr. Friesen’s objection to  
15 confirmation.

16 **Analysis.**

17 Mr. Friesen first argues that this court does not have “core proceeding” jurisdiction  
18 over the Friesen Claim because it is based on personal injury and damages alleged in the  
19 State Court Litigation. Mr. Friesen relies on 28 U.S.C. § 157(b)(2)(B), which states:

20 (2) Core proceedings include, but are not limited to—

21 . . .

22 (B) allowance or disallowance of claims against the estate or exemptions from  
property of the estate, and estimation of claims or interests for the purposes of

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24 <sup>2</sup>On December 20, 2006, Mr. Friesen filed a copy of a purported “default  
25 judgement” entered against the Debtors in the State Court Litigation on August 1, 2006,  
26 in the amount of \$327,651.61. Based thereon, Mr. Friesen again argues that the Debtors  
27 are not eligible for chapter 13 relief under §109(e). The court has not considered this new  
28 pleading because (1) it was not timely filed in support of Mr. Friesen’s objections, (2) it  
was not served on the Debtors or their counsel, and (3) it appears to have been entered in  
violation of the automatic stay.

1 confirming a plan under chapter 11, 12, or 13 of title 11 *but not the liquidation or*  
2 *estimation of contingent or unliquidated personal injury tort or wrongful death*  
3 *claims against the estate for purposes of distribution in a case under title 11;*  
(emphasis added.)

4 Mr. Friesen's argument misstates the applicable law. While it is true that the  
5 *liquidation* of a personal injury claim is not a core proceeding under 28 U.S.C. §  
6 157(b)(2)(B), confirmation of the Second Modified Plan does not involve liquidation of  
7 the Friesen Claim. The Debtors have elected not to object to the Friesen Claim and it will  
8 be allowed as filed. (§ 502(a).)<sup>3</sup> The court has not been asked to liquidate the Friesen  
9 Claim. Mr. Friesen's objection based on jurisdiction is therefore overruled.

10 Mr. Friesen next argues that the Debtors did not date their declaration in support of  
11 the Second Modified Plan. The fact that the Debtors may not have actually dated the  
12 document is nonfatal and can easily be corrected if the court were to so order. The court  
13 can accept the date of filing as the effective date of the declaration. Mr. Friesen's  
14 argument on this point, as a grounds for denial of confirmation and dismissal of the case,  
15 is without merit.

16 Mr. Friesen argues that the Debtors committed mathematical errors in the  
17 calculation of their income. He disputes the Debtors' amended Schedules I and J. He  
18 contends that "the Debtors have manipulated their income to be low, and have artificially  
19 increased their expenses in an effort to mislead the bankruptcy court." The court notes  
20 first that the debtors are entitled to amend their schedules at any time before the case is  
21 closed. Fed.R.Bankr.P. 1009(a). Mr. Friesen has offered no evidence to support his  
22 objection, and to rebut the veracity of the Debtors' amended schedules. As stated above,  
23 the Second Modified Plan provides essentially for a 60-month distribution of the Debtors'  
24 monthly net income as reflected in their latest amended schedules. The Debtors appear  
25 to be committing virtually all of their disposable income toward payment of the Second  
26 Modified Plan. The Trustee has investigated the factors for confirmation of the Second

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27 <sup>3</sup>See the Prior Ruling regarding Mr. Friesen's motion for relief from the automatic  
28 stay.

1 Modified Plan and has no opposition to its confirmation. The Trustee's Declaration  
2 states: "[I]t is the Trustee's conclusion that there is a complete utilization of projected  
3 disposable income for the required minimum payment into the Plan." Therefore, Mr.  
4 Friesen's argument on this point will be overruled.

5 **Conclusion.**

6 Based on the foregoing, Mr. Friesen's objection to the Second Modified Plan will  
7 be overruled. The Debtors' motion to confirm their Second Modified Plan will be  
8 granted. Debtors shall submit an appropriate order in compliance with General Order  
9 05-03, as amended by General Order 06-01.

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11 Dated: December 27, 2006

12  
13 /s/ W. Richard Lee  
14 W. Richard Lee  
15 United States Bankruptcy Judge  
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