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5 UNITED STATES BANKRUPTCY COURT
6 EASTERN DISTRICT OF CALIFORNIA

7 In re Case No. 10-11219-A-13
8 KEVIN THOMAS and JENNIFER THOMAS DC No. NEA-4

9 Debtor.
10 _____/

11 MEMORANDUM DECISION REGARDING
12 MOTION TO CONFIRM
13 DEBTORS' SECOND MODIFIED PLAN

14 The debtors, Kevin and Jennifer Thomas, have proposed a
15 Second Amended Chapter 13 Plan. They filed their bankruptcy case
16 February 8, 2010, and filed an initial plan at that time. They
17 filed an Amended Plan on March 10, 2010, and the Second Amended
18 Plan at issue here (the "Plan") on April 9, 2010.

19 The trustee has opposed confirmation on the grounds that the
20 treatment of GMAC and Toyota Motor Credit Corporation ("Toyota")
21 does not comply with Bankruptcy Code § 1325. The Plan places
22 both creditors in Class 2. GMAC has a claim secured by a 2009
23 car. The Plan lists the amount as \$18,037.04. The proposed
24 interest rate is 0%. The monthly dividend is \$300.61.

25 The Plan shows Toyota as secured by a 2008 minivan, with a
26 claim of \$24,362.77, an interest rate of 0%, and a monthly
27 dividend of \$425.94.

28 In their brief in support of confirmation, the debtors
indicated that showing the interest for Toyota as 0% was an

1 error. Instead, the debtors propose an interest rate in the Plan
2 for Toyota of 1.9%.

3 Both GMAC and Toyota timely filed proofs of claim in
4 February 2010. Toyota's proof of claim shows a secured claim of
5 \$22,631.19 at 1.9% interest. The last payment is due August
6 2013. Toyota's proof of claim also states that the claim is a
7 "910 claim."

8 GMAC filed a proof of claim showing a secured claim in the
9 amount of \$17,420.76 with an annual interest rate of 0%. The
10 last payment is due July 2014. GMAC also states in its proof of
11 claim that this interest rate "may not reflect rate entitled to
12 under *In re Till*."

13 The Plan pays other secured creditors as well; pays tax
14 claims; and contemplates paying unsecured creditors an 18%
15 dividend. The Plan commitment period is 60 months. Thus
16 payments in the Plan to GMAC and Toyota extend longer than the
17 contractual period of those payments.

18 In the notice of motion to confirm the Plan, the debtors
19 state that "the failure of the responding party to timely file
20 written opposition may be deemed a waiver of any opposition to
21 the granting of the motion." The proof of service of the notice
22 of motion to confirm the Second Modified Plan shows that GMAC was
23 served in April 2010 at a post office box in Glendale, Arizona.
24 The proof of claim for GMAC states that the name and address
25 where notices should be sent is "GMAC, P. O. Box 130424,
26 Roseville, MN 55113."

27 The notice of motion to confirm the Plan was served in April
28 2010 on Toyota at a post office box in City of Industry,

1 California. Toyota's proof of claim states that notices should
2 be sent to "Toyota Motor Credit Corporation, 3200 West Ray Road,
3 Chandler, AZ 85226." Neither Toyota nor GMAC filed a request for
4 notice in the case. Both were served with the notice of motion
5 to confirm plan after their proofs of claim were filed.

6 The chapter 13 trustee has opposed confirmation on the
7 grounds that the Plan does not comply with Bankruptcy Code
8 § 1325(a)(5)(B)(ii). This is because the Plan does not pay
9 Toyota or GMAC a rate of interest to compensate for the delay in
10 paying their claims in full. In other words, by giving Toyota an
11 interest rate of 1.9% and GMAC an interest rate of 0%, the Plan
12 fails to provide them with the present value of their claims.
13 Although neither creditor objected to confirmation, the trustee
14 asks the court to determine that because the Plan contains
15 "improper" or "illegal" provisions with respect to present value,
16 it should not be confirmed. The chapter 13 trustee asserts that
17 he has standing to object to confirmation of a plan that fails to
18 treat secured creditors appropriately under § 1325(a)(5) and also
19 asserts that the court has the duty independently to review
20 whether secured creditors receive present value.

21 The debtors essentially disagree with each of the trustee's
22 arguments.

23 In order to approach a decision, it is first necessary to
24 review the language of Bankruptcy Code § 1325. Section 1325(a)
25 states that with exceptions provided in subsection (b) of § 1325,
26 the court shall confirm a plan if it meets certain requirements.
27 Among those requirements is the requirement of § 1325(a)(1)
28 that the plan comply with the provisions of chapter 13 and with

1 the other applicable provisions of the Bankruptcy Code.

2 Section 1325(a) (5) provides, as relevant here, that

3 "With respect to each allowed secured claim provided for by
4 the plan -

5 (A) the holder of such claim has accepted the plan;

6 (B) (i) the plan provides that -

7 (I) the holder of such claim retain the lien
8 securing such claim until the earlier of -

9 (aa) the payment of the underlying debt
10 determined under nonbankruptcy law; or

11 (bb) discharge under section 1328; and
12 (II) if the case under this chapter is dismissed
13 or converted without completion of the plan, such lien shall
14 also be retained by such holder to the extent recognized by
15 applicable nonbankruptcy law; and

16 (ii) the value, as of the effective date of the
17 plan, of property to be distributed under the plan on
18 account of such claim is not less than the allowed amount of
19 such claim; and

20 (iii) if -

21 (I) property to be distributed pursuant to this
22 subsection is in the form of periodic payments, such
23 payments shall be in equal monthly amounts; and

24 (II) the holder of the claim is secured by
25 personal property, the amount of such payments shall not be
26 less than an amount sufficient to provide to the holder of
27 such claim adequate protection during the period of the
28 plan; or

(C) the debtor surrenders the property securing such
claim to such holder;"

Neither GMAC nor Toyota objected to confirmation of the
Plan. A number of courts have held that creditors need not
affirmatively indicate approval of a plan in order for §
1325(a) (5) (A) to be satisfied.

See, Shaw v. Aurgroup Financial Credit Union, 552 F.3d 447 (6th
Cir. 2009); In re Jones, 530 F.3d 1284 (10th Cir. 2008); In re
Andrews, 49 F.3d 1404 (9th Cir. 1995). The Shaw court stated:

"As we have previously indicated, however, if a secured
creditor fails to object to confirmation, the creditor will
be bound by the confirmed plan's treatment of its secured
claim under § 1325(a) (5). This is because the failure to
object constitutes acceptance of the plan. And a creditor's
acceptance of a chapter 13 plan is one way to satisfy the
requirements of § 1325(a) (5) with respect to that creditor's
allowed secured claim."

1
2 Shaw, 552 F.3d at 457. The court went on to say:

3 "In short, when the holder of an allowed secured claim does
4 not object, the court may interpret this silence as
5 acceptance under § 1325(a)(5)(A); under these circumstances,
6 the plan need not meet the requirements set forth in
7 § 1325(a)(5)(B), including the present-value requirement."
8 Id.

9 The Tenth Circuit decision in Jones agreed, in almost
10 identical language.

11 In a much older case, the Ninth Circuit in Andrews expressed
12 a similar view.

13 "Here, § 1325(a)(5) is fulfilled because subsection (A) was
14 satisfied when the holders of the secured claims failed to
15 object. In most instances, failure to object translates
16 into acceptance of the plan by the secured creditor. . . .
17 The acceptance by the secured creditors here satisfies
18 § 1325(a)(5)(A)"

19 An Idaho bankruptcy case also considered this issue. In re
20 James, 260 B.R. 498 (Bankr. Idaho 2001). In that case, Judge
21 Pappas stated that "the case law makes clear that if the holder
22 of an allowed secured claim provided for by a plan fails to
23 object to confirmation of the plan, § 1325(a)(5)(A) is
24 satisfied." Id., at 503.

25 Thus, the weight of the case law is that when it comes to
26 whether it is necessary to provide present value under § 1325(a)
27 (5)(B)(ii), the failure of a secured creditor to object to
28 confirmation will be deemed acceptance of the plan so that the
requirement of § 1325(a)(5)(A) is satisfied. That is, if the
holder of a secured claim accepts the plan, it is not necessary
to satisfy the present value requirement. Of course, creditors
do not vote to accept or reject a chapter 13 plan, in contrast

1 with chapter 11.

2 Does the chapter 13 trustee have standing to raise the issue
3 of compliance with § 1325(a)(5)? In re Andrews is helpful on
4 this point as well. In that case, the trustee objected to
5 confirmation. The court characterized the issue as

6 "whether a Chapter 13 trustee has standing to object to a
7 plan that fails to meet *all* the requirements necessary for
8 confirmation. . . . the primary purpose of the Chapter 13
9 trustee is not just to serve the interests of the unsecured
creditors, but rather, to serve the interests of all
creditors."

10 In re Andrews, at 1307. The court goes on to say that

11 "In reviewing the plan for confirmation, the Chapter 13
12 trustee may object if the plan fails to conform to all
requirements in the Bankruptcy Code, not just § 1325(a)(5)."

13 In Andrews, the secured creditors had not themselves
14 objected. The Ninth Circuit was persuaded that that their
15 failure to object constituted acceptance and that for that
16 reason, it was irrelevant whether the chapter 13 trustee had
17 standing under § 1325(a)(5).

18 The bottom line, however, is that the chapter 13 trustee has
19 standing under § 1325(A)(1), which subsumes § 1325(a)(5).

20 Does the court have a duty to review a plan for compliance
21 with § 1325(a)(5) even where the secured creditor has not
22 objected to confirmation? The trustee's argument here is worth
23 setting out. The trustee stated:

24 "Many courts have held that the Bankruptcy Court has a
25 responsibility to determine whether the confirmation
26 requirements of 11 U.S.C. §§ 1322 and 1325 are satisfied,
27 notwithstanding the absence of an objection to confirmation
28 by a creditor or the Trustee. In re Warren, 89 B.R. 87
(B.A.P. 9th Cir. 1988). This duty was recently reaffirmed
by the Supreme Court in United Student Aid Funds, Inc. v.
Espinosa, ____ 559 U.S. ____ 2010, where the court stated:

1 'In other contexts, we have held that courts have the
2 discretion, but not the obligation, to raise on their
3 own initiative certain nonjurisdictional barriers to
4 suit. See Day v. McDonough, 547 U.S. 198, 202, 209
5 (2006) (statute of limitations); Granberry v. Greer, 481
6 U.S. 129, 134 (1987) (habeas corpus petitioner's
exhaustion of state remedies). Section 1325(a) does
more than codify this principle; it **requires** bankruptcy
courts to address and correct a defect in a debtor's
proposed plan even if no creditor raises the issue.'

7 Espinosa, ___ 559 U.S. at ___ 2101. (emphasis added).

8 Does Espinosa require a Bankruptcy Court to determine
9 whether the provisions of 11 U.S.C. § 1325(a)(5)(B)(ii) are
10 satisfied even if the creditor or Chapter 13 Trustee does
11 not object to confirmation of a Chapter 13 plan? If the
12 trustee did not object to the treatment of GMAC's claim
13 under 1325(a)(1) and does not have standing under
14 1325(a)(5)(A), then must the court review and raise the
issue? If silence constitutes acceptance of the provisions
contained in a Chapter 13 plan, then 11 U.S.C. §
1325(a)(5)(A) should apply and the Chapter 13 plan should be
confirmed. Otherwise does the Bankruptcy Court have the
ability to trump acceptance of a Chapter 13 plan based on
silence by a creditor or the Chapter 13 Trustee?"

15 The Espinosa case arose in the context of a chapter 13 plan
16 that proposed to discharge a student loan debt without an
17 adversary proceeding to determine undue hardship. After
18 concluding that the student loan creditor in the case had
19 forfeited its argument by failing to raise a timely objection,
20 the Supreme Court went on to consider what should have happened
21 in the Espinosa case. The Court characterized the requirement
22 for a determination of undue hardship to discharge a student loan
23 debt as "self executing" and stated that failure to comply with
24 that requirement should prevent confirmation of a plan even if
25 the creditor fails to object. United Student Aid Funds, Inc. v.
26 Espinosa, 130 S. Ct. 1367, 1381 (2009). The Court explained:

27 "That is because § 1325(a) instructs the bankruptcy court to
28 confirm a plan only if the court finds, *inter alia*, that the
plan complies with the applicable provisions of the Code.

1 § 1325(a) (providing that a bankruptcy court shall confirm a
2 plan if the plan complies with the provisions of Chapter 13
3 and with other applicable provisions of this title)
4 (internal quotation marks and citations omitted.) Thus,
5 contrary to the [Ninth Circuit] Court of Appeals' assertion,
6 the Code makes plain that bankruptcy courts have the
7 authority - indeed, the obligation - to direct a debtor to
8 conform his plan to the requirements of § § 1328(a) (2) and
9 523(a) (8) ."

10 Id. at 1381.

11 But is the requirement for provision of present value in the
12 absence of acceptance of a chapter 13 plan by a secured creditor
13 the kind of compliance about which the court in Espinosa was
14 speaking? A few examples may be helpful here. In Shaw, the
15 Sixth Circuit considered a plan that failed to comply with the
16 so-called "hanging paragraph" of § 1325(a). In other words,
17 debtor Shaw had purchased a vehicle within 910 days of filing her
18 bankruptcy petition. In her chapter 13 plan, she proposed to
19 retain ownership of the car and pay about \$9,000 less than she
20 owed to the creditor with interest. The creditor and the
21 bankruptcy trustee objected to confirmation on the ground that it
22 did not satisfy the "hanging paragraph." Under the hanging
23 paragraph, because the car had been purchased within 910 days of
24 filing the petition, the creditor secured by the car was entitled
25 to be paid in full with interest.

26 After concluding that the requirements of § 1325 are
27 mandatory, not discretionary, the court went on to conclude that
28 a plan that did not comply with the hanging paragraph could not
29 as a matter of law be confirmed.

30 An even more helpful case is In re Montoya, 341 B.R. 41
31 (Bankr. D. Utah 2006). In that case, Montoya had purchased a
32 vehicle within 910 days of filing her bankruptcy case. Her

1 chapter 13 plan proposed to bifurcate the car creditor's secured
2 claim and to pay the secured value in full and only pay a small
3 portion of the unsecured balance. The creditor failed to file an
4 objection despite the fact that its claim was being treated
5 contrary to the requirements of the hanging paragraph. The
6 debtor and the chapter 13 trustee argued that the court should
7 still confirm the plan because the creditor had failed to object.
8 After all, one way to satisfy the requirements of § 1325(a)(5)
9 for secured claims is that the holder of the claim accepts the
10 plan. And, numerous courts have concluded that failure to object
11 constitutes acceptance. Thus, should not a bankruptcy court rule
12 that if a creditor with a "910 claim" fails to object, the debtor
13 is free to bifurcate the claim? The Utah court concluded that
14 this treatment would not work. The court's language is cogent.

15 "The Chapter 13 Trustee and the Debtor broadly contend that
16 failure to object to a properly noticed plan constitutes
17 acceptance of the plan. This position overstates the case
18 because the parties improperly combine two significantly
19 different concepts and Code sections. It is correct that,
20 if a plan is properly noticed and otherwise meets the
21 requirements of § 1325(a), the Court may deem a secured
22 creditor's silence to constitute acceptance of a plan and
23 the plan may be confirmed. This 'implied' acceptance is
24 allowed because Chapter 13, unlike Chapter 11, has no
25 balloting mechanism to evidence acceptance of a proposed
26 plan, and it is only the negative - a filed objection - that
27 evidences the lack of acceptance. when the creditor simply
28 does nothing, the judicial doctrine of 'implied' acceptance
fills the drafting gap in the Code. The concept of implied
acceptance of an otherwise compliant plan, or even voting on
similar provisions in Chapter 11, however, is quite
different from proposing a plan intentionally inconsistent
with the Code and then waiting for the trap to spring on a
somnolent creditor. Creditors are entitled to rely on the
few unambiguous provisions of the BAPCPA for their
treatment. They should not be required to scour every
Chapter 13 plan to ensure that provisions of the BAPCPA
specifically inapplicable to them will not be inserted in a
proposed plan in the debtor's hope that the improper secured
creditor treatment will become *res judicata*."

1 Id. at 45. (emphasis added.)

2 Thus, the Montoya court and Espinosa and the Shaw court
3 distinguish between two different concepts. First is the idea
4 that a plan intentionally inconsistent with the Code ought not to
5 be confirmed even in the absence of objection. Good examples are
6 a plan that attempts to discharge a student loan claim without a
7 proper proceeding to determine undue hardship and a plan that
8 improperly bifurcates a 910 claim into a secured and an unsecured
9 portion.

10 Another example is a plan that provides for payments over a
11 period that is longer than five years in contravention of
12 Bankruptcy Code § 1322(d). See, In re Russell, 2010 WL 2671496
13 (Bankr. E. D. Va. June 30, 2010). Interestingly, the Russell
14 court distinguished the acceptance requirement of § 1325(a) from
15 being the sort of “illegal provision” that would preclude
16 confirmation of a plan. While denying confirmation on grounds
17 that included the plan’s attempt to reamortize the debt over a
18 period exceeding the term of the plan, the court also stated that
19 since the creditor had not objected to the interest rate, the
20 court need not decide that issue. Id., at fn. 9.

21 On the other hand, the treatment of secured creditors
22 required by § 1325(a)(5) is in the disjunctive. There are three
23 possible ways of satisfying § 1325(a)(5). First, the holder of
24 the secured claim may accept the plan. Second, the plan may
25 provide for present value to be paid. Or, third, the debtor may
26 surrender the property securing the claim to the holder of the
27 claim. In determining whether the holder of the claim has
28 accepted the plan, courts generally conclude that silence equals

1 acceptance.

2 And there are good policy reasons for distinguishing the
3 requirements of § 1325(a)(5) and concluding that silence equals
4 acceptance. If it is necessary for the debtor to establish that
5 he is paying the secured creditor the present value of a claim,
6 the requirements of the Supreme Court decision in Till v. SCS
7 Credit Corporation must be met. 124 S.Ct. 1951 (2004). In Till,
8 the Supreme Court concluded that the appropriate approach to
9 determine present value is to start with the national prime rate
10 and then adjust upward as appropriate for risk. The court stated

11 "The approach then requires a Bankruptcy Court to adjust the
12 prime rate accordingly. The appropriate size of that risk
13 adjustment depends, of course, on such factors as the
14 circumstances of the estate, the nature of the security, and
15 the duration and feasibility of the reorganization plan. . .
16 . Moreover, starting from a considerably low estimate and
17 adjusting upward places the evidentiary burden squarely on
18 the creditors, who are likely to have readier access to any
19 information absent from the debtor's filing"

16 Id.

17 The requirement of present value is not self-executing. It
18 requires evidence and it requires proof. It is the creditor who
19 has the burden of proof. In this sense, it is very unlike the
20 required treatment of a 910 claim, the requirement for a
21 proceeding to establish undue hardship in order to discharge a
22 student loan debt, the requirement to be current on domestic
23 support obligations (§ 1325(a)(8)), the requirement that all
24 applicable tax returns be filed (§ 1325(A)(9)), or the
25 requirement that the debtor who files chapter 13 be eligible for
26 chapter 13 (§ 109(b)). Those requirements are all within the
27 scope of the Supreme Court's admonition to bankruptcy courts.

28 If failure to object to confirmation of a chapter 13 plan

1 constitutes acceptance under § 1325(a)(5)(A), then a necessary
2 predicate is adequate service of the motion to confirm the plan
3 and the plan and adequate notice to the creditors who are treated
4 in the plan.

5 Federal Rule of Bankruptcy Procedure 2002(b) requires 28
6 days notice by mail of the time fixed for filing objections and a
7 hearing to consider confirmation of a chapter 13 plan. Rule
8 2002(g) states:

9 "(1) Notices required to be mailed under Rule 2002 to a
10 creditor, indenture trustee, or equity security holder shall
11 be addressed as such entity or an authorized agent has
12 directed in its last request filed in a particular case.
13 For the purposes of this subdivision - -

14 (A) a proof of claim filed by a creditor or indenture
15 trustee that designates a mailing address constitutes a
16 filed request to mail notices to that address, unless a
17 notice of no dividend has been given under rule 2002(e) and
18 a later notice of possible dividend under Rule 3002(c)(5)
19 has not been given; and

20 (B) a proof of interest filed by an equity security
21 holder that designates a mailing address constitutes a filed
22 request to mail notices to that address."

23 Thus it would appear that it is necessary to give notice to
24 creditors who have filed proofs of claim at the address on the
25 proof of claim. But that did not occur here. The Notice of Motion
26 to Confirm Plan was served well after both secured creditors had
27 filed proofs of claim.

28 The Bankruptcy Appellate Panel for the First Circuit has
considered the notice issue in In re Flynn, 482 B.R. 437 (10th
Cir. BAP 2009). There the BAP considered whether secured
creditor's lack of objection to confirmation of a plan could be
deemed to be acceptance for purposes of § 1325(a)(5)(A) - the
same issue as this case presents. The panel observed that courts

1 that have considered the question have overwhelmingly concluded
2 that a secured creditor's lack of objection may constitute
3 acceptance of the plan for purposes of § 1325(a)(5)(A). The
4 panel adopted the Third Circuit's view that acceptance may occur
5 upon a secured creditor's failure to file a timely objection to a
6 chapter 13 plan. The court went on to say that:

7 "Implied consent requires, however, that the secured
8 claimholder has received both proper and adequate notice and
9 proper and adequate service. Proper and adequate notice is
10 a highly factual inquiry and necessarily depends on the
11 language in the plan and the context of the case. Indeed,
12 the very nature of due process negates any concept of
13 inflexible procedures universally applicable to every
imaginable situation [citations and internal quotations
omitted]. At a minimum, due process requires that a proper
and adequate notice contain a clear, open, and explicit
statement of a secured creditor's treatment in a chapter 13
plan before the creditor's failure to object will be deemed
implied acceptance."

14 Id., at 444.

15 The bankruptcy court in a Maryland case agreed. In re
16 Davis, 411 B.R. 225 (Bankr. D. Maryland 2008). In that case, the
17 court stated:

18 "A number of courts have opined that in chapter 13, unlike
19 chapter 11, the failure by a secured creditor to object to
20 confirmation of the plan which provides for the claim of
21 such creditor, constitutes an acceptance by the creditor of
22 the plan. Under the specific facts of this case, this court
23 agrees with that holding. However, the court finds that
this doctrine can be applied only after strictly reviewing
whether constitutionally mandated notice of the proposed
treatment has been afforded to the effected creditor as
required by due process."

24 Id., at 229.

25 The rules about notice are not written on a blank slate.
26 Rather, they are an attempt to give parties due process. Of
27 course, due process requires notice that is "reasonably
28 calculated, under all the circumstances, to apprise interested

1 parties of the pendency of the action and afford them an
2 opportunity to present their objections." Mullane v. Central
3 Hanover Bank and Trust Co., 339 U.S. 306, 314 (1950).

4 Here, the Notice of Motion to Confirm Debtors' Second
5 Modified Plan clearly stated that a confirmation hearing would be
6 held on the date set forth in the notice. It stated the time by
7 which opposition was to be filed and on whom opposition must be
8 served. The motion to confirm the Plan, served along with the
9 notice, included a copy of the Plan and also stated at ¶ 4(E):

10 "each holder of an allowed secured claim will retain its
11 lien under the Debtors' Second Modified Chapter 13 Plan and
12 the Plan proposes to pay each such holder value, as of the
effective date of the Plan, equal to the value of the
creditor's collateral."

13 The Plan attached to the notice states that the interest
14 rate to be paid to GMAC and to Toyota is 0%. Thus, the language
15 of the motion is inconsistent with the Plan itself. Further, by
16 the time the motion to confirm the second modified plan was
17 served on April 12, 2010, both GMAC and Toyota had filed proofs
18 of claim setting forth the address at which service of all
19 notices should be sent. Neither creditor was served at the
20 address on the proof of claim.¹

21
22 ¹In the Eastern District of California, if a chapter 13 plan
23 is filed when the case is filed, and if no creditor or the
24 trustee objects to plan confirmation, confirmation of the plan
25 will be based on the plan and the notice given of the plan to
26 creditors shortly after the case is filed and before proofs of
27 claim are filed. In that context, a debtor would not be able to
28 serve a creditor at the address on the proof of claim because no
proof of claim would have been filed. However, creditors could
still be served in a manner calculated to provide notice. See,
for instance, Fed. R. Bankr. P. 7004 with respect to notice.
Because that is not the issue presented here, the court does not
reach it.

1 The court concludes, with the great weight of case
2 authority, that silence by a secured creditor who is properly
3 noticed is sufficient to constitute acceptance for the purposes
4 of Bankruptcy Code § 1325(a)(5)(A). However, in this case,
5 notice was inadequate. First, the motion to confirm incorrectly
6 stated that creditors would receive the present value of their
7 claims. Second, well after the proofs of claim were filed, the
8 debtor failed to serve the creditors at the addresses set forth
9 on those proofs of claim.

10 For the foregoing reasons, confirmation of the debtors'
11 second amended chapter 13 plan filed April 9, 2010, is denied.

12 DATED: 9/13/2010

13 /s/

14 _____
15 WHITNEY RIMEL, Judge
16 United States Bankruptcy Court
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