

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
JAIME GARCIA, SR. and) CASE NO. 05-64222
NANCY D. GARCIA,) Chapter 13
)
Debtors.)

ORDER REGARDING NOTICE OF AGREED
MATERIAL MODIFICATION OF PLAN ["MODIFICATION"]

The Modification was filed on February 26, 2008.¹ The problem with the Modification is its format. The form appears to seek to accomplish two separate goals: first, to provide the actual terms of the proposed modification to the plan, and second to provide a mechanism for the Court's approval of the manner in which notice of the modification will be provided to creditors and parties-in-interest. In a technical sense, the format of the document violates N.D.Ind.L.B.R. B-9013-1(a)'s prohibition that every motion requesting an order of the Court be submitted separately, in that the Modification in essence requests approval of the terms of the modification and separately requests the Court to enter an order with respect to the procedures to be utilized for providing notice of the modification to creditors and parties-in-interest. Additionally, the form is set up to provide for the entry of a deadline date for objections, and the last paragraph of the order is in fact an order of the Court directing the procedure to be employed. Let's say that the Court signs the document – a necessary step in approving the procedure for providing notice. What happens then if notice is properly provided and no one objects, and the Court determines that the Modification is acceptable? What order does the Court enter to approve the Modification? Additionally, in approving the procedure, the format of the document in essence connotes that the Court has approved the Modification itself in

¹ An order entered on February 27, 2008, by essentially signing and dating the Modification as filed with the Court – was vacated by the Court's order entered on March 7, 2008.

advance of the provision of notice to creditors and parties-in-interest.

Okay, so the Court doesn't like the format of this document. With respect to a material post-confirmation modification of a Chapter 13 plan which does not require the filing of a full-blown amended plan (such as that evidenced by the Modification which merely provides for an increase in payments to be made by the debtor in order to repay a tax refund which should have previously been turned over to the Trustee), the following procedure shall be employed:

1. The Modification, as signed by both the debtors' counsel and the Trustee, shall be filed as a separate document limited in its terms to the statement of the actual material modification sought to be made. The modification itself may contain, as a separate provision – stated in the document subsequent to all preceding provisions of the document including counsels' signatures – an order for the Court to approve its terms, stated as "IT IS ORDERED that the foregoing modification is approved.", followed by a line for the dating of the order by the Court and a signature line for the Court's signature. Alternatively, a separate form of order should be submitted if the order of approval is not stated in the document itself.

2. The procedures of N.D.Ind.L.B.R. B-2002-2(a)(12) shall then be followed with respect to the modification as filed with the Court. Upon the Court's record evidencing proper notice and expiration of the applicable deadline for objections or requests for hearing, the Court will then enter an order approving the modification if it deems the modification to be in accordance with applicable law.

With respect to the Modification filed in the instant case, the provisions relating to notice, modification and court approval are too interconnected to allow the utilization of the document as even the submission of the modification itself to the Court.

IT IS ORDERED that the Court will take no action with respect to the Modification, and that an amended modification, executed by debtors' counsel and by the Trustee – in the format designated by this order – shall be filed within 21 days of the date of entry of this order, and that

upon the filing of that document, the proposed modification shall be noticed pursuant to
N.D.Ind.L.B.R. B-2002-2(a)(12).

Dated at Hammond, Indiana on March 17, 2008.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Debtors, Attorney for Debtors
Trustee, US Trustee