



**SO ORDERED.**

**SIGNED this 30 day of April, 2010.**

*Janice Miller Karlin*  
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**JANICE MILLER KARLIN**  
**UNITED STATES BANKRUPTCY JUDGE**

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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF KANSAS**

**In re:** )  
 )  
**RONNIE LEE BROWN JR. and** ) **Case No. 09-41816**  
**SECUNDA YVETTE HOPKINS-BROWN** )  
 )  
**Debtors.** )  
\_\_\_\_\_ )

**ORDER DENYING CONFIRMATION OF DEBTORS' FIRST AMENDED PLAN**

This matter is before the Court on Debtors' Amended Chapter 13 Plan.<sup>1</sup> Debtors' original plan<sup>2</sup> contained the standard language advocated by the Chapter 13 Trustee, essentially acknowledging that one of the Debtors owed a domestic support obligation (DSO)<sup>3</sup> to two women, estimating the pre-petition arrearage on those obligations at \$500 each, and providing to pay through the plan "[a]ny arrearage that existed as of the date of filing." Several months later, Debtors

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<sup>1</sup>Doc. 30.

<sup>2</sup>Doc. 4.

<sup>3</sup>This is now a defined term, found at 11 U.S.C. § 101(14A).

amended that plan and altered the standard DSO language to include the following language in Paragraph 8:

Any arrearage that existed as of the date of the filing of this case will be paid through the plan. **Creditors listed below shall have an affirmative obligation** to determine the exact amounts of said domestic support arrearages; and further **shall be required to file a proof of claim for said arrearages**, with the requisite supporting documentation, **or they shall be forever barred from claiming or collecting these alleged arrearage** (emphasis added).

In light of the recent decision by the Supreme Court in *United Student Aid Funds, Inc. v. Espinosa*,<sup>4</sup> wherein the Supreme Court reiterated that bankruptcy courts may confirm a plan only if it complies with the applicable provisions of the Bankruptcy Code, the Chapter 13 Trustee exercised his gatekeeper role and brought this language to the Court's specific attention.

Section 1328(a) of Title 11 provides that a debtor will generally be entitled to a discharge after completion of a plan, but then specifies certain debts that cannot be discharged. One of those debts is a debt of the kind specified in 11 U.S.C. § 523(a)(5).<sup>5</sup> Section 523(a)(5) debts are domestic support obligations, as that term is specifically defined in § 101(14A). In addition, § 501(a) clearly states that a creditor "may" file a proof of claim. Nothing in the Code requires a creditor to do so.

The Court must deny confirmation of a plan to the extent the plan provides that any pre-petition domestic support obligation (DSO) that is not paid through the Chapter 13 plan is dischargeable, and to the extent a plan places an affirmative duty on any DSO creditor to file a proof of claim, lest his or her claim be discharged. Accordingly, for the reasons placed on the record at the confirmation hearing conducted April 28, 2010, which are incorporated herein by reference, the

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<sup>4</sup> \_\_\_ U.S. \_\_\_, 2010 WL 1027825 (March 23, 2010).

<sup>5</sup>11 U.S.C. § 1328(a)(2).

Court denies confirmation of Debtors' Amended Plan because of the language these Debtors added to Paragraph 8 when they amended their plan.<sup>6</sup>

Debtors are ordered to file a second amended plan (within 14 days) that does not violate 11 U.S.C. §§ 1328(a)(2) or 501, and that is in all other respects consistent with this decision.

**IT IS SO ORDERED.**

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<sup>6</sup>This case also demonstrates why this judge, especially in light of *Espinosa*, is in favor of a standard Chapter 13 plan that requires debtors, when they elect to deviate from the standard plan because of unique needs or circumstances, to place that non-standard language in a specific section of the plan, rather than burying it, in the same typeface, with otherwise standard language. Especially when plans are now running well over 10 pages—Debtors' amended plan is 13 single spaced- pages—the Court, the Trustee, and creditors are entitled to have non-standard language emphasized so that language can be easily discovered and fairly analyzed.