

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-41907-RJK
Chapter 13

Vernetta E. Durant

OBJECTION TO CONFIRMATION

Debtor(s).

TO: Debtor(s) and Attorney for Debtor(s); Chapter 13 Trustee; U.S. Trustee; and other parties in interest.

1. TCF Mortgage Corporation on behalf of Minnesota Housing Finance Agency, (“TCF Mortgage”), a secured creditor of Debtor(s), by its undersigned attorney, makes this objection to the confirmation of the proposed modified plan of the Debtor(s).

2. Hearing on Confirmation of the Modified Plan is scheduled for 10:30 a.m. on October 21, 2004, before the Honorable Robert J. Kressel in Courtroom 8 West, U.S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota or as soon thereafter as counsel can be heard.

3. Any objection to the relief requested herein must be filed and delivered not later than October 18, 2004, which is three (3) days before the time set for the hearing (excluding Saturdays, Sundays and holidays) or filed and served by mail not later than October 12, 2004, which is seven (7) days before the time set for the hearing, (excluding Saturdays, Sundays and holidays). **UNLESS A WRITTEN RESPONSE IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Fed.R.Bankr.P. 5005 and Local Rule 1070-1. This is a core proceeding. The petition commencing this Chapter 13 case was filed on May 9, 2004, and the case is now pending in this Court.

5. This motion arises under 11 U.S.C. § 1325 and Fed.R.Bankr.P. 3015. This motion is filed under Fed.R.Bankr.P. 9014, and Local Rules 3015-3, 3020-1, 9013-1 and 9013-2. Movant requests relief with respect to Debtor(s) plan of reorganization. The modified proposed plan does not cure existing default within a reasonable time.

6. By mortgage dated November 23, 1999, in the original principal amount of \$86,232.00 (the “Mortgage”), TCF Mortgage acquired a mortgagee’s interest in the real property (the “Property”)

Lot 22, Block 9, Walton Park, Hennepin County, Minnesota

Street Address: 3626 Humboldt Avenue North, Minneapolis, Minnesota 55412

7. A copy of the Mortgage is attached hereto as Exhibit A.

8. The pre-petition arrearages owed to TCF Mortgage total \$2,337.72. The outstanding balance under the Note is \$82,562.86, plus interest, late fees and attorneys’ fees. The interest rate on the Note is 6.6%. After a default, which has been declared by TCF Mortgage, interest is set at the rate per annum charged on judgments in the State of Minnesota but not to exceed eight percent.

9. Under the proposed monthly payments, TCF Mortgage will not be paid on its arrearage – assuming the Trustee paid TCF Mortgage in successive installments – for over 34 months.

10. Therefore, the Plan does not comply with this jurisdiction’s interpretation of the applicable provisions of Chapter 13.

11. Movant has not received any payments under the Plan.

12. Movant has incurred \$300.00 in costs and attorneys’ fees in connection with this objection that must be included in the secured claim pursuant to 11 U.S.C. § 506.

13. THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION
WILL BE USED FOR THAT PURPOSE.

WHEREFORE, TCF Mortgage respectfully requests this Court to enter an order denying
confirmation of the Debtor(s) proposed modified plan and such other further relief as is just and
equitable.

Dated: September 29, 2004

MACKALL, CROUNSE & MOORE, PLC

By: /e/Andrew P. Moratzka
Andrew P. Moratzka (#0322131)
Attorneys for Movant
1400 AT&T Tower
Minneapolis, MN 55402
Ph. (612) 305-1400

stencil

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MORTGAGE

FIA CASE NO.
271-8231663

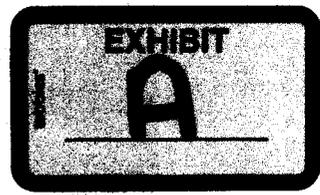
THIS MORTGAGE ("Security Instrument") is given on **NOVEMBER 23, 1999**
The mortgagor is **VERNETTA E. DURANT, A SINGLE PERSON**

TCF MORTGAGE CORPORATION
which is organized and existing under the laws of **MINNESOTA**, and whose address is
601 MARQUETTE AVENUE
MINNEAPOLIS, MN 55402

("Borrower"). This Security Instrument is given to

("Lender"). Borrower owes Lender the principal sum of
EIGHTY SIX THOUSAND TWO HUNDRED THIRTY TWO AND NO/100
Dollars (U.S. \$ **86,232.00**). This debt is evidenced by Borrower's note dated the same date as this Security
Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on
DECEMBER 1, 2029 and for interest at the yearly rate of **6.0000** percent. This Security Instrument
secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and
modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security
of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument
and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender, with power of sale, the following
described property located in **MENNEPIN** County, Minnesota:
LOT 22, BLOCK 9, WALTON PARK

which has the address of **3828 HUMBOLDT AVENUE NORTH, MINNEAPOLIS**
(Street) (City)
Minnesota: **55412** ("Property Address");
(Zip Code)



TCF MINNESOTA MORTGAGE
ITEM 6506L1 (9709) MPFN3212 - 09/97

(Page 1 of 6 pages)

991319032 GREATLAND ■
To Order Call: 1-800-530-8393 ☐ Fax 616-791-1131

ITEM 6506L2 (9709) MPFN3212 - 09/97

(Page 2 of 6 pages)

991319032 GREATLAND ■
To Order Call: 1-800-530-8393 ☐ Fax 616-791-1131

...to the payment of principal, or (b) to the restoration or repair

of the damaged Property. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments which are referred to in paragraph 2, or change the amount of such payments. Any excess insurance proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

In the event of foreclosure of this Security Instrument or other transfer of title to the Property that extinguishes the indebtedness, all right, title and interest of Borrower in and to insurance policies in force shall pass to the purchaser.

5. Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within sixty days after the execution of this Security Instrument (or within sixty days of a later sale or transfer of the Property) and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender determines that requirement will cause undue hardship for Borrower, or unless extenuating circumstances exist which are beyond Borrower's control. Borrower shall notify Lender of any extenuating circumstances. Borrower shall not commit waste or destroy, damage or substantially change the Property or allow the Property to deteriorate, reasonable wear and tear excepted. Lender may inspect the Property if the Property is vacant or abandoned or the loan is in default. Lender may take reasonable action to protect and preserve such vacant or abandoned Property. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and fee title shall not be merged unless Lender agrees to the merger in writing.

6. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in place of condemnation, are hereby assigned and shall be paid to Lender to the extent of the full amount of the indebtedness that remains unpaid under the Note and this Security Instrument. Lender shall apply such proceeds to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order provided in paragraph 3, and then to prepayment of principal. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments, which are referred to in paragraph 2, or change the amount of such payments. Any excess proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

7. Charges to Borrower and Protection of Lender's Rights in the Property. Borrower shall pay all governmental or municipal charges, fines and impositions that are not included in paragraph 2. Borrower shall pay these obligations on time directly to the entity which is owed the payment. If failure to pay would adversely affect Lender's interest in the Property, upon Lender's request Borrower shall promptly furnish to Lender receipts evidencing these payments.

If Borrower fails to make these payments or the payments required by paragraph 2, or fails to perform any other covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, for condemnation or to enforce laws or regulations), then Lender may do and pay whatever is necessary to protect the value of the Property and Lender's rights in the Property, including payment of taxes, hazard insurance and other items mentioned in paragraph 2.

Any amounts disbursed by Lender under this paragraph shall become an additional debt of Borrower and be secured by this Security Instrument. These amounts shall bear interest from the date of disbursement at the Note rate, and at the option of Lender shall be immediately due and payable.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

8. Fees. Lender may collect fees and charges authorized by the Secretary.

9. Grounds for Acceleration of Debt.

(a) Default. Lender may, except as limited by regulations issued by the Secretary in the case of payment defaults, require immediate payment in full of all sums secured by this Security Instrument if:

(i) Borrower defaults by failing to pay in full any monthly payment required by this Security Instrument prior to or on the due date of the next monthly payment, or

(ii) Borrower defaults by failing, for a period of thirty days, to perform any other obligations contained in this Security Instrument.

(b) **Sale Without Credit Approval.** Lender shall, if permitted by applicable law (including section 341(d) of the Garn-St. Germain Depository Institutions Act of 1982, 12 U.S.C. 1701j - 3(d)) and with the prior approval of the Secretary, require immediate payment in full of all sums secured by this Security Instrument if:

(i) All or part of the Property, or a beneficial interest in a trust owning all or part of the Property, is sold or otherwise transferred (other than by devise or descent), and

(ii) The Property is not occupied by the purchaser or grantee as his or her principal residence, or the purchaser or grantee does so occupy the Property, but his or her credit has not been approved in accordance with the requirements of the Secretary.

(c) **No Waiver.** If circumstances occur that would permit Lender to require immediate payment in full, but Lender does not require such payments, Lender does not waive its rights with respect to subsequent events.

(d) **Regulations of HUD Secretary.** In many circumstances regulations issued by the Secretary will limit Lender's rights, in the case of payment defaults, to require immediate payment in full and foreclose if not paid. This Security Instrument does not authorize acceleration or foreclosure if not permitted by regulations of the Secretary.

(e) **Mortgage Not Insured.** Borrower agrees that if this Security Instrument and the Note are not determined to be eligible for insurance under the National Housing Act within 60 DAYS

from the date hereof, Lender may, at its option require immediate payment in full of all sums secured by this Security Instrument. A written statement of any authorized agent of the Secretary dated subsequent to 60 DAYS

from the date hereof, declining to insure this Security Instrument and the Note, shall be deemed conclusive proof of such ineligibility. Notwithstanding the foregoing, this option may not be exercised by Lender when the unavailability of insurance is solely due to Lender's failure to remit a mortgage insurance premium to the Secretary.

10. **Reinstatement.** Borrower has a right to be reinstated if Lender has required immediate payment in full because of Borrower's failure to pay an amount due under the Note or this Security Instrument. This right applies even after foreclosure proceedings are instituted. To reinstate the Security Instrument, Borrower shall tender in a lump sum all amounts required to bring Borrower's account current including, to the extent they are obligations of Borrower under this Security Instrument, foreclosure costs and reasonable and customary attorneys' fees and expenses properly associated with the foreclosure proceeding. Upon reinstatement by Borrower, this Security Instrument and the obligations that it secures shall remain in effect as if Lender had not required immediate payment in full. However, Lender is not required to permit reinstatement if: (i) Lender has accepted reinstatement after the commencement of foreclosure proceedings within two years immediately preceding the commencement of a current foreclosure proceeding, (ii) reinstatement will preclude foreclosure on different grounds in the future, or (iii) reinstatement will adversely affect the priority of the lien created by this Security Instrument.

11. **Borrower Not Released; Forbearance by Lender Not a Waiver.** Extension of the time of payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successors in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

12. **Successors and Assigns Bound; Joint and Several Liability; Co-Signers.** The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 9(b). Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

13. **Notices.** Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

14. **Governing Law; Severability.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

22. **Riders to this Security Instrument.** If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument.

[Check applicable box(es)]

- | | | |
|---|--|--|
| <input type="checkbox"/> Condominium Rider | <input type="checkbox"/> Graduated Payment Rider | <input type="checkbox"/> Growing Equity Rider |
| <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Rehabilitation Loan Rider |
| <input type="checkbox"/> Non-Owner Occupancy Rider | <input checked="" type="checkbox"/> Other [Specify] MINNESOTA HOUSING FINANCE AGENCY | |

BY SIGNING BELOW, Borrower accepts and agrees to the terms contained in pages 1 through 6 of this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

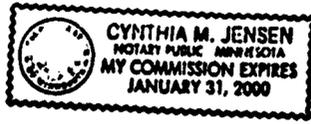
<u>Vermetta E. Durant</u> (Seal) VERNETTA E. DURANT -Borrower	_____ (Seal) -Borrower
_____ (Seal) -Borrower	_____ (Seal) -Borrower
_____ (Seal) -Borrower	_____ (Seal) -Borrower

Witness: _____ Witness: _____

STATE OF MINNESOTA, Hennepin County ss:

The instrument was acknowledged before me on 11-23-99 by Vermetta E. Durant, a single person

Cynthia M. Jensen
Notary Public



My Commission expires:

This instrument was drafted by
Name: TCF MORTGAGE CORPORATION
Address: 801 MARQUETTE AVENUE SOUTH
MINNEAPOLIS, MN 55402

GMX

OFFICE OF COUNTY RECORDER
HENNEPIN COUNTY, MINNESOTA

7278647

00 MAR 28 AM 9:40

7278647

CO. REC.



COUNTY

Enw: TCF MAg

ASSIGNMENT OF REAL ESTATE MORTGAGE/DEED OF TRUST

PIN #: 04-029-24-43-9131
Loan #: 591319052

For value received, the undersigned hereby grants, assigns and transfers to MINNESOTA HOUSING FINANCE AGENCY, A PUBLIC BODY CORPORATE AND POLITIC OF THE STATE OF MINNESOTA, 400 SIBLEY ST., SUITE 300

all the rights, title and interest of the undersigned in and to that certain Real Estate Mortgage/Deed of Trust dated 11/23/1999, executed by VERNETTA E. DURANT, A SINGLE PERSON

to TCF MORTGAGE CORPORATION
its Successors and/or Assigns, a corporation organized under the laws of the State of MINNESOTA and recorded on 12/23/99, as Document No. 7233306, or, in Book/Volume No. _____, Page No. _____, in the Office of the County Recorder of HENNEPIN County, State of MINNESOTA described hereinafter as follows:

LOT 22, BLOCK 9, WALTON PARK

Commonly Known As: 3626 HUMBOLDT AV N MINNEAPOLIS, MN 55412-2025
Together with the note or notes therein described or referred to, the money due and to become due thereon with interest, and all rights accrued or to accrue under said Real Estate Mortgage/Deed of Trust

Loan # 591319052

TCF MORTGAGE CORPORATION

BY: *Diane R. Rimer*

DIANE R. RIMER

ITS: ASSISTANT VICE PRESIDENT

State of MINNESOTA
County of HENNEPIN

The foregoing instrument was acknowledged before me this 1st day of March, 2000, by DIANE R. RIMER the ASSISTANT VICE PRESIDENT of TCF MORTGAGE CORPORATION, a MINNESOTA Corporation, on behalf of the corporation.

Patricia A. Carrow

(Signature of Person Taking Acknowledgement)

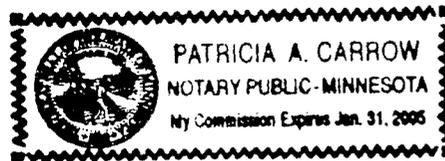
This instrument was drafted by and when recorded be returned to:

TCF MORTGAGE CORPORATION

6600 FRANCE AVENUE SOUTH

MC: 030-00-0

EDINA, MN 55435



UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re: Vernetta E Durant
TCFMC #591319052

Bky 04-41907

Debtor(s).

Chapter 13

UNSWORN DECLARATION

I, Janice McCall of TCF Mortgage Corporation declare under penalty of perjury that the facts contained herein are true and correct to the best of my knowledge, information and belief:

1. I am an employee of TCF Mortgage Corporation and have personal knowledge of the facts set forth herein.

2. Attached hereto is a true and correct copy of the mortgage made by Debtor(s) (the "Mortgage").

3. Minnesota Housing Finance Agency is the present holder of the Mortgage.

4. None are the months that remain unpaid post petition pursuant to the note secured by the Mortgage (the "Note").

5. \$2,337.72 is the outstanding *pre-petition* delinquency under the Note.

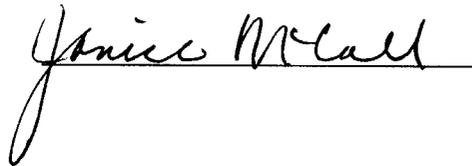
6. \$0.00 is the outstanding *post-petition* delinquency under the Note.

7. \$82,562.86 is the outstanding balance due under the Note.

8. \$90,000.00 is the approximate fair market value of the property described in the Mortgage.

9. \$0.00 Other defaults exist as follows:

Date: September 22, 2004



UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-41907-RJK

Chapter 13

Vernetta E. Durant

Debtor(s).

**MEMORANDUM IN SUPPORT OF
OBJECTION TO CONFIRMATION**

TCF Mortgage Corporation (“TCF Mortgage”) submits this memorandum of law in support of its objection to confirmation in the above-entitled matter.

FACTS

The pre-petition arrearages owed to TCF Mortgage total \$2,337.72. The outstanding balance under the Note is \$82,562.86, plus interest, late fees and attorneys’ fees. The interest rate on the Note is 6.6%. After a default, which has been declared by TCF Mortgage, interest is set at the rate per annum charged on judgments in the State of Minnesota but not to exceed eight percent.

Under the proposed monthly payments, TCF Mortgage will not be paid on its arrearage – assuming the Trustee paid TCF Mortgage in successive installments – for over 34 months.

DISCUSSION

Pursuant to 11 U.S.C. §1322, a plan must provide to cure existing delinquency under a homestead mortgage within a reasonable time. In Minnesota, 12 months has been established as the presumed maximum reasonable period to cure homestead mortgage delinquencies. *In re Newton*, 161 B.R. 207 (Bankr. D. Minn. 1993); *see also In re Brady*, 86 B.R. 166 (Bankr. Minn. 1988). In this case, the plan proposes a period of over 34 months, which is well in excess of the presumed reasonable

cure period. Furthermore, the Plan does not list the proper amount of the arrearages. Therefore, the plan should not be confirmed.

WHEREFORE, TCF Mortgage Corporation respectfully requests this Court to deny confirmation of Debtor's proposed Modified Chapter 13 Plan.

Dated: September 29, 2004

MACKALL, CROUNSE & MOORE, PLC

By: /e/Andrew P. Moratzka
Andrew P. Moratzka (#0322131)
Attorneys for Movant
1400 AT&T Tower
Minneapolis, MN 55402
Ph. (612) 305-1400

U.S. BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Vernetta E. Durant

Debtor(s)

UNSWORN DECLARATION
FOR PROOF OF SERVICE

Bky. No. 04-41907-RJK

Amy J. Ditty, employed by Mackall, Crouse & Moore, attorney(s) licensed to practice law in this court, with office address of 1400 AT&T Tower, 901 Marquette Avenue, Minneapolis, MN 55402-2859, declares that on the date set forth below, I served the annexed **Objection to Confirmation, Memorandum in Support, and proposed Order** upon each of the entities named below by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Minneapolis, Minnesota addressed to each of them as follows:

~~United States~~ Trustee
1015 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

(Trustee)
Jasmine Z. Keller
310 Plymouth Building
12 South 6th Street
Minneapolis, MN 55402

(Debtor(s))
Vernetta Durant
3626 Humboldt Avenue
Minneapolis, MN 55412

(Attorney for Debtor(s))
Robert Hoglund
P O Box 130938
Roseville, MN 55113

(Co-Debtor)

~~And I declare~~, under penalty of perjury, that the foregoing is true and correct.

Dated: September 29, 2004

Signed: /s/Amy J. Ditty

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-41907-RJK

Chapter 13

Vernetta E. Durant

Debtor(s).

ORDER

This matter came before this Court for confirmation of the Modified Chapter 13 plan of reorganization of Debtor(s). Appearances were noted in the record. Based upon all the files and records, the Court makes this Order pursuant to the Federal Rules of Bankruptcy Procedure.

IT IS HEREBY ORDERED, that confirmation of the Chapter 13 modified plan of Debtor(s) is denied.

Dated: _____

Judge Robert J. Kressel
United States Bankruptcy Judge