



ORDERED in the Southern District of Florida on January 3, 2014.

**Robert A. Mark, Judge
United States Bankruptcy Court**

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA**

_____)	
In re:)	CASE NO. 13-26632-RAM
)	CHAPTER 13
ANGELA ROXANA GARCIA,)	
)	
)	
Debtor.)	
)	
_____)	

**ORDER (1) GRANTING
CREDITOR'S MOTION TO COMPEL
AND (2) SETTING DEADLINE FOR DEBTOR TO AMEND PLAN**

The Court conducted a hearing on December 10, 2013, on the Motion to Compel Good Faith Adequate Protection Payments Under Loss Mitigation Mediation Program (the "Motion to Compel") [DE# 32], filed by Creditor, Wells Fargo Bank, N.A. ("Wells Fargo").

Wells Fargo holds a first mortgage on the Debtor's home. The Debtor is attempting to modify the Wells Fargo loan through this Court's Loss Mitigation Mediation Program (the "LMM Program"). On October 22, 2013, the Court entered an Order of Referral to Loss Mitigation Mediation [DE# 25].

This Court has adopted Loss Mitigation Mediation Program Procedures (the "LMM Procedures"). Section XI of the LMM Procedures provides language that must be included in chapter 13 plans when a debtor is seeking to modify a loan through the LMM Program. The mandatory plan language includes the following sentence:

While the LMM is pending and until the trial/interim payment plan or the permanent mortgage modification/permanent payment is established by the parties, the Debtor has included a post-petition plan payment, absent Court order to the contrary, of no less than 31% of the Debtor's gross monthly income as a good faith adequate protection payment to the Lender.

In this case the Debtor's 1st Amended Plan (the "Plan") [DE# 26] contains the required language. The Plan provides total payments of \$54,625.0 which according to the Debtor represent 31% of the Debtor's gross income over 60 months. If paid in equal monthly installments, the monthly payment would be \$910.42. However, the Debtor is not proposing equal payments. Instead, in months 1 through 6, the Plan provides monthly

payments to Wells Fargo of only \$362.26 and \$737.50 per month to pay Debtor's counsel's attorney's fees. Starting in month 7, the Plan proposes to pay Wells Fargo \$971.33 per month, making up the shortfall in the first six months with higher than average payments in the remaining 54 months.

The facts and the Motion to Compel raise the following issue: can a debtor comply with the Court's LMM Procedures if the initial monthly plan payments to the lender are less than 31% of the debtor's gross monthly income?

The Debtor argues that she complied with the LMM Procedures because the total payments to Wells Fargo during the life of the Plan equal 31% of her monthly income. Wells Fargo, in turn, argues that the Plan structure does not comply and does not provide the adequate protection contemplated by the LMM Procedures.

The Court agrees with Wells Fargo. First, the LMM Procedures are unambiguous and require debtors to pay 31% of their gross monthly income starting in month one of the plan. Although the above-quoted LMM Procedures language arguably provides an exception to the 31% requirement ("absent court order to the contrary"), the Court finds that the facts in this case do not warrant applying this "exception." Second, this Plan, and others like it, fail to accomplish the purpose of the

LMM Procedures. The 31% requirement is based upon the smallest monthly payment that a debtor is likely to achieve in the mediation process. The 31% requirement thus functions as a trial period for lenders of the Debtor's ability to make payments under the modification sought by the Debtor. Finally, as Wells Fargo argues, if the 31% requirement does not apply beginning month one, lenders will not receive adequate protection while the mediation process is taking place and ultimately recover less than the required 31% if the LMM Program fails and the case is dismissed. Therefore, it is -

ORDERED as follows:

1. The Motion to Compel is granted.
2. By January 17, 2014, the Debtor shall file a 2d Amended Plan providing for 31% payments starting in month one of the plan.

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COPIES TO:

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