

**THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO**

IN RE:)	CHAPTER 13
)	CASE NO: 17-55555
Larry Luckless)	
)	ALAN M. KOSCHIK
)	BANKRUPTCY JUDGE
DEBTOR(S))	
)	<u>TRUSTEE'S OBJECTION TO</u>
)	<u>CONFIRMATION</u>
)	
)	
)	
)	
)	
)	

.....

Now comes Keith L. Rucinski, the Chapter 13 Trustee, and hereby moves this Court for an order sustaining his objection to confirmation of the debtor's plan pursuant to 11 U.S.C. § 1325(a)(3), (6), and (7). The debtor has not filed this chapter 13 plan or petition in good faith and his actions in this case have caused delays which are prejudicial to his creditors. The plan and schedules include several expenses which are not "necessary and reasonable expenses" needed for the debtor's successful completion of a chapter 13 plan.

The Trustee states the following:

I. JURISDICTION

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(a). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (L). Accordingly, this Court may render a final order.
2. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1409(a).

II. PLAN AND SCHEDULES

3. This Chapter 13 plan was filed on or about September 11, 2014.
4. The unsecured dividend in this case is being proposed at five (5) percent with monthly plan payments of \$1,790.00.
5. The debtor is currently behind \$7,160.00 in plan payments as of the date of this pleading and has submitted one \$1,790.00 payment into the Chapter 13 plan. The debtor is required to make all payments to the Chapter 13 Trustee as set forth in the plan pursuant to 11 U.S.C. § 1325(a)(7).

III. THE DEBTOR'S UNSUBSTANTIATED INCOME ALONG WITH THE UNREASONABLE AND UNNECESSARY EXPENSES REQUIRE THAT THE PROPOSED CHAPTER 13 PLAN BE DENIED

CHAPTER 13
Keith L. Rucinski
Trustee
One Cascade Plaza
Suite 2020
Akron, Oh 44308
Tel: (330) 762-6335
Fax: (330) 762-7072
Email: rucinski@chl3akron.com

6. When determining whether a debtor is making their “best efforts to repay creditors” courts often look to the disposable income that is available to pay creditors in a chapter 13 plan to determine the ability to repay creditors that exists.¹
7. Disposable income, as defined by the bankruptcy code is income which is not reasonably necessary to be expended for the maintenance or support of the debtor. See 11 U.S.C. § 1325(b)(2). Therefore, when analyzing a particular debtor’s disposable income, courts examine the amount of the debtor’s income and the expenses that are “reasonably necessary.”
8. One source of the debtor’s income on Schedule I is listed as “trust income” for \$2,500.00 per month. See Line 8h on Schedule I.
9. The Trustee has not received a copy of the trust after requesting a copy at the first meeting of creditors. The contents of the trust, including the debtor’s authority to control trust distributions could impact the debtor’s schedules and equity calculation to determine the terms of the chapter 13 plan. The Trustee has the right to review the trust documents pursuant to 11 U.S.C. § 521 which states that the Debtor has a duty to provide the Trustee with documents to substantiate income at least seven days prior to the first meeting of creditors.
10. The Trustee has the same concerns with the respect to the debtor’s business, Debt Crusader, LLC. The Trustee has requested the business’s profit and loss statement for the last two years, and the last six month of business bank statements and has not been provided those documents.
11. Without the documents, the Trustee cannot perform his duties as required by 11 U.S.C. § 1302, including determining if the case should or should not be recommended for confirmation.
12. The debtor’s proposed Schedule J lists an expense for \$800.00 per month for his son, Rick’s tuition.
13. Generally, debtors in a Chapter 13 case are not allowed to take expenses to contribute to their adult child’s college tuition. See In re Baker, 400 B.R. 594, 598 (Bankr. N.D. Ohio 2009); In re Walker, 383 B.R. 830, 838 (Bankr. N.D. Ga. 2008); In re Hicks, 370 B.R. 919, 923 n.7 (ED. Mo. 2007) and; U.S. Trustee v. Harrelson, 323 B.R. 176, 179 (Bankr W.D. Va. 2005). Making such payments toward an adult child’s college education significantly reduces the funds available and payable to unsecured creditors in a chapter 13 plan.
14. The debtor also lists an expense for Fred, his butler, at a monthly cost of \$1,000.00.
15. The debtor has not proven that Fred’s services are necessary and reasonable to his performance in the chapter 13 plan while the payments to Fred could otherwise go to unsecured creditors in the case.
16. Because of these unnecessary and unreasonable expenses it is the Trustee’s position that the debtor’s proposed plan was not filed in good faith, a requirement for confirmation of the plan pursuant to 11 U.S.C. § 1325 (a)(3).

¹ Confirmation of a plan under Chapter 13 of the Bankruptcy Code is governed by 11 U.S.C. § 1325(b), which provides, in relevant part:

(b) (1) If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan
 (A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or
 (B) the plan provides that all of the debtor’s *projected disposable income* to be received in the three-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan. (emphasis added.)

17. The Trustee is requesting that the instant objection to confirmation of the debtor's proposed chapter 13 plan be denied. The debtor has not devoted all projected disposable income into the plan for the benefit of creditors as required by 11 USC § 1325(b)(1)(B).

WHEREFORE, the Chapter 13 Trustee hereby objects to confirmation of the debtor's plan and moves this Court to sustain this objection to confirmation for all of the reasons stated herein and any other relief the Court deems just.

Respectfully submitted,

Joseph A. Ferrise, Esq.
Attorney for the Chapter 13 Trustee
Ohio Reg. No. 0084477
One Cascade Plaza, Suite 2020
Akron, OH 44308
T: 330.762.6335
F: 330.762.7072
E: jferrise@ch13akron.com

CERTIFICATE OF SERVICE

I hereby certify that on March 1, 2017, a copy of the foregoing was sent via Regular U.S. Mail to:

Larry Luckless
123 ABC Lane
Financial Despair, OH 44999

via ECF:

Morris Laatsch, Esquire at jwander@aol.com
Keith L. Rucinski, Chapter 13 Trustee at efilings@ch13akron.com
Amy Good, Esq. - Office of the U.S. Trustee at Amy.L.Good@usdoj.gov

CHAPTER 13
Keith L Rucinski
Trustee
One Cascade Plaza
Suite 2020
Akron, Oh 44308

(330) 762-6335
Fax
(330) 762-7072
Email
rucinski@ch13akron.com

Office of the Chapter 13 Trustee

THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:)

CHAPTER 13
CASE NO: 17-55555

Larry Luckless)

DEBTOR)

ALAN M. KOSCHIK
BANKRUPTCY JUDGE

**JOINT STIPULATIONS OF FACTS
AND LEGAL CONCLUSIONS**

JOINT STIPULATIONS OF FACT

Now comes Keith L. Rucinski, the Chapter 13 Trustee, by and through undersigned counsel, along with the Debtor, by and through undersigned counsel who hereby submit to this Court stipulations to the following facts:

1. This Chapter 13 case was filed on or about February 1, 2017. Docket No. 1.
2. The debtor is currently behind \$7,160.00 in plan payments as of the date of this pleading. The debtor's chapter 13 plan proposes monthly payments of \$1,790.00.
3. The debtor's chapter 13 plan proposes an unsecured dividend of five (5) percent.
4. The parties agree that the Debtor's annualized current monthly income (CMI) pursuant to 11 U.S.C. § 1325(b)(3)(B) is above the median income for a household of two in Ohio.
5. If the Debtor's expenses for paying for butler services to Fred is not allowed, the monthly net income and the plan payment would increase \$1,000.00.
6. If the Debtor's expenses for paying for college tuition for his son Rick is not allowed, the monthly net income and the plan payment would increase \$800.00.
7. Both parties agree that the Chapter 13 Trustee requested additional documentation and information from the debtor to substantiate his representation on the bankruptcy schedules regarding the debtor's interest in both Debt Crusader, LLC and his interest in a trust that has named him a beneficiary.

Respectfully submitted,

/s/ Joseph A. Ferrise
Joseph A. Ferrise, Esq.
Attorney for the Chapter 13 Trustee

CHAPTER 13
Keith L. Rucinski
Trustee
One Cascade Plaza
Suite 2020
Akron, Oh 44308
(330) 762-6335
Fax
(330) 762-7072
Email
rucinski@ch13akron.com

Ohio Reg. No. 0084477
One Cascade Plaza, Suite 2020
Akron, Ohio 44308
T: 330.762.6335
F: 330.762.7072
E: jferrise@ch13akron.com

Approved by:

/s/ Morris Laatsch
Morris Laatsch
Attorney for Debtor

CERTIFICATE OF SERVICE

I hereby certify that on March 20, 2017, a copy of the foregoing was sent via Regular U.S. Mail to:

Larry Luckless
123 ABC Lane
Financial Despair, OH 44999

via ECF:

Morris Laatsch, Esquire at jwander@aol.com
Keith L. Rucinski, Chapter 13 Trustee at efilings@ch13akron.com
Office of the U.S. Trustee at UST@usdoj.gov

/s/ Joseph A. Ferrise
Office of the Chapter 13 Trustee

CHAPTER 13
Keith L. Rucinski
Trustee
One Cascade Plaza
Suite 2020
Akron, Oh 44308

(330) 762-6335
Fax
(330) 762-7072
Email
rucinski@ch13akron.com