IT IS SO ORDERED.

Kay Woods

Honorable Kay Woods
United States Bankruptcy Judge

Dated: June 16, 2009
11:15:13 AM

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:	*	
	*	**CASE NUMBER 08-41047**
HARRY ROWE and JULIE ROWE,	*	**CHAPTER 13**
Debtors.	*	**HONORABLE KAY WOODS**

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MEMORANDUM OPINION REGARDING TRUSTEE'S OBJECTION TO CONFIRMATION
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This cause is before the Court on Trustee's Objection to Confirmation ("Objection") (Doc. # 24), filed by Standing Chapter 13 Trustee Michael A. Gallo ("Trustee") on December 24, 2008. Debtors Harry Rowe ("Mr. Rowe") and Julie Rowe ("Mrs. Rowe") (collectively, "Debtors") filed Debtors' Response to Trustee's Motion to Dismiss ("Response") (Doc. # 25) on January 15, 2009.

The Objection and Response present two issues – one legal and one factual. The legal question is: How should a Debtor's chapter 13 plan payment be calculated? If the Court determines that

line 59 of Form 22C controls, then the Objection will be sustained. On the other hand, if the Court applies a "Forward-Looking" approach, as discussed below, this raises a second, factual question regarding how much of Debtors' income is actually available to fund their chapter 13 plan.

This Court has jurisdiction pursuant to 28 U.S.C. § 1334 and the general order of reference (General Order No. 84) entered in this district pursuant to 28 U.S.C. § 157(a). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1391(b), 1408, and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(L). The following constitutes the Court's findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

I. FACTS

On April 17, 2008 ("Petition Date"), Debtors filed, *inter alia*, (i) a voluntary chapter 13 petition, (ii) chapter 13 plan ("Plan"), (iii) Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income ("Form 22C"), and (iv) Employee Income Records for both Debtors. On November 18, 2008, Trustee filed Motion to Dismiss (Doc. # 22), which the Court set for hearing ("Hearing") on December 10, 2008. As a consequence of arguments made at the Hearing, the Court directed the parties to brief the issue of appropriate plan payment amount. In response, Trustee filed the Objection on December 24, 2008, and Debtors filed the Response on January 15, 2009.

Form 22C indicates that, as of the Petition Date, Debtors had total current monthly income (after taxes) of $10,667.00 (Line 53) and monthly disposable income of $1,286.00 (Line 59). However, Schedule I shows a combined monthly income of only $6,548.00, and Schedule J reports Debtors' monthly net (disposable) income as $550.00. Debtors' Plan proposes a monthly payment of $550.00, which would provide their unsecured creditors with a 10% dividend. (Obj. at 1.) The proposed monthly payment also covers payments to (i) holders of security interests in Debtors' vehicles[1] and (ii) administrative expenses, including attorney's fees up to $3,000.00.

The Trustee asserts that, while Debtors' Schedule I indicates Mr. Rowe has a gross monthly income of $5,982.00, "according to the pay stubs attached to the petition [Mr. Rowe] was earning gross income of $3,384.00 bi-weekly, which would amount to $6,768.00 gross income per month." (Obj. at 2.) The Court notes that the Employment Records (Doc. # 5) demonstrate that Mr. Rowe's total gross salary (excluding a $15,792.00 "incentive bonus," to be discussed separately below) was $15,290.28 for the period of January 21, 2008, to March 30, 2008, for a biweekly average of 3,058.06, or a monthly average of $6,625.79.[2]

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[1]Specifically, the plan calls for payments to "TOYOTA FINANCIAL SERVICES, on the 2005 Kia Sedona Van, . . . at 100% of the secured value at 6.5% interest or contract rate, whichever is lower [and] FORD MOTOR CREDIT, on the 2003 Ford Windstar, . . . at 100% of the secured value at 6.5% interest or contract rate, whichever is lower and the balance to be paid as a general unsecured claim." (Plan ¶ 2.)

[2]The Trustee has not objected to the amount listed in Schedule I for Mrs. Rowe's income or the expenses listed on Schedule J.

Debtors assert that they "projected their income based upon a blend of historical numbers within the six months pre-petition and a look forward at an expectation of future income." (Resp. at 2.) Debtors further assert that Mr. Rowe receives annual incentive bonuses based on his employer's performance in the previous year. (*Id.*) Mr. Rowe's 2007 incentive bonus was $6,801.00, while his 2008 "maximum" bonus was $15,792.00. (*Id.* at 2-3). However, Debtors claim that Mr. Rowe has low expectations for a bonus in 2009 because his employer's stock suffered in 2008. (*Id.* at 3.) Further, Debtors assert that Mr. Rowe anticipates further decreases in his income due to (i) elimination of overtime, (ii) a change in his employer's medical flex plan, and (iii) anticipated increases in employee benefit contributions. (*Id.*) These statements in Debtors' Response are in contrast to line 17 of Schedule I where Debtors answered "None" where instructed to describe any reasonably anticipated changes in income.

I. LAW

Section 1325(b) of the Bankruptcy Code lists conditions under which a bankruptcy court may not approve a chapter 13 plan:

> (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--
>
> . . .
>
> (B) the plan provides that all of the debtor's **projected disposable income** to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be

applied to make payments to unsecured creditors under the plan.

(2) For purposes of this subsection, the term "**disposable income**" means current monthly income[3] received by the debtor . . . less amounts reasonably necessary[4] to be expended--

(A) (i) for the maintenance or support of the debtor or a dependent of the debtor . . . ; and

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[3]The term "current monthly income" –

(A) means the average monthly income from all sources that the debtor receives (or in a joint case the debtor and the debtor's spouse receive) without regard to whether such income is taxable income, derived during the 6-month period ending on –

(i) the last day of the calendar month immediately preceding the date of the commencement of the case if the debtor files the schedule of current income required by section 521(a)(1)(B)(ii)

. . . and

(B) includes any amount paid by any entity other than the debtor (or in a joint case the debtor and the debtor's spouse), on a regular basis for the household expenses of the debtor or the debtor's dependents (and in a joint case the debtor's spouse if not otherwise a dependent) . . . .

11 U.S.C. § 101(10A) (West 2008).

[4]Section 1325(b)(3) goes on to state:

(3) Amounts reasonably necessary to be expended under paragraph (2), other than subparagraph (A)(ii) of paragraph (2), shall be determined in accordance with subparagraphs (A) and (B) of section 707(b)(2), if the debtor has current monthly income, when multiplied by 12, greater than–

(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $ 575 per month for each individual in excess of 4.

11 U.S.C. § 1325(b)(3) (West 2008).

> (ii) for charitable contributions . . . in an amount not to exceed 15 percent of gross income of the debtor for the year in which the contributions are made; and
>
> (B) if the debtor is engaged in business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business.

11 U.S.C. § 1325(b) (West 2008) (emphasis added).

A. Determining Income

Before enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), monthly disposable income was basically the difference between a debtor's Schedule I income and Schedule J expenses. However, BAPCPA amended 11 U.S.C. § 1325(b)(2) to define disposable income in terms of current monthly income, which is calculated by the "means test" on Form 22C. As a result, the meaning of the word "projected" in 11 U.S.C. § 1325(b)(1) is now an open question.

Post-BAPCPA, courts have taken one of the following two main approaches to determining projected disposable income:

1. The "Mechanical Application" approach, which simply multiplies a debtor's current monthly income, as determined on Form 22C, by the applicable number of months in the plan period; or

2. The more flexible "Forward-Looking" approach, which allows for consideration of a debtor's actual financial circumstances at the time of plan confirmation.[5] Some courts utilizing a "Forward-

[5]A small minority of "Forward-Looking" courts have held that debtor's current monthly income, as calculated on Form 22C, plays no part in determining projected disposable income. *See, e.g., In re Riggs*, 359 B.R. 649, 653 (Bankr.

Looking" approach have found a "Rebuttable Presumption," which presumes that disposable income (*i.e.*, current monthly income) is the same as projected disposable income, but allows a party to rebut this presumption by showing a change in debtor's financial situation.

1. Mechanical Application Approach

Courts taking the Mechanical Application approach hold that the term "disposable income," as used in § 1325(b)(1)(B), is specifically defined in § 1325(b)(2) and (b)(3). For a debtor with above-median income, Section 1325(b)(3) directs that the amounts "reasonably necessary to be expended" shall be determined in accordance with Section 707(b)(2)(A) and (B). Section 707(b)(2)(A), in turn, codifies the so-called "means test" calculated on Form 22C. For these courts, determining projected disposable income is simply a matter of multiplying the means test result by the number of months in the applicable plan period. However, using the Mechanical Application may result in (i) a debtor paying creditors less than the difference between the amounts on Schedules I and J; or (ii) plan payments that are significantly greater than a debtor can afford due to a post-petition reduction in circumstances.

The leading Mechanical Application case is *Maney v. Kagenveama (In re Kagenveama)*, 541 F.3d 868 (9th Cir. 2008). In *Kagenveama*, debtor's Form 22C showed a negative projected disposable income of

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E.D. Ky. 2007) ("Debtors' projected disposable income must be determined by references to their Schedules I and J.").

$4.04, but Schedules I and J showed a positive disposable monthly income of $1,523.89. The Ninth Circuit Court of Appeals reasoned that BAPCPA changed only the disposable income calculation, not the relationship between "disposable income" and "projected disposable income" in § 1325. *Id.* at 873. The *Kaganveama* court expressly rejected the Forward-Looking Approach and the Rebuttable Presumption, noting that Congress was aware that BAPCPA could produce less than favorable results for unsecured creditors in some above-median chapter 13 cases. *Id.* at 875. The Court of Appeals also "stress[ed] that nothing in our opinion prevents the debtor, the trustee, or the holder of an allowed unsecured claim [from] request[ing] modification of the plan after confirmation pursuant to § 1329." *Id.* at 877.

2. Forward-Looking Approach

Courts taking a Forward-Looking approach hold that "projected disposable income" is different from "disposable income," and take a flexible approach in determining projected disposable income. This is the position taken by the First Circuit B.A.P. in *Kibbe v. Sumski (In re Kibbe)*, 361 B.R. 302 (B.A.P. 1st Cir. 2007). The debtor in *Kibbe* was a below-median income debtor who obtained a higher paying job just prior to her petition date. Based solely on Form 22C calculations, the debtor argued that she had no disposable income and, therefore, no projected disposable income to pay unsecured creditors. On the other hand, Schedules I and J indicated a monthly disposable income of $2,382.00. The bankruptcy court held

that the debtor's projected disposable income should be determined strictly by Schedules I and J, but the B.A.P. took a more nuanced position, concluding:

> If circumstances dictate that neither Form B22C nor Schedules I and J accurately portray the debtor's income (less the Income Exclusions) projected over the plan commitment period, the bankruptcy court must make a fact-based determination at the time of confirmation, whether by way of the parties' agreement or the taking of evidence. Said most directly, the object is not to select the right form, but to reach a reality-based determination of a debtor's capabilities to repay creditors.

Id. at 315.

The Eighth Circuit Court of Appeals also took a Forward-Looking approach in *Coop v. Frederickson (In re Frederickson)*, 545 F.3d 652 (8th Cir. 2008), noting that:

> [A] debtor's "disposable income," as calculated on Form 22C, is not the same as the debtor's actual "projected disposable income." Thus, a distinction can be drawn between a debtor's "disposable income," which is calculated solely on the basis of historical numbers and regional averages, and a debtor's "projected disposable income," which necessarily contemplates a forward-looking number. Under this interpretation, bankruptcy courts will continue to have some discretion over the calculations of each individual debtor's financial situation, with the result that the debtor's "projected disposable income" will end up more closely aligning with reality.

Id. at 659 (internal citation omitted). The *Frederickson* debtor's Form 22C calculation resulted in a negative disposable monthly income of $95.49, but Schedules I and J demonstrated monthly disposable income of $606.00. The Court of Appeals held that the Form 22C disposable income calculation is the "starting point for determining the debtor's 'projected disposable income,' but that the

final calculation can take into consideration changes that have occurred in the debtor's financial circumstances as well as the debtor's actual income and expenses as reported on Schedules I and J." *Id.*

The Tenth Circuit Court of Appeals analyzed both the Mechanical and Forward Looking Approaches in *Hamilton v. Lanning* (*In re Lanning*), 545 F.3d 1269 (10th Cir. 2008) and concluded that a Forward Looking Approach must be taken to determine projected disposable income. However, in order to do so, the court had to read an implicit presumption into § 1325(b)(1)(B). After acknowledging that "each interpretation of the statutory language is not without problems," the Court stated:

> The difficulty with the forward-looking approach is that it renders the new definition of "disposable income," with its link to historic "current monthly income," nearly meaningless unless one reads a presumption into the statute – that the defined term "disposable income" is just the starting point – which can be rebutted by showing a substantial change in circumstances bearing on how much the debtor realistically can commit to repayment of unsecured creditors as of the effective date of the plan. This was the solution reached in the present case. It is compatible with the statutory language of § 1325(b)(1)(B), the new definition of disposable income, and the use of the means test to standardize an above-median Chapter 13 debtor's expenses, but requires a certain disregard of the notion that Congress knows how to create a presumption when it intends one, *see In re Kagenveama*, 541 F.3d at 874.

Id. at 1278-79.

The debtor in *Lanning* had recently lost her job and obtained new employment at a lower pay rate. As a result, Form 22C calculated her monthly disposable income as $1,114.98, but Schedules

I and J indicated monthly disposable income of only $149.03. The *Lanning* court raised both interpretive and practical concerns about the Mechanical Approach. First, as a matter of statutory interpretation, the Mechanical Approach essentially ignores all of the forward-looking phrases in § 1325(b): "as of the effective date of the plan," "to be received in the applicable commitment period," and "will be applied to make payments." *Id.* at 1279. Second, as a practical matter –

> [T]he mechanical approach advocated by the Trustee would effectively foreclose bankruptcy protection to debtors like Ms. Lanning, who lack adequate income going into the commitment period to pay the amount of disposable income on Form B22C, while at the same time permitting above-median debtors who have greater income at the time of plan confirmation to pay less to unsecured creditors than they are able to. While the latter situation could be rectified by post-confirmation modification of the plan under 11 U.S.C. § 1329, the former situation cannot be addressed in this manner because the plan would be infeasible and therefore unconfirmable in the first place.

Id. at 1281-82. As a result, the Court of Appeals held that, "the starting point for calculating a Chapter 13 debtor's 'projected disposable income' is presumed to be the debtor's 'current monthly income,' as defined in 11 U.S.C. § 101(10A)(A)(i), subject to a showing of a substantial change in circumstances." *Id.* at 1282.

B. Determining Expenses

The second issue in determining the amount of projected disposable income concerns determining the applicable expenses that a debtor may deduct. Courts are also split as to whether § 707(b)(2)(A)(ii)(I) permits debtors to take the IRS Local Standard

deduction when they may have a payment (*i.e.*, a car or mortgage payment) lower than the Local Standard or no payment at all. Some courts allow such deductions only when a debtor actually makes the payment, however small. This approach is known as the IRM Approach.[6] Other courts allow a debtor to deduct the Local Standard amount even if the debtor is not making payments. This approach is known as the Plain Language Approach.

Resolution of the expenses question involves interpretation of the word "applicable" as it is used in § 707(b)(2)(A)(ii)(I).[7] The cases that have reached the appellate level have involved vehicle

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[6]A subsection of courts utilizing the IRM Approach allow the Local Standard deduction or the amount of debtor's actual expense, whichever is less. *See, e.g., In re Rezentes*, 368 B.R. 55 (Bankr. D. Haw. 2007).

[7]11 U.S.C. 707(b) is the "Means Test" by which a court is to decide whether to dismiss or convert a chapter 7 case. Specifically, § 707(b)(2)(A)(ii)(I) states that

> The debtor's monthly expenses shall be the debtor's **applicable** monthly expense amounts specified under the National Standards and Local Standards, and the debtor's **actual** monthly expenses for the categories specified as Other Necessary Expenses issued by the Internal Revenue Service for the area in which the debtor resides, as in effect on the date of the order for relief, for the debtor, the dependents of the debtor, and the spouse of the debtor in a joint case, if the spouse is not otherwise a dependent. Such expenses shall include reasonably necessary health insurance, disability insurance, and health savings account expenses for the debtor, the spouse of the debtor, or the dependents of the debtor. Notwithstanding any other provision of this clause, the monthly expenses of the debtor shall not include any payments for debts. In addition, the debtor's monthly expenses shall include the debtor's reasonably necessary expenses incurred to maintain the safety of the debtor and the family of the debtor from family violence as identified under section 309 of the Family Violence Prevention and Services Act, or other applicable Federal law. The expenses included in the debtor's monthly expenses described in the preceding sentence shall be kept confidential by the court. In addition, if it is demonstrated that it is reasonable and necessary, the debtor's monthly expenses may also include an additional allowance for food and clothing of up to 5 percent of the food and clothing categories as specified by the National Standards issued by the Internal Revenue Service.

11 U.S.C. § 707(b)(2)(A)(ii)(I) (West 2008).

ownership expenses, but bankruptcy courts have applied similar reasoning to the question of housing expenses.

1. IRM Approach

Courts taking the IRM Approach reason that the word "applicable" refers to relevancy. That is, the Local Standard vehicle ownership deduction is only applicable (or relevant) when the debtor is actually making a car payment. These courts look to the Internal Revenue Manual (IRM) guidelines for applying the Local Standards to taxpayers as part of their analysis. Bankruptcy appellate panels in two circuits have applied the IRM Approach: *Babin v. Wilson (In re Wilson),* 383 B.R. 729 (B.A.P. 8th Cir. 2008)[8] and *Ransom v. MBNA America Bank (In re Ransom)*, 380 B.R. 799 (B.A.P. 9th Cir. 2007).

In addition to noting how the IRS applies the Local Standards, the Bankruptcy Appellate Panel in *In re Wilson* also noted that the IRM Approach is consistent with BAPCPA's over-arching purpose that debtors pay as much as possible to their unsecured creditors. The *Wilson* debtors claimed vehicle ownership deductions of $471.00 for their first car and $332.00 for their second car, although they owned both vehicles outright. The court reasoned that, had the debtors not claimed those deductions, they would have paid their unsecured creditors nearly $26,000.00 over the course of a sixty

[8]A District Court in the Eighth Circuit also held that "before the expense amount can be included in the debtor's allowed monthly expenses, the expense itself must actually be applicable to the debtor – in other words, the debtor must actually have a loan or lease payment obligation." *Fokkena v. Hartwick (In re Hartwick)*, 373 B.R. 645, 650 (D. Minn. 2007).

month plan instead of the total of $250.00 they proposed paying their nonpriority unsecured creditors. *In re Wilson,* 383 B.R. at 732. The court held that "debtors who do not incur vehicle ownership expenses are not permitted to claim the IRS Standard deductions for such expenses because such expenses are not applicable under § 707(b)(2)(A)(ii)(I)." *Id.* at 734.

The debtor in *In re Ransom* claimed a $471.00 expense for his only vehicle, on which he was making no payments, which resulted in a calculated $210.55 in monthly disposable income. When the debtor proposed to pay $500.00 per month over the course of his sixty month plan, one of his unsecured creditors objected, pointing out that, if the debtor was not allowed the vehicle ownership expense, he would be able to fund his plan at $681.55 per month. *In re Ransom*, 380 B.R. at 801-02. The *Ransom* court rejected debtor's counter argument, based on equitable principles, in part because debtors with old or high mileage cars could possibly claim additional expenses based upon "special circumstances" under § 707(b)(2)(B). *Id.* at 808.

2. Plain Language Approach

In contrast, courts taking the "Plain Language Approach" argue that "applicable" refers to the Local Standards that apply to the debtor's geographic region and number of owned vehicles, regardless of whether debtor has the Local Standard deduction as an actual expense. These courts reason that such interpretation maintains a difference of meaning between "applicable monthly expense amounts"

and “actual monthly expenses,” as those phrases are used in the statute.

The Seventh Circuit Court of Appeals, which is the only court of appeal to fully analyze this issue, used the Plain Language Approach to decide *Ross-Tousey v. Neary (In re Ross-Tousey)*, 549 F.3d 1148 (7th Cir. 2008). When the *Ross-Tousey* debtors claimed the full $803.00 ownership allowance for two vehicles, the United States Trustee brought a motion to dismiss for abuse. The Bankruptcy Court found for the debtors, but the District Court found for the United States Trustee. In reversing the District Court, the Court of Appeals held “that a debtor who owns his car free and clear may take the Local Standard transportation ownership deduction under the section 707(b)(2)(A)(ii)(I) means test.” *Id.* at 1162. In addition to statutory interpretation, the Court of Appeals also cited policy considerations, including: (i) ownership costs associated with vehicles aside from loan or lease payments; (ii) debtors may need a replacement vehicle during the course of the bankruptcy; and (iii) the IRM approach unfairly punishes debtors who drive older or cheaper cars rather than borrow money to buy a newer or more expensive vehicle. *Id.* at 1160-61.

II. ANALYSIS

Approximately a year and a half ago, this Court held “that ‘projected disposable income’ and ‘disposable income’ do not have the same meaning and that ‘projected disposable income’ necessarily requires the use of Debtors’ disposable income at the time of

confirmation rather than the historical six month average." *In re Michael and Catherine Marinecz*, Case No. 07-41250, Doc. # 24 at 18 (Bankr. N.D. Ohio Nov. 26, 2007). At that time, the Court adopted a Forward Looking Approach in sustaining the creditor's objection to confirmation of the debtors' plan, but did not articulate how projected disposable income should be determined. Since that time, there have been many additional opinions on this subject – all thoughtful and thorough – although, as set forth above, not in agreement. This Court restates its position that a Forward Looking Approach must be used to determine what constitutes "projected disposable income" as set forth in § 1325(b)(1)(B), but adopts the flexible methodology rather than the rebuttable presumption. This Court also adopts the Plain Meaning Approach, as modified herein, in determining expenses. These positions are consistent with opinions by the Sixth Circuit B.A.P.

In *Hildebrand v. Petro (In re Petro)*, 395 B.R. 369 (B.A.P. 6th Cir. 2008), and *Hildebrand v. Thomas (In re Thomas)*, 2008 Bankr. LEXIS 3664 (B.A.P. 6th Cir. Oct. 31, 2008), the Sixth Circuit B.A.P. rejected the Mechanical Application approach and held that a bankruptcy court "*may not* confirm the plan if the court finds that debtor's schedules or other credible evidence require a reassessment of disposable income as determined by the means test under § 1325(b)(2) and (b)(3)." *In re Thomas,* 2008 Bankr. LEXIS 3664 at *21. However, the B.A.P. did not articulate a specific methodology for making this reassessment.

> That is not to say that Schedules I and J provide the total answer either. Schedules I and J capture a snapshot as of the date of filing for relief under the Bankruptcy Code. Thus, anticipated changes in income, such as those that result from retirement or bonuses, may not be accurately reflected on Schedules I and J. A debtor's projected disposable income should be calculated based on the realities of the debtor's circumstances as of confirmation and as reasonably anticipated to be during the length of the plan.

In re Petro, 395 B.R. at 377-78 (emphasis added).

The Sixth Circuit B.A.P. took the Plain Meaning Approach to expenses in deciding *Hildebrand v. Kimbro (In re Kimbro)*, 389 B.R. 518 (B.A.P. 6th Cir. 2008). The debtors in *Kimbro* subtracted their $112.18 car payment from the Local Standard of $471.18 to claim an ownership deduction of $358.82 for their first vehicle. They also deducted a $332.00 ownership expense for their second vehicle, which they apparently owned free and clear. *Id.* at 521. A divided Bankruptcy Appellate Panel analyzed the same policy and statutory language factors that were considered by the Seventh Circuit Court of Appeals in *Ross-Tousey v. Neary*, and held that "a debtor may deduct an ownership expense for a vehicle regardless of whether the debtor has a debt or lease payment on that vehicle." *Id.* at 532.

Citing to *Kimbro*, the District Court for the Eastern District of Kentucky concluded "that a debtor is permitted to deduct from his current monthly income 'Ownership Costs' under the bankruptcy means test even where he owns his car free and clear of any debt." *Clippard v. Ragle (In re Ragle)*, 395 B.R. 387, 400 (E.D. Ky 2008).

This Court is persuaded by the reasoning of Judge Eugene R.

Wedoff in *In re Johnson*, 400 B.R. 639 (Bankr. N.D. Ill. 2009), that §§ 101(10A) and 1325(b) can be harmonized into a workable methodology. In *In re Johnson*, Judge Wedoff first analyzed the inconsistencies between the definition of "current monthly income" in § 101(10A) and the use of "current monthly income" in § 1325(b)'s definition of "disposable income." He then used a "harmonizing approach," with the end result as "a synthesis of §§ 101(10A) and 1325(b) that measures the 'current monthly income' inclusions and exclusions of § 101(10A) projected to be received by the debtor during the applicable commitment period defined by § 1325(b), reduced by the necessary expenditures incurred by the debtor during the period." *Id*. at 649. Judge Wedoff noted that:

> This "harmonizing approach" honors the principle that statutory revisions should only result in changes to established practices to the extent that the revisions clearly provide for change. . . . Before the enactment of BAPCPA, it was the established practice to "project" disposable income under § 1325(b) by looking to the income, net of necessary expenses, that the debtor actually anticipated receiving during the relevant post-filing period. . . . By measuring income and expenses anticipated to be received during the debtor's plan, the harmonizing approach continues this practice – one that BAPCPA does not clearly contradict – but also honors the changes in the income inclusions and exclusions that BAPCPA clearly specifies.

Id. at 649-50.

The *Johnson* court further recognized that:

> None of the forms and schedules that debtors are currently required to file provide the information needed to calculate disposable income received during the applicable commitment period. Official Form 22C provides for the reporting and calculation of current monthly income as defined in § 101(10A). See Official Forms 22A-

> 22C 2005-2008 committee note, Part A (2008). Accordingly, it directs debtors to report an average of income received during the six calendar months before the bankruptcy filing. See Official Form 22C, Lines 1-9. For the calculation of "necessary expenditures" prescribed by § 707(b)(2) – which § 1325(b)(3) employs to determine the disposable income of debtors with above-median income – Form 22C gives no explicit instruction as to the relevant time frame. However, its descriptions of each expense item are set out in present tense, indicating that current, rather than future expenses should be disclosed. *Id.* Lines 24-58. The form makes no provision for reporting anticipated changes in either income or expenses during the applicable commitment period.
>
> Schedules I and J (Official Forms 6I and 6J) – the schedules of current income and current expenditures required under § 521(a)(1)(B)(ii) – do require a disclosure of changes in the reported information anticipated to occur after the schedule is filed. However, these schedules are designed to report the debtor's actual income and expenditures and therefore may vary substantially from the income and expense calculations used in determining disposable income under § 1325(b). Schedule I requires an "[e]stimate of average or projected monthly income at time case filed," rather than during the six-month period before the case was filed, and it does not exclude from income either Social Security benefits or irregularly received support payments. Schedule J requires a statement of the debtor's actual expenses, rather than the allowances specified in § 707(b)(2).
>
> Accordingly, in order to report disposable income projected to be received during the applicable commitment period, a debtor must supplement Official Form 22C with a statement of any changes in the "current monthly income" as reported in the form, and any changes in the expenses allowed, anticipated to take place during the applicable commitment period. In many cases, of course, the information the form requires will not be anticipated to change and no further disclosure would be required. But with debtors like the Johnsons, for whom a change in income from the six-month period before the bankruptcy filing has already occurred, an adjustment of disposable income as reported on the current form is essential.

Id. at 650-51.

This Court agrees that none of the current forms, standing

alone, accurately portrays a debtor's projected disposable income, especially where debtor has experienced, or anticipates, a change in income and/or allowable expenses. The mechanism described by Judge Wedoff in the *Johnson* case appears to rectify this situation. Accordingly, this Court adopts the statement that, when necessary, "a debtor must supplement Official Form 22C with a statement of any changes in the 'currently monthly income' as reported in [Form 22C], and any changes in the expenses[9] allowed, anticipated to take place during the applicable commitment period." *Id*. at 651.

III. CONCLUSION

The Court finds that the requirements set forth in 11 U.S.C. § 1325 for confirmation of a chapter 13 plan have not been met. As a consequence, the Court sustains the Trustee's Objection to confirmation of Debtors' plan because it is not clear that the amount to be contributed to the plan equals Debtors' projected disposable income. The Court directs Debtors to file an amended plan and any necessary supplemental documents within fourteen days after entry of the Order accompanying this Opinion.

An appropriate Order will follow.

# # #

[9]Although this Court finds the Plain Meaning Approach to be the better approach, it holds that a debtor's allowed expenses are the Local Standard deductions under the section 707(b)(2)(A)(ii)(I) means test, as changed to reflect debtor's post-petition change in circumstances.

IT IS SO ORDERED.

Kay Woods

Honorable Kay Woods
United States Bankruptcy Judge

Dated: June 16, 2009
11:15:13 AM

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:	*	
	*	**CASE NUMBER 08-41047**
HARRY ROWE and JULIE ROWE,	*	**CHAPTER 13**
Debtors.	*	**HONORABLE KAY WOODS**

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ORDER SUSTAINING TRUSTEE'S OBJECTION TO CONFIRMATION
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This cause is before the Court on Trustee's Objection to Confirmation ("Objection") (Doc. # 24), filed by Standing Chapter 13 Trustee Michael A. Gallo ("Trustee") on December 24, 2008. Debtors Harry Rowe and Julie Rowe (collectively, "Debtors") filed Debtors' Response to Trustee's Motion to Dismiss ("Response") (Doc. # 25) on January 15, 2009.

For the reasons set forth in this Court's Memorandum Opinion entered this date, the Court finds that the requirements set forth in 11 U.S.C. § 1325 for confirmation of a chapter 13 plan have not

been met. As a consequence, the Court sustains Trustee's Objection to confirmation of Debtors' plan because it is not clear that the amount to be contributed to the plan equals Debtors' projected disposable income. The Court directs Debtors to file an amended plan and any necessary supplemental documents within fourteen days after entry of this Order.

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