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4 UNITED STATES BANKRUPTCY COURT
5 EASTERN DISTRICT OF CALIFORNIA
6 MODESTO DIVISION
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10 In re) Case No. 05-90721-A-13G
11 CHRISTINA KRAUSE,) Docket Control No. DEF-1
12 Debtor.) Date: August 9, 2005
13) Time: 2:00 p.m.
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14 *On August 9, 2005 at 2:00 p.m., the court considered the*
15 *motion of the debtor to confirm an amended plan to which the*
16 *trustee objected. The text of the final ruling appended to the*
17 *minutes of the hearing follows. This final ruling constitutes a*
18 *"reasoned explanation" for the court's decision and accordingly*
19 *is posted to the court's Internet site, www.caeb.uscourts.gov, in*
20 *a text-searchable format as required by the E-Government Act of*
21 *2002. The official record of this ruling remains the ruling*
22 *appended to the minutes of the hearing.*

19 **FINAL RULING**

20 The motion will be granted and the objection will be
21 overruled.

22 The objection complains that a nonfiling spouse is making a
23 contribution to a pension plan with wages earned by the nonfiling
24 spouse. The objection asserts that because the plan pays nothing
25 to unsecured creditors, this means the plan has been filed in bad
26 faith. This is rejected.

27 This objection is reminiscent of an objection that the plan
28 is not the debtor's "best effort." Whether or not a plan is the

1 debtor's "best effort" has been addressed under 11 U.S.C. §
2 1325(b) since it was added to the Code in 1984. Lundin, Chapter
3 13 Bankruptcy, § 177.1, p. 177-5, § 193.1, p. 193-2 (3rd ed.
4 2004). Consequently, there is little "economic content to the
5 good faith test." Handeen v. LeMaire (In re LeMaire), 898 F.2d
6 1346 (8th Cir. 1990).

7 The issue then becomes whether the spouse's wages are
8 property of the estate. They are not. First, the spouse has not
9 joined in this petition. Second, while 11 U.S.C. § 1306(a)(2)
10 makes the debtor's post-petition earnings property of the estate,
11 this does not extend to the earnings of a nonfiling spouse.
12 Section 1306(a)(2) is very clear in its language. Only "earnings
13 from services performed by the debtor after the commencement of
14 the case" are property in a chapter 13 case. The spouse is not a
15 debtor.

16 The spouse's wages are still germane to an objection under
17 section 1325(b). That is, the fact that a nonfiling spouse has
18 earnings and is contributing some of those earnings to the
19 debtor's household is relevant to determine how much disposable
20 income the debtor has that can and should be paid to creditors.
21 However, there is no evidence before the court as to what the
22 spouse contributes nor is there evidence that the parties have
23 contrived to shift all household expenses to the debtor so that
24 the spouse may keep her earnings effectively out of reach from
25 creditors.

26 While this may seem somewhat unfair, if the spouse has any
27 liability for the debtor's claims, the creditors are free to seek
28 relief from the codebtor stay of 11 U.S.C. § 1301 and pursue

1 their claims against the spouse and/or the community property in
2 her hands that is not property of the estate.

3 Dated:

4 By the Court

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7 Michael S. McManus, Chief Judge
8 United States Bankruptcy Court

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