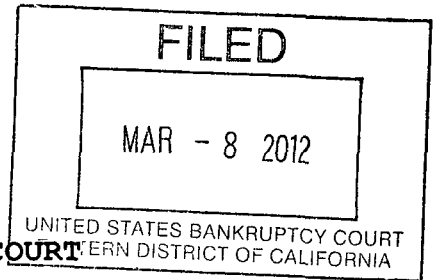


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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

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6 In re: ) Case No. 11-24447-D-13L  
7 CHESTER LEASURE and )  
8 SHERRI LEASURE, ) Docket Control No. JAP-5  
9 Debtors. ) Date: February 21, 2012  
10 ) Time: 10:00 a.m.  
11 ) Dept: D  
12 )  
13 )

14 **This memorandum decision is not approved for publication and may**  
15 **not be cited except when relevant under the doctrine of law of**  
16 **the case or the rules of claim preclusion or issue preclusion.**

17 **MEMORANDUM DECISION**

18 On December 27, 2011, the debtors in this case, Chester  
19 Leasure and Sherri Leasure (the "debtors"), filed a motion to  
20 confirm a fourth amended chapter 13 plan, Docket Control No. JAP-  
21 5 (the "Motion"). The chapter 13 trustee in this case, Russell  
22 D. Greer (the "trustee") opposes the Motion. For the reasons set  
23 forth below, the court will deny the Motion.

24 On their Schedule J, the debtors have deducted \$250 each for  
25 college expenses of their two sons, a total of \$500 per month.  
26 The trustee contends that with this deduction, the plan fails the  
27 disposable income test of 11 U.S.C. § 1325(b)<sup>1</sup> and is not  
28 proposed in good faith. § 1325(a)(3).<sup>2</sup>

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29 1. Unless otherwise indicated, all Code, chapter, and  
30 section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-  
31 1532. All Rule references are to the Federal Rules of Bankruptcy  
32 Procedure, Rules 1001-9037.

33 2. Other issues originally raised by the trustee have been  
34 resolved.

1       The debtors are above-median income debtors; thus, their  
2       disposable income is determined under § 1325(b)(2)(A)(i) and (3),  
3       and in turn, by reference to § 707(b)(2)(A) and (B). Allowable  
4       educational expenses include the actual expenses for a dependent  
5       child less than 18 years old, up to \$1,500 per year per child, to  
6       attend a private or public elementary or secondary school,  
7       assuming a satisfactory explanation and documentation.

8       § 707(b)(2)(A)(ii)(IV). Applying the doctrine of *expressio unius*  
9       *est exclusio alterius* (the expression of one thing is the  
10       exclusion of another), courts have held that the omission from  
11       that subsection of college expenses for children 18 and older  
12       means that Congress did not intend such expenses to be deducted.  
13       In re Featherston, 2007 Bankr. LEXIS 4578 \*40 (Bankr. D. Mont.  
14       2007); In re Goins, 372 B.R. 824, 827 (Bankr. D.S.C. 2007).

15       A similar analysis can be made of § 707(b)(2)(A)(ii)(II),  
16       which allows the deduction of "actual expenses paid by the debtor  
17       that are reasonable and necessary for care and support of an  
18       elderly, chronically ill, or disabled household member or member  
19       of the debtor's immediate family (including . . . children,  
20       . . .) and who is unable to pay for such reasonable and necessary  
21       expenses." College expenses for an adult child who is  
22       chronically ill or disabled might well be allowable under this  
23       section; absent such a showing, however, college expenses for an  
24       adult child are not permissible. In re Harris, 415 B.R. 756,  
25       760-62 (Bankr. E.D. Cal. 2009).

26       Congress has expressly provided for education expenses for  
27       children under 18 and for expenses generally for a family member  
28       who is chronically ill or disabled; it has not provided for

1 college expenses for a child 18 or over who does not meet either  
2 of those qualifications.<sup>3</sup> Thus, the deductions taken by the  
3 debtors here are not allowable, and the Motion will be denied.

4 The court will issue an appropriate order.

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6 Dated: March 8, 2012

*Robert Bardwil*  
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7 ROBERT S. BARDWIL  
United States Bankruptcy Judge

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25 3. When this case was filed, the debtors' sons were 18 and  
26 17 years old, respectively. The case has been pending just over  
27 a year; thus, both are now at least 18. To the extent a  
28 deduction was taken for college expenses for the younger son  
while he was 17, those are not allowable because for a child  
under 18, § 707(b)(2)(A)(ii)(IV) permits a deduction for expenses  
of an elementary or secondary school only, not for college  
expenses.