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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

In re:	)	Case No. 10-92499-D-13G
	)	
GREGORY D. LAWLESS and	)	Docket Control No. RDG-1
SVIDLANA LAWLESS,	)	
	)	Date: September 21, 2010
Debtors.	)	Time: 10:00 a.m.
	)	Dept: D

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

## MEMORANDUM DECISION

On August 25, 2010, chapter 13<sup>1</sup> trustee Russell D. Greer (the "trustee"), filed an objection to confirmation of the chapter 13 plan proposed by Gregory D. Lawless and Svidlana Lawless (the "debtors"), bearing Docket Control No. RDG-1 (the "Objection"). For the reasons set forth below, the court will overrule the Objection.

The Objection was brought on two distinct grounds, one of which has now been withdrawn by the trustee, leaving as the only issue for determination whether the court may confirm in this case only a plan that proposes a five-year term or whether the debtors' present plan, with its three-year term, may be confirmed after Hamilton v. Lanning, 130 S. Ct. 2464 (June 7, 2010). The court concludes that Lanning did not overrule Maney v. Kagenveama (In re Kagenveama), 541 F.3d 868 (9th Cir. 2008), on this issue.

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

1       The Lanning decision concerned only the first issue decided  
2 by Kagenveama -- the issue of the mechanical approach versus the  
3 forward-looking approach in determining projected disposable  
4 income; the Court overruled Kagenveama on that issue. The debtor  
5 in Lanning had, according to her Form 22C, a positive monthly  
6 disposable income, and had proposed a 60-month plan. Thus, the  
7 Court had no occasion to consider whether an above-median debtor  
8 with negative monthly disposable income, as calculated on the  
9 Form 22C, may obtain confirmation of a 36-month plan. Nothing in  
10 Lanning overruled Kagenveama's holding on the issue of the  
11 applicable commitment period for above-median debtors.

12       In Whaley v. Tennyson (In re Tennyson), 611 F.3d 873 (11th  
13 Cir. July 16, 2010), the court examined what it considered to be  
14 the plain meaning of the statute, together with Lanning and the  
15 legislative history of the Bankruptcy Abuse Prevention and  
16 Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23,  
17 to arrive at the conclusion that "the 'applicable commitment  
18 period' is a temporal term that prescribes the minimum duration"  
19 of a chapter 13 plan. 611 F.3d at 880. Thus, the court declined  
20 to confirm the above-median debtor's 36-month plan, despite the  
21 fact that his monthly disposable income, as calculated on his  
22 Form 22C, was a negative number. However, the court recognized  
23 that the Lanning decision "does not directly comment on the  
24 definition of 'applicable commitment period' . . . " (id. at  
25 878), and in no way suggested that its holding was dictated by  
26 Lanning.

27       The Tennyson court was not bound by Kagenveama, as is this  
28 court. Whether the Kagenveama holding is correct, whether the

1 Ninth Circuit will ultimately reverse its holding in light of  
2 Lanning, and whether the United States Supreme Court will  
3 ultimately agree with or overrule Kagenveama are all irrelevant  
4 for present purposes.

5 This court, following Kagenveama, concludes that because the  
6 debtors' monthly disposable income is <\$251.89>, they have no  
7 projected disposable income, and therefore, the applicable  
8 commitment period does not apply and there is no requirement that  
9 they propose a five-year plan. Kagenveama, 541 F.3d at 877.  
10 Thus, the Objection will be overruled.

11 The court will issue an appropriate order.

12 Dated: September \_\_, 2010

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14 ROBERT S. BARDWIL  
15 United States Bankruptcy Judge  
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