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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

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In re) Case No. 19-11512-B-13
TEOFILO RODRIGUEZ and)
CHRISTY RODRIGUEZ,) DC No. MHM-3
Debtors.)

MEMORANDUM DECISION

INTRODUCTION

Debtors, who head a household of seven, have proposed a three-year Chapter 13 Plan paying their projected disposable income for the benefit of allowed unsecured claims. The Chapter 13 Trustee objected to some of the deductions from their current monthly income and contends the Debtors are not paying enough of their projected disposable income into the Plan. The court finds this record supports the claimed expenses as reasonably necessary for the maintenance or support of the Debtors and their dependents except for the following: entertainment, childcare and children's education costs, and contributions to other family.

PERTINENT FACTS

"Below median" Debtors, Teofilo and Christy Rodriguez ("Debtors"), filed this Chapter 13 case and their proposed Plan on April 15, 2019. Docs. # 1 and 2. The Plan's duration is 36 months. The Debtors propose making Plan payments of \$907.00 per

1 month, directly pay their loan secured by their residence in
2 Madera, and make periodic payments to purchase a 2012 Honda
3 Accord through the Plan.¹ Allowed unsecured claims are to be paid
4 approximately 14 percent. Debtors' list about \$70,000.00 of
5 unsecured claims—largely credit card debt.

6 The Debtors face unique circumstances. Docs. # 41, 46.
7 Their household is seven persons: four adults (Debtors and
8 Teofilo's parents) and three minor children, two of whom are
9 teenagers of driving age.² Christy is a licensed Respiratory Care
10 Practitioner and is employed by a hospital in Fresno, 23 miles
11 away from their residence. Teofilo is completely disabled by
12 injuries attributed largely to his military service. Though
13 Teofilo's parents are in their sixties and still of "employment
14 age," they each have medical issues preventing their employment.
15 One child requires frequent vision correction due to a physical
16 condition. All three children are active in school participating
17 in various activities.

18 The Debtors live relatively modestly. They have a 2100
19 square foot home. They own five aging, high mileage vehicles and
20 owe nothing on them except the Honda mentioned previously. They
21 have exempted the value of the vehicles. They participate in a
22 "403B" plan with a modest balance. They have exempted the equity
23 in their home. They own a few weapons, the usual household
24 furnishings and other exempt items.

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26

27 ¹ The car was evidently purchased less than 910 days before the filing.
28 See 11 U.S.C. § 1325 (a). Future references to: "sections" shall be
 references to the Bankruptcy Code, Federal Rules of Bankruptcy Procedure -
 "Rule;" Federal Rules of Civil Procedure - "Civil Rule."

² Reference may be made to the Debtors by their first names. That is for
 ease of following the narrative. No disrespect is intended.

1 Debtors' sources of income are Christy's salary, Teofilo's
2 VA benefits and Teofilo's parents' Social Security Income which
3 is contributed to the household. These add up to about \$9,000
4 per month.

5 Monthly expenses are high. They include: \$1,300.00 in
6 transportation expenses and over \$700.00 for utilities. Debtors
7 also claim \$150.00 for childcare, \$500.00 for "entertainment,"
8 \$110.00 for charitable contributions,³ \$80.00 paid to another
9 family member, \$117.00 for a storage unit, and \$40.00 for
10 Christy's continuing education and certification.⁴ Total monthly
11 expenses are approximately \$8,100. The difference between these
12 expenses and Debtors' income is about the proposed Plan payment.
13

14 OBJECTION TO CONFIRMATION

15 The chapter 13 trustee ("Trustee") objects to confirmation
16 contending the plan does not provide for all of Debtors'
17 projected disposable income to be applied to unsecured creditors
18 under the plan under 11 U.S.C. § 1325(b)(1)(B). Doc. #43.
19 Trustee argues Debtors' expenses exceed the standard allowance
20 allowed by Congress for *above median* Debtors by \$1,804.06. See
21 Schedule J, doc. #1. Trustee emphasizes nearly \$1,300.00 is
22 allotted by Debtors to transportation expenses and \$700.00 is
23 allotted to utility expenses, including home maintenance,
24 repair, and upkeep, telephone, internet, and cable. Trustee
25 additionally objects to other expenses on Debtors' Schedule J
26 and asks the court to determine whether Debtors have
27

28 ³ The court notes that on an annual basis, that is less than allowed to
be deducted to determine "disposable income". § 1325 (b)(2)(A)(ii).

⁴ See Schedules I and J, doc. # 1.

1 demonstrated that those expenses are "actual" and "amounts
2 reasonably necessary for maintenance or support of the Debtors
3 and their dependents." Id.

4 Debtors responded, addressing each objection and providing
5 evidence.⁵ Docs. ##41, 45. They argue they have circumstances
6 that justify the expenses including the disability of three
7 household members, the realities of raising two teenagers and
8 the realistic effect on regular expenses such as school needs
9 and insurance, and other "life demands" their situation
10 regularly faces.

11 The hearing on the objection was August 15, 2019. All
12 parties appeared in person with counsel or through counsel. The
13 court asked whether Trustee wished to respond to Debtors'
14 evidence. Trustee declined. The court declared the record
15 "closed." So, the court will decide the issues based on the
16 existing record.

17 18 ANALYSIS

19 11 U.S.C. § 1325(b)(1)(B) provides that if a trustee or
20 unsecured creditor objects to confirmation of a chapter 13 plan,
21 the court may not confirm the plan unless all the debtor's
22 "projected disposable income" will be applied to make payments
23 to unsecured creditors. Section 1325(b)(2)(A) states that in
24 calculating "disposable income," the debtor may deduct "amounts
25

26 ⁵ Debtors' counsel intermittently references to certain exhibits in his
27 opposition. The exhibits were not filed separately, as required by LBR 9004-
28 2(c). Failure to comply with this rule in the future will result in the
motion being denied without prejudice or the opposition being stricken under
LBR 9014-1(1).

1 reasonably necessary to be expended" for maintenance or support
2 of the debtor or a dependent.

3 For above-median debtors, § 1325(b)(3) states that
4 reasonable and necessary expenses are determined by referring to
5 § 707(b)(2) - the so-called "Means Test." Specifically, §
6 707(b)(2)(A)(ii)(I) provides:

7
8 The debtor's monthly expenses shall be the
9 debtor's applicable monthly expense amounts specified
10 under the National Standards and Local Standards, and
11 the debtor's actual monthly expenses for the
12 categories specified as Other Necessary Expenses
13 issued by the Internal Revenue Service for the area in
14 which the debtor resides 11 U.S.C. §
15 707(b)(2)(A)(ii)(I) (emphasis added).

16 The means test does not apply to Chapter 13 debtors whose
17 incomes are below the median - those debtors must prove on a
18 case-by-case basis that each claimed expense is reasonably
19 necessary. In cases involving debtors like those here, the court
20 retains discretion to determine the reasonableness of expenses
21 and it is not bound by the amounts set forth by IRS standards.
22 In re Quarterman, 342 B.R. 647 (Bankr. M.D. Fla. 2006).

23 Trustee argues it is not likely that Congress intended
24 debtors with income below the median to be allowed higher
25 expenses than their above median counterparts. Since "amounts
26 reasonably necessary to be expended" is a subjective standard,
27 Trustee surmises, Congress apparently thought that the IRS
28 standards were a good source to determine reasonableness. Based
on "the wisdom of Congress", Trustee compares below median
debtor expenses with the National and Local Standards as a

1 starting point to raise objections to expenses as not reasonably
2 necessary in below median cases.

3 Here, the court disagrees. "[When] a below median income
4 debtor, seeks to deduct from income a higher expense amount than
5 that of an above median debtor, there is no basis in law or
6 public policy to restrict below median debtors to the same
7 expenses authorized above median income debtors." In re Powers,
8 554 B.R. 41, 63 (Bankr. N.D.N.Y. 2016); See also, In re Gladwin,
9 No. 10-62276-13; 2011 Bankr. LEXIS 489 at *8-*9 (Bankr. D. Mont.
10 Feb. 9, 2011) [noting even using the IRS standards as a guide in
11 below median cases runs counter to the Supreme Court's Lanning
12 and Ransom decisions holding the means test does not apply to a
13 below median income debtor.]

14 The debtors' burden to establish all confirmation elements
15 under § 1325(a), including good faith, is beyond reasonable
16 dispute. In re Chinichian, 784 F.2d 1440, 1443-44 (9th Cir.
17 1986); see also Barnes v. Barnes (In re Barnes), 32 F.3d 405,
18 407 (9th Cir. 1994), In re Bassett, 413 B.R. 778, 786 (Bankr. D.
19 Mont. 2009).⁶

20 But the burden is transient when the issue is available
21 disposable income. "Only the chapter 13 trustee or an allowed
22 unsecured claimant may bring an objection to confirmation
23 raising §1325(b)(1)(B). The objector has the initial burden of
24 proof to show that the debtor is not applying all disposable
25 income to plan payments." In re Lopez, 574 B.R. 159, 171 (Bankr.
26 E.D. Cal. 2017) (citing Itule v. Heath (In re Heath), 182 B.R.
27 557, 560 - 61 (9th Cir. BAP 1995). The objector has the initial

28 ⁶ Notably, Trustee has not made a good faith objection to confirmation
of Debtors' Plan.

1 burden of proof to show that the debtor is not applying all
2 disposable income to plan payments. Id. at 560-61. The burden
3 then shifts to the debtor, "as the party with most access to
4 proof on the point, to show . . . that the objection lacks
5 merit." Lopez, 574 B.R. at 171 (citing In re Crompton, 73 B.R.
6 800, 809 (Bankr. E.D. Pa. 1987) (citation omitted)). The court
7 will now examine the contested categories of expenses.

8 *Transportation* - Trustee notes the large discrepancy
9 between the "standards" (which are inapplicable as discussed
10 above) and Debtors' expenses. But Trustee is not specific and
11 presents no evidence suggesting Debtors do not need the expense.

12 Debtors explain they have several cars because in addition
13 to Christy needing transportation to make the daily 46-mile
14 round trip for work, there are other adults in the house who
15 need transportation. Also, there is one teenage driver in the
16 house and another on the cusp since the child is completing
17 driver's training. Debtors do not explain why the teenagers
18 cannot use one vehicle between them, but Trustee has not raised
19 the issue. The teenage drivers explain the large insurance
20 expense. That expense could be minimized if the teenagers did
21 not each drive a vehicle, but Trustee presents no evidence that
22 is a realistic alternative.

23 Debtors explain the actual need for a high maintenance
24 expense. The vehicles are older and may require additional
25 repairs. The Debtors need some funds in the event an "emergency"
26 repair arises. In the face of no opposing evidence, the court
27 finds the expense reasonable.

28

1 *Utilities/home expenses* - Trustee again notes the
2 difference between Debtors' claimed expenses and the standard.
3 While that is an interesting comparison, it is not really
4 evidence except for the fact the standard is what Trustee claims
5 in "above median" cases. Assuming that is relevant evidence,
6 which is doubtful in this case, Debtors have presented
7 persuasive evidence.

8 The size of the household explains some aspects of the
9 expense.⁷ There are natural needs for more utilities with more
10 consumers using one utility source. The pest control and
11 gardening expenses seem reasonable and Trustee does not argue or
12 prove otherwise. The deferred maintenance at their home is
13 unknown. The question is: will the maintenance be needed in the
14 next 36 months? Debtors can always modify the Plan if something
15 unexpected arises, but in the absence of evidence Debtors'
16 estimate is unreasonable, the court finds their estimate
17 reasonable. Debtors are making home warranty insurance payments
18 which are not significant. Debtors also explain the need for
19 higher clothing expenditures including Teofilo's medical
20 condition. The water, sewer, refuse expenses are largely beyond
21 Debtors' control and there is no counter evidence. Debtors also
22 explain the medical and health care expenses and the need to
23 travel for Teofilo's care. The court finds these expenses actual
24 and reasonably necessary.

25 *Entertainment* - Trustee challenges the \$500.00 monthly
26 expense. Trustee asks the Debtors to prove the expense is

27
28 ⁷ The Debtors and their counsel reference national standards, census standards or "Table 1400" with no authority either is relevant here.

1 reasonably necessary for maintenance and support of the Debtors
2 and their dependents.

3 In support and justification of the entertainment expense,
4 Debtors point to information obtained from the census bureau
5 purporting to show average expenses for a family of 5 plus a
6 family of 2. Doc. #47. Entertainment was suggested to average
7 \$642.00 per month. The court is simply unable to find on the
8 evidence presented that the \$500.00 per month expense on
9 entertainment reasonably necessary. The Debtors state that the
10 amount is estimated; it is accounted for by expenditures on pets
11 for approximately \$150.00 per month, and then \$9.99 for Prime
12 Video "or for eating out at a restaurant or from a portion of
13 the Walmart receipts attached as Exhibit K." Exhibit K shows
14 what appears to be debit card entries for pet expenses,
15 teenagers' drivers licenses, and driving school.

16 The census figures are not proven to be either relevant or
17 applicable in determining "disposable income" for below median
18 debtors. When heads of a family are in bankruptcy is it germane
19 what "the average family" spends on entertainment? Is the
20 "average family" availing themselves of the bankruptcy
21 discharge? So, comparing what an average family may spend on
22 entertainment in a month to what a family in bankruptcy may be
23 allowed to deduct from current income in a month is not the
24 proper standard. The court does not find entertainment expenses
25 are inappropriate. Rather, the court is not persuaded based on
26 the evidence before it that Debtors have met their burden on
27 this expense.

28

1 *Childcare and children's education costs* - Trustee says
2 there is no objection if the Debtors demonstrate they pay
3 \$150.00 per month in childcare expenses.

4 Debtors state one of the children has just completed
5 drivers training and the other is in driver's training, the
6 total amount for the two classes is \$900.00. If those classes
7 have been paid for, and the court is assuming that they have
8 been, the childcare and children's education and cost
9 expenditure may be overstated. Schedule J states the expense to
10 be \$150.00, yet Exhibit J, which pertains to childcare costs,
11 shows that \$1,800.00 per year is spent on "school games, winter
12 formal, thest fest, plays, and back to school." Debtor states in
13 the declaration that she spends, on average, about \$150.00 per
14 month that "I or my husband pay in cash to watch my youngest
15 child when no other person is available or capable in the
16 household." Debtors have not met their burden in this regard. On
17 the one hand, Debtors' claim \$150 per month is what they need to
18 pay for all their children's schooling. On the other hand, the
19 Debtors say they pay about that to a child caregiver monthly. It
20 is therefore unclear what this expenditure represents. Is it
21 just for childcare or also education? Debtors are entitled to
22 claim the expense if it is reasonably necessary for their
23 children's maintenance or support. The court is not convinced
24 the Debtors have met their burden on this expense.

25 *Contributions to other family* - Trustee questions whether
26 this \$80.00 expense is reasonably necessary for the maintenance
27 of the Debtors or their dependents. The court does as well.
28

1 The court was given no evidence that the \$80.00
2 contribution to other family members was actual or reasonably
3 necessary for the Debtors and their dependents. The court
4 commends Debtors for their generosity and assistance to
5 Christy's sister, but she is neither a debtor, nor a dependent,
6 and the expense is only for her benefit, not Debtors' nor their
7 dependents. There is no explanation why this is a monthly
8 expense that should be deducted from current income. The Debtors
9 have not met their burden here.

10 *Charitable contributions* - Trustee states there is no
11 objection if the Debtors give \$110 per month and will continue
12 for the next 36 months. No evidence is presented the Debtors
13 will not or have not. The court has already noted the
14 contribution is less than permitted under § 1325(b)(2)(A)(ii).

15 *Storage Unit* - The court finds that the \$117.00 spent on
16 the storage unit is actual and reasonably necessary for the
17 Debtors and their dependents. It is necessary to store extra and
18 unused home goods, so they are not damaged. The goods are
19 largely owned by Teofilo's parents and there is no need or space
20 to store them in Debtors' residence. The storage expense is much
21 less expensive than a larger residence.

22 *Christy's Continuing Education Expense* - Trustee again
23 wants Debtors' proof this amount has been and will be spent.

24 Christy is a licensed professional. She needs to comply
25 with continuing education requirements. She also has
26 certifications which have their own continuing education
27 components. Christy is now the only adult working outside the
28 home. Trustee presents no alternative evidence. Debtors have

1 shown the amount deducted is less than may be spent. The court
2 finds this expense reasonably necessary for the maintenance and
3 support of the Debtors and their dependents.

4
5 CONCLUSION

6 For the foregoing reasons, Trustee's objection is OVERRULED
7 IN PART and SUSTAINED IN PART. Debtors may file, serve, and set
8 for a hearing a modified plan for confirmation or otherwise
9 present an order confirming Plan signed by Trustee. A separate
10 order will issue.

11 Dated: August 21, 2019

12
13 /s/

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RENÉ LASTRETO, II, Judge
16 United States Bankruptcy Court
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