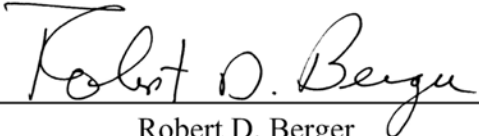


The relief described hereinbelow is **SO ORDERED**.

**SIGNED** this 16th day of October, 2023.



  
Robert D. Berger  
United States Bankruptcy Judge

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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF KANSAS**

In re:

**BENJAMIN DWAIN TRICKEY, JR.,**

Debtor.

Case No. 20-20951

Chapter 13

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**ORDER SUSTAINING TRUSTEE'S OBJECTION TO DEBTOR'S THIRD  
AMENDED PLAN AND FORMS 122C-1 and -2**

This matter comes before the Court on the Chapter 13 Trustee's objection to confirmation of debtor Benjamin Trickey's third amended Chapter 13 plan.<sup>1</sup> The Court will sustain the Trustee's objection because the numerous errors in Trickey's

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<sup>1</sup> ECF 155 (objecting to confirmation of ECF 151). Trustee W.H. Griffin appears in person. Debtor appears by attorneys Kristina S. Zhilkina-Crump and Christopher Coons. Plan confirmation is a core proceeding under 28 U.S.C. § 157(b)(2)(L). Venue here is appropriate under 28 U.S.C. § 1409(a).

Official Forms 122C-1 and -2 make it impossible to determine whether his plan complies with 11 U.S.C. § 1325(b)(1)(B).<sup>2</sup>

Under § 1325(b)(1)(B), Trickey's proposed Chapter 13 plan cannot be confirmed unless all of his "projected disposable income" during the applicable commitment period will be paid into the plan for the benefit of his unsecured creditors. The Bankruptcy Code<sup>3</sup> does not define "projected disposable income," but it does define other terms (here in relevant part):

- "Disposable income" means current monthly income received by the debtor less amounts reasonably necessary to be expended for the maintenance and support of the debtor and his dependents, *see* 11 U.S.C. § 1325(b)(2);
- "Current monthly income" means the debtor's average monthly income, including amounts paid on a regular basis for the household expenses of the debtor or his dependents, during the last six full months before the debtor filed for bankruptcy, *see* 11 U.S.C. § 101(10A);<sup>4</sup>
- If the debtor is above-median-income, amounts "reasonably necessary to be expended" under § 1325(b)(2) "shall be determined in accordance with" § 707(b)(2)(A) and (B), *see* 11 U.S.C. § 1325(b)(3);

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<sup>2</sup> 11 U.S.C. § 1325(b)(1)(B). Section 1325(b)(1)(B) applies here because the Trustee objects to confirmation and Trickey's proposed plan will not pay all allowed unsecured claims in full. *Cf.* 11 U.S.C. § 1325(b)(1)(A).

<sup>3</sup> "Bankruptcy Code" refers to Title 11, United States Code.

<sup>4</sup> A Chapter 13 debtor's "current monthly income" under § 101(10A) and the "applicable commitment period" under § 1325(b)(4) are calculated on Official Form 122C-1 ("Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period").

- The applicable expense amounts under § 707(b)(2)(A)(ii)(I) are those “as in effect on the date of the order for relief,” *see* 11 U.S.C. § 707(b)(2)(A)(ii)(I); and
- In order to establish “special circumstances that justify additional expenses,” the debtor must itemize each additional expense; provide documentation for such expenses and a detailed explanation of the special circumstances that make such expenses necessary and reasonable; and attest under oath to the information provided, *see* 11 U.S.C. § 707(b)(2)(B).

To calculate a debtor’s *projected* disposable income under § 1325(b)(1)(B), a bankruptcy court should start by calculating the debtor’s disposable income under § 1325(b)(2)—but may then “account for changes in the debtor’s income or expenses that are known or virtually certain at the time of confirmation.” *Hamilton v. Lanning*, 560 U.S. 505, 524 (2010). For an above-median-income debtor, this calculation takes place on Official Form 122C-2 (“Chapter 13 Calculation of Your Disposable Income”). The result is the “projected disposable income” that the debtor must pay into his Chapter 13 plan.<sup>5</sup>

Here, Trickey’s Forms 122C-1 and 122C-2<sup>6</sup> contain the following errors that must be corrected to determine whether his third amended plan complies with § 1325(b)(1)(B):

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<sup>5</sup> In contrast, the amount calculated on Schedules I and J—“monthly net income”—shows whether an above-median-income debtor can *afford* to pay the required amount into his plan—i.e., whether the plan complies with § 1325(a)(6).

<sup>6</sup> ECF 150.

- Form 122C-1: per § 101(10A) and form instructions, calculate current monthly income based on the six full months preceding June 30, 2020, the date of the “commencement of the case.”<sup>7</sup> Changes to that amount must be “known or virtually certain” under *Lanning* and belong in Part 3 of Form 122C-2.
- Form 122C-2: per § 707(b)(2)(A)(ii)(I), use IRS expense amounts “as in effect on the date of the order for relief,” or June 30, 2020.<sup>8</sup>
- Form 122C-2, lines 13 and 33b: remove ownership expense and loan payment for CR-V; Trickey is not obligated on the loan.
- Form 122C-2, line 18: \$250/month expense for life insurance is not listed in Schedule J; one of these must be amended so that they are consistent.
- Form 122C-2, line 25: \$781/month expense for health and disability insurance, whereas Schedule J lists expense of \$727/month; one of these must be amended so that they are consistent.
- Form 122C-2, line 33d: the debt to Nebraska Furniture Mart (which has not filed a claim) can be included only if Trickey himself is liable on it.
- Form 122C-2, line 35: only include amounts that were past due on June 30, 2020, the date of the filing of the petition.<sup>9</sup>

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<sup>7</sup> *Cf.* 11 U.S.C. § 348(a) (providing, with exceptions not relevant here, that conversion from one chapter to another “does not affect a change in the date of the filing of the petition, the commencement of the case, or the order for relief”).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

- Form 122C-2, line 36: if projected monthly plan payment is more than \$325 after corrections, the average monthly administrative expense should be increased accordingly.
- Form 122C-2, line 41: provide documentation of \$1,088.62/month retirement contribution to Trustee.
- Form 122C-2, line 43:
  - “Yearly bonus adjustment,” if applicable to current monthly income calculated as of June 30, 2020, requires documentation to Trustee.
  - “Necessary housing repairs”: Expenses above \$250/month deduction for painting and wood rot repair (such as HVAC replacement) require documentation to Trustee.

Confirmation of Trickey’s third amended plan is hereby denied for failure to demonstrate compliance with 11 U.S.C. § 1325(b)(1). If Trickey wishes to file a fourth amended plan, he may do so, along with amended Forms 122C-1 and -2 (and, if applicable, an amended Schedule J), within 45 days of the date of this order.

IT IS SO ORDERED.

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