The relief described hereinbelow is SO ORDERED.

SIGNED this 8th day of June, 2023.

Robert D. Berger
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS

In re:

AMBER KAY SHANK,

Debtor.

Case No. 21-20605
Chapter 13

ORDER OVERRULING OBJECTION TO CONFIRMATION

This matter comes before the Court on Instant One Media, Inc.'s objection to confirmation of debtor Amber Shank's proposed Chapter 13 bankruptcy plan.[1]

[1] ECF 50. The Court previously overruled Instant One's objection in part for lack of standing. *See* ECF 107.

Plan confirmation is a core proceeding that this Court may hear and determine under 28 U.S.C. §§ 157(b)(2)(L) and 1334(b). Venue here is appropriate under 28 U.S.C. § 1409(a). Ms. Shank appears by Erlene Krigel and James Sullivan. Instant One appears by Sam Han, Daniel DeWoskin, and Adam Breeze.

Claiming that Shank filed neither her plan nor her petition in good faith, Instant One argues that Shank's plan should not be confirmed because it fails to satisfy the good-faith requirements of 11 U.S.C. § 1325(a)(3) and (7).

The Court hereby finds, under the totality of the circumstances, that Shank did file her plan and petition in good faith. Instant One's objection to confirmation is therefore overruled.

I. Factual Background

Shank formed her company, EZFauxDecor, LLC, in 2012. EZFauxDecor sells decorative peel-and-stick vinyl film for kitchen countertops and appliances on Amazon, eBay, Etsy, and its own website, ezfauxdecor.com. Shank operates EZFauxDecor out of her home in Leawood, Kansas.

Instant One, a competitor of EZFauxDecor, also sells decorative peel-and-stick vinyl film. In 2017, Shank, EZFauxDecor, and Instant One entered into a settlement agreement in which Shank and EZFauxDecor agreed not to market EZFauxDecor's products with the terms "instant granite" and/or "instant stainless." Instant One then trademarked those terms.

Two years later, Instant One sued Shank and EZFauxDecor in the Northern District of Georgia, asserting claims for breach of contract and trademark infringement. On June 4, 2021, Instant One obtained a $1,035,000 judgment

against EZFauxDecor.[2] However, because Shank filed for bankruptcy shortly before trial, Instant One has no judgment against Shank personally.[3] Nor does Instant One—who did not timely file a proof of claim in this case—have an allowed claim against Shank's bankruptcy estate.[4]

Instant One's lack of an allowed claim affects Shank's proposed Chapter 13 plan in two ways. First, it means that the plan will pay 100% of allowed unsecured claims. Second, it means that Instant One lacks standing to object to the plan's treatment of unsecured claims. Consequently, the Court has already overruled four of Instant One's six arguments in its objection to confirmation.[5]

Instant One's remaining two arguments—that Shank's bankruptcy is a "scheme to defraud" Instant One and that her proposed Chapter 13 plan is a "fraudulent scheme" that will "siphon" money out of EZFauxDecor to Instant One's detriment[6]—are now before the Court. Such arguments arise under 11 U.S.C. § 1325(a)(3) and (7), which require a debtor to have filed her Chapter 13 plan and

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[2] EZFauxDecor has appealed the Georgia judgment to the Eleventh Circuit. *See* Notice of Appeal, *Instant One Media, Inc. v. EZFauxDecor, LLC*, Case No. 1:19-cv-00540-WMR, ECF No. 212 (N.D. Ga. Apr. 18, 2022).

[3] *Cf.* 11 U.S.C. § 362(a) (providing that the filing of a bankruptcy petition operates as a stay of most litigation against the debtor).

[4] *See* ECF 60 (denying Instant One's motion to allow late-filed claim).

[5] *See* ECF 107 at 5-7; *id.* at 3 (observing that "standing to object [to confirmation] requires that the party in interest have a direct stake, cognizable under the Bankruptcy Code, in making that particular objection").

[6] *See* ECF 50 at 5, 6.

petition in good faith. On December 8 and 9, 2022, the Court conducted an evidentiary hearing to determine whether Shank had done so.

II. Evidentiary Hearing

At the hearing, Shank testified that although 2020 had been a "very good year" for EZFauxDecor, the beginning of 2021 was a "very scary time."[7] Shank explained that EZFauxDecor imports its products "in big pallets" from overseas, and that EZFauxDecor is required to pay for those products in advance. However, she continued, EZFauxDecor does not receive payment from its own customers until it ships their orders. And in 2021, although EZFauxDecor was getting "tons of orders," its products (for which it had already paid) "sat for months" on container ships.[8] Meanwhile, EZFauxDecor's shipping costs had increased to three times what they had been the previous year.

At the same time, Shank faced a host of personal challenges. She was the primary caregiver for her 85-year-old mother, who had dementia and was living with her full-time. She owed an additional $20,000 in income taxes from 2020[9] and could not afford to pay them. She was having trouble paying her 2021 estimated taxes. She could not afford her daughter's community-college tuition. Her credit card balance was increasing. She bounced a check for the first time in her life. She

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[7] The Court takes judicial notice of the COVID-19 pandemic that began in 2020.

[8] The Court took judicial notice of the 2021 global supply chain crisis at the hearing.

[9] Shank explained that although she had made all of her quarterly estimated payments in 2020, those estimates were based on her (lower) 2019 income—and thus insufficient to cover her 2020 tax bill.

began to suffer from panic attacks and anxiety, only to find out that she had a heart condition. Shank testified that when she finally decided in early May to file for bankruptcy, she felt "hopeless." She was "drowning."

As to Instant One's lawsuit, Shank testified that it was "the last thing on her mind" when she decided to file for bankruptcy. Shank explained that after Instant One sued her in 2019, she searched every EZFauxDecor product listing for prohibited terms and found two—one use of the term "instant granite" on an Amazon listing and one on eBay. Shank acknowledged that such use violated the settlement agreement with Instant One. However, she said, EZFauxDecor's gross sales of the two offending products totaled less than $1,000 combined—$798.63 on Amazon and $147.94 on eBay. As a result, Shank thought (as did her attorney in the Georgia case) that Instant One's lawsuit was "crazy." *It was a thousand dollars*, she reiterated. When Shank found out, during a meeting with her bankruptcy attorney on May 20, 2021, that the lawsuit (which was subject to a rolling trial date) would actually go to trial on June 2nd, she "just started crying."

Shank testified that before she filed for bankruptcy, she used a single Bank of America checking account for both herself and EZFauxDecor.[10] She explained that after EZFauxDecor's income from Amazon, PayPal, and Etsy was deposited into the account, she used that money to pay for EZFauxDecor's business expenses. Whatever money was left in the account was "in essence" EZFauxDecor's profit,

[10] On May 21, 2021, at the advice of her bankruptcy attorney, Shank opened a second checking account for EZFauxDecor.

which Shank used for her personal expenses. Shank testified that her accountant—a CPA who has done her taxes for years—never told her to handle the accounting differently.[11]

Shank's Schedule A/B reports a balance of $561 in the Bank of America checking account on the petition date. Shank explained that she arrived at that number by subtracting three outstanding checks for $300, $277, and $3,056 from the previous day's balance of $4,194. She produced daily ledger balances from Bank of America, and copies of the checks themselves, to support her calculation. (Her arithmetic checks out.)[12]

Shank testified that she also used a single Capital One credit card for both herself and EZFauxDecor. She agreed that she had paid $35,100 to Capital One during the 90 days before she filed for bankruptcy. She also agreed that she should have answered "Yes" to the question "During the 90 days before you filed for bankruptcy, did you pay any creditor a total of $6,825 or more?" in paragraph 6 of her Statement of Financial Affairs. Shank explained that she had answered "No"

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[11] Shank testified that each year, she printed out her records and brought them to her accountant in a "huge box." The accountant used those records to prepare Shank's personal income tax return, which reflected EZFauxDecor's income and expenses on Schedule C. *Cf. Single Member Limited Liability Companies*, https://www.irs.gov/businesses/small-businesses-self-employed/single-member-limited-liability-companies (last visited Feb. 8, 2023) ("If a single-member LLC does not elect to be treated as a corporation, the LLC is a 'disregarded entity,' and the LLC's activities should be reflected on its owner's federal tax return.").

[12] Shank also produced other outstanding checks that she missed when calculating her bank balance, noting that she would have been "overdrawn . . . by a lot" if she had taken them into account.

instead because the payments to Capital One used EZFauxDecor's money to pay for EZFauxDecor's expenses—not her own.

Shank's son Joseph worked full-time for EZFauxDecor in 2020. Shank agreed that Joseph received $97,512 from the Bank of America checking account during the year before she filed for bankruptcy. However, in paragraph 7 of her SOFA, which asks, "Within 1 year before you filed for bankruptcy, did you make a payment on a debt you owed anyone who was an insider," Shank answered, "No." Shank explained that the payments to Joseph were compensation from EZFauxDecor for his full-time work (which Shank described as "the work of three people"). She offered copies of the form 1099s issued to Joseph by EZFauxDecor to support her testimony.

In June or July 2021, the Chapter 13 trustee asked Shank to provide documentation of EZFauxDecor's gross sales and expenses. In response, Shank submitted a profit and loss statement, which she prepared by generating reports of EZFauxDecor's account activity between January 1 and May 31, 2021, on Amazon, PayPal (i.e., sales on eBay and ezfauxdecor.com), and Etsy. According to the reports, EZFauxDecor's total revenue during that five-month time period was $357,073.[13] Shank explained that the figures on the reports are lower than the figures on EZFauxDecor's year-end 1099 forms (which reflect a total of $404,285.54 in revenue during the same five-month period) because Amazon, PayPal, and Etsy do not report customer orders as revenue until they are shipped—at which point the

[13] The figure Shank provided to the Chapter 13 trustee—$356,275—was slightly different, but not materially so.

revenue is included retroactively. (Thus, for example, an order placed in April and shipped in July would not be included on a January-through-May report but *would* be included as April revenue on a year-end 1099.)

The Court also heard testimony from Instant One's witnesses Brian Sullivan and Alison Smith. Sullivan, a patent attorney licensed in Ohio, testified that during a Rule 26(f) conference in 2019,[14] Shank's attorney stated that "if there was any liability for the . . . Georgia case, it would only be worth about $700," and that even if Instant One won that case, "it wouldn't matter because they're just going to declare bankruptcy anyway."[15] Smith, the owner and CEO of Instant One, testified about her use of an Amazon account, the previous business relationship between Shank and Smith's late husband, EZFauxDecor's appearance on the Rachael Ray show, a 2015 lawsuit that led to the 2017 settlement agreement, and the Georgia litigation.

[14]Neither Sullivan nor Instant One explained his connection to the case even after the Court observed, "I don't know who this gentleman is."

[15] Under Fed. R. Evid. 801(d)(2)(D), a statement offered against an opposing party and made by the opposing party's agent or employee on a matter within the scope of that relationship and while it existed is not hearsay. A statement by Shank's attorney in the Georgia litigation about the value of Instant One's claims in that case would be non-hearsay under Rule 801(d)(2)(D). Whether his statement about bankruptcy is also non-hearsay under that rule depends on whether bankruptcy was within the scope of his relationship with Shank. But even assuming that the statement is non-hearsay, its negative implications, if any, are outweighed by Shank's credible testimony.

III. Analysis

The requirements of § 1325(a) are mandatory for confirmation, and the debtor has the burden of proving that they have been met. *See Wachovia Dealer Servs. v. Jones (In re Jones)*, 530 F.3d 1284, 1290 (10th Cir. 2008); *Alexander v. Hardeman (In re Alexander)*, 363 B.R. 917, 922 (B.A.P 10th Cir. 2007). Thus, the burden is on Shank to prove that she proposed her Chapter 13 plan and filed her Chapter 13 petition in good faith. *See* 11 U.S.C. § 1325(a)(3), (7). Both are determined on a case-by-case basis under the totality of the circumstances. *See Anderson v. Cranmer (In re Cranmer)*, 697 F.3d 1314, 1318 (10th Cir. 2012); *Gier v. Farmers State Bank of Lucas, Kan. (In re Gier)*, 986 F.2d 1326, 1329 (10th Cir. 1993).[16]

Factors relevant to whether a Chapter 13 plan was proposed in good faith include "whether the debtor has stated his debts and expenses accurately; whether he has made any fraudulent misrepresentation to mislead the bankruptcy court; or whether he has unfairly manipulated the Bankruptcy Code." *See In re Cranmer*, 697 F.3d at 1319 n.5 (quoting *Educ. Assistance Corp. v. Zellner*, 827 F.2d 1222, 1227 (8th Cir. 1987)).[17] Factors relevant to whether a Chapter 13 petition was filed in

[16] Although *In re Gier* was about whether a petition was filed in bad faith for purposes of 11 U.S.C. § 1307(c), its factors are also relevant to good faith under § 1325(a)(7).

[17] *See also In re Cranmer*, 697 F.3d at 1319 n.5 (noting that § 1325(b) "subsumes" most of the factors listed in *Flygare v. Boulden*, 709 F.2d 1344 (10th Cir. 1983), such that the good-faith inquiry now "has a more narrow focus") (quoting *Zellner*, 827 F.2d at 1227). Only if there has been a showing of serious debtor misconduct or abuse should a Chapter 13 plan be found lacking in good faith. *Collier on Bankruptcy* ¶ 1325.04 (Richard Levin & Henry J. Sommer eds., 16th ed.).

good faith include the nature of the debt (including the question of whether the debt would be nondischargeable in a Chapter 7 proceeding); the timing of the petition; how the debt arose; the debtor's motive in filing the petition; how the debtor's actions affected creditors; the debtor's treatment of creditors both before and after the petition was filed; and whether the debtor has been forthcoming with the bankruptcy court and the creditors. *See In re Gier*, 986 F.2d at 1329 (quoting *In re Love*, 957 F.2d 1350, 1357 (7th Cir. 1992)).

Here, Instant One argues that Shank's good faith under § 1325(a)(3) and (7) is belied by a number of so-called "false statements" in her petition and schedules. Having carefully reviewed each one, the Court disagrees. Some of the statements at issue, while inaccurate, have a good-faith explanation for the inaccuracy. (E.g., Shank's statement that she had not paid any creditor more than $6,825 during the 90 days before she filed for bankruptcy.) Some of the so-called "false statements" were accurate according to the best information available to Shank and her counsel at the time they were made. (E.g., the profit and loss statement Shank provided to the Chapter 13 trustee in mid-2021, which did not include—and could not have included—orders that had not yet shipped.) Some don't necessarily have only one right answer. (E.g., Shank's statements about the value of EZFauxDecor and the balance of her checking account on the petition date.) And some of the so-called "false statements" are actually true. (E.g., Shank's statements that she did not use EZFauxDecor's EIN and did not make a payment on a debt she owed to an insider during the year before she filed for bankruptcy.) In short, the Court finds that to the

extent Shank's petition and schedules contain any inaccuracies, each was reasonably made in good faith.[18]

Instant One also argues that Shank demonstrates a lack of good faith by failing to correct her petition and schedules now. But such corrections would not affect the terms of Shank's Chapter 13 plan, which already pays 100% of allowed unsecured claims. *Cf.* 11 U.S.C. § 1325(a)(4), (b)(1)(A). The only relevant question now is whether Shank's statements, accurate or not, were made in good faith.

For example, Instant One argues that Shank's interest in EZFauxDecor is worth more than the $5,000 listed on her Schedule A/B. But because Shank's plan will pay all allowed unsecured claims in full, the value of that interest *per se* is no longer relevant to confirmation.[19] Thus, even assuming that the "better" value of EZFauxDecor would exceed $5,000 (and there is no evidence that this is the case), the only relevant issue is whether Shank reported a value of $5,000 in good faith—and the Court is satisfied that she did. At the hearing, Shank testified:

> Q. How did you value the company at $5,000?
>
> A. Well, basically the day that Erlene [Shank's bankruptcy attorney] and I were in the office discussing, she said, well, what are your assets of the -- like, what would EZFauxDecor be worth? And I'm, like, well, the worth of EZFauxDecor is pretty much Amber Shank

[18] At the hearing, Shank volunteered that she "ha[s] about 50 parked domains that are not used, have no website, I don't sell any product on them." Trial Tr. 271:5-7, Dec. 9, 2022. She should have included those domains on her Schedule A/B. However, given Shank's apparent belief that the domains were worthless, the Court finds that she omitted (or overlooked) them in good faith.

[19] *Cf.* 11 U.S.C. § 1325(a)(4), (b)(1)(A); *see* ECF 50 at 6-7 (overruling Instant One's objections to confirmation based on the value of Shank's nonexempt assets for lack of standing).

> because I'm -- was the one -- I was a one-man show. But as I explained to her, I said there's some inventory downstairs right now in my basement, but it's very little, because we're waiting for shipments that we may never get.
>
> I also had explained to her there's, like, a big wood table that we pull -- we have no machines. We have no equipment. I've got a computer. We've got a printer. And she said, well, if you could figure out, like, what all maybe that would be worth. And I'm, like, maybe $5,000. Maybe. I'm, like, I doubt it, but . . .
>
> . . .
>
> If I went to sell my business right now, you could walk down into my basement and look around and go, okay, we might give you $50 for the table over there and (inaudible). I mean, it's not -- I don't have, like, machines that are down there that do -- we do everything by hand. It's all by hand. I mean, we are the value. If we weren't down there working in the basement 12 hours a day, there would be no sales to Amazon. We couldn't be able to get to the Amazon. I mean, that's my business, the basement.
>
> And at that point because we had hardly -- I would've valued it higher if the walls would've been stacked with inventory like it used to, but there was hardly anything left down there and we didn't know if there would be anything that would ever even come again.[20]

Her explanation is reasonable. When Shank reported a value of $5,000, she did so in good faith. Whether Instant One would have calculated EZFauxDecor's value differently[21] is beside the point.

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[20] Trial Tr. 253:8-22, 255:2-15, Dec. 9, 2022.

[21] Instant One argues that Shank should have calculated EZFauxDecor's value as a function of its revenue rather than its assets.

Next, Instant One argues that Shank demonstrated a lack of good faith by filing for bankruptcy five days before trial in the Georgia case. Again, the Court disagrees. Under Tenth Circuit precedent, "the timing of the petition" is relevant to whether a debtor filed her petition in good faith. *See In re Gier*, 986 F.2d at 1329 (quoting *In re Love*, 957 F.2d at 1357). But neither *Gier* nor *Love* suggests that a debtor displays bad faith by filing for bankruptcy on the eve of another trial. To the contrary:

> If there is any logic to the timing of bankruptcy filings, it is that debtors delay filing bankruptcy until some especially pressing event makes life unbearable. . . .
>
> Bankruptcy generally, and Chapter 13 in particular, *is* management of problems with creditors. . . . The debtor who files on the eve of a trial for damages in some other court may be following good advice—before trial, the claims involved may be contingent or unliquidated and not counted for purposes of Chapter 13 eligibility; waiting costs the expense of defense and may render the debtor ineligible for Chapter 13 relief.
>
> . . . To prove good faith at confirmation, must the debtor withhold filing the petition until after a state court trial or until after entry of judgment? Until the creditor garnishes the debtor's wages? This makes no sense. The trial is wasted money for the creditor and high risk for no reward for the debtor. Filing before trial is more humane for everyone.[22]

Instead, *Love* (and in adopting it, *Gier*) establishes that the timing of a bankruptcy petition is relevant where it indicates that the debtor was motivated by a *desire* not to pay his debts rather than an inability to pay them. (For example, *Love* was about

[22] Keith M. Lundin, *Lundin on Chapter 13* § 105.3 (Filing on the Eve of Whatever), at ¶¶ 1-3, https://lundinonchapter13.com/Content/Section/105.3.

a debtor whose five-year involvement with an anti-tax protestor group did not end until a few months before he filed for bankruptcy—suggesting that he filed because he didn't want to pay his taxes, not because he couldn't pay them.) Here, Shank's testimony and other evidence establishes that she filed for bankruptcy because she was unable to pay her debts. That she filed five days before trial in Georgia does not suggest otherwise.

Next, Instant One contends that Shank's disputed debt to Instant One would have been excepted from discharge in Chapter 7. As to that issue, Instant One argues that the Georgia judgment against EZFauxDecor—which includes an award of attorneys' fees under Ga. Code Ann. § 13-6-11—should have collateral-estoppel effect against Shank herself in this proceeding. According to Instant One's trial brief:

> O.C.G.A. § 13-6-11 recites, in relevant part, that "where the defendant has acted in bad faith . . . the jury may allow" recovery of attorneys' fees. Because the statute requires bad faith, an award for attorneys' fees "under O.C.G.A. § 13-6-11 is non-dischargeable under 11 U.S.C. § 523(a)(6)."[23]

But even if "bad faith" under the Georgia statute were equivalent to "willful and malicious injury" for purposes of § 523(a)(6), the Georgia statute does not require bad faith—it requires bad faith *or* stubborn litigiousness *or* unnecessary trouble and expense.[24] And while Instant One similarly asserts that "the jury found

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[23] ECF 130 at 4 (alteration in original) (quoting Ga. Code Ann. § 13-6-11 and *In re Demps*, 506 B.R. 163, 173 (Bankr. N.D. Ga. 2014)).

[24] In other words, bad faith is sufficient but not necessary. *See* Ga. Code Ann. § 13-6-11 ("The expenses of litigation generally shall not be allowed as a part of the

unanimously that . . . EZFauxDecor acted in bad faith,"[25] the jury did not so find—it found that EZFauxDecor had acted in bad faith *or* been stubbornly litigious *or* caused Instant One unnecessary trouble and expense.[26] Because neither the Georgia statute nor the Georgia judgment necessarily includes a finding of bad faith, the Court rejects Instant One's arguments regarding the collateral-estoppel effect of the judgment.[27] The Court also finds that in making those arguments, Instant One crossed the line—twice—from zealous advocacy into outright misrepresentation.

Those are not Instant One's only misrepresentations. For example, on page 3 of its post-trial brief, Instant One argues: "Shank insists that her statements are not false but 'inaccurate,' which is a distinction without a difference and an obfuscation of fact."[28] But that distinction was made—and the difference explained to Instant One—by this Court, not Shank. At the hearing:

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damages; but where the plaintiff has specifically pleaded and has made prayer therefor and where the defendant has acted in bad faith, has been stubbornly litigious, or has caused the plaintiff unnecessary trouble and expense, the jury may allow them.").

[25] ECF 130 at 7.

[26] *See* Jury Verdict ¶ 13, *Instant One Media, Inc. v. EZFauxDecor, LLC*, Case No. 1:19-cv-00540-WMR, ECF No. 154 (N.D. Ga. June 4, 2021).

[27] The Court does so without reaching other questionable aspects of Instant One's collateral-estoppel argument, including (but not limited to) privity, finality, identity of issues, and whether the concept of a "disguised Chapter 7" remains viable after BAPCPA.

[28] ECF 135 at 3.

MR. HAN: Have you or anyone acting on your behalf ever falsely stated to this bankruptcy court that you did not pay any creditor more than $6,825?

. . .

THE COURT: I think the problem is, is first using the term "falsely," . . . from which one could infer intent. And perhaps it's something more along the lines of something that does not infer [sic] intent. So it could be an inaccuracy.

MR. HAN: I understand, Your Honor. And just to let this Court know, I do have a set of questions that asks first about the falsity, just whether or not the statement is true or false, and then about whether it's false under oath and then whether it's about knowingly false under oath.

. . .

THE COURT: [W]e're going to move this along more quickly if it's simply "is that accurate?" If it's not accurate, then explain why. . . . [T]he trial's to the Court; it's to me. And it has to be beneficial to the Court's analysis. . . . Plus the Court understands where you're going, the Court understands the argument, the Court understands the debtor's position. So . . .

MR. HAN: Thank you, Your Honor, for the explanation. But my frustration here is that I've asked very simple questions and the time that's taken to answer the questions is really what's killing to the time rather than the questions themselves. And, again, I'll try to rephrase them so that we can get a clear yes or no answer. And if we can just get that yes or no answer, I think we can move this thing along.

THE COURT: Well, I would perhaps employ the term "is that accurate" --

MR. HAN: Okay.

THE COURT: -- so we don't have any negative inference. I mean, either it's factual or it isn't. . . . [I]t's ultimately, as

> you know, for the Court to define whether there is an intentional misstatement.
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> MR. HAN: Understood, Your Honor.[29]

And on page 7 of its trial brief, Instant One represents to the Court that "[i]n her SOFA, Shank verified under oath that within one (1) year of filing her Chapter 13 Petition, Shank had not paid anyone who was an insider."[30] But that is not what the SOFA asks. The SOFA asks whether Shank made a payment *on a debt she owed* to an insider. The Court addressed that distinction at the hearing as well.[31]

Other arguments made by Instant One straddle the line between advocacy and misrepresentation. The IRS's proof of claim does not prove that Shank "failed to pay her taxes in 2021."[32] Shank's assertion of the attorney-client privilege regarding details of the potential claim against Instant One listed on her Schedule A/B is not an "attempt to conceal assets."[33] Her testimony regarding her knowledge of the

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[29] Trial Tr. 209:18-20, 211:2-213:20, Dec. 9, 2022.

[30] ECF 135 at 7.

[31] As the Court explained: "The SOFA refers to debts. And while I suppose there's technically a debt if someone's paid weekly or biweekly, unless they're paid in advance, typically this pertains to antecedent debts, trade debts, payments on notes, commercial notes, personal notes, whatever." Trial Tr. 223:22-224:1, Dec. 9, 2022. (Moreover, even if the wages at issue were a "debt" for purposes of the question, they were owed by EZFauxDecor, not Shank.)

[32] *See* ECF 135 at 6. The IRS's proof of claim proves only that Shank paid less than she owed in 2021—which stands to reason, given that she didn't file for bankruptcy until midway through the year.

[33] *See* ECF 135 at 10.

previously-rolling Georgia trial date was not a "flagrant lie."[34] And despite Instant One's frequent invocation of the word, there is no evidence of "fraud" in this case.

Instant One's remaining arguments (including its original arguments that Shank's bankruptcy was a "scheme to defraud" Instant One and that her proposed Chapter 13 plan was a "fraudulent scheme") are equally without merit.

Shank's testimony at trial was completely credible. This Court is firmly convinced that she has conducted this bankruptcy case in good faith. To the extent her schedules contain any discrepancies, her intent was not to mislead. Bankruptcy entails full financial disclosure by debtors; it does not retroactively transform them into accounting experts.

The Court finds, under the totality of the circumstances, that Shank filed her Chapter 13 petition and plan in good faith as required by 11 U.S.C. § 1325(a)(3) and (7). Instant One's objection to confirmation is hereby overruled. Shank's proposed Chapter 13 plan will be confirmed in a separate order.

IT IS SO ORDERED.

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[34] *See* ECF 135 at 14. The undisputed evidence establishes that an actual trial date (as opposed to a rolling date) was not set for the Georgia litigation until May 20, 2021—some two weeks after Shank decided to file for bankruptcy.