No. 25-1303

United States Court of Appeals
for the
Fourth Circuit

BOBBY EUGENE GODDARD,

Debtor - Appellant,

– v. –

MICHAEL BRANDON BURNETT,

Trustee - Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA AT RALEIGH

BRIEF OF APPELEE

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

DISCLOSURE STATEMENT

- In civil, agency, bankruptcy, and mandamus cases, a disclosure statement must be filed by **all** parties, with the following exceptions: (1) the United States is not required to file a disclosure statement; (2) an indigent party is not required to file a disclosure statement; and (3) a state or local government is not required to file a disclosure statement in pro se cases. (All parties to the action in the district court are considered parties to a mandamus case.)
- In criminal and post-conviction cases, a corporate defendant must file a disclosure statement.
- In criminal cases, the United States must file a disclosure statement if there was an organizational victim of the alleged criminal activity. (See question 7.)
- Any corporate amicus curiae must file a disclosure statement.
- Counsel has a continuing duty to update the disclosure statement.

No. 23-01303 Caption: Goddard v. Burnett

Pursuant to FRAP 26.1 and Local Rule 26.1,

Michael B. Burnett, Trustee
(name of party/amicus)

who is Appellee, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation? ☐YES ☑NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐YES ☑NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☑YES ☐NO
If yes, the debtor, the trustee, or the appellant (if neither the debtor nor the trustee is a party) must list (1) the members of any creditors' committee, (2) each debtor (if not in the caption), and (3) if a debtor is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of the debtor.

7. Is this a criminal case in which there was an organizational victim? ☐YES ☑NO
If yes, the United States, absent good cause shown, must list (1) each organizational victim of the criminal activity and (2) if an organizational victim is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of victim, to the extent that information can be obtained through due diligence.

Signature: s/ Michael B. Burnett, Trustee Date: 4/11/2025

Counsel for: Michael B. Burnett, Trustee

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BRIEF OF THE CHAPTER 13 TRUSTEE – APPELLEE

NOW COMES Appellee Michael B. Burnett, Chapter 13 Standing Trustee, and hereby files this brief in response to the Brief of Appellant, filed July 9, 2025, and the Brief of the *Amicus Curiae* ("Amicus") filed in support of Appellant on July 16, 2025.

STATEMENT OF THE ISSUE PRESENTED

Whether the bankruptcy court abused its discretion in denying confirmation of the Debtor's plan for lack of good faith when the Debtor proposed to retain three motor vehicles requiring payments of approximately $3,000.00 per month while paying a minimal dividend to general unsecured creditors.

STATEMENT OF THE CASE

The Debtor filed a chapter 13 plan proposing to retain, and continue to service loans secured by, three motor vehicles requiring payments totaling approximately $3,000.00 per month, while paying a minimal dividend to holders of general unsecured claims. The Trustee filed an objection to confirmation of the plan asserting it failed to satisfy the good faith requirement of § 1325(a)(3). The court conducted a hearing on confirmation of the plan and sustained the Trustee's objection. The Debtor filed an interlocutory appeal to the United States District Court for the Eastern District of North Carolina which affirmed the bankruptcy court below. The Debtor then filed a notice of appeal to this Court.

STATEMENT OF FACTS

Bobby Eugene Goddard, Jr. ("Debtor" or "Appellant") filed a petition with the United States Bankruptcy Court for the Eastern District of North Carolina on September 1, 2023, seeking relief under chapter 13 of title 11 of the United States Code. (JA26).[1] Michael B. Burnett ("Trustee") was appointed to serve as trustee to fulfill the duties under § 1302.

The Debtor filed all required schedules and statements with the bankruptcy court, listing on Schedule A/B his sole ownership of three motor vehicles: 1) a 2022 Genesis ("Genesis") with a value of $43,675.00; 2) a 2021 GMC Sierra 1500 ("GMC") with a value of $45,425.00; and 3) a 2015 Chevy Corvette ("Corvette") with a value of $41,825.00. (JA46). When referred to collectively hereinbelow, these three cars will be referred to as "Vehicles." No other motor vehicles are listed on Schedule A/B.

The Debtor financed the pre-petition purchase of the Vehicles, and each are encumbered by liens for which the respective creditors filed proofs of claim in this case. The creditor name, claim amounts, and contractual monthly payments for the Vehicles are as follows:

[1] All references to "JA" are to specific pages of the Joint Appendix docketed with this Court as docket entry number 13.

Genesis: Hyundai Capital America; court claim # 8 in the amount of $58,930.43; contractual monthly payments of $1,140.69 per month. (JA110).

GMC: TD Bank, N.A.; court claim # 5 in the amount of $44,811.17; contractual monthly payments of $1,079.95 per month. (JA35).

Corvette: Wells Fargo Bank, N.A.; court claim # 7 in the amount of $33,865.04; contractual monthly payments of $839.14 per month. (JA101).

Prior to the filing of the Debtor's bankruptcy case, his contractual obligations for all three Vehicles totaled $3,059.78 per month.

Schedule I indicates the Debtor and his non-filing spouse are both employed, with the Debtor's monthly gross income consisting of $7,167.33 from wages, $2,748.00 from pension or retirement, and $2,353.39 from VA disability benefits. (JA71-72). His non-filing spouse's gross income is $4,189.19 per month from wages. *Id.*

A note on Schedule J reflects the Debtor's mother-in-law resides in the Debtor's home but does not identify her as a dependent. (JA74). No dependents or other individuals live in the Debtor's household, according to Schedule J.

The Debtor's household income is considered above-median for purposes of §§ 1322(d) and 1325(b), and as such he completed Official Forms 122C-1 and -2, colloquially known as the "means test." (JA84-95). On the means test debtors claim deductions from their current monthly income to calculate "monthly disposable

income" which determines the minimum required dividend to general unsecured creditors under § 1325(b)(1)(B). In this case, the Debtor calculated his current monthly income to be $11,140.88,[2] from which he deducted, *inter alia*, deductions for the Vehicles totaling $2,521.07, resulting in monthly disposable income of -$233.98. *Id*.

The Debtor has filed four chapter 13 plans in this case. (JA5-7). Confirmation hearings on the first two plans were not conducted before they were amended by the Debtor. The bankruptcy court denied confirmation of the third plan for the same reasons it denied confirmation of the fourth plan, although only a form order was issued by the court. (JA17(n.3)). The fourth and most recent plan was filed January 4, 2024 ("Plan"). (JA129). The Debtor's applicable commitment period is 60 months, and the Plan provided for a payment schedule to the Trustee of $3,070.00 per month for 2 months, followed by $3,700.00 per month for 60 months. *Id*.

Included among the Plan's terms was the Debtor's proposal to retain and pay in full through Trustee disbursements over a 60-month period, with interest at 10.5%, the three claims secured by the Vehicles. (JA131). Amortizing the three claims at 10.5% over 60 months would require average monthly disbursements from

[2] Pursuant to the provisions of The HAVEN Act, this amount does not include the Debtor's income from his VA benefits. The Debtor also excluded from the current monthly income calculation his non-filing spouse's monthly wage withholdings.

the Trustee to creditors for the Vehicles as follows:

Genesis: $1,266.64 per month.

GMC: $963.17 per month.

Corvette: $727.89 per month.

For each monthly Plan payment remitted to the Trustee by the Debtor, a total of $2,957.70 of each payment would have to be allotted toward the three claims secured by the Vehicles. The bulk of Debtor payments to the Trustee would therefore be for the purpose of paying claims secured by the Vehicles.[3]

Allowed claims of general unsecured creditors total $84,700.19. Part 2.5 of the Plan reflected no dividend to unsecured creditors was required by either the hypothetical liquidation test under § 1325(a)(4), or the disposable income test of § 1325(b)(1)(B). (JA130). The Trustee nevertheless projected allowed claims of general unsecured creditors would receive a dividend of 7.7 percent if the Plan were consummated. (JA17). Under the Plan, the Debtor would discharge more than $78,000.00 of unsecured debt. (JA23).

[3] The balance of each monthly Plan payment would, at one point or another, be allocated toward payment of a small pre-petition mortgage arrearage, a claim secured by a lawn mower, the priority unsecured claim owing to the IRS, the Debtor's base attorney fees and reimbursement totaling $6,838.00, and Trustee fees for disbursement of the above.

The sole allowed priority unsecured claim is that of the Internal Revenue Service in the amount of $6,693.85.

In addition to the claims secured by the Vehicles noted above, allowed secured claims include a mortgage claim secured by the Debtor's residence being paid directly to the creditor by the Debtor, requiring mortgage payments of $2,512.98 per month. (JA130).[4]

The Trustee filed an objection to confirmation of the Plan. (JA138). The Court conducted a hearing on that objection, following which it denied confirmation of the Plan and issued a memorandum opinion to that effect. (JA15).

SUMMARY OF THE ARGUMENT

The bankruptcy court did not abuse its discretion in reviewing through the lens of good faith the Debtor's proposal to continue servicing debt secured by the Vehicles at the rate of nearly $3,000.00 per month in the face of a minimal distribution to unsecured claims. Congress did not eliminate the requirement plans be proposed in good faith or strip the good faith standard of all economic meaning when it enacted § 1325(b) and the "disposable income test" in 1984, or when it reformed that test through the Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA") in 2005. The good faith of a debtor's plan is analyzed

[4] There is no dispute regarding the amount, nature, and treatment of claims as described above.

under a totality of the circumstances test, which in the Fourth Circuit is a broad and non-exhaustive analysis. While permissible expenses for an above-median income chapter 13 debtor are described in detail through BAPCPA's provisions, compliance with standardized forms does not necessarily mandate a finding of good faith or that no abuse is present. The good faith requirement remains a free-standing requirement for plan confirmation and is a part of the discretionary and equitable authority of the bankruptcy court. While not replacing the means test calculation of § 1325(b)(1)(B), the good faith determination can be used to assess the impact of those calculations considering the totality of circumstances of a case. In this case, the bankruptcy court thoroughly examined the facts of record and denied confirmation of the plan with reasoning in line with most reported court opinions on the issue.

STANDARD OF REVIEW

The standard of review for denial of confirmation is abuse of discretion. A "court abuses its discretion only where it has acted arbitrarily or irrationally, has failed to consider judicially recognized factors constraining its exercise of discretion, or when it has relied on erroneous factual or legal premises." *L.J. v. Wilbon*, 633 F.3d 297, 304 (4th Cir. 2011) (internal quotation marks, alternation, and ellipsis omitted). "Legal conclusions are reviewed *de novo*, but findings of fact will only be set aside if clearly erroneous." *Schlossberg v. Barney*, 380 F.3d 174, 178 (4th Cir. 2004).

ARGUMENT

I. SECTION 1325(a)(3) IS AN INDEPENDENT REQUIREMENT FOR PLAN CONFIRMATION THAT HAS NOT BEEN DIMINISHED OR NARROWED BY § 1325(b).

The modern Bankruptcy Code[5] was enacted in 1978 and includes a requirement of confirmation that "the plan has been proposed in good faith and not by any means forbidden by law." 11 U.S.C. § 1325(a)(3). Congress did not define the term "good faith" in 1978, nor has it in any year since. It is a term inherently amorphous; that such a term was included as a fundamental requirement in the plan confirmation scheme suggests Congress foresaw the diversity of fluid circumstances that would be funneled into the bankruptcy process, and that it would be necessary for courts to exercise discretion in their oversight of plan confirmation.

Not long after the emergence of the Code and this "good faith" requirement, the Fourth Circuit commented,

> [a] comprehensive definition of good faith is not practical. Broadly speaking, the basic inquiry should be whether or not under the circumstances of the case there has been an abuse of the *provisions*, *purpose*, or *spirit* of the [the Chapter] in the proposal or plan…,

[5] Hereinafter, title 11 of the United States Code will be referred to as "the Bankruptcy Code," or "the Code." All citations with only a § symbol refer to a section or subsection of the Bankruptcy Code, as indicated. References to chapter 13 mean 11 U.S.C. § 1301, *et. seq*.

and that the bankruptcy court's discretion in making the good faith determination is necessarily a "broad one," requiring a "totality of circumstances" examination on a case-by-case basis that takes into account,

> the debtor's financial situation, the period of time payments will be made, the debtor's employment history and prospects, the nature and amount of unsecured claims, the debtor's past bankruptcy filings, the debtor's honesty in representing facts, and any unusual or exceptional problems facing the particular debtor.

Deans v. O'Donnell, 692 F.2d 968, 972 (4th Cir. 1982)(emphasis added). *See also*, *In re Bateman*, 515 F.3d 272, 283 (4th Cir. 2008) citing *Deans v. O'Donnell*, 692 F.2d 968, 972 (4th Cir.1982)("Congress never intended, of course, that Chapter 13 serve as a haven for debtors who wish to receive a discharge of unsecured debts without making an honest effort to pay those debts.").[6]

In 1984 the Bankruptcy Amendments and Federal Judgeship Act of 1985, Pub. L. No. 98-353, 98 Stat. 333 ("BAFJA"), was enacted adding § 1325(b) to the Code, requiring commitment of a debtor's "projected disposable income" to a plan and a formula for calculating disposable income.

BAPCPA was enacted in 2005 through which Congress, *inter alia*, included a means test analysis under § 1325(b)(1)(B) which chapter 13 debtors must now

[6] In 1986 the Fourth Circuit reasserted the *Deans v. O'Donnell* analysis in *Neufeld v. Freeman*, adding pre-petition conduct as another factor in assessing good faith under § 1325(a)(3). *Neufeld v. Freeman,* 794 F.2d 149 (4th Cir. 1986).

satisfy. Under that analysis, if a debtor's "current monthly income" exceeds the median family income level for their household size, the debtor's disposable income is to be calculated by deducting from that income expenses permitted in accordance with the chapter 7 means test, specifically subparagraphs (A) and (B) of section 707(b)(2). *See*, § 1325(b)(2) and (3). So, whereas § 707(b)(2) supplies the "means test" used to determine whether abuse can be presumed in chapter 7 cases, this same means test analysis is used in chapter 13 cases by above-median income debtors to determine whether disposable income exists for payment to unsecured claims.

The Debtor and Amicus argue in support of their position that courts, like the Ninth Circuit in *Drummond v. Welsh*[7], and the Fourth Circuit in *Bledsoe v. Cook*[8], have in effect treated BAFJA and BAPCPA as ending any role the § 1325(a)(3) good faith requirement has in assessing the impact a proposed chapter 13 plan may have on unsecured creditors. But, as will be shown below, that argument: 1) fails to account for the similarities between the statutory construction of chapters 7 and 13 which are instructive; 2) focuses on the "provisions" of chapter 13 as a means of showing good faith to the exclusion of the "spirit" and "purposes" of chapter 13; 3) ignores relevant case law from this Circuit and around the nation; and 4) fails to recognize the distinctions between the "good faith" standard employed in the Ninth

[7] 711 F.3d 1120 (9th Cir. 2013).
[8] 70 F.4th 746 (4th Cir. 2023).

Circuit, and that which is employed in the Fourth Circuit.

A. The Statutory Structure of Chapters 13 and 7 Supports the Continued Use of Good Faith to Supplement the Means Test.

The good faith test of § 1325(a)(3) operates much the same way in chapter 13 as § 707(b)(3) operates in chapter 7 cases. For a chapter 7 case, § 707(b)(3) authorizes a court to consider whether "the totality of the circumstances ... of the debtor's financial situation demonstrates abuse" even if no presumption of abuse arises under the means test (or such presumption is rebutted). 11 U.S.C. § 707(b)(3)(A) and (B). So, a chapter 7 debtor can "pass" the means test of § 707(b)(2) but still be subject to dismissal for abuse through § 707(b)(3). For example, consider a hypothetical chapter 7 debtor who owns several vehicles, multiple 4-wheelers, a boat, and a vacation home on Hilton Head Island. This property serves as collateral for secured debts with sizeable payments. The secured debt payments may be allowed deductions on the means test under § 707(b)(2), but nevertheless be grounds for finding bad faith under § 707(b)(3). The same holds true for a chapter 13 case being reviewed for good faith under § 1325(a)(3), and the statutory similarities between chapters 7 and 13 bear this out. It is telling that the chapter 13 disposable income test incorporates § 707(b)(2) – the chapter 7 means test – but then does not incorporate the very next subsection, § 707(b)(3). The reason for this exclusion is that there is no need to incorporate § 707(b)(3) into chapter 13 because Congress already included a good faith requirement in chapter 13 through

§ 1325(a)(3). In other words, § 1325(a)(3) fulfills essentially the same function in chapter 13 that § 707(b)(3) fulfills in chapter 7. The means test is a limited purpose screening device. *In re Predragovic*, 2010 WL 3239360, *3 (Bankr. N.D. Ohio). The existence of a means test in chapter 13 does not eliminate the applicability of good faith under § 1325(a)(3) any more than a court's discretion under § 707(b)(3) is diminished by the means test of § 707(b)(2). Each chapter utilizes a detailed means test, followed by a totality of circumstances assessment.

To be sure, the economic component of § 1325(a)(3)'s good faith requirement may not always arise outside a proper completion of the means test calculation in compliance with § 1325(b)(1)(B), § 707(b), and the Official Forms, and affirming denial of confirmation of the Plan in this case should not signal supremacy of § 1325(a)(3) over § 1325(b)(1)(B). Rather, these two provisions should be interpreted as being complementary, with the facts of a given case serving to shed light on the good faith, or lack thereof, of creditor treatment being proposed by a debtor through a plan. The Debtor and Amicus argue instead that the treatment of unsecured creditors resulting from a means test calculation can never be the basis of a good faith inquiry. But that argument goes too far as it declares § 1325(a)(3) to be neutered by § 1325(b)(1)(B), something Congress has yet to do expressly, or the Fourth Circuit has yet to recognize. Establishing good faith therefore still requires more than simply reducing one's current monthly income by all expenses included

within the universe of permissible deductions.

But the Debtor and Amicus would lead the Court down a very different road, seeking to obviate the need for other provisions of the Code requiring evaluations of broader considerations. The advent of § 1325(b) did not nullify other provisions of the Code, especially § 1325(a)(3). A debtor "cannot expect to go 'first class' when 'coach' is available." *In re Kitson* 65 B.R. 615, 622 (Bankr. E.D.N.C. 1986).

B. Satisfying Good Faith Requires Complying with the Spirit and Purposes of Chapter 13 in Addition to its Provisions.

The good faith analysis was indeed affected by the 1984 and 2005 amendments in BAFJAand BAPCPA because they adjusted the "provisions" or statutory requirements of chapter 13, particularly by the inclusion of formulaic calculations through § 1325(b)(1)(B). But pursuant to *Deans v. O'Donnell*, a plan can still fall short of the good faith requirement if it seeks ends which do not comply with the "purpose" and "spirit" of chapter 13. These terms may be as nebulous as "good faith," but their meaning can be gleaned from the chapter 13 statutory framework as a whole, case law on § 1325(a)(3) itself, and even the interpretation by courts of other provisions of chapter 13. Regarding those other provisions, the Supreme Court, in interpreting BAPCPA and the undefined term "projected disposable income" in § 1325(b)(1)(B), relied on past bankruptcy practice in rejecting strict use of a debtor's formulaic "current monthly income" as the undisputed basis upon which to calculate a debtor's "disposable income" under §

1325(b)(2). *See*, *Hamilton v. Lanning*, 560 U.S. 505, 517 (2010). The Supreme Court held a bankruptcy court has discretion when factoring that number into disposable income calculations and may account for changes in income or expenses that are known or virtually certain at the time of confirmation. To hold otherwise would be potentially "deny[ing] creditors payments that the debtor could easily make." *Id*., at 520.

In 2011, the Supreme Court, again interpreting § 1325(b), held a debtor cannot claim an expense deduction on the means test for a loan or lease payment they are not in fact making, even though a strict application of § 707(b)(2)(A)(ii) would allow such deductions. In *Ransom v. FIA Card Services*, the Court quoted its opinion in *Milavetz, Gallop & Milavetz, P.A. v. United States*, 559 U.S. 229, 231-232 (2010):

> "Congress enacted the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005…to correct perceived abuses of the bankruptcy system." In particular, Congress adopted the means test—"[t]he heart of [BAPCPA's] consumer bankruptcy reforms," H.R. Rep. No. 109-31, pt. 1, p. 2 (2005) … and the home of the statutory language at issue here—to help ensure that debtors who *can* pay creditors *do* pay them. See, *e.g., ibid.* (under BAPCPA, "debtors [will] repay creditors the maximum they can afford").

Ransom v. FIA Card Services, 562 U.S. 61, 64 (2011).[9] This Court relied

[9] It should be noted BAPCPA was enacted to address perceived abuses of the bankruptcy system by *debtors*, not the courts. There was no issue of plans *not* being confirmed pre-BAPCPA, but instead too many plans with perceived abuses being confirmed.

upon *Ransom* in reaching a similar conclusion regarding the claiming of expense deductions on the means test for assets being surrendered as part of a chapter 13 plan. *See*, *In re Quigley*, 673 F.3d 269 (4th Cir. 2012).

The issue before this Court is, of course, not calculation of the Debtor's projected disposable income under § 1325(b) like that in *Lanning*, *Ransom*, or even *Bledsoe v. Cook*,[10] but these cases nevertheless identify the broader "spirit" of chapter 13 and the "purpose" it is serving. The "principal purpose [of bankruptcy relief] is to grant a 'fresh start' to the 'honest but unfortunate debtor,'" *Grogan v. Garner*, 498 U.S. 279 (1991), and the reorganization of debts contemplated under a system which requires a "good faith" effort must involve more than a debtor simply keeping property while paying as little as possible to creditors. The Code

> strikes a balance between the interests of insolvent debtors and their creditors. [The Code is not] focused on the unadulterated pursuit of the debtor's interest. …[T]he Code, like all statutes, balances multiple, often competing interests. No statute pursues a single policy at all costs, and we are not free to rewrite this statute (or any other) as if it did.

In re Goetz, 95 F.4th 584, 591 (8th Cir. 2024)((internal citations omitted, quoting *Bartenwerfer v. Buckley*, 598 U.S. 69 (2023) in analyzing various Code provisions when a chapter 13 case converts to chapter 7), petition for cert. filed (U.S.

[10] In *Bledsoe v. Cook*, 70 F.4th 746 (4th Cir. 2023), this Court held case-by-case analyses of chapter 13 debtors' means test calculations, not good faith considerations, to be guided by the statutory directives of § 707(b). The Fourth Circuit did not use *Bledsoe v. Cook* to opine on the impact, if any, these calculations have on the good faith requirement of § 1325(a)(3).

June 10, 2024)(No. 23-1289)). This interpretation may sound in equity but appropriately so, because whereas some parts of chapter 13 have become highly rigid, like the means test calculation, Congress has yet to signal the chapter 13 process as a whole has devolved into a self-serve kiosk devoid of judicial oversight. ("The cornerstone of the bankruptcy courts has always been the doing of equity." *In re Waldron*, 785 F.2d 936, 941 (11th Cir. 1986)). *See also*, *Trantham v. Tate*, 112 F.4th 223, 239 (4th Cir. 2024) (Wilkinson, C.J., concurring).

Under the approach recognized by the bankruptcy and district courts below, the complexities of the means test enacted through BAPCPA are preserved as authoritative in determining a debtor's minimum distribution to unsecured creditors, while still affording courts the ability to assess the result of that test and a plan as a whole through the lens of good faith in light of the totality of circumstances. This position has been recognized by numerous courts since BAPCPA was enacted, as demonstrated below.

The bankruptcy court below found good faith unsatisfied due to the totality of circumstances of the Debtor's case, specifically the economic impact of the Plan on the Debtor's financial circumstances and the resulting treatment of unsecured creditors. Bankruptcy courts still have such leave to ensure strict compliance with the provisions of chapter 13 don't produce outcomes which violate the purpose and spirit of chapter 13.

C. Applicable Case Law Supports the Continued Recognition of Economic Components of Good Faith.

The *Deans* good faith standard pre-dates the implementation of BAPCPA, but numerous courts within the Fourth Circuit have been clear the *Deans* and *Neufeld* factors still control. *See*, *In re Allawas*, No. 07-06058-HB, 2008 WL 6069662, * 3 (Bankr. D.S.C. Mar. 3, 2008); *Williams v. Gorman*, No. 20-11645-KHK, 2021 WL 4267277 at *2 (E.D. Va. Sept. 20, 2021)(incorporating *Deans* and noting the impracticability of a precise definition of good faith, the broad discretion bankruptcy courts have in determining good faith, and how a bankruptcy court may consider all relevant factors in their determination); *In re Sawyer*, No. 04-39378, 2005 WL 5864795 at *4 (E.D. Va. Nov. 25, 2005)(incorporating *Deans* and noting the Fourth Circuit's adoption of the totality of the circumstances test in hopes, at least in part, that chapter 13 debtors would pay a substantial portion to all their unsecured debts); *Ekweani v. Thomas*, 574 B.R. 561, 569 (Bankr. D. Md. 2017); *In re Mitrano*, 472 B.R. 706, 712 (Bankr. E.D. Va. 2012); *In re Tomer*, No. 4:09CV0008, 2009 WL 2029798, at *4 (W.D. Va. July 2, 2009); *In re Mazzarella*, No. 10-81189, 2010 WL 4452352, at *2 (Bankr. M.D.N.C. 2010) ("The Debtor is proposing to pay a 0% dividend to unsecured creditors while retaining two timeshares and three vehicles that are subject to secured claims. . . the Debtor's indifference to paying any dividend to unsecured creditors is evidence of his lack of good faith.").

And more recently this Court has observed the Code requires chapter 13 debtors to establish they have filed both their petition and their plan in good faith, *Trantham v. Tate*, 112 F.4th 223, 236 (4th Cir. 2024), and that "[C]ourts must consider the totality of the circumstances...when assessing whether the requisite good faith exists." *Sugar v. Burnett*, 130 F.4th 358, 376 (4th Cir. 2025).

Furthermore, the majority of courts outside of the Fourth Circuit have generally disagreed with the Debtor's and Amicus position that § 1325(b) forecloses judicial analysis under the good faith test of § 1325(a)(3), particularly as it relates to retention of non-essential or luxury items. *In re Puffer*, 674 F.3d 78, 82 (1st Cir. 2012) (holding that a § 1325 good faith analysis applies equally to all sections of the subsection, and that because the good faith analysis sounds in equity, any *per se* limitations on this analysis is inappropriate); *In re Wrobel*, 525 B.R. 211, 217 (Bankr. W.D.N.Y. 2015) (Simply committing all of one's non-exempt assets and meeting the 'projected disposable income' test...does not compel a ruling that a plan meets the 'good faith' test of 11 U.S.C. § 1325(a)(3)); *Hammett v. Woodard*, No. 4:21-cv-0099-P, 2022 WL 705875, at *3 (N.D. Tex. Mar. 9, 2022) ("Mere compliance with the technical requirements of the Bankruptcy Code 'does not necessarily mean that the Plan ha[s] been proposed in good faith."); *In re Predragovic*, No. 10-60259, 2010 WL 3239360, at *2 (Bankr. N.D. Ohio 2010) (Vehemently disagreeing that deductions on the means test are barred from a good

faith analysis and holding that expenses are only one of many factors to be considered); *In re Daniel-Sanders*, 420 B.R. 102, 108 (Bankr. W.D.N.Y. 2009) (allowing proposed plan with expenses for two vehicles because of unique circumstances of the debtor, and proposed distribution to unsecured creditors of 25%); *In re Broder*, 607 B.R. 774, 778 (Bankr. D. Me 2019), and *In re Williams*, 349 B.R. 550, 576 (Bankr. D. Colo. 2008)(both cited by the bankruptcy court below); *In re Cordle*, No. 08-82332-TLS, 2009 WL 762184 (Bankr. N.D. Neb. Mar. 19, 2009)(Expense amounts allowable to an above-median income debtor for a boat and travel trailer used for recreation are not reasonably necessary and violate § 1325(a)(3)); *In re Styles*, 397 B.R. 771 (Bankr. W.D. Va. Nov. 21, 2008)(Unmarried, above-median income debtor may take expense deduction for two automobiles on the means test, but a good faith review of the totality of circumstances applies to 'nonessential assets' and requires debtor to demonstrate that unsecured creditors are not injured by allowed expense deduction). *See also*, Richard S. Bell, *The Effect of the Disposable Income Test of Section 1325(b)(1)(B) upon the Good Faith Inquiry of Section 1325(a)(3)*, 5 BANKR. DEV. J. 267 (1989) (arguing the disposable income test did not significantly alter the good faith totality of the circumstances standard).

As yet another example, a bankruptcy court in New Jersey was presented with a chapter 13 plan proposed by above median debtors wishing to retain investment property in the Poconos Mountains. *In re Amos*, 452 B.R. 886, 888 (Bankr. D. N.J.

2011). As in this case, the debtors argued the good faith requirement had been satisfied since they were permitted to deduct secured debt payments related to the property by application of § 1325(b)(3)'s incorporation of § 707(b)(2). *Id.* at 890. The bankruptcy court rejected that argument, holding "the good faith test is an independent authority for examining *economic components* of a proposed plan, even where the disposable income test is satisfied." *Amos* at 893 (emphasis added).

Additionally, as stated by the bankruptcy court in *In re Sandberg*, 433 B.R. 837 (Bankr. D. Kansas 2010), a case involving the retention of a boat with secured debt payments:

> Finally, this Court recognizes that Congress retained § 1325(a)(3)'s good faith requirement for confirmation when it enacted BAPCPA in 2005 and appended to subsection (b) the more detailed and objective disposable income test. Congress made no effort to limit the existing case law concerning the good faith requirement. Two canons of statutory construction compel the conclusion that good faith remains alive and well as a separate and independent requirement for confirmation, notwithstanding compliance with the disposable income test. First, when Congress adopted BAPCPA, it is presumed to have had knowledge of the existing requirements for confirmation, including the interpretations given by the bankruptcy courts to the good faith requirement. Second, interpretation of statutes that render language superfluous are disfavored. If the good faith test were wholly subsumed by the disposable income and other economic tests for confirmation, § 1325(a)(3) would be superfluous and would have been eliminated. It was not. This suggests that the good faith test is not limited by the objective disposable income test. Accordingly, this Court concludes that debtors must meet the good faith test, in addition to satisfaction of the disposable income test in order for their plans to be confirmed.

Sandberg at 847-48.

As in the cases above, the court below focused its good faith inquiry on the Debtor's financial situation considering his minimal dividend to unsecured creditors and his proposal to retain property unnecessary for an effective reorganization.

D. The Ninth Circuit Decision in *Welsh* is Based Upon Different Factors than Those Applied in the Fourth Circuit for Examining Good Faith.

The Debtor and Amicus rely heavily on the reasoning of *Welsh* in arguing the Debtor's secured debt deductions on the means test cannot be scrutinized under any good faith standard. This interpretation of *Welsh* creates a *per se* rule: fulfilling the mechanical requirements of § 1325(b) equals compliance with the good faith standard of § 1325(a)(3). But the Debtor and Amicus miss a key distinction underlying the *Welsh* decision – its reaffirmation of a "totality of circumstances" test for good faith. *In re Welsh*, 711 F.3d 1120, 1129 (9th Cir. 2013). However, the Ninth Circuit test for good faith has very different factors than other circuits. In the Ninth Circuit, there are only four factors that serve as guidance on the issue of good faith:

> 1. Whether the debtor misrepresented facts in his petition or plan, unfairly manipulated the Bankruptcy Code, or otherwise filed his chapter 13 petition or plan in an inequitable manner;
> 2. The debtor's history of filings and dismissals;
> 3. Whether the debtor only intended to defeat state court litigation; and
> 4. Whether egregious behavior is present.

In re Welsh, at 1123.

Comparing these factors to those used by other circuits, including the Fourth Circuit, illuminates why the court in *Welsh* ruled the way it did. Their factors, as they explain, focus only on "the debtor's motivation and forthrightness with the court in seeking relief." *In re Welsh*, at 1132. Through that lens, a good faith analysis in the Ninth Circuit does *not* include the consideration of the individual financial or economic circumstances of the debtor, the actual distribution to unsecured creditors, or any other circumstances that might warrant the finding of bad faith under a broader examination.

The factors historically used in the Fourth Circuit, however, could lead to a different conclusion than that reached in *Welsh*. The Fourth Circuit, in line with cases from every other circuit except the Ninth, employs broader, more equitable considerations with its factors from *Deans v. O'Donnell*. The Fourth Circuit has over time recognized the necessity of the bankruptcy court to broadly examine all facets of a case, specifically enumerating factors such as the actual distribution to unsecured creditors and the financial situation of the debtor. *Deans,* at 972. The Fourth Circuit is also careful to note their factors are non-exhaustive, should not be used as a checklist, and that all facts should be examined on a case-by-case basis. *Id.* While it is unnecessary to speculate on the outcome of the *Welsh* facts if considered by a court sitting in this Circuit, such courts have historically resisted *per se* rules, instead maintaining, for over forty years, the equity and integrity of the totality of

the circumstances test employed by the bankruptcy court. The ruling in *Welsh* which stems from the rigid factors considered in the Ninth Circuit would have been unlikely here.

II. THE BANKRUPTCY COURT FOUND A LACK OF GOOD FAITH BASED ON THE DEBTOR'S TESTIMONY AND HIS PROPOSAL TO RETAIN VEHICLES TO THE DETRIMENT OF HIS UNSECURED CREDITORS. THIS WAS NOT AN ABUSE OF DISCRETION.

A. The Court has an Independent Duty to Assess Good Faith

The court did not abuse its discretion in finding the Plan lacked good faith following the Trustee's objection to confirmation and a review of the facts of this case. Even in the absence of an objection to confirmation on good faith grounds, the bankruptcy court still has an independent duty to determine whether the proposed chapter 13 plan was filed in good faith. *See*, *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 277 n.14 (2010) ("Section 1325(a)...requires bankruptcy courts to address and correct a defect in a debtor's proposed plan even if no creditor raises the issue."); *In re Soppick*, 516 B.R. 733, 752 (Bankr. E.D. Pa. 2014)(citing *Espinosa*)("[w]hether or not a specific confirmation objection has been made, this court has the right to independently determine that a debtor's proposed chapter 13 plan meets all statutory requirements based upon the evidence presented at confirmation."); *In re Richardson*, 643 B.R. 324, 331 (Bankr. D.S.C. 2022); *In re McNeely*, 366 B.R. 542, 548 (Bankr. N.D. W.Va. 2007)("the court has the

independent duty to determine if a proposed Chapter 13 plan constitutes an abuse of the provisions, purpose, or spirit of Chapter 13").

B. The Debtor's Burden of Proof

The Debtor bears the burden of proof that a plan satisfies all elements for plan confirmation required by § 1325, including the good faith requirement of § 1325(a)(3).[11] *Education Assistance Corp. v. Zellner,* 827 F.2d 1222 (8th Cir. 1987) (Debtor has burden of proving the requirements for confirmation in § 1325(a)); *Smyrnos v. Padilla (In re Padilla),* 213 B.R. 349, 352 (B.A.P. 9th Cir. 1997) ("The burden of establishing good faith is on the debtor."); *In re Reese,* 281 B.R. 735 (Bankr. M.D. Fla. 2002) (Debtor has the burden to prove that plan is filed in good faith.); *In re Brown*, 244 B.R. 603 (Bankr. W.D. Va. 2000)("As a general matter the debtor has the burden 'to prove that a proposed plan complies with Chapter 13.')(quoting *In re Stewart,* 172 B.R. 14, 15-16 (W.D. Va. 1994)). The question before this Court is therefore ultimately whether the bankruptcy court abused its discretion in finding the Debtor did not carry that burden by a preponderance of the evidence.

[11] The good faith requirement was singled out among all confirmation requirements for reference in the Federal Rules of Bankruptcy Procedure, which provide a court may determine a plan has been filed in good faith without receiving evidence on the matter. FED. R. BANKR. P. 3015(f). Still, under this Rule finding good faith is permissive and not mandatory.

C. The Totality of Circumstances Do Not Support Good Faith

There is no dispute as to the Debtor's sole ownership of the Vehicles, his sole obligation on the debts secured by the Vehicles, their value, the monthly distributions necessary to pay for those Vehicles over the life of the Plan, or the proposed distribution amount to unsecured creditors under the Plan.

At the confirmation hearing on March 19, 2024, the Debtor testified to, among other things, that:

a. He is the primary driver of the Sierra which he uses twice per pay period (subject to increase) to commute approximately 8 miles (one-way) from his home in Garner, N.C. to his place of work in Raleigh, and that he otherwise uses the Sierra for yard work at his home (JA171, JA175-176);

b. The Corvette offers him "relaxation driving" when the weather is clear or when it is not raining (JA171-172), and that he and his wife sometimes travel to visit family using the Corvette (JA179-180);

c. The Genesis serves two purposes: 1) to be used by his wife whenever her 2015 Nissan Altima becomes unreliable, although the Altima is sufficient to get her to and from work, but no further (JA170, JA172, JA190); and 2) to ferry his mother-in-law (and mother, approximately four times a year) to doctor appointments because they are physically unable to board the

Sierra. (JA172-174). The Debtor ultimately testified this latter reason is the main reason he owns this vehicle. (JA173).

d. He and his wife do not comingle their incomes (JA184), and while she uses the Genesis, she did not contribute financially toward its ownership or maintenance costs prior to the filing of this case (JA185); and

e. He filed bankruptcy to obtain relief from credit card and personal loan debt which he incurred as a result of funding, or to fund, requests for financial assistance from friends and family (JA181-183), and the mercurial financial situation this created required him to "rob Peter to pay Paul" when attempting to service his monthly debt obligations (JA190). The Debtor conceded if he had not had to service the debt obligations for the Vehicles, he probably could have successfully serviced his other pre-petition debt and avoided having to seek bankruptcy relief. (JA188-189).

This testimony informed the terms of the Plan and, along with the record in this case, served as the basis for the bankruptcy court's finding the Plan did not satisfy the good faith requirement of § 1325(a)(3). This finding was based on the Debtor's failure to establish a necessity for all three Vehicles in order to pursue an effective reorganization, the impact of their retention on his ability to pay unsecured creditors, and the Vehicles' identification as contributing factors, if not a proximate cause, to his need to seek bankruptcy relief. The court's conclusion was a rational

finding based on a valid interpretation of § 1325(a)(3), and does not rise to the level of an abuse of discretion.

CONCLUSION

The bankruptcy court did not abuse its discretion in denying confirmation of the Plan, or in recognizing a continuing economic component to the good faith requirement of § 1325(a)(3). The court's authority to so rule is supported by the statutory language and construction of chapter 13 and relevant case law. The Debtor did not establish his retention of all three Vehicles was necessary for an effective reorganization, or otherwise justify the resulting treatment of unsecured creditors in this case. This Court should affirm the bankruptcy court's order denying confirmation of the Plan.

STATEMENT REGARDING ORAL ARGUMENT

The Appellee believes the facts and legal contentions are adequately presented in the materials before the Court, and therefore requests the Court dispense with oral argument.

Respectfully submitted this, the 11th day of August, 2025.

By:
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Dated: August 11, 2025

s/ Michael B. Burnett
Michael B. Burnett, Chapter 13 Trustee

CERTIFICATE OF SERVICE

I, Michael B. Burnett, do hereby certify I served the attached Brief of Appellee upon the parties below by mailing a copy thereof to the addresses indicated below by deposit into an official depository under the exclusive care and custody of the United States Post Office in Raleigh, North Carolina, with proper postage attached or, alternatively, through the ECF System as allowed by law.

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I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted this, the 11th day of August, 2025

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