

**No. 25-1048**

---

**UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

---

CHRISTOPHER M. COOK,  
Debtor-Appellant,

v.

CHAPTER 13 TRUSTEE  
Trustee-Appellee.

---

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA, ALEXANDRIA  
CASE No. 1:24-cv-00288-MSN-WBP, 23-10889-KHK  
THE HONORABLE JUDGE MICHAEL S. NACHMANOFF

---

**RESPONSE BRIEF OF THE APPELLEE, CHAPTER 13 TRUSTEE**

---

Marcelo R. Michel  
Office of the Chapter 13 Trustee  
1414 Prince Street, Suite 201  
Alexandria, VA 22314  
Phone: (703) 836-2226  
Fax: (703) 836-8120  
VSB# 47818  
E-mail: mmichel@chapter13alexva.com

*Counsel for Appellee*

## 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. 25-1048Caption: Christopher Cook v. Chapter 13 Trustee

Pursuant to FRAP 26.1 and Local Rule 26.1,

Thomas P. Gorman, Chapter 13 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.  
The Chapter 13 Trustee
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/ Marcelo R. Michel

Date: 02/21/2025

Counsel for: Chapter 13 Trustee

## TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES .....	iii
JURISDICTION.....	1
STATEMENT OF ISSUES .....	1
STATEMENT OF THE CASE.....	1
SUMMARY OF THE ARGUMENT .....	5
ARGUMENT .....	7
I. Standard of Review.....	7
II. The U.S. District Court correctly affirmed confirmation of Debtor’s Fourth Plan holding that Appellant’s appeal was equitably moot. ....	7
a. Appellant’s First Plan has been abrogated or replaced by each subsequent Plan that were seemingly proposed in good faith. Appellant’s argument to revive First Plan was equitably moot at the time of the U.S. District Court ruling. ....	7
b. Appellant repudiates both the confirmed Plan and the First Plan, which he sought to revive at the U.S. District Court level, by now proposing a <i>fifth</i> Plan for this Court to consider and approve. ....	9
III. Appellant’s First Plan was properly denied confirmation and not timely appealed. ....	10

a. Appellant’s appeal of the September 15, 2023, Order denying confirmation of the First Plan was untimely. ....10

b. The Bankruptcy Court did not err in denying confirmation of Debtor’s First Plan. ....12

CONCLUSION .....14

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT.....15

CERTIFICATE OF SERVICE .....16

## TABLE OF AUTHORITIES

### CASES

<i>68<sup>th</sup> St. Site Work Grp. V. Alban Tractor Co.</i> , 105 F.4 <sup>th</sup> 222, 230 n.7 (4 <sup>th</sup> Cir. 2024) .....	10
<i>Copley v. United States</i> , 959 F.3d 118, 121 (4 <sup>th</sup> Cir. 2020).....	7
<i>Dubois v. Atlas Acquisitions LLC (in re Dubois)</i> , 834 F.3d 522 (4 <sup>th</sup> Cir. 2016).....	13
<i>Grogan v. Garner</i> , 498 U.S. 279, 286, 111 S. Ct. 654, 112 L.Ed.2d 755 (1991) ...	13
<i>In re Holsenback</i> , Case No. 20-12242-BFK (Bankr. E.D. Va. May 17, 2021).....	13
<i>In re Vaughn</i> , 536 B.R. 670, 679 (Bankr. D.S.C. 2015).....	13
<i>Kelly v. McNamee, Hosea, Jernigan, Green &amp; Lynch, P.A.</i> , Case Nos. 22-1378, 22-1379 (4 <sup>th</sup> Cir. August 28, 2023) .....	10
<i>Leclair v. Tavenner</i> , Case Nos. 23-1131, 23-1133, 23-1134, 15 (4 <sup>th</sup> Cir. February 7, 2025).....	10
<i>Marrama v. Citizens Bank</i> , 549 U.S. 365, 367, 127 S. Ct. 1105, 166 L. Ed. 2d 956 (2007).....	13
<i>Patterson v. Mahwah Bergen Retail Group, Inc.</i> , 636 B.R. 641, 696 (E.D. Va. 2022).....	5
<i>Trantham v. Tate</i> , 112 F.4 <sup>th</sup> 223, 230 (4 <sup>th</sup> Cir. 2024).....	7
<i>United States v. Boyd</i> , 5 F.4 <sup>th</sup> 550, 556 (4 <sup>th</sup> Cir. 2021).....	10

**STATUTES**

11 U.S.C. §1322(a) .....9

11 U.S.C. §1322(b) .....9

11 U.S.C. §1323(c) .....9

11 U.S.C. §1324(a)(4)..... 2, 3, 4

11 U.S.C. §1325(a) .....9

11 U.S.C. §1325(a)(3)..... 2, 3, 4

11 U.S.C. §1326(a)(1).....6

11 U.S.C. §1329.....9, 10

11 U.S.C. §501(a)(1).....13

11 U.S.C. §521(a)(1).....12

28 U.S.C. §157(b) .....1

28 U.S.C. §158(a) .....1

28 U.S.C. §158(d) .....1

**RULES**

F.R. Bankr. P. 2002.....9, 10

F.R. Bankr. P. 8002.....5, 11

F.R. Bankr. P. 8003.....5, 11

F.R. Bankr. P. 8004..... 5, 6, 11

F.R. Bankr. P. 8007.....6

## JURISDICTION

The Bankruptcy Court had jurisdiction pursuant to 28 U.S.C. §157(b). The U.S. District Court for the Eastern District of Virginia had appellate jurisdiction pursuant to 28 U.S.C. §158(a). The U.S. Court of Appeals for the Fourth Circuit has appellate jurisdiction pursuant to 28 U.S.C. §158(d).

## STATEMENT OF ISSUES

Whether the U.S. District Court correctly affirmed confirmation of Debtor's Plan ruling that Appellant's appeal was equitably moot?

Whether Debtor's First Plan was properly denied confirmation?

## STATEMENT OF THE CASE

This appeal arises from the December 11, 2024, Memorandum Opinion and Order (JA268-69) of the U.S. District Court for the Eastern District of Virginia that affirmed the February 6, 2023, Order Confirming Chapter 13 Plan of the U.S. Bankruptcy Court for the Eastern District of Virginia (JA234-45, 260-62).

Christopher M. Cook (herein, "Appellant" or "Debtor") filed for Chapter 13 relief on May 29, 2023, at that time filing a complete set of schedules with the Petition (JA5-54) and the *first* Chapter 13 Plan (JA55-66) (herein, "First Plan"). First Plan proposed total funding of \$7,200.00 over a 36-month term to be paid in \$200.00 per month installments (JA55-56, ¶2). On July 25, 2023, Thomas P.

Gorman, Chapter 13 Trustee (herein, “Trustee” or “Appellee”) filed an Amended Objection to Confirmation of Plan<sup>1</sup> (JA67-68) objecting on grounds pursuant to 11 U.S.C. §1325(a)(3), Good Faith, 11 U.S.C. §1324(a)(4), Liquidation Test, and 11 U.S.C. §1325(b)(1)(B), Disposable Income. Debtor filed a Response to Trustee’s Amended Objection to Confirmation of Plan (JA69-70). At Debtor’s request the August 17, 2023, confirmation hearing was continued to September 14, 2023. Between August 17 and September 14, 2023, Debtor filed amended schedules and statements—Amended Schedules A/B, I, J, and Statement of Financial Affairs (JA71-90)—on September 9, 2023. After Debtor testimony and parties’ arguments at the September 14, 2023 confirmation hearing, the Bankruptcy Court weighed the evidence on Good Faith and Liquidation Test: The Bankruptcy Court denied confirmation of First Plan, noting “the plan does not meet the liquidation test based on the information that the debtor has provided...the transfers need to be account for in a liquidation test” (JA140 at 8-15), and that the court “will be looking for good faith in the new plan, and [that it was] concerned that this case has not been proposed in good faith as well,”<sup>2</sup> (JA140 at 17-19).

---

<sup>1</sup> This Objection to Confirmation amended a prior objection to add Good Faith, Disposable Income, and Liquidation Test grounds after conclusion of Debtor’s rescheduled Meeting of Creditors.

<sup>2</sup> On cross-examination, Debtor testified that his scheduled monthly rental expense of \$3,000 was more accurately \$2,600 per month. (JA120 at 7-13.) Additionally, his original schedules and his affirmations to their accuracy as evidenced by his

Debtor filed an Amended Chapter 13 Plan (herein, “Second Plan”) on September 18, 2023 (JA155-66), proposing total funding of \$13,600.00 over a 36-month term to be paid in four (4) \$200.00 per month installments then thirty-two (32) \$400.00 per month installments (JA155, ¶2). On October 30, 2023, Trustee filed an Objection to Confirmation of Plan (JA167-69) objecting on grounds pursuant to 11 U.S.C. §1325(a)(3), Good Faith, 11 U.S.C. §1324(a)(4), Liquidation Test, and 11 U.S.C. §1325(b)(1)(B), Disposable Income. Debtor filed a Response to Trustee’s Objection to Confirmation of Plan (JA170-73) and an Objection to Confirmation of *Debtor’s own* Chapter 13 Plan (JA174-76) in which “the debtor object[ed] to the [Second] [P]lan” noting “that the [F]irst plan filed by the debtor, with monthly payments of only \$200 per month is the plan that should have been confirmed” (JA176)—repudiating his Second Plan. The Court denied confirmation of Second Plan at the November 8, 2023, confirmation hearing.

Debtor filed an Amended Chapter 13 Plan (herein, “Third Plan”) on November 9, 2023 (JA182-93), proposing total funding of \$19,800.00 over a 36-month term to be paid in four (4) \$200.00 per month installments then one (1) \$400.00 per month installment then thirty-one (31) \$600.00 per month installments (JA182, ¶2). On November 27, 2023, Trustee filed an Objection to Confirmation of

---

signature on those schedules and the testimony at his Section 341 Meeting of Creditors demonstrated that those schedules and that testimony were not accurate. (JA128 at 21-24.)

Plan (JA194-96) objecting on grounds pursuant to 11 U.S.C. §1325(a)(3), Good Faith, 11 U.S.C. §1324(a)(4), Liquidation Test, and 11 U.S.C. §1325(b)(1)(B), Disposable Income. Debtor filed a Response to Trustee’s Objection to Confirmation of Plan (JA197-209) and an Objection to Confirmation of *Debtor’s own* Chapter 13 Plan (JA210-22) in which the Debtor prayed “the objection to confirmation by debtor to his [Third] [P]lan should be sustained” (JA221)—repudiating his Third Plan. The Court denied confirmation of Third Plan at the December 14, 2023, confirmation hearing, instructing Debtor to “file a plan that [he] wish[es] to prosecute” (JA229 at 11-12).

Debtor filed an Amended Chapter 13 Plan (herein, “Fourth Plan”) on December 16, 2023 (JA234-45), proposing total funding of \$20,550.00 over a 36-month term to be paid in four (4) \$200.00 per month installments then one (1) \$400.00 per month installment then one (1) \$600.00 per month installment and then thirty (30) \$625.00 per month installments (JA134, ¶2). On January 24, 2024, Debtor filed an Objection to Confirmation of *his own* Chapter 13 Plan (JA248-59)— “the debtor ask[ed] that his objection be overruled and that this plan be confirmed” (JA259). At the February 1, 2024, confirmation hearing, the Bankruptcy Court, at the behest of Debtor’s counsel, overruled Debtor’s

Objection.<sup>3</sup> An Order Confirming Chapter 13 Plan (JA260-62) was entered on February 6, 2024.

Debtor appealed the Order Confirming Chapter 13 Plan on February 16, 2024.<sup>4</sup> The District Court affirmed confirmation of Fourth Plan holding that “Appellant’s arguments concerning the First Plan are now equitably moot” noting the four factors in *Patterson v. Mahwah Bergen Retail Group, Inc.*, 636 B.R. 641, 696 (E.D. Va. 2022), (JA266).

Appellant appealed the District Court’s Memorandum Opinion and Order (JA268-69).

### SUMMARY OF THE ARGUMENT

Appellant did not seek an interlocutory appeal of the September 15, 2023, Order denying confirmation of First Plan, instead subsequently filing a Second, Third, and Fourth Plan, each, increasing the total funding in response to the

---

<sup>3</sup> Presented with Debtor’s Objection to his own Fourth Plan, the Bankruptcy Court had the option of (1) Confirming to Plan over Debtor’s Objection; (2) Denying Confirmation with leave to file a *Fifth* Plan; or (3) Denying Confirmation without leave to amend, which would have resulted in dismissal of the case. The Bankruptcy Court chose the first option, and confirmed the Plan.

<sup>4</sup> F.R. Bankr. P. 8002, F.R. Bankr. P. 8003, and F.R. Bankr. P. 8004 control the time, manner, and procedure by which an appeal of a final or interlocutory order of the Court is filed: a Notice of Appeal must be filed with fourteen (14) days of the order’s entry—if an interlocutory appeal, the Notice of Appeal must be accompanied by a Motion for Leave to Appeal.

Bankruptcy Court's ruling(s), *see* JA155-66, 182-93, and 234-45. The Fourth Plan was confirmed by the Bankruptcy Court on February 6, 2024 (JA260-62).

The Fourth Plan—which has completed Twenty-two (22) months of its Thirty-six (36) months term through March 2025—has now been substantially consummated: based on the Plan's funding schedule (JA234, ¶2)<sup>5</sup>, Debtor has made \$11,800.00 in payments through March 31, 2025, and Trustee has made disbursements to creditors pursuant to the confirmed Plan.

Therefore, the issue of whether Debtor's *earlier* Plan should have been confirmed is now moot by virtue of the confirmation of a subsequent Plan upon which money has come in from Debtor and gone out to creditors. If Debtor had desired to have this Court review the denial of confirmation of his earlier Plan, he could and should have sought leave to file an interlocutory appeal pursuant to F.R. Bankr. P. 8004, and sought a stay pending appeal pursuant to F.R. Bankr. P. 8007, while the U.S. District Court determined the merits of his argument. Rather than seeking an interlocutory appeal Debtor filed subsequent Plans, the last of which has now been confirmed and consummated.

The issue of confirmation of a prior Plan is now equitably moot.

---

<sup>5</sup> Having filed for bankruptcy relief on May 29, 2023, Debtor's first Plan payment became due on June 28, 2023, pursuant to 11 U.S.C. §1326(a)(1) and through March 31, 2025, Debtor is scheduled to have made Twenty-two (22) payments.

## ARGUMENT

### I. Standard of Review

Upon appellate review, this Court applies the same standards that the district court applied: this Court reviews “the bankruptcy court’s legal conclusions de novo, its factual findings for clear error, and any discretionary decisions for abuse of discretion.” *Trantham v. Tate*, 112 F.4<sup>th</sup> 223, 230 (4<sup>th</sup> Cir. 2024) (citing *Copley v. United States*, 959 F.3d 118, 121 (4<sup>th</sup> Cir. 2020)).

### II. The U.S. District Court correctly affirmed confirmation of Debtor’s Fourth Plan holding that Appellant’s appeal was equitably moot.

- a. **Appellant’s First Plan has been abrogated or replaced by each subsequent Plan that were seemingly proposed in good faith. Appellant’s argument to revive First Plan was equitably moot at the time of the U.S. District Court ruling.**

Appellant’s First Plan—filed on May 29, 2023, and denied confirmation on September 14, 2023 (JA55-66) proposed total funding of \$7,200.00 over a 36-month term to be paid in \$200.00 per month installments (JA55-56, ¶2). Following a contested evidentiary confirmation hearing at which Debtor presented argument and gave testimony, the Bankruptcy Court ruled that “the plan does not meet the liquidation test based on the information that the debtor has provided” (JA140 at 8-9) and advised the Debtor that the Bankruptcy Court “will be looking for good faith in the new plan, and [the Bankruptcy Court is] **concerned that this case has**

**not been proposed in good faith as well,”** (JA140 at 17-19, emphasis added).

First Plan was denied confirmation.

Seemingly to address the issues of the liquidation test and good faith, Debtor subsequently filed Second, Third, and Fourth Plans (JA155-66, 182-93, and 234-45), the fourth being confirmed on February 6, 2024 (JA260-62).

At every instant, Debtor proposed an Amended Plan increasing the funding—in rounded numbers—by almost 100% to nearly 200% of the First Plan’s funding. Creditors who may have otherwise objected on good faith grounds to the Second, Third, or Fourth Plans—had Debtor continued to file and give notice with the terms of the First Plan—have been foreclosed from raising their own good faith objections, considering each subsequent Plan falsely lulled them, with increased funding, into believing each Plan was proposed in good faith. Eventually, the Fourth Plan was confirmed without meaningful contest.

Since the Fourth Plan’s confirmation, the Debtor has made timely payments—the sum of \$11,800.00 in payments through March 31, 2025—which have been disbursed to allowed claimants who filed timely Proofs of Claim. Appellant sought, at the U.S. District Court level, to revive a Plan after having given notice to his creditors, regardless as to the size of the body of creditors, that his intension was to increase their return, even if not in payment-in-full, through distributions that began after confirmation of his Plan on February 6, 2024.

Having not filed a timely appeal to the First Plan's denial of confirmation Appellant seeks to resurrect an appeal of that Order. Appellant's argument is equitably moot by virtue of Debtor's continued and repeated proposal and prosecution of subsequent Plans that increased the funding without having sought a stay pending appeal to stay distribution to his creditors from the bankruptcy estate.

**b. Appellant repudiates both the confirmed Plan and the First Plan, which he sought to revive at the U.S. District Court level, by now proposing a *fifth* Plan for this Court to consider and approve.**

The First Plan proposed total funding of \$7,200.00 over a 36-month term to be paid in \$200.00 per month installments (JA55-56, ¶2). The Fourth Plan that has been confirmed, proposed total funding of \$20,550.00 over a 36-month term to be paid in four (4) \$200.00 per month installments then one (1) \$400.00 per month installment then one (1) \$600.00 per month installment and then thirty (30) \$625.00 per month installments (JA134, ¶2).

Pursuant to 11 U.S.C. §1329, a Plan may be modified, after confirmation but before the completion of the payments, upon the request of the debtor, trustee, or unsecured claimant to increase or reduce the amount of the payment, or extend or reduce the Plan term provided the modified Plan satisfies the requirements under 11 U.S.C. §1322(a), 11 U.S.C. §1322(b), 11 U.S.C. §1323(c), 11 U.S.C. §1325(a) and has been duly noticed pursuant to F.R. Bankr. P. 2002.

For the first time, rather than in support of the First Plan as argued in U.S. District Court, Appellant now proposes a *fifth* Plan on appeal: “the Appellant is not asking this Court to undo what has been done to date...not asking the creditors to disgorge the payments they have received to date[, rather]...**asking that moving forward the creditors no longer receive \$625 per month, but rather \$200 per month.**” (Brief, Dkt. No. 20 at 14, emphasis added.) (*See Leclair v. Tavenner*, Case Nos. 23-1131, 23-1133, 23-1134, 15 (4<sup>th</sup> Cir. February 7, 2025) (citing 68<sup>th</sup> *St. Site Work Grp. V. Alban Tractor Co.*, 105 F.4<sup>th</sup> 222, 230 n.7 (4<sup>th</sup> Cir. 2024); *United States v. Boyd*, 5 F.4<sup>th</sup> 550, 556 (4<sup>th</sup> Cir. 2021); *Kelly v. McNamee, Hosea, Jernigan, Green & Lynch, P.A.*, Case Nos. 22-1378, 22-1379 (4<sup>th</sup> Cir. August 28, 2023) (limiting review to issues preserved in the brief).)

Appellant’s **moving forward** proposal, *i.e.*, a modification of the confirmed Plan, is raised for the first time in his brief and clearly does not satisfy the requirements of 11 U.S.C. §1329 or F.R. Bankr. P. 2002.

### **III. Appellant’s First Plan was properly denied confirmation and not timely appealed.**

#### **a. Appellant’s appeal of the September 15, 2023, Order denying confirmation of the First Plan was untimely.**

At the root of Appellant’s argument and issue on appeal is the Bankruptcy Court’s denial of confirmation of Debtor’s First Plan, filed on May 29, 2023 (JA55-66), and denied confirmation on September 14, 2023, following a contested

confirmation hearing at which Debtor gave argument and testimony (JA91-154). First Plan was denied confirmation with leave to amend (JA140 at 14) “because the plan does not meet the liquidation test based on the information that that debtor has provided...the transfers need to be account for in a liquidation test”. (JA140 at 8-15.)

Debtor had fourteen (14) days from September 15, 2023, within which to seek an appeal of the Order denying confirmation: *i.e.*, an interlocutory appeal with leave of the court would need to have been filed by September 29, 2023. (*See* F.R. Bankr. P. 8002; F.R. Bankr. P. 8003; F.R. Bankr. P. 8004.)

Rather than seek an appeal of the *first* Order denying confirmation, Debtor filed Second Plan on September 18, 2023 (JA155-66), increasing the Plan funding from \$7,200.00 to \$13,600.00. Trustee objected (JA167-69); and Debtor objected, repudiating the Second Plan (JA174-76). The Bankruptcy Court denied confirmation (JA178 at4) of the Second Plan.

Debtor then filed Third Plan on November 9, 2023 (JA180-93) increasing the Plan funding—from the First Plan’s sum of \$7,200.00 to \$19,800.00. Trustee and Debtor objected to the Third Plan (JA194-96, 210-22). The Bankruptcy Court in sustaining the objections and denying confirmation instructed the Debtor to “file a plan that [he] wish[es] to prosecute” (JA229 at 11-12) and denying confirmation of Third Plan.

Debtor then filed Fourth Plan on December 16, 2023 (JA234-45) again increasing the Plan funding—from the First Plan’s sum of \$7,200.00 to \$20,550.00. Debtor objected asking that the objection be overruled and this Plan be confirmed (JA259). An Order Confirming Chapter 13 Plan (JA260-62) was entered on February 6, 2024.

**b. The Bankruptcy Court did not err in denying confirmation of Debtor’s First Plan.**

This Court ought not ignore the inaccuracies and lack of diligence with which a debtor completed sworn documents filed with the Bankruptcy Court. Appellant acknowledged that his schedules, filed with the Bankruptcy Court, as being true and correct and his testimony at the scheduled Meeting of Creditors were in fact not true, correct, or accurate. (JA128 at 19-24.) After receiving Trustee’s objection to confirmation, he admits to then only sought to review his schedules’ accuracy. (JA128-31.)

Pursuant to 11 U.S.C. §521(a)(1) a debtor has a duty—honest and full disclosure—to file with the Bankruptcy Court a list of creditors, a schedule of assets and liabilities, and a state of financial affairs that provides a trustee and creditors an opportunity to make an accurate and complete assessment of a debtor’s financial situation, and in exchange of the full disclosure a debtor seeks a “fresh start” by discharging, as in the instant case, an overwhelming amount of

debt<sup>6</sup>. (*Dubois v. Atlas Acquisitions LLC (in re Dubois)*, 834 F.3d 522, 526 (4<sup>th</sup> Cir. 2016) (citing *Marrama v. Citizens Bank*, 549 U.S. 365, 367, 127 S. Ct. 1105, 166 L.Ed.2d 956 (2007) (quoting *Grogan v. Garner*, 498 U.S. 279, 286, 111 S. Ct. 654, 112 L.Ed.2d 755 (1991)); see *In re Vaughn*, 536 B.R. 670, 679 (Bankr. D.S.C. 2015); 11 U.S.C. §501(a)(1)); see also *In re Holsenback*, Case No. 20-12242-BFK (Bankr. E.D. Va. May 17, 2021) (“Debtors are under an obligation to fill out their Schedules and other forms filed with the Court accurately to the best of their abilities” and holding that the case be dismissed with prejudice to refile for bankruptcy relief).

In *In re Holsenback* the debtor “testified under oath that her Schedules were accurate and complete to the best of her knowledge,” at her meeting of creditors (*Id.* at 5.) The Appellant, under oath, testified that his schedules and statements were “true and correct” (JA120 at 19-25, and JA121 at 1-10). Appellant also signed his statement of financial affairs under oath that was of record at the meeting of creditors (JA123 at 2-11) but he admits to have filed inaccurate schedules and only sought to review their accuracy after receiving Trustee’s Objection to Confirmation of the First Plan (JA128-31).

---

<sup>6</sup> Appellant scheduled nonpriority unsecured claims in the sum of \$333,168.00 (JA12 at ¶3b).

Appellant's testimony and unconcerned attitude to the accuracy, importance and dignity of accurate schedules is apparent. Considering all the inaccuracies, when denying confirmation of the First Plan the Bankruptcy Court made clear that it had concerns that the case was not filed in good faith (JA140 at 17-19). More so, at the denial of confirmation of Debtor's Third Plan, the Bankruptcy Court advised the Appellant to file a Plan that he wanted to prosecute (JA229 at 11-12).

### CONCLUSION

Trustee respectfully asks this Court to affirm the U.S. District Court's December 11, 2024 Memorandum Opinion and Order affirming the Bankruptcy Court's confirmation Debtor's Chapter 13 Plan (JA263-67).

DATE: April 25, 2025

/s/ Marcelo R. Michel  
Marcelo R. Michel  
Office of the Chapter 13 Trustee  
1414 Prince Street, Suite 201  
Alexandria, VA 22314  
Phone: (703) 836-2226  
Fax: (703) 836-8120  
VSB# 47818  
E-mail: mmichel@chapter13alexva.com

*Counsel for Appellee*

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT**

1. Appellant's Brief complies with the type-volume limitations of F.R. App. P. 28.1(e)(2) or 32(a)(7)(B) because this brief contains 3,373 words or less, excluding the parts of the brief exempted by F.R. App. P. 32(a)(7)(B)(iii).
2. This brief complies with the typeface requirements of F.R. App. P. 32(a)(5) and the type style requirements of F.R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using MS Word in 14-point Times New Roman font.

DATE: April 25, 2025

/s/ Marcelo R. Michel  
Marcelo R. Michel  
Office of the Chapter 13 Trustee  
1414 Prince Street, Suite 201  
Alexandria, VA 22314  
Phone: (703) 836-2226  
Fax: (703) 836-8120  
VSB# 47818  
E-mail: mmichel@chapter13alexva.com

**CERTIFICATE OF SERVICE**

I hereby certify that on April 25, 2025, I have served via ECF authorized users or mailed a true copy of the foregoing Response Brief of the Appellee to the following party:

Rober S. Brandt  
Counsel for Appellant  
Law Office of Robert S. Brandt  
600 Cameron Street  
Alexandria, VA 22314

Richard P. Cook  
Counsel for  
*Amici Curiae* of NACBA & NCBRC  
Richard P. Cook, PLLC  
7036 Wrightsville Ave., Ste. 101  
Wilmington, NC 28403

/s/ Marcelo R. Michel

Marcelo R. Michel  
Office of the Chapter 13 Trustee  
1414 Prince Street, Suite 201  
Alexandria, VA 22314  
Phone: (703) 836-2226  
Fax: (703) 836-8120  
VSB# 47818  
E-mail: mmichel@chapter13alexva.com