Honorable Natalie M. Cox
United States Bankruptcy Judge

Entered on Docket
May 10, 2023

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

* * * * * *

In re:	)	Case No.: 22-10454-nmc
	)	Chapter 11
LUKE CESARETTI,	)	
	)	Hearing Date: February 24, 2023
Debtor.	)	Hearing Time: 9:30 a.m.
	)	

ORDER DENYING CONFIRMATION OF LUKE CESARETTI'S SECOND AMENDED PLAN OF REORGANIZATION (ECF NO. 60)[1]

On February 24, 2023, the Court presided over an evidentiary hearing regarding confirmation of Luke Cesaretti's ("Debtor") Second Amended Plan of Reorganization ("Plan"). (ECF No. 60).[2] Appearances were entered by Maurice VerStandig, Esq., on behalf of Debtor, Edward M. Burr, Esq., as the Subchapter V Trustee, and Patrick A. Rose, Esq., on behalf of the Internal Revenue Service ("IRS"). The Court heard testimony from Lydia Wyatt and Debtor. The Court also admitted Debtor's exhibits 1-3. Pursuant to the parties' request, and as otherwise allowed under FED. R. EVID. 201, the Court also has taken judicial notice of all pleadings on the docket in the above-captioned bankruptcy case. After argument, the Court took the matter under advisement. The court enters the following findings of fact and conclusions of law pursuant to FED R. CIV. P. 52, made applicable herein pursuant to FED. R. BANKR. P. 7052 and 9014(c). Any

[1] All references to "ECF No." are to the documents filed in the above-captioned bankruptcy case.

[2] An official transcript of the February 24, 2023, confirmation hearing is available on the Court's docket. (ECF No. 71, referred to herein as "Hrg. Tr.").

finding of fact that should be a conclusion of law is deemed a conclusion of law. Any conclusion of law that should be a finding of fact is deemed a finding of fact.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. On February 9, 2022, Debtor filed a voluntary subchapter V petition with this Court, as well as his schedules of assets and liabilities ("Schedule(s)") and statement of financial affairs ("SOFA"). (ECF No. 1).

2. In Schedule A/B, Debtor listed an aggregate of $139,938.70 in assets, including (i) a 2013 Porsche Panamera valued at $42,000, (ii) a 2017 Porsche Macan valued at $41,000, (iii) a 2008 Porsche Cayenne valued at $1 that Debtor claims he gifted to his nephew, (iv) miscellaneous household goods and furnishings valued at $1,000, (v) electronics valued at $300, (vi) 3 guitars and an amplifier valued at $200, (vii) firearms valued at $250, (viii) clothes valued at $500, (ix) jewelry valued at $400, (x) 8 rescue cats valued at $0, (xi) $300 in cash, (xii) $20,792.31 in checking accounts, (xiii) non-publicly traded stocks and interests in unincorporated businesses valued at $0, (xiv) $24,595.39 in retirement or pension accounts, and (xv) $8,600 in security deposits and prepayments.

3. In Schedule D, Debtor listed, in pertinent part, a $55,946.09 undersecured claim regarding the 2017 Porsche Macan.

4. In Schedule E/F, Debtor listed an aggregate of $1,230,836.57 in claims, of which the IRS was listed as holding priority and non-priority claims in the aggregate amount of $868,840.74.

5. In Schedule G, Debtor listed a residential lease with C L Property Investment LLC and an executory contract with Black Knight Sports and Entertainment LL regarding season tickets for the Vegas Golden Knights hockey team.

6. In Schedule I, Debtor listed $20,568.38 in net monthly income for himself and $0 for his wife, Lydia Cesaretti. In response to Question 8e of his Schedule I, Debtor listed $0 in Social Security income.

7. In Schedule J, Debtor listed $22,104.07 in monthly expenses, resulting in negative net monthly income of $1,535.69.

8. In response to Question 4 of his SOFA (Did you have any income from employment or from operating a business during this year or the two previous calendar years?), Debtor listed $415,344 for calendar year 2020, $417,365.92 for calendar year 2021, and $37,775.62 for the period from January 1, 2022, through February 9, 2022. See Amended Plan at 1:17-18 (Debtor "makes approximately $417,000.00 per annum….").

9. On March 21, 2022, Debtor filed his monthly operating report for the month ending February 2022 ("February MOR"). (ECF No. 18). In response to Question 11 of his February MOR (Have you sold any assets other than inventory?), Debtor checked the box for "Yes" and provided the following explanation:

> Dr. Cesaretti is contractually bound to pay for season tickets to the Vegas Golden Knights. In an effort to offset this monthly expense, as he is contractually permitted to do, Dr. Cesaretti a portion of these tickets to a third-party for $1,500 [sic].

In response to Question 15 of his February MOR (Have you borrowed money from anyone or has anyone made any payments on your behalf?), Debtor checked the box for "Yes" and provided the following explanation:

> While Dr. Cesaretti was attempting to open his DIP Account, he went through a post-petition transition period wherein he still used two credit cards: an American Express card and a Discover card. Dr. Cesaretti now understands such transactions are impermissible and these balances will properly be accounted for and paid out of the Debtor's DIP Account. *See infra* Exhibit E.

Exhibit E to the February MOR reflects, in pertinent part, the following charges for the period from February 10, 2022, through February 27, 2022: (i) $3,531.06 for Vegas Golden Knights season tickets, (ii) $1,487.52 for restaurant meals, (iii) $313.64 for wine/liquor stores, (iv) $659.38 for Chewy.com, (v) $262.08 in refreshments at a hockey game and concert, and (vi) $120 in valet services. In response to Question 17 of his February MOR ("Have you paid any bills you owed before you filed bankruptcy?), Debtor checked the box for "Yes" and provided the following explanation:

Dr. Cesaretti paid the following January utility bills and credit card statements post-petition:

Payment Date	Pre-Petition Debt	Amount
2/10/2022	January American Express Credit Card Statement	$10,982.44
2/23/2022	Las Vegas Valley water bill	$73.26
2/23/2022	January Sears Credit Card Statement	$100.00
2/23/2022	Southwest Gas bill	$135.59

Debtor never sought Court approval for, and the Court never approved, the sale of tickets or payments of pre-petition indebtedness discussed in the February MOR.

10. On March 22, 2022, Debtor filed his Section[3] 1188(c) Status Report, pursuant to which, he stated, in pertinent part, the following:

> Regardless of the dischargeability of tax debts, it is clear Dr. Cesaretti will need to moderate his lifestyle to conform to his income, and will need to endeavor to free up funds for payment to creditors as part of that process. The mere act of entering bankruptcy has helped the Debtor become more acutely focused on this need, and the preparation of the initial monthly operating report herein has, too, afforded occasion to place this reality in sharper relief.
>
> Dr. Cesaretti is in the throes of assessing where his expenditures may be cut. This is an ongoing and amorphous process, but one nonetheless deserving of attention as it will directly inform the availability of funds to be paid through a plan.
>
> …
>
> Since the Debtor is a natural person, many of the traditional reorganizational tools are simply not available – he cannot spin off an unprofitable division, reduce payroll obligations, or convert debentures into equity. Yet various equally common belt-tightening options are manifest, with his personal expenses being primed for careful examination and his forward-looking income being ripe for rigorous budgeting.

(ECF No. 19).

11. On May 9, 2022, Debtor filed his initial subchapter V plan. (ECF No. 22).

[3] All references to "Section" are to 11 U.S.C. § 101, et. seq. unless otherwise noted.

12. On May 9, 2022, Debtor filed his monthly operating report for the month ending March 2022 ("March MOR"). (ECF No. 23). The March MOR reflects $39,194.01 in total cash receipts and, contrary to Debtor's alleged "belt-tightening" and "rigorous budgeting" proclamations, $39,725.67 in total cash disbursements, resulting in a negative net cash flow of $531.66. Debtor's "Personal Interest Checking" statement for the period from March 3, 2022, through April 3, 2022, attached to the March MOR reflects different figures, namely "Total additions" of $43,394.01 and "Total subtractions" of $29,384.61. Debtor has not explained this discrepancy.

13. On July 18, 2022, Debtor filed his monthly operating report for the month ending April 2022 ("April MOR"). (ECF No. 25). The April MOR reflects $23,979.87 in total cash receipts and, contrary to Debtor's alleged "belt-tightening" and "rigorous budgeting" proclamations, $23,416.22 in total cash disbursements, resulting in a net cash flow of $563.65. In response to Question 17 of his April MOR ("Have you paid any bills you owed before you filed bankruptcy?), Debtor checked the box for "Yes" and provided the following explanation:

> On April 11, 2022, I paid $4,100.58 toward my pre-petition debt incurred via an American Express credit card for which I am an authorized user along with my spouse. On April 13, 2022, I paid $1,000.00 toward my pre-petition debt incurred via a Discover credit card for which I am an authorized user along with my spouse. On April 29, 2022, I paid $1,000.00 toward my pre-petition debt incurred via a Discover credit card for which I am an authorized user along with my spouse.

Debtor never sought Court approval for, and the Court never approved, the payment of pre-petition indebtedness discussed in the April MOR.

14. On July 18, 2022, Debtor filed his monthly operating report for the month ending May 2022 ("May MOR"). (ECF No. 26). The May MOR reflects $30,606.70 in total cash receipts and, contrary to Debtor's alleged "belt-tightening" and "rigorous budgeting" proclamations, $28,199.67 in total cash disbursements, resulting in a net cash flow of $2,407.03. In addition to the thousands of dollars spent on, among other things, restaurants, Chewy.com purchases, entertainment, and at wine/liquor stores, Debtor's "Personal Interest Checking" account statement

attached to the May MOR reflects $4,411.97 spent on the Vegas Golden Knights (presumably season tickets) on May 26, 2022. In response to Question 17 of his May MOR ("Have you paid any bills you owed before you filed bankruptcy?), Debtor checked the box for "Yes" and provided the following explanation:

> On May 23, 2022, I paid $5,000.00 to the Internal Revenue Service as part of my pre-petition debt for the 2021 tax year.

Debtor never sought Court approval for, and the Court never approved, the payment of pre-petition indebtedness discussed in the May MOR.

15. On July 18, 2022, Debtor filed his monthly operating report for the month ending June 2022 ("June MOR"). (ECF No. 27). The June MOR reflects $23,404.78 in total cash receipts and, contrary to Debtor's alleged "belt-tightening" and "rigorous budgeting" proclamations, $29,405.99 in total cash disbursements, resulting in a negative net cash flow of $6,001.21. In addition to the thousands of dollars spent on, among other things, restaurants, Chewy.com purchases, entertainment, and at wine/liquor stores, Debtor's "Personal Interest Checking" account statement attached to the June MOR reflects $4,411.97 spent on the Vegas Golden Knights (presumably season tickets) on June 27, 2022. In response to Question 17 of his June MOR ("Have you paid any bills you owed before you filed bankruptcy?), Debtor checked the box for "Yes" and provided the following explanation:

> On June 13, 2022, I paid $6,083.00 to the Internal Revenue Service as part of my pre-petition debt for the 2021 tax year. On June 29, 2022, I paid $63.33 to the Internal Revenue Service as part of my pre-petition debt for the 2021 tax year.

Debtor never sought Court approval for, and the Court never approved, the payment of pre-petition indebtedness discussed in the June MOR.

16. On July 25, 2022, Debtor filed his first amended subchapter V plan. (ECF No. 28).

17. On October 9, 2022, Debtor filed his monthly operating report for the month ending July 2022 ("July MOR"). (ECF No. 35). The July MOR reflects $33,434.63 in total cash receipts and, contrary to Debtor's alleged "belt-tightening" and "rigorous budgeting" proclamations,

$22,546.99 in total cash disbursements, resulting in a net cash flow of $10,887.64. Debtor's "Personal Interest Checking" statement for the period from July 3, 2022, through August 3, 2022, attached to the July MOR reflects different figures, namely "Total additions" of $33,436.86 and "Total subtractions" of $32,683.99. Debtor has not explained this discrepancy. In addition to the thousands of dollars spent on, among other things, restaurants, Chewy.com purchases, entertainment, and at wine/liquor stores, Debtor's "Personal Interest Checking" account reflects $4,411.97 spent on the Vegas Golden Knights (presumably season tickets) on July 22, 2022.

18. On October 9, 2022, Debtor filed his monthly operating report for the month ending August 2022 ("August MOR"). (ECF No. 36). The August MOR reflects $30,935.07 in total cash receipts and, contrary to Debtor's alleged "belt-tightening" and "rigorous budgeting" proclamations, $33,482.53 in total cash disbursements, resulting in a negative net cash flow of $2,547.46. Debtor's "Personal Interest Checking" statement for the period from August 3, 2022, through September 3, 2022, attached to the August MOR reflects different figures, namely "Total additions" of $30,935.24 and "Total subtractions" of $23,837.84. Debtor has not explained this discrepancy. In addition to the thousands of dollars spent on, among other things, restaurants, Chewy.com purchases, entertainment, and at wine/liquor stores, Debtor's "Personal Interest Checking" account reflects $4,411.97 spent on the Vegas Golden Knights (presumably season tickets) on August 22, 2022.

19. On October 9, 2022, Debtor filed his monthly operating report for the month ending September 2022[4] ("September MOR"). (ECF No. 37). The September MOR reflects $38,345.22 in total cash receipts and, contrary to Debtor's alleged "belt-tightening" and "rigorous budgeting" proclamations, $28,172.36 in total cash disbursements, resulting in a net cash flow of $10,172.86. Debtor's "Personal Interest Checking" statement for the period from September 3, 2022, through October 3, 2022, attached to the September MOR reflects different figures, namely "Total

[4] The September MOR mistakenly states it is for the month of "August 2022." However, the August MOR is available at ECF No. 36, and it is clear, upon review, that ECF No. 37 relates to September.

additions" of $38,346.21 and "Total subtractions" of $29,670.13. Debtor has not explained this discrepancy. In addition to the thousands of dollars spent on, among other things, restaurants, Chewy.com purchases, entertainment, and at wine/liquor stores, Debtor's "Personal Interest Checking" account reflects $4,064.06 spent on September 6, 2022, at Balmain Las Vegas (which appears to be a designer clothing retailer with a location at the Wynn Casino)[5] and $2,340.68 spent on September 8, 2022, at German Motors (which appears to be an auto repair shop specializing in servicing German vehicles, such as Debtor's Porsches).[6]

20. On October 18, 2022, Debtor filed his second amended subchapter V plan. (ECF No. 38).

21. On December 12, 2022, Debtor filed his monthly operating report for the month ending October 2022 ("October MOR"). (ECF No. 48). The October MOR reflects $32,924.96 in total cash receipts and, contrary to Debtor's alleged "belt-tightening" and "rigorous budgeting" proclamations, $37,946.82 in total cash disbursements, resulting in a negative net cash flow of $5,021.86. In addition to the thousands of dollars spent on, among other things, restaurants, Chewy.com purchases, entertainment, and at wine/liquor stores, Debtor's "Personal Interest Checking" account statement attached to the October MOR reflects $3,500 spent on October 11, 2022, to Volunteers in Medicine (which appears to be the non-profit entity that Debtor's wife testified she works for on an uncompensated basis)[7] and $1,965.92 spent on October 17, 2022, at Vitra Eyewear Wynn (which appears to be a designer eyewear retailer).

22. On December 12, 2022, Debtor filed his monthly operating report for the month ending November 2022 ("November MOR"). (ECF No. 49). The November MOR reflects $26,024.87 in total cash receipts and, contrary to Debtor's alleged "belt-tightening" and "rigorous budgeting" proclamations, $15,163.84 in total cash disbursements, resulting in a net cash flow of $10,861.03.

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[5] See https://us.balmain.com/en.

[6] See https://germanmotorslv.com/.

[7] See https://www.vmsn.org/.

23. On February 9, 2023, Debtor filed his third amended subchapter V plan ("Amended Plan"). (ECF No. 60). Under the "Description and History of the Debtor's Business" sub-heading of the Amended Plan, Debtor stated the following:

> Dr. Cesaretti is a natural person and, as such, there is no traditional business history to be shared herein. By way of relevant background, however, Dr. Cesaretti has practiced medicine in the Las Vegas area since 1991 and continues to do so presently. He is married, makes approximately $417,000.00 per annum, and finds himself in bankruptcy because of a large extant obligation to the Internal Revenue Service.
>
> The majority of Dr. Cesaretti's tax debt is from 2013 and 2015. During those years, Dr. Cesaretti jointly owned a medical practice that, for various reasons, saw its ownership required to reimburse a staggering sum of money to a government agency. This obligation left Dr. Cesaretti without the funds requisite to pay his own taxes and, with the passage of time, penalties and interest compounded an already-straining situation.
>
> The transparent objectives of this Plan are to permit Dr. Cesaretti to (i) pay those various administrative obligations incurred in this case; and (ii) retire the whole of his obligations to the IRS, through a discharge of certain debt and the repayment of certain nondischargeable priority debt. This is not a case where general unsecured creditors will receive distributions but, as noted *infra*, this is also a Plan to pays out [sic] significantly more money than would be available for distribution in a Chapter 7 context, and this is a Plan that advances the interests of the United States.

(Amended Plan at 1:15-2:2).

24. The Amended Plan contains five classes. Class 1, comprised of the secured claim of Porsche Financial Services, is unimpaired and proposed to be paid pursuant to the terms of the security agreement with Debtor. Class 2, comprised of the IRS's allowed secured claim of $96,890.70, is impaired but proposed to be paid in full. Class 3, comprised of the IRS's allowed priority claim of $99,330.47, is impaired but proposed to be paid in full. Class 4, comprised of general unsecured creditors, is impaired, proposed to receive $0.00, and is deemed to reject under Section 1126(g). Finally, the Class 5 equity class comprised of Debtor is deemed unimpaired.

25. In Article 6 of his Amended Plan, Debtor proposes to assume both the executory contract for hockey season tickets and the residential lease identified in his Schedule G. With respect to his executory contract for hockey season tickets, the Amended Plan states the following:

> Item 2.1 on Schedule G: Contract with Black Knight Sports and Entertainment LLC. The Debtor has paid nearly the whole of his obligation under this contract and is now due to receive the benefit thereof, part of which he plans to lawfully monetize on the secondary market as a means of raising secondary revenue.

(Amended Plan at 5:16-18). Debtor's financial projections, attached as Exhibit 2 to the Amended Plan, do not contain a line entry showing this alleged proposed monetization of Debtor's hockey season tickets.

26. In Article 7 (Means for Implementation of the Plan) of his Amended Plan, Debtor states the following:

> The Debtor currently earns approximately $417,000.00 per annum through the full time practice of medicine. He also receives approximately $60,828.00 per annum in Social Security benefits. He will apply his disposable net income and Social Security proceeds, after consideration of his budgeted expenses, toward payments under this Plan.
>
> The Debtor has created a payment regime under the Plan whereby he will gradually make larger payments over a 60 month period. This is designed to allow the Debtor time to adjust to a more modest lifestyle,[8] and to permit the Debtor occasion to retain a modest sum of money as and for a "rainy day" fund should he encounter an uninsured calamity, encounter an increase in his rent, see ever-fluctuating gas prices go ever higher, need to make a payment on a new vehicle, or otherwise find himself in need of funds.
>
> Should the Debtor's budget prove infeasible, he is prepared to make arrangements to work sufficient overtime to cover the added obligations during the life of the plan. While the Debtor is of retirement age, he is committed to continuing to work – and, if need-be, doing so on an overtime basis – so as to fund this Plan.

[8] Based on Debtor's financial projections, his monthly expenses aggregate to more than $20,000. See Conclusion of Law 54, *infra*.

> The Debtor hopes to have more money available to make payments and, if he does, will make payments early under this Plan. He is incentivized to do so because the making of early payments will allow him to reammortize his obligations to the Internal Revenue Service, with less money ultimately being paid on account of less interest ultimately accruing.

(Amended Plan at 5:20-6:7).

27. Pursuant to his Amended Ballot Summary, Debtor represents that Classes 2 and 3 rejected the Amended Plan. (ECF No. 50).

28. On February 14, 2023, the IRS filed an objection ("Objection") to confirmation of the Amended Plan. (ECF No. 66).

29. On February 24, 2023, Debtor filed his monthly operating report for the month ending December 2022 ("December MOR"). (ECF No. 68). The December MOR reflects $30,217.22 in total cash receipts and, contrary to Debtor's alleged "belt-tightening" and "rigorous budgeting" proclamations, $32,139.89 in total cash disbursements, resulting in a negative net cash flow of $1,922.67. In addition to the thousands of dollars spent on, among other things, restaurants, Chewy.com purchases, entertainment, and at wine/liquor stores, Debtor's "Personal Interest Checking" account statement attached to the December MOR reflects $400.44 spent for Sirius/XM on December 8, 2022, $3,411.17 spent at German Motors on December 12, 2022, $1,102.17 spent at Balmain Las Vegas on December 27, 2022, $1,000 spent at Frank's European Service (which appears to be another auto mechanic)[9] on December 30, 2022, and another $327.60 spent for Sirius/XM on January 3, 2023.

30. On February 24, 2023, Debtor filed his monthly operating report for the month ending January 2023 ("January MOR"). (ECF No. 69). The January MOR reflects $21,998.55 in total cash receipts and, contrary to Debtor's alleged "belt-tightening" and "rigorous budgeting" proclamations, $41,070.92 in total cash disbursements, resulting in a negative net cash flow of $19,072.37. In addition to the thousands of dollars spent on, among other things, restaurants, Chewy.com purchases, entertainment, and at wine/liquor stores, Debtor's "Personal Interest

[9] See https://www.frankseuropeanservice.com/.

Checking" account statement attached to the January MOR reflects $2,473.90 spent at Frank's European on January 31, 2023, and $262.08 spent on Sirius-XM on February 2, 2023.

31. On February 24, 2023, the Court held an evidentiary hearing regarding confirmation of the Amended Plan. At the confirmation hearing, Debtor's counsel stated that he would file a supplement addressing the payment of gap interest on the IRS's priority claim. Debtor filed that supplement ("Supplement") on February 26, 2023, and the IRS filed its response ("Supplemental Response") on March 1, 2023. (ECF Nos. 70, 73).

CONCLUSIONS OF LAW

1. Section 1191(a) states:

> The court shall confirm a plan under this subchapter only if all of the requirements of section 1129(a), other than paragraph (15) of that section, of this title are met.

11 U.S.C. § 1191(a).

2. Debtor carries the burden, by a preponderance of the evidence, to show that the Amended Plan complies with applicable statutory requirements. In re Sagewood Manor Assocs. Ltd. P'ship, 223 B.R. 756, 761 (Bankr. D. Nev. 1998).

3. Even in the absence of an opposition, the Court has an independent obligation to determine that the Amended Plan complies with applicable statutory requirements. Seaport Automotive Warehouse, Inc. v. Rohnert Park Auto Parts, Inc. (In re Rohnert Park Auto Parts, Inc.), 113 B.R. 610, 616-17 (B.A.P. 9th Cir. 1990); In re Las Vegas Monorail Co., 462 B.R. 795, 798 (Bankr. D. Nev. 2011) citing 7 COLLIER ON BANKRUPTCY ¶ 1129.05[1][e] (Henry Sommer & Alan Resnick, eds., 16th ed. 2011). In furtherance of its obligations, the Court finds and concludes as follows:

I. Section 1129(a)(1).

4. Section 1129(a)(1) states that "[t]he court shall confirm a plan only if … (1) The plan complies with the applicable provisions of this title." 11 U.S.C. § 1129(a)(1).

5. Based on the Court's independent review of the Amended Plan, and the absence of any opposition under Section 1129(a)(1), the Court finds and concludes that Debtor has sustained his burden under Section 1129(a)(1).

II. Section 1129(a)(2).

6. Section 1129(a)(2) states that "[t]he court shall confirm a plan only if … (2) The proponent of the plan complies with the applicable provisions of this title." 11 U.S.C. § 1129(a)(2).

7. Although Section 1129(a)(2)'s primary purpose is to assure a debtor's compliance with the disclosure and solicitation requirements under Sections 1125 and 1126, other courts have denied confirmation under Section 1129(a)(2) where debtors have failed to comply with other provisions of the Bankruptcy Code. See Pineda Grantor Trust II v. Dunlap Oil Co., Inc. (In re Dunlap Oil Co., Inc.), 2014 WL 6883069, at *11-12 (B.A.P. 9th Cir. Dec. 5, 2014) (citing cases). Ultimately, the court retains "broad discretion to determine whether a particular violation … is so serious as to require denial of confirmation under § 1129(a)(2)." Id. at *12.

8. The IRS did not raise Section 1129(a)(2) in its Objection. However, based on the Court's independent review, the Court finds and concludes that Debtor has failed to sustain his burden under Section 1129(a)(2). As the Findings of Fact reflect, Debtor, without authority from the Court, violated Section 363 of the Bankruptcy Code.

9. For these reasons, and those subsequently discussed, the Court finds and concludes that Debtor has not sustained his burden under Section 1129(a)(2).

III. Section 1129(a)(3).

10. Section 1129(a)(3) states that "[t]he court shall confirm a plan only if … (3) The plan has been proposed in good faith and not by any means forbidden by law." 11 U.S.C. § 1129(a)(3).

11. As succinctly summarized by the Bankruptcy Appellate Panel of the Ninth Circuit,

> The "good faith" requirement of section 1129(a)(3) is determined on a case-by-case basis taking into account the totality of the circumstances of the case, with a view to whether the plan will fairly achieve a result consistent with the objectives and purposes of the Bankruptcy Code. *Platinum Capital, Inc. v. Sylmar Plaza, L.P. (In re Sylmar Plaza, L.P.)*, 314 F.3d 1070, 1074–75 (9th Cir.2002); *see*

> *also Sec. Farms v. Gen. Teamsters, Warehousemen & Helpers Union, Local 890 (In re Gen. Teamsters, Warehousemen & Helpers Union, Local 890)*, 265 F.3d 869, 877 (9th Cir.2001). The bankruptcy judge is in the best position to assess the good faith of the parties' proposals. *Pac. First Bank ex rel. RT Capital Corp. v. Boulders on the River (In re Boulders on the River)*, 164 B.R. 99, 104 (9th Cir.BAP1994); *see also In re Madison Hotel Assocs.*, 749 F.2d 410, 425 (7th Cir.1984). Part of the good faith analysis is that the plan must deal with the creditors in a fundamentally fair manner. *In re Marshall*, 298 B.R. 670, 676 (Bankr.C.D.Cal.2003); *see, e.g., Jorgensen v. Fed. Land Bank (In re Jorgensen)*, 66 B.R. 104, 108–09 (9th Cir.BAP1986). Essentially, the good faith analysis involves a sense that the debtor is trying to maximize the return to the creditors within the confines of the rules. *See Gen. Teamsters Warehousemen & Helpers Union, Local 890*, 265 F.3d at 877.

Rand v. Porsche Fin. Servs., Inc. (In re Rand), 2010 WL 6259960, at *8 (B.A.P. 9th Cir. Dec. 7, 2010).

12. As the Findings of Fact evidence, Debtor lives an exorbitant and lavish lifestyle and, as subsequently discussed, is not dedicating all of his disposable income to fund payments under his Amended Plan. Furthermore, Debtor has, for reasons unknown to the Court, single-handedly decided, without prior notice to parties in interest or approval from this Court, to pay thousands of dollars in unsecured pre-petition indebtedness to credit card companies which presumably assist Debtor and his wife in paying for their lavish lifestyle. In a case such as this, where Debtor earns approximately $417,000 annually, has exorbitant monthly expenses, and is proposing to pay nothing to unsecured creditors, the Court finds applicable the following words of wisdom from U.S. Bankruptcy Judge David A. Scholl:

> We find that a debtor's failure to make anything close to the best offer of payment to the creditors violates … 11 U.S.C. §[] 1129(a)(3)… It is not an act of "good faith" to propose a plan in which the Debtors retain one hundred (100%) of the expenditure necessary to support a lavish lifestyle, and, consequently, require the creditors to either wait 30 years for payment or accept a guaranteed payment of fifteen (15%) percent—or twenty-five (25%) if they are lucky.

In re Harman, 141 B.R. 878, 889 (Bankr. E.D. Pa. 1992).

13. For these reasons, and those subsequently discussed, the Court finds and concludes that Debtor has not sustained his burden under Section 1129(a)(3).

IV. Section 1129(a)(4).

14. Section 1129(a)(4) states that a court shall confirm a plan only if:

> Any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable.

11 U.S.C. § 1129(a)(4).

15. Based on the Court's independent review of the Amended Plan, and the absence of any opposition under Section 1129(a)(4), the Court finds and concludes that Debtor has sustained his burden under Section 1129(a)(4).

V. Section 1129(a)(5).

16. Section 1129(a)(5) states that a court shall confirm a plan only if:

> (5)
>
> (A)
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> (i) The proponent of the plan has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint plan with the debtor, or a successor to the debtor under the plan; and
>
> (ii) the appointment to, or continuance in, such office of such individual, is consistent with the interests of creditors and equity security holders and with public policy; and
>
> (B) the proponent of the plan has disclosed the identity of any insider that will be employed or retained by the reorganized debtor, and the nature of any compensation for such insider.

11 U.S.C. § 1129(a)(5).

17. Based on the Court's independent review of the Amended Plan, and the absence of any opposition under Section 1129(a)(5), the Court finds and concludes that Section 1129(a)(5) is inapplicable.

VI. Section 1129(a)(6).

18. Section 1129(a)(6) states that a court shall confirm a plan only if:

> Any governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval.

11 U.S.C. § 1129(a)(6).

19. Based on the Court's independent review of the Amended Plan, and the absence of any opposition under Section 1129(a)(6), the Court finds and concludes that Section 1129(a)(6) is inapplicable.

VII. Section 1129(a)(7).

20. Section 1129(a)(7) states, in pertinent part:

> The court shall confirm a plan only if—
>
> …
>
> (7) With respect to each impaired class of claims or interests—
>
> (A) each holder of a claim or interest of such class—
>
> …
>
> (ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date

11 U.S.C. § 1129(a)(7).

21. Based on the Court's independent review of the Amended Plan, and the absence of any opposition under Section 1129(a)(7), the Court finds and concludes that Debtor has sustained his burden under Section 1129(a)(7).

VIII. Section 1129(a)(8).

22. Section 1129(a)(8) states:

> The court shall confirm a plan only if—
>
> (8) With respect to each class of claims or interests—
>
> (A) such class has accepted the plan; or

(B) such class is not impaired under the plan.

11 U.S.C. § 1129(a)(8).

23. Classes 2 and 3 under the Amended Plan have voted to reject, or are deemed to reject, the Amended Plan. Consequently, the Court finds and concludes that Debtor has failed to sustain his burden under Section 1129(a)(8).[10]

IX. Section 1129(a)(9).

24. Section 1129(a)(9) states that a court shall confirm a plan only if:

> (9) Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that—
>
> (A) with respect to a claim of a kind specified in section 507(a)(2) or 507(a)(3) of this title, on the effective date of the plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim;
>
> (B) with respect to a class of claims of a kind specified in section 507(a)(1), 507(a)(4), 507(a)(5), 507(a)(6), or 507(a)(7) of this title, each holder of a claim of such class will receive—
>
> (i) if such class has accepted the plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or
>
> (ii) if such class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claim;
>
> (C) with respect to a claim of a kind specified in section 507(a)(8) of this title, the holder of such claim will receive on account of such claim regular installment payments in cash—
>
> (i) of a total value, as of the effective date of the plan, equal to the allowed amount of such claim;
>
> (ii) over a period ending not later than 5 years after the date of the order for relief under section 301, 302, or 303; and
>
> (iii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan (other than cash payments made to a class of creditors under section 1122(b)); and

[10] Pursuant to Section 1191(b), a debtor's failure to satisfy Section 1129(a)(8) alone does not preclude confirmation of a subchapter V plan.

> (D) with respect to a secured claim which would otherwise meet the description of an unsecured claim of a governmental unit under section 507(a)(8), but for the secured status of that claim, the holder of that claim will receive on account of that claim, cash payments, in the same manner and over the same period, as prescribed in subparagraph (C).

11 U.S.C. § 1129(a)(9).

25. Based on the Court's independent review of the Amended Plan, and the absence of any opposition under Section 1129(a)(9), the Court finds and concludes that Debtor has sustained his burden under Section 1129(a)(9).

X. Section 1129(a)(10).

26. Section 1129(a)(10) states that "[t]he court shall confirm a plan only if … (10) If a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider." 11 U.S.C. § 1129(a)(10).

27. Because an impaired class did not vote to accept the Amended Plan, the Court finds and concludes that Debtor has failed to sustain his burden under Section 1129(a)(10).[11]

XI. Section 1129(a)(11).

28. Section 1129(a)(11) states that "[t]he court shall confirm a plan only if … (11) Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan." 11 U.S.C. § 1129(a)(11).

29. In its Objection, the IRS argues that the Amended Plan is not feasible because it fails to pay gap interest on the IRS's priority claim. In his Supplement, Debtor proposes to pay this gap interest, and the IRS, in its Supplemental Response, indicates that this aspect of their Objection is now resolved. The resolution of this aspect of the IRS's Objection, however, does not end the Court's inquiry.

[11] Pursuant to Section 1191(b), a debtor's failure to satisfy Section 1129(a)(10) is not necessarily fatal to confirmation of a subchapter V plan.

30. In the Amended Plan, Debtor represents the following:

> The Debtor's financial projections show that the Debtor will have projected disposable income (as defined by § 1191(d) of the Bankruptcy Code), remaining after the payment of administrative expenses addressed in § 3.02 below, for the period in § 1191(c)(2), of $-15,509.40, but the Debtor is projected to receive an additional $304,140.00 in Social Security income during the same time period, which will be used to fund his obligations hereunder.

(Amended Plan at 2:9-12). Attached as Exhibit 2 to the Amended Plan is Debtor's financial projections reflecting $5,069 in monthly social security payments, which, when multiplied by the 60-month term of the Amended Plan, equals the $304,140 figure previously identified by Debtor. Yet, Debtor's monthly projection of $5,069 in monthly social security payments is more than double the amounts deposited monthly in Debtor's checking account, as reflected in his monthly operating reports. Indeed, at the February 24, 2023, evidentiary hearing, Debtor testified that his actual monthly deposits of Social Security income "is considerably less than that, somewhere less than $3,000. I assume … they take out taxes or something…." Hrg. Tr. at 27:22-28:4. Debtor's monthly operating reports corroborate Debtor's testimony that he receives a net amount of Social Security income that is less than $3,000. Specifically, Debtor's "Personal Interest Checking" account statement attached to the December MOR reflects that Debtor received $2,503[12] in Social Security on December 28, 2022, which, when multiplied by the 60-month term of the Amended Plan, equals $150,180—or $153,960 less than Debtor represented in his Amended Plan. This $150,180 in net Social Security income—which Debtor concedes is vital to make plan payments—is significantly less than the $242,796.57 in proposed payments under the Amended Plan, thereby rendering the Amended Plan not feasible. See Amended Plan, Ex. 1 at 1:18-19 ("The Plan calls

[12] Based on the Court's review of the "Personal Interest Checking" account statements attached to the monthly operating reports, Debtor's other Social Security payments received during the case were consistent with the amount he received on December 28, 2022. Specifically, Debtor received the following Social Security payments: $2,440 on February 23, 2022; $5,069 on April 8, 2022; $2,503 on May 25, 2022; $2,503 on June 22, 2022; $2,503 on July 27, 2022; $2,503 on August 24, 2022; $2,503 on September 28, 2022; $2,503 on October 26, 2022; and $2,503 on November 23, 2022.

for Dr. Cesaretti to make payments over a period of 60 months, with those payments totaling $242,796.57.").

31. The Amended Plan also is not feasible because the Debtor is 70 years old and enjoys a lifestyle that can only be sustained via his continued employment. See Hrg. Tr. at 23:23-24. Yet, Debtor's substantial employment income is, by his own concession, insufficient to fund his exorbitant lifestyle. If Debtor either chooses to retire or is otherwise unable to work in the future, the Social Security income he receives is insufficient to fund his lifestyle and plan payments, thereby potentially requiring the filing of another bankruptcy case. See In re Harman, 141 B.R. at 885 ("The ability of the Debtors to manage their financial affairs raises some doubt in our minds. As we noted earlier, it seems strange that individuals with such a large income would accumulate such large debts that they had to consider filing bankruptcy.").

32. For these reasons, the Court finds and concludes that Debtor has not sustained his burden under Section 1129(a)(11).

XII. Section 1129(a)(12).

33. Section 1129(a)(12) states that "[t]he court shall confirm a plan only if … (12) All fees payable under section 1930 of title 28, as determined by the court at the hearing on confirmation of the plan, have been paid or the plan provides for the payment of all such fees on the effective date of the plan." 11 U.S.C. § 1129(a)(12).

34. Subchapter V debtors are not required to pay the fees set forth in 28 U.S.C. § 1930. Therefore, Section 1129(a)(12) does not apply. See In re BCT Deals, Inc., 2022 WL 854473, at *4 (Bankr. C.D. Cal. March 22, 2022).

XIII. Section 1129(a)(13).

35. Section 1129(a)(13) states that "[t]he court shall confirm a plan only if … (13) The plan provides for the continuation after its effective date of payment of all retiree benefits, as that term is defined in section 1114 of this title, at the level established pursuant to subsection (e)(1)(B) or (g) of section 1114 of this title, at any time prior to confirmation of the plan, for the duration of the period the debtor has obligated itself to provide such benefits." 11 U.S.C. § 1129(a)(13).

36. Based on the Court's independent review of the Amended Plan, and the absence of any opposition under Section 1129(a)(13), the Court finds and concludes that Section 1129(a)(13) is inapplicable.

XIV. Section 1129(a)(14).

37. Section 1129(a)(14) states that "[t]he court shall confirm a plan only if … (14) If the debtor is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, the debtor has paid all amounts payable under such order or such statute for such obligation that first become payable after the date of the filing of the petition." 11 U.S.C. § 1129(a)(14).

38. Based on the Court's independent review of the Amended Plan, and the absence of any opposition under Section 1129(a)(14), the Court finds and concludes that Section 1129(a)(14) is inapplicable.

XV. Section 1129(a)(15).

39. Section 1129(a)(15) does not apply in subchapter V cases. See 11 U.S.C. § 1191(a).

XVI. Section 1129(a)(16).

40. Section 1129(a)(16) states that "[t]he court shall confirm a plan only if … (16) All transfers of property under the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust." 11 U.S.C. § 1129(a)(16).

41. Based on the Court's independent review of the Amended Plan, and the absence of any opposition under Section 1129(a)(16), the Court finds and concludes that Section 1129(a)(16) is inapplicable.

XVII. Section 1191(b).

42. Section 1191(b) states:

> Notwithstanding section 510(a) of this title, if all of the applicable requirements of section 1129(a) of this title, other than paragraphs (8), (10), and (15) of that section, are met with respect to a plan, the court, on request of the debtor, shall confirm the plan notwithstanding the requirements of such paragraphs if the plan does not discriminate unfairly, and is fair and equitable, with respect

> to each class of claims or interests that is impaired under, and has not accepted, the plan.

11 U.S.C. § 1191(b). Because Debtor has not sustained his burden with respect to, in pertinent part, Sections 1129(a)(2), (3), and (11), the Court need not go any further in its analysis and can deny confirmation on this basis alone. But even if this were not the case, and the Court considered the cramdown provisions of Section 1191(b), the plan still would fail.

43. To successfully confirm a plan under Section 1192(b), the plan must not discriminate unfairly, and it must be fair and equitable with respect to each class of claims or interests that is impaired under, and has not accepted, the plan. The IRS lodged the only objection to the plan, objecting on the grounds that the plan is not fair and equitable under Section 1191(c)(1).

44. With respect to the first element—whether the plan does not discriminate unfairly with respect to each class of claims or interests that is impaired under, and has not accepted, the plan—the Court finds and concludes that the Amended Plan does not unfairly discriminate against any classes. But see Conclusion of Law 8 (Debtor's unfair treatment of creditors during the bankruptcy case).

45. With respect to the second element—whether the plan is fair and equitable with respect to each class of claims or interests that is impaired under, and has not accepted, the plan—the IRS first contends that the Amended Plan is not fair and equitable under Section 1191(c)(1) because it fails to pay interest on its secured claim.

46. Section 1191(c) states:

> For purposes of this section, the condition that a plan be fair and equitable with respect to each class of claims or interests includes the following requirements:
>
> (1) With respect to a class of secured claims, the plan meets the requirements of section 1129(b)(2)(A) of this title.

11 U.S.C. § 1191(c)(1). Section 1129(b)(2)(A) states, in pertinent part:

> (2) For the purpose of this subsection, the condition that a plan be fair and equitable with respect to a class includes the following requirements:
>
> (A) With respect to a class of secured claims, the plan provides—

> (i)
>
> (I) that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims[13]; and
>
> (II) that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property;

11 U.S.C. § 1129(b)(2)(A).

47. "Because the cash payments are deferred but must equal the allowed amount of the claim, the payments must include interest in an amount sufficient to compensate the creditor for the time value of money and to account for the risk of nonpayment." In re Islet Sciences, Inc., 640 B.R. 425, 488 n.117 (Bankr. D. Nev. 2022) citing Till v. SCS Credit Cor., 541 U.S. 465, 475-76 (2004).

48. Debtor proposed to pay interest on the IRS's secured claim under the Amended Plan but eliminated the payment of interest in its Supplement. As the IRS correctly argues in its Supplemental Response, the Amended Plan, as revised by the Supplement, does not comply with Sections 1191(c)(1) and 1129(b)(2)(A).

49. Moreover, as the IRS further contends, the Amended Plan is not fair and equitable under Section 1191(c)(2) because Debtor is not dedicating all of his projected disposable income. Section 1191(c)(2) states:

> For purposes of this section, the condition that a plan be fair and equitable with respect to each class of claims or interests includes the following requirements:
>
> …
>
> (2) As of the effective date of the plan—
>
> (A) the plan provides that all of the projected ***disposable income*** of the debtor to be received in the 3-year period, or such longer period not to exceed 5 years as the court may fix, beginning

[13] The IRS concedes that its prior objection under this subsection has been resolved. See Supplemental Response at 1:27-28 ("The debtor does not dispute that the IRS should retain its tax liens until the secured claim is paid in full.") (citations omitted).

> on the date that the first payment is due under the plan will be applied to make payments under the plan; or
>
> (B) the value of the property to be distributed under the plan in the 3-year period, or such longer period not to exceed 5 years as the court may fix, beginning on the date on which the first distribution is due under the plan is not less than the projected disposable income of the debtor.

11 U.S.C. § 1191(c)(2) (emphasis added).

50. Section 1191(d)(1)(A) defines "disposable income" as "the income that is received by the debtor and that is not reasonably necessary to be expended … (1) for … (A) the maintenance or support of the debtor or a dependent of the debtor…." 11 U.S.C. § 1191(d)(1)(A).

51. There exists little case law analyzing the disposable income requirement in the context of a subchapter V case. Nevertheless, as U.S. Bankruptcy Judge Paul W. Bonapfel, Northern District of Georgia, suggests in A Guide to the Small Business Reorganization Act of 2019 (2022),[14] "chapter 12 and below-median chapter 13 cases, and . . . chapter 13 cases prior to the introduction of the means test standards in BAPCPA . . . should provide guidance in making such determinations."

52. The Court agrees with Judge Bonapfel and, consequently, relies on the following principals set forth in a below-median chapter 13 case:

> In applying the statutory framework of section 1325(b), Congress provided little guidance for determining when expenses are "reasonably necessary." *See, e.g., In re Goewey*, 185 B.R. 444, 446 (Bankr. N.D.N.Y. 1995). In general though, a court should evaluate the debtors' expenses on a case-by-case basis, giving consideration to all of the circumstances surrounding the debtors and their chapter 13 case. *See, e.g., In re Smith*, 207 B.R. 888, 890 (B.A.P. 9th Cir. 1996); *In re Bauer*, 309 B.R. 47, 50 (Bankr. D. Idaho 2004). Debtors should not continue prepetition, spendthrift lifestyles at the expense of their creditors. *See In re McNichols*, 249 B.R. 160, 168 (Bankr. N.D. Ill. 2000); 2 *Bankruptcy*, § 9-13 (Epstein, *et al.* 1992). Thus, reasonably necessary expenses "means adequate, but not first class, and luxury items are excluded." *In re McNichols*, 249 B.R. at 169 (citing *In re Nicola*, 244 B.R. 795, 797 (Bankr. N.D. Ill. 2000)).

[14] Available at https://www.alsb.uscourts.gov/sbra-materials.

In applying this general approach, some courts have noted the following principles:

> The *Devine* Court [*In re Devine*, 1998 WL 386380, at *6 (Bankr.E.D.Pa.1998)] arrived at the following three overarching principles [regarding reasonably necessary expenses]:
>
> > One, debtors are supposed to make a substantial effort toward the payment of debts in their plan that may require sacrifices on their part. Two, the role of the courts is to develop norms for support, which implicitly means that courts must evaluate debtors' budgets to determine what is and is not necessary for support and maintenance. Three, a debtor's plan may be confirmed even in the absence of a large return to creditors provided that the debtor's effort is substantial within his capabilities.
> >
> > * * *
> >
> > Sarasota's objections highlight the difficulties accompanying judicial scrutiny into the reasonableness of a debtor's living expenses. Bankruptcy law does not impose an ascetic existence upon a Chapter 13 debtor. "A court determining the debtor's disposable income is not expected to, and should not, mandate drastic changes in the debtor's lifestyle to fit some preconceived norm for [C]hapter 13 debtors. The debtor's expenses should be scrutinized only for luxuries which are not enjoyed by an average American family." *In re Navarro*, 83 B.R. 348, 355 (Bankr.E.D.Pa.1988) (quoting 5 Collier on Bankruptcy ¶ 1325.08[4][b] at 1325–48 to 1325–49 (15 ed.1987)). Determining whether expenses are "reasonably necessary," however, is an inherently subjective task. While spending on essentials such as food, clothing and shelter is clearly permissible, the "reasonably necessary" inquiry becomes considerably more difficult when a court must evaluate more discretionary spending, such as entertainment and recreation expenses. In fact, courts are often quite candid about their discomfort in attempting to craft a standard for what discretionary expenses are "reasonably necessary." *In re Devine*, 1998 WL 386380, at *7; *Navarro*, 83 B.R. at 355 ("In general, 11 U.S.C. § 1325(b) should not be considered a mandate for a court to superimpose its values and substitute its judgment

> for those of the debtor on basic choices about appropriate maintenance and support."); *In re Woodman*, 287 B.R. 589, 592 (Bankr. D. Me.2003) (noting that practice of branding certain kinds of expenditures as never reasonably necessary "can clothe subjective moral judgments with the force of law"). Evaluating the reasonableness of a given expense while avoiding a critique of a debtor's lifestyle choices is not a simple task. Thus, the Navarro Court stated that it was appropriate to amend a debtor's budget when one of four factors was present:
>
> > (a) the debtor proposes to use income for luxury goods or services; (b) the debtor proposes to commit a clearly excessive amount to non-luxury goods or services; (c) the debtor proposes to retain a clearly excessive amount of income for discretionary purposes; (d) the debtor proposes expenditures which would not be made but for a desire to avoid payments to unsecured creditors.

Sarasota, Inc. v. Weaver, 2004 WL 2514290, *2, *4 (E.D. Pa. 2004); *see also In re Rothman*, 204 B.R. 143, 158 (Bankr. E.D. Pa.1996); *In re Stein*, 91 B.R. 796, 802 (Bankr. S.D. Ohio 1988).

Other courts reach a similar result by focusing upon the debtors' non-essential expenditures as a whole, rather than focusing upon them singly. As explained in a reported decision:

> Even non-discretionary expenditures such as for food and shelter can reflect discretionary lifestyle choices. Thus a debtor whose monthly car payment exceeds that which is reasonably necessary is in reality making a discretionary expenditure to the extent of the excess.... No matter where the "fat" is hidden, such discretionary expenditures typically have more to do with enhancing one's quality of life, acquiring spiritual fulfillment or just simply relaxing and enjoying oneself, than with subsistence. Since no two people have the same tastes, interests or philosophical dispositions, these discretionary costs can run the gamut from making charitable donations to buying a ticket for a tractor-pull event.
>
> By lumping all discretionary expenses together, whether they derive from categories more commonly thought of in subsistence terms or from categories commonly thought of

> as clearly discretionary in nature, the bankruptcy judge will often obviate the need to pass judgment on specific expenditures, that is to say, micromanage the details of a debtor's life.... The disposable-income test is designed to balance the interest of creditors with the interest of the debtor in obtaining a fresh start. Thus the proper methodology is to aggregate all expenses projected by the debtor which are somewhat more discretionary in nature, and any excessive amounts in the relatively nondiscretionary line items such as food, utilities, housing, and health expenses, to quantify a sum which, for lack of a better term, will be called "discretionary spending."
>
> *In re Gonzales*, 157 B.R. 604, 608–09 (Bankr. E.D. Mich.1993) (citations and footnote omitted); *accord, e.g., In re Butler*, 277 B.R. 917, 921 (Bankr. N.D. Iowa 2002); *In re Devine*, 1998 WL 386380, at *6 (Bankr. E.D. Pa.1998).

In re Sandercock, 2005 WL 6522759, at *5–6 (Bankr. E.D. Pa. Jan. 20, 2005).

53. Debtor does not address whether the amount and type of expenses he incurs is "reasonably necessary" for his "maintenance or support." Debtor instead seeks to deflect the exorbitant nature of his spending by contending that he is voluntarily dedicating his Social Security income to cover any excessive expenses he incurs. That, however, is not the test and does not obviate the Court's responsibility to determine what expenses are reasonably necessary for Debtor's maintenance or support. See In re Patrick, 2013 WL 168222, at *5 (Bankr. S.D. Miss. Jan. 16, 2013) (rejecting "Debtors' argument that the Court lacks authority to consider the reasonableness of the expenses and items inside the Plan merely because the Plan is funded in part by Social Security benefits."); see also Paul W. Bonapfel, A Guide to the Small Business Reorganization Act of 2019 (2022), at 144 ("One commentator has concluded that Social Security benefits are not taken into account in determining projected disposable income in a subchapter V case."). Even assuming Debtor's dedication of Social Security is relevant, Debtor's projections fall short by approximately $153,960, as previously noted.

54. After deducting Debtor's payroll withholdings in the amount of $13,692.88, Debtor's financial projections, attached as Exhibit 2 to the Amended Plan, reflect $20,048.63 in monthly

expenses for just Debtor and his wife. The Court finds and concludes that $20,048.63 in monthly expenses for Debtor and his wife are not reasonably necessary for their maintenance and support.

55. Although neither Debtor nor the IRS provided any argument or evidence as to what categories and/or amounts are reasonably necessary to Debtor's support and maintenance, the Court identifies the expenses it views as particularly extravagant for a debtor in a subchapter V bankruptcy case, and which are counter to the "belt-tightening" and "rigorous budgeting" Debtor mentions in his plan:

a. $6,810 in a monthly lease for residential real property for only Debtor and his wife.

b. $668 in monthly storage fees. Debtor's Schedule A/B identifies minimal assets with nominal value that arguably do not need to be placed in a storage facility, and Debtor did not provide any testimony regarding the reasonableness or necessity of this ongoing storage obligation that far exceeds the value of the items potentially subject to storage identified in his Schedule A/B.

c. $1,388 in a monthly car payment for the 2017 Porsche Macan. A vehicle may be reasonably necessary for Debtor's support and maintenance but not a luxury vehicle in this amount. Furthermore, as the Findings of Fact reflect, Debtor has spent thousands of dollars either maintaining, or fixing up, one or more of the three Porsches listed in his Schedule A/B.

d. $750 in monthly landscaping expenses. See Hrg. Tr. at 28:14-21 ("When … we first rented the property, we asked the – the – in the $7,000 was included, whatever the difference is, $110 for lawn and yard maintenance. And we're a little bit fussy about that, and we could tell from the condition of the yard when we moved in that it wasn't adequate care, so we asked if we would get a credit for that $110 and then pay for the law[n] … service ourselves, be picking a – a company that we prefer.").

e. $200 for monthly hair expenses. See Hrg. Tr. at 29:11-13 ("I – I get a haircut biweekly and – that's what my – my hairdresser, who I've known for a long time, charges, $100 a shot.").

f. $1,500 in monthly grocery expenses for Debtor and his wife especially when considered alongside $4,000 in monthly expenses for "Meals and Entertainment." See Hrg. Tr. at 49:11-15.

g. $4,000 in monthly "Meals and Entertainment" expenses.

56. Based on the foregoing, the Court finds and concludes that Debtor has not satisfied his burden to show that the Amended Plan is fair and equitable under Sections 1191(b) and (c)(2).

For these reasons,

IT IS HEREBY ORDERED that confirmation of the Second Amended Plan of Reorganization (ECF No. 60) is **DENIED**.

IT IS SO ORDERED.

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