



**SO ORDERED,**

A handwritten signature in blue ink that reads "Neil P. Olack".

**Judge Neil P. Olack  
United States Bankruptcy Judge  
Date Signed: April 23, 2015**

**The Order of the Court is set forth below. The docket reflects the date entered.**

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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF MISSISSIPPI**

**IN RE:**

**JAMIE K. MORTON AND  
LAN T. MORTON,**

**CASE NO. 14-51605-NPO**

**DEBTORS.**

**CHAPTER 13**

**ORDER (1) OVERRULING IN PART AND SUSTAINING IN PART  
THE TRUSTEE OBJECTION AND (2) OVERRULING THE PUNZO OBJECTION**

This matter came before the Court<sup>1</sup> for hearing on March 17, 2015 (the “Hearing”) on the Trustee’s Objection to Confirmation (the “Trustee Objection”) (Dkt. 18) filed by Warren A. Cuntz, Jr., the standing chapter 13 trustee (the “Trustee”), the Debtor’s [*sic*] Response to Trustee’s Objection to Confirmation (DK #18) (the “Response to the Trustee Objection”) (Dkt. 25) filed by Jamie K. Morton (“J. Morton”) and Lan T. Morton (“L. Morton” or, together with J. Morton, the “Debtors”), the Objection to Confirmation of Chapter 13 Plan (the “Punzo Objection”) (Dkt. 21) filed by Charles Punzo d/b/a Punzo Photography (“Punzo”), and the Debtor’s [*sic*] Response to the Objection to Confirmation by Charles Punzo d/b/a Punzo Photography (DK # 21) (the “Response to the Punzo Objection”) (Dkt. 26) filed by the Debtors

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<sup>1</sup> The above-styled bankruptcy case (the “Bankruptcy Case”) was transferred from the Honorable Katharine M. Samson, United States Bankruptcy Judge, Southern District of Mississippi to the Honorable Neil P. Olack, United States Bankruptcy Judge, Southern District of Mississippi on January 5, 2015.

in the Bankruptcy Case. At the Hearing, Phillip Brent Dunnaway, Esq. (“Dunnaway”) represented the Trustee, Rick O. Amos, Esq. (“Amos”) represented Punzo, and David L. Lord, Esq. (“Lord”) represented the Debtors. The Court, being fully advised in the premises, finds as follows:

### **Jurisdiction**

The Court has jurisdiction over the parties to and the subject matter of this case pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(L). Notice of the Trustee Objection and the Punzo Objection was proper under the circumstances.

### **Facts**

1. On June 27, 2014, L. Morton entered into a Retail Installment Contract (the “Installment Contract”) (Trustee Ex. 1)<sup>2</sup> with Pat Peck Honda (“Honda”) in which L. Morton financed the purchase of a 2014 Honda Odyssey, VIN #5FNRL5H65EB093479 (the “Odyssey”), to be paid in sixty (60) monthly payments of \$589.37. According to the Installment Contract, L. Morton paid a down payment of \$4,000.00 and financed the balance due of \$33,682.63 at an interest rate of 1.9%. (*Id.*).

2. On September 3, 2014, the Circuit Court of Harrison County, Mississippi, entered a Final Judgment (POC 22-1 Ex. A) in Cause No. A2402-2012-00105 ordering J. Morton d/b/a J.K. Morton Photography to pay Punzo a judgment of \$126,126.28 with interest.

3. On October 15, 2014, the Debtors filed a voluntary petition for relief (the “Petition”) (Dkt. 1) pursuant to chapter 13 of the United States Bankruptcy Code (the “Bankruptcy Code”).

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<sup>2</sup> Hereinafter, exhibits introduced into evidence at the Hearing by the Trustee are cited as “(Trustee Ex. \_\_\_)”, exhibits introduced into evidence at the Hearing by Punzo are cited as “(Punzo Ex. \_\_\_)”, and exhibits introduced into evidence at the Hearing by the Debtors are cited as “(Debtors Ex. \_\_\_)”.

4. Also on October 15, 2014, the Debtors filed their (1) statements and schedules regarding their income, expenses, and creditors (the “Statements and Schedules”) (Dkt. 4); (2) Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income (the “Statement of Disposable Income”) (Dkt. 5); and (3) Chapter 13 Plan (the “Plan”) (Dkt. 7).

5. On Schedule I: Your Income (the “Schedule I”) (Dkt. 4 at 19-21), the Debtors listed \$4,328.54 as their combined monthly income.<sup>3</sup> On the Statement of Disposable Income, which reflects the average monthly income derived from the six (6) calendar months prior to filing the Petition, the Debtors listed a combined currently monthly income of \$6,575.30.<sup>4</sup> (Dkt. 5 at 3). According to the Statement of Disposable Income, the Debtors’ monthly disposable income under 11 U.S.C. § 1325(b)(2)<sup>5</sup> is \$28.08. (*Id.* at 8).

6. In the Plan, the Debtors propose to pay Honda<sup>6</sup> \$33,682.63 in direct payments outside of the Plan because the “loan term extends beyond 60 month plan.” (Dkt. 7 at 2).

7. On December 22, 2014, the Trustee filed the Trustee Objection requesting the Court to deny confirmation of the Plan because (1) the Debtors’ retention of the Odyssey is not

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<sup>3</sup> This figure is calculated by adding J. Morton’s monthly income of \$1,661.82 together with L. Morton’s monthly income of \$2,666.72. (Dkt. 4 at 19-20).

<sup>4</sup> This figure is calculated by adding J. Morton’s monthly business income of \$2,234.77 together with L. Morton’s gross income of \$4,340.53. (Dkt. 5 at 1-2).

<sup>5</sup> Hereinafter, all code sections refer to the Bankruptcy Code found at title 11 of the United States Code unless otherwise noted.

<sup>6</sup> The Plan actually provides payment to “American Honda Finace” [*sic*] outside the Plan. Although this name does not mirror “Pat Peck Honda” listed in the Installment Contract, both the Trustee and the Debtors treated these names synonymously at the Hearing. Therefore, the Court will refer to both the creditor listed in the Installment Contract and the creditor listed in the Plan as “Honda.”

reasonably necessary in the Bankruptcy Case and (2) the Debtors should not be allowed to pay the debt to Honda outside of their Plan.

8. Also on December 22, 2014, Punzo filed the Punzo Objection requesting the Court to deny confirmation of the Plan because (1) the income listed by the Debtors in the Statements and Schedules is understated, (2) the expenses listed by the Debtors in the Statement and Schedules is overstated, and (3) the Debtors' monthly payment for the Odyssey discriminates against the unsecured creditors.

9. On December 30, 2014, the Debtors filed the Response to the Trustee Objection and the Response to the Punzo Objection.

10. On February 19, 2015, Punzo filed a proof of claim in the amount of \$126,709.54. (POC 22-1).

## **Discussion**

### **A. The Trustee Objection**

In the Trustee Objection, the Trustee argues that the Plan should not be confirmed because (1) the Debtors' retention of the Odyssey is not reasonably necessary in the Bankruptcy Case and (2) the Debtors should not be allowed to pay the debt to Honda outside of their Plan. As for the Debtors' retention of the Odyssey, the Trustee argues that the Debtors should be required to surrender the Odyssey and purchase a less expensive vehicle. The Odyssey is the only vehicle currently being financed by the Debtors. According to the Debtors' Schedule B – Personal Property (Dkt. 4 at 2-6), the only other operating vehicle owned by the Debtors is a “1998 Dodge Ram 1500” (the “Dodge Ram”) that has “131,365 miles” on the odometer.

At the Hearing, L. Morton testified that she purchased the Odyssey because the previous vehicle primarily driven by the Debtors was “totaled” in an accident. She further testified that the

Odyssey is the only dependable vehicle the Debtors own because the Dodge Ram is unreliable and that both Debtors use the Odyssey for personal and work purposes. The Court additionally notes that if the Debtors were to surrender the Odyssey and attempt to purchase a new vehicle, they would effectively lose the \$4,000.00 down payment they paid to Honda in June 2014, they would unlikely be able to finance a purchase at an interest rate similar to the extremely favorable interest rate of 1.9% that is included in the Installment Contract, and they would unlikely be able to purchase a vehicle with the Odyssey's condition and dependability. For these reasons, the Court finds that the Debtors' retention of the Odyssey is reasonably necessary in the Debtors' reorganization under the Bankruptcy Code, and, therefore, the Trustee Objection should be overruled as to the Trustee's objection to the Debtors' retention of the Odyssey in the Bankruptcy Case.

As for the Plan's provision that the Debtors pay Honda for the Odyssey outside of the Plan, Lord stated at the Hearing that when he filed the Plan on behalf of the Debtors, he mistakenly thought that the term of the Installment Contract was longer than the commitment period of the Plan. Having realized that the Installment Contract's term will end prior to the conclusion of the Plan's term, Lord stated that the Debtors have no objection to paying for the Odyssey through the Plan. The Court consequently finds that the Trustee Objection should be sustained as to the Trustee's contention that the Debtors should pay for the Odyssey through the Plan. Accordingly, the Debtors should amend the Plan within fourteen (14) days from the date of this Order to include the payments to Honda for the Odyssey in the Plan.

**B. The Punzo Objection**

In the Punzo Objection, Punzo argues that the Debtors' Plan should not be confirmed because (1) the income listed by the Debtors in the Statements and Schedules is understated; (2)

the expenses listed by the Debtors in the Statement and Schedules is overstated; and (3) the Debtors' monthly payment for the Odyssey discriminates against the unsecured creditors. As previously explained, the Court finds that the Debtors' retention of the Odyssey is reasonably necessary in the Debtors' reorganization under the Bankruptcy Code, and, thus, rejects Punzo's third argument.

As for the remaining contentions, Punzo has not cited in the Punzo Objection or at the Hearing any specific section of the Bankruptcy Code or provided any legal authority in support of his position that the Plan should not be confirmed. Punzo specifically argued at the Hearing that confirmation of the Plan should be denied because the income and expenses of J. Morton's photography business, J.K. Morton Photography, listed by the Debtors in Schedule I and in the Statement of Disposable Income, are inaccurate. Section 1325 governs the confirmation of a chapter 13 plan. *See* 11 U.S.C. § 1325. Although Punzo has not cited any subsection of § 1325 as the grounds for his objection to confirmation, the Court finds that the substance of his arguments raise issues under two subsections: § 1325(a)(3) and § 1325(b). Courts have held that the falsification of information in bankruptcy schedules can preclude confirmation of a chapter 13 plan under the good faith standard provided in § 1325(a)(3). KEITH M. LUNDIN & WILLIAM H. BROWN, CHAPTER 13 BANKRUPTCY, 4TH EDITION, § 179.2[1] (collecting cases); *see also* 4 COLLIER ON BANKRUPTCY ¶ 521.02 (16th ed. 2015); *In re Meador*, No. 06-80509-G3-13, 2008 WL 243673, at \*5 (Bankr. S.D. Tex. Jan. 25, 2008). In addition, assuming a debtor's chapter 13 plan does not propose to pay their general unsecured creditors in full, confirmation of the debtor's plan will be denied under § 1325(b) if the debtor does not commit all of their projected disposable income to their chapter 13 plan. 11 U.S.C. § 1325(b). Therefore, based on Punzo's

allegations in the Punzo Objection and at the Hearing, the Court will analyze whether the confirmation of the Debtors' Plan should be denied under either § 1325(a)(3) or § 1325(b).

**1. Section 1325(a)(3)**

Section 1325(a)(3) provides that a plan is to be confirmed if it "has been proposed in good faith and not by any means forbidden by law." 11 U.S.C. § 1325(a)(3). In determining whether a chapter 13 plan is proposed in good faith, the Court considers the "totality of the circumstances." *In re Chaffin*, 836 F.2d 215, 217 (5th Cir. 1988). In support of his contention that the Debtors' Statements and Schedules are inaccurate, Punzo admitted into evidence at the Hearing the Debtors' joint income tax returns for 2014 (the "2014 Tax Return") (Punzo Ex. 1), 2013 (the "2013 Tax Return") (Punzo Ex. 2), and 2012 (the "2012 Tax Return") (Punzo Ex. 3).

In the 2014 Tax Return, the Debtors reported (a) \$55,763.00 in gross income for J.K. Morton Photography; (b) \$29,349.00 in net profit for J.K. Morton Photography; (c) \$47,270.00 in total wages and salaries for the Debtors; and (d) \$25,664.00 in total expenses for J.K. Morton Photography. On Schedule I, the Debtors listed (a) \$3,207.67 in gross monthly income for J.K. Morton Photography; (b) \$1,661.82 in net monthly income for J.K. Morton Photography; (c) \$3,933.47 in total monthly wages and salaries for the Debtors; and (d) \$1,545.85 in monthly business expenses for J.K. Morton Photography. In the Statement of Disposable Income, the Debtors listed (a) \$3,766.33 in gross receipts for J.K. Morton Photography; (b) \$2,234.77 in net business income of J.K. Morton Photography; (c) \$4,340.53 in total gross wages and salaries of the Debtors; and (d) \$1,531.56 in ordinary and necessary business expenses of J.K. Morton Photography.

In comparing the 2014 Tax Return, the Schedule I, and the Statement of Disposable Income, the Court finds that the figures regarding the total wages and salaries of the Debtors are

nearly identical among the three documents.<sup>7</sup> There is a discrepancy, however, between the amounts pertaining to J.K. Morton Photography that are reported on the 2014 Tax Return, listed on Schedule I, and listed on the Statement of Disposable Income.<sup>8</sup> At the Hearing, Amos extensively questioned J. Morton about the 2012 Tax Return, the 2013 Tax Return, and the 2014 Tax Return. J. Morton explained in detail the amounts associated with J.K. Morton Photography's income and expenses, including the aforementioned discrepancies. J. Morton testified, essentially line-by-line, that each amount regarding J.K. Morton Photography's income is not understated and that each amount regarding J.K. Morton Photography's expenses are not overstated. He provided credible testimony that any discrepancies between the amounts included in the 2014 Tax Return, the Schedule I, and the Statement of Disposable Income are due to the

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<sup>7</sup> *Compare* **\$47,270.00** (the total wages and salaries of the Debtors reported by the Debtors on the 2014 Tax Return) *with* **\$47,201.64** (the total monthly wages and salaries of the Debtors listed by the Debtors on Schedule I  $(\$3,933.47) \times 12$ ) *and* **\$52,086.36** (the total gross monthly wages and salaries of the Debtors listed by the Debtors on the Statement of Disposable Income  $(\$4,340.53) \times 12$ ).

<sup>8</sup> For the gross income of J.K. Morton Photography: *compare* **\$55,763.00** (the gross income of J.K. Morton Photography the Debtors reported on the 2014 Tax Return) *with* **\$38,492.04** (the gross monthly income of J.K. Morton Photography the Debtors listed on Schedule I  $(\$3,207.67) \times 12$ ) *and* **\$45,195.96** (the gross receipts of J.K. Morton Photography the Debtors listed on the Statement of Disposable Income  $(\$3,766.33) \times 12$ ).

For the net business income of J.K. Morton Photography: *compare* **\$29,349.00** (the net profit of J.K. Morton Photography the Debtors reported on the 2014 Tax Return) *with* **\$19,941.84** (the net monthly income of J.K. Morton Photography listed by the Debtors on Schedule I  $(\$1,661.82) \times 12$ ) *and* **\$26,817.24** (the net business income of J.K. Morton Photography the Debtors listed on the Statement of Disposable Income  $(\$2,234.77) \times 12$ ).

For the total business expenses of J.K. Morton Photography: *compare* **\$25,664.00** (the total expenses of J.K. Morton Photography the Debtors reported on the 2014 Tax Return) *with* **\$18,550.20** (the monthly business expenses of J.K. Morton Photography listed by the Debtors on Schedule I  $(\$1,545.85) \times 12$ ) *and* **\$18,378.72** (the ordinary and necessary business expenses of J.K. Morton Photography listed by the Debtors in the Statement of Disposable Income  $(\$1,531.56) \times 12$ ).



fluctuating nature of his business and its income and expenses. He further testified that J.K. Morton Photography's business is "down" right now and income is less than it has been in the past. This downturn explains why the amounts contained in the 2014 Tax Return, which reflect figures for the entire calendar year of 2014, can differ from the amounts contained in Schedule I, which reflect the Debtors' monthly income and expenses at the time the Statements and Schedules were completed and filed (in this instance, October 15, 2014), and the amounts contained in the Statement of Disposable Income, which reflect the average income and expenses derived during the six (6) calendar months preceding the filing of the Petition.<sup>9</sup> At the Hearing, J. Morton credibly answered Amos' questions regarding J.K. Morton Photography's income and expenses between 2012 and 2014. In addition, he stated that he keeps receipts for all of his business expenses and records of all of the mileage he travels for work.

Considering the totality of the circumstances, the Court finds that the Plan was proposed in good faith. As previously set forth, the Court finds that J. Morton credibly explained the discrepancies between the 2014 Tax Return, the Schedule I, and the Statement of Disposable Income noted by Punzo. Punzo spent a considerable amount of time at the Hearing arguing that a series of payments made by MGM Resorts International to "Punzo Photography LLC" for services rendered by the Debtors to MGM Resorts International ("MGM") should have been included in the 2014 Tax Return, the Schedule I, and the Statement of Disposable Income as income of J.K. Morton Photography. According to Punzo, although the Debtors never received

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<sup>9</sup> Furthermore, the fact that the figures in the 2014 Tax Return (that reflect the entire 2014 calendar year) are greater than the figures in the Statement of Disposable Income (that reflect the six (6) months preceding the Petition), which, in turn, are greater than the figures in Schedule I (that reflect the Debtors' condition on October 15, 2014, the day the schedule was filled out) comports with J. Morton's testimony that J.K. Morton Photography's business decreased as the year progressed.

the checks, the payments still constituted income earned by J.K. Morton Photography because the payments were sent to a creditor of the Debtors.<sup>10</sup>

The Court has taken this argument into account when considering the totality of the circumstances, and it does not sway the Court's opinion toward finding bad faith on behalf of the Debtors. First, the Court notes that the Debtors did include these payments in the Overflow Statement of the 2014 Tax Return. (Punzo Ex. 1 at 13). The 2014 Tax Return provides that these payments to Punzo were included in the initial calculation of J.K. Morton Photography's gross receipts, but were deducted from the total amount used on Schedule C of the 2014 Tax Return. J. Morton additionally testified at the Hearing that the Debtors' certified public accountant who prepared the 2014 Tax Return for the Debtors advised them that they did not have to report the amount of the payments sent to Punzo as taxable income because the Debtors never received the money.<sup>11</sup> Second, all seven (7) of the checks and their accompanying invoices are dated post-Petition. Thus, the Debtors completed and filed the Schedule I and the Statement of Disposable Income before any of the checks were written or sent to Punzo. As of the date of this Order, the Debtors still have not received these payments, and the \$5,322.00 currently is in the possession of the Trustee.<sup>12</sup> The Court does not find that the omission of the payments to Punzo in the Schedule I or the Statement of Disposable Income indicative of bad faith on behalf of the

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<sup>10</sup> The seven (7) checks, totaling \$5,322.00 (Debtors Ex. 1), purportedly were garnished from J.K. Morton Photography's wages at an erroneous percentage. The Court was informed at the Hearing that these funds are now in the possession of the Trustee.

<sup>11</sup> Punzo did not provide any authority stating that the Debtors should have reported the amount of money paid from MGM to Punzo as taxable income in their 2014 Tax Return.

<sup>12</sup> The Court notes that in order for the Trustee to use or disburse the funds, he should file the appropriate motion with the Court. At this juncture, the potential disbursement of these funds is not before the Court, and, therefore, this Order does not make any findings as to the fate of these funds or the Trustee's ability to use, disburse, or otherwise dispose of them.

Debtors. The Court consequently finds that the Plan was proposed in good faith under § 1325(a)(3).

## **2. Section 1325(b)**

Under § 1325(b)(1), a court must not confirm a plan unless the plan (1) proposes to pay the debtor's general unsecured creditors in full or (2) commits all of the debtor's projected disposable income to the payment of unsecured creditors under the plan. 11 U.S.C. § 1325(b)(1). Since the Debtors' Plan proposes to pay one percent (1%) of general unsecured claims, the Debtors must commit all of their projected disposable income to the Plan. *Id.*

Punzo has the initial burden of producing satisfactory evidence to support his contention that the Debtors are not committing all of their disposable income to the Plan. *See Educ. Assistance Corp. v. Zellner*, 827 F.2d 1222, 1226 (8th Cir. 1987); *Itule v. Heath (In re Heath)*, 182 B.R. 557, 560-61 (B.A.P. 9th Cir. 1995); 8 COLLIER ON BANKRUPTCY ¶ 1325.11[2] (16th ed. 2015); KEITH M. LUNDIN & WILLIAM H. BROWN, CHAPTER 13 BANKRUPTCY, 4TH EDITION, § 217.1[2] (collecting cases). After Punzo satisfies this initial burden, the ultimate burden of persuasion rests with the Debtors to show they are committing their projected disposable income to the Plan. *Id.*

Punzo contends that (1) the amount listed as J.K. Morton Photography's monthly gross receipts (\$3,766.33) on the Statement of Disposable Income is understated and (2) the amount listed as J.K. Morton Photography's monthly ordinary and necessary business expenses (\$1,531.56) on the Statement of Disposable Income is overstated. In support of his contentions, Punzo admitted into evidence the Debtors' 2014 Tax Return, the 2013 Tax Return, and the 2012 Tax Return. As previously explained, the figures included in the Statement of Disposable Income reflect the monthly average income and expenses derived during the six (6) calendar months

preceding the filing of the Petition. Since the Debtors filed the Petition on October 15, 2014, the Statement of Disposable Income reflects the Debtors' monthly average income and expenses from April 2014 to October 2014. For this reason, the Court does not find the 2012 Tax Return or the 2013 Tax Return as helpful in determining whether the amounts in the Statement of Disposable Income are accurate as the 2014 Tax Return.

Punzo satisfied his initial burden by producing the 2014 Tax Return and highlighting (a) the difference between the amount of J.K. Morton Photography's monthly gross receipts listed on the Statement of Disposable Income and the amount of its gross income reported on the 2014 Tax Return<sup>13</sup> and (b) the difference between the amount of J.K. Morton Photography's monthly ordinary and necessary business expenses listed on the Statement of Disposable Income and the amount of its total expenses reported on the 2014 Tax Return.<sup>14</sup> The ultimate burden of persuasion accordingly rests with the Debtors to show they are committing their projected disposable income to the Plan. As previously explained, the Court finds that J. Morton provided credible testimony regarding the differences between the amounts listed on the Statement of Disposable Income and the amounts reported on the 2014 Tax Return. *See supra* B.1. Moreover, J. Morton credibly explained and accounted for J.K. Morton Photography's 2014 income and expenses during Amos' extensive, line-by-line, examination at the Hearing.

Amos and J. Morton went through the same line-by-line analysis of the 2012 Tax Return and the 2013 Tax Return as well. The Court likewise finds that, overall, J. Morton provided a

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<sup>13</sup> There is an \$880.59 difference between \$3,766.33 (the monthly gross receipts listed on the Statement of Disposable Income) and \$4,646.92 (the gross income reported on the 2014 Tax Return (\$55,763.00)  $\square$  12).

<sup>14</sup> There is a \$607.11 difference between \$1,531.56 (the monthly ordinary and necessary business expenses listed on the Statement of Disposable Income) and \$2,138.67 (the total expenses reported on the 2014 Tax Return (\$25,664.00)  $\square$  12).

credible explanation and accounting of J.K. Morton Photography's income and expenses in 2012 and 2013. There was some unclear testimony about whether J.K. Morton Photography photographed one or two weddings in 2012 and 2013 and whether the income received from those engagements was properly reported in the 2012 Tax Return or the 2013 Tax Return. J. Morton did testify that J.K. Morton Photography definitely did not photograph any weddings in 2014. Whether the Debtors properly reported income received from photographing weddings in 2012 and 2013 on the tax returns does not impact the Statement of Disposable Income, which, as previously explained, takes into account the monthly average income and expenses from April 2014 to October 2014. In addition, the Court took this testimony into account when it considered the totality of the circumstances in determining that the Debtors proposed the Plan in good faith. *See supra* B.1.

For these reasons, the Court finds that the Debtors satisfied their burden in showing that they are committing their projected disposable income to the Plan under § 1325(b).<sup>15</sup> As a result of the Plan being proposed in good faith under § 1325(a)(3) and the Debtors committing their projected disposable income in the Plan under § 1325(b), the Court finds that the Punzo Objection should be overruled.

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<sup>15</sup> The Court notes that a debtor's projected disposable income is not an immovable figure solely calculated on historical information. *Hamilton v. Lanning*, 560 U.S. 505, 523 (2010); *Nowlin v. Peake (In re Nowlin)*, 576 F.3d 258, 266 (5th Cir. 2009). Instead, the Debtors' presumptive projected disposable income that is calculated in the Statement of Disposable Income may be altered or rebutted if "evidence of present or reasonably certain future events that substantially change the debtor's financial situation" is presented. *Nowlin*, 576 F.3d at 266. As the Court previously stated, no motions have been filed with the Court regarding the disposition of the \$5,322.00 currently held by the Trustee, and this Order not make any findings as to the fate of these funds or the Trustee's ability to use, disburse, or otherwise dispose of them. *See supra* note 12. Accordingly, at this juncture, there is no evidence of "present or reasonably certain future events that substantially change" the Debtors' financial situation. The Court does not make any findings at this point regarding any potential duty to amend Statements and Schedules or alter the Statement of Disposable Income pending the disposition of the \$5,322.00 currently held by the Trustee.

### **Conclusion**

For the above and foregoing reasons, the Court finds that the Trustee Objection should be overruled in part and sustained in part and the Punzo Objection should be overruled.

IT IS, THEREFORE, ORDERED that the Trustee Objection hereby is overruled to the extent that the Trustee contends that the Debtors' retention of the Odyssey is not reasonably necessary.

IT IS FURTHER ORDERED that the Trustee Objection hereby is sustained to the extent that the Trustee contends that the Debtors should pay for the Odyssey through the Plan.

IT IS FURTHER ORDERED that the Debtors shall amend the Plan within fourteen (14) days of this Order to provide for the payments to Honda through the Plan.

IT IS FURTHER ORDERED that the Punzo Objection hereby is overruled.

##END OF ORDER##