



**SO ORDERED,**

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

**Judge Neil P. Olack  
United States Bankruptcy Judge  
Date Signed: December 14, 2017**

**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:**

**ERICA SHONTA FOWLER,**

**CASE NO. 17-02925-NPO**

**DEBTOR.**

**CHAPTER 13**

**ORDER RESOLVING TRUSTEE'S OBJECTION TO CONFIRMATION**

This matter came before the Court for hearing on November 6, 2017 (the "Hearing"), on the Trustee's Objection to Confirmation (the "Trustee's Objection") (Dkt. 17) filed by Harold J. Barkley, Jr. (the "Trustee") in the above-styled chapter 13 bankruptcy case (the "Bankruptcy Case"). At the Hearing, Justin Jones represented the Trustee, and Thomas Carl Rollins represented Erica Shonta Fowler (the "Debtor").

On August 10, 2017, the Debtor filed a petition for relief pursuant to chapter 13 of the U.S. Bankruptcy Code (Dkt. 1). The Debtor filed the chapter 13 plan (the "Plan") on that same day (Dkt. 2). On September 25, 2017, the Trustee filed the Trustee's Objection alleging that the Debtor's Plan does not comply with 11 U.S.C. § 1325(a)(1)<sup>1</sup>, the Debtor did not file the Plan in good faith, and the Debtor proposes a special claim of \$100 per month for "federal restitution." The Trustee requests the Court to require the Debtor to produce evidence supporting the need for

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<sup>1</sup> Hereinafter, all code sections refer to the United States Bankruptcy Code found at Title 11 of the United States Code, unless otherwise noted.

a special restitution claim. If the Debtor cannot produce such evidence, the Trustee asks that the Court deny confirmation of the Plan and dismiss the Bankruptcy Case.

At the Hearing, the Trustee directed the Court to its prior ruling in *In re Cooper* for guidance on whether the favorable treatment of a debt in a chapter 13 plan unfairly discriminates against other creditors. See Memorandum Opinion and Order: (1) Denying Amendment of Plan, (2) Denying Confirmation of Plan, and (3) Conditionally Approving Settlement Order, *In re Cooper*, No. 11-52095-KMS (Dkt. 59) (Bankr. S.D. Miss. Aug. 3, 2012). In *In re Cooper*, the Court adopted the two-step approach set forth in *In re King*, 460 B.R. 708 (Bankr. N.D. Tex. 2011) to determine whether the favorable treatment of a debt unfairly discriminates against other creditors. *Id.* at 14. The test is as follows: (1) whether the discrimination has a rational basis; and (2) whether the class discriminated against receives no less than it would have received if there were no discrimination and thirty-six (36) months of the debtor's disposable income were applied to the plan. *Id.* at 15-18. With *In re Cooper* in mind, the Trustee stated that the restitution owed by the Debtor is a nondischargeable debt pursuant to § 523(a)(13). Because the Debtor has student loans, and student loan obligations also are a nondischargeable debt, the Trustee argued that the Debtor must satisfy the two-step approach in *In re Cooper* to treat restitution and student loans differently.<sup>2</sup>

With respect to step one, the Trustee stated that the Debtor had been placed on probation, fulfilled the terms of her probation, and has been paying restitution for the past seven (7) years. Since a revocation hearing could potentially jeopardize the Debtor's efforts to pay the restitution,

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<sup>2</sup> At the Hearing, the Trustee noted that the two-prong test in *In re Cooper* is probably satisfied. Thus, the Trustee explained that he would withdraw the Trustee's Objection if the Court agrees that the Debtor has met the *In re Cooper* test.

the Trustee conceded that the first step of the *In re Cooper* test is met, and a rational basis exists for special treatment of the restitution.

With respect to step two, the Trustee asserted that the Debtor's Plan proposes to pay 0% to unsecured creditors for sixty (60) months. While the Debtor's gross monthly income is approximately \$1,800.00, her net monthly income is about \$2,102.00 after the receipt of family support payments. The Debtor's monthly expenses are about \$1,563.00. Thus, the Debtor's monthly disposable income is approximately \$539.00, which enables the Debtor to make monthly payments under the Plan of \$539.68. The Debtor's monthly payment under the Plan is currently set at \$648.00. The Trustee, however, stated that it does not necessarily need that additional amount. The difference between the two amounts equals about \$100.00, which is the amount the Debtor proposes to pay each month for restitution. Since the \$100.00 being used each month to pay the restitution is coming from money that is over and above the Debtor's disposable income, the Trustee argued that the second step of the *In re Cooper* test is likely met, and the student loan servicer would receive no less than it would have received without discrimination and if thirty-six (36) months of the Debtor's disposable income were applied to the Plan.

In response, and with respect to step one, the Debtor asserted that restitution is different from a student loan obligation because restitution judgments are not subject to the automatic stay. Thus, the Debtor's wages could be garnished, or her property could be seized at any time if she fails to make the restitution payments. See *United States v. Robinson (In re Robinson)*, 764 F.3d 554, 561 (6th Cir. 2014) ("Though the automatic stay prohibits the enforcement of prepetition judgments against property of the estate, [18 U.S.C.] § 3613 allows the government to collect criminal restitution despite 'any other Federal law.' This language overrides the application of § 362(a)'s various stays . . . ."). Student loan obligations, however, are subject to the automatic

stay. Further, since student loan obligations are a nondischargeable debt, the Debtor will still owe her student loan debt despite the claim being treated differently from restitution. Thus, the Debtor argued that a rational basis exists for special treatment of the restitution.

With respect to step two, the Debtor argued that the food allowance and several other allowances on Schedule J are significantly lower than the Internal Revenue Service's standards, and the Debtor still remains able to propose a Plan that pays 0% to general unsecured creditors. Thus, the second step of the *In re Cooper* test is met, and the student loan servicer would receive no less than it would have received without discrimination and if thirty-six (36) months of the Debtor's disposable income were applied to the Plan.

After fully considering the matter, the Court finds that the Debtor has satisfied the test set forth in *In re Cooper*. The Debtor has paid restitution for seven (7) years, and any interruption in payment may jeopardize the Debtor's efforts to pay the restitution and/or cause her to become incarcerated. Thus, the Court finds that the Debtor has met her burden to show a rational basis for distinguishing between the Debtor's two nondischargeable debts. Additionally, if there were no discrimination between the restitution debt and the student loan obligation, the student loan servicer still would not receive any funds because the Debtor is a below-median income debtor proposing to pay 0% to general unsecured creditors under the Plan. The Debtor does not have any additional disposable income after making the monthly payments to the Plan. As a result, the Debtor does not have a statutory minimum payment to unsecured creditors and has met the second prong of the *In re Cooper* test. Accordingly, the Trustee may withdraw the Trustee's Objection.

IT IS, THEREFORE, ORDERED that the Debtor has satisfied the two-prong test in *In re Cooper* and, as a result, the Trustee shall withdraw the Trustee's Objection.

##END OF ORDER##