

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA

In re: )  
)  
Shanna Rena Pettway, ) Case No. 24-20008  
)  
Debtor(s). )

ORDER SUSTAINING OBJECTIONS TO CONFIRMATION, ORDERING AMENDED  
PLAN WITHIN 14 DAYS, AND RESETTING CONFIRMATION HEARING

This chapter 13 case is before the court on the objections to confirmation to confirmation filed by the chapter 13 trustee and creditor AutoLoanz Finance, LLC (“creditor”). The court held an evidentiary hearing on the objections on June 21, 2024, and then took the matter under advisement. For the reasons below, the court sustains the objections.

The debtor filed this chapter 13 case on January 12, 2024. The debtor is single but has a daughter aged 19 and a son aged 17 living with her. In her chapter 13 plan (doc. 2), she proposes to retain and pay for three vehicles: a 2015 Nissan Altima, a 2007 Nissan Altima, and a 2011 Honda Accord which the plan says “Daughter Drives.” She is “cramming down” the 2011 Honda and the 2007 Nissan and paying for the 2015 Nissan Altima as a “910 claim.” The plan proposes to surrender her interest in a 2008 Honda Accord to a co-debtor. She testified that she also has a non-running 2007 Honda that was not listed on her schedules.

The debtor’s sworn schedules (doc. 1) incorrectly state that her daughter is 14 and thus not driving age, and she has not amended the schedules to date. But the debtor testified that she purchased the 2011 Honda for her daughter (who was 18 then and is now 19) as a gift in May 2023. She further testified that when this case was filed in January 2024 and all times since, the daughter was working full-time for ARD Logistics, a supplier for Mercedes Benz in Vance, Alabama. The daughter lives with the debtor but does not contribute to the household expenses

or the 2011 Honda Accord payment, according to Schedule J. The debtor testified that she primarily drives the 2015 Nissan Altima. She also testified that she has a 17-year old son living with her; there was no clear testimony about his driving any of the vehicles. Her schedules list an 18- (not 17-) year-old son living with her and the court cannot reconcile the inconsistency.

Both the trustee and the creditor object to the debtor's retention of multiple cars, and the creditor specifically objects to the valuation and retention of the 2011 Honda Accord driven by the debtor's daughter. In any event, the court has an independent duty to ensure that a bankruptcy plan complies with the Bankruptcy Code. *See generally United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010). The debtor's plan is not confirmable on multiple grounds: (1) the expense of vehicles other than 2015 Altima driven by the debtor is not reasonably necessary for the maintenance and support of the debtor; (2) those expenses are not reasonably necessary for the maintenance and support of a dependent of the debtor; and (3) regardless, the plan was not proposed in good faith.

The debtor is a below-median income debtor and is not proposing to pay 100% on unsecured claims. As a result, the debtor must pay all of her projected disposable income into the plan for the applicable commitment period under Bankruptcy Code § 1325(b)(1). In calculating a below-median debtor's disposable income, Code § 1325(b)(2) allows the deduction of "amounts reasonably necessary to be expended for the maintenance and support of the debtor or a dependent of the debtor . . . ." The debtor "bears the burden of proving that an expense is reasonably necessary." *See In re Stacks*, 588 B.R. 263, 266 (Bankr. N.D. Ga. 2018).

The court finds that the debtor has not proven that the expense of any vehicle other than the 2015 Altima that she drives is reasonably necessary for the maintenance and support of her dependents and her. The court finds that her daughter, who turned 19 in February 2024 and has

been working full-time since she graduated from high school in May 2023, is not a “dependent” of the debtor under § 1325(b)(2). The expenses of the other vehicles are thus not allowable in calculating her plan payment.

The court also cannot confirm a plan if it has not been proposed in “good faith” under Code § 1325(a)(3). *See In re Jackson*, No. 11-42528-JJR-13, 2012 WL 909782, at \*2 (Bankr. N.D. Ala. Mar. 16, 2012). The Eleventh Circuit “has set forth a non-exhaustive list of factors relevant to whether a plan was proposed in good faith[,]” commonly referred to as the *Kitchens* factors. *See In re Brown*, 742 F.3d 1309, 1316-17 (11th Cir. 2014). The court determines good faith case-by-case using a “totality of the circumstances” approach. *See id.* The debtor bears the burden to show that the “plan was proposed in good faith.” *See In re Jackson*, 2012 WL 909782, at \*2.

Having reviewed the *Kitchens* factors and the totality of the circumstances here, the court finds that it is not good faith for the debtor to retain multiple vehicles, including the one driven by her daughter. The debtor testified that she gave the vehicle to her daughter as a gift and thus wants to keep paying for it, but her plan proposes to do at the expense of unsecured creditors even though her daughter has a full-time job. *See, e.g., In re Hicks*, No. 10-41855-JJR-13, 2011 WL 2414419 (Bankr. N.D. Ala. 2011) (finding lack of good faith in chapter 13 plan that, among other things, paid for unnecessary vehicles).

To the extent the court has not specifically addressed any of the parties’ arguments, it has considered them and determined that they would not alter the result. The court is not reaching the issue raised at confirmation about whether the 2011 Accord qualifies as a “910” vehicle since it is disallowing that expense in its entirety. For the reasons discussed herein, independently and together, the court sustains the pending objections to confirmation, denies confirmation, and

orders the debtor to file an amended plan and serve it on all creditors within 14 days of the date of this order.

The court resets this case for a confirmation hearing on September 20, at 10:30 a.m., Selma Federal Building, Second Floor, 908 Alabama Ave., Selma, AL 36701. Any objections to confirmation of the amended plan must be filed at least 7 days before the reset confirmation hearing. The court also orders the debtor to file corrected schedules within 14 days to accurately list her vehicles.

Dated: July 30, 2024

  
HENRY A. CALLAWAY  
U.S. BANKRUPTCY JUDGE

# Notice Recipients

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TOTAL: 4

## Recipients submitted to the BNC (Bankruptcy Noticing Center):

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3820035	1st Franklin Financial	Po Box 880	Toccoa, GA 30577
3834913	1st Franklin Financial Corporation	Attn: Administrative Services	PO Box 880 Toccoa Ga, 30577
3838617	AMERICAN CAR CENTER (C/O Westlake Portfolio Manage	4751 Wilshire Blvd, Suite 100	Los Angeles, CA 90010
3834575	AutoLoanz Finance, LLC.	c/o Richard C. Dean, Jr.	P.O. Box 1028 Montgomery, AL 36101-1028
3820036	Autoloanz Finance LLC	Attn: Cashunta Richards Reg Agt	3034 Woodley Road Montgomery, AL 36116
3820037	Bama Motors	1120 J. L. Chestnut Jr Blvd	Selma, AL 36703
3837308	Bridgecrest Acceptance Company LLC	PO Box 29018	Phoenix, AZ 85038
3820038	Bridgecrest Acceptance Corp	7300 East Hampton Avenue	Suite 100 Mesa, AZ 85209
3820039	Cnb Fka Camden Natl Bk	3 Water Street	Camden, AL 36726
3820040	Credit Acceptance	Attn: Bankruptcy	25505 West 12 Mile Road Ste 3000 Southfield, MI 48034
3822803	Credit Acceptance Corporation	25505 West 12 Mile Rd Suite #3000	Southfield MI 48034
3820041	Diversified Consultant	P O Box 551268	Jacksonville, FL 32255
3820042	Enhanced Recovery Co L	8014 Bayberry Rd	Jacksonville, FL 32256
3820043	Farmers Home Furniture	Attn : Phillip D Faircloth, CEO & Pres.	Po Box 1140 Dublin, GA 31040
3820044	Fingerhut	Attn: Bankruptcy	6250 Ridgewood Road Saint Cloud, MN 56303
3820045	Kikoff Lending Llc	Attn: Bankruptcy	75 Broadway Suite 226 San Francisco, CA 94111
3829447	LVNV Funding, LLC	Resurgent Capital Services	PO Box 10587 Greenville, SC 29603-0587
3820046	Lvnv Funding/Resurgent Capital	Attn: Bankruptcy	Po Box 10497 Greenville, SC 29603
3820047	Mutual Savings Credit Union	907 Medical Center Parkway	Selma, AL 36701
3820048	Navient	Attn: Bankruptcy	Po Box 9500 Wilkes Barre, PA 18773
3820049	Possible Finance	2231 First Avenue Ste B	Seattle, WA 98121
3820050	Regions Bank	Po Box 11007	Birmingham, AL 35288
3820051	Self INC/Lead Bank Communtiy Bank	Attn: Bankruptcy	1801 Main St Kansas City, MO 64108
3820052	Senex Srvc	3333 Founders Road	Indianapolis, IN 46268
3820053	Sunrise Banks	Attn: Bankruptcy	200 University Avenue West Saint Paul, MN 55103
3821519	TitleMax of Alabama, Inc.	15 Bull Street, Suite 200	Savannah, GA 31401
3820054	Titlebucks	1618 Broad Street	Selma, AL 36701
3820055	Titlemax of Alabama	CT Corporation System	2 North Jackson Street Suite 605 Montgomery, AL 36104
3820056	Titlemax of Alabama dba Titlebucks	15 Bull Street, Suite 200	Savannah, GA 31401
3820057	Twncountrynb	P.o. Box 458	Camden, AL 36726
3820058	Vaughan Regional Medical Center	1015 Medical Center Parkway	Selma, AL 36701
3829438	Vaughan Regional Medical Center	Resurgent Capital Services	PO Box 1927 Greenville, SC 29602
3834999	Verizon	by American InfoSource as agent	4515 N Santa Fe Ave Oklahoma City, OK 73118
3820060	Verizon Wireless	Attn: Bankruptcy	500 Technology Dr, Ste 599 Weldon Springs, MO 63304
3820059	Verizon Wireless	National Recovery Operations	Minneapolis, MN 55426
3820061	Wakefield	Po Box 50250	Knoxville, TN 37950
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3820063	Wells Fargo Bank	423 Broad Street	Selma, AL 36701
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TOTAL: 41