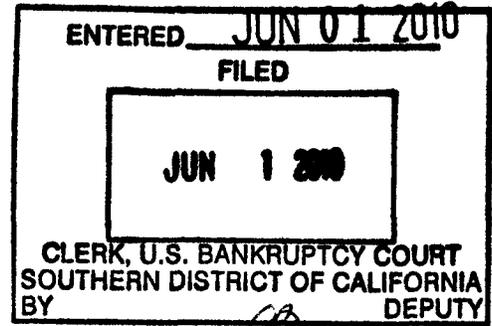


WRITTEN DECISION - NOT FOR PUBLICATION



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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA

In re: )  
 ANDRES PORTILLO, ) Bankruptcy No. 09-15044-LA  
 Debtor. ) Chapter 13  
 ) MEMORANDUM DECISION

**BACKGROUND**

The Debtor Andres Portillo filed a Chapter 13 bankruptcy petition on October 2, 2009. His Chapter 13 Plan ("Plan") was filed the same day. It was subsequently amended on March 24, 2010 and May 11, 2005. Plan confirmation objections were filed by the Chapter 13 Trustee David Skelton ("Trustee"), BAC Home Loans Servicing, LP and AmeriCredit Financial Services, Inc. By the time of the continued confirmation hearing on May 5, 2010, all confirmation objections had been resolved with exception of whether the Plan was proposed in good faith in accordance with 11 U.S.C. section 1325(a)(3).

The Plan provides no payment to unsecured creditors even though the Debtor has annual income above the median. Nevertheless, due to significant tax and health care insurance expenses, as well as car and mortgage payments, the Debtor's Chapter 13 Statement of Current Monthly

1 Income and Calculation of Commitment Period and Disposable Income B22 form reflects no  
2 disposable income. In fact, the B22 form reflects negative income by over \$1000.

3 The Trustee contends the Debtor's Plan was proposed in bad faith because the Debtor  
4 purchased a 2006 Toyota Corolla shortly before he filed his bankruptcy case, when he already had a  
5 2002 Acura to drive. The Debtor also purchased \$2800 in furniture and a new home in the year  
6 before he filed bankruptcy. As a result, the Trustee contends the Debtor incurred this debt in  
7 contemplation of bankruptcy and should be required, as a condition to Plan confirmation, to reject  
8 the Corolla and use the \$350 monthly car payments to pay the unsecured creditors. There are no  
9 claims the Debtor has engaged in serial bankruptcy filings or has been dishonest.

10 In turn, the Debtor contends the car and home debts were not incurred in contemplation of  
11 bankruptcy. He contends the purchase of the Corolla was necessary to meet the transportation needs  
12 of his family, which includes two teenage children who are new drivers. Of the family members,  
13 the Debtor primarily drives the Corolla, which is in good condition with mileage of 46,000. The Debtor  
14 values the Corolla in his Schedule of Assets and Liabilities at \$10,015. The Corolla secures a purchase  
15 money debt of \$18,138. The Debtor's other car is an 8 year old Acura in poor mechanical condition  
16 with mileage of 120,000. Per the Debtor's Schedule of Assets and Liabilities, the Acura has an  
17 estimated value of \$5,790 and secures a \$9,046 debt.

18 At the continued Plan confirmation hearing held on May 5, 2010, the Court took under  
19 submission the issue of whether the purchase of the second car and furniture was in bad faith such  
20 that confirmation of the Plan should be denied and the Debtor's Chapter 13 case dismissed.

### 21 ANALYSIS

22 A Chapter 13 Plan must be proposed in good faith and not by any means forbidden by law.  
23 11 U.S.C. section 1325(a)(3). Generally this requires the debtor to have acted equitably and to have  
24 proposed a plan consistent with the spirit and purposes of Chapter 13. *In re: Goeb*, 675 F.2d 1386,  
25 1390 (9<sup>th</sup> Cir. 1982); *In re: Chinichian*, 784 F.2d 1440, 1444 (9<sup>th</sup> Cir. 1986). Repeated bankruptcy  
26 filings or dishonesty can preclude a finding of good faith. *In re: Nash*, 765 F.2d 1410, 1415 (9<sup>th</sup>

1 Cir. 1985); *In re: Huerta*, 137 B.R. 356, 367 (Bankr. CD CA 1992). These circumstances are not  
2 present here, however.

3 The Trustee's objection to confirmation of the Plan asserts the Debtor in bad faith incurred  
4 the Corolla and furniture debt in anticipation of bankruptcy, and that the Debtor could pay more to  
5 unsecured creditors. As to the first issue, the only evidence before the Court to support this position  
6 is that the furniture and Corolla debts were incurred by the Debtor the year his bankruptcy was  
7 filed. The timing of the incurrence of these debts is not linked by the Trustee to any bankruptcy  
8 related purpose, by evidence or argument. The timing of these debts could just as well be explained  
9 by the Debtor's establishment of a new household after separation from his wife, which had  
10 occurred before the bankruptcy was filed. The Trustee's claim that the incurrence of this debt  
11 constitutes bad faith is thus merely insinuation. *In re Richmond*, 338 Fed. Appx. 197, 200 (3d Cir.  
12 N.J. 2009) (insinuations alone do not support a finding that a Chapter 13 plan was proposed in bad  
13 faith.)

14 The Debtor has countered the Trustee's bad faith insinuation relating to the Corolla with a  
15 declaration. He explains the Corolla was purchased to meet his needs for reliable transportation for  
16 the three drivers in his family since the Acura is in poor mechanical condition and will need to be  
17 replaced before the Plan payments are completed. By this point in time, the Acura will be 13 years  
18 old. The \$350 payment on the Corolla is not excessively high, \$2800 in furniture is not exorbitant,  
19 and neither of the vehicles can be considered luxury items. On the record before it, the Court  
20 cannot find the challenged debts were incurred in anticipation of bankruptcy.

21 The Trustee's second claim of bad faith, that the Debtor could pay more to unsecured  
22 creditors under the Plan if he were to reject the Corolla is inconsistent with recent authority from the  
23 Ninth Circuit as well as the record before the Court. In *Maney v. Kagenveama* (*In re:*  
24 *Kagenveama*), 541 F.3d 868, 875 (9<sup>th</sup> Cir. 2008), the Ninth Circuit, citing *In re Anderson*, 21 F.3d  
25 355, 358 (9<sup>th</sup> Cir. 1994) confirmed that:

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27 "§ 1325(b)(1)(B) requires provision for 'payment of all projected disposable income' as  
28 calculated at the time of confirmation, and we reject the Trustee's attempt to impose a

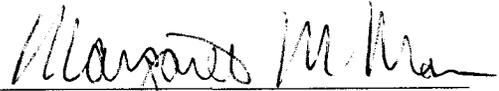
1 different, more burdensome requirement on the debtors' plan as a prerequisite to  
confirmation."

2 The Trustee's claim the unsecured creditors would receive some payment if the Corolla  
3 were to be rejected, is also not supported by the record. Even without the \$350 payment on the  
4 Corolla, the Debtor's disposable income calculated in accordance with *Kagenveama*, 541 F.3d at  
5 875, would still be negative by approximately \$700. The Court thus overrules the Trustee's  
6 objection that the Debtor should be required to reject the Corolla to generate payments to unsecured  
7 creditors.

8  
9 **CONCLUSION**

10  
11 For the reasons set forth above, the Court overrules the Trustee's bad faith objections to  
12 confirmation of the Debtor's Chapter 13 Plan. The Debtor may submit a confirmation order to be  
13 entered by the Court within ten days of entry of this Memorandum Decision.

14 DATED: June 1, 2010

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16 MARGARET M. MANN, JUDGE  
17 United States Bankruptcy Court  
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