

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re:
Philip Dennis Gardner and Andrea Ruth
Bowen-Gardner,

Debtor(s)

Case No.: 2:23-bk-15827-NB
Chapter: 13

**MEMORANDUM DECISION RE: PLAN
CONFIRMATION**

Hearing:
Date: March 14, 2024
Time: 9:30 a.m.
Place: Courtroom 1545
255 E. Temple Street
Los Angeles, CA 90012
(and via Zoomgov per posted procedures)

At the above-captioned hearing this Court made oral findings of fact and conclusions of law and confirmed Debtors' second amended proposed chapter 13 Plan (dkt. 43). See 11 U.S.C. § 1325 and Rule 52(a)(1) (Fed. R. Civ. P., incorporated by Rules 7052 and 9014(c), Fed. R. Bankr. P.). As set forth at greater length orally on the record, those findings and conclusions included and are augmented by the following.

Although Debtors have been conclusively found to have engaged in wrongful acts and omissions, both before and during their prior chapter 7 case (Case No. 9:19-bk-11016-RC; Adv. No. 9:19-ap-01052-RC, adv. dkt. 160), and although this Court has *not presumed* that Debtors could be trusted in this subsequent bankruptcy case to be

1 fully transparent about their disposable income, their assets, and other matters,
2 nevertheless this Court must make its decisions based on the evidence in the record,
3 and this Court is persuaded that Debtors have met their burdens to confirm their Plan
4 under § 1325, including on the issue of having *proposed their plan* in good faith, for the
5 following reasons. *See generally, e.g., In re Welsh*, 711 F.3d 1120, 1123 (9th Cir. 2013)
6 (citing and quoting *In re Leavitt*, 171 F.3d 1219, 1224 (9th Circuit 1999)); *and see*
7 *Garvin v. Cook Investments NW, SPNWY, LLC*, 922 F.3d 1031, 1035 (9th Cir. 2019)
8 (construing language of § 1129(a)(3) identical to language of § 1325(a)(3)), *and In re*
9 *Escarcega*, 573 B.R. 219, 241 (9th Cir. BAP 2017) (generalized test for good faith is
10 “whether the debtor has misrepresented facts in his plan, unfairly manipulated the
11 Bankruptcy Code, or otherwise proposed his Chapter 13 plan in an inequitable manner”)
12 (citation and internal quotation marks omitted). *See also* Rule 43(c) (Fed. R. Civ. P.,
13 incorporated by Rule 9017, Fed. R. Bankr. P.) (live testimony not required for contested
14 matters).

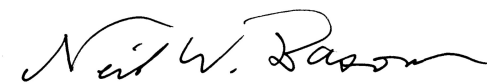
15 (1) Of paramount importance, Debtors have agreed that they will not be granted
16 any discharge of their debts in this bankruptcy case (and this Court is expressly relying
17 on Debtors’ agreement, notwithstanding any “boilerplate” language that could be read to
18 the contrary in their proposed Plan or in any confirmation order, and notwithstanding
19 any possible contrary arguments). (2) Debtors have substantially reduced their
20 proposed monthly expenses. (3) Debtors have provided information to the Chapter 13
21 Trustee to verify their income, expenses, assets, and liabilities. (4) The tax authorities
22 and other creditors have had opportunities to file proofs of claim (at little or no expense),
23 and in addition creditors and the Chapter 13 Trustee have had opportunities to attempt
24 to uncover any undisclosed revenues or assets, or otherwise maximize recoveries
25 (although admittedly those remedies sometimes can be cost-prohibitive). (6) Outside of
26 bankruptcy, creditors almost certainly would have no greater ability to uncover any
27 hidden income or assets, nor would they have any greater remedies – to the contrary
28 they would appear to have fewer such abilities and remedies. (7) In the event that post-

1 confirmation creditors do uncover hidden income or assets, or other misconduct, their
2 remedies include (a) seeking to vacate confirmation of the Plan, within 180 days (11
3 U.S.C. § 1330), (b) seeking to modify the Plan to increase payments, throughout the
4 entire term of the Plan (11 U.S.C. § 1329), and (c) seeking sanctions (although not
5 discussed at the hearing, such sanctions might include, for example, coercive contempt
6 sanctions, including incarceration, in the event that Debtors do not cooperate in fulfilling
7 their duties such as recovering any hidden assets).

8 For all of these reasons, and any additional reasons stated at the above-
9 captioned hearing, this Court will be issuing a separate order confirming Debtors'
10 chapter 13 Plan.

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24 Date: March 21, 2024



Neil W. Bason
United States Bankruptcy Judge