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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re ] Case No. 06-50708-ASW  
Cathie M. Swan ] Chapter 13  
Debtor. ]

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MEMORANDUM DECISION  
ON CREDITOR'S AMENDED OBJECTION TO CONFIRMATION

Before the Court is the amended objection of American Express Centurion Bank ("Creditor") to confirmation of the amended chapter 13 plan of Cathie M. Swan ("Debtor"). Creditor's objection is based on the assertion that (1) Debtor has not pledged all of her projected disposable income in support of the amended plan; (2) that Debtor (A) improperly claimed a transportation ownership expense based on the IRS Local Standard Transportation Expense Standards on Form B22C for a vehicle she owns free and clear of any liens and (B) improperly claimed a housing expense based on the IRS Local Standards for a one member household in Santa Clara County, California, although such expense exceeds Debtor's actual housing expense; and (3) that the phrase "applicable commitment period"

1 referenced in 11 U.S.C. § 1325(b)(4)<sup>1</sup> requires the amended plan to  
2 have a term of sixty months.

3 The Chapter 13 Trustee in this case is Devin Derham-Burk  
4 ("Trustee"). Richard T. Hilovsky, Esq. of the Law Offices of  
5 Richard T. Hilovsky, represents Debtor. John M. O'Donnell, Esq. of  
6 the Law Offices of John M. O'Donnell, represents Creditor.

7 This Memorandum Decision constitutes the Court's findings of  
8 fact and conclusions of law, pursuant to Rule 7052 of the Federal  
9 Rules of Bankruptcy Procedure.

10  
11 I.

12 FACTS

13 The facts of this case are undisputed.

14 Debtor filed a voluntary petition under chapter 13 of the  
15 Bankruptcy Code on May 1, 2006. Concurrently with the filing of  
16 the petition, Debtor submitted a proposed chapter 13 plan,  
17 Statement of Financial Affairs, and Form B22C "Statement of Current  
18 Monthly Income and Calculation of Commitment Period and Disposable  
19 Income" ("Form B22C"). On June 1, 2006, Creditor filed an  
20 "Objection to Confirmation of Debtor's Plan". Debtor filed an  
21 amended plan on July 10, 2006 ("Plan"), and Creditor filed an  
22 amended objection on August 24, 2006 ("Objection"). The Trustee  
23 filed a Brief in Support of Confirmation of Debtor's Proposed Plan  
24 on December 15, 2006.

25 Debtor lives in San Jose, California. Debtor's Schedule J  
26 shows a monthly rental expense of \$800. On Schedule B, Debtor

27  
28 <sup>1</sup>Unless otherwise noted, all statutory references are to Title  
11, United States Code (the Bankruptcy Code), as it existed when  
Debtor filed the bankruptcy petition on May 1, 2006.

1 lists a single automobile: a 1988 Ford Tempo with 120,000 miles.  
2 Debtor owns the Ford Tempo free and clear of any liens.

3 On Schedule I, Debtor lists gross monthly wages of \$4,462 and  
4 net monthly income (after deductions for taxes, insurance, and  
5 union fees) of \$2,958. Debtor's total monthly expenses on Schedule  
6 J are \$2,433, leaving monthly net income, according to the  
7 schedules, of \$525.

8 On Form B22C, Debtor checked the box at the top of the first  
9 page indicating that "Disposable income is determined under §  
10 1325(b)(3)", and the "applicable commitment period is 5 years."  
11 Debtor's current monthly income from Form B22C, line 11, is  
12 \$4,965.04. Annualizing her current monthly income from Form B22C  
13 totals \$59,580.48, which exceeds California's median family income  
14 of \$43,107 for a family with one earner. Accordingly, Debtor is an  
15 above-median debtor and must complete the expense portion of Form  
16 B22C to determine the amount of disposable income that must be paid  
17 into her plan pursuant to 11 U.S.C. § 1325(b)(3).

18 On Line 25B of Form B22C, Debtor deducted \$1,644 for housing  
19 using the IRS Local Standard for a one-member household in Santa  
20 Clara County, California. In addition, on Line 28 of Form B22C,  
21 Debtor deducted \$471 for the Local Standard amount allowed for  
22 vehicle ownership expense. Debtor's total expenses allowed under  
23 the IRS Standards at line 38 of Form B22C are \$4,905.54. As a  
24 result, Debtor's monthly disposable income according to Form B22C  
25 is \$59.50.<sup>2</sup>

26 The Plan proposes payments of \$525 per month for 36 months,  
27 resulting in total Plan receipts of \$18,900.00. The proposed  
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<sup>2</sup> \$4,965.04 - \$4,905.54 = \$59.50.

1 dividend to Debtor's unsecured non-priority creditors is  
2 approximately 17%.

3 Creditor holds two unsecured non-priority claims for unpaid  
4 credit card debt totaling \$29,468.85.<sup>3</sup> These claims represent  
5 approximately 34% of the total claims against Debtor.<sup>4</sup>

6 Creditor's Objection contends that: (A) Debtor is not allowed  
7 to take the standard IRS expense deduction (IRS Local Standard for  
8 housing) when her actual rent is less than the standard; and (B)  
9 Debtor is not allowed to take an ownership deduction specified in  
10 the IRS Local Transportation Expense standards because she owns a  
11 car free and clear of liens. If Creditor is correct, and Debtor's  
12 claimed expense deductions are disallowed, then Debtor's monthly  
13 disposable income according to Form B22C would rise by \$1,315.<sup>5</sup> In  
14 that case, Debtor's Amended Plan could not be confirmed because  
15 Debtor would not be paying all of her "projected disposable income"  
16 to unsecured creditors, and thus the Plan would violate §  
17 1325(b)(1)(B). Debtor counters that the expense deductions are  
18 proper, and therefore the Plan satisfies the requirement that all  
19 projected disposable income be pledged to pay unsecured creditors.  
20 Finally, Creditor contends that because Debtor is an above-median  
21 debtor her "applicable commitment period" under § 1325(b)(1)(B) is  
22 sixty months, and this requires Debtor to commit to a five-year

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24 <sup>3</sup> According to Schedule F, Creditor holds two unsecured claims  
25 against the Debtor, one for \$17,734.74 and another for \$11,734.11,  
each arising from a separate credit card account.

26 <sup>4</sup> According to Schedule F, Debtor has total nonpriority general  
27 unsecured debt of \$87,235.

28 <sup>5</sup> \$471 vehicle ownership expense plus \$844 (difference between  
standard housing deduction of \$1644 and Debtor's actual housing  
expense of \$800).

1 plan. Debtor responds by arguing that Creditor misunderstands  
2 the BAPCPA requirements and that her Plan satisfies the statute  
3 because she is paying significantly more than the full amount she  
4 would be required to pay over a five-year plan during the three-  
5 year term of her proposed Plan. In fact, Debtor is proposing to  
6 pay five times more under the proposed three-year Plan than she  
7 would be required to pay over five years.

8  
9 II.

10 ANALYSIS

11 The petition was filed on May, 1, 2006, and thus all statutory  
12 amendments contained in the BAPCPA apply in this case.

13 **1. Whether calculation of Debtor's projected disposable income**  
14 **under § 1325(b)(1) requires the Court to look beyond Form B22C.**

15 Pursuant to § 1325(b)(1)(B), the Plan must provide "that all of  
16 the debtor's projected disposable income to be received in the  
17 applicable commitment period beginning on the date that the first  
18 payment is due under the plan will be applied to make payments to  
19 unsecured creditors under the plan." 11 U.S.C. § 1325(b)(1)(B).  
20 Section 1325(b)(2) defines "disposable income" as "current monthly  
21 income received by the debtor...less amounts reasonably necessary  
22 to be expended...for the maintenance and support of the debtor or a  
23 dependent of the debtor..." 11 U.S.C. § 1325(b)(2).

24 Creditor's argument in this regard is not clear. Creditor  
25 states that Debtor's Plan should not be confirmed because the  
26 debtor is not paying all of her "projected disposable income" under  
27 11 U.S.C. § 1325(b)(1)(B). Creditor cites cases supporting the  
28 proposition that "projected disposable income" may be different

1 than "disposable income." In re Hardacre, 338 B.R. 718, 723  
2 (Bankr. N.D. Tex. 2006); In re Kibbe, 342 B.R. 411, 414-15 (Bankr.  
3 D. N.H. 2006); In re Dew, 344 B.R. 655, 660 (Bankr. N.D. Ala.  
4 2006). Creditor fails, however, to provide this Court with any  
5 alternative basis for calculating Debtor's projected disposable  
6 income. Creditor has not alleged any facts indicating that Debtor  
7 has the ability to pay more, or is likely to receive a substantial  
8 increase in income in the near future. Rather, in this case,  
9 Debtor's gross monthly income stated on Schedule I (\$4,642) is less  
10 than on her statement of CMI (\$4,965.04). Accordingly, Creditor's  
11 only allegations regarding Debtor's alleged failure to pledge all  
12 of her projected disposable income to payment of unsecured  
13 creditors relate to the housing and vehicle ownership expense  
14 deductions. Creditor makes no other argument that the statement of  
15 net income on Form B22C does not accurately reflect the income to  
16 be received by Debtor in the future. Therefore, the cases cited by  
17 Creditor are inapposite. The only specific objections by Creditor  
18 involve the expense deductions, which the Court, for the reasons  
19 stated infra, overrules in this Memorandum Decision.<sup>6</sup>

20  
21 <sup>6</sup>Moreover, in its Objection, Creditor adopts Debtor's net  
22 income statement from Form B22C as the starting point for its  
23 calculations of projected disposable income. Nowhere does Creditor  
24 argue that the Court should look elsewhere (like, for example, to  
25 Schedules I & J) to determine Debtor's required monthly Plan  
26 payment.

27 Because Creditor has not made any other specific objection to  
28 the calculation of Debtor's projected disposable income, the Court  
need not decide the issue of whether a departure from Form B22C is  
permissible under the law or warranted on the facts of this case.  
Courts deciding this issue have taken at least three different  
approaches. See In re Miller, --- B.R. ----, 2007 WL 60812 (Bankr.  
N.D. Ala. Jan. 18, 2007)(holding that Form B22C is dispositive of  
an above-median debtor's projected disposable income); In re Jass,  
340 B.R. 411 (Bankr. D. Utah 2006)(holding that Form B22C is not  
dispositive of a debtor's projected disposable income, but will

1           **2. Whether the expense deductions claimed by Debtor on Form**  
2 **B22C are proper.**

3           Where the holder of an allowed unsecured claim objects to  
4 confirmation, a plan must pledge all projected disposable income  
5 during the "applicable commitment period." 11 U.S.C. §  
6 1325(b)(1)(B). Disposable income is defined as current monthly  
7 income less "amounts reasonably necessary to be expended." In re  
8 Crews, 2007 WL 626041, \*3 (Bankr. N.D. Ohio Feb. 23, 2007). Debtor  
9 is an above-median income debtor, and therefore, according to  
10 § 1325(b)(3), the amounts reasonably necessary to be expended in  
11 calculating Debtor's disposable income under 1325(b)(2) "shall be  
12 determined in accordance with subparagraphs (A) and (B) of section  
13 707(b)(2)." In re Naslund, --- B.R. ----, 2006 WL 4038608, \*8  
14 (Bankr. D. Mont. Nov. 16, 2006). Section 707(b)(2)(A)(ii)(I)  
15 states, in pertinent part:

16           The debtor's monthly expenses shall be the debtor's applicable  
17 monthly expense amounts specified under the National Standards  
18 and Local Standards, and the debtor's actual monthly expenses  
19 for the categories specified as Other Necessary Expenses issued  
20 by the Internal Revenue Service for the area in which the  
debtor resides, as in effect on the date of the order for  
relief, for the debtor, the dependents of the debtor, and the  
spouse of the debtor in a joint case, if the spouse is not  
otherwise a dependent.

21           Creditor's Objection regarding Debtor's alleged failure to  
22 pledge all projected disposable income to repayment of unsecured  
23 creditors is based on two separate arguments. The first is  
24 Creditor's contention that Debtor is not entitled to take the IRS  
25 standard vehicle ownership deduction because Debtor owns her

26 \_\_\_\_\_  
27 receive a presumption that it reflects projected disposable income  
28 absent a showing of a substantial change in circumstances); In re  
Demonica, 345 B.R. 895, 900 (Bankr. N.D. Ill. 2006)(holding that  
the term "projected disposable income" "must mean something other  
than the income computed on Form B22C.")

1 vehicle free and clear of liens. Creditor's second argument is  
2 that, because Debtor's actual housing expense is less than the IRS  
3 local standard allowance, Debtor is only entitled to deduct her  
4 actual housing expense. Although these are presented as separate  
5 arguments, they both turn on the same issue, and that is whether  
6 the IRS Local Standards are caps on the allowable deductions, or  
7 are the fixed allowances that all above-median debtors may take  
8 when completing Form B22C. See Crews, 2007 WL 626041 at \*3. For  
9 the reasons that follow, the Court finds that, with respect to both  
10 issues, the IRS Local Standards are not caps, but provide the  
11 actual deductions to be taken under the circumstances.

12 Accordingly, the Court finds that Debtor's Plan does pledge all  
13 projected disposable income to payment of unsecured creditors, and  
14 Creditor's Objections on that basis are therefore overruled.

15 **A. Whether, on Form B22C, Debtor may deduct the vehicle**  
16 **ownership expense for a car owned free and clear of liens.**

17 Debtor owns her vehicle free and clear of liens. Debtor  
18 claimed a deduction for transportation ownership/lease expense of  
19 \$471 on Form B22C. There is no question that this is the relevant  
20 amount of the IRS Transportation Standards, Ownership Costs  
21 deduction for a first car. The question is whether it is  
22 appropriate for Debtor, who owns her vehicle outright, and  
23 therefore currently makes no lease or finance payments on the  
24 vehicle, to take this deduction.

25 This issue has been thoroughly discussed in recent cases. No  
26 discernable majority view has yet emerged. This Court counts  
27 eleven opinions holding that a debtor cannot deduct an ownership  
28 expense for a vehicle owned free and clear. Hardacre; In re

1 McGuire, 342 B.R. 608 (Bankr. W.D. Mo. 2006); In re Barraza, 346  
2 B.R. 724 (Bankr. N.D. Tex. 2006); In re Lara, 347 B.R. 198 (Bankr.  
3 N.D. Tex. 2006); In re Carlin, 348 B.R. 795, (Bankr. D. Or. 2006);  
4 In re Oliver, 350 B.R. 294 (Bankr. W.D. Tex. 2006); In re Harris,  
5 353 B.R. 304 (Bankr. E.D. Okla. 2006); In re Wiggs, 2006 WL 2246432  
6 (Bankr. N.D. Ill. August 4, 2006); In re Devilliers, --- B.R. ----,  
7 2007 WL 92504 (Bankr. E.D. La. Jan. 9, 2007); In re Slusher, ---  
8 B.R. ----, 2007 WL 118009 (Bankr. D. Nev. Jan. 17, 2007); In re  
9 Ceasar, --- B.R. ----, 2007 WL 777821 (Bankr. W.D. La. Mar. 6,  
10 2007). Fourteen courts have gone the other way, holding that the  
11 debtor may deduct the ownership expense for a vehicle that is not  
12 financed or leased. In re Demonica, 345 B.R. 895 (Bankr. N.D. Ill.  
13 2006); In re Fowler, 349 B.R. 414 (Bankr. D. Del. 2006); In re  
14 Hartwick, 352 B.R. 867 (Bankr. D. Minn. 2006); In re Grunert, 353  
15 B.R. 591 (Bankr. E.D. Wis. 2006); In re Haley, 354 B.R. 340 (Bankr.  
16 D. N.H. 2006); In re Wilson, 356 B.R. 114 (Bankr. D. Del. 2006); In  
17 re McIvor, 2006 WL 3949172 (Bankr. E.D. Mich. Nov. 15, 2006);  
18 Naslund; In re Prince, 2006 WL 3501281 (Bankr. M.D.N.C. Nov. 30,  
19 2006); In re Zak, --- B.R. ----, 2007 WL 143065 (Bankr. N.D. Ohio  
20 Jan 12, 2007); In re Sawdy, --- B.R. ----, 2007 WL 582535 (Bankr.  
21 E.D. Wis. Feb. 20, 2007); Crews; In re Enright, 2007 WL 748432  
22 (Bankr. M.D.N.C. Mar. 6, 2007); In re Watson, --- B.R. ----, 2007  
23 WL 1086582 (Bankr. D. Md. Apr. 11, 2007).

24 This Court finds the latter line of cases more persuasive. The  
25 bankruptcy court in Sawdy collected the cases and analyzed the  
26 different rationales expressed by courts on both sides of this  
27 issue, setting forth six separate categories of explanations  
28 offered by the courts: (1) the "Plain Meaning" Rationale; (2) the

1 Unfair Results Rationale; (3) the "Ownership/Liability" Distinction  
2 Rationale; (4) the Policy Rationale; (5) the Applicable vs. Actual  
3 Rationale; and (6) the Reliance on IRS Materials Rationale. Sawdy,  
4 --- B.R. at ----, 2007 WL 582535 at \*4 - \*13. Like the Sawdy  
5 court, this Court finds two of those rationales particularly  
6 convincing -- what the Sawdy court termed (1) the Applicable vs.  
7 Actual Rationale; and (2) the Reliance on IRS Materials Rationale.  
8 Both are applicable not only to this issue, but to the housing  
9 deduction issue as well. In addition to the two rationales that  
10 convinced the Sawdy court, this Court also finds that a separate  
11 policy rationale supports allowing the deduction. This policy  
12 rationale was touched upon, but not fully explicated, by the Sawdy  
13 court in its discussion of what it termed the "Unfair Results  
14 Rationale." Sawdy, --- B.R. at ----, 2007 WL 582535 at \*6. In  
15 addition to the rationales explored, in whole or in part, by the  
16 Sawdy court, this Court finds that a separate efficiency argument,  
17 buttressed by BAPCPA's legislative history, supports allowance of  
18 the standard deductions.

19 **The Applicable vs. Actual Rationale**

20 This rationale arises from an examination of the language of  
21 § 707(b)(2)(a)(ii)(I). The first clause of that section states  
22 that, "[t]he debtor's monthly expenses shall be the debtor's  
23 applicable monthly expense amounts specified under the National  
24 Standards and Local Standards." The clause immediately thereafter  
25 states: "and the debtor's actual monthly expenses for the  
26 categories specified as Other Necessary Expenses issued by the  
27 Internal Revenue Service for the area in which the debtor  
28 resides...." The distinction made by the bankruptcy court in

1 Fowler, and which this Court finds highly persuasive, is that the  
2 use of the word "applicable" in the first clause with regard to  
3 some expenses (which include both housing and transportation  
4 ownership), and the use of the word "actual" with regard to "Other  
5 Necessary Expenses", indicates Congressional intent to distinguish  
6 between the two classes of expenses, and to allow debtors to use  
7 the deductions found in the Local Standards for the first category.  
8 A debtor's actual expenses are only relevant with respect to  
9 expenses that fall into the "Other Necessary Expenses" category.  
10 Fowler, 349 B.R. at 418. Applied specifically to the  
11 transportation ownership expense, which clearly falls within the  
12 first clause of § 707(b)(2)(a)(ii)(I) and is set forth in the Local  
13 Standards, this interpretation leads to the conclusion that any  
14 debtor who owns a vehicle is entitled to the deduction for  
15 transportation ownership, regardless of whether or not the debtor,  
16 at the moment of plan confirmation, has an actual car payment  
17 expense.

18 This conclusion is consistent with an interpretation of the  
19 Local Standards, incorporated into § 707(b)(2)(a)(ii)(I), as fixed  
20 allowances, rather than caps on actual expenses. See Crews, 2007  
21 WL 626041 at \*3 - \*4. That this was the intent of Congress in  
22 enacting this bankruptcy legislation is further supported by the  
23 fact that, under the Internal Revenue Manual ("IRM"), the  
24 transportation ownership standards act as caps: "Taxpayers will be  
25 allowed the local standard or the amount actually paid, whichever  
26 is less." IRM 5.8.5.5.2. The fact that, in enacting the current  
27 version of the bankruptcy code, Congress chose not to adopt the  
28 language from the IRM "evidences that it did not intend the Local

1 Standards to apply as a cap." Fowler, 349 B.R. at 418.

2 **The Reliance on IRS Materials Rationale**

3 As explained in Sawdy, --- B.R. at ----, 2007 WL 582535 at \*13  
4 - \*14, many of the courts finding that a debtor who owned a vehicle  
5 free and clear of liens could not take the ownership deduction  
6 relied, to some extent, on language in the IRM and the IRS  
7 Collection Financial Standards. See Hardacre, 338 B.R. at 726;  
8 McGuire, 342 B.R. at 612-13; Barraza, 346 B.R. at 728; Carlin, 348  
9 B.R. at 797; Hartwick, 352 B.R. at 869. In so doing, these courts  
10 concluded, on the basis of the language of those IRS publications,  
11 that because the IRS is clear that when considering allowances for  
12 housing and transportation, a taxpayer may take the lower of the  
13 deduction set forth in the Local Standards or the amount actually  
14 spent, the same was true in this context. Accordingly, those  
15 courts held that the debtor was only entitled to deduct the lesser  
16 of the Local Standard deduction and the actual expense -- so where  
17 the debtor had no transportation ownership expense (because the  
18 vehicle was owned free and clear), the debtor was not entitled to  
19 any deduction.

20 As discussed in the preceding section, the bankruptcy courts in  
21 Fowler and Grunert pointed out the flaw in this reasoning by  
22 referencing BAPCPA's legislative history. See Fowler, 349 B.R. at  
23 419; Grunert, 353 B.R. at 594. If Congress had intended to adopt  
24 wholesale the language and intent of these IRS publications, it  
25 could have done so explicitly. Congress did not. In fact,  
26 § 707(b)(2)(a)(ii)(I) refers specifically to the National Standards  
27 and Local Standards, but "does not refer to or purport to include  
28 the numerous rules and practices specified throughout the Internal

1 Revenue Manual." Prince, 2006 WL 3501281 at \*2. None of the  
2 courts using the IRS publications in reaching their decisions cited  
3 any specific authority for doing so<sup>7</sup>, but simply found it  
4 "instructive" to do so. Hardacre, 338 B.R. at 726. In the absence  
5 of any specific authority directing courts to apply those  
6 publications in interpreting this Code section, reference to such  
7 materials is inappropriate.

### 8 **The Unfair Results Rationale**

9 For the sake of consistency with the discussion in prior  
10 opinions, the Court will refer to this as the Unfair Results  
11 Rationale. The debtors in Sawdy argued that in most cases where  
12 debtors owned the vehicle for a long time, the vehicle had once  
13 been subject to a lien, but the lien had been paid off.  
14 Accordingly, in such cases, the debtors will own older vehicles,  
15 which are more likely to require repairs or replacement during the  
16 life of a typical chapter 13 plan. The debtors in Sawdy argued  
17 that it would be unfair to force them to pay the amount of the  
18 monthly ownership expense to creditors when they may, and likely  
19 will, need that amount of money in the future to repair or replace  
20 their present vehicle. Sawdy, --- B.R. at ----, 2007 WL 582535 at  
21 \*7. The Sawdy court ultimately found this rationale unpersuasive,  
22 interpreting it as a general argument for building an "emergency  
23 cushion" into the disposable income requirement of § 1325(b)(1)(A),  
24 for which the court found no statutory support, and which the Sawdy

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26  
27 <sup>7</sup>Other than the assertion that statutory interpretation is "a  
28 holistic endeavor," citing United Sav. Ass'n v. Timbers of Inwood  
Forest Assoc., Ltd., 484 U.S. 365, 371 (1988). Hardacre, 338 B.R.  
at 725.

1 court was "reluctant" to read into the Code. Sawdy, --- B.R. at --  
2 --, 2007 WL 582535 at \*9.

3 This Court respectfully disagrees with this portion of the  
4 Sawdy court's analysis. In this Court's opinion, the argument that  
5 a debtor who owns an old car free and clear of liens almost  
6 inevitably will have to repair or replace it during the chapter 13  
7 plan term provides strong support for allowing the standard  
8 deduction, both on the basis of the specific facts in this case,  
9 and the policy in general. Here, Debtor owns a 1988 Ford Tempo  
10 with 120,000 miles. By any reasonable assessment, there is a  
11 strong probability that the Debtor will have to obtain a  
12 replacement vehicle during the term of the Plan. The vehicle has  
13 very little value (Debtor valued the car at \$1,500 on Schedule B),  
14 which likely renders any major repair an economically inefficient  
15 venture. Any type of reasonably reliable replacement will cost the  
16 Debtor several thousand dollars up front, a lengthy commitment on a  
17 significant monthly payment for a loan or lease, or both (in the  
18 case of a new car with money down -- which may be necessary to make  
19 the monthly payments manageable for those with meager incomes  
20 and/or tight budgets). Requiring the Debtor to pay the full amount  
21 of the monthly ownership expense by disallowing the deduction would  
22 effectively foreclose the Debtor from doing any of those things --  
23 and ultimately from being able to replace the vehicle at all. If  
24 forced to pay the full amount of the vehicle ownership expense to  
25 creditors, the Debtor would not be able to amass any savings to use  
26 if the car breaks down, and would not have any monthly cash flow  
27 available to make monthly payments on a loan or lease. The Debtor  
28 could be forced to choose between making Plan payments and buying

1 or leasing a new vehicle, and could ultimately wind up defaulting  
2 on the Plan as a result. This Court finds that such a result would  
3 be inconsistent with the fresh start policy of the Code and unfair  
4 to the Debtor. Moreover, if Debtor cannot complete her Plan, she  
5 would likely convert to chapter 7, which would result in creditors  
6 receiving less money than they would under the Plan.

7 **The Efficiency Rationale**

8 Creditor responds to the Unfair Results Rationale by arguing  
9 that the Debtor could seek to modify the Plan if in fact the car  
10 does break down. The Court finds this argument unpersuasive.  
11 Considering the strong likelihood that Debtor will have to replace  
12 her 1988 Ford Tempo during the term of the Plan, requiring that the  
13 Plan be modified if and when that occurs is, in this Court's  
14 opinion, an inefficient manner of dealing with this issue. Every  
15 modification would require the Debtor to contact her attorney, have  
16 her attorney draft and file the necessary papers and serve notice  
17 on creditors. If a creditor should object, a hearing would have to  
18 be held, Debtor's counsel would have to file additional papers and  
19 appear at the hearing, and the Court would have to decide the  
20 motion. That process takes a significant amount of time, and costs  
21 a significant amount of money, in terms of attorney's fees,  
22 noticing costs, and judicial resources. All of that simply to  
23 allow Debtor to pay for a vehicle -- which is, in most cases, an  
24 absolute necessity in terms of allowing a debtor to maintain  
25 employment. Going through such a procedure under these  
26 circumstances in thousands of bankruptcy cases is not what Congress  
27 intended. Allowing the standardized deduction, as the BAPCPA  
28 provides, is far more efficient.

1           This is consistent with BAPCPA's intent to limit the bankruptcy  
2 court's discretion in inquiring into "'lifestyle and [disposable  
3 income] philosophy' questions that were prevalent under prior law.  
4 Instead, the court is left to review the Form B22C, which properly  
5 permits certain deductions that are greater than the debtor's  
6 actual expenses." Grunert, 353 B.R. at 594 (citations omitted).  
7 The legislative history of BAPCPA supports the conclusion that the  
8 IRS standards, rather than the debtor's actual expenses, are to be  
9 used on Form B22C: "The bill also makes substantial changes to  
10 chapter 13 by substituting the IRS expense standards to calculate  
11 disposable income....The formula remains inflexible and divorced  
12 from the debtor's actual circumstances." Report of the Committee  
13 on the Judiciary, House of Representatives, to Accompany S. 256,  
14 H.R.Rep. No. 109-31, pt. 1 at 553 (2005). Treating the standard  
15 deductions as fixed allowances, rather than caps on actual  
16 expenses, furthers the interests of efficiency, ease of  
17 administration, and limits the bankruptcy courts' inquiry into  
18 debtors' individual expenditure choices, as intended by Congress.

19           From a policy perspective, Creditor's position would have the  
20 perverse effect of incentivizing debtors to incur large vehicle  
21 loans on the eve of filing chapter 13 and to spend the full amount  
22 of the standard vehicle ownership deduction. If a debtor who owns  
23 a vehicle free and clear is not permitted to take the ownership  
24 deduction, then debtors have every motivation to buy a new car --  
25 immediately prior to filing for bankruptcy -- for which the  
26 deduction is permitted. Debtors who do so would receive the  
27 benefit of possessing a newer vehicle, rather than the old one  
28 owned free and clear. Faced with the choice of owning a new car or

1 driving an old car and paying their unsecured creditors a few  
2 hundred additional dollars every month, while at the same time  
3 being tethered to a plan that makes no allowance for car payments,  
4 any rational debtor would choose the former. It is better policy  
5 to promote the purchase and use of lower-cost used vehicles by  
6 debtors. This is a more financially responsible choice than a  
7 policy that encourages debtors to stretch their budgets to buy more  
8 expensive new vehicles -- just before filing bankruptcy -- to take  
9 advantage of a deduction, where the only other practical  
10 alternative is, from the debtors' perspective, to lose the ability  
11 to fix or replace their vehicles.

12 **B. Whether, on Form B22C, Debtor may deduct the housing**  
13 **allowance provided by the IRS standards, or is limited to the**  
14 **actual expense.**

15 Debtor's actual monthly rent payment is \$800. Debtor claimed  
16 a deduction of \$1,644 on Form B22C. This is the appropriate IRS  
17 Housing and Utility Local Standard for a one-member household in  
18 Santa Clara County, California. The question for decision is  
19 whether a debtor whose actual housing expense is lower than the IRS  
20 standard may nevertheless deduct the standard amount.

21 There are three decisions on this issue of which this Court is  
22 aware. Two hold that the debtor is entitled to take the full  
23 amount of the applicable housing deduction without consideration of  
24 the debtor's actual expense. In re Ferrar-Johnson, 353 B.R. 224  
25 (Bankr. N.D. Ill. 2006); In re Naslund, --- B.R. ----, 2006 WL  
26 4038608 (Bankr. D. Mont. Nov. 16, 2006). The other holds that a  
27 debtor is only entitled to claim the lesser of the IRS local  
28 standard amount or the actual housing expense. In re Rezentes, ---

1 B.R. ----, 2007 WL 988055 (Bankr. D. Haw. Apr. 2, 2007). This  
2 Court agrees with the Ferrar-Johnson and Naslund decisions. The  
3 reasoning that this Court finds persuasive in reaching this  
4 conclusion is the same as that employed by numerous courts in  
5 deciding the vehicle ownership expense deduction. The Unfair  
6 Results Rationale, as it applies in this context, has not received  
7 any attention in the cases, and is worthy of further discussion.

8 If the Court were to accept Creditor's position and cap  
9 Debtor's housing deduction on Form B22C at her actual expense, it  
10 would have the effect of locking Debtor in to that expense for the  
11 duration of the chapter 13 Plan. Such a result would be unfair to  
12 the Debtor because it is highly unlikely that Debtor's housing  
13 expense will remain at the current level throughout the Plan term.  
14 Circumstances inevitably change. Rents generally go up. People  
15 move. If Debtor's rent were to increase by ten percent, that would  
16 amount to \$80. But under Creditor's position, Debtor would be  
17 unable to find money in her budget to pay for that increase,  
18 because it would already have been pledged toward payment of  
19 unsecured creditors. That potentially would result in Debtor  
20 defaulting in her Plan payments (because she would be forced to  
21 divert funds allocated to the Plan toward staying current on her  
22 rent) or, worse yet, being evicted from her home. If Debtor is  
23 unable to make her Plan payments, the case likely would be  
24 converted to chapter 7, and creditors would receive a lower return  
25 than they are entitled to under the Plan. None of these events are  
26 in the best interest of Debtor or the unsecured creditors.

27 As in the context of the car ownership expense, the response  
28 that Debtor could modify the Plan if her rent increases is

1 unconvincing. It is possible, perhaps likely, that Debtor's rent  
2 could increase every year. Such a situation would require numerous  
3 modifications over the life of the Plan. Requiring Debtor to move  
4 to modify the Plan at every occasion of an increase in rent is  
5 inconsistent with the BAPCPA, and is terribly inefficient.  
6 Requiring the Debtor to incur hundreds of dollars of attorney's  
7 fees every time her rent goes up, for the sole purpose of allowing  
8 her to budget properly for her housing expense, cannot have been  
9 the result intended by Congress. The standardized deduction  
10 provided for in the language of the BAPCPA, as described above, is  
11 far more efficient.

12 As with the vehicle ownership situation, the same perverse  
13 policy implications are at play here. Acceptance of Creditor's  
14 position creates an incentive for debtors to spend the full amount  
15 of the allowable housing deduction on their housing expense. In  
16 this particular case, that amounts to more than \$800 per month.  
17 Any rational person faced with the choice of living in a house that  
18 costs \$1,600 per month, or one that costs \$800 per month and at the  
19 same time being tethered to a plan that makes no allowance for rent  
20 increases, would likely choose the former. For the courts to  
21 promote such a choice would be irresponsible. Debtors should be  
22 given incentives to live within their means and to choose lower  
23 cost alternatives when fulfilling everyday needs such as housing  
24 and transportation. Such a policy is in the best interests of  
25 debtors and creditors, both in the long-run and in the short term.  
26 Debtors who live more frugally are less likely to default on their  
27 plans, and thus creditors will receive a greater return in the  
28 short term. In the long-run, Debtors who develop financially sound

1 decision-making skills are more likely to repay their debts than  
2 those who live on the edge of, or beyond, their means.<sup>8</sup> This  
3 approach is consistent with both the language and the intent of the  
4 BAPCPA, as explained supra, in connection with the discussion of  
5 the vehicle ownership deduction.

6 **3. Whether the term "applicable commitment period" in 1325(b)**  
7 **requires Debtor to commit to a sixty-month plan.**

8 Section 1325(b)(1)(B) states that a court may not confirm a

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9  
10 <sup>8</sup>The recent decision of the bankruptcy court in Rezentes,  
11 despite its holding in favor of Creditor's position, illustrates  
12 the inefficiency of such a holding, as well as the perversity of  
13 the policy it encourages. In Rezentes, above-median debtors (a bus  
14 driver and school teacher with four dependent children) lived in a  
15 series of rented homes. The first cost \$2,100 per month, and the  
16 second \$1,800 per month. When the debtors' finances got even  
17 tighter, they moved in with the debtor-husband's parents (nine  
18 people to a three-bedroom house), where they paid only \$300 per  
19 month in rent. After filing a chapter 13 petition, the debtors  
20 attempted to take the IRS local standard housing deduction for a  
21 family of six of \$2,000 on Form B22C. An unsecured creditor  
22 objected to the deduction, arguing that the debtors were only  
23 entitled to deduct the lesser of the standard deduction or their  
24 actual housing expense. The bankruptcy court adopted the  
25 creditor's position, holding that the debtors were only entitled to  
26 deduct their actual housing expense of \$300. Following its  
27 holding, the Rezentes court included a section in its discussion  
28 entitled "Possible Solutions for the Debtors' Dilemma," wherein it  
acknowledged: "The irony of this case is that the debtors must make  
larger plan payments because they moved into a too-small home in a  
valiant and commendable effort to pay their creditors. If the  
debtors had remained in one of their prior residences, rather than  
reduced their housing expense in a failed attempt to keep up with  
their bills, the debtors could have claimed the entire local  
standard expense." The court then suggested that the debtors could  
propose a plan initially based on their actual housing expense, and  
then propose a modification if they moved into more expensive  
housing that better suits their needs. Or, the court suggested,  
the debtors could propose a plan with variable payments that would  
allow them to save up for a move into more appropriate (and  
expensive) housing. As discussed supra, requiring honest debtors  
to navigate chapter 13 in such a manner, and to incur the  
additional expenses, so as to enable them to budget for appropriate  
housing is, inter alia, inefficient, unfair, contrary to the  
language and intent of BAPCPA, and constitutes bad policy.

1 plan unless it "provides that all of the debtor's projected  
2 disposable income to be received in the applicable commitment  
3 period beginning on the date that the first payment is due under  
4 the plan will be applied to make payments to unsecured creditors  
5 under the plan." 11 U.S.C. § 1325(b)(1)(B). According to the  
6 Code, the "applicable commitment period" that applies to Debtor is  
7 "not less than 5 years." 11 U.S.C. § 1325(b)(4)(A)(ii). Creditor  
8 contends that Debtor's Plan may only be shorter than 5 years if  
9 Debtor pays all allowed unsecured creditors in full, pursuant to  
10 § 1325(b)(4)(B). It is undisputed that the Plan does not provide  
11 for full payment of all allowed unsecured claims. Debtor argues  
12 that the statute does not require a fixed plan term, and that,  
13 because the Plan proposes to pay, over 36 months, an amount greater  
14 than Debtor's projected disposable income multiplied by 60 months,  
15 the Plan should be confirmed as proposed.

16 This issue has been described as a distinction between a  
17 "monetary" requirement and a "temporal" requirement. In re Brady,  
18 --- B.R. ----, 2007 WL 549359, \*9 (Bankr. D. N.J. Feb. 13, 2007),  
19 citing Alane A. Becket and Thomas A. Lee, III, Applicable  
20 Commitment Period: Time or Money?, 25-MAR Am. Bankr. Inst. J. 16  
21 (2006). Creditor espouses the view that the phrase "applicable  
22 commitment period" imposes a temporal requirement that Debtor must  
23 commit to a plan for a specific amount of time -- in this case,  
24 five years. Some courts have adopted this position. Slusher, ---  
25 B.R. at ----, 2007 WL 118009 at \*11; In re Casey, 356 B.R. 519, 527  
26 (Bankr. E.D. Wash. 2006); In re Cushman, 350 B.R. 207, 212 (Bankr.  
27 D. S.C. 2006); In re Davis, 348 B.R. 449, 458 (Bankr. E.D. Mich.  
28 2006); Dew, 344 B.R. at 661; McGuire, 342 B.R. at 615.

1 Debtor takes the position that "applicable commitment period"  
2 constitutes a monetary requirement such that, in order to be  
3 confirmed, Debtor's three-year Plan must provide for payment of her  
4 projected disposable income multiplied by the applicable commitment  
5 period. In this case, the relevant calculation is \$59.50 projected  
6 disposable income according to Form B22C multiplied by the 60 month  
7 applicable commitment period equals \$3,570. Debtor argues that the  
8 Plan satisfies the requirements of the Code, and therefore may be  
9 confirmed, because it proposes to pay \$18,900 over 36 months, which  
10 is over five times more than Debtor's projected disposable income  
11 over the applicable commitment period of \$3,570. Cases supporting  
12 Debtor's position include Brady, and In re Fuger, 347 B.R. 94  
13 (Bankr. D. Utah 2006). Bankruptcy Judge Keith M. Lundin takes the  
14 same view in his chapter 13 treatise. See 5 Keith M. Lundin,  
15 Chapter 13 Bankruptcy §§ 500.1 at 500-2 (3d ed. 2006) ("The  
16 applicable commitment period does not require that the debtor  
17 actually make payments for any particular period of time. Rather  
18 it is the multiplier in a formula that determines the amount of  
19 disposable income that must be paid to unsecured creditors.")

20 The logic of Debtor's position is straightforward. Unsecured  
21 creditors will receive more under the Plan than is required by the  
22 Code. Specifically, in this case, unsecured creditors will receive  
23 more than five times what the Code requires (\$18,900 compared with  
24 \$3,570), and they will receive it more quickly under Debtor's  
25 three-year Plan than they would if the Court were to adopt  
26 Creditor's position, and require a five-year plan term. This is  
27 clearly to the benefit of all creditors. The unsecured creditors  
28 are not being paid interest, so the time value of money makes the

1 disparity between what Debtor is offering to pay under the Plan --  
2 \$18,900 over three years -- and what unsecured creditors would be  
3 entitled to under Creditor's position -- \$3,570 over five years --  
4 even greater than it appears at first blush. Debtor's position  
5 also furthers the Code's fresh start policy, allowing Debtor to  
6 fulfill the obligations imposed by the Code in a shorter amount of  
7 time, receive a discharge, and move on.

8       In light of the extreme monetary disparity between the two  
9 positions, it is difficult to comprehend why Creditor has taken  
10 this position. Practically speaking, Creditor must be hoping for  
11 one of two events to occur. Creditor wants the Plan term extended  
12 to five, rather than three, years because the longer time period  
13 increases the likelihood either that (1) the Plan will be modified  
14 upward; or (2) Debtor will default on the Plan and Creditor will  
15 maintain an entitlement to the full amount of its claim. In this  
16 Court's experience of over sixteen years on the bench, the former  
17 is extremely rare. Accordingly, Creditor's reason for supporting  
18 this position appears to be its hope that the Plan will fail. The  
19 Court finds such reasoning unpersuasive. This reasoning  
20 contravenes the Code's fresh start policy. It also delays payment  
21 to other creditors, most of whom would likely prefer to receive  
22 payment over three years, rather than five. Moreover, if Debtor  
23 cannot keep up her Plan payments, she will likely convert to  
24 chapter 7 -- which would deprive creditors of a substantial portion  
25 of Debtor's Plan payments.

26       One court has held that the phrase "applicable commitment  
27 period" does not come into play where the debtor has no disposable  
28 income, but that, where the debtor has positive disposable income,

1 the phrase mandates a specific plan length. In re Alexander, 344  
2 B.R. 742, 751 (Bankr. E.D.N.C. 2006). However, this is a  
3 distinction without a difference. Construction of the phrase  
4 "applicable commitment period" as a monetary requirement renders  
5 this distinction meaningless. The Code requires debtors to pay  
6 their projected disposable income over the applicable commitment  
7 period into the plan. Whether that amount is zero or greater than  
8 zero makes no difference, because in the end the effect is the  
9 same. Just as it makes no sense for a debtor to remain in chapter  
10 13 where he has no disposable income and has paid his secured,  
11 administrative and priority claims in full, it likewise makes no  
12 sense for a debtor with some disposable income to remain in chapter  
13 13 after he has paid the full amount required by the Code to his  
14 unsecured creditors. In both cases, the absurdity is having a  
15 debtor remain in chapter 13 awaiting discharge where, after a  
16 certain point, he has fulfilled all of the Code requirements and  
17 his plan payment is reduced to zero. The purpose of the Code is to  
18 provide debtors a fresh start and to ensure that creditors are paid  
19 as much as possible as soon as possible. It is not to incentivize  
20 people to remain in bankruptcy at the continued expense of their  
21 creditors, who could have received their plan payments much  
22 earlier, and at the expense of the bankruptcy system as a whole.

23 Some courts adopting Creditor's position have held that the  
24 language of § 1325(b)(1)(B) "clearly indicates" that, where there  
25 is an objection to confirmation and the debtor does not propose to  
26 pay unsecured creditors in full, above-median debtors must perform  
27 a plan of reorganization for 60 months. Cushman, 350 B.R. at 212;  
28 In re Schanuth, 342 B.R. 601, 607 (Bankr. W.D. Mo. 2006). However,

1 the statute does not specify a minimum plan term. The statute  
2 merely states that, in order to be confirmed, a plan must apply all  
3 of a debtor's projected disposable income during the applicable  
4 commitment period to make payments under the plan. Brady, --- B.R.  
5 at ----, 2007 WL 549359 at \*9. Accordingly, the Plan meets the  
6 requirements of the statute in that it applies all of (in fact,  
7 much more than) Debtor's projected disposable income (\$59.50)  
8 during the applicable commitment period (60 months) to make  
9 payments under the Plan.

10 The rationales supporting the conclusion that the "applicable  
11 commitment period" is a temporal requirement are unpersuasive to  
12 this Court. In McGuire, the bankruptcy court cited three reasons  
13 for its conclusion. First, it reasoned that, because the  
14 disposable income calculation on Form B22C is "merely a starting  
15 point," and is not dispositive such that a court need not confirm a  
16 plan that proposes to pay the amount reported on Form B22C, "it  
17 follows that a court is not required to confirm a plan because it  
18 proposes to pay a total sum equal to the Form B22C amount  
19 multiplied by the applicable number of months." McGuire, 342 B.R.  
20 at 615. This reasoning is unhelpful because, while the Court need  
21 not reach the question of whether departure from Form B22C is  
22 permissible under the law, under the facts of this case, the amount  
23 of disposable income reported by Debtor on Form B22C in fact  
24 satisfies the requirements of the Code.<sup>9</sup> Therefore, the statement  
25 that a court "is not required to confirm a plan simply because the

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26  
27 <sup>9</sup> If the McGuire decision can be read to mean that this Court  
28 has discretion whether or not to confirm Debtor's Plan under the  
circumstances, then the Court exercises its discretion to confirm  
the Plan for the reasons explained in this decision.

1 debtors propose a plan payment in the Form B22C amount," does not  
2 help answer the question of whether a court may do so when the  
3 amount of the Form B22C payment is not challenged as being too low.

4 The second reason cited by the McGuire court was that "a  
5 monetary interpretation of ACP renders § 1325(b)(4)(B)  
6 meaningless." Id. That section states that the applicable  
7 commitment period "may be less than 3 or 5 years, whichever is  
8 applicable under subparagraph (A), but only if the plan provides  
9 for payment in full of all allowed unsecured claims over a shorter  
10 period." The contention that this section is rendered superfluous  
11 by a monetary interpretation of "applicable commitment period"  
12 assumes that it is inherent in the Code that a debtor who pays  
13 unsecured claims in full may complete a chapter 13 plan in less  
14 than 36 months. See Davis, 348 B.R. at 455: "Under this  
15 interpretation of ACP, § 1325(b)(4)(B) doesn't really state  
16 anything more than that a debtor does not have to pay more than  
17 100% on his unsecured claims." The fact that the Code specifically  
18 provides that if a debtor pays 100% of his claims with interest  
19 that the court must confirm the plan regardless of the plan's  
20 length does not mean that a debtor may not do what the Debtor's  
21 Plan does here, i.e., pay the same amount to unsecured creditors  
22 that would be required over five years, in three years.  
23 Accordingly, the Court is not persuaded by this argument.

24 The third and final rationale used by the McGuire court to  
25 support its conclusion was that Congress did not express any intent  
26 to alter pre-BAPCPA practice on this issue by enacting the BAPCPA.  
27 McGuire, 342 B.R. at 615. Prior to BAPCPA, § 1325(b)(1)(B)  
28 required all of the debtor's projected disposable income received

1 during the three-year period, beginning on the due date of the  
2 first payment, to be applied to the plan, and according to McGuire,  
3 debtors were not allowed to exit chapter 13 early unless they could  
4 establish extraordinary circumstances or creditors were paid in  
5 full. Id. Noting that the BAPCPA amendments in this regard only  
6 changed the phrase "the three year period" to "applicable  
7 commitment period", the McGuire court, following Schanuth, 342 B.R.  
8 at 608, discerned no clear intent on the part of Congress to alter  
9 the pre-BAPCPA practice. Id. The Court disagrees with McGuire's  
10 characterization of pre-BAPCPA law, particularly as it existed in  
11 this Circuit. Several pre-BAPCPA cases permitted debtors to payoff  
12 the plan balance and exit chapter 13 in less than 36 months without  
13 paying unsecured creditors in full. Fuger, 347 B.R. at 101, citing  
14 In re Sunahara, 326 B.R. 768 (B.A.P. 9th Cir. 2005)(court may  
15 approve a plan modification allowing a debtor to complete plan in  
16 fewer than 36 months without paying unsecured claims in full); In  
17 re Richardson, 283 B.R. 783 (Bankr. D. Kan. 2002); In re Forte, 341  
18 B.R. 859 (Bankr. N.D. Ill. 2005); In re Miller, 325 B.R. 539  
19 (Bankr. W.D. Pa. 2005). Accordingly, the lack of a clearly  
20 expressed Congressional intent to alter pre-BAPCPA law on this  
21 issue is at best an ambiguous rationale, since an interpretation of  
22 "applicable commitment period" as a monetary, rather than temporal,  
23 requirement is not necessarily inconsistent with pre-BAPCPA law.  
24 In the Ninth Circuit where, under Sunahara, debtors could modify  
25 their chapter 13 plans to pay off the plan balance in less than 36  
26 months, this rationale actually lends additional support to  
27 Debtor's position.

28 Some of the cases take a theoretical, but impractical approach

1 to this issue that divorces the language of the Code from the  
2 realities of the debtor/creditor relationship. See e.g., Slusher,  
3 --- B.R. at ----, 2007 WL 118009 at \*8. There can be no question  
4 that in the vast majority of cases, creditors will be far better  
5 served under the monetary, rather than the temporal, approach.  
6 Creditors will be paid sooner under the monetary approach. This is  
7 of tremendous financial advantage, especially since unsecured  
8 creditors normally receive no interest on their claims. The  
9 present value of payments over three years is much greater than  
10 payment of the same amount of money spread out over five years.  
11 Plus, the risk of plan default is lower on a shorter plan -- which  
12 means the creditors are much more likely to actually get paid,  
13 rather than having the debtor convert to chapter 7, in which case  
14 creditors are unlikely to receive any further payments. In sum,  
15 everyone benefits under the monetary approach in the vast majority  
16 of cases. More debtors will receive fresh starts more quickly.  
17 Creditors will be paid more money, more quickly, on their claims,  
18 and the entire bankruptcy system will be easier to administer and  
19 much more efficient.

20 This Court agrees with the Fuger court that "where the debtor's  
21 projected disposable income is consistent with the calculations on  
22 Form B22C, it makes little sense to hold the debtor hostage for 60  
23 months where the debtor can satisfy the requirements of §  
24 1325(b)(1)(B) in a shorter period." Fuger, 347 B.R. at 101.  
25 Accordingly, the Court holds that the phrase "applicable commitment  
26 period" does not dictate a minimum plan term, but requires only  
27 that the Debtor's projected disposable income be computed over that  
28 amount of time -- at least where, as here, Debtor's Plan provides

1 for a term of at least three years. The Court finds that the Plan  
2 proposes to pay all of Debtor's projected disposable income over  
3 the sixty-month applicable commitment period to unsecured  
4 creditors, and therefore satisfies the requirements of §  
5 1325(b)(1)(B). Alternatively, if this Court has the discretion to  
6 confirm Debtor's three-year Plan because it pays creditors what  
7 they would receive -- in fact much more than what they would  
8 receive -- under a five-year plan, the Court exercises its  
9 discretion to do so for the reasons set forth in this Memorandum  
10 Decision. Creditor's objection on this basis is overruled.

11  
12 III.

13 CONCLUSION

14 For the reasons stated herein, the Court overrules Creditor's  
15 Objection to confirmation. The Plan shall be confirmed. Counsel  
16 for Debtor is directed to submit an order conforming to this  
17 Memorandum Decision after review as to form by counsel for  
18 Creditor.

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21 Dated:

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24 ARTHUR S. WEISSBRODT  
25 UNITED STATES BANKRUPTCY JUDGE  
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28

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