

1  
2  
3 **DISTRICT COURT OF GUAM**  
4 **BANKRUPTCY DIVISION**  
5

Case No. 1:14-bk-00070

6 **In re LAWRENCE TYDINGCO and**  
7 **ARLENE TYDINGCO,**

8 Debtors.

**DECISION AND ORDER SUSTAINING  
CREDITOR CFG'S OBJECTION TO  
DEBTORS' SIXTH AMENDED CHAPTER  
13 PLAN AND DENYING CONFIRMATION**

9  
10 **I. INTRODUCTION**

11 In October 2012, Lawrence and Arlene Tydingco opened a business, L&L Feed & Supply,  
12 in part with a loan from Community First Guam Federal Credit Union ("CFG"). Just over one year  
13 later, L&L went out of business. The Tydingcos petitioned for chapter 13 bankruptcy relief and  
14 now seek the Court's approval of a plan that proposes to pay unsecured creditors an estimated  
15 3.66% of their claims. (ECF No. 52.) CFG objects. (ECF No. 53.) The Debtors responded to  
16 CFG's objection (ECF Nos. 57, 58), and CFG replied. (ECF No. 60.)

17 CFG enlists a myriad of arguments against confirming the Tydingcos' plan. It contends  
18 that: (1) the Tydingcos misapplied the Bankruptcy Code's "means test," which determines the  
19 minimum payments a chapter 13 debtor must make to unsecured creditors; (2) the plan unfairly  
20 discriminates among unsecured creditors, with some receiving more than the 3.66% of their claims  
21 promised in the plan; (3) the Tydingcos presented false facts in a number of their schedules and  
22 misrepresented their income; and (4) no receipts from L&L's operations were filed. The Tydingcos  
23 dispute most of the arguments.  
24

25 The first objection poses an important issue of first impression for this Court: how to apply  
26

1 the means test within Guam when a fundamental provision of the test—IRS local standards—no  
2 longer exists for the jurisdiction. Because the means test determines the minimum amount of  
3 money an above-median income chapter 13 debtor must pay to his unsecured creditors before his  
4 plan may be confirmed (as well as whether an above-income chapter 7 debtor may receive a  
5 discharge at all), the determination of this issue will likely have rippling effects on many  
6 bankruptcy petitioners in this district.

7  
8 The parties propose differing solutions to the problem. CFG would have the Tydingcos  
9 apply the 2011 standards. The Tydingcos would either apply the standards of a similar state, such  
10 as Hawaii, or somehow adjust the 2011 Guam standards for inflation. The Court declines to adopt  
11 either party's proposal. Instead, the Court holds that a debtor completing the means test for Guam  
12 must use his actual reasonable expenses in place of the now-defunct local standards, with the  
13 exception of vehicle expenses, which are national in scope. Because the current plan does not  
14 accord with the Court's holding, it cannot be confirmed.

15 Additionally, to help ensure that this matter will not become further ensnared in delay, the  
16 Court will rule on CFG's remaining arguments. The Court will sustain CFG's objection to the plan  
17 and deny confirmation, but will allow the Tydingcos to file an amended plan that comports with  
18 this decision and order.<sup>1</sup>

## 19 **II. BACKGROUND FACTS**

20  
21 The Tydingcos petitioned for Chapter 13 bankruptcy protection on May 30, 2014. (ECF  
22 No. 1.) As part of that petition, the Tydingcos filed schedules and forms detailing their financial  
23

24  
25 <sup>1</sup> The Tydingcos have already filed amended plans on June 25, 2014 (ECF No. 13), September 2, 2014 (ECF No. 19),  
26 October 13, 2014 (ECF No. 31), October 24, 2014 (ECF No. 35), November, 24, 2014 (ECF No. 44), and most  
recently, January 14, 2015 (ECF No. 52).

1 situation. Of particular note are Schedules I and J, and Form B22C.<sup>2</sup>

2 Debtors report their income on Schedule I, which asks them to estimate their “monthly  
3 gross wages, salary, and commissions” as of the date of filing. Lawrence reported \$12,286.64 from  
4 his job as a sales consultant, and Arlene reported \$533 from her job as a taxi driver in a separate  
5 category as “net income from rental property and from operating a business, profession, or form.”  
6 (Schedule I, ECF No. 1.) Lawrence listed total payroll deductions of \$4,798.39, of which  
7 \$2,068.34 came from “401k, pnotes, adm, others.” Arlene did not list any deductions. In total, the  
8 Tydingcos estimated their monthly income at the time they filed for bankruptcy as \$8,021.25.  
9

10 On Schedule J, debtors list their expenses and calculate their monthly net income. The  
11 Tydingcos, who have four dependent children, reported the following monthly expenses in their  
12 most recent filings:

- 13 • \$1,700 for rent and \$75 for upkeep;
- 14 • \$750 for electricity, heat, and natural gas;
- 15 • \$113 for water, sewer, and garbage;
- 16 • \$289 for phone, internet, and cable;
- 17 • \$1,400 for food and housekeeping supplies;
- 18 • \$330 for childcare and education;
- 19 • \$500 for clothing and laundry;
- 20 • \$300 for “personal care products and services”;
- \$300 for medical expenses;
- \$300 for transportation;
- \$232 for entertainment;
- \$80 for charitable contributions; and
- \$118 for vehicle insurance.

21 (Schedule J, ECF No. 42.) In total, the Tydingcos claimed \$6,487.00 in expenses and \$8,021.25 in  
22 income, leaving them with a monthly net income of \$1,534.25—the amount they propose to pay  
23 toward their creditors during their plan. (Plan 1.03, ECF No. 52.)  
24

25 \_\_\_\_\_  
26 <sup>2</sup> The Tydingcos filed several amended Schedule Js and Form B22Cs. The most recent amendments were filed on  
November 20, 2014 (Schedule J, ECF No. 42) and October 13, 2014 (B22C, ECF No. 30).

1 Like Schedules I and J, Official Form B22C compares a debtor's income with certain  
2 expenses and calculates monthly disposable income. However, as explained in detail below, Form  
3 B22C applies the means test, and therefore differs substantially from Schedules I and J in how to  
4 calculate income and in what deductions a debtor can take. On the B22C, Lawrence listed his  
5 "gross wages, salary, tips, bonuses, overtime, [and] commissions" as \$8,327.35, and Arlene listed  
6 hers as \$533.33, for total monthly income of \$8,860.68. (B22C, ECF No. 30.) The Tydingcos listed  
7 the following deductions:

- 8 • \$2,027 for National Standards: food, apparel and services, housekeeping supplies,  
9 personal care, and miscellaneous;
- 10 • \$360 for National Standards: health care (for \$60 per person in their six person  
11 household);
- 12 • \$466 for Local Standards: housing and utilities; non-mortgage expenses;
- 13 • \$1,169 for Local Standards: housing and utilities; mortgage/rent expense;
- 14 • \$420 for Local Standards: transportation; vehicle operation/public transportation  
15 expense;
- 16 • \$145.02 for Local Standards: transportation ownership/lease expense; Vehicle 1 (or  
17 \$471 for the IRS Transportation Standards, Ownership Costs minus average monthly  
18 payments of \$325.98 on Vehicle 1);
- 19 • \$31.86 for Local Standards: transportation ownership/lease expense; Vehicle 2 (or  
20 \$332 for the IRS Transportation Standards, Ownership Costs minus average monthly  
21 payments of \$300.14 on Vehicle 2);
- 22 • \$2,014.92 for Other Necessary Expenses: taxes;
- 23 • \$482.67 for Other Necessary Expenses: involuntary deductions for employment;
- 24 • \$285.50 for Health Insurance, Disability Insurance, and Health Savings Account  
25 Expenses;
- 26 • \$60.85 for Additional food and clothing expenses;
- \$933.90 for future payments on secured claims (for three vehicles: \$325.98 for Vehicle  
1; \$300.14 for Vehicle 2; and \$307.78 for Vehicle 3);
- \$57.57 for payments on prepetition priority claims;
- \$17.45 for chapter 13 administrative expenses; and
- \$231.88 for qualified retirement deductions.

23 In total, the Tydingcos listed monthly income of \$8,860.68 and allowed deductions of \$8,703.62,  
24 leaving \$157.06 in monthly disposable income.

25 The Tydingcos owe \$255,827.12 in unsecured debt. (Schedule F, ECF No. 30.) Their plan  
26 proposes to pay a total of \$88,709 over the course of 60 months to all creditors. (Plan 1.03.) Of

1 that amount, they propose to pay approximately 3.66% on all unsecured claims—\$3,246.75—to  
2 the unsecured creditors.

### 3 4 **III. DISCUSSION**

5 CFG raises four general issues with confirming the Tydingcos' plan: (1) the plan  
6 misapplies the means test; (2) it unfairly discriminates among unsecured creditors; (3) the  
7 Tydingcos misrepresented or manipulated the underlying facts; and (4) the Tydingcos never  
8 submitted business receipts for L&L.  
9

#### 10 *A. Application of the Means Test*

11 CFG argues that the Tydingcos misapplied the means test in three ways: (1) by failing to  
12 apply the 2011 IRS local standards for Guam; (2) by deducting the full local standard for housing  
13 expenses, rather than their actual expenses, and by deducting expenses for a third car in the local  
14 standards for vehicles, in excess of the allowance for only two; and (3) by making voluntary  
15 contributions to a 401(k) plan. The Tydingcos argue that the 2011 Guam local standards should  
16 not apply and that they are entitled to deduct the full amount of the national standards. They  
17 concede, however, that voluntary contributions to a 401(k) plan are not permitted. The Court will  
18 rule as follows: (1) the 2011 IRS local standards for Guam no longer apply, and the Tydingcos  
19 may apply their actual expenses in place of the means test's local standards, with the exception of  
20 the vehicle standards; (2) the local standards for vehicles limit standard deductions to two vehicles;  
21 and (3) a chapter 13 debtor may not deduct expenses for voluntary contributions to a 401(k) plan.  
22

#### 23 *B. How the Means Test Works*

24 An ordinary consumer debtor may principally discharge his debts in two ways: he may  
25 either give up all his possessions—with certain exceptions—to be liquidated for his creditors  
26

1 (chapter 7), or he may surrender his surplus income to his creditors for a fixed period of time as  
2 part of a repayment plan, but keep his possessions (chapter 13). Discharge follows liquidation or  
3 the last payment on the plan.

4 In 2005, Congress passed the Bankruptcy Abuse Prevention and Consumer Protection Act  
5 (“BAPCPA”) 119 Stat. 23, to curb perceived abuses of the bankruptcy system. *Milavetz, Gallop*  
6 *& Milavetz P.A. v. United States*, 559 U.S. 229, 231-32 (2010). At the heart of its reforms,  
7 BAPCPA introduced an equation to determine whether a chapter 7 debtor could obtain a discharge,  
8 or how much a chapter 13 debtor must pay to his creditors over the course of his plan—the means  
9 test. *See Ransom v. FIA Card Servs., N.A.*, 562 U.S. 61, 64 (2011) (noting that the purpose of the  
10 means test is to “help ensure that debtors who *can* pay creditors *do* pay them” (emphasis in  
11 original)).  
12

13 Prior to BAPCPA, courts would determine the monthly amount a debtor must pay his  
14 creditors under a chapter 13 plan by subtracting the expenses reported in Schedule J from the  
15 income reported in Schedule I, subject to the court’s “review for the necessity and reasonableness  
16 of those expenses.” *In re Rush*, 387 B.R. 26, 29 (Bankr. W.D. Mo. 2008). Not anymore.

17 Under BAPCPA, a debtor must first calculate his “current monthly income” by averaging  
18 all of the income he received in the 6 months prior to filing for bankruptcy, excluding Social  
19 Security. 11 U.S.C. § 101(10A) (defining “current monthly income”). If that dollar amount,  
20 multiplied by 12, is lower than or equal to the annual median income of the debtor’s family size in  
21 his state, as determined by Census Bureau figures, then he is a below-median income debtor, and  
22 may skip the means test. *See* 11 U.S.C. §§ 707(b)(7), 1325(b)(3). For below-median debtors, the  
23 chapter 13 inquiry is similar to the pre-BAPCPA reasonableness test. *See In re Ormonde*, No. 10-  
24 10767-B-13, 2010 WL 9498235, at \*3 (Bankr. E.D. Cal. Aug. 4, 2010) (unpublished opinion)  
25  
26

1 (noting that if a debtor is below-median, deductions from his current monthly income “are based  
2 on a ‘reasonably necessary’ test and the court can generally look to Schedules I and J to begin that  
3 inquiry”); 11 U.S.C. § 1325(b)(3).

4           However, if the debtor’s “current monthly income,” multiplied by 12, puts the debtor above  
5 the annual median income of his state for his family size, then he must pass through the means  
6 test. 11 U.S.C. §§ 707(b)(2), 1325 (b)(2)–(3). When the trustee or an unsecured creditor with an  
7 allowed claim objects to the chapter 13 debtor’s plan, the plan becomes unconfirmable unless it  
8 provides that either the creditors will be paid in full, or that “all of the debtor’s projected disposable  
9 income . . . will be applied to make payments to unsecured creditors under the plan.” 11 U.S.C.  
10 § 1325(b)(1)(B). A debtor’s “disposable income” is his current monthly income (excluding child  
11 support) “less amounts reasonably necessary to be expended” for either the “maintenance or  
12 support of the debtor” and his dependents, or for payments necessary to sustain the debtor’s  
13 business. *See* 11 U.S.C. § 1325(b)(2). For an above-median income debtor, “amounts reasonably  
14 necessary to be expended . . . shall be determined in accordance with subparagraphs (A) and (B)  
15 of section 707(b)(2).” 11 U.S.C. § 1325(b)(3).

16  
17           Section 707(b)(2) comprises the means test and instructs the debtor to deduct specified  
18 “amounts reasonably necessary to be expended” from his current monthly income. *See* 11 U.S.C.  
19 § 707(b)(2)(A)(ii)-(iv). In relevant part, the means test provides:

20  
21           The debtor’s monthly expenses shall be the debtor’s applicable monthly expense  
22 amounts specified under the National Standards and Local Standards, and the  
23 debtor’s actual monthly expenses for the categories specified as Other Necessary  
Expenses issued by the Internal Revenue Service for the area in which the debtor  
resides, as in effect on the date of the order for relief.

24 11 U.S.C. § 707(b)(2)(A)(ii)(I). The national and local standards “are tables that the IRS prepares  
25 listing standardized expense amounts for basic necessities.” *Ransom*, 562 U.S. at 66; *see* 26 U.S.C.  
26

1 § 7122(d)(2) (The “Secretary [of the Treasury] shall develop and publish schedules of national and  
2 local allowances designed to provide that taxpayers entering into a compromise have an adequate  
3 means to provide for basic living expenses”); Internal Revenue Manual (“IRM”) § 5.15.1.7–  
4 5.15.1.10, [https://www.irs.gov/irm/part5/irm\\_05-015-001.html#d0e1365](https://www.irs.gov/irm/part5/irm_05-015-001.html#d0e1365) (all websites last visited  
5 Jan. 27, 2016). The national standards cover food, clothing and other items, and out-of-pocket  
6 healthcare expenses. IRM § 5.15.1.7(3). The local standards “establish standards for two necessary  
7 expenses: (1) housing and utilities and (2) transportation.” IRM § 5.15.1.7(4) (noting that  
8 transportation costs are broken down by “ownership costs,” which come from national figures, and  
9 “operating costs,” which are “broken down by Census Region and Metropolitan Statistical Area”).  
10

11 Unfortunately, the IRS no longer provides local standards for Guam, and has not done so  
12 since October 3, 2011.<sup>3</sup> Indeed, the current Internal Revenue Manual provides that neither the  
13 national nor local standards apply “for international taxpayers or the U.S. Territories, except for  
14 housing and utilities in Puerto Rico.” IRM § 5.15.1.7(2).<sup>4</sup> The IRM goes on to provide:

15 In the absence of standardized figures for foreign countries, a fair and consistent  
16 approach should be applied to what is allowed as living expenses for international  
17 taxpayers. Collection employees should not use any other non-[Allowable Living  
18 Expense] (“ALE”) figures as pre-determined guideline figures or arbitrarily select  
19 any location in the United States as a starting point for allowances. In those cases  
20 where there are no ALE standards or leverage to enforce collection of a balance  
21 due, the taxpayers' submission of living expenses should generally be accepted,  
22 provided they appear reasonable.

23 *Id.* Debtors in Guam can obtain and apply the national standards as they apply to the states, but the  
24

---

25 <sup>3</sup> The United States Trustee website, which houses the IRS standards in easy formats for debtors to plug into the B22C  
26 means test, states under the “Housing and Utilities Standards” section that “[e]ffective October 3, 2011, the IRS no  
longer provides Housing and Utilities Standards for the U.S. territories of Guam, the Northern Mariana Islands, and  
the Virgin Islands.” *See, e.g.*, <http://www.justice.gov/ust/means-testing/means-testing-cases-filed-between-november-1-2011-and-april-30-2012-inclusive> (last visited Jan. 27, 2016).

<sup>4</sup> The IRM envisions three types of allowable expenses as part of its Allowable Living Expense (“ALE”) Standards: (1) allowable living expenses based on the national and local standards; (2) other necessary expenses that are necessary to provide for a taxpayer’s health and welfare or production of income; and (3) other conditional expenses, allowable on a case-by-case basis. *See* IRM § 5.15.1.7. The IRS does not apply the ALE standards to Guam. *Id.*

1 local standards are simply unavailable. That poses a problem for the Tydingcos, and indeed any  
2 other consumer debtor attempting to obtain relief in chapter 7 or chapter 13.

### 3 4 C. *Guam's Absent Local Standards*

5 The Court must determine how the Internal Revenue Service's decision not to provide local  
6 standards for Guam affects chapter 13 debtors in this jurisdiction in light of BAPCPA's mandatory  
7 language. As always, the intent of Congress provides the lodestar for analysis, as expressed by the  
8 language of the Bankruptcy Code itself. *See Ransom*, 562 U.S. at 69 (2011). However, "in the rare  
9 cases [in which] the literal application of a statute will produce a result demonstrably at odds with  
10 the intentions of its drafters," "the intention of the drafters, rather than the strict language,  
11 controls." *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 242 (2011) (internal quotation  
12 marks omitted). This is such a case.

14 The pertinent language of the means test mandates that "the debtor's monthly expenses  
15 shall be the debtor's applicable monthly expense amounts specified under the National Standards  
16 and Local Standards." 11 U.S.C. § 707(b)(2)(A)(ii)(I) (emphasis added). In other words, a debtor  
17 completing the means test has no option to substitute other calculations of his expenses for those  
18 given by the IRS. To illustrate, a simplified means test formula, based solely on current monthly  
19 income compared to the IRS standards, shows how the statute's mandatory language puts chapter  
20 13 debtors in such a bind:

22 Disposable Income = Current Monthly Income – (National Standards + Local  
Standards).

23 Or:

24 Minimum Monthly Payment = 6 Month Average Income – (Standards for Food,  
25 Clothing and Other Items and Out-of-Pocket Health Expenses + Standards for  
26 Housing, Utilities, and Transportation).

1 In the absence of local standards, a debtor strictly applying the means test would *only* be able to  
2 deduct the national standards from his current monthly income before reaching his disposable  
3 income, which would almost inevitably result in monthly payments to unsecured creditors far in  
4 excess of what any debtor could afford. *Cf.* 11 U.S.C. § 1325(a)(6) (a plan cannot be confirmed  
5 unless “the debtor will be able to make all payments under the plan”). In essence, rather than  
6 claiming the benefit of the local standards for himself, a chapter 13 debtor would be penalized in  
7 that amount. The IRS estimates of housing, utilities, and transportation costs would go to  
8 unsecured creditors, while the debtor would somehow have to get by on his national standards  
9 allowance (food, clothing, and out-of-pocket health expenses) to pay for everything else. If the  
10 debtor took anything more than the national standards, he would be giving less than his disposable  
11 income, and therefore have an unconfirmable plan. 11 U.S.C. § 1325(b)(1).

12  
13 Congress would not countenance the absurdity of the IRS effectively eliminating above-  
14 median income consumer bankruptcy protection in U.S. territories. *Cf. Lamie v. U.S. Trustee*,  
15 540 U.S. 526, 534 (2004) (“It is well established that when a statute’s language is plain, the sole  
16 function of the courts—at least where the disposition required by the text is not absurd—is to  
17 enforce it according to its terms.” (internal quotation marks omitted)). No Act of Congress suggests  
18 a legislative intent to end bankruptcy relief for above-median income Guamanian debtors. To the  
19 contrary, Congress specifically vested bankruptcy jurisdiction in the Guam District Court,  
20 demonstrating its intent to apply the Bankruptcy Code to that jurisdiction. *See* 48 U.S.C. § 1424(b)  
21 (creating a District Court of Guam and providing it with the jurisdiction of a “bankruptcy court of  
22 the United States”).

23  
24 Moreover, as the Supreme Court held in *Ransom*, Congress created the means test to ensure  
25 that debtors who *could* pay their creditors, *did* pay them. 562 U.S. at 64. The means test of chapter  
26

1 13 attempts to satisfy Congress’s objective by preventing a debtor from paying too much or too  
2 little to his unsecured creditors, relative to his own reasonable expenses. *See Hamilton v. Lanning*,  
3 560 U.S. 505, 520-21 (2010) (noting that a “mechanical approach” to “current monthly income”  
4 that did not account for near-certain changes in a debtor’s actual income would “produce senseless  
5 results” because it would either allow a debtor to avoid payments he “could easily make” or deny  
6 him the protection of chapter 13). Here, debtors who would otherwise be eligible for chapter 13 in  
7 different jurisdictions, or even under a version of the old Guam local standards, would be denied  
8 relief.

9  
10 In keeping with the intent of Congress, the Court holds that, in the absence of local  
11 standards, above-median income debtors must complete the means test by deducting from their  
12 current monthly income their actual expenses. The sole exception is for the class of vehicle  
13 expenses, which, although labeled under local standards, are national in character and may be  
14 obtained from other sources. *See* IRM § 5.15.1.7(4).

15 The Court’s holding dovetails nicely with the rest of the Bankruptcy Code. Like below-  
16 median income debtors, the Court’s rule means that above-median income debtors’ housing,  
17 utilities, and transportation expenses will be subject to judicial review to determine whether they  
18 are “reasonably necessary.” *See In re Mullen*, 369 B.R. 25, 31 (Bankr. D. Ore. 2007) (noting that  
19 the pre- and post-BAPCPA treatment of below-median income debtors is the same, and requires a  
20 Court to review whether a debtor’s actual expenses are “reasonably necessary”); 11 U.S.C.  
21 § 1325(b)(3) (only above-median income debtors are referred to the 707(b)(2) means test). The  
22 key difference between above- and below-median income debtors comes in practice: above-  
23 median income debtors will need to indicate their actual expenses on the B22C instead of the local  
24 standards figure, while below-median income debtors may continue to use Schedules J and I. *See*

1 *Mullen*, 369 B.R. at 31.

2         Additionally, allowing above-median income debtors to deduct their reasonably necessary  
3 expenses that would otherwise be covered in local standards avoids the “senseless results” rejected  
4 in *Lanning* because it ensures that debtors will be forced to pay their creditors what they can  
5 afford—no more and no less. 560 U.S. at 520 (criticizing a construction that would thoughtlessly  
6 deny creditors payments a debtor could easily make, or deny debtors protection under chapter 13).

7         The Court’s decision also comports with the IRM without defying the language of the  
8 Bankruptcy Code. *See Ransom*, 562 U.S. at 72 (noting that the IRM can provide useful guidance  
9 for interpreting the national and local standards, but “cannot control if [it is] at odds with the  
10 statutory language”). To the extent that the IRM provides that the “submission of living expenses  
11 should generally be accepted, provided they are reasonable” in U.S. Territories, the IRM matches  
12 the Bankruptcy Code for below-median income debtors and the Court’s holding for above-median  
13 debtors in the absence of local standards. *See* IRM § 5.15.1.7(2). Of course, because the  
14 Bankruptcy Code expresses a contrary mandate for the rest of the means test—that expenses *shall*  
15 *be* the national expenses—the code controls the IRM in all other respects. *Ransom*, 562 U.S. at 72.

16         CFG argues that the 2011 Guam local standards continue to apply, but offers no  
17 explanation for the statements in the IRM and on the U.S. Trustee’s website indicating that the  
18 IRS no longer provides local standards for Guam. (Reply 8-9, ECF No. 60.) It is not that the IRS  
19 has failed to update the standards, as CFG argues, but rather that the agency has jettisoned them  
20 entirely. Accordingly, when the most recent standards ceased to be effective on October 3, 2011,  
21 there were no more local standards for Guam.  
22

23         To the extent that CFG argues that the Court should apply the 2011 Guam local standards  
24 regardless of their continuing applicability, the Court disagrees. As the Tydingcos correctly point  
25  
26

1 out, the local standards of other jurisdictions are updated at least annually and reflect changes in  
2 economic circumstances affecting taxpayers or debtors. Numbers that reflected the economic  
3 reality of 2011 almost certainly no longer represent the economic reality of 2014, when the  
4 Tydingcos filed. Using the 2011 local standards would result in arbitrary payments inconsistent  
5 with the purpose of the Bankruptcy Code, and the Court rejects their application. *See* IRM  
6 § 5.15.1.7(2) (noting that IRS employees should not use unofficial figures as a baseline for  
7 collections).

8  
9 The Tydingcos, on the other hand, argue that the Court should simply adopt the local  
10 standards of a similar state, such as Hawaii, or somehow adjust the 2011 Guam local standards for  
11 inflation. (*See* Opp’n 4-5, ECF No. 57.) The Court is not convinced. Applying the local standards  
12 of a similar state begs the question: Which state? The Tydingcos proposed Hawaii at oral argument  
13 because it allegedly has expensive goods based on the Jones Act—like Guam—but goods are  
14 already covered in the national standards, not the local standards. It would be very difficult to  
15 accurately select a similar state, and the Court notes that the IRM advises IRS employees not to  
16 do so. *See* IRM § 5.15.1.7(2) (“Collection employees should not . . . arbitrarily select any location  
17 in the United States as a starting point for allowances.”).

18  
19 As for the Tydingcos’ second argument, the Court simply lacks the resources or subject-  
20 matter expertise of the Treasury Department to make annual adjustments for inflation, even if that  
21 were an acceptable method of calculating local standards. The Court will not attempt it.

22 The Court notes one exception to its ruling: the local standards for vehicle expenses. Unlike  
23 the other local standards, which are based on statewide economic data, the local standards for  
24 vehicle ownership expenses are national in character, with the exception operational expenses,  
25 which are based in one of four Census Bureau regions of the United States: Northeast, Midwest,  
26

1 South, and West. For purposes of the regional local standards for operating costs, Guam is  
2 considered part of the West. That region's information is easily available for other jurisdictions  
3 with local standards, such as Hawaii. Because the West is based on broad data, rather than local  
4 data in Guam, the Court finds that it continues to apply to Guam, and that therefore actual expenses  
5 need not replace the numbers in the standards.

6 In summary, the Court concludes that above-median chapter 13 debtors in Guam must  
7 complete the B22C using their actual reasonable expenses in place of the now-defunct local  
8 standards, with the exception of vehicle expenses, which, like the national standards, shall be  
9 applied in the normal course.

10  
11 *D. Amount of Means Test Deduction*

12 CFG next argues that the Tydingcos improperly deducted two expenses from their  
13 disposable income: (1) housing expenses in excess of the local standards; and (2) vehicle  
14 ownership expenses for three cars, rather than the two allowed by the local standards. The Court's  
15 holding that Guam chapter 13 debtors must deduct their actual reasonable expenses to calculate  
16 their disposable income moots CFG's first argument. However, the Court agrees that the  
17 Tydingcos may only deduct ownership expenses for two vehicles, rather than the three they  
18 propose.

19  
20 i.

21 The Court must reject CFG's first argument as moot. CFG contends that the local standards  
22 serve as a cap on the amount a debtor may deduct when calculating his disposable income. No one  
23 disputes that statement. CFG also argues that a debtor applying the means test may only deduct  
24 the lesser of his actual expenses or the applicable IRS standards, rather than using the relevant IRS  
25 standard on the B22C. Here, however, because the IRS local standards for housing and utilities do  
26

1 not exist in Guam, and because the Court has already determined that the Tydingcos must use their  
2 actual expenses for the means test, there can be no controversy about whether the Tydingcos may  
3 take deduct their actual expenses or the local standards. Accordingly, CFG's argument is moot. If  
4 CFG wishes to contest the amounts deducted by the Tydingcos on their B22C, CFG cannot rely  
5 on the "cap" of a local standard, but must instead argue that the expenses are unreasonable.

6 ii.

7  
8 CFG next argues that the Tydingcos cannot deduct transportation expenses for three cars  
9 on their B22C, but rather only two cars. The Tydingcos disagree, and contend that they may deduct  
10 any secured expenses, including for cars. The Court agrees with CFG.

11 Once again, the source of the Court's decision is the Bankruptcy Code itself: "The debtor's  
12 monthly expenses shall be the debtor's applicable monthly expense amounts specified under the  
13 National Standards and Local Standards." 11 U.S.C. § 707(b)(2)(A)(ii)(I). As stated above, the  
14 Court applies the local standards for vehicle expenses, which are based on national and regional  
15 figures. At the time the Tydingcos petitioned for bankruptcy, the applicable local standards for two  
16 cars allowed operating costs of \$472 and ownership costs of \$1,034.<sup>5</sup> The standards list values for  
17 only two vehicles, not three. *See In re Maura*, 491 B.R. 493, 504-5 (Bankr. E.D. Mich. 2013)  
18 (holding that, consistent with § 707, a debtor may only deduct expenses consistent with the local  
19 standards, including its limitation of two vehicles). Because the local standards limit vehicle  
20 deductions to two vehicles, the Tydingcos' may not deduct three.

21  
22 The Tydingcos argue that they may nevertheless deduct their actual vehicle expenses as  
23 secured debt. That is true, but it has nothing to do with whether they may claim deductions for  
24 more than two vehicles. *See* 11 U.S.C. § 707(b)(2)(A)(iii) (allowing current monthly income to be

25  
26 <sup>5</sup> See [http://www.justice.gov/ust/eo/bapcpa/20140501/bci\\_data/IRS\\_Trans\\_Exp\\_Stdс\\_WE.htm](http://www.justice.gov/ust/eo/bapcpa/20140501/bci_data/IRS_Trans_Exp_Stdс_WE.htm).

1 reduced by the “debtor’s average monthly payments on account of secured debts”); *Drummond v.*  
2 *Welsh (In re Welsh)*, 711 F.3d 1120, 1133-35 (9th Cir. 2013) (noting that “Congress did not see fit  
3 to limit or qualify the kinds of secured payments that are subtracted from current monthly income  
4 to reach a disposable income figure”). Form B22C uses the local standards for vehicle ownership  
5 expenses as a baseline, but then subtracts a debtor’s actual monthly payments secured by the  
6 vehicle from that amount to prevent double dipping, which would occur if a debtor took both the  
7 standard deduction and the secured payment deduction. *See* 11 U.S.C. § 707(b)(2)(A)(ii)(I)  
8 (“Notwithstanding any other provision of this clause, the monthly expenses of the debtor shall not  
9 include any payments for debts.”). In other words, the debtor gets the benefit of the difference  
10 between his actual secured payments and the local standards, consistent with the “notwithstanding”  
11 clause.  
12

13 Here, the Tydingcos enjoy the same benefit—for two vehicles. For the third, they may only  
14 deduct the actual car payment.

#### 15 *E. Voluntary 401(k) Contributions*

16 CFG argues that the Tydingcos cannot deduct voluntary contributions to 401(k) plans as  
17 expenses under the means test. For instance, Lawrence’s paystubs show payroll deductions of  
18 \$75.00 for “401k,” and \$173.35 for “401k loan.” (ECF No. 1-3.) At oral argument, counsel for the  
19 Tydingcos conceded that voluntary 401(k) contributions may not be deducted from disposable  
20 income in chapter 13. The Court agrees.  
21

22 In *Parks v. Drummond (In re Parks)*, the Bankruptcy Appellate Panel for the Ninth Circuit  
23 held that 11 U.S.C. § 541(b)(7), which establishes the property of the bankruptcy estate, “does not  
24 authorize chapter 13 debtors to exclude voluntary postpetition retirement contributions in any  
25 amount for purposes of calculating their disposable income.” 475 B.R. 703, 709 (BAP 9th Cir.  
26

1 2012); *see Seafort v. Burden (In re Seafort)*, 669 F.3d 662, 663 (6th Cir. 2012) (“We hold that  
2 post-petition income that becomes available to debtors after their 401(k) loans are fully repaid is  
3 ‘projected disposable income’ that must be turned over to the trustee for distribution to unsecured  
4 creditors pursuant to § 1325(b)(1)(B) and may not be used to fund voluntary 401(k) plans.”).

5 Lawrence may deduct payments made on his 401(k) loan from his projected disposal  
6 income until the loan is repaid, *see* 11 U.S.C. § 1322(f), but may not deduct voluntary payments  
7 to his 401(k) plan, *see* 11 U.S.C. § 541(b)(7). The Tydingcos may adjust their B22C accordingly  
8 if they decide to amend their plan.  
9

10 *F. The Plan Unfairly Discriminates Among Unsecured Creditors*

11 CFG next contends that the Tydingcos’ plan unfairly discriminates among unsecured  
12 creditors, in violation of 11 U.S.C. § 1322(b)(1). (First CFG Memo. 2-5, ECF No. 15.) The  
13 Tydingcos passed over that argument in their opposition brief. Having reviewed the record, the  
14 Court agrees that the Tydingcos’ plan unfairly discriminates among unsecured creditors and must  
15 be amended before it can be confirmed.

16 If a chapter 13 plan classifies claims, then it “shall provide the same treatment for each  
17 claim within a particular class.” 11 U.S.C. § 1322(a)(3). A chapter 13 plan may “designate a class  
18 or classes of unsecured claims, as provided in section 1122 of this title, but may not discriminate  
19 unfairly against any class so designated.” 11 U.S.C. §§ 1322(b)(1), 1122(a) (“a plan may place a  
20 claim or an interest in a particular class only if such claim or interest is substantially similar to the  
21 other claims or interests of such class”). However, a chapter 13 plan “may treat claims for a  
22 consumer debt of the debtor if an individual is liable on such consumer debt with the debtor  
23 differently than other unsecured claims.” 11 U.S.C. § 1322(b)(1); *see Meyer v. Renteria (In re*  
24 *Renteria)*, 470 B.R. 838, 839 (9th Cir. BAP 2012) (affirming the confirmation of a chapter 13 plan  
25  
26

1 in which the debtor paid 100% of a debt cosigned by her mother, but almost nothing to other  
2 unsecured creditors).

3 Here, line 5h of the Tydingcos' Schedule I states that Lawrence has a payroll deduction of  
4 \$2,068.34 each month for "401k, pnotes, adm, others." (ECF No. 1.) To the extent that "pnotes"  
5 means promissory notes for unsecured debt, it appears that the Tydingcos are favoring that debt  
6 by paying it directly from Lawrence's payroll, rather than through the plan. Because it appears that  
7 the Tydingcos are favoring one unsecured creditor over the others, in violation of 11 U.S.C.  
8 § 1322(b)(1), the Court must deny confirmation of the plan. Additionally, there is no indication  
9 that any other individual is liable on the debt, and the Court accordingly finds that the exception  
10 to the unfair discrimination rule does not apply. *See Renteria*, 470 B.R. at 846 ("Whatever else the  
11 'however clause' may or may not do, a court may not deny confirmation of a plan under  
12 § 1322(b)(1) solely because the plan prefers a co-debtor claim over other unsecured claims.").

#### 14 *G. Factual Representations*

15 CFG next argues that the Tydingcos misrepresented facts in their filings and manipulated  
16 their schedules, all in bad faith. The Court shares CFG's concerns, but will allow the Tydingcos to  
17 file amended schedules. However, the Court will also require the Tydingcos to file additional  
18 documents to demonstrate that their costs are what they say they are.

19 CFG first asserts that the Tydingcos manipulated their Schedule J expenses. Most  
20 significantly, CFG notes that the Tydingcos' increased their rental expenses from \$900 when they  
21 first filed to \$1,700 months later. Lawrence filed a statement with the Court explaining that the  
22 family had to move from their inexpensive rental property and that the more expensive property  
23 was the best they could find. (ECF No. 58.) However, the Court cannot credit Lawrence's  
24 statement because, as CFG correctly noted in its reply brief, the declaration was not made under  
25

1 penalty of perjury, as required by statute. 28 U.S.C. § 1746. The statement must therefore be  
2 stricken. Inexplicably, Lawrence did not amend his declaration to properly bring it before the  
3 Court's attention after CFG noted its deficiency. Because nearly doubling rental expenses while  
4 in bankruptcy seems highly suspicious, the Court agrees that the Tydingcos' appear to have  
5 manipulated their schedules at the expense of their creditors. *See* 11 U.S.C. § 1325(a)(3) (stating  
6 that a plan must be "proposed in good faith"). The Court also agrees with CFG that the Tydingcos'  
7 other fluctuating expenses, as reflected on their repeated Schedule J amendments, require  
8 explanation. This is particularly true because those expenses will heavily impact the disposable  
9 income and the means test. In particular, the Tydingcos should account for the changes in the  
10 following categories: food and housekeeping supplies; clothing and laundry; personal care  
11 products; and medical expenses. Those expenses allegedly increased by \$700 between May 2014  
12 and October 2014, in addition to the Tydingcos' rent increasing by \$800. The Court will allow the  
13 Tydingcos to file a declaration explaining the myriad changes, but will also require some  
14 documentation to justify the changes.

15  
16       Next, CFG argues that the Tydingcos underrepresented their "current monthly income."  
17 Lawrence listed "current monthly income" of \$8,327.35 on the B22C, but the two months of  
18 paystubs he submitted with the bankruptcy petition would average to approximately \$11,877.92.  
19 Of course, because current monthly income represents a six-month average, it is entirely possible  
20 that Lawrence, who works on commission, could have had four slower months before the two  
21 months leading up to the bankruptcy petition. Ordinarily, debtors are only required to submit  
22 paystubs for the two months before bankruptcy, but this case presents a unique problem. The Court  
23 agrees with CFG that the Tydingcos' implied assertion that Lawrence earned substantially less  
24 before the time of filing is not entirely plausible. Accordingly, the Court will order the Tydingcos  
25  
26

1 to submit paystubs for the entire six-month period used to calculate current monthly income.

2 *H. Missing Business Receipts*

3 Finally, CFG argues that the Tydingcos failed to submit business receipts for L&L pursuant  
4 to Rule 2015 of the Federal Rules of Bankruptcy Procedure. The Tydingcos contend that L&L no  
5 longer operates, and that therefore the business records requested are no longer necessary.

6 The Court agrees that the business receipts are required. Although the Tydingcos no longer  
7 operate L&L, and have not done so since they filed for bankruptcy, they must nevertheless keep  
8 records and receipts of money and property. *See* 11 U.S.C. §§ 1304(c), 704(a)(8) (stating that if  
9 the debtor’s business is operated, the debtor must file periodic business reports with the court);  
10 Fed. R. Bankr. P. 2015(c)(2), (a)(2) (stating that in non-business cases, the debtor must “keep a  
11 record of receipts and the disposition of money and property received”). The Court will grant leave  
12 for the Tydingcos to file the necessary business records if they decide to amend their plan.  
13

14 **IV. CONCLUSION**

15 Because the Tydingcos’ chapter 13 plan and associated schedules and forms do not  
16 comport with the Bankruptcy Code, the Court must sustain CFG’s objection to the plan’s  
17 confirmation. However, nothing in the record suggests that the Tydingcos will not be able to file  
18 appropriate documentation to successfully confirm an amended plan.

19 Accordingly, it is hereby ORDERED that CFG’s objection to the plan confirmation (ECF  
20 No. 53) is sustained; confirmation of the Tydingcos’ chapter 13 plan (ECF No. 52) is denied; and  
21 the Tydingcos shall file all necessary amendments no later than February 11, 2016.  
22

23 SO ORDERED this 27th day of January, 2016.

24   
25 RAMONA V. MANGLONA  
26 Designated Judge