UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

ENTERED

NOV 14 1996

K.R.D.

IN RE:

Thom R. Marett,

Debtor.

C/A No. 96-75003-W

JUDGMENT

Chapter 13

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, the trustee's motion to dismiss the debtor's case with prejudice for a period of 180 days is granted. Additionally, the debtor shall pay the sum of $725.38 to the Trustee by cashier's check or money order within ten (10) days from the entry of this order and will not be allowed to file another petition for relief under the Bankruptcy Code in this district until said sanction is paid in full. The motions of First Piedmont Federal for relief from the stay and for relief from the codebtor stay are hereby rendered moot.

UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
November 13, 1996.

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UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

Thom R. Marett,

Debtor.

C/A No. 96-75003-W

ORDER

Chapter 13

THIS MATTER comes before the Court upon the trustee's motion to dismiss the debtor's case for bad faith, the trustee's motion to dismiss the case for lack of feasibility, the trustee's motion to dismiss the case for failure to pay, and the trustee's motion to dismiss the case for the debtor's failure to file documents and provide information. In his motion to dismiss the debtor's case for bad faith, the trustee has also requested that the debtor be prohibited from filing another petition for bankruptcy relief in this District for a period of one year and that sanctions be imposed against the debtor.

Findings of Fact

On April 29, 1996, the debtor filed his first pro se petition for relief under Chapter 13 of the Bankruptcy Code. On July 8, 1996, after the Debtor failed to appear at the dismissal hearing, this court entered an order dismissing the debtor's first case for failure to file a plan which complied with Local Rule 3015, the debtor's failure to list as a debt a lawsuit commenced by Gary Ramsey, ("Ramsey") against the debtor, and the debtor's failure to timely commence payments under the plan. No appeal was taken from the July 8, 1996, order and no motion for reconsideration was filed. Instead, on July 22, 1996, the debtor filed another pro se petition for relief under Chapter 13 of the Bankruptcy Code. He did not file a plan or schedules at that time.

The debtor's petition did not indicate that he conducted business under any other name.

On July 25, 1996, the trustee served on the debtor, a motion to dismiss the debtor's case for bad faith, to prohibit the debtor from filing another petition for relief for one year, and to assess sanctions against the debtor. This motion was filed on July 26, 1996 and scheduled for hearing on August 20, 1996.

On August 6, 1996, the debtor filed his schedules. The debtor's D schedule of secured debts listed first and second mortgage obligations owed to First Piedmont Federal ("First Piedmont"), and an automobile debt owed to First Franklin. The debtor's E schedule of priority debts listed two tax debts owed to Cherokee County. On his F schedule of unsecured debts, the debtor listed Duke Power Company and BellSouth Corporation. Despite the specific finding in this court's July 8, 1996 order that the failure of the debtor to list Ramsey was bad faith, the debtor, again, did not list Ramsey as a creditor. The debtor's schedules listed no other creditors.

Paragraph 12 of the debtor's B schedule listed that the debtor had no "stock, and interest in incorporated and unincorporated business". Paragraph 20 of the debtor's B schedule reflected that he had no "contingent and unliquidated claims of every nature, including tax refunds, counterclaims of debtor and rights to setoff claims". Emphasis added.

Paragraph 1 of the debtor's statement of affairs reads as follows: "Income from Employment: A. State the gross monthly income from profession = $1,250". Bankruptcy Rule 9009[1] and Official Form Number 7, however, set forth the required format for paragraph 1 as

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[1] Bankruptcy Rule 9009 states as follows:

FORMS

follows:

1. Income from employment or operation of business

State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the **two years** immediately preceding this calendar year. (A debtor that maintains, or has maintained, financial records on the basis of a fiscal rather than a calendar year may report fiscal year income. Identify the beginning and ending dates of the debtor's fiscal year.) If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income of both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT SOURCE (if more than one)

Emphasis in the original.

The debtor's I schedule reflected gross income of $1,250.00 per month, payroll deductions of $250.00 per month, and net income of $1,000.00 per month with a "[P]rojected 5% semi-annual increase due to `continual recovery' from `11-27-95' Personal Disability [Medical: `Venom Injection' (Brown Recluse Spider)]."

The debtor's J schedule did not conform to the official form and listed "total expenditures [Non-Plan schedule]. $1,325" and "total expenditures [*Plan re-schedule]. $400". From the debtor's J schedule, it was impossible to determine the debtor's projected monthly expenses so as to determine whether the debtor's income was sufficient to pay these expenses and the plan

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The Official Forms prescribed by the Judicial Conference of the United States shall be observed and used with alterations as may be appropriate. Forms may be combined and their contents rearranged to permit economies in their use. The Director of the Administrative Office of the United States Courts may issue additional forms for use under the Code. The forms shall be construed to be consistent with these rule and the Code.

payment or whether the debtor was paying all of his disposable income into the plan as required by 11 U.S.C.§1325(b)(1)(B)[2].

On August 6, 1996, the debtor also filed his first Chapter 13 plan. See attached Exhibit A. This plan provided for 60 monthly payments of $600 to the trustee, but the plan did not comply with the form plan required by Local Rule 3015(A).[3] The form plan required by Local Rule 3015 is attached hereto as Exhibit B. The debtor's plan provided for the trustee to make variable payments and provided for varying payments to priority and secured creditors with balloon payments "TBA". The debtor's plan did not provide that priority creditors would be paid in full after secured creditors as required by the form plan. Neither did the debtor's plan require the debtor to make postpetition payments to creditors which would otherwise be entitled to priority status as required by the form plan. Neither did the debtor's plan provide a percentage to be paid on allowed unsecured claims as required by the form plan; instead the debtor's plan provided for full payment to two unsecured creditors, but provided for no payment to other

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[2] Further references to the Bankruptcy Code, 11 U.S.C. §101, et seq., shall be by section number only.

[3] Local Rule 3015(A) states:

> In all chapter 13 cases, the debtor or the debtor's attorney shall file, as the chapter 13 plan, a completed version of the chapter 13 model plan which appears as Exhibit 1 to this rule. In the event a plan conforming to Exhibit 1 is not filed with the petition, the debtor or the debtor's attorney shall--at the time of the filing of the plan--serve upon all creditors a copy of the plan and file a certificate of such service with the original plan. A copy of the certificate of service and of the plan shall be served upon the appropriate chapter 13 trustee at the time as the filing of the certificate of service and the plan.

unsecured creditors which might have allowed claims, including any claim of Ramsey.

In response to the filing of debtor's first plan on August 6, 1996, the trustee wrote the debtor a letter informing the debtor that his plan did "not conform to the form plan required by Local Rule 3015, and for that reason is undecipherable to anyone but you".

On August 7, 1996, First Piedmont filed a motion pursuant to §362(d) for relief from the stay alleging that the debtor had no ownership interest in the property securing First Piedmont's mortgages, and the debtor was not an obligor on either of the debts secured by the mortgages. First Piedmont also filed a motion requesting relief from the codebtor stay.

In an attempt to partially satisfy his duty pursuant to §1302(c) to investigate the operation of the debtor's business, the trustee, on August 8, 1996, forwarded, by first class mail, his standard letter to self-employed debtors asking the debtor to provide financial information about his business. The information requested included: a statement of monthly business income and expenses for the last three months; copies of the debtor's last two tax returns; completed statements regarding the debtor's real estate, accounts receivable, bank accounts, and insurance coverage. This information was requested within fifteen days so that the trustee could review the information prior to the meeting of creditors scheduled for September 18, 1996. This letter was never returned to the trustee as undelivered.

On August 19, 1996, an unsecured claim in the amount of $50,000 was filed on behalf of Ramsey. Attached to the claim was a complaint filed in state court alleging that the debtor had committed fraud, unfair and deceptive trade practices, breach of contract accompanied by fraudulent act, and malicious prosecution.

On August 19, 1996, the debtor filed a "motion for removal of trustee" alleging that the

trustee had issued false statements in the debtor's previous and present cases and that the trustee did attempt to commit "fiduciary breach hereby [and hereafter, based upon documental filings hereto]." The motion stated: "the trustee did knowingly, and willfully, fail in representation of this estate; thus, without `non-procedural furtherance' [`bad faith detriment', or `pro se prejudice', against debtor], the debtor does hereby respectfully demand an order removing trustee". The motion was not accompanied by a memorandum as required by Local Rule 9013(A).[4]
This motion was scheduled for hearing on September 19, 1996 at which time it was withdrawn by the Debtor.

Also on August 19, 1996, the debtor filed a pleading captioned "Statement of Conflict".

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[4] Local Rule 9013(A) states in pertinent part:

> 1. A motion permitted by the Bankruptcy Rules--or the Federal Rule of Civil Procedure insofar as they are made applicable hereto by the Bankruptcy Rules--shall be filed with an accompanying supporting memorandum of authority which shall be filed and made part of the public record. However, unless otherwise directed by the court, a supporting memorandum may be waived if a full explanation of the motion as set forth below is contained within the motion and a memorandum would serve no useful purpose. Unless the memorandum is so submitted or contained within the motion, the court may refuse to consider the motion.
>
> a. A memorandum shall contain:
>
> (1) A concise summary of the nature of the case;
> (2) A concise statement of the facts that pertain to the matter before the court for ruling;
> (3) The argument (brevity is expected) relating to the matter before the court for ruling with appropriate citations;
> (4) Copies of any unpublished decisions, or decisions published in the various specialized reporting services, (e.g., CCH Tax Reports, Labor Reports, U.C.C. Reporting Service, etc.)....

In this apparent request for recusal, the debtor requested that the Judge assigned the case not hear any part of it. Based upon the pendency of other motions in this case, the Court addressed and denied the request for recusal at a hearing on August 20, 1996. A subsequent motion for reconsideration of this ruling was also denied by the Court.

On August 20, 1996, after conducting a hearing on the merits, the court took under advisement the trustee's motion to dismiss the case for bad faith, First Piedmont's motion for relief from the stay, and the debtor's objection to First Piedmont's motion for relief from the codebtor stay.

On September 3, 1996, 1st Franklin filed a proof of claim for $3,791.22 secured by a lien on the debtor's automobile. The contract attached to 1st Franklin's claim listed the annual percentage rate of interest at 36.00% and showed that the final payment under the contract was due December 11, 1997.

On September 5, 1996, thirty days after the filing of the debtor's plan, the debtor was, pursuant to §1326(a)(1), required to "commence making the payments proposed by" this plan. The debtor did not make the $600.00 plan payment to the trustee at that time. On September 10, 1996, the trustee filed a motion to dismiss the debtor's case for failure to commence payments under the plan. This motion was scheduled for hearing on October 17, 1996.

On September 18, 1996, the trustee convened the meeting of creditors. Based in part upon the debtor's failure to provide tax information to the trustee at that meeting, the trustee continued the meeting of creditors until October 16, 1996.

On September 18, 1996, the trustee filed a motion to dismiss the debtor's case for failure to provide the trustee with information necessary for the efficient administration of the case. The

trustee, at the same time, also filed a motion to dismiss the case alleging that the debtor's expenses exceeded his income, thus rendering the proposed plan not feasible. Both of these motions were scheduled for hearing on October 17, 1996.

On September 18, 1996, the trustee wrote the debtor a letter demanding that the debtor file an amended statement of affairs listing his income for the previous two calendar years as requested by Official Form 7.

On September 24, 1996, the trustee sent another letter by first class mail requesting that the debtor provide the trustee with the information regarding the debtor's business which had previously been requested in the trustee's August 8, 1996 letter. This letter was never returned to the trustee as undelivered.

On September 25, 1996, First Piedmont's attorney filed an objection to confirmation of the debtor's plan alleging: that the plan was not feasible in that the $600 per month plan payment coupled with the $839.33 per month first and second mortgage payments exceeded the debtor's gross monthly income of $1,200.00; the plan violated §1322(b)(5) by not providing for the maintenance of regular mortgage payments during the pendency of the case; and the plan did not conform to the form plan required by Local Rule 3015.

On September 30, 1996, First Piedmont's attorney filed an amended objection to confirmation of the debtor's plan realleging the items contained in the original objection, and further alleging that the debtor had tendered an NSF check in payment of his 1996-1997 Real Estate License fees, and that as a result of the failure to keep his license in good standing, the debtor had no income to fund his plan. The debtor later testified at the October 17, 1996 hearings that he had tendered sufficient payment to keep his real estate license in good standing.

On October 10, 1996, the debtor filed an objection to the trustee's motion to dismiss the case for failure to pay, an objection to the trustee's motion to dismiss the case for lack of feasibility, and an objection to the trustee's motion to dismiss the case for the debtor's failure to file documents and provide information. In his objection the debtor stated: "the debtor will hereby respectfully request an order dismissing petition upon `moot point' thereby [with prejudice thereto, and sanction thereagainst, Hon. Trustee]".

On October 10, 1996, the debtor filed an amended I schedule which reflected gross income of $2,300, deductions of $405, and net income of $1,995. The debtor's original I schedule reflected gross income of $1,250, deductions of $250, and net income of $1,000.

On October 10, 1996, the debtor also filed an amended J schedule which reflected "Total expenditures [Non-plan schedule]. $1,495" and "Total expenditures [Plan re-schedule]. $400". The debtor's original J schedule reflected "Total expenditures [Non-plan schedule]. $1,325 and "Total expenditures [*Plan re-schedule]. $400".

On October 10, 1996, at 11:42 a.m., the debtor filed a document entitled "`08-06-96' Plan, `09-16-96' Revision". See attached Exhibit C. This plan did not conform to the form plan required by Local Rule 3015. This plan also required the debtor to make 57 monthly payments of $600 to the trustee.

On October 10, 1996, at 11:43 a.m., the debtor filed a document entitled "`08-06-96' Plan, `10-04-96' Revision". See attached Exhibit D. This plan did not conform to the form plan required by Local Rule 3015 in numerous respects. First, the plan provided for arrearage payments on two tax debts plus interest with "[r]egular `notice payment' [@ TBA per year] to be made directly by the debtor beginning on `01-15-97'". Furthermore, the debtor's plan did not

require the debtor to make postpetition payments to creditors which would otherwise be entitled to priority status as required by the form plan. The debtor's plan also deleted any reference to payment of unsecured claims and, without explanation, removed the earlier plan provision for full payment of the scheduled unsecured claims of Duke Power Company and Bell South Corporation. The debtor's plan also reduced his plan payments from $600 to $400 despite the fact that his amended I schedule showed his monthly net income increased from $1,000 to $1,995.

On October 10, 1996, thirty five days after his first payment to the trustee was due, the debtor tendered $800 for his September and October plan payments of $400 each. Under the first two plans which the debtor filed, his monthly obligations would have been $600, or a total of $1,200.

On October 17, 1996, at the hearings on the trustee's motion to dismiss and the hearing on confirmation of the debtor's plan, witnesses testified that they were owed debts by the debtor which had not been listed on the debtor's schedules. These creditors also testified that they had received no notice from the court or the debtor regarding the debtor's two bankruptcy cases.

At the October 17, 1996 hearings, Mrs. Guthrie testified that the debtor had collected rents owed to her and had not paid her those rents. Mrs. Guthrie also testified that she had caused to be issued a criminal warrant against the debtor in an attempt to recover those rents from the debtor. Mrs. Guthrie was not listed as a creditor on the debtor's schedules. Dr. Upton testified that he paid rents due and owing to Mrs. Guthrie to the debtor, and that the debtor never forwarded those rents to Mrs. Guthrie. Dr. Upton also testified that he had caused to be issued another criminal warrant against the debtor in an attempt to recover the money. Dr. Upton was

not listed as a creditor on the debtor's schedules. Instead, the debtor testified that Mrs. Guthrie and Dr. Upton owed the debtor money. The court finds Mrs. Guthrie's and Dr. Upton's testimony more credible.

At the October 17, 1996 hearings, Richard Rhodes, Esquire, testified that he held a recorded judgment in the amount of $4,413 against the debtor for attorney's fees earned representing the debtor in a successful appeal to the South Carolina Supreme Court. Including prepetition interest at the state statutory rate, the amount owing was approximately $9,500. Mr. Rhodes was not listed as a creditor on the debtor's schedules, and Mr. Rhodes testified that he only learned about the debtor's bankruptcy case earlier that day. The debtor testified that he did not think he owed Mr. Rhodes for the fees anymore. The court finds Mr. Rhodes' testimony more credible.

At the October 17, 1996 hearings, Fulton Ross, Esquire, testified that he was the attorney representing Ramsey in his state court action against the debtor. Mr. Ross testified that the complaint attached to the proof of claim which he filed on behalf of Ramsey was the complaint which had been filed in state court. Mr. Ross also testified that the debtor had filed a counter-claim against Ramsey. Ramsey was not listed as a creditor on the debtor's schedules, and the debtor's counter-claim against Ramsey was not listed in paragraph 20 of the debtor's B schedule. The debtor testified that he did not list Ramsey as a creditor, because Ramsey was a "debtor's debtor". The court finds Mr. Ross' testimony more credible.

Mr. Ross also testified that his search of the Cherokee County records reflected a civil suit filed against the debtor by Nora P. Sadler and others. This suit was listed in paragraph 4 of the debtor's statement of affairs, but the plaintiffs were not listed as creditors on the debtor's

schedules.

Discussion and Conclusions of Law

I

In the July 8, 1996 order dismissing the debtor's first chapter 13 case, the Court held as follows:

> Although a debtor is free to represent himself in his bankruptcy case, that choice does not excuse the debtor from complying with the requirements of the Bankruptcy Code, the Bankruptcy rules, and the Local Rules. As one court stated:
>
> > Once Debtor determined to represent herself pro se she undertook the responsibility to comply with the relevant rules of procedural and substantive law...and, therefore, she is to be graced with no special treatment as a reward for her decision to represent herself.
>
> In re Kleinman, 136 B.R. 69, 71 (Bkrtcy. S.D. N.Y. 1991). See, Hughes v. Ruffin (In re Ruffin), C.A. 3:94-1795-19 BC, slip. op. at p. 3 (D. S.C. 11/28/94); In re Clawson, 92-72412 (Bkrtcy. D. S.C. 2/7/95).

In re Marett, 96-72959-W slip. op. at 5 (Bankr. D. S.C. 7/8/96). In this second bankruptcy case, the debtor again has attempted to represent himself in a pro se manner and again, the Chapter 13 Trustee has motioned this Court to dismiss the case for the debtor's failure to follow the rules of this Court and due to his failure to present a confirmable plan.

II

Section 1307(c) provides in pertinent part:

> . . . on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interest of creditors and the estate, for cause, ...

The debtor as proponent of the plan has the burden of proving by a preponderance of the evidence that his plan meets the confirmation requirements of §1325(a), including the good faith

requirement of §1325(a)(3). In re Smith, 91-03821 (Bankr. D. S.C. 10/9/91) (WTB); In re Thomas, 118 B.R. 421 (Bankr. D. S.C. 1990).

The filing of a case in bad faith constitutes cause for dismissal or conversion of the case. In re Eisen, 14 F. 3rd 469 (9th Cir. 1994); In re Harford, No. 86-1178 (4th Cir. 10/2/86) (unpublished);[5] in re Superior Siding & Window, Inc., C.A. 6:91-3739-3 (D. S.C. 2/7/92); In re Brunner, 92-71010 (Bankr. D. S.C. 6/10/92) (WTB); In re Thomas, 118 B.R. 421 (Bankr. D. S.C. 1990); In re Whitner, 88-00948 (Bankr. D. S.C. 6/15/88); (In re McElveen), 78 B.R. 1005 (Bankr. D. S.C. 1987); In re Pryor, 54 B.R. 679 (Bankr. D. S.C. 1985); In re Chin, 31 B.R. 314 (Bankr. S.D. N.Y. 1983).

In determining whether a plan is proposed in good faith, the following nonexclusive factors should be considered: the percentage of proposed repayment; the debtor's financial situation; the period of time payment will be made; the debtor's employment history and prospects; the nature and amount of unsecured claims; the debtor's past bankruptcy filings; the debtor's honesty in representing facts; any unusual or exceptional problems facing the particular debtor; evidence of pre-filing conduct and the possible non-dischargeability of the objecting creditors' claims if the case were one under Chapter 7. Neufeld v. Freeman, 794 F.2d 149 (4th Cir. 1986); Deans v. O'Donnell, 692 F.2d 968 (4th Cir. 1982). See In re Brunner, supra.

Another factor to be considered is the extent to which misrepresentations by the debtor make administration of the case unduly burdensome to the Chapter 13 Trustee because of the

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[5] Although unpublished Fourth Circuit opinions are not binding precedent (I.O.P. 36.5 and 36.6), they may supply "helpful guidance". In re Serra Builders, Inc., 970 F. 2d 1309, 1311 (4th Cir. 1992).

Trustee's inability to rely upon the schedules and general honesty of the debtor. In re Harford, slip op at p. 4; United States v. Estus, (In re Estus), 695 F.2d 311, 317 (8th Cir. 1982). In re Brunner, supra. The object of the inquiry is to determine whether considering all the circumstances there has been "an abuse of the provisions, purpose or spirit" of Chapter 13. Deans v. O'Donnell, 692 F.2d at 972. See, In re Brunner, supra.

This Court has previously considered the above listed factors and other relevant factors as indicia of a debtor's bad faith. The outcome of this review has varied depending on the number and severity of the indicia of bad faith present in each case. Several factors are of particular relevance here and will be reviewed in turn.

A.

In determining whether this case is filed in good faith, a relevant factor to be considered is the debtor's past bankruptcy filings. In re Eisen, supra; In re Metz, 820 F.2d 1495, 1497 (9th Cir. 1987); Neufeld v. Freeman, 794 F.2d at 153; In re Earl, supra, In re Black, 91-03845 (Bankr. D. S.C. 10/15/91); In re Jarman, 91-01227 (Bankr. D. S.C. 5/21/91); In re Sapp, 91-00090 (Bankr. D. S.C. 2/7/91); In re McElveen, 78 B.R. 1005 (Bankr. D. S.C. 1987); In re Pryor, 54 B.R. 679 (Bankr. D. S.C. 1985). It is the debtor's burden to prove with detailed testimony and convincing evidence entitlement to a second or third opportunity to file a bankruptcy petition. In re Bolton, 43 B.R. 48, 12 B.C.D. 416, (Bankr. E.D. N.Y. 1984); In re Black, supra; In re Pryor, supra.

In resolving whether the filing of this Chapter 13 case, after the previously filed Chapter 13 case has been dismissed, constitutes bad faith and cause for its dismissal, this Court is mindful of §109(g)(1) and (2). However, the Court is also aware that there is not a statutory prohibition

against repetitive filings. See, In re Pryor, supra; Johnson v. Vanguard Holding Corp. (In re Johnson), 708 F.2d 865, 868 (2nd Cir. 1983).

With regard to the refiling of a Chapter 13 case, the Court in Johnson stated:

> The Bankruptcy Judge should determine whether Johnson had a bona fide change in circumstances that justified both her default on her first plan and her second filing.

708 F.2d 868. The debtor's showing of such a change in circumstances has been required in In re Black, supra, In re Pryor, supra; In re Bolton, supra; In re Chin, 31 B.R. 314 (Bankr. S.D. N.Y. 1983). The reasoning in Bolton, supra, is particularly persuasive. There the Court stated:

> Under a doctrine enunciated in Johnson, the court holds that a debtor who files a subsequent petition after a prior petition is dismissed must not only demonstrate a "change in circumstances" but also must show good cause why he ignored applicable statutory provisions in failing to move for relief from the obligations under the prior plan in the prior proceeding.

12 B.C.D. at 418, 43 B.R. at 50.

A bona fide change in circumstances between the last filed case and the pending case may justify another filing as the changed circumstances may show that the pending case was filed in good faith. Such a change in circumstances is one factor to be considered. In re Earl, 140 B.R. 15 738; In re Huerta, 137 B.R. 356, 368 (Bankr. C.D. Cal. 1992).

The debtor filed this case just fourteen days after the entry of the order dismissing his first case. Furthermore, the debtor has presented no persuasive evidence that there has been a positive change in circumstances between the dismissal of his first case and the filing of the instant case. In re Huerta, 137 B.R. at 368. Furthermore, the debtor has presented no evidence as to the actions he took to make his previous case workable.

In addition to the debtor's change in circumstances and his attempts to make his previous

case work, another aspect of serial bankruptcy filings which must be considered is the period of time which elapses between filings. In an order dismissing husband and wife serial filings, this Court previously stated:

> These debtors originally filed their Chapter 13 petition in 1986. The debtors were granted their discharge in February 1989 after completing their Chapter 13 case. The second filing occurred in September 1990 over a year after the first Chapter 13 was dismissed. *This Court is under the belief that when a substantial period of time has* elapsed between the dismissal of the first case and the filing of the second, for example a year, the burden of proving a change of circumstances is not as compelling.

In re Black, slip op at 4.

There is no specific time period after the dismissal or completion of a prior bankruptcy case within which a debtor is automatically insulated from a finding that a refiling is in bad faith. Each case must be examined in the totality of circumstances, yet the longer the period of time between the end of the prior case and the filing of the later case, the less burdensome is the debtor's task of showing entitlement to another opportunity for bankruptcy relief.

Although the debtor's bad faith filing of his first case is not determinative of whether the instant case is filed in bad faith, the Court should consider that a debtor who has previously filed a case in bad faith may do so again in the future and require convincing evidence that any later filing is in good faith. Based on the above, it appears that the debtor's serial filings are evidence that the instant case is filed in bad faith.

B.

In determining whether this case is filed in good faith, another relevant factor to be considered is the debtor's pre-filing conduct. With respect to this factor, Neufeld v. Freeman, 794 F.2d at 153 stated:

> Of course the issue of dischargeability in Chapter 7 need not, and cannot, be litigated to conclusion in every Chapter 13 confirmation proceeding. Where significant claims involve conduct that would otherwise raise serious Chapter 7 dischargeability issues, however, the quality of that conduct is part of the "totality of circumstances" which must be weighed, with other factors, in assessing the debtor's good faith under Chapter 13.

Section 101(10) defines a "creditor" as an "entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor...." Section 101(5) defines "claim" as:

> (A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or
>
> (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured;

With respect to §101(5), the Fourth Circuit has stated:

> Congress intended to adopt the broadest possible definition of the term "claim," so that a bankruptcy case would deal with all of the debtor's legal obligations.

Stewart Foods, Inc. v. Broecker (In re Stewart Foods, Inc.), 64 F. 3d 141, 144 (4th Cir. 1995).

Considering the broad scope of the term "claim", it appears that Ramsey, Guthrie, and Upton all have "claims" of indeterminate amounts. Since §521(1) states that "[t]he debtor shall ...file a list of creditors...", it was the duty of the debtor to list all parties who might have a right to payment against him whether that right of payment was disputed or unliquidated. This duty insures that creditors will have notice of the debtor' bankruptcy case so that these creditors may participate and protect their rights.

The claims of Ramsey, Guthrie and Upton all implicate Chapter 7 dischargeability issues

and constitute a large portion of the debtor's total debt and a major portion of the debtor's unsecured debt. Based on the debtor's pre-filing conduct including his relationship and litigation with these creditors and his failure to list them in his case filings, it appears that the debtor's case is filed in bad faith.

C.

Another relevant factor to be considered in determining whether the debtor's case is filed in good faith is the debtor's honesty in representing facts. The debtor's failure to list four creditors exhibits a lack of honesty in representing facts. In re Brunner, supra; In re Cash, 51 B.R. 927 (Bankr. N.D. Ala. 1985). Furthermore, the debtor has failed to list his interest in incorporated and unincorporated businesses on his B schedule. The debtor has also failed to list his counterclaims and rights to setoff in his B schedule.

A debtor's failure to list assets on his bankruptcy schedules has been a factor considered by several courts in deciding to convert or dismiss a case under Chapter 13. Hardin v. Caldwell (In re Caldwell), 895 F. 2d 1123, 1127 (6th Cir. 1990); In re Brunner, supra; In re Cisneros, 110 B.R. 531, 534 (Bankr. D. Colo. 1990); In re Powers), 48 B.R. 120, 121 (Bankr. M.D. La. 1985); In re Lewis, 26, B.R. 379, 381 (Bankr. D. Md. 1982). See, In re Superior Siding & Window, Inc., slip op. at p. 4. (Chapter 11 debtor's failure to list motor vehicles on bankruptcy schedules was one factor warranting dismissal of case.)

Finally, it appears as if the debtor has not honestly listed his income and expenses but has at opportune times altered those figures to serve his own purposes. Based on the above, it appears that the debtor's case is filed in bad faith.

D.

Another relevant factor to be considered in determining whether the debtor's Chapter 13 case is filed in good faith is the extent to which administration of the case is unduly burdensome on the trustee.

Since a Chapter 13 trustee ordinarily disburses money received from the debtor's post-petition wages to creditors of the debtor, a Chapter 13 trustee, unlike a Chapter 7 trustee, does not usually resort to extensive investigative resources to uncover assets of the debtor or verify the information on a debtor's schedules. For this reason a Chapter 13 trustee does not have the network of investigative resources available to a Chapter 7 trustee who must regularly uncover hidden assets, therefore, a Chapter 13 trustee may be less able than a Chapter 7 trustee to effectively deal with a dishonest debtor. As one court succinctly stated:

> Because of the numbers involved, and the lack of creditors with any substantial interests to be vindicated, most of the burden of checking upon debtors' schedules falls upon the Chapter 13 trustee and upon counsel for the Chapter 13 debtor. Much of what the debtor states has to be taken upon faith in view of the lack of ability on the part of the trustee, the court, or the creditors to investigate fully the facts contained in the Chapter 13 Statement and Plan. Only the coincidence of an extraordinary police investigation caused various facts to be uncovered showing clearly that the debtor misrepresented facts in his plan. This would appear to be the substance of what Congress meant by "good faith". Can the court or the trustee or the creditors rely upon the debtors' statement in this case? The answer must be in the negative.

In re Lewis, 26 B.R. at 381.

The unreliability of the debtor's schedules, the debtor's refusal to comply with the Local Rules, the debtor's unwillingness to supply the trustee with necessary information, the debtor's dilatory payment history, and the debtor's unreasonable litigiousness, all combine to make the debtor's case unnecessarily burdensome for the trustee to administer. For these reasons, it appears that the debtor's case is filed in bad faith.

E.

Although, not listed in the non-exclusive factors set forth in Neufeld v. Freeman, another factor deserving consideration here is the debtor's practice of filing meritless pleadings. In filing his motion for recusal, motion for reconsideration of order denying recusal and motion for removal of trustee, the debtor has displayed a propensity for filing meritless pleadings which do not conform to the requirements of the Local Rules.

The debtor's filing of meritless pleadings in this case is another factor evidencing the debtor's willingness to file bankruptcy petitions, bankruptcy schedules and bankruptcy plans in bad faith.

III

Section 1307(c)(1) provides for dismissal of a Chapter 13 case for "unreasonable delay that is prejudicial to creditors...." Despite requests from the trustee and the urging of this court over a period of months, the debtor has failed to file a confirmable plan or even one that conforms to the requirements of Local Rule 3015.

This court stated in the debtor's first case:

> [T]he debtor has failed to use the form plan required by Local Rule 3015(A). At least one court in this circuit has held that the required use of a form plan was a valid use of a bankruptcy court's rule making power. In re Walat, 87 B.R. 408 (Bankr. E.D. Va. 1988) (en banc) aff'd 89 B.R. 11 (E.D. Va. 1988). Here, the debtor's failure to use the required form plan has delayed administration of the debtor's case and is one reason that his alleged plan is impossible to understand.

In re Marett, 96-72959-W, slip op. at 6-7 (Bankr. D. S.C. 7/8/96).

Despite this Court's ruling in the first bankruptcy case that the debtor's plan was impossible to understand and administer, the debtor once again persisted in proposing a plan

which has the same defects, does not conform to the required form plan and which does not provide for treatment of the judgment claim of Rhodes or the possible unsecured claims of Ramsey, Guthrie, Upton, Sadler, or others. The debtor's deletion of the earlier payment provisions to Duke Power Co. and Bell South Corp. raises further questions with this Court of whether the debtor has violated §1322(a)(3)[6] by paying these two creditors directly and immediately while providing no payment at all to other unsecured claims. Furthermore, the debtor's latest plan does not require the debtor to keep current in his tax obligations as this Court would require.

The debtor appears to be attempting to use §1322(b)(5)[7] to cure the arrearages on debts which are not long term debts within the scope of §1322(b)(5). Cases interpreting §1322(b)(5) have stated that for a debt to be a long term debt on which the arrearage may be cured and the regular payments maintained, the unaccelerated term of the debt must exceed the term of the plan. Grubbs v. Houston First American Savings Association (In re Grubbs), 730 F.2d 236, 247 (5th Cir. 1984); In re Pruitte, 157 B.R. 662 (Bankr. E.D. Mo. 1993); In re Dinsmore, 141 B.R. 499 (Bankr. W.D. Mich. 1992).

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[6] Section 1322(a)(3) states "[t]he plan shall...if the plan classifies claims, provide the same treatment for each claim within a particular class".

[7] Section 1322(b)(5) states that "subject to subsection (a) and (c) of this section, the plan may...notwithstanding paragraph (2) of this subsection, provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending on any unsecured claim or secured claim on which the last payment is due after the date on which the final payment under the plan is due".

In this case, the two tax debts and the debt to 1st Franklin all come due before the end of the 57 month terms of the debtor's plan, therefore these debts are not long term debts which may be treated under §1322(b)(5) as proposed in the debtor's latest plan.

The debtor's provision of different rates of interest on secured claims without any rational basis also appears to be violative of §1322(a)(3). Such a conclusion seems especially unavoidable in light of the fact that the debtor could not be paying all secured creditors their contractual interest because 1st Franklin's contractual rate of interest is 36%, not 10.25%. Without some rational explanation of the varying interest rates being paid to secured creditors, the Court cannot determine whether the plan unfairly discriminates against some secured creditors.

The debtor's latest plan also violates §1322(b)(5) in that it does not provide for the resumption of the regular payment on First Piedmont's first mortgage until November 15, 1996 and First Piedmont's second mortgage until January 20, 1997. In so doing, the debtor's plan is creating defaults rather than curing them, and without some justification, the plan may be violative of §1326(a)(1).[8]

The debtor's inability to propose a decipherable, confirmable, plan, the debtor's unwillingness to file schedules in the form required by Bankruptcy Rule 9009, the debtor's failure to timely file his 1995 tax returns and the debtor's refusal to provide the trustee with information necessary for the administration of the case, have created unreasonable delays which

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[8] Section 1326(a)(1) states: "Unless the court orders otherwise, the debtor shall commence making payments proposed by a plan within 30 days after the plan is filed".

have prejudiced the debtor's creditors by blocking their collection efforts against the debtor since April 29, 1996, the date of the filing of the debtor's first case. This unreasonable delay which prejudices the debtor's creditors warrants dismissal of the case pursuant to §1307(c)(1).

IV

Section 1307(c)(4) provides for dismissal of a Chapter 13 case for "failure to commence making timely payments under Section 1326 of this title...." As discussed earlier, §1326(a)(1) requires the debtor to commence making payments proposed by a plan within thirty days after the plan is filed. Under §1326(a)(1), the debtor's first payment of $600 was due September 5, 1996. The debtor's second payment of $600 was due on October 5, 1996. Instead of paying the trustee $1,200 by October 5, 1996, the debtor, on October 10, 1996, while simultaneously filing schedules reflecting an increase of $995 per month in his net income, filed a plan retroactively reducing the plan payments to $400 per month. On October 10, 1996, some 35 days after his first plan payment was due and 65 days after the filing of his first plan, the debtor tendered $800 to the trustee. In light of the debtor's failure to make any payments in his first case, Congress' clear intention to stress the importance of timely commencing plan payments, and the debtor's seemingly bad faith attempt to retroactively reduce his payments under the plan and the debtor's failure to timely commence his payments under the plan warrant dismissal of the debtor's case.

V

The trustee has also alleged that the debtor's case should be dismissed as his plan is not feasible. Section 1325(a)(6) requires that "the debtor will be able to make all payments under the plan and to comply with the plan". As the proponent of the plan, the debtor must prove by a preponderance of the evidence that his plan is feasible.

To comply with §1325(a)(6), a debtor must prove he has sufficient income to pay realistic and reasonable ongoing living expenses not paid through the Chapter 13 plan. In re Rogers, 140 B.R. 254 (Bankr. W.D. Mo. 1992); In re Smith, 91-03821 Bankr. D. S.C. 10/9/91) (WTB); In re Humphrey, 90-01121 (Bankr. D. S.C. 6/14/90) (WTB). A proposed plan is not feasible if the ongoing living expenses proposed by the debtor are unrealistically low and there is not sufficient income to pay realistic and reasonable ongoing living expenses. In re Belden, 144 B.R. 1010, 1021 (Bankr. D. Minn. 1992); In re Olp, 29 B.R. 932, 936 (Bankr. E.D. Wi. 1983); In re Hockaday), 3 B.R. 254, 256 (Bankr. S.D. Cal. 1980).

Even if a debtor has sufficient income to pay realistic and reasonable ongoing living expenses, there must also be a reasonable surplus of income for unforseen expenses. In re Humphrey, supra; In re Goodavage, 41 B.R. 742, 746 (Bankr. E.D. Va. 1984); In re Belka, 13 B.R. 607, 610 (Bankr. W.D. Mi. 1981); In re Guerrieri, 10 B.R. 464, 465 (Bankr. D. R.I. 1981).

Even if the debtor has sufficient income to pay realistic and reasonable ongoing living expenses and to provide a reasonable surplus for unforseen expenses, the debtor must still show that he has sufficient income remaining to make the required plan payment in order to satisfy §109(e) and §1325(a)(6). In re Larrimore, 69 B.R. 622, 626 (Bankr. E.D. Tn. 1986); In re Manes, 67 B.R. 13, 16 (Bankr. E.D. Ark. 1986); In re Moore, 86-01310, slip op. at 2 (Bankr. D. S.C. 12/5/86) (JBD).

In this case, the debtor's original I schedule reflected net monthly income of $1,000, while his reasonable ongoing living expenses, including the regular mortgage payments of $849 per month to First Piedmont, total approximately $1,445 per month. From this deficit of $445 per month, the debtor proposed to make payments to the trustee of $600 per month.

After the trustee filed his motion to dismiss, the debtor filed an amended I schedule reflecting an unexplained increase of $995 per month in his net income. At the October 17, 1996 hearings the debtor attributed this dramatic increase in income to his improving health. The numerous allegations of fraud and misconduct against the debtor along with the questionable status of the debtor's real estate license however, cause this Court to question this opportune and substantial increase in his income. At the hearing in this matter the debtor failed to present any evidence to substantiate his income or its sufficiency to meet the obligations under the plan. For the reasons stated above, the court finds that the debtor's plan is not feasible and that without clear and credible evidence of his true income and expenses, no plan which the debtor could propose would be feasible. Therefore, the debtor should not be granted the opportunity to file another plan and dismissal of the case is appropriate under §1307(c)(5).[9]

VI

Having determined that dismissal of the debtor's case is appropriate, the court must now consider whether the debtor should be prohibited for a period of time, from filing another petition for relief under the Bankruptcy Code.

This court has previously held that bad faith serial filings may warrant dismissing the case and prohibiting the debtor from refiling for a period of time. In re Peters, 93-71133 (Bankr. D. S.C. 5/24/93) (WTB) (180 days); In re Black, supra (180 days); In re Sapp, supra (1 year); In

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[9] Section 1307(c)(5) provides for dismissal of a chapter case, "for cause, including...denial of confirmation of a plan under section 1325 of this title and denial of a request made for additional time for filing another plan or a modification of a plan..."

re Jarman, supra (1 year); In re Whitner, supra (1 year); In re Commander, 87-02103 (Bankr. D. S.C. 9/16/87) (JBD) (1 year); In re McElveen, supra (2 years); In re McDonald, 86-00827 (Bankr. D. S.C. 6/18/86) (JBD) (1 year); In re Pryor, supra (180 days).

Other courts have also held that if a case is dismissed for being filed in bad faith, §105(a), §349(a), and F.R. Bankr. P. 9011(a) empower the Court to prohibit the debtor from filing another case for a specific period of time. In re Eisen, supra (180 days); In re Stathatos, 163 B.R. 83 (N.D. Tx. 1993) (2 years); In re Jolly, 143 B.R. 383 (E.D. Va. 1992) (180 days); In re Neill, 158 B.R. 93 (Bankr. N.D. Oh. 1993) (180 days); In re Earl, 140 B.R. 728 (Bankr. N.D. Ind. 1992) (180 days); In re Huerta, supra (180 days); In re Dilley, 125 B.R. 189 (Bankr. N.D. Oh. 1991) (1 year); In re Hundley, 103 B.R. 768 (Bankr. E.D. Va. 1989) (1 year).

It appearing that the debtor's second Chapter 13 case was filed in bad faith, it is appropriate that the debtor be barred from filing another petition for relief in this district for 180 days from the entry of this Order. §105(a); F.R. Bankr. P. 9011(a).

VII

In his motion to dismiss the case, the Trustee has also requested that sanctions be imposed against the debtor under §105(a) and F.R. Bankr. P. 9011(a). Section 105(a) allows the court to "issue any order...that is necessary or appropriate to carry out the provisions of this title". F.R. Bankr. P. 9011(a) requires every document in a bankruptcy case to be signed by an attorney or party, and states:

> The signature of an attorney or a party constitutes a certificate by him that he has read the documents; that to the best of his knowledge, information and belief formed after reasonable inquiry it is well grounded in argument for the extension, modification or reversal of existing law; and that it is not interposed for any improper purpose such as to harass, to cause delay, or to increase the cost of

> litigation. If a document is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the person whose signature is required. If a document is signed in violation of the rule, the court on motion or on its own initiative, shall impose on the person who signed it, the represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including a reasonable attorney's fee.

As discussed at length above, the debtor's filing and prosecution of his case has been a continuing display of bad faith and improper vexatious filings. In order to deter such acts and to compensate the trustee for the time and expense he has incurred in attempting to administer this case, the court sanctions the debtor the sum of $725.38, which is the total of the reasonable fees and expenses incurred by the Trustee. §105(a); F.R. Bankr. P. 9011(a).

The debtor shall pay to the trustee the sum of $725.38 by cashier's check or money order within ten (10) days from the entry of this order. The debtor is prohibited from filing another petition for relief in this district until the sum set forth above is paid to the trustee.

VIII

Having dismissed the debtor's Chapter 13 case, the motions of First Piedmont for relief from the stay and for relief from the codebtor stay are hereby moot.

ORDER

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

(1) That this case be dismissed;

(2) That the debtor not file another petition for relief under the Bankruptcy Code in this District within 180 days from the entry of this order:

(3) That the debtor pay the sum of $725.38 to the Trustee by cashier's check or money order within ten (10) days from the entry of this order;

(4) That the debtor not be allowed to file another petition for relief under the Bankruptcy Code in this district until the sanction set forth in paragraph 3 is paid in full, but in no event shall the debtor be allowed to file another petition for relief until at least 180 days from the entry of this order;

(5) The motions of First Piedmont Federal for relief from the stay and for relief from the codebtor stay are hereby rendered moot.

AND IT IS SO ORDERED.

UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
November 13, 1996.

28

UNITED STATES BANKRUPTCY COURT DISTRICT OF SOUTH CAROLINA	CASE NO. 96-75003/JEW. CHAPTER NO. 13.
IN RE: Thom R. Marett, Debtor.	'08-06-96' PLAN

01. The future earnings, and income, of this debtor are submitted to the supervision, and control, of the trustee; and, this debtor will pay directly to the trustee for 1 period of 60 months, beginning on '09-06-96', and ending on '08-06-01', and the sum of $600 per month.

02. After the deduction from all disbursements of the allowed trustee's commission, and expenses, of 10%, or less, then the trustee will make 60 monthly disbursements, in the sum of dollars 'variable', plus allowance of A.P.R. interest upon the sum of dollars computed as '09-06-96' debt balance, as follows:

A. SCHEDULE D, to 'secured creditor', First Piedmont Federal Bank (AN 377017712), and 1st mortgage debt to be paid on, and at, plus 7.50% 'fixed' upon the '09-06-96' ARREARAGE DUE (by computation: TBA) = 6 @ $345, 6 @ $381, 4 @ $461, and 44 @ $482. Regular payments ($704.53 per month, and based upon the '10-28-92' amortization schedule) to be made directly by debtor beginning on '09-06-01' (and upon post balance by computation: TBA); thus, based upon the '09-06-96' pre balance (by computation: TBA), then 'in advance', 1 '09-01-01' balloon payment (by computation: TBA), and '09-01-01' pre balance (by computation: TBA).

B. SCHEDULE D, to 'secured creditor', First Piedmont Federal Bank (AN 386003913), and 2nd mortgage debt to be paid on, and at, plus 9.25% 'variable' upon the '09-06-96' ARREARAGE DUE (by computation: TBA) = 6 @ $42, 6 @ $47, 4 @ $57, and 44 @ $58. Regular payments (by computation: TBA, and based upon the '10-29-92' amortization schedule) to be made directly by debtor beginning on '09-06-01' (and upon post balance by computation: TBA); thus, based upon the '09-06-96 pre balance (by computation: TBA), then 'in advance', 1 '09-01-01' balloon payment (by computation: TBA), and '09-01-01' pre balance (by computation: TBA).

C. SCHEDULE D, to 'secured creditor', 1st Franklin Financial Corp. (AN 73638881), and 1st security debt to be paid on, and at, plus 36.00% 'fixed' upon the '09-06-96' ARREARAGE DUE (by computation: TBA) = 6 @ $17, 6 @ $18, and 4 @ $22. Thus, based upon the '09-06-96' pre balance (by computation: TBA), then 'in advance', 1 '12-11-97' balloon payment (by computation: TBA), and '12-11-97' post balance ($0), to be made directly by debtor.

Exhibit A

JW-79-

'08-06-96' PLAN -- Continued.

D. SCHEDULE E, to 'unsecured priority creditor', Cherokee County Tax Collector (AN 152-00-00-011.00), and real property assessment (1995) to be paid on, and at, plus 14.00% 'legal' upon the '09-06-96' ARREARAGE DUE (by computation: TBA) = 12 @ $31. Thus, based upon the '09-06-96' pre balance (by computation: TBA), then 'in advance', 1 '09-06-97' balloon payment (by computation: TBA), and '09-06-97' post balance ($0), to be made directly by debtor.

E. SCHEDULE E, to 'unsecured priority creditor, Cherokee County Tax Collector (AN 172-00-00-049.00), and real property assessment (1995) to be paid on, and at, plus 14.00% 'legal' upon the '09-06-96' ARREARAGE DUE (by computation: TBA) = 12 @ $11. Thus, based upon the '09-06-96' pre balance (by computation: TBA), then 'in advance', 1 '09-06-97' ballon payment (by computation: TBA), and '09-06-97' post balance ($0), to be made directly by debtor.

F. SCHEDULE F, to 'unsecured non-priority creditor', Duke Power Co. (AN 60098819753), and real property service (electricity) to be paid on, and at, plus 18.00% 'fixed' upon the '09-06-96' ARREARAGE DUE (by computation: TBA) = 6 @ $16. Thus, based upon the '09-06-96' pre balance (by computation: TBA), then 'in advance', 1 '03-06-97' balloon payment (by computation: TBA), and '03-06-97' post balance ($0), to be made directly by debtor.

G. SCHEDULE F, to 'unsecured non-priority creditor', Bellsouth Corp. (AN 864-839-4118 100 1978), and real property service (telephone) to be paid on, and at, plus 18.00% 'fixed' upon the '09-06-96' ARREARAGE DUE (by computation: TBA) = 6 @ $78. Thus, based upon the '09-06-96' pre balance (by computation: TBA), then 'in advance', 1 '03-06-97' balloon payment (by computation: TBA), and '03-06-97' post balance ($0), to be made directly by debtor.

03. Upon confirmation of this plan, then property of the estate will remain property of the estate, but title to the property will revest in debtor.

04. Unsecured claims which are not filed within the time required by BANKRUPTCY RULE 3002(2) may be disallowed, or subordinated to other claims, upon further order of the court.

05. To receive payment from the trustee, a secured creditor must file a proof of claim. Secured claims which are not filed within the time required by BANKRUPTCY RULE 3002(2) may be disallowed, or subordinated to other claims, upon further order of the court.

06. Confirmation of this plan does not bar a party in interest from objection to a claim, which is not filed in accordance with BANKRUPTCY RULE 3001, and 3002.

TKM PAGE 02 OF 03

Exhibit A

JW-30

'08-06-96' PLAN -- Continued.

07. If property is to be released, or otherwise surrended pursuant to this plan, then the creditors holding a lien on, or interest in, the property to be released must obtain the consent of the trustee, otherwise the property will not be released, or surrendered.

08. Any creditor holding a claim secured by property which is moved from the protection of the automatic stay, whether by judicial action, voluntary surrender, or through operation of this plan, will receive no further distribution from the trustee, unless an itemized proof of claim for any deficiency is filed within a reasonable time after the removal of the property from the estate. Also, this applies to creditors who may claim an interest in, or lien on, property which is removed from the estate protection by another lienholder, or released to another lienholder.

09. If a tax creditor files a claim which is allegedly a secured claim, but does not timely object to confirmation of this plan, then the claim, if timely filed pursuant to BANKRUPTCY RULE 3002(2), may be paid as a priority claim. Furthermore, if a claim is scheduled as unsecured, and the creditor files a proof of claim alleging to be a secured creditor, but does not timely object to confirmation of this plan, then the creditor may be treated as unsecured for purposes of distribution under this plan. This paragraph does not limit the right of a creditor affected by this paragraph to seek relief from the stay, or to object to the discharge of the debt.

10. The debtor is responsible for protecting the non-exempt value of all property of the estate, and for protecting the estate from any liability resulting from operation of a business by debtor.

DATE: '08-06-96'. DEBTOR: Thom R. Marett (L.S.)

PRO SE
Thom R. Marett
POB 573, Gaffney, SC 29342;
or, 1-864-839-4118.

Exhibit A

Jw-31-

(EXHIBIT 1 TO LOCAL RULE 3015)

UNITED STATES BANKRUPTCY COURT

DISTRICT OF SOUTH CAROLINA

IN RE:) CASE NO:_____
)
)
) CHAPTER 13 PLAN
)
)
_____ DEBTOR.)

1. The future earnings and income of the debtor are submitted to the supervision and control of the trustee, and the debtor shall pay to the trustee the sum of $_____ per month, for a period of _____ months or longer if necessary for completion of this plan according to its terms, but not to exceed 60 months.

2. After the deduction from all disbursements of the allowed trustee's commission and expenses, the trustee shall make disbursements as follows:

a. A proof of claim for attorney's fees of the debtor in the amount of $_____ will be filed and shall be paid at a rate of ten (10%) percent of the monthly payments to creditors until paid in full. This percentage may be reduced or increased by the trustee as necessary.

b. Payments to secured creditors, as follows:

(1)(a) Long term or mortgage debt - ARREARAGE ONLY, to be paid to _____ _____ at $_____ per month, along with _____% interest. Regular payments to be made directly by the debtor beginning _____, 199___.

(b) Long term or mortgage debt - ARREARAGE ONLY, to be paid to _____ _____ at $_____ per month along with _____% interest. Regular payments to be made directly by the debtor beginning _____, 199___.

(2) Secured debt - Payments of $_____ per month to _____ until the net balance/value of property (strike one) plus _____% interest has been paid in full. If claim is to be valued, a motion to value the property at $_____ will be filed in accordance with Local Rule 3012.

(3) Other secured debt - Payments of $_____ per month to _____ until the net balance/value of property (strike one) plus _____% interest has been paid in full. If claim is to be valued, a motion to value the property at $_____ will be filed in accordance with Local Rule 3012.

Other secured debt - Payments of $_____ per month to _____ until the net balance/value of property (strike one) plus _____% interest has been paid in full. If claim is to be valued, a motion to value the property at $_____ will be filed in accordance with Local Rule 3012.

Other secured debt - Payments of $_____ per month to _____ until the net balance/value of property (strike one) plus _____% interest has been paid in full. If claim is to be valued, a motion to value the property at $_____ will be filed in accordance with Local Rule 3012.

Exhibit B JW-32

(4) Other secured debt to be treated as follows:

_____

_____

_____

_____

(5) The following payments to mortgage creditors are current and the debtor will continue making the regular payments directly:

_____

(6) The following liens will be avoided pursuant to 11 U.S.C. § 522(f), and Local Rule 4003, or other applicable sections of the Bankruptcy Code:

_____

_____

c. Subsequent to the above, all 11 U.S.C. § 507 priority creditors, (including, but not limited to, taxes or other claims by governmental units) will have the allowed amounts of their prepetition claims paid on a pro-rata basis unless the holder of the claim agrees to different treatment. The debtor shall pay all other post-petition priority obligations as they come due directly to such creditors.

d. Subsequent to the above, unsecured creditors will be treated as follows:

(1) General unsecured creditors will be paid _____% of their allowed claims, on a pro-rata basis.

(2) The following creditors who hold unsecured consumer claims with codebtors will be paid _____% of their allowed claims plus _____% interest on a pro-rata basis:

_____

(3) The following creditors who hold unsecured claims of the kind specified in 11 U.S.C. § 1328(a)(2) and (3) will be paid _____% of their allowed claims plus _____% interest on a pro-rata basis.

_____

3. The following leases or executory contracts will treated as follows:

_____

_____

4. Upon confirmation of the plan, property of the estate will remain property of the estate, but title to the property shall revest in the debtor. Unless the plan provides otherwise, secured creditors retain their liens until the allowed amounts of their secured claims are paid.

Unsecured claims which are not filed within the time required by Bankruptcy Rule 3002(c) may be disallowed and might not be paid by the trustee for that reason alone.

To receive payment from the trustee, a secured creditor must file a proof of claim. Secured claims which are not filed within the time required by Bankruptcy Rule 3002(c) may be disallowed or subordinated to other claims upon further order of the court.

Confirmation of this plan does not bar a party in interest from objection to a claim which is not filed in accordance with Bankruptcy Rule 3001 or Bankruptcy Rule 3002.

If property is to be released or otherwise surrendered pursuant to this plan, the creditors holding a lien on, or interest in, the property to be released must obtain the consent of the trustee, otherwise the property will not be released or surrendered.

Any creditor holding a claim secured by property which is removed from the protection of the automatic stay, whether by judicial action, voluntary surrender, or through operation of the plan, will receive no further distribution from the trustee, unless an itemized proof of claim for any deficiency is filed within a reasonable time after the removal of the property from the estate. This also applies to creditors who may claim an interest in, or lien on, property which is removed from the estate protection by another lienholder or released to another lienholder.

If a tax creditor files a claim which is allegedly a secured claim but does not timely object to confirmation of this plan, then the claim, if timely filed pursuant to Bankruptcy Rule 3002(c), may be paid as a priority claim. Furthermore, if a claim is scheduled as unsecured, and the creditor files a proof of claim alleging to be a secured creditor but does not timely object to confirmation of the plan, then the creditor may be treated as unsecured for purposes of distribution under the plan. This paragraph does not limit the right of a creditor affected by this paragraph to seek relief from the stay or to object to the discharge of the debt.

The debtor is responsible for protecting the non-exempt value of all property of the estate and for protecting the estate from any liability resulting from operation of a business by the debtor.

Date:_____,199_

_____
Debtor's Signature

_____
Debtor's Signature

_____
Attorney's Signature

_____
Typed/Printed Name/Address/Telephone

_____
District Court I.D. Number

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U.S. BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

UNITED STATES BANKRUPTCY COURT DISTRICT OF SOUTH CAROLINA	CASE NO. 96-75003/JEW. CHAPTER NO. 13.
IN RE: Thom R. Marett, Debtor.	'08-06-96' PLAN, '09-16-96' REVISION

1. The future earnings, and income, of the debtor are submitted to the supervision, and control, of the trustee; and, the debtor shall pay to the trustee the sum of $600 per month, for a period of 57 months [or longer, if necessary for completion of this plan according to its terms, not to exceed 60 months].

2. After the deduction from all disbursements of the allowed trustee's commission, and expenses, [not to exceed 10%] the trustee shall make disbursements, as follows:

   a. 'not applicable'.

   b. Payments to secured creditors, as follows:

      (1)(a). Long term, or mortgage debt, ARREARAGE ONLY to be paid to First Piedmont Federal Bank [AN 377017712; and, residential 1st lien at $345 for 6 'periodic months' ['01 thru 06'], $381 for 6 'periodic months' ['07 thru 12'], $461 for 4 'periodic months' ['13 thru 16'], and $482 for 31 'periodic months ['17 thru 57']; and, with 7.5% interest. Regular payments to be made directly by the debtor beginning on '12-06-96'.

      (b). Long term, or mortgage debt, ARREARAGE ONLY to be paid to First Piedmont Federal Bank [AN 386003913; and, residential 2nd lien] at $42 for 6 'periodic months' ['01 thru 06'], $47 for 6 'periodic months' ['07 thru 12'], $57 for 4 'periodic months' ['13 thru 16'], and $58 for 31 'periodic months' ['17 thru 57']; and, with 9.25% interest. Regular payments to be made directly by the debtor beginning on '03-06-97'.

      (2). Secured debt, ARREARAGE ONLY to be paid to 1st Franklin Financial Corp. [AN 73638881; and, automobile 1st lien] at $17 for 6 'periodic months' ['01 thru 06'], $18 for 6 'periodic months' ['07 thru 12'], and $22 for 4 'periodic months' ['13 thru 16']; and, with 10.25% interest. Regular payments to be made directly by the debtor beginning on '06-06-97'.

      (3). 'not applicable'.

      (4). 'not applicable'.

      (5). 'not applicable'.

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Exhibit C

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(6). 'not applicable'.

c. Subsequent to the above, all USCS § 507 priority creditors, including 'real property' taxes, to be paid, as follows:

(1) To Cherokee County Tax Collector [AN 152-00-00-011.00; and, '1995' assessment] at $31 for 12 'periodic months' ['01 thru 12']; and, with 14% interest. Regular payment to be made directly by the debtor beginning on '01-06-97'.

(2) To Cherokee County Tax Collector [AN 172-00-00-049.00; and, '1995' assessment] at $11 for 12 'periodic months' ['01 thru 12']; and, with 14% interest. Regular payment to be made directly by the debtor beginning on '01-06-97'.

d. Subsequent to the above, unsecured creditors, including 'real property' utilities, to be paid 100% of claim, as follows:

(1)(a) to Duke Power Co. [AN 60098819753; and, 'electrical' service] at $16 for 6 'periodic months' ['01 thru 06']; and, with 18% interest. Regular payment to be made directly by the debtor beginning on '09-06-96'.

(b) to Bellsouth Corp. [AN 864-839-4118 100 1978; and, 'telephone' service] at $78 for 6 'periodic months' ['01 thru 06']; and, with 18% interest. Regular payment to be made directly by the debtor beginning on '09-06-96'.

(2) 'not applicable'.
(3) 'not applicable'.

3. 'not applicable'.

4a. Upon confirmation of the plan, property of the estate will remain property of the estate will remain property of the estate, but title to the property shall revest in the debtor. Unless the plan provides otherwise, secured creditors retain liens until the allowed amounts of secured claims are paid.

b. Unsecured claims, which are not filed within the time required by Bankruptcy Rule 3002(c), may be disallowed, and might not be paid, by the trustee for that reason alone.

c. To receive payment from the trustee, a secured creditor must file a proof of claim. Secured claims, which are not filed within the time required by Bankruptcy Rule 3002(2), may be disallowed, or surbordinated to other claims, upon further order of the court.

d. Confirmation of the plan does not bar a party in interest from objection to a claim, which is not filed in accordance with Bankruptcy Rule 3001, or 3002.

e. If property is to be released, or otherwise surrendered, pursuant to this plan, the creditors holding a lien on, or interest in, the property to be released must obtain the consent of the trustee, otherwise the property will not be released, or surrendered.

TRM

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f. Any creditor holding a claim secured by property, which is removed from the protection of the automatic stay, whether by judicial action, voluntary surrender, or through operation of the plan, will receive no further distribution from the trustee, unless an itemized proof of claim for any deficiency is filed within a reasonable time after the removal of the property from the estate. Also, this applies to creditors that may claim an interest in, or lien on, property that is removed from the estate protection by another lienholder, or released to another holder.

g. If a tax creditor files a claim, which is allegedly a secured claim, but does not timely object to confirmation of this plan, then the claim, if timely filed pursuant to Bankruptcy Rule 3002(2), may be paid as a priority claim. Furthermore, if a claim is scheduled as unsecured, and the creditor files a proof of claim alleging to be a secured creditor, but does not timely object to confirmation of the plan, then the creditor may be treated as unsecured for purposes of distribution unter the plan. This paragraph does not limit the right of a creditor, affected by this paragraph, to seek relief from stay, or to object to the discharge of the debt.

h. The debtor is responsible for protecting the non-exempt value of all property of the estate, and for protecting the estate from any liability resulting from operation of a business by the debtor.

DATE: '09-16-96'. DEBTOR: Thom R. Marett [L.S.]

PRO SE
Thom R. Marett
POB 573, Gaffney, SC 29342
1-864-839-4118

Exhibit C

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U.S. BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

UNITED STATES BANKRUPTCY COURT DISTRICT OF SOUTH CAROLINA	CASE NO. 96-75003/JEW. CHAPTER NO. 13.
IN RE: Thom R. Marett, Debtor.	'08-06-96' PLAN, '10-04-96' REVISION

1. The future earnings, and income, of the debtor are submitted to the supervision, and control, of the trustee; and, the debtor shall pay to the trustee the sum of $400 per month, for a period of 57 months [or longer, if necessary for completion of this plan according to its terms, not to exceed 60 months].

2. After the deduction from all disbursements of the allowed trustee's commission, and expenses, [not to exceed 10%] the trustee shall make disbursements, as follows:

   a. 'not applicable'.

   b. Payments to secured creditors, as follows:

      (1)(a). Long term, or mortgage debt, ARREARAGE ONLY [beginning with '07-18-96' account variance @ $10,333 (based upon '10-28-92' loan note @ $74,238, and '11-02-95' tax advance @ $1,042); and, with 7.50 APR interest] to be paid to First Piedmont Federal Bank [AN 377017712; and, residence 1st lien] @ $269 per month. Regular 'fixed payments' [@ $704.53 per month] to be made directly by the debtor beginning on '11-15-96'.

      (b). Long term, or mortgage debt, ARREARAGE ONLY [beginning with '07-18-96' account variance @ $2332 (based upon '10-29-92' loan note @ $9,226); and, with 9.25 APR interest] to be paid to First Piedmont Federal Bank [AN 386003913; and, residence 2nd lien] @ $61 per month. Regular 'fixed payments' [@ $143.61 per month] to be made directly by the debtor beginning on '01-20-97'.

      (2). Secured debt, ARREARAGE ONLY [beginning with '07-18-96' account variance @ $674 (based upon '12-11-95' loan note @ $3,591); and, with 10.25 APR interest] to be paid to 1st Franklin Financial Corp. [AN 73638881; and, automobile 1st lien] @ $18 per month. Regular 'fixed payments' [@ $220.00 per month] to be made directly by the debtor beginning on '03-21-97'.

      (3). 'not applicable'.

      (4). 'not applicable'.

      (5). 'not applicable'.

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(6). 'not applicable'.

c. Subsequent to the above, all USCS § 507 priority creditors, including 'real property' taxes, to be paid, as follows:

(1). Unsecured debt, ARREARAGE ONLY [beginning with '07-18-96' account variance @ $361; and, with 14.00 APR interest] to Cherokee Co. Tax Collector [AN 152-00-00-011.000; and, '1995' real assessment] @ $9 per month. Regular 'noticed payment' [@ TBA per year] to be made directly by the debtor beginning on '01-15-97'.

(2). Unsecured debt, ARREARAGE ONLY [beginning with '07-18-96' account variance @ $129; and, with 14.00 APR interest] to Cherokee Co. Tax Collector [AN 172-00-00-049.000; and, '1995' real assessment] @ $3 per month. Regular 'noticed payment' [@ TBA per year] to be made directly by the debtor beginning on '01-15-97'.

d. 'not applicable'.

(2). 'not applicable'.

(3). 'not applicable'.

3. 'not applicable'.

4a. Upon confirmation of the plan, property of the estate will remain property of the estate will remain property of the estate, but title to the property shall revest in the debtor. Unless the plan provides otherwise, secured creditors retain liens until the allowed amounts of secured claims are paid.

b. Unsecured claims, which are not filed within the time required by Bankruptcy Rule 3002(c), may be disallowed, and might not be paid, by the trustee for that reason alone.

c. To receive payment from the trustee, a secured creditor must file a proof of claim. Secured claims, which are not filed within the time required by Bankruptcy Rule 3002(2), may be disallowed, or surbordinated to other claims, upon further order of the court.

d. Confirmation of the plan does not bar a party in interest from objection to a claim, which is not filed in accordance with Bankruptcy Rule 3001, or 3002.

e. If property is to be released, or otherwise surrendered, pursuant to this plan, the creditors holding a lien on, or interest in, the property to be released must obtain the consent of the trustee, otherwise the property will not be released, or surrendered.

Exhibit D

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f. Any creditor holding a claim secured by property, which is removed from the protection of the automatic stay, whether by judicial action, voluntary surrender, or through operation of the plan, will receive no further distribution from the trustee, unless an itemized proof of claim for any deficiency is filed within a reasonable time after the removal of the property from the estate. Also, this applies to creditors that may claim an interest in, or lien on, property that is removed from the estate protection by another lienholder, or released to another holder.

g. If a tax creditor files a claim, which is allegedly a secured claim, but does not timely object to confirmation of this plan, then the claim, if timely filed pursuant to Bankruptcy Rule 3002(2), may be paid as a priority claim. Furthermore, if a claim is scheduled as unsecured, and the creditor files a proof of claim alleging to be a secured creditor, but does not timely object to confirmation of the plan, then the creditor may be treated as unsecured for purposes of distribution unter the plan. This paragraph does not limit the right of a creditor, affected by this paragraph, to seek relief from stay, or to object to the discharge of the debt.

h. The debtor is responsible for protecting the non-exempt value of all property of the estate, and for protecting the estate from any liability resulting from operation of a business by the debtor.

DATE: '10-04-96'. DEBTOR: Thom R. Marett [L.S.]

PRO SE

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Exhibit D

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