THE FOLLOWING ORDER
IS APPROVED AND ENTERED
AS THE ORDER OF THIS COURT:

DATED: February 14, 2019

G. Michael Halfenger
Chief United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

In re:

Miashia Hampton,

Debtor.

Case No. 16-29012-GMH
Chapter 13

ORDER OVERRULING TRUSTEE'S OBJECTION TO DEBTOR'S REQUEST TO MODIFY CONFIRMED PLAN

On July 25, 2018, the chapter 13 trustee moved to dismiss this case due to the debtor's failure to make payments under the confirmed plan and her failure to pay to the trustee one-half of any income-tax refunds that she received for 2016 and 2017. ECF No. 34. On September 7, the court denied the trustee's motion based on the parties' agreement that the case could proceed if, among other things, the debtor resumed making plan payments and either paid to the trustee one-half of her 2016 and 2017 tax refunds or modified the plan to provide for such payment. ECF No. 42, ¶¶1 & 3.

On November 15, the debtor filed a request to modify the confirmed plan to provide, in relevant part, that she will pay in $5,243 "representing one-half of [the]

missing 2016 and 2017 tax refunds." ECF No. 51, at 2, §3. The trustee objected that the modification does not comply with the court's order denying the trustee's motion to dismiss and that it was not proposed in good faith. ECF No. 54.

I

Whether the modification complies with the order denying the trustee's motion to dismiss is an easy issue to address. That order contains two provisions with respect to plan modification. The first, described above, required the debtor to either pay to the trustee one-half of her 2016 and 2017 net tax refunds or modify the plan to provide for payment of that amount. The trustee has conceded that the debtor "received $10,486 in tax refunds for 2016 and 2017, one-half of which is $5,243." ECF No. 57, at 1. That is the amount that the debtor's modification requires her to pay into the plan as modified.

The other modification-related provision of the order denying the trustee's motion to dismiss simply required the debtor to "file a modified feasible . . . plan". ECF No. 42, ¶4. In general, a plan is feasible if "the debtor will be able to make all payments under the plan and to comply with the plan". See 11 U.S.C. §1325(a)(6). The trustee has not argued that the debtor will be unable to make all payments under or to comply with the plan as modified, and the court has no basis for concluding that the plan as modified is infeasible.

Simply put, the trustee's argument that the debtor's modification does not comply with the court's order denying the motion to dismiss is not well founded.

II

The trustee's contention that the modification was not proposed in good faith is a more nebulous concern to address, though the result is ultimately the same. Good faith "is one of the 'requirements of section 1325(a)' that applies to any modification." *Germeraad v. Powers*, 826 F.3d 962, 975 (7th Cir. 2016) (quoting 11 U.S.C. §1329(b)(1)). "[G]ood faith under Chapter 13 depends on the 'totality of the circumstances,' . . . of which the most fundamental and encompassing is whether the debtor has dealt fairly

with his creditors." *In re Schaitz*, 913 F.2d 452, 453 (7th Cir. 1990).

In evaluating good faith (or, conversely, assessing whether there are "indicia of bad faith"), courts "look at factors such as whether the debtor has stated his debts and expenses accurately; whether he has made any fraudulent misrepresentation to mislead the bankruptcy court; or whether he has unfairly manipulated the Bankruptcy Code." See, e.g., *In re Melander*, 506 B.R. 855, 861–62 (Bankr. D. Minn. 2014) (quoting *Fink v. Thompson (In re Thompson)*, 439 B.R. 140, 143 (B.A.P. 8th Cir. 2010)), quoted in *In re Manzo*, 577 B.R. 759, 771 (N.D. Ill. 2017); see also, e.g., *In re Witkowski*, 16 F.3d 739, 746 (7th Cir. 1994) ("[L]ack of good faith can be shown by manipulation of code provisions.").

A

The trustee's primary argument seems to be that the modification does not represent a sincere effort to comply with the terms on which the parties agreed to resolve the trustee's motion to dismiss: "The Trustee agreed to these terms, at least in part, due to the long-standing practice in this jurisdiction [of] requiring below-median debtors to pay in sufficient funds to at least account for thirty-six months of plan payments and one-half of tax refunds." ECF No. 57, at 2. Thirty-six months' worth of payments under the confirmed plan, which provides for bi-weekly payments of $189, is $14,742. See *id.* at 1. One-half of the debtor's 2016 and 2017 net tax refunds, as previously noted, is $5,243. Thus, in the trustee's view, the debtor should be required to pay in at least $19,985, and to the extent that the plan as modified permits the debtor to pay any less, the modification was not proposed in good faith. *Id.*

But the court's order denying the trustee's motion to dismiss—which, according to the trustee, "effectuated the agreement of the parties", *id.*—does not mention this "long-standing practice". Nor does it impose any minimum plan funding requirements on the debtor apart from those described above concerning her 2016 and 2017 tax refunds and the feasibility of the plan as modified. As noted, the debtor's modification

satisfies those requirements. That the modification does not also satisfy a term on which the trustee reportedly relied but nevertheless omitted from the parties' settlement agreement is insufficient to warrant a finding that the modification was proposed in bad faith.

B

The trustee also objects that the modification was not proposed in good faith because its "net effect . . . is to retroactively nullify the requirements of the confirmed plan". ECF No. 57, at 2. Put differently, the trustee asserts that the debtor improperly "seeks to effectively forgive plan payments already missed". ECF No. 54, at 2. The trustee, though, does not identify any provision of the Bankruptcy Code that prohibits a debtor from requesting that a plan be modified post-confirmation to reduce the amount of a payment under the plan that has already come due. And, to whatever extent the plan as modified absolves the debtor of her need to cure a default in plan payments, the absolution resulted from the trustee's agreement to resolve the motion to dismiss without requiring the debtor to cure any such default.

III

For the foregoing reasons, the trustee's objection to the debtor's request to modify the confirmed plan is overruled.

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