and in creditor lists" **or** file a statement that there are no changes **within 14 days after entry of an order converting a case from one chapter to another.** BLR 1019-1 (emphasis added).

In the case at bar, the Debtors failed to file either amended Schedules or a statement that there were no changes by February 25, 2013 (i.e., 14 days after the Conversion Date).[51] Indeed, the Debtors waited approximately one month after the February 25, 2013 deadline to file the 3/22 Amended Schedules. [Finding of Fact No. 16]. Moreover, the 3/22 Amended Schedules did not list all of the Debtors' interests in property as of the Conversion Date. [Finding of Fact No. 42]. Therefore, the Court finds that the Debtors failed to comply with Bankruptcy Local Rule 1019-1 because they failed to meet the February 25, 2013 deadline to timely file either complete and accurate amended Schedules, with itemized changes, or a statement that there were no changes from the Original Schedules.

3. The Debtors Failed to Comply with Bankruptcy Rule 4002(a)(4) and § 521(a)(3)[52]

Bankruptcy Rule 4002(a)(4) requires the Debtors to "**cooperate with the [T]rustee** in the preparation of an inventory, the examination of proofs of claim, and the administration of the estate." FED. R. BANKR. P. 4002(a)(4) (emphasis added). Section 521(a)(3) requires that the Debtors "**cooperate with the trustee** as necessary to enable the trustee to perform the trustee's duties under this title." 11 U.S.C. § 521(a)(3)(emphasis added); *see, e.g.*, *United States Trustee v. Cortez (In re Cortez)*, 457 F.3d 448, 457 (5th Cir. 2006) ("Section 521[a](3) requires the debtor to cooperate with the trustee, and § 1302(b) imposes duties on the trustee, including the duty to investigate the debtor's financial affairs under § 704(4).").

[51] Although the Debtors, on the Conversion Date, filed the 2/11 Amended Schedules [Finding of Fact No. 11], the Court concludes that the 2/11 Amended Schedules did not satisfy the Debtors' duties under Bankruptcy Local Rule 1019-1 because they were inaccurate. [*See* Doc. Nos. 93, 93-1, 93-2 & 94; Trustee's Ex. B, pp. 7–14].

[52] This section is limited to the Debtors' failure to comply with § 521(a)(3) by amending their Schedules. In Section V(C)(2), the Court further discusses how the Debtors and their counsel, in other respects, failed to comply with § 521(a)(3), a provision which is not limited to their obligation to amend their Schedules.

Here, the Debtors failed to cooperate with the Trustee because the 3/22 Amended Schedules are inaccurate and incomplete [Finding of Fact No. 42], which hindered the Trustee in carrying out her duties—namely, the investigation of the Debtors' financial affairs, preparation of an inventory, and the administration of the estate. As of the filing of the Objection/Motion (i.e., October 11, 2013) and the date of the Hearing (i.e., November 19, 2013), the "Live" Pleadings were the Original Schedule A, the 3/22 Amended Schedule B, the 3/22 Amended Schedule C, the Original Schedules D and E, the 2/11 Amended Schedule F, the 3/22 Amended Schedule G, the Original Schedule H, the 3/22 Amended Schedules I and J, and the Original SOFA. [Finding of Fact No. 41]. The Debtors not only failed to comply with the Trustee's request on September 24, 2013 to amend the "Live" Pleadings in light of the August 9, 2013 Order, [*see* Findings of Fact Nos. 38, 39, 40 & 41], but their counsel failed to respond to the Trustee's counsel's e-mail requesting confirmation of her interpretation of the Debtors' representations [Findings of Fact Nos. 40 & 41]. Indeed, the Debtors waited approximately <u>two months</u>—after the Trustee filed the Objection/Motion and this Court held the Hearing—to file the 11/19 Amended Schedules, which are still not entirely acceptable.[53] [*Compare* Finding of Fact No. 16 *with* Doc. No. 187].

In sum, because the Debtors failed, and continue to fail, to cooperate with the Trustee by providing her with accurate and complete Bankruptcy Rule 1019(5)(C)(i) Amended Schedules—reflecting their interests in property and appropriate exemptions as of the Conversion Date—the

[53] As already set forth in footnote number 50, the 11/19 Amended Schedules are unacceptable because the Debtors are now trying to exempt $332.00 with respect to the Woodforest Bank Accounts, even though they only claimed a $20.00 exemption in the 3/22 Amended Schedules [Finding of Fact No. 43], and the Debtors' counsel stipulated at the Hearing that the Debtors could not exempt more than what they claimed as exempt in the 3/22 Amended Schedules. [Tape Recording, November 19, 2013 Hearing at 2:31:00–2:32:18 p.m.]. Moreover, the 11/19 Amended Schedules are unacceptable because the Debtors finally disclosed to the Trustee and this Court that they disposed of the 2010 Dodge Truck and purchased the 2005 Dodge Ram, and now the Debtors are attempting to exempt this 2005 truck. *See* [Doc. No. 187, p. 4].

Court finds that the Debtors have failed to comply with Bankruptcy Rule 4002(a)(4) and § 521(a)(3).

4. The Debtors Failed to Fully and Accurately Disclose All of Their Assets and Interests in Property

It is well-established that the Debtors' affirmative duty under § 521 to fully and accurately disclose all assets and interests in property **continues throughout the case** and requires the Debtors to amend their Schedules "**whenever it becomes necessary in order to ensure the accuracy and reliability of the information disclosed therein.**" *In re Okan's Foods, Inc.*, 217 B.R. 739, 752 (Bankr. E.D. Pa. 1998). The Court finds that the Debtors have failed to fulfill the most fundamental duties imposed upon debtors—full disclosure and truthfulness. They have not been forthright with the Trustee, their creditors, or this Court.

In the case at bar, this Court issued the August 9, 2013 Order, granting the § 348(f) Motion, because it concluded that the Debtors had converted their case from Chapter 13 to Chapter 7 in bad faith. [Finding of Fact No. 27]. Section 348(f)(2) provides: "[i]f the debtor converts a case under chapter 13 of this title to a case under another chapter under this title **in bad faith**, the property of the estate in the converted case shall consist of the property of the estate **as of the date of conversion**." 11 U.S.C. § 348(f)(2) (emphasis added). "Based upon the plain language of § 348(f)(2), a debtor who converts in bad faith is punished by enlarging the property of the estate to include the debtor's postpetition after acquired property." *In re Fonke*, 321 B.R. 199, 208 (Bankr. S.D. Tex. 2005).

Here, the Debtors converted their case from Chapter 13 to Chapter 7 in bad faith. [Finding of Fact No. 27]. There are several instances of the Debtors' bad faith conduct. First, Mr. Reeves' VA Benefits increased in September of 2011, and around that time, he also received the Retroactive Payment, approximately $10,000 to $12,000 to bring his benefits current.

[Finding of Fact No. 33]. Despite the increase in Mr. Reeves' VA Benefits and the Retroactive Payment, the Debtors did not disclose this information or modify the Confirmed Plan to make greater distributions to creditors. [*Id.*]. Second, Mr. Reeves secretly and improperly used the Retroactive Payment to purchase the 2010 Dodge Truck [*Id.*], which the Debtors attempted to fully exempt on the 3/22 Amended Schedules. [Finding of Fact. No. 47]. Third, Mr. Reeves testified, at the Hearing on the § 348(f)(2) Motion, that he had acquired several vehicles during the Debtors' Chapter 13 case, but he could not articulate the disposition of these vehicles. [Finding of Fact No. 35].

Fourth, Mr. Reeves started a business, TMP, after the Petition Date but before confirmation of the Chapter 13 Plan; yet, he neither notified the Chapter 13 Trustee about TMP nor did he have authority from this Court or the Chapter 13 Trustee to operate TMP. [Finding of Fact No. 31]. In addition to concealing the existence of his new business from the Chapter 13 Trustee and this Court, Mr. Reeves—and Ms. Reeves—never sought to modify the Chapter 13 Plan to increase the recovery to the Debtors' creditors, despite Mr. Reeves earning a monthly income from TMP. [*Id.*]. Fifth, Mr. Reeves testified at the April 4, 2013 continued meeting of creditors that his wife and he converted their case from Chapter 13 to Chapter 7 to avoid judgments that had been filed related to his business debts and that he expected a discharge for the additional $506,395.32 in debts incurred during the Debtors' Chapter 13 case. [*Id.*]. Sixth, the bank statements from Mr. Reeves' personal account reflect that he received a wire transfer in the amount of $46,930.50 on February 8, 2013, at which time Mr. Reeves requested and obtained a cashier's check in the amount of $30,010.00. [Finding of Fact No. 29]. He then used the cashier's check in the amount of $30,010.00 to pay Jim Roy, a creditor of his business, TMP. [Finding of Fact No. 30].

Seventh, Mr. Reeves did not maintain books or records for TMP and he ceased doing business in either January or February of 2013. [Finding of Fact No. 32]. Indeed, in response to the Trustee's request for invoices, Mr. Reeves was only able to turn over drafts, correspondence, and handwritten notes regarding TMP's sales [*Id.*], thereby preventing the Trustee from ascertaining the TMP's true financial condition. At the meeting of creditors on April 4, 2013 and at the hearing on the § 348(f)(2) Motion, Mr. Reeves testified that he discarded the computer he used for TMP's operations in or around September 2012, during the pendency of the Debtors' Chapter 13 case. [Finding of Fact No. 34].

Eighth, Mr. Reeves testified that over $800,000 flowed through TMP's account in the year 2012, but he could not explain how he spent these funds, other than on expenses related to entertainment or the purchases of vehicles to transport products; however, Mr. Reeves could not provide any evidence of any payment made for products purchased for customers or on behalf of customers. [Finding of Fact. No. 35].

Ninth, at the same hearing, Mr. Reeves identified an unpaid receivable due to him in the amount of at least $20,000.00, which constitutes property of the estate; and if collectible, it would be distributed to the Debtors' creditors. [Finding of Fact No. 36]. He further testified that he paid the account debtor in cash to deliver the products to his customer, the customer never received the product, and he never received the return of the funds. [*Id.*]. Mr. Reeves testified that he was not familiar with the account debtor at the time of the transaction, even though the transaction took place at his home and involved the exchange of cash obtained from the Debtors' Woodforest Bank Account for the purchase of the product. [*Id.*]. He indicated that he would turn over to the Trustee information regarding the account debtor, but he has never done so. [*Id.*].

Finally, the other Debtor (i.e., Ms. Reeves) claimed to have no knowledge or familiarity with Mr. Reeves' business. [Finding of Fact No. 37]. The Court finds this assertion of her lack of knowledge of TMP to be dubious because she is married to Mr. Reeves, and she presumably enjoyed at least some of the his income from TMP. She failed to notify the Chapter 13 Trustee or this Court of the existence of TMP or of Mr. Reeves' increased income from TMP, and she could not explain the whereabouts of the alleged $800,000 that flowed through TMP's account or the existence or absence of TMP's business records. [*Id.*].

Therefore, because of the foregoing bad conduct that was revealed at the hearing on the § 348(f)(2) Motion, this Court concluded that the Debtors' estate would be determined as of the Conversion Date and would include the Debtors' post-petition after-acquired property. [Finding of Fact No. 27]. As of August 9, 2013, the Debtors were on notice that property of their bankruptcy estate would be determined as of the Conversion Date and that they had a duty to amend their Schedules to completely and accurately reflect all of their property as of the Conversion Date. *See* [Finding of Fact No. 27; FED. R. BANKR. P. 1019(5)(C)(i); BLR 1019-1]. This, the Debtors failed to do, and they steadfastly maintained that the "Live" Pleadings were sufficient until after the Trustee filed the Objection/Motion and this Court held the Hearing on November 19, 2013. [*See* Findings of Fact Nos. 38, 39, 40 & 41; Doc. No. 187]. Only then did they file the 11/19 Amended Schedules. Case law is clear that debtors cannot cleanse themselves of dishonesty in their Schedules by coming clean with amended disclosures after a third party has first exposed their untruthfulness. *See Gebhardt v. Gartner (In re Gartner)*, 326 B.R. 357, 373 (Bankr. S.D. Tex. 2005).

For all the reasons above, the Court concludes that the Debtors have failed to accurately, completely, and timely amend their Schedules pursuant to Bankruptcy Rule 1019(5)(C)(i), Bankruptcy Local Rule 1019-1, Bankruptcy Rule 4002(a)(4), and § 521(a)(3). Moreover, the

Debtors have not provided any good reason for why the 3/22 Amended Schedules are inaccurate and why they failed to timely provide the Trustee with amended Schedules accurately reflecting their property interests as of the Conversion Date.[54]

B. Contrary to the Debtors' Assertion, the Trustee was not Required to First Make a Demand for Turnover of Property of the Estate Before Filing the Objection/Motion

At the Hearing, counsel for the Debtors repeatedly emphasized that the Trustee should have first made a demand for turn over of property of the estate before filing the Motion/Objection. Counsel for the Debtors supports this assertion by stating that it is local practice for trustees to call the debtor's attorney, point out discrepancies in the Schedules, and request that the debtor "either find another exemption or write [the trustee] a check." [Tape Recording, November 19, 2013 Hearing at 2:45:33–2:46:07 p.m.].

The Court rejects this argument. The duty to turn over the property of the estate is not contingent upon any demand by the Trustee; rather the obligation is "self-operative and mandatory." *See Calvin v. Wells Fargo Bank, N.A. (In re Calvin)*, 329 B.R. 589, 600 (Bankr. S.D. Tex. 2005). "In fact, [t]here is no requirement in the Code that the trustee make a demand, obtain a court order, or take any further action in order to obtain a turnover [delivery] of the estate's property." *Id.* (citations omitted). And, because there is no language in the Code that states that the Trustee has to make a demand to turn over property of the estate, this Court will not impose such a requirement on the Trustee. *See Carcieri v. Salazar*, 555 U.S. 379, 380 (2009) ("When a statute's text is plain and unambiguous, the statute must be applied according to its terms.") (citation omitted); *Lamie v. U.S. Tr.*, 540 U.S. 526, 536 (2004) ("We should prefer the

[54] The Debtors did not testify at the Hearing. Counsel for the Debtors attempted to call a rebuttal witness, but this Court sustained the Trustee's counsel's objection because counsel for the Debtors had failed to file a witness or exhibit list, as required by Bankruptcy Local Rule 9013-2. *See* BLR 9013-2(c), (k) ("Counsel for each party shall also exchange and file exhibit <u>and witness lists</u> with the Clerk of the Court by noon on the Day of Exchange [i.e., 48 hours before the scheduled hearing].") (emphasis added).

plain meaning since that approach respects the words of Congress); *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253-54 (1991) ("We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there."). Moreover, even the Bankruptcy Local Rules do not impose such a requirement on the Trustee.[55] For these reasons, the Debtors' position is unsupportable as a matter of law.

Indeed, there are good policy reasons why the Code imposes no such requirement on Chapter 7 trustees. First, if Chapter 7 trustees had to first make demands, it would consume a substantial amount of their time. Second, it would allow anyone holding estate property to legally use this property until the demand was made, which would result in a wasting of assets of the estate. For all of these reasons, the Court concludes that the Debtors' argument that the Trustee should have first made a demand upon them to turn over property of the estate before filing the Objection/Motion is without merit.

C. Contrary to the Debtors' Assertion, the Trustee did not Fail to Comply with § 704(a)(7); Rather, the Debtors and their Counsel Failed to Comply with § 521(a)(3)[56]

1. Discussion about § 704(a)(7)

In the Brief, the Debtors attempt to shift the blame for their failure to comply with Bankruptcy Rule 1019(5)(C), Bankruptcy Local Rule 1019-1, and § 521(a)(3) by asserting that the Trustee failed to comply with § 704(a)(7), which requires the Trustee to "furnish such information concerning the estate and the estate's administration as is requested by a party in interest." In the Brief, the Debtors assert that the Trustee was required to inform the Debtors'

---

[55] *See* BLR 1009-1(c) ("If it appears to the court or trustee that the supporting documents need to be amended, the court or trustee may notify the debtor, specifying the items, documents, and time for amendment.") (emphasis added).

[56] In Section V(A)(3), the Court previously discussed how the Debtors failed to comply with § 521(a)(3) by amending their Schedules. This section now discusses how the Debtors and their counsel, in other respects, failed to comply with § 521(a)(3), a provision which is not limited to their obligation to amend their Schedules.

counsel of the discrepancies in the 3/22 Amended Schedules because they had requested "information concerning the estate and the estate's administration." [Doc. No. 186, p. 4, ¶ 8]. In support of their argument, the Debtors assert that they requested "information concerning the estate and the estate's administration" when their counsel responded to the Trustee's counsel's e-mail with the following language: "Because, Bankr[.] Rules required conversion schedules (regardless of the issue of bad faith), I believe that what we've submitted should suffice. **Let me know otherwise.**" [Trustee's Ex. A, p. 1; *see* Finding of Fact No. 39] (emphasis added).

The Court disagrees. This phrase (i.e., "Let me know otherwise") does not constitute a request for "information concerning the estate and the estate's administration" pursuant to § 704(a)(7). The Debtors signed and filed the 2/11 Amended Schedules and the 3/22 Amended Schedules under oath; and the "burden is on the [D]ebtors to complete their schedules accurately." *In re Park*, 246 B.R. 837, 842 (Bankr. E.D. Tex. 2000). The Debtors, not the Trustee, are in the best position to know what discrepancies exist in their own Schedules. Rather than a request for "information concerning the estate and the estate's administration," the Court construes the Debtors' counsel's response as an affirmative representation to the Trustee that the Debtors and he believe that the Schedules that were already filed were sufficient. The Trustee did not have the obligation to the Debtors to specifically disclose to them the discrepancies in the 3/22 Amended Schedules before filing the Objection/Motion. Therefore, the Court finds the Debtors' argument—that the Trustee failed to comply with § 704(a)(7)—is meritless. Rather, the Court finds that it is the Debtors and their counsel who have failed to comply with their obligations under the Code—i.e., § 521(a)(3)—by repeatedly failing to cooperate with the Trustee throughout the pendency of this case.

2. Discussion about the failure of the Debtors and their counsel to comply with § 521(a)(3)

Section 521(a)(3) requires that the Debtors "cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title." 11 U.S.C. § 521(a)(3); *see, e.g.*, *United States Trustee v. Cortez (In re Cortez)*, 457 F.3d 448, 457 (5th Cir. 2006) ("Section 521(3) requires the debtor to cooperate with the trustee, and § 1302(b) imposes duties on the trustee, including the duty to investigate the debtor's financial affairs under § 704(4)."). "Not only does a debtor have a duty to cooperate with the Trustee, *see* 11 U.S.C. § 521(a)(3); counsel for the debtor, as an agent of the debtor, shares this duty to cooperate with the Trustee." *In re Cochener*, 360 B.R. 542, 580 (Bankr. S.D. Tex. 2007), *aff'd in part, rev'd in part*, 382 B.R. 311 (S.D. Tex. 2007), *rev'd*, 297 F. App'x 382 (5th Cir. 2008). The Debtors and their counsel have failed to cooperate with the Trustee throughout the pendency of this case in numerous respects.

First, only one of the Debtors appeared at the meeting of creditors on April 4, 2013 [Finding of Fact No. 17], and neither of the Debtors appeared at four subsequent meetings of creditors, which were scheduled on May 2, 2013, May 16, 2013, June 11, 2013, and July 2, 2013 [Findings of Fact Nos. 21, 23 & 25]. Pursuant to § 343 and Bankruptcy Local Rule 2003-1(a), the Debtors were required to appear at the scheduled meetings of creditors. *See* 11 U.S.C. § 343 ("The debtor **shall appear** and submit to examination under oath at the meeting of creditors under section 341(a) of this title.") (emphasis added); BLR 2003-1(a) ("Debtors **must attend Creditors' Meetings** unless excused by the Court from attendance, Bankruptcy Code 343) (emphasis added). Moreover, the Form entitled "Chapter 7 Debtors Duties and Responsibilities" (the Duties and Responsibilities Form), which is available on the website for the Bankruptcy Court of the Southern District of Texas, also requires the Debtors to attend all meetings of

creditors.[57] The Form entitled "Procedures for Obtaining Relief from Requirement to Attend § 341 Meeting of Creditors" (the Procedures Form), which is also available on the website for the Bankruptcy Court of the Southern District of Texas, expressly sets forth the procedures for which the Debtors can seek to be excused from attending the mandatory meetings of creditors.[58] For example, if the Debtors were unable to attend any scheduled meeting of creditors, the Debtors were required to contact the trustee "prior to the scheduled meeting."[59] And, if the Debtors were unable to attend the meeting of creditors, but the Trustee did not agree that their attendance should be excused, or if any creditor objected at a meeting of creditors, the Debtors were required to file a motion to excuse their appearance at the meeting of creditors.[60] This, the Debtors never did. Moreover, the Debtors' counsel, as an agent of the Debtors, also failed to cooperate with the Trustee when he failed to appear at the continued meeting of creditors on July 2, 2013. [Finding of Fact No. 25]. Although the Debtors failed to appear at this meeting, counsel for the Debtors had a duty himself to appear at this meeting. *See, e.g.*, *In re Cochener*, 360 B.R. at 580 ("[E]ven if a debtor does not appear at a meeting of creditors, there is an obligation for the debtor's attorney to attend the meeting of creditors on behalf of the debtor."). "[W]hen the attorney and the debtor[s] both failed to appear, any trustee could reasonably conclude that it was under the advice and direction of the attorney that the debtor did not appear." *Id.*

---

[57] *See* the Duties and Responsibilities Form, p. 2, ¶ 16 ("[The Debtors] are required to appear and attend a Meeting of Creditors . . . . The meeting can only be rescheduled as a result of an emergency or an unavoidable or unforeseen conflict."), *available at* http://www.txs.uscourts.gov/bankruptcy/rulesformsproc.

[58] *See* the Procedures Form, *available at* http://www.txs.uscourts.gov/bankruptcy/rulesformsproc. BLR 1001-1 sets forth that the Forms referenced in the Bankruptcy Local Rules are contained on the court's website.

[59] *Id.* at p. 1, ¶ 3.

[60] *Id.* at p. 2, ¶ 6.

Second, the Debtors, through their attorney, filed the First Motion to Dismiss, but this Court denied this motion for failure to: (1) give notice to the creditors, the Trustee and parties requesting notice per Bankruptcy Local Rule 9013-1; and (2) file a proper Certificate of Service. [Findings of Fact Nos. 18 & 19]. Although the Debtors subsequently filed the Second Motion to Dismiss, which complied with Bankruptcy Local Rule 9013-1 [Finding of Fact No. 20], they nevertheless failed to attend the meeting of creditors on May 2, 2013, and the continued meetings of creditors on May 16, 2013, June 11, 2013, and July 2, 2013—apparently because they believed that their attendance was unnecessary solely because the Second Motion to Dismiss was pending before this Court. *See* [Findings of Fact Nos. 21, 23, 26]. Indeed, on July 11, 2013, the Debtors finally appeared at the continued meeting of creditors [Finding of Fact No. 25], but only <u>after</u> this Court issued an order on June 28, 2013 [*see* Finding of Fact No. 24]. This order denied the Second Motion to Dismiss because the Debtors had failed to appear at the hearing on the Second Motion to Dismiss; and this order required the Debtors to appear, give testimony, and produce documents at the continued meeting of creditors on July 11, 2013; and this order expressly set forth that if the Debtors did not appear at the meeting of creditors on July 11, 2013, or any subsequently scheduled meeting of creditors, then the Court would issue a bench warrant for their arrest. [Finding of Fact No. 24]. Thus, the Debtors' conduct required this Court to actually issue an order requiring attendance under the threat of being taken into custody. If this conduct does not reflect failure to cooperate with the Trustee, then nothing does.

Third, on September 24, 2013, <u>before filing the Objection/Motion</u>, counsel for the Trustee e-mailed the Debtors' counsel, requesting that the Debtors, within 10 days, file newly amended Schedules and SOFA in light of the August 9, 2013 Order. [Finding of Fact No. 38]. This, the Debtors failed to do. [*See* Finding of Fact No 41]. It was only **<u>after</u>** this Court held the

Hearing on the Objection/Motion that the Debtors filed the 11/19 Amended Schedules.[61] [Findings of Fact No. 23, 24, 25, 26 & 51]. Rather, counsel for the Debtors initially argued that Bankruptcy Rule 1019(5)(C)(i) did not apply and that the Debtors did more than they were required to do because they filed the 2/11 Amended Schedules and the 3/22 Amended Schedules [Finding of Fact No. 41]; and, on September 24, 2013, the Debtors' counsel also asserted to the Trustee's counsel that "I believe that what we've submitted [i.e., the 3/22 Amended Schedules] should suffice" [Finding of Fact No. 24]. By filing the 11/19 Amended Schedules, the Debtors now impliedly concede that the 2/11 Amended Schedules and the 3/22 Amended Schedules do not suffice and that they therefore should have complied with the Trustee's request of September 24, 2013.

Finally, at the Hearing, counsel for the Debtors agreed that to the extent that the value of the Debtors' interest in certain property is more than what they claimed as exempt in the 3/22 Amended Schedules, they should not receive an exemption above the amount they claimed to be exempt in the 3/22 Amended Schedules. [Finding of Fact No. 49]. Despite their counsel's statement at the Hearing, the Debtors, by filing the 11/19 Amended Schedule C, now attempt to increase the amount of their exemption with respect to the Woodforest Bank Accounts from $20.00—as reflected on the 3/22 Amended Schedule C—to $332.00. [*Compare* Doc. No. 100, p. 1, *with* Doc. No. 187, p. 1]. It is unclear to this Court why the Debtors are attempting to claim an exemption of $332.00 with respect to the Woodforest Bank Accounts on the 11/19 Amended Schedules. The Debtors' counsel did not mention this specific amount (i.e., $332.00) at the Hearing. What is clear is that the $332.00 claimed exemption runs contrary to the Debtors' counsel's stipulation that the Debtors should not receive an exemption above the amount they claimed to be exempt in the 3/22 Amended Schedules. Reneging on a stipulation in open court

[61] *See* Section V(D) of this Memorandum Opinion for why the Court strikes the 11/19 Amended Schedules.

further underscores the lack of cooperation that the Debtors have provided to the Trustee in this case.

In sum, the Court finds that the Debtors' argument—that the Trustee failed to comply with § 704(a)(7)—is meritless. The Court also finds that the Debtors and their counsel have failed to cooperate with the Trustee in violation of § 521(a)(3); and, their failure to cooperate has substantially interfered with the Trustee's duty under §704(4) to investigate the Debtors' financial affairs.

D. The 11/19 Amended Schedules Should Be Stricken and Disallowed

Amendments to exemptions are generally and liberally allowed under Bankruptcy Rule 1009. FED. R. BANKR. P. 1009(a) ("A voluntary petition, list, schedule, or statement may be amended by the debtor as a matter of course at any time before the case is closed."). The Debtors' right to amend is not, however, absolute. An exception to this general rule is that "if there is a showing of the debtor's bad faith or of prejudice to the creditors," an amendment may be denied. *Unruh v. Tow (In re Unruh)*, 265 F. App'x 148, 150 (5th Cir. 2008) (quoting *Stinson v. Williamson (In re Williamson)*, 804 F.2d 1355, 1358 (5th Cir. 1986)). The Court also has discretion to deny leave to amend if the debtor has concealed assets. *In re Park*, 246 B.R. 837, 841, n.8 (Bankr. E.D. Tex. 2000). "Any one of the foregoing factors standing alone would be sufficient grounds to strike an amended claim of exemption." *Id.* (citing *In re Talmo*, 185 B.R. 637, 644 (Bankr. S.D. Fla. 1995)).

1. <u>The Debtors Acted in Bad Faith</u>

If debtors have acted in bad faith in amending their Schedules, the court may strike the amended Schedules. *See In re Unruh*, 265 F. App'x 148, 150 (5th Cir. 2008). *Unruh* concluded that a "finding of bad faith requires some form of deception, such as an effort to mislead

creditors or to conceal assets, as opposed to a mere mistaken failure to list an asset or to claim an exemption." *Id.* (citing *McFatter v. Cage*, 204 B.R. 503, 508 (S.D. Tex. 1996)).

Here, the Debtors undervalued and concealed assets on the 3/22 Amended Schedules by: (i) failing to disclose that they had two accounts at Woodforest Bank Accounts as of the Conversion Date [Finding of Fact No. 43]; (ii) undervaluing their interest in the Woodforest Bank Accounts by $2,652.08 [Finding of Fact No. 44]; (iii) undervaluing the 2012 Tax Refund by $613.00 [Findings of Fact Nos. 45 & 46]; (iv) concealing the Chapter 13 Refund in the amount of $4,625.49 [Finding of Fact No. 48]; and (v) undervaluing their interest in the HPFCU Account by $9.07 [Findings of Fact Nos. 49 & 50]. Further, the Debtors attempted to mislead their creditors by utilizing the "tools of the trade" exemption under § 522(d)(6) to claim a $4,350.00 exemption with respect to the 2010 Dodge Truck, despite Mr. Reeves' testimony that he had ceased to do business in January or February of 2013. [Finding of Fact No. 47 and footnote number 27]. *See, e.g.*, *In re Mmahat*, 110 B.R. 236, 243 (Bankr. E.D. La. 1990) ("[T]he Debtor's characterization of an item as a tool of his trade is not enough to render it exempt; instead, the exemption claim must be made in good faith and supported by credible testimony.") (citing *In re Racca*, 40 B.R. 622, 627 (Bankr. W.D. La. 1984)). Therefore, this Court concludes that the Debtors acted in bad faith when they filed the 3/22 Amended Schedules. By so doing, the Debtors unnecessarily created additional expenses for the Trustee because she had to have her counsel draft and prosecute the Objection/Motion. Further, the Debtors acted in bad faith because once the Trustee prosecuted the Objection/Motion, and forced this Court to consume time hearing the dispute, the Debtors then filed the 11/19 Amended Schedules, attempting to avoid the consequences of their prior omissions and inaccuracies—which the Trustee had already

pointed out in the Objection/Motion—and to exempt more than $20.00 in cash related to the Woodforest Bank Accounts as well as the 2005 Dodge Ram.

2. The Creditors Were Prejudiced By the Debtors' Failure to Disclose

In the alternative, the Court may also strike the 11/19 Amended Schedules if the creditors have been prejudiced as a result of the Debtors' failure to disclose. *See, e.g.*, *In re Unruh*, 265 F. App'x 148, 150 (5th Cir. 2008). The Debtors' failure to timely file complete and accurate Bankruptcy Rule 1019(5)(C)(i) Amended Schedules unnecessarily created additional expenses because the Trustee, through her counsel, had to prepare and prosecute the Objection/Motion. Additionally, the Trustee had to incur further expense to prepare for the Hearing only to learn at the Hearing that the Debtors' counsel was willing to stipulate to all the factual averments in the Objection/Motion. [Tape Recording, November 19, 2013 Hearing at 11:15:25–11:15:32 a.m. & 1:39:23–1:39:36p.m.]. These additional administrative expenses will prejudice creditors because they will reduce any ultimate distribution to them, as their claims are junior to the increasing administrative claims of the Trustee's counsel for having to prosecute the Objection/Motion. *See In re Wilson*, 446 B.R. 555, 562 (Bankr. M.D. Fla. 2011) (holding that the debtor's delayed amendment created additional expenses in prosecuting the motion to turnover and motion to compel, which will prejudice creditors by reducing any ultimate distribution to them).

3. The 11/19 Amended Schedules Do Not Excuse the False Oaths in the 3/22 Amended Schedules

The Fifth Circuit has held that amending schedules does not excuse false oaths. *Sholdra v. Chilmark Fin. LLP (In re Sholdra)*, 249 F.3d 380, 382 (5th Cir. 2001) (citing *Mazer v. United States*, 298 F.2d 579, 582 (7th Cir. 1962)). Indeed, a debtor's assertion that he has amended his SOFA will fail as a defense if the amendment came only after a third party has brought to the Court's attention the initial inaccuracies in those schedules and SOFA. *Gebhardt v. Gartner (In*

re Gartner), 326 B.R. 357, 373 (Bankr. S.D. Tex. 2005) (citing *In re Sholdra*, 249 F.3d at 382) (affirming the denial of discharge based on the debtor's false oath and rejecting the defense that the debtor filed amendments to his original Schedules and SOFA one week after his deposition revealed false statements in his original filings); *see also In re Guenther*, 333 B.R. 759, 767–68 (Bankr. N.D. Tex. 2005) ("It may be close to impossible to produce Schedules and SOFAs that contain no mistaken information, and bankruptcy papers with mistakes are not, alone, enough to bar a debtor's discharge. But, the appropriate response is to offer amended information in a prompt fashion, and not to wait to amend the errors **only after the insistence of one of their creditors**.") (emphasis added).

Here, that is exactly what happened. Only when the Trustee filed the Objection/Motion **and** this Court held the Hearing on the Objection/Motion did the Debtors amend their Schedules to correct the inaccuracies and omissions in the 3/22 Amended Schedules. [*See* Finding of Fact No. 41; Doc. No. 187]. The Debtors' inaccuracies and omissions in the 3/22 Amended Schedules are not minor [*see* Findings of Fact Nos. 42–50], the non-disclosure of which can be excused. *See Gebhardt v. Gartner (In re Gartner)*, 326 B.R. 357, 372 (Bankr. S.D. Tex. 2005) ("A debtor who makes more than one false statement under oath with **an opportunity to clear up the inconsistencies** has demonstrated his recklessness, which is sufficient for the bankruptcy court to infer the debtor's requisite [fraudulent] intent.") (emphasis added). The Debtors made multiple false statements under oath in the 3/22 Amended Schedules, and they had ample opportunity to clear up the inconsistencies when the Trustee's counsel e-mailed on Debtors' counsel on September 24, 2013.[62] [*See* Finding of Fact No. 38]. The Debtors, however, did

[62] In the Trustee's counsel's e-mail to the Debtor's counsel on September 24, 2013, she stated: "In light of [the August 9, 2013 Order], which stated that the Debtors' estate would be determined as of [the Conversion Date], the Trustee requests that the Debtors file newly amended schedules and [SOFA] . . . within the next 10 days. If the Debtors believe their current form of schedules/sofa to be complete and accurate even in light of the Court's order,

nothing for almost two months [*see* Finding of Fact No. 38, 39, 40 & 41]—until they filed the 11/19 Amended Schedules approximately eight hours after this Court held the Hearing on the Objection/Motion [Doc. No. 187]. Indeed, if the Trustee had not filed and prosecuted the Objection/Motion, then the Debtors would not have filed the 11/19 Amended Schedules.

Notably, even after the Trustee filed the Objection/Motion on October 11, 2013, the Debtors' counsel made no attempt to contact the Trustee or her counsel to discuss and resolve the discrepancies. Rather, the Debtors filed the Response and forced the Trustee and her counsel to prepare for and prosecute the Objection/Motion at the Hearing. But then, at the beginning of the Hearing, the Debtors' counsel stipulated to all of the factual averments made in the Objection/Motion. [Tape Recording, November 19, 2013 Hearing at 11:15:25–11:15:32 a.m. & 1:39:23–1:39:36 p.m.]. The Court is at a loss to understand why the Debtors' counsel—since he stipulated, on behalf of the Debtors, to all of the factual averments made in the Objection/Motion [*Id.*]—did not simply pick up the phone and confer with the Trustee or her counsel before the Hearing, which took place more than two months after the Objection/Motion was filed, in order to spare the Trustee's counsel from having to spend additional time preparing for the Hearing.

Additionally, by filing the 11/19 Amended Schedules, the Debtors now attempt to exempt $332.00 of the $2,672.08 in the Woodforest Bank Accounts as of the Conversion Date [*see* Doc. No. 187, p. 6], despite the stipulation of the counsel at the Hearing that the Debtors could not exempt more than $20.00—i.e., the amount they claimed to be exempt in the 3/22 Amended Schedules [Tape Recording, November 19, 2013 Hearing at 2:31:00–2:32:18 p.m.]. It is disingenuous, if not outright deceitful, that the Debtors and their counsel are now trying to claim $332.00 as exempt, rather than the amount of $20.00, with respect to the Woodforest Bank

---

please make that express representation to me in response to this email." [Finding of Fact No. 38].

Accounts.[63]

In sum, because the Debtors did not amend the 3/22 Amended Schedules B and C before the Trustee brought to this Court's attention the inaccuracies and omissions contained therein, this Court finds that the 11/19 Amended Schedules should be stricken and disallowed. Accordingly, the "Live" Pleadings—including the 3/22 Amended Schedules B and C—remain the Debtors' current Schedules and SOFA for purposes of issuing rulings with respect to the Debtors. *See* [Finding of Fact No. 41].

E. The Objection/Motion

1. Standard for Objections to Exemptions

Bankruptcy Rule 4003(b)(1) provides, in relevant part, that "a party in interest may file an objection to the list of property claimed as exempt within 30 days after the meeting of creditors held under § 341(a) is concluded . . . ." In the case at bar, the Trustee filed the Objection, objecting to certain exemptions claimed by the Debtors, on October 11, 2013. [Doc. No. 175]. The § 341 meeting of creditors was concluded on September 12, 2013. [Finding of Fact No. 28]. Because the Objection was filed within thirty days after the conclusion of the § 341 meeting of creditors, the Court finds that the Objection was timely filed.

Under Bankruptcy Rule 4003(c), the Trustee, as the objecting party, has the burden of proving that the Debtors' exemptions are not properly claimed. However, "while the Trustee has the burden of proving that exemptions are not properly claimed, the initial burden is with the Debtor[s] to establish that the exemption, as claimed, is of the type covered by the statute." *In re Park*, 246 B.R. 837, 840 (Bankr. E.D. Tex. 2000) (quoting *In re Gregoire*, 210 B.R. 432 (Bankr. D.R.I. 1997)). "If the trustee objects and the objection is sustained, the debtor will be required

[63] It is unclear to this Court why the Debtors are claiming the specific amount of $332.00. What is clear to this Court is that based on the stipulation of their own counsel and relevant case law, the Debtors may not claim more than $20.00 as exempt.

either to forfeit the portion of the exemption that exceeds the statutory allowance, or to revise other exemptions or arrangements with her creditors to permit the exemption." *Schwab v. Reilly*, 560 U.S. 770 (2010) (citing FED. R. BANKR. P. 1009(a)); *see also In re Hall*, 169 B.R. 732, 734 (Bankr. N.D. Okla. 1994) ("Property can be exempt in bankruptcy only if it is claimed as exempt, by listing it as claimed exempt pursuant to 11 U.S.C. § 522(l), F.R.B.P. 4003(a), Official Form 6."); *In re Pomar*, 234 B.R. 135, 136 (Bankr. M.D. Fla. 1993) ("It is elementary that assets not scheduled and not claimed as exempt cannot be allowed as exempt.").

In the case at bar, for the reasons set forth below, the Court finds that the Trustee has met her burden of proving that the Debtors' exemptions are not properly claimed; and the Court further finds that the Debtors have failed to establish that their claimed exemptions are covered by any appropriate law. Thus, the Debtors will be required: (1) to forfeit the funds totaling $2,652.08 in their Woodforest Bank Accounts; (2) to pay the Trustee the sum of $613.00 (representing that portion of the 2012 Tax Return that they failed to disclose on the 3/22 Amended Schedules); (3) to pay the Trustee the sum of $4,350.00 (representing the amount they claimed as exempt on 3/22 Amended Schedules under the "tools of the trade" exemption for the 2010 Dodge Truck[64]); (4) to pay the Trustee the sum of $4,625.49 (representing the Chapter 13 Refund that they failed to disclose); and (5) to pay the Trustee the sum of $9.07 (representing that portion of the HPFCU Account that they failed to disclose on the 3/22 Amended Schedules). With respect to the Trustee's Motion for Turn Over, the Court concludes that the Debtors must turn over the above-referenced funds, totaling $12,249.64 (i.e., $2,652.08 + $6.13 + $4,350.00 + $4,625.49 + $9.07). The Court discusses each of these amounts immediately below.

[64] Not only was Mr. Reeves not using the 2010 Dodge Truck as a tool of his trade [Finding of Fact No. 35] because he was no longer doing business as of the time they filed the 3/22 Amended Schedules; the Debtors also surreptitiously used the Retroactive Payment, which constituted property of the estate, to purchase the 2010 Dodge Truck [Finding of Fact No. 33].

2. <u>Property in Dispute</u>

a. The Woodforest Bank Accounts

In addition to outright omissions, there are inaccurate "low-ball" values placed on certain assets. [Finding of Fact No. 42]. The Court finds that the omissions and the inaccurate "low-ball" values in the 3/22 Amended Schedules relating to the Woodforest Bank Accounts are both blatant and substantial.[65] First, the Debtors failed to disclose that they had two accounts at Woodforest National Bank. [Finding of Fact No. 43]. Second, the Debtors' bank account statements reflect that they significantly undervalued the amount they had in Woodforest National Bank. [Findings of Fact Nos. 43]. On the 3/22 Amended Schedules, the Debtors identified $20.00 related to Woodforest National Bank, but they actually had a total of $2,672.08 in their two accounts. [*Id.*]. Therefore, the difference between what the Debtors scheduled with respect to the Woodforest Bank Accounts on the 3/22 Amended Schedules and the actual amount that was in the Woodforest Bank Accounts as of the Conversion Date is $2,652.08 (i.e., $2,672.08 - $20.00 = $2,652.08). [Finding of Fact No. 44].

The Court finds that the Debtors filed the 3/22 Amended Schedules under oath that deliberately and significantly understated the value of their asset at Woodforest National Bank. The Debtors provided no reason for why there is such a large discrepancy with respect to the Woodforest Bank Accounts. Indeed, in closing arguments at the Hearing, counsel for the Debtors admitted that there is a "large discrepancy" with respect to the Woodforest Bank Accounts. [Tape Recording, November 19, 2013 Hearing, at 2:45:28–2:45:32].

Accordingly, the Court sustains the Trustee's objection with respect to the Woodforest Bank Accounts and finds that the Debtors shall: (1) turn over to the Trustee $2,652.08, representing the

---

[65] The Debtors' counsel also stipulated at the Hearing that the discrepancy relating to the Woodforest Bank Accounts was substantial. *See* [Tape Recording, November 19, 2013 Hearing at 2:44:51–2:44:58] ("I agree, $20 does not look anything like $2,600. I agree. **Those two numbers cannot be harmonized.**") (emphasis added).

amount in the Debtors' two Woodforest Bank Accounts as of the Conversion Date which exceeds the amount they claimed as exempt (i.e., $2,672.08 - $20.00); and (2) not be allowed to exempt any amount related to the Woodforest Bank Accounts in excess of $20.00.

b. The 2012 Tax Refund

On the 3/22 Amended Schedules, the Debtors identified $15,000.00 with respect to the 2012 Tax Refund; however, the actual amount of the 2012 Tax Refund was $15,613.00. [Finding of Fact No. 45]. This Court finds the $613.00 difference between what the Debtors scheduled and the actual amount that they received to be substantial. [*See* Finding of Fact No. 46]. The Debtors vigorously contend that the $613.00 difference is immaterial and insignificant by reiterating that $613.00 is only a four percent difference.[66] By way of example, in the Response, the Debtors state: "[i]n subparagraph d the Trustee further states that the Debtors listed as tax refund of $15,000.00 when it was actually $15,613.00 **that's another huge four percent (4%) difference!**" [Doc. No. 178, p. 1, ¶ 2]. In closing arguments at the Hearing, counsel for the Debtors argued that "a 4% mistake . . . is not an attempt to avoid creditors; not an attempt to avoid losing money. It's simply a 4% mistake. These are not large numbers." [Tape Recording, November 19, 2013 Hearing, at 2:45:14–2:45:27].

This Court disagrees. To adopt the Debtors' and their counsel's view that 4% is immaterial would be to allow all debtors to skim a little bit from each property that they own and hope that the trustee and their creditors do not notice and object. Counsel for the Debtors is essentially arguing that the greater a debtor's assets and debts, the less accurate the debtor has to be.[67] This position runs contrary to the bankruptcy system. *See, e.g., In re SRR Energy*

---

[66] It is approximately 4% (i.e., $613/$15,000 = 4%).

[67] Indeed, at the Hearing, the Debtors' counsel stated: "I probably would not have amended a schedule that had a $12 [sic] difference . . . . $15,613, yes, I would have made that amendment." [Tape Recording, November 19, 2013 Hearing at 2:49:21–2:49:34]. Despite their counsel's concession that he, himself, would have amended Schedules to

Management Resources, Inc. (In re Roqumore), 393 B.R. 474, 484 (Bankr. S.D. Tex. 2008) ("The principal purpose of the Bankruptcy Code is to grant a 'fresh start' to the '*honest* but unfortunate debtor.'") (quoting *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365, 367 (2007)).

The Court finds that the Debtors filed the 3/22 Amended Schedules under oath that deliberately and significantly understated the value of the 2012 Tax Refund. The Duties and Responsibilities Form requires the Debtors to "provide written notice to the Trustee of any tax refund in excess of $2,500.00 you anticipate receiving or actually receive." *See* the Duties and Responsibilities Form, p. 2, ¶ 10, *available at* http://www.txs.uscourts.gov/bankruptcy/rulesformsproc. Moreover, the Duties and Responsibilities Form directs the Debtors as follows:

> You have a legal obligation to promptly provide the Trustee with the information requested herein as soon as you learn of it . . . . If you receive money or property under any of the categories listed above, you must keep all such monies or property in your possession until the Trustee directs you to take a specific course of action.

Id. at p. 3. The Debtors have provided no reason for why they failed to provide the Trustee with written notice, or why they did not accurately amend their Schedules to disclose that the 2012 Tax Refund was $15,613.00, and not the $15,000.00 that they represented on the 3/22 Amended Schedules.

Accordingly, this Court sustains the Trustee's objection with respect to the 2012 Tax Refund and finds that the Debtors shall: (1) turn over to the Trustee $613.00, which represents the difference between the actual amount the Debtors received and the amount they disclosed on

---

reflect a $613.00 increase in the expected tax return, the Debtors failed to amend their Schedules to reflect this increase.

the 3/22 Amended Schedules (i.e., $15,613.00 - $15,000.00); and (2) not be allowed to exempt any amount related to the 2012 Tax Refund in excess of $15,000.00.

c. The 2010 Dodge Truck

On the 3/22 Amended Schedules, the Debtors attempt to fully exempt the 2010 Dodge Truck by utilizing the "tools of the trade" exemption and claiming a $4,350.00 exemption under § 522(d)(6) despite the testimony of Mr. Reeves at the meeting of creditors on April 4, 2013 that he had ceased doing business in January or February 2013 and was not using the truck as a trade tool. [Finding of Fact No. 47]. Because it is undisputed that Mr. Reeves was not using the 2010 Dodge Truck as a tool of his trade on the Conversion Date, this Court finds that the Debtors, under oath, deliberately listed the "tools of the trade" exemption with respect to the 2010 Dodge Truck despite knowing that they were not entitled to such an exemption.

Accordingly, the Court sustains the Trustee's objection with respect to the 2010 Dodge Truck, and disallows the "tools of the trade" exemption that the Debtors claimed with respect to the 2010 Dodge Truck on the 3/22 Amended Schedules. *See, e.g.*, *In re Mmahat*, 110 B.R. 236, 243 (Bankr. E.D. La. 1990) ("[T]he Debtor's characterization of an item as a tool of his trade is not enough to render it exempt; instead, the exemption claim must be made in good faith and supported by credible testimony.") (citing *In re Racca*, 40 B.R. 622, 627 (Bankr. W.D. La. 1984)). Therefore, the Debtors need to turn over $4,350.00 to the Trustee, representing the improperly claimed exemption under § 522(d)(6) on the 3/22 Amended Schedules [Finding of Fact No. 47].[68]

---

[68] The Debtors used the Retroactive Payment, which they failed to disclose to the Chapter 13 Trustee or this Court, to purchase the 2010 Dodge Truck [Finding of Fact No. 33], and they subsequently sold the 2010 Dodge Truck to purchase the 2005 Dodge Ram [Doc. No. 187]. The Trustee has not complained about the Debtors failing to disclose the VA monies which the Debtors ultimately used to purchase the 2005 Dodge Ram. She is only objecting to the "tools of the trade" exemption in the amount of $4,350.00 under § 522(d)(6). [Doc. No. 175, p. 5, ¶ 15]. Accordingly, the Court will require only that the Debtors to turn over $4,350.00.

d. The Chapter 13 Refund

With respect to the Chapter 13 Refund, which the Debtors failed to list on the 3/22 Amended Schedules, the Court finds that the Debtors' omission is material. [Finding of Fact No. 48]. The Chapter 13 Trustee filed the Final Report on March 1, 2013, representing that he had returned the Chapter 13 Refund to the Debtors. [Findings of Fact Nos. 13 & 14]. If the Chapter 13 Trustee had not listed the Chapter 13 Refund in the Final Report, the Trustee would not have known that the Debtors received $4,625.49.[69] [*See* Finding of Fact No. 14]. In the Objection/Motion, the Trustee requested turn over of this $4,625.49, and objected to any attempts by the Debtors to exempt any amount of the Chapter 13 Refund because the Debtors failed to disclose the Chapter 13 Refund on the 3/22 Amended Schedules. [Finding of Fact No. 48]. The Trustee was willing to accept a reduced portion of the Chapter 13 Refund upon the Debtors' production of proper documentation that a specific portion of the Chapter 13 Refund was earned after the Conversion Date[70]—as the Debtors contend—but the Debtors have provided no documentation to support their claim. [Doc. No. 175, p. 3, ¶ 7(c) & p. 5, ¶ 13].

In the Response, the Debtors assert that they were not required to list or exempt the Chapter 13 Refund on their Schedules because:

---

[69] While Bankruptcy Rule 1019(5)(C)(i) only requires the Debtors to disclose property not listed in the Final Report, Bankruptcy Local Rule 1019-1 requires them to amend their Schedules itemizing any changes. [*Compare* FED. R. BANKR. P. 1019(5)(C)(i) *with* BLR 1019-1]. Hence, the Debtors were required to amend their Schedule B to disclose the Chapter 13 Refund.

[70] While the Debtors were still in their Chapter 13 case, a so-called "Wage Order" was in effect. *See* [Findings of Fact Nos. 4, 8 & 9]. When a Wage Order is in effect, a debtor's employer remits a portion of the debtor's wages directly to the Chapter 13 trustee pursuant to the confirmed plan. Once a Chapter 13 case is converted to a Chapter 7 case, the Chapter 13 plan is no longer in effect. However, until the employer receives an order from this Court directing the employer to cease making direct payments to the Chapter 13 trustee, the employer continues to remit such payments. Thus, in the case at bar, when the Chapter 7 Trustee stated that she was willing to request a reduced amount [Doc. No. 175, p. 3, ¶ 7(c) & p. 5, ¶ 13], she was telegraphing to the Debtors that if, in fact, the employer had remitted post-conversion payments to the Chapter 13 Trustee, she would probably not seek to recover these funds.

> based upon information and belief, no refund was due to the Debtors as of [the Conversion Date] . . . and this is why the Debtors did not mention such item. *After* conversion, the Chapter 13 Trustee did withdraw an additional sum from the Debtor's account and that amount was subsequently refunded to Debtors. **Further, there is no obligation to either list or exempt such amount.**

[Doc. No. 178, p. 1, ¶ 2] (emphasis added). The Debtors set forth two reasons for their assertion that they were not required to list or exempt the Chapter 13 Refund on their Schedules. The Court disagrees with both reasons.

i. The Debtors Were Required to Turn Over the Chapter 13 Refund to the Trustee Pursuant to Bankruptcy Rule 4002(a)(4) and § 521(a)(3), But They Failed to Do So

On the 3/22 Amended Schedules, the Debtors failed to disclose the Chapter 13 Refund. [Finding of Fact No. 48]. In closing arguments at the Hearing, counsel for the Debtors argued that although the Chapter 13 Refund was owed to the Debtors prior to the Conversion Date and therefore belonged to the Debtors' estate,[71] the Debtors received the Chapter 13 Refund after the Conversion Date directly from the Chapter 13 Trustee. The Court notes that the Debtors' counsel's statement at the Hearing—that the Chapter 13 Refund constitutes property of the Debtors' estate—is accurate.[72] However, contrary to their counsel's stipulation, it is the Debtors' position that because the Chapter 13 Trustee had a legal obligation to turn over property of the estate to the Trustee under Bankruptcy Rule 1019(4), and because the Chapter 13 Trustee did not

---

[71] When the undersigned judge asked the Debtors' counsel if, in his judgment, the Debtors needed to disclose the Chapter 13 Refund, the Debtors' counsel stated: "Well, that's a very good point. When is the estate measured? If the estate is measured according to your order, Judge, as of February, the 11th, the refund wasn't made until after that date. Now, if it was money owed to the Debtors prior to February, the 11th, I would agree with the Court that that money does belong to the Chapter 7 estate." [Tape Recording, November 19, 2013 Hearing at 2:42:24–2:42:42 p.m.] (emphasis added).

[72] *See* § 1306(a)(2) ("Property of the estate includes . . . all earnings from services performed by the [D]ebtor[s] after the [Petition Date] but before the case is closed, dismissed or converted to a case under chapter 7, 11, or 12 of this title, whichever occurs first."); *see also In re Seafort*, 437 B.R. 204, 209 (B.A.P. 6th Cir. 2010), *aff'd on other grounds*, 669 F.3d 662 (6th Cir. 2012) ("Notably, [§ 1306], which addresses property and earnings that come into existence *after* the debtor files a petition for relief does not exclude 401(k) contributions from property of the estate.") (citing § 1306).

turn over the Chapter 13 Refund to the Trustee, but rather sent it directly to the Debtors, the Chapter 13 Refund is presumed not to be property of the estate. [*Id.* at 2:12:23–2:12:50 p.m. & 2:42:48–2:43:14 p.m.].

The Court disagrees with this argument. Because the Chapter 13 Refund constitutes property of the estate, the Debtors were required to immediately turn over the Chapter 13 Refund to the Trustee when they received it directly from the Chapter 13 Trustee. *See* § 542(a).[73] There is no presumption that property that the Chapter 13 Trustee sends directly to the Debtors is not property of the estate.[74] As previously mentioned in Sections V(A)(3) and V(C)(2), Bankruptcy Rule 4002(a)(4) and § 521(a)(3) require the Debtors to cooperate with the Trustee so that she can carry out her duties under the Code. *See In re Royce Homes, LP*, No. 09–32467–H4–7, 2009 WL 3052439 (Bankr. S.D. Tex. Sept. 22, 2009) (discussing a debtor's unquestionable duty to cooperate with the trustee). One of the Trustee's duties is to identify and take possession of the assets of the Debtors' estate, § 704(a)(1), (2), (4), and then determine, once the Debtors claim their exemptions, whether to object to these exemptions, FED. R. BANKR. P. 4003(b). *See, e.g.*, *In re Melenyzer*, 140 B.R. 143, 155 (Bankr. W.D. Tex. 1992) ("[T]he trustee must also collect the assets of the estate; investigate the financial affairs of the debtor, and appropriately object . . . to exemptions.").

If the Debtors deposited the check from the Chapter 13 Trustee into their account, they needed to make this disclosure; or, if they had not yet done so, they still needed to disclose that they were in possession of this check. *See* BLR 1019-1; the Duties and Responsibilities Form,

---

[73] Section 542(a) provides that "**an entity**, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease . . . or that the debtor may exempt . . . , **shall deliver to the trustee, and account for, such property or the value of such property**, unless such property is of inconsequential value or benefit to the estate." 11 U.S.C. § 542(a) (emphasis added).

[74] The Debtors' counsel cited no case law stating there is a presumption that it is not property of the estate.

p. 2, ¶ 10. Finally, and perhaps more important, pursuant to § 542(a)[75], the Debtors were required to turn over the Chapter 13 Refund to the Trustee, so she could administer this particular asset of the Chapter 7 estate. In sum, the Debtors' obligations here were to disclose receipt of monies and to turn them over to the Trustee as required by § 542(a). They failed to do so.

ii. The Debtors Were Required to Turn Over the Chapter 13 Refund to the Trustee Pursuant § 521(a)(4), But They Failed to Do So

Second, the Court rejects the Debtors' assertion—that they were not required to list or exempt the Chapter 13 Refund on their Schedules—because § 521(a)(4) requires the Debtors to "**surrender to the trustee all property of the estate** and any recorded information, including books, documents, records, and papers, relating to property of the estate." 11 U.S.C. § 521(a)(4) (emphasis added). The Debtors were required to surrender to the Trustee the Chapter 13 Refund upon receipt of these funds. If the Debtors really believed that these funds were not property of the estate, then they should have kept these funds in their possession, notified the Trustee of their receipt, and provided an opportunity to the Trustee to determine whether these funds were property of the estate and whether the Debtors needed to turn over these funds to her.[76] *See* the Duties and Responsibilities Form, p. 2, ¶ 10 ("You have a legal obligation to promptly provide the Trustee with the information requested herein as soon as you learn of it . . . . If you receive money or property under any of the categories listed above, you must keep all such monies or property in your possession until the Trustee directs you to take a specific course of action.") (emphasis added), *available at* http://www.txs.uscourts.gov/bankruptcy/rulesformsproc; *see also*

---

[75] *See* 62 n.73 (defining § 542(a)).

[76] Any capable consumer bankruptcy attorney would have counseled his clients to take this approach. The record is devoid of any evidence that the Debtors' counsel did so here.

In re Pegues, 266 B.R. 328, 330 (Bankr. D. Md. 2001) (stating that some courts have held that "post-petition wages held by the chapter 13 trustee at the time that the case is converted to chapter 7 should be disbursed to creditors under a confirmed plan."). The Debtors failed to comply with their legal obligation. Rather, they spent the Chapter 13 Refund, [Finding of Fact No. 48], and told no one until confronted by the Trustee.

Accordingly, the Court sustains the Objection with respect to the Chapter 13 Refund and finds that the Debtors shall: (1) turn over to the Trustee $4,625.49—the entire amount of the Chapter 13 Refund [Finding of Fact No. 48]—because (a) they failed to disclose and turn over the Chapter 13 Refund; and (b) they have failed to produce documentation supporting their allegation that a portion of this amount was earned after the Conversion Date [Doc. No. 175, p. 3, ¶ 7(c) & p. 5, § 13]; and (2) not be allowed to exempt any amount related to the Chapter 13 Refund.

e. Houston Police Federal Credit Union Account

On the 3/22 Amended Schedules, the Debtors identified $8.00 related to the HPFCU Account; however, as of the Conversion Date, Ms. Reeves—one of the Debtors—actually had a balance of $17.07 in the HPFCU Account. [Finding of Fact No. 49]. Therefore, the difference between what the Debtors schedule with respect to the HPFCU Account on the 3/22 Amended Schedules and the actual amount that was in the HPFCU Account as of the Conversion Date is $9.07 (i.e., $17.07 - $8.00 = $9.07). [Finding of Fact No. 50].

The Debtors do not believe that this discrepancy is substantial. In the Response, the Debtors state: "[i]ndeed the Trustee apparently challenges an account alleged to contain $8.00 when it ostensibly contained a whopping $17.07–a full $9.07 difference!" [Doc. No. 178, p. 1, ¶ 5]. The Debtors simultaneously dismiss the gravity of the discrepancy relating to the HPFCU

Account on the 3/22 Amended Schedules and criticize the Trustee and her counsel for doing their job:

> **Debtors laughingly admit paragraph #12**[77] which should tell this Court *everything* it needs to know about the prosecution of this case, and about the conduct of the Trustee's counsel. Rhetorically, does the Trustee's counsel *really* intend to show that the Debtors *intentionally* hid $9.07 from the Trustee? Seriously? **Has this case degraded to such a wolf-pack mentality that this Court will simply preside of the tearing apart of the carcasses of these folks?** It appears that the Debtor's punishment for their alleged fraud is that they will pay everyone back (which appears to be the case now as they have agreed to non-dischargeability on several debts), and that **they will also pay the "wolf-pack's" lawyers for the privilege of not being able to escape their bankruptcy filing.**

[Doc. No. 178, p. 2–3, ¶ 6] (emphasis added).

The Debtors have provided no reason for why there was a discrepancy with respect to the HPFCU Account. In a vacuum, if the only discrepancy in this case was the HPFCU Account, the Trustee would assuredly not have made this $9.07 discrepancy an issue. However, the Debtors have demonstrated a repeated pattern of lying on their Schedules and by the time the Trustee filed the Objection/Motion [*see* Doc. No. 175], this Court had already found the Debtors to have converted their case from Chapter 13 to Chapter 7 in **bad faith** [Finding of Fact No. 27]. The Trustee was justifiably worried about how the Debtors were using the HPFCU account and how much monies were actually on deposit at this institution. *See* [Finding of Fact No. 49]. Thus, the Trustee had no choice but to do her job and object to the Debtors' claimed exemption for the HPCFU Account.

Accordingly, the Court sustains the Trustee's objection with respect to the HPFCU Account and finds that the Debtors shall: (1) turn over to the Trustee $9.07, which represents the amount in the HPFCU Account as of the Conversion Date exceeding the amount they claimed as

[77] Paragraph 12 of the Objection/Motion contains the Trustee's request for a turn over of $9.07 and the Trustee's objection to any attempts by the Debtors to exempt any amount over $8.00 with respect to the HPFCU account (i.e., the amount that the Debtors identified on the 3/22 Amended Schedules B and C). [Doc. No. 175, p. 4–5, ¶ 12; *see also* Findings of Fact Nos. 49 & 50].

exempt (i.e., $17.07 - $8.00 = $9.00); and (2) not be allowed to exempt any amount related to the HPFCU Account in excess of $8.00.

VI. CONCLUSION

A. Summary of the Court's Conclusions Regarding the 11/19 Amended Schedules and the Objection/Motion

In conclusion, this Court finds that that the 11/19 Amended Schedules should be stricken and disallowed because there is ample evidence of the Debtors' bad faith and that the Debtors concealed assets. Therefore, the 3/22 Amended Schedules B and C, and not the 11/19 Amended Schedules B and C, are the Debtors' "live" Schedules for the purpose of this Court's ruling on the Objection/Motion and for the remainder of this Chapter 7 case.

With respect to the Objection/Motion, the Court finds that the relief requested should be granted in its entirety. Specifically, the Court sustains the Objection and grants the Motion with respect to the Woodforest Bank Account, the 2012 Tax Refund, the 2010 Dodge Truck, the Chapter 13 Refund, and the HPFCU Account. Accordingly, the Debtors shall turn over to the Trustee the total amount of $12,249.64—which is the sum of (1) $2,652.08 related to the Woodforest Bank Accounts; (2) $613.00 related to the 2012 Tax Refund; (3) $4,350.00 related to the 2010 Dodge Truck (representing the amount that the Debtors improperly claimed as exempt on 3/22 Amended Schedules under the "tools of the trade" exemption for the 2010 Dodge Truck); (4) $4,625.49 related to the Chapter 13 Refund; and (5) $9.07 related to the HPFCU Account. Finally, the Debtors will not be allowed to exempt: (1) any amount in excess of $20.00 related to the Woodforest Bank Accounts; (2) any amount in excess of $15,000.00 related to the 2012 Tax Refund; (3) any amount related to the Chapter 13 Refund; and (4) any amount in excess of $8.00 related to the HPFCU Account.

B. The Court, At This Time, Declines to Address Sanctions Against the Debtors' Counsel

Language in the Debtors' Brief underscores that their counsel, himself, knows that his conduct is unacceptable. *See* [Doc. No. 186, pp. 2–4] (providing reasons why the Debtors' counsel should not be sanctioned for discrepancies on the 3/22 Amended Schedules relating to the Woodforest Bank Accounts, the 2012 Tax Refund, and the Chapter 13 Refund).[78] The Brief addresses why the Trustee should not be able to recover sanctions against him; yet, the Trustee has not filed a separate motion for sanctions.[79] *See* [Doc. No. 175]. Because the Trustee has not sought such relief—at least so far—this Court will not grant such relief at this time.

C. Comments on the Conduct of the Debtors' Counsel

Sir Walter Scott, the Scottish author and novelist, aptly made the following observation: "Oh what a tangled web we do weave, when we practise to deceive!"[80] That is what the Debtors have done in both their Chapter 13 case and in this converted Chapter 7 case. Moreover, the conduct of the Debtor's counsel has been as shoddy as his clients' conduct has been deceptive.

The Debtors' counsel was flippant to the Trustee and her counsel—both in his e-mails to the Trustee's counsel and his pleadings. *See* [Finding of Fact Nos. 38, 39, 40 & 41; Doc. No. 178; Doc. No. 186]. He failed to appear at the July 2, 2013 meeting of creditors. [Finding of Fact No. 25]. Additionally, he failed to comply with a fundamental rule when he filed the First Motion to Dismiss—namely, he gave no notice to the creditors and the Trustee about his clients' wish to

---

[78] The Court reiterates that, in the Brief, the Debtors addressed neither of the discrepancies on the 3/22 Amended Schedules relating to the HPFCU Account or the 2010 Dodge Truck. *See* [Doc. No. 186]. Their silence on the claimed exemption of the 2010 Dodge Truck is particularly deafening.

[79] Pursuant to Bankruptcy Rule 9011, a motion for sanctions must "be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision(b)." FED. R. BANKR. P. 9011(c)(1)(A).

[80] Sir Walter Scott, *Marmion, Canto vi. Stanza 17*. The Court notes that the word "practise" is not misspelled in this quotation.

have their case dismissed. [Findings of Fact Nos. 18 & 19; FED. BANKR. R. P. 9013-1]. Further, he failed to respond to the last e-mail of the Trustee's counsel, which caused the Trustee to file the Objection/Motion. [Finding of Fact No. 41]. He thereafter failed to contact the Trustee's counsel after she filed the Objection/Motion,[81] which caused the Trustee's counsel to prepare for the Hearing, but then the Debtors' counsel showed up at the Hearing and stated that he would stipulate to all of the factual averments in the Objection/Motion [Tape Recording, November 19, 2013 Hearing at 11:15:25–11:15:32 a.m. & 1:39:23–1:39:36 p.m.]. Counsel for the Debtors then proceeded to incorrectly cite the law to this Court, [*see id.* at 2:43:15–2:44:48 p.m.], and, when he attempted to call one of his clients to the stand, he discovered that he could not do so because, upon objection by the Trustee's counsel, he learned that he had failed to comply with the well-known Bankruptcy Local Rule requiring him to submit a witness list two days in advance of the Hearing [*Id.* at 2:21:00–2:22:37 p.m.; BLR 9013-2]. In sum, the conduct of the Debtors' counsel has fallen short of acceptable standards.

Counsel for the Debtors needs to change his ways, and he needs to do so immediately. He can make a good start by sitting his clients down and explaining to them why this Court has sustained the Objection and granted the Motion. He must then do what he apparently has never previously done: strongly urge the Debtors to respect the bankruptcy system to which they have turned for a discharge and comply with this Court's orders.

[81] By this time, counsel for the Debtors knew that this Court had already found his clients to be in bad faith during their Chapter 13 case, but he nevertheless continued to undertake his duties in a very nonchalant fashion. One would think that if one's clients have already been held to have acted in bad faith, then one would respond quickly, accurately, and politely to requests from the Chapter 7 Trustee or her counsel; and that one would strongly encourage one's clients to timely and accurately complete amended Schedules to comply with the applicable Code sections and Rules.

Orders consistent with this Memorandum Opinion will be issued simultaneously on the docket with the entry of this Opinion.

Signed this 29th day of January, 2014.

Jeff Bohm
Chief United States Bankruptcy Judge