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3 UNITED STATES BANKRUPTCY COURT
4 EASTERN DISTRICT OF CALIFORNIA
5 SACRAMENTO DIVISION
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8 In re:)
9) Case No. 06-23261-B-13J
10 EDWARD DAYTON,)
11 Debtor.) Docket Control No. JPJ-2
12) Date: November 14, 2006
) Time: 9:30 a.m.
)

13 On or after the calendar set forth above, the court issued
14 the following ruling. The official record of the ruling is
appended to the minutes of the hearing.

15 Because the ruling constitutes a "reasoned explanation" of
16 the court's decision under the E-Government Act of 2002 (the
17 "Act"), a copy of the ruling is hereby posted on the court's
Internet site, www.caeb.uscourts.gov, in a text-searchable
18 format, as required by the Act. However, this posting does not
constitute the official record, which is always the ruling
appended to the minutes of the hearing.

19 **DISPOSITION AFTER ORAL ARGUMENT**

20 This matter came on for hearing on November 14, 2006, at 9:30
21 a.m. Appearances are noted on the record. The following constitutes
22 the court's findings of fact and conclusions of law, pursuant to
23 Federal Rule of Bankruptcy Procedure 7052.

24 The motion is granted in part and the case is converted to one
25 under chapter 7. The court finds cause pursuant to 11 U.S.C. §
26 1307(c)(1), (c)(3), and (c)(5). In this instance conversion is in the
27 best interests of creditors given the non-exempt equity listed in the
28 non-official schedules. This ruling is effective on November 14, 2006

1 at 10:00 a.m.

2 This is the eighth chapter 13 case filed by debtor since October
3 16, 2001. The times between dismissal of one case and the filing of
4 the next case has ranged from five (5) days to thirteen (13) months.

5 The motion lists the chronology and outcome of each case:

6 1. 01-32020-A-13L - Filed October 16, 2001 - Dismissed
7 February 1, 2002.

8 2. 02-21383-B-13J - Filed February 7, 2002 - Dismissed July
9 22, 2003.

10 3. 03-29660-B-13J - Filed August 29, 2003 - Dismissed
11 September 25, 2003.

12 4. 04-30736-B-13J - Filed October 27, 2004 - Dismissed
13 February 25, 2005.

14 5. 05-25495-D-13L - Filed May 16, 2005 - Dismissed October
15 11, 2005.

16 6. 05-39773-B-13J - Filed October 16, 2005 - Dismissed April
17 5, 2006.

18 7. 06-21674-D-13L - Filed May 18, 2006 - Dismissed June 12,
19 2006.

20 8. 06-23261-B-13J - Filed August 23, 2006 - Pending.

21 The third case was voluntarily dismissed by debtor. The other
22 six dismissals were on trustee's motions. The first case was
23 dismissed for delinquent plan payments. The second case was dismissed
24 for delinquent plan payments (failure to cure under a conditional
25 order). The fourth case was dismissed for failure to prosecute,
26 delinquent payments, and an unconfirmable plan (proposed \$100 payments
27 were not sufficient to pay \$1,000 in conduit payments). The fifth
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1 case was dismissed for delinquent plan payments and failure to
2 prosecute (a confirmation objection was sustained and no new plan was
3 filed). The sixth case was dismissed for delinquent plan payments and
4 inability to confirm a plan. (failure to cure under conditional
5 order). The seventh case was dismissed for ineligibility under
6 Section 109(h) (failure to obtain pre-filing credit counseling).

7 Through these successive filings, the debtor has effectively
8 staved off his creditors for five years while failing to perform his
9 obligations under Chapter 13. Five cases were dismissed, at least in
10 part, for failure to make plan payments. The most recent previous
11 case was dismissed for ineligibility under 11 U.S.C. § 109(h) for
12 failure to obtain pre-petition credit counseling. In the present
13 case, the debtor filed Schedules and a Statement of Financial Affairs
14 using outdated official forms. He used the forms applicable prior to
15 October 17, 2005 when the Bankruptcy Abuse Prevention and Consumer
16 Protection Act of 2005 went into effect. The debtor also failed to
17 submit his Schedules under penalty of perjury as required by Fed. R.
18 Bankr. P. 1008. The debtor did file the required declaration for the
19 Statement of Financial Affairs. The plan filed by debtor is also on
20 an outdated form. Debtor used the form which use was required for
21 cases filed between July 1, 2003 and October 16, 2005. Debtor failed
22 to comply with General Order 05-03, ¶ 2(a). The plan filed by debtor
23 was denied confirmation by order entered November 2, 2006.

24 Trustee accurately argues in the motion that there is nothing in
25 the documents that have been filed in this case that reflects any bona
26 fide change in circumstances showing that this case is any more likely
27 to succeed than those that preceded it. The debtor's employment has
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1 not changed for eleven years (See Schedule I, Dkt. No. 11). The
2 debtor has not opposed this motion.

3 The court finds that the debtor filed this case in bad faith and
4 as part of an ongoing scheme to delay his creditors through successive
5 bankruptcy filings rather than propose, confirm and perform a Chapter
6 13 plan. The foregoing constitutes cause to convert or dismiss under
7 11 U.S.C. § 1307(c). In this instance, the court determines that
8 conversion is in the best interest of creditors because of the
9 apparent non-exempt equity in property of the estate, as shown in the
10 non-official schedules filed September 8, 2006.

11 The court will issue a minute order, however, the ruling is
12 effective on November 14, 2006 at 10:00 a.m. Noli v. Commissioner of
13 Internal Revenue, 860 F.2d 1521, 1525 (9th Cir. 1988).