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In re)	Case No. 07-21945-A-13G
)	
SUDHAKER RAJENDER,)	Docket Control No. CLH-1
)	
)	Date: August 13, 2007
Debtor.)	Time: 9:00 a.m.
)	
)	

The motion of debtor Sudhaker Rajender to confirm a chapter 13 plan will be denied and the objection of the trustee will be sustained.

According to Form 22C, the debtor has monthly projected disposable income of \$324.37 and, because the debtor's annualized current monthly income exceeds median state income, the debtor's applicable commitment period is 5 years. As noted by the trustee, this income would permit the debtor to pay a dividend of 8.6% to holders of Class 7 unsecured claims. The plan provides a dividend of only 3%. Because the trustee has raised the objection, because the debtor's plan will not pay unsecured creditors in full, the plan must pay all projected disposable income to unsecured creditors. See In re Alexander, 344 B.R. 742, 749-50 (Bankr. E.D.N.C. 2006). See also In re Barr, 341 B.R. 181 (Bankr. M.D.N.C. 2006); In re Rotunda, 349 B.R. 324

1 (Bankr. N.D.N.Y. 2006); In re Trammers, 355 B.R. 234 (Bankr. D.
2 Mont. 2006); In re Hanks, 362 B.R. 494 (Bankr. D. Utah 2007); In
3 re Miller, 361 B.R. 224 (Bankr. N.D. Ala. 2007); In re Lawson,
4 361 B.R. 215 (Bankr. D. Utah 2007); In re Brady, 361 B.R. 765
5 (Bankr. D.N.J. 2007); In re Kolb, 2007 WL 219951 (Bankr. S.D.
6 Ohio March 30, 2007). Because the proposed plan fails to pay all
7 projected disposable income to unsecured creditors, it cannot be
8 confirmed.

9 While the debtor argues that he neglected to include a
10 1/60th of a \$13,616.76 priority claim on Line 49 of Form 22C, he
11 has never amended Form 22C to include such a claim. Further, the
12 debtor has not explained whether in fact he owes such a claim.
13 For instance, is this an estimated claim for income taxes because
14 the debtor failed to file a return? Does the debtor agree or
15 disagree that he owes the tax estimated by the IRS? Until Form
16 22C is amended, and without such an explanation, the court will
17 not permit the debtor to file yet another statement under penalty
18 of perjury that contradicts an earlier statement under penalty of
19 perjury.

20 Even if the priority claim is included in the Form 22C
21 calculations, the debtor has claimed expenses in excess of what
22 is permitted by the relevant IRS Standards.

23 The debtor has claimed additional expenses for food and
24 utilities on Line 26. There are three problems with this claim
25 for additional expenses.

26 For one thing, Line 26 is limited to housing expenses. The
27 debtor has included housing and food expenses.

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1 For another, Line 26 is not on Form 22C to permit a debtor
2 to claim additional housing related expenses. Line 26, like Line
3 21, the corresponding line on the chapter 7 variant of the
4 Statement of Current Monthly Income, Form 22A, does not invite
5 debtors to increase their housing and/or utility expenses simply
6 because they have higher expenses than allowed by the IRS Local
7 Standard for housing.

8 Line 26 allows debtors only to contest how the U.S. Trustee
9 has divided the Local Standard for housing between the
10 mortgage/rent and nonmortgage/nonrent expense categories. That
11 is, the IRS permits a taxpayer with delinquent taxes to pay one
12 aggregate amount for both mortgage/rent and nonmortgage/nonrent
13 expenses. The IRS does not break down this aggregate amount into
14 the two categories. Indeed, the IRS's Internet site,
15 www.irs.gov/businesses/small/article/0,,id=104696,00.html, gives
16 the following cautionary note:

17 **Disclaimer:** *IRS Allowable Expenses are intended for use in*
18 *calculating repayment of delinquent taxes. Expense*
19 *information for use in bankruptcy calculations can be found*
on the website for the U.S. Trustee Program.

20 The U.S. Trustee has divided the aggregate amount set by the
21 IRS into the two categories, mortgage/rent and
22 nonmortgage/nonrent. Line 26 allows the debtor to argue that the
23 U.S. Trustee's allocation is not appropriate for any reason.
24 However, the aggregate amount claimed may not exceed the amount
25 specified in the Local Standard for housing.

26 Here, the debtor has increased his nonmortgage/nonrent
27 expense beyond what is permitted by the Local Standard for
28 housing as interpreted by the U.S. Trustee. On January 31, 2007,

1 the IRS allowed a total housing expense of \$1,310 per month for a
2 household of one in San Joaquin County. The U.S. Trustee has
3 broken this number down and permits \$336 for nonmortgage/nonrent
4 expenses and \$974 for mortgage/rent expenses, a total of \$1,310.

5 The debtor is attempting to claim more than a total of
6 \$1,310. He is claiming \$336 for nonmortgage/nonrent expenses
7 (utilities, etc.), the \$974 allowed rent expense, and an
8 additional \$825 for utilities and food. The additional amount is
9 not segregated further between utilities and food. Nonetheless,
10 it is clear that the debtor is not claiming a total of \$1,310 and
11 reallocating that total amount between the mortgage/rent and
12 nonmortgage/nonrent categories. The debtor is limited to a total
13 of \$1,310, plus any additional home energy expenses that can be
14 claimed on Line 42.

15 Lines 42 and 44 invite debtors to claim additional home
16 energy expenses beyond what the allowance for nonmortgage/nonrent
17 expenses permits for utilities and additional food expenses. The
18 debtor in this case has claimed nothing on Lines 42 and 44, and
19 the court cannot even guess what might be claimed because the
20 amount on Line 26 is a single amount comprised of both utilities
21 and food expenses.

22 Finally, whatever additional amounts the debtor might claim
23 for food and utilities, the debtor has not met the burdens
24 imposed by 11 U.S.C. § 707(b)(2)(A). As to the additional food
25 expenses, the debtor is limited to an additional 5% of what the
26 IRS National Standard would allow. See 11 U.S.C. §§
27 707(b)(2)(A)(ii); 1325(b)(3). This is 5% of \$483, or just
28 \$24.15. The debtor has not quantified how much additional food

1 expense he has each month or established that it is no more than
2 \$24.15.

3 Also, in order to claim additional utility expenses, the
4 debtor must "provide[] documentation of such actual expenses and
5 demonstrate[] that such actual expenses are reasonable and
6 necessary." See 11 U.S.C. § 707(b)(2)(A)(ii)(V). The debtor has
7 not provided a specific number for the additional utility expense
8 nor has he provided any documentation.

9 Nor may the additional food or utility expenses be claimed
10 under IRS's allowance for "other necessary expenses." Such
11 expenses may include reasonably necessary health insurance,
12 disability insurance, and health savings account expenses for the
13 debtor and the debtor's spouse and dependents. See 11 U.S.C. §
14 707(b)(2)(A)(ii)(I). Generally speaking, this category is not
15 used to supplement what is permitted under the IRS National and
16 Local Standards. See Internal Revenue Manual at § 5.15.1.10.,
17 found at www.irs.gov/irm/part5/ch15s01.html. Other necessary
18 expenses may include state and federal income, self-employment,
19 social security, and Medicare taxes; dental, vision, long-term
20 care, and life insurance; childcare expenses; court ordered
21 payments such as spousal and child support payments; mandatory
22 payroll deductions for such things as uniforms, pension
23 contributions, and union dues; and business expenses. See Lines
24 30-37 of Official Form 22C.

25 Finally, while the court accepts the debtor's explanation as
26 to his withholding for taxes, even his explanation shows that
27 Form 22C over-withholds for taxes by \$58.06. This sum must be
28 added to his projected disposable income.

1 For these reasons, the trustee's objection to confirmation
2 of the proposed chapter 13 plan will be sustained. The plan does
3 not provide either payment in full of unsecured claims or payment
4 to unsecured creditors of all of the debtor's projected
5 disposable income for the plan's applicable commitment period.

6 A separate order denying confirmation of the plan will be
7 entered.

8 Dated:

9 By the Court

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11 Michael S. McManus, Chief Judge
12 United States Bankruptcy Court
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