



UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

May 9, 2023 at 1:30 p.m.

Unless otherwise ordered, all matters before the Honorable Christopher M. Klein shall be simultaneously: (1) **In Person** at Sacramento Courtroom #35, (2) via **ZoomGov Video**, (3) via **ZoomGov Telephone**, and (4) via **CourtCall**.

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UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Bankruptcy Judge

Sacramento, California

May 9, 2023 at 1:30 p.m.

1. [21-20348](#)-C-13 HEATHER GREY MOTION TO SELL
[PLC](#)-2 Peter Cianchetta 4-13-23 [[52](#)]

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 21 days' notice. The Proof of Service shows that 26 days' notice was provided. Dkt. 56.

The Motion to Sell is granted.

Debtor, Heather Michelle Grey, filed this Motion pursuant to 11 U.S.C. §§ 363 and 1303 seeking to sell property commonly known as 3400 Sondiesa Way, Elk Grove, CA ("Property").

The proposed purchasers of the Property are Donald and Denise Paganelli, and the proposed purchase price is \$525,000.

Wells Fargo Bank N.A. has filed a conditional non-opposition (dkt. 58) to the motion stating that it consents to the sell as long as debtor clarifies that its loan is secured by the Property and the loan will be paid in full.

The Chapter 13 Trustee filed a response stating that he would like certain language included in the order granting the motion.

DISCUSSION

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: **xxxxxxxxxxxxxxxxxx**.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the sale will yield proceeds that will pay general unsecured creditors 100% of all claims.

The court shall issue a minute order substantially in the following form holding that:

May 9, 2023 at 1:30 p.m.

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Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Sell Property filed by Heather Michelle Grey ("Movant"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted. The debtor's counsel shall prepare an appropriate order granting the Motion, transmit the proposed order to the Chapter 13 trustee for approval as to form, and if so approved submit the proposed order to the court.

Final Ruling: No appearance at the May 9, 2023 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 36 days' notice was provided. Dkt. 50.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

The Motion to Confirm is granted.

The debtor filed this Motion seeking to confirm the Amended Chapter 13 Plan (Dkt. 48) filed on April 3, 2023.

No opposition to the Motion has been filed.

Upon review of the record, the court finds the plan complies with 11 U.S.C. §§ 1322 and 1325(a). The Motion is granted, and the plan is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm filed by the debtor, Sanohar Lal, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, the debtor's Amended Chapter 13 Plan (Dkt. 48) meets the requirements of 11 U.S.C. §§ 1322 and 1325(a), and the plan is confirmed. Counsel for the debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 trustee for approval as to form, and if so approved, the trustee will submit the proposed order to the court.

3. [19-26364](#)-C-13 STEVEN/MARIA PETERSON MOTION TO MODIFY PLAN
[PLC](#)-2 Peter Cianchetta 4-4-23 [[52](#)]

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 35 days' notice was provided. Dkt. 56.

The Motion to Modify Plan is denied.

The debtors filed this Motion seeking to confirm the Modified Chapter 13 Plan (Dkt. 55) filed on April 4, 2023.

The Chapter 13 Trustee filed an Opposition (Dkt. 58) on April 17, 2022, opposing confirmation on the following grounds:

1. The plan fails to suspend the delinquency in the amount of \$1,849.13;
2. Plan is not feasible;
3. Debtors have failed to amend Schedules I & J.
4. Debtors have failed to sufficiently plead with particularity the grounds upon which the requested relief is based.

DISCUSSION

The debtor is \$1,849.13 delinquent in plan payments. Declaration, Dkt. 59. Delinquency indicates that the plan is not feasible and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

The plan mathematically requires a payment of \$156 per month, which is greater than the proposed \$69.14 payment.

The debtor has not demonstrated the plan is feasible because the plan terms require a higher payment than what is proposed and claims filed in the case are greater than scheduled. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

Upon review of the record, the court finds the plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329. The Motion is denied, and the plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Modify Plan filed by the debtors, Steven and Maria Peterson, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied, and the plan is not confirmed.

Final Ruling: No appearance at the May 9, 2023 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 46 days' notice was provided. Dkt. 180.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

The Motion to Modify Plan is granted.

The debtors filed this Motion seeking to modify the terms of the confirmed plan pursuant to 11 U.S.C. § 1329.

No opposition to the Motion has been filed.

Upon review of the record, the court finds the plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329. The Motion is granted, and the plan is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Modify Plan filed by the debtors, Eddie and Caryn Gardner, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, the Modified Chapter 13 Plan (Dkt. 179) meets the requirements of 11 U.S.C. §§ 1322, 1325(a), and 1329, and the plan is confirmed. Counsel for the debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the trustee will submit the proposed order to the court.

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 19 days' notice was provided. Dkt. 34.

The Motion to Dismiss is granted, and the case is dismissed.

The Chapter 13 Trustee filed this Motion To Dismiss arguing that cause for dismissal exists because the debtor has not filed a motion to confirm plan for the plan filed on February 3, 2023.

A review of the docket confirms the proposed Chapter 13 plan was filed, but no hearing is set for confirmation hearing. Dkt. 23.

Failure to confirm a plan constitutes evidence of unreasonable delay by the debtor that is prejudicial to creditors.

Based on the foregoing, cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1). Furthermore, the court finds that dismissal, and not conversion, is in the best interest of creditors and the Estate. The Motion is granted, and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee, Russell Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed, the court having found that dismissal, and not conversion is in the best interest of creditors and the Estate.

6. [20-20775](#)-C-13 EBALINA HERNANDEZ AND CONTINUED MOTION TO USE CASH
[PGM](#)-2 ALAN TRUJILLO DOMINGUEZ COLLATERAL
Peter Macaluso 3-28-23 [[52](#)]

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 28 days' notice was provided. Dkt. 55.

The Motion for Authority to Use Cash Collateral is xxxxxxx

Ebalina Hernandez and Alan Dominguez ("Debtors") move for an order approving the use of cash collateral from insurance proceeds of a 2012 Toyota Tacoma ("Property") that was secured by Golden 1 Credit Union ("Creditor"). Debtors request the use of cash collateral to purchase a new vehicle because two vehicles are need in debtors household.

Creditor, The Golden 1 Credit Union ("Creditor"), opposes the motion because the contract between the parties provides that not only shall Creditor have a lien over the vehicle, but also have a security interest in money received from insurance placed on the vehicle. Therefore, Creditor argues that the money received from insurance should be paid over to Creditor, and there is no adequate substitute to the collateral other than the insurance funds paid.

APPLICABLE LAW

As a debtor in Chapter 13, the debtor, sell, or lease property of the estate pursuant to 11 U.S.C. § 363(b), (d), (f) & (l). In relevant part, 11 U.S.C. § 363 states:

(b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless-

(A) such sale or such lease is consistent with such policy; or

(B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease-

(i) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and

(ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

Federal Rule of Bankruptcy Procedure 4001(b) provides the procedures in which a trustee or a debtor in possession may move the court for authorization to use cash collateral. In relevant part, Federal Rule of Bankruptcy Procedure 4001(b) states:

(b) (2) Hearing

The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 14-day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

DISCUSSION

At the hearing **XXXXXXXX**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Authority to Use Cash Collateral filed by Ebalina Hernandez and Alan Dominguez ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is **XXXXXXXX**

7. [22-22787](#)-C-13 AMRIT LAL
[AVN](#)-2 Anh Nguyen

MOTION TO CONFIRM PLAN
3-26-23 [[57](#)]

Thru #8

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. No certificate of service was filed.

The Motion to Confirm is ~~XXXXXXXXXX~~

The debtor filed this Motion seeking to confirm the Amended Chapter 13 Plan (Dkt. 58) filed on March 26, 2023.

At the hearing ~~XXXXXXXXXX~~

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm filed by the debtor, Amrit Lal, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is ~~XXXXXXXXXX~~

8. [22-22787](#)-C-13 AMRIT LAL
[FWP](#)-3 Anh Nguyen

MOTION TO EXTEND DEADLINE TO
FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR AND/OR
MOTION TO EXTEND DEADLINE TO
FILE A COMPLAINT OBJECTING TO
DISCHARGEABILITY OF A DEBT
4-10-23 [[68](#)]

Final Ruling: No appearance at the May 9, 2023 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 28 days' notice was provided. Dkt. 72.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

**The Motion to Extend Deadline to File a Complaint
Objecting to Discharge is granted.**

EBF Holdings LLC dba Everest Business Funding, a Delaware LLC, ("Movant") moves to extend the deadline, for a second time, to file a complaint objecting to Amrit Lal's ("Debtor") discharge and dischargeability of debt.

The deadline for filing a complaint objecting to discharge is April 14, 2023. Dckt. 40. The Motion requests that the deadline to object to Debtor's discharge be extended through June 13, 2023.

The court may, on motion and after a noticed hearing, extend the time for objecting to the entry of discharge for cause. FED. R. BANKR. P. 4004(b)(1). The court may extend that deadline where the request for the extension of time was filed prior to the expiration of time for objection. *Id.*

The instant Motion was filed on April 10, 2023, before the deadline to object to the discharge of Debtor. The movant and debtor have filed a stipulation agreeing to the extension. Dckt. 68, Ex. 1.

Therefore, the Motion is granted, and the deadline for Movant to object to Debtor's discharge is extended through June 13, 2023.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in
the Civil Minutes for the hearing.

The Motion to Extend Deadline to File a Complaint Objecting to Discharge filed by EBF Holdings LLC dba Everest Business Funding, a Delaware LLC, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the deadline is extended through June 13, 2023.

9. [23-20489](#)-C-13 WANMUENG WADKHIAN
[ALG](#)-1 Matthew DeCaminada

OBJECTION TO CONFIRMATION OF
PLAN BY FLOYD E. CARLTON,
TRUSTEE OF THE CARLSON FAMILY
TRUST, DATED MARCH 27, 2012
4-5-23 [[30](#)]

Thru #10

Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 32 days' notice was provided. Dkt. 34.

The Objection to Confirmation of Plan is sustained.

Creditor, Floyd E. Carlton, Trustee of the Carlson Family Trust dated March 27, 2012 ("Creditor"), opposes confirmation of the Chapter 13 plan on the basis that:

1. Plan fails to provide for the full pay off of Creditor's deed of trust during the plan's 60-month term; and
2. Plan fails to provide all of the Debtor's projected disposable income.

DISCUSSION

The classification of Creditor's claim as Class 1 is an improper modification of a claim secured only by a security interest in real property that is the debtor's principal residence. That is reason to deny confirmation. 11 U.S.C. § 1322(b)(2).

The plan proposes a monthly payment of \$4,100.00, which is less than all of the debtor's disposable income. That is reason to deny confirmation. 11 U.S.C. § 1325(b)(1).

That is reason to deny confirmation. Therefore, the Objection is sustained.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by Floyd E. Carlton, Trustee of the Carlson Family Trust dated March 27, 2012, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is sustained.

10. [23-20489](#)-C-13 WANMUENG WADKHIAN
[RDG](#)-1 Matthew DeCaminada

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
4-11-23 [[35](#)]

Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 28 days' notice was provided. Dkt. 38.

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that:

1. 341 Meeting has not been held;
2. Debtor has failed to provide Trustee with business documents;
3. Plan is not feasible;
4. Plan was not signed by debtor, or debtor's attorney.

DISCUSSION

A review of the docket shows that the 341 meeting was held on April 20, 2023 and the debtor and debtor's attorney appeared. A continued meeting of the creditors has been scheduled for May 4, 2023 at 2:00pm.

The debtor has not filed all business documents including, six months of profit and loss statements, proof of license and insurance or written statement that no such documentation exists. 11 U.S.C. §§ 521(e)(2)(A)(i), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with the Chapter 13 Trustee. 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1) & (a)(6).

Failure to sign a plan may demonstrate that the plan was not filed in good faith. Absent a signed plan, that is cause to deny confirmation.

That is reason to deny confirmation. Therefore, the Objection is sustained.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the

Chapter 13 Trustee, Russell Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is sustained.

Thru #11

Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 29 days' notice was provided. Dkt. 16. **Local Rules require the certificate of service be docketed separately and to use the official certificate of service form. See LBR 7005-1, 9014-1(c) & (d).**

The Objection to Confirmation of Plan is sustained.

Creditor, Trinity Financial Services, LLC ("Creditor"), opposes confirmation of the Chapter 13 plan on the basis that the proposed plan is not feasible.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on April 19, 2023. Dkt. 23. Debtor contends the plan will pay off all of the arrears. Debtor further asserts that she was approved for California Mortgage Relief that paid off debtor's entire mortgage arrears to Select Portfolio Services.

DISCUSSION

The plan at Section 3.02 provides that Creditor's Proof of Claim, *and not the plan*, determines the amount and classification of a claim.

Notwithstanding whether the plan provides for the prepetition arrearage as Creditor argues, the debtor has not carried his burden to show the plan is adequately funded. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

If, as the debtor represents, the arrears have been paid off, then the proof of claim must first be amended, or an objection sustained, before the plan is feasible. The court does note that the arrears to this Creditor are provided in the plan and the claim is properly classified as a Class 1 claim.

That is reason to deny confirmation. Therefore, the Objection is sustained.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by Trinity Financial Services, LLC, having been presented to the court,

and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is sustained.

Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 28 days' notice was provided. Dkt. 20.

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that:

1. Debtor has failed to provide business documents requested by the Trustee;
2. Plan is not feasible;
3. Plan fails the liquidation test.

DEBTOR'S OPPOSITION

The debtor filed an Opposition on April 19, 2023. Dkt. 27. Debtor represents she has provided 6 months of profit and loss statements with her opposition. She also asserts that the car insurance was sent to the Trustee. Debtor further represents her Schedule I has now been filed, she can increase the monthly plan payment and that she was approved for California Mortgage Relief which paid off arrears to Select Portfolio Services. Finally, debtor disagrees there are non-exempt assets that can be liquidated.

DISCUSSION

The plan at Section 3.02 provides that Creditor's Proof of Claim, *and not the plan*, determines the amount and classification of a claim.

Notwithstanding whether the plan provides for the prepetition arrearage as Creditor argues, the debtor has not carried his burden to show the plan is adequately funded. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

If, as the debtor represents, the arrears have been paid off, then the proof of claim must first be amended, or an objection sustained, before the plan is feasible.

The debtor has not filed all business documents including, six months of bank account statements, and proof of license and insurance or written statement that no such documentation exists. If the debtor is correct that the Trustee has received this information then this is no longer an issue. The court notes the exhibit with what appears to be a spreadsheet with financial information on it. See 11 U.S.C.

§§ 521(e)(2)(A)(i), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with the Chapter 13 Trustee. 11 U.S.C. § 521(a)(3). Otherwise, that is cause to deny confirmation. 11 U.S.C. § 1325(a)(1) & (a)(6).

That is reason to deny confirmation. Therefore, the Objection is sustained.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, Russell Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is sustained.

Thru #14

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 46 days' notice was provided. Dkt. 54.

The Motion to Confirm is denied.

The debtor filed this Motion seeking to confirm the Chapter 13 Plan (Dkt. 55) filed on March 27, 2023.

The Chapter 13 Trustee filed an Opposition (Dkt. 59) on April 24, 2023, opposing confirmation on the following grounds:

1. Plan fails the liquidation test;
2. Plan does not provide all of the debtor's disposable income; and
3. Plan is not feasible.

DISCUSSION

The debtor has non-exempt assets totaling \$38,875.25. The plan provides for a 0 percent dividend to unsecured claims, which is less than the 5 percent dividend necessary to meet the liquidation test. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(4).

The plan mathematically requires a payment of \$2,121.18 per month, which is greater than the proposed \$1,253.00 payment for months 1 through 9 and \$1,919.00 thereafter.

The debtor has not demonstrated the plan is feasible because the plan terms require a higher payment than what is proposed. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

Upon review of the record, the court finds the plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Motion is denied, and the plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm filed by the debtor, Lawrence

Fung, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied, and the plan is not confirmed.

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 14 days' notice was provided. Dkt. 45.

The Motion to Dismiss is granted, and the case is dismissed.

The Chapter 13 Trustee filed this Motion To Dismiss arguing that cause for dismissal exists because the debtor has not set a hearing on confirmation of the first amended plan since the court denied confirmation of the Chapter 13 plan on October 25, 2022.

The motion was continued at the prior hearing to allow for the Trustee to review the debtor's newly filed plan and for the confirmation hearing to occur. See above.

The Motion also argues debtor is \$1,946.00 delinquent in plan payments, which is supported by declaration. Dkt. 44.

Failure to maintain plan payments constitute evidence of unreasonable delay by the debtor that is prejudicial to creditors.

Based on the foregoing, cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1). Furthermore, the court finds that dismissal, and not conversion, is in the best interest of creditors and the Estate. The Motion is granted, and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee, Russell Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed, the court having found that dismissal, and not conversion is in the best interest of creditors and the Estate.