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IT IS SO ORDERED.

Dated: May 2, 2025



*Mina Nami Khorrami*  
Mina Nami Khorrami  
United States Bankruptcy Judge

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

In re:

MARK LYNN ANTHONY,  
  
Debtor.

Case No. 2:23-bk-52661

Chapter 13

Judge Mina Nami Khorrami

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**OPINION AND ORDER OVERRULING IN PART AND SUSTAINING IN PART  
OBJECTIONS TO CONFIRMATION OF FIFTH AMENDED CHAPTER 13 PLAN  
(DOC. 211) AND SIXTH AMENDED CHAPTER 13 PLAN (DOC. 259)**

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**I. Introduction**

Before the Court are the *Fifth Amended Chapter 13 Plan* (Doc. 211) (the “Plan”) filed by Debtor Mark Lynn Anthony (the “Debtor”), the *Objections to Confirmation of Fifth Amended Chapter 13 Plan (ECF 211)* (Doc. 235) (the “Stemen Objection”) filed by David Stemen (“Mr.

Stemen”) and Eventuresencore, Inc. (collectively, the “Stemen Creditors”), and the *Objection to Confirmation* (Doc. 258) (the “Trustee Objection”), filed by Chapter 13 Trustee Faye D. English (the “Trustee”).<sup>1</sup>

On February 19, 2025, the Court held an evidentiary hearing (the “Confirmation Hearing”) to consider the Plan together with the Objections. Robert Morje appeared on behalf of the Debtor, James Nobile appeared on behalf of the Stemen Creditors, Molly Hartnell appeared on behalf of the Trustee, and Laura Atack appeared on behalf of the United States Trustee. The Debtor and Mr. Stemen were present, and each testified under oath. The Debtor then filed his *Sixth Amended Chapter 13 Plan* (Doc. 259) (the “Sixth Amended Plan”) on March 3, 2025. Each of these filings will be addressed below.

Following are the Court’s findings of fact and conclusions of law pursuant to Rule 52(a) of the Federal Rules of Civil Procedure (the “Civil Rules”), as made applicable herein by Rules 7052 and 9014(c) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). Based on the testimony of witnesses, the evidence submitted, and the arguments made at the Confirmation Hearing, the Court overrules the Objections in part and sustains the Trustee’s Objection in part.

## **II. Findings of Fact**

The Court first notes that on November 22, 2024, it issued the *Memorandum Opinion And Order Denying Amended Motion To Dismiss Or Convert Chapter 13 Case Filed By David Stemen And Eventuresencore, Inc. (Doc. 19) And Trustee’s Motion To Dismiss Case Prior To*

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<sup>1</sup> Where appropriate, the Stemen Objection and the Trustee Objection will collectively be referred to as the “Objections,” and the Stemen Creditors and the Trustee will collectively be referred to as the “Objecting Parties.” At the outset of the Confirmation Hearing and in response to the Court’s inquiry as to whether the Trustee was going forward with her original objection filed on October 30, 2024 (Doc. 194), the Trustee withdrew her original objection but was given leave to reinstate her objection to confirmation based upon the testimony at the Confirmation Hearing within 7 days. She timely filed the Trustee Objection on February 26, 2025.

*Confirmation (Doc. 90)* (Doc. 200), entered on November 22, 2024, which was published as *In re Anthony*, 664 B.R. 418 (Bankr. S.D. Ohio 2024) (hereinafter the “Dismissal Opinion”).<sup>2</sup> The Dismissal Opinion was issued following a three-day evidentiary hearing held from June 10-12, 2024 (the “Dismissal Hearing”) and post-hearing briefing that was completed in September 2024. Based upon the extensive factual findings set forth therein, the Court concluded that the Debtor had commenced this case in good faith. The findings of fact in the Dismissal Opinion are incorporated by reference herein.<sup>3</sup>

The Debtor filed his petition (the “Petition”) on August 4, 2023 (the “Petition Date”).<sup>4</sup> The facts of this case are complex and involve disputes going back over 15 years. The Debtor is a 63-year-old man who lives in or near Logan, Ohio in Hocking County. He grew up in Lithopolis, Ohio, graduated from Carroll High School in 1980, and attended Hocking College for one year. He has no educational degrees beyond his high school diploma.

The Debtor owns and operates a mobile crane business which is operated by a company called Load Lifters, LLC (hereinafter “Load Lifters”). The Debtor is the sole member of Load Lifters. Since 2015, the Debtor’s primary source of income has been his crane work through Load Lifters, supplemented by occasional work in his individual capacity performing minor construction

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<sup>2</sup> For ease of reference, the Court will hereinafter use the Bankruptcy Reporter citation when citing to the Dismissal Opinion. The Dismissal Opinion resolved the *Amended Motion To Dismiss Or Convert Chapter 13 Case* (Doc. 19), filed by the Stemen Creditors, and the *Trustee’s Motion To Dismiss Case Prior To Confirmation* (Doc. 90), filed by the Trustee. The Court will refer to these motions collectively as the “Dismissal Motions.” Both Dismissal Motions asserted, among other things, that this case was not commenced in good faith and the case should be dismissed or converted to chapter 7.

<sup>3</sup> The evidentiary record for the Confirmation Hearing is limited to the evidence introduced at the Confirmation Hearing. *In re Bigler LP*, 2011 Bankr. LEXIS 2329, at \*31-32 (Bankr. S.D. Tex. June 9, 2011) (“In a contested hearing, each party has a duty to offer into evidence any exhibits it seeks to include as part of the evidentiary record.”). Thus, matters previously filed on the docket or admitted into evidence on a separate contested matter or adversary proceeding are not part of the evidentiary record. *Id.*

<sup>4</sup> This is the Debtor's second chapter 13 case since 2022. On September 22, 2022, he filed his first chapter 13 case in this Court, Case No. 22-52785 (the “2022 Case”), which was dismissed on April 10, 2023. For clarity, the current case will be referred to as the “2023 Case.”

and maintenance work. For additional income, the Debtor purchases, repairs, and resells used vehicles and equipment. Prior to 2015, the Debtor was involved in various business ventures, including the operation of mobile home parks, an RV park, several real estate holdings, and a zipline business. Over time each of those businesses failed, and the Debtor continues to bear the consequences of those failures. Some of the failures have resulted in extensive (and in some cases ongoing) litigation in the Court of Common Pleas of Hocking County, Ohio, and in the United States District Court for the Southern District of Ohio. The Debtor has resorted to this Court to obtain relief from all the state and federal court litigation and to allow him to pay his creditors based on his current income and expenses.

Other than his personal bank account and Load Lifters' business bank account, both maintained at Huntington National Bank, the Debtor does not keep extensive financial records. At the Confirmation Hearing, the Stemen Creditors went through many of the Debtor's business and personal bank account statements from August 2023 to August 2024 to identify certain cash withdrawals reflected in the Debtor's and Load Lifters' bank accounts in locations near or around gambling casinos. Ex. SC-14, and SC-19 through SC-30.

Prior to filing the 2023 Case, the Debtor engaged regularly in gambling, primarily at the Eldorado Casino at Scioto Downs, located at 6000 S. High Street in Columbus, Ohio. The Debtor was advised by his current counsel early in this bankruptcy case that he should avoid gambling. At the Dismissal Hearing, the Debtor asserted that he had gambled once in August of 2023, but had not gambled between September 2023 and April 2024 except in January of 2024. On that occasion, the Debtor had met his mother for dinner at a restaurant located at Scioto Downs and after dinner, they gambled at the Eldorado Casino, which is located in Scioto Downs. Despite this testimony at the Confirmation Hearing, the Stemen Creditors produced a Form W-2G (Ex. SC-49)

that was issued to the Debtor by the Eldorado Casino showing that he had gambled and won a jackpot of \$1,525.50 on November 21, 2023. The Debtor acknowledged that he had gambled that day and stated that he had simply forgotten about that win when he gave his prior testimony. He insisted that it was an honest mistake and that he did not intend to mislead anyone.

The Stemen Creditors also introduced records of cash withdrawals from Huntington Bank’s automated teller machines (“ATM” or “ATMs”) located at 200 Georgesville Road, Columbus, Ohio (the location of the Hollywood Casino), 121 Georgesville Road, Columbus, Ohio (a Huntington National Bank branch across the street from the Hollywood Casino), and 6000 S. High Street, Columbus, Ohio (the location of Scioto Downs and the Eldorado Casino). Ex. SC-14 and Ex. SC-19 through SC-30.<sup>5</sup> Almost all these transactions occurred between August 2023 and April 2024.<sup>6</sup> The following chart provides a summary of the evidence submitted by the Stemen Creditors.

Date	Exhibit	Account	Location	Amount
August 14, 2023	SC-21	Load Lifters	6000 South High Street	\$166.99
August 28, 2023	SC-21	Load Lifters	121 Georgesville Road, Columbus	\$400.00
September 11, 2023	SC-23	Load Lifters	3464 South High Street Columbus	\$300.00
September 25, 2023	SC-14	Debtor	200 Georgesville Road, Columbus	\$186.00
September 25, 2023	SC-23	Load Lifters	121 Georgesville Road, Columbus	\$400.00
September 29, 2023	SC-23	Load Lifters	200 Georgesville Road, Columbus	\$306.00
November 13, 2023	SC-24	Load Lifters	3464 S. High St., Columbus	\$300.00
November 29, 2023	SC-24	Load Lifters	200 Georgesville Road, Columbus	\$306.00
December 18, 2023	SC-22	Load Lifters	3464 S. High St., Columbus	\$360.00
December 26, 2023	SC-19	Debtor	Debit Card transaction at Dash Café at 6000 S. High St., Columbus	\$4.58
December 26, 2023	SC-22	Load Lifters	3464 S. High St., Columbus	\$400.00
January 8, 2024	SC-25	Load Lifters	121 Georgesville Road, Columbus	\$400.00
January 8, 2024	SC-25	Load Lifters	200 Georgesville Road, Columbus	\$306.00

<sup>5</sup> The Stemen Creditors included in this evidence a number of ATM withdrawals at a Huntington Bank branch located at 3464 S. High Street in Columbus. The Debtor disputed that this location was close to Scioto Downs and the Stemen Creditors did not offer any evidence to show otherwise.

<sup>6</sup> There was one ATM withdrawal at 121 Georgesville Road on July 9, 2024, and another on August 19, 2024. Ex. SC-20 and SC-30. But the majority of the ATM withdrawals were between August of 2023 and April of 2024. The Stemen Creditors did not introduce any evidence of ATM activity in the vicinity of a casino after August 2024.

February 6, 2024	SC-26	Load Lifters	6000 S. High St., Columbus	\$206.99
February 12, 2024	SC-26	Load Lifters	6000 S. High St., Columbus	\$306.99
February 20, 2024	SC-26	Load Lifters	6000 S. High St., Columbus	\$366.99
March 6, 2024	SC-28	Load Lifters	Cash withdrawal slip (location unknown)	\$350.00
March 26, 2024	SC-27	Load Lifters	121 Georgesville Rd., Columbus	\$500.00
April 11, 2024	SC-29	Load Lifters	Cash withdrawal slip (location not specified)	\$500.00
July 9, 2024	SC-30	Load Lifters	121 Georgesville Rd., Columbus	\$400.00
August 10, 2024	SC-31	Load Lifters Square Account	6000 S. High St., Columbus	\$1,171.47
August 19, 2024	SC-20	Debtor	121 Georgesville Rd., Columbus	\$400.00

The Debtor’s responses to the use of these cash ATMs withdrawals were that he sometimes eats at the restaurants at the casinos. Or that he is in the vicinity of the Hollywood Casino somewhat regularly because Jack Beatley, for whom the Debtor works on occasion, has an office that is located nearby.<sup>7</sup> The Debtor also indicated that his girlfriend, with whom he shares some expenses, has used the ATM cards from time to time. Except for November 21, 2023, and his birthday dinner in January 2024, he reiterated that he has not gambled during the pendency of the 2023 Case.

The Stemen Creditors also introduced certain records from Caesars Entertainment, Inc., which owns and operates the Eldorado Casino. These records reflect activity on the Debtor’s account<sup>8</sup> on approximately two dozen occasions in 2023 after the Petition Date and approximately

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<sup>7</sup> Mr. Beatley is a longtime business associate of the Debtor who also provides the Debtor with a cabin to live in rent free in exchange for taking care of other cabins and the grounds. *See Anthony*, 664 B.R. at 428, 439.

<sup>8</sup> The Debtor and Mr. Stemen referred to the card both as a “Player’s Card” and a “Casino Card.” For ease of reference, the Court will use the term “Player’s Card” herein. In essence, the Debtor described the card as a means by which the casino attempts to track play and offers rewards and incentives, much in the manner of a retail store’s loyalty rewards program. The card is linked to a player’s account and the player may insert it into a slot machine prior to playing so that the casino may track the player’s gambling activity. According to the Debtor, an identification code is required to access benefits but is not required to track play. Although the Court briefly examined the Player’s Card that Mr. Anthony had with him, it was not offered into evidence and was returned to Mr. Anthony after the Court’s brief review, so the Court does not have a record of the formal name on the card or the name of the loyalty program offered at the Eldorado Casino.

a dozen more in the first three months of 2024, when the activity stops. Ex. SC-33 and SC-34.<sup>9</sup> The Debtor's response to these activities was that he has given his Player's Card to his friends and family over the years and that when he learned his gambling activity had become an issue in this case, he tried to get the casino to cancel the Player's Card tied to his account, but he was not successful. As a result, the Debtor asserted that his account shows gambling activity when he was not even present at the casino. He further specified that there is no verification or security required when a Player's Card is placed into a slot machine to track play. A pin code however is required to access the benefits from the Player's Card, including obtaining "free plays," which the Debtor described as credits offered by the casino as an inducement to its patrons to come in and play. In contrast, Mr. Stemen denoted that he also has a Player's Card at the Eldorado Casino and disputed that one could easily use someone else's Player's Card to play. Mr. Stemen did however specify that it is very easy to obtain a Players Card, and that anyone who is gambling with their own money would want to get their own card rather than give the Debtor the benefits. According to the casino records, there was no activity on the Debtor's Player's Card account after March 10, 2024. Ex. SC-34.

In addition to the gambling issues, the Stemen Creditors also focused on the sale of a Komatsu Bulldozer (the "Bulldozer") and the Debtor's use of the cash from the sale. On or about September 19, 2022, three days before filing the 2022 Case, the Debtor caused Load Lifters to sell the Bulldozer for \$17,000.00. Ex. SC-10. The proceeds of the sale were deposited into Load Lifters' bank account. *Id.* The Debtor then withdrew \$12,000.00 of that money on September 21,

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<sup>9</sup> The Debtor objected to Exhibits SC-33 and SC-34 on hearsay grounds. The Court overruled the objection because the exhibits were accompanied by a certification from an employee of Scioto Downs, Inc., authenticating those exhibits under Rule 902(11) of the Federal Rules of Evidence (the "Evidence Rules") and establishing the business records exception to the rule against hearsay under Evidence Rule 803(6).

2022. Ex. SC-11 and SC-12. This was the day before the 2022 Case was filed on September 22, 2022. Ex. SC-1. The Debtor testified that the primary reason for the sale of the Bulldozer and his immediate withdrawal of the \$12,000.00 in cash was that he needed to replace the motor on Load Lifters' crane. Through an online source, the Debtor had located a used replacement engine owned by a farmer in Indiana and the farmer insisted on being paid in cash for the used engine.<sup>10</sup> The Debtor used the balance of the funds to pay his bankruptcy counsel. The Debtor did not recall the identity of the purchaser of the Bulldozer, nor the farmer who sold him the motor. The Debtor did not have documentation reflecting those transactions. The Debtor disclosed the sale of the Bulldozer in both the 2022 Case and the 2023 Case on Item 18 of the Statement of Financial Affairs ("SOFA"), which asks a debtor to disclose any transfers of property outside the ordinary course of business in the two years preceding the bankruptcy case. *See* Ex. SC-2 at 30 (Schedules and SOFA in 2022 Case), Ex. SC-7 at 29 (Schedules and SOFA in 2023 Case).

The Plan provides that the Debtor is to make 60 monthly payments of \$2,359.37 yielding a dividend of .037% to the unsecured creditors. Ex. A. The Debtor has made all of his Plan payments as of the Confirmation Hearing. Ex. A. The Debtor's schedules of income and expenses were not part of the evidence at the Confirmation Hearing, but most of the Debtor's income comes from operating his business, Load Lifters. The Debtor acknowledged that Load Lifters' profitability depends upon the costs of fuel, maintenance, and repairs for the crane. The Debtor specified that he is able to make his Plan payments based on his current income and

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<sup>10</sup> At their closing arguments, the Stemen Creditors claimed that the Debtor's statement that he used the \$12,000 that he took from the sale of the Bulldozer to repair the crane was newly manufactured and inconsistent with prior testimony from other proceedings. The Stemen Creditors, however, failed to offer any prior testimony by the Debtor into evidence by reading the prior inconsistent statements into the record or offering a transcript of the prior testimony as an exhibit.

expenses, but he asserted that if he has to find a new place to live that required him to pay rent, that will result in an additional expense of potentially \$800.00 to \$1,200.00 per month.

The Debtor affirmed that the Plan, as amended, represents his good-faith effort to devote all his disposable income to pay his creditors and put the various disputes in which he has been involved for the past decade behind him. He also believes that Load Lifters has sufficient prospects of business over the coming years for him to be able to generate the necessary income to fund his Plan payments. He admits that difficulties with weather, fuel costs, or mechanical issues with the crane could present difficulties in generating income, but the Debtor reaffirmed that he could make his Plan payments, as shown by the fact that he has made all his Plan payments to date. The Debtor has made over \$40,600.00 in Plan payments as of the Confirmation Hearing. Ex. A.

### **III. Conclusions of Law**

#### **A. Jurisdiction and Venue**

This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the Amended General Order 05-02 entered by the United States District Court for the Southern District of Ohio, referring all bankruptcy matters to this Court. Proceedings regarding confirmation of a chapter 13 plan are core proceedings under 28 U.S.C. § 157(b)(2)(L) and (O). Venue properly lies in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

#### **B. Standards for Plan Confirmation Under 11 U.S.C. § 1325**

The criteria for chapter 13 plan confirmation are set forth in 11 U.S.C. § 1325. The requirements of § 1325 are mandatory and the Court cannot confirm a plan if it finds that any of the criteria in § 1325(a) are not satisfied. *Shaw v. Aurgroup Fin. Credit Union*, 552 F.3d 447, 455 (6th Cir. 2009). Notwithstanding this principle, “it is generally accepted that a party objecting to

confirmation bears the burden of proof.” *Shortridge v. Ruskin (In re Shortridge)*, 65 F.3d 169, 1995 U.S. App. LEXIS 32890, at \*6 (6th Cir. Aug. 31, 1995) (unpublished table decision).<sup>11</sup>

In *Shortridge*, a creditor and the chapter 13 trustee had appeared at the confirmation hearing and had asserted, without presenting evidence, that the case had numerous problems that made the debtor’s plan unconfirmable. Without ever requiring the objecting parties to present evidence, and without giving the debtor an opportunity to show that the plan was confirmable, the bankruptcy court denied confirmation and dismissed the case. The Sixth Circuit reversed due to the lack of any findings about whether the plan satisfied § 1325(a), but to provide guidance to the proceedings on remand, the court observed that the party objecting to confirmation bears the burden of proof. 1995 U.S. App. LEXIS 32890, at \*6 (citing *In re Mendenhall*, 54 B.R. 44 (Bankr. W.D. Ark. 1985)). “Because the burden lies with the objecting party, vague and unsupported allegations cannot impede confirmation of the plan.” 1995 U.S. App. LEXIS 32890, at \*6.

The Court takes further guidance from *Mendenhall*, since it was cited with approval by the Sixth Circuit in *Shortridge*. *Mendenhall* provides an extensive and well-reasoned analysis of the burden of proof and analyzes how the burden should be allocated based upon analogies to ordinary civil litigation. 54 B.R. at 46. *Mendenhall* noted that, pursuant to that court’s practice, a confirmation hearing would never be held in the absence of an objection.<sup>12</sup> Accordingly,

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<sup>11</sup> Although unpublished opinions of the Sixth Circuit are not binding, the Court notes that lower courts “should not disregard a Sixth Circuit opinion merely because it is unpublished.” *In re Buttermilk Towne Ctr., LLC*, 442 B.R. 558, 567 (B.A.P. 6th Cir. 2010). This is particularly true where there is no other Sixth Circuit caselaw on point. *Id.*; see also *Ken Builders Supply, Inc. v. Mullen (In re Mullen)*, 2012 Bankr. LEXIS 615, at \*11 n.2 (Bankr. S.D. Ohio Feb. 3, 2012) (stating that, although an opinion of the Sixth Circuit was unpublished, “it is persuasive authority that cannot be ignored.”).

<sup>12</sup> Similarly, this Court’s practice is that absent an objection or Court concern, a confirmation hearing would not be held. This is supported by the Bankruptcy Code and Bankruptcy Rules. Although 11 U.S.C. § 1324 states that the court “shall hold a hearing on confirmation of a plan,” 11 U.S.C. § 102(1) only requires notice and the opportunity for a hearing; and the court can act without a hearing if no party in interest requests one. 54 B.R. at 46. Bankruptcy Rule 3015(f), which provides that an objection to confirmation is a contested matter governed by Bankruptcy Rule 9014, supports this view, since it is the objection that initiates the contested matter (and thereby seeks to modify the status quo), not the plan itself.

*Mendenhall* reasoned the objecting party is the one attempting to alter the status quo, because without the objection the plan would be confirmed. Accordingly, it placed the burden of persuasion on the objecting party. 54 B.R. at 46-47 (“the Court finds that if 11 U.S.C. § 1325 places any burden on the debtor, it is the burden of coming forward with evidence to rebut any evidence introduced in support of an objection by a creditor or the Chapter 13 trustee. The burden of producing evidence may then shift from opponent to opponent depending on, among other things, the quality and weight of evidence presented by each party.”) (citation omitted).

The Fourth Circuit recently cited *Shortridge* with approval in *Trantham v. Tate*, 112 F.4th 223, 236 (4th Cir. 2024). The court noted that “the objecting party must contend that the plan provision doesn’t comply with the requirements of confirmation under 11 U.S.C. § 1325(a).” Further, the objecting party bears the initial burden of coming forward with evidence to support the objection. *Id.* The court noted that “the debtor is the principal architect of her plan,” and that other “than the right to object on certain specified bases in the Bankruptcy Code, a Chapter 13 plan is a rather one-sided affair.” *Id.* at 236 (quoting *In re Turner*, 558 B.R. 269, 280 (Bankr. N.D. Ill. 2016)).<sup>13</sup>

In that regard, in determining whether the objecting party has met its burden of coming forward with a prima facie case, ordinary principles governing the presentation of any contested matter to the Court apply. In particular, “it is not sufficient for a party to mention a possible

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<sup>13</sup> To be sure, there are cases from outside the Sixth Circuit that could be read to suggest that an objection under any element of § 1325(a) is sufficient to require the debtor to prove all elements of § 1325(a). *See, e.g., In re Heath*, 649 B.R. 313, 317 (Bankr. N.D. Ill. 2023) (“While the party objecting to confirmation has the initial burden to produce evidence that supports the objection, it is ultimately a debtor’s responsibility to meet each requirement of § 1325(a) by a preponderance of the evidence.”). To the extent that these cases suggest that an objection on one element of § 1325(a) is sufficient to trigger a debtor’s burden to prove all elements of § 1325(a), they are inconsistent with *Shortridge* and therefore the Court declines to follow them. Moreover, in practice, these courts limit their analysis to the grounds raised by the objecting parties. *Heath*, 649 B.R. at 317-319 (limiting analysis to the two grounds raised in trustee’s objection and confirming plan without making findings on any elements that were not the subject of an objection).

argument in the most skeletal way, leaving the court to . . . put flesh on its bones.” *Cockrun v. Berrien Cnty, Mich.*, 101 F.4th 416, 419 (6th Cir. 2024) (quoting *United States v. Sandridge*, 385 F.3d 1032, 1035-36 (6th Cir. 2004)). “We have previously instructed district courts to ‘withhold judgment on issues not fully developed by the briefs or in the record. Issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived.’” *Cockrun*, 101 F.4th at 419 (quoting *Sandridge*, 385 F.3d at 1035). Thus, parties objecting to confirmation must timely object to confirmation and present evidence in support of that objection at the confirmation hearing together with sufficient argument to show how the evidence supports their objection. *See In re Harris*, 304 B.R. 751, 759 (Bankr. E.D. Mich. 2004) (holding that issue raised in objection but not in post-hearing closing brief was abandoned). And the fact that an exhibit is admitted into evidence does not automatically give it probative value. The proponent must use the exhibit in a way that gives it evidentiary weight. *See, e.g., Chop Foo, LLC v. Fara (In re Fara)*, 663 B.R. 696, 710 n.5 (Bankr. N.D. Ill. 2024).

The Stemen Creditors have objected to confirmation based on § 1325(a)(3) (the plan was not proposed in good faith), § 1325(a)(6) (the Debtor will not be able to make the payments called for in the plan – commonly known as the “feasibility” test), and § 1325(a)(7) (the petition was not filed in good faith). They presented evidence and argument on these issues at the Confirmation Hearing.<sup>14</sup> The Trustee also asserts that the Petition and the Plan were not filed in good faith. She also asserts that the \$12,000.00 cash withdrawal from Load Lifters’ bank account by the Debtor on September 21, 2022, and the Debtor’s post-petition gambling winnings must be treated as disposable income and paid into the Plan.

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<sup>14</sup> The Stemen Creditors’ Objection asserted several additional grounds, including §§ 1325(a)(4), 1325(a)(9), and 1325(b), but they focused their evidentiary presentation and argument at the Confirmation Hearing on §§ 1325(a)(3), 1325(a)(6), and 1325(a)(7). Given that they bear the burden of coming forward, the additional grounds, not developed with evidence, testimony, and argument, are deemed abandoned and are not addressed further herein.

**C. The Dismissal Opinion’s Finding that the Petition Was Filed in Good Faith Is The Law of the Case and Establishes that 11 U.S.C. § 1325(a)(7) Is Satisfied**

As part of their Objections, the Objecting Parties assert that the Petition was not filed in good faith. Because § 1325(a)(7) provides that lack of good faith in filing the petition is a basis to deny confirmation, the Court must consider the effect of the Dismissal Opinion, which definitively found that this case had been commenced in good faith. *In re Anthony*, 664 B.R. 418, 437, 449 (Bankr. S.D. Ohio 2024). Although substantially all the evidence and argument the Objecting Parties presented at the Confirmation Hearing was directed at the Debtor’s alleged lack of good faith in filing the Petition, the Stemen Creditors did not explicitly request that the Court reconsider the Dismissal Opinion. In any event, the Court concludes that the Dismissal Opinion decisively resolved the question of the Debtor’s good faith in filing the Petition and that § 1325(a)(7) is satisfied.

The standard for finding cause to convert or dismiss under § 1307(c) due to a lack of good faith in filing the petition is the same as the standard for denying confirmation under § 1325(a)(7) due to a lack of good faith in filing the petition. *In re Tomer*, 2009 WL 2029798, at \*4-5 (W.D. Va. July 14, 2009); *In re Ames*, 2022 WL 2195469, at \*7-9 (Bankr. E.D. Pa. June 17, 2022); *In re Warwick*, 2025 WL 920103, at \*5 (Bankr. E.D. Tenn. Mar. 26, 2025); *In re Pfetzer*, 586 B.R. 421, 424-25 (Bankr. E.D. Ky. 2018).

Although the law of the case doctrine and the general principles governing prior orders allow reconsideration of those orders, “as a rule courts should be loathe to do so in the absence of extraordinary circumstances such as where the initial decision was ‘clearly erroneous and would work a manifest injustice.’” *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 817, 108 S. Ct. 2166, 100 L. Ed. 811 (1988) (quoting *Arizona v. California*, 460 U.S. 605, 618 n.8, 103 S. Ct. 1382, 75 L. Ed. 2d 318 (1983)). When “the ‘same issue’ is presented ‘in the same case’ to the

‘same court,’ the ‘same result’ should follow.” *Ermold v. Davis*, 130 F.4th 553, 559 (6th Cir. 2025) (quoting *Howe v. City of Akron*, 801 F.3d 718, 739 (6th Cir. 2015)). Without the law of the case doctrine, “an adverse judicial decision would become little more than an invitation to take a mulligan, encouraging lawyers and litigants alike to believe that if at first you don't succeed, just try again.” *Ermold*, 130 F.4th at 559 (quoting *Entek GRB, LLC v. Stull Ranches, LLC*, 840 F.3d 1239, 1240 (10th Cir. 2016) (Gorsuch, J.)).

As a result, courts should only revisit interlocutory rulings where there is: (1) an intervening change of controlling law; (2) newly discovered evidence that was not previously available; or (3) a need to correct a clear error or prevent manifest injustice. *Louisville/Jefferson Cnty. Metro Gov't v. Hotels.com, L.P.*, 590 F.3d 381, 389 (6th Cir. 2009); *Howe*, 801 F.3d at 739. Reconsideration of interlocutory orders is looked upon with disfavor. *Libertarian Party of Ohio v. Wilhelm*, 465 F. Supp. 3d 780, 785 (S.D. Ohio 2020). This attitude towards reconsideration is based on the need “to prevent the filing of endless motions for reconsideration and for the judicial interest in finality.” *Wilson v. Ancestry.com LLC*, 2024 WL 3157764, at \*1 (S.D. Ohio June 25, 2024). “[M]ere dissatisfaction with a Court's ruling is an inappropriate and insufficient ground to support a motion for reconsideration. This doctrine reflects the sound policy that litigation should not be subject to instant replays but rather decided and put to rest.” *Wilhelm*, 465 F. Supp. 3d at 785 (quoting *Ohio Midland, Inc. v. Proctor*, 2006 WL 3793311, at \*2 (S.D. Ohio Nov. 28, 2006)).

These principles apply with particular force where the prior decision was the product of full discovery, a fully-developed factual record, and thorough analysis by the court. *United Tort Claimants v. Quorum Health Res., Inc. (In re Otero Cnty. Hosp. Assn., Inc.)*, 584 B.R. 746, 757, 766 (Bankr. D.N.M. 2018). Indeed, even where the applicable standard of review changes, where the relevant facts do not change, courts may apply the law of the case doctrine. *Seals v. Wayne*

*Cnty.*, 2025 U.S. App. LEXIS 4624, at \*9 (6th Cir. Feb. 25, 2025) (upholding trial court’s application of law of the case doctrine to grant partial summary judgment and a motion in limine based upon its earlier denial of a motion to dismiss where discovery had established the allegations of the complaint and the defendant’s arguments had not changed).

Considering these principles, the Court declines to revisit the question of whether the Debtor filed the Petition in good faith. The Court and the parties intended that the question of the Debtor’s good faith in filing this case would be resolved through the Dismissal Motions. A great deal of time and energy was spent on the Dismissal Motions. The parties had the benefit of extensive discovery, as detailed in *Anthony*, 664 B.R. at 444. The Dismissal Hearing covered three days, and the Court issued a lengthy opinion addressing the good faith issue in detail. The Dismissal Opinion is a fully-considered decision following a lengthy discovery period and a full evidentiary hearing on the merits. It was intended to and did undoubtedly resolve the issue of good faith in filing this case.

Further, given that they did not explicitly request reconsideration, the Objecting Parties did not establish that any of the exceptions to the law of the case doctrine exist. Disagreement with a decision of the Court is not grounds to revisit it. To warrant reconsideration, the prior decision must be more than erroneous – it must be clearly erroneous such that it would work a manifest injustice. *Christianson*, 486 U.S. at 816. In other words, a court’s decision is clearly erroneous only when it is “dead wrong.” *United States v. Branham*, 460 F. App’x 538, 543 n.3 (6th Cir. 2012).<sup>15</sup> “[C]lear-error review is highly deferential review.” *Taglieri v. Monasky*, 907 F.3d 404,

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<sup>15</sup> As other cases have more colorfully put it, “to be clearly erroneous ‘a decision must strike us as more than just maybe or probably wrong; it must . . . strike us as wrong with the force of a five-week-old unrefrigerated dead fish.’” *United States v. Federated Dept. Stores, Inc. (In re Federated Dept. Stores, Inc.)*, 171 B.R. 603, 609 (S.D. Ohio 1994) (quoting *United States v. Perry*, 908 F.2d 56, 58 (6th Cir. 1990)).

408 (6th Cir. 2018) (en banc), *aff'd*, 589 U.S. 68, 140 S. Ct. 719, 206 L. Ed. 2d 9 (2020). The Court does not see anything about the Dismissal Opinion that remotely approaches this standard.

For these reasons, the Court declines to revisit its prior conclusion that this case was filed in good faith and therefore determines that § 1325(a)(7) is satisfied.

**D. 11 U.S.C. § 1325(a)(3) – Plan is Proposed in Good Faith**

Section 1325 contains a second good faith requirement for confirmation, namely the Plan must have been filed in good faith “and not by any means forbidden by law.” 11 U.S.C. § 1325(a)(3). The Sixth Circuit in *Alt* recognized that good faith in filing a plan is different from good faith in filing the petition, although it also acknowledged that there is significant overlap between those inquiries. *Alt v. United States (In re Alt)*, 305 F.3d 413, 420 (6th Cir. 2002). Even though the inquiry under § 1325(a)(3) also applies a “totality of the circumstances” analysis, it is a more focused analysis with a slightly different purpose. *In re Hoskins*, 590 B.R. 843, 846 (Bankr. S.D. Ind. 2018). Section 1325(a)(3) asks the Court to determine whether there is “a sincerely-intended repayment of pre-petition debt consistent with the debtor’s available resources.” *Soc. Nat’l Bank v. Barrett (In re Barrett)*, 964 F.2d 588, 592 (6th Cir. 1992) (quoting *In re Okoreeh-Baah*, 836 F.2d 1030, 1033 (6th Cir. 1988)). In contrast, under *Alt*, when considering the debtor’s good faith in filing the petition, the “key inquiry . . . is whether the debtor is seeking to abuse the bankruptcy process.” 305 F.3d at 419. In other words, the “focus of § 1325(a)(3) should be on the facts and behavior relevant to the plan, more so than the prepetition facts and behavior relevant to the filing of the petition.” *Hoskins*, 590 B.R. at 846.

The Sixth Circuit has stated that § 1325(a)(3) requires the Court to examine the totality of the circumstances, and that

no list is exhaustive of all the conceivable factors which could be relevant when analyzing a particular debtor's good faith. It would be impossible to provide such a

list and we have not attempted to do so. We also stress that no one factor should be viewed as being a dispositive indication of the debtor's good faith.

*In re Caldwell*, 851 F.2d 852, 859-60 (6th Cir. 1988).<sup>16</sup>

The Stemen Creditors did not discuss these factors or tie their arguments to them, other than to renew their arguments regarding the Debtor's honesty and sincerity (the motivation and sincerity of the debtor in seeking Chapter 13 relief). They argued that the Debtor had perjured himself at the Dismissal Hearing, and that this provided grounds for the Court to find bad faith. They also argued that the Debtor continues to gamble, and that his inability to account for how he spent \$12,000 of the proceeds of the sale of the Bulldozer on the eve of the 2022 Case demonstrated bad faith. The Court will address each contention in turn.

Before addressing those contentions, the Court notes that the Objecting Parties' focus almost exclusively on the Debtor's sincerity does not deprive the Court of authority to consider the other *Caldwell* factors of relevance here. The mere fact that the Objecting Parties limited their focus does not alter this Court's obligation to analyze the totality of the circumstances, particularly given *Caldwell's* mandate that no one factor is dispositive. 851 F.2d at 860. A brief review of those other factors indicates that they largely favor the Debtor. He is proposing to pay \$2,359.37

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<sup>16</sup> Although *Caldwell* stated that it was not providing a list of factors, it in fact did set forth a list of "some of the factors that a court may find meaningful in making its determination of good faith." 851 F.2d at 859 (quoting *In re Estus*, 695 F.2d 311, 317 (8th Cir. 1982)). The factors are:

- (1) the amount of the proposed payments and the amount of the debtor's surplus;
- (2) the debtor's employment history, ability to earn, and likelihood of future increases in income;
- (3) the probable or expected duration of the plan;
- (4) the accuracy of the plan's statements of the debts, expenses, and percentage repayment of unsecured debt and whether any inaccuracies are an attempt to mislead the court;
- (5) the extent of preferential treatment between classes of creditors;
- (6) the extent to which secured claims are modified;
- (7) the type of debt sought to be discharged and whether any such debt is nondischargeable in Chapter 7;
- (8) the existence of special circumstances such as inordinate medical expenses;
- (9) the frequency with which the debtor has sought relief under the Bankruptcy Reform Act;
- (10) the motivation and sincerity of the debtor in seeking Chapter 13 relief; and
- (11) the burden which the plan's administration would place upon the trustee.

851 F.2d at 859 (quoting *Estus*, 695 F.2d at 317).

per month for 60 months for a total of \$141,562.20, a substantial sum by any measure. The Debtor testified without contradiction that this amount represents his best effort. The Debtor is proposing the maximum length for a plan permitted by 11 U.S.C. § 1322(d). There is no evidence of preferential treatment of creditors. Secured claims are not being modified, nor is there evidence that any of the claims against the Debtor would be nondischargeable under chapter 7. The Court must consider the totality of the circumstances in order to determine whether the Plan represents a “sincerely-intended repayment of debt consistent with the debtor’s available resources.” *Barrett*, 964 F.2d at 592 (quoting *Okoreeh-Baah*, 836 F.2d at 1033). The Objecting Parties have given themselves something of an uphill battle by limiting the focus of their presentation.<sup>17</sup>

**1. The Debtor’s Prior Testimony Does Not Demonstrate Perjury or an Attempt to Mislead the Court**

At the Dismissal Hearing, the Debtor testified that he had not gambled from September 2023 through April 2024. *Anthony*, 664 B.R. at 447. He acknowledged two exceptions, one at the outset of the case in August 2023, and another when he met his mother for his birthday in January 2024. *Id.*, n.31. At the Confirmation Hearing, after being shown Ex. SC-49 (a Form W-2G issued to him showing gambling winnings of \$1,525.50 on November 21, 2023), the Debtor conceded that this prior testimony was inaccurate and that he had indeed gambled on November 21, 2023. He further stated that in his prior testimony, he had simply forgotten that he had gambled in November and was not trying to mislead the Court or anyone else. The Stemen Creditors characterize this testimony as perjury and asserted that this alone is sufficient to deny confirmation of the Plan.

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<sup>17</sup> This is particularly so given the prior finding that this case was filed in good faith and the Sixth Circuit’s recognition of the substantial overlap between the inquiry regarding good faith in filing the Petition and the inquiry regarding good faith in filing the Plan. *Alt*, 305 F.3d at 420 (“There will often be substantial overlap between the two inquiries.” (quoting *In re Love*, 957 F.2d 1350, 1360 (7th Cir. 1992))).

Clearly, a witness committing perjury before the Court would be extremely serious. Perjury is a crime, both generally and specifically in the bankruptcy context. *See* 18 U.S.C. §§ 152(2), 1621(1). And perjury by a chapter 13 debtor would also violate the debtor's fundamental obligation to be "honest, forthcoming, truthful, and frank." *Alt*, 305 F.3d at 421. However, inaccurate testimony does not automatically equate to perjury.

Perjury occurs where a witness "gives false testimony concerning a material matter with the willful intent to provide false testimony, rather than as a result of confusion, mistake, or faulty memory." *United States v. Dunnigan*, 507 U.S. 87, 94, 113 S. Ct. 1111, 122 L. Ed. 2d 445 (1993); *see also Spaeth v. United States*, 218 F.2d 361, 363 (6th Cir. 1955) (approving jury instruction that defined "willfully" as used in 18 U.S.C. § 1621 to mean "knowingly and intentionally, done with corrupt design or purpose"). Likewise, a "false oath" under 18 U.S.C. § 152(2) is found where sworn evidence is given "knowingly and fraudulently" in bankruptcy proceedings. *Interstate Fin. Corp. v. Scrogam*, 265 F.2d 889, 891 (6th Cir. 1959); *United States v. James*, 2010 WL 4513799, at \*2 (S.D. Ohio Nov. 2, 2010).

It follows those inconsistencies in testimony or mere impeachment, or even rejection of testimony for lack of reliability, do not equate to proof of perjury. *In re Berger Indus., Inc.*, 298 B.R. 37, 43-44 (Bankr. E.D.N.Y. 2003). A finding of perjury thus requires conclusions of willfulness and materiality that cannot be assumed but must be based upon the evidence. *In re Rosenblum*, 2020 WL 5888007, at \*6-7 (Bankr. E.D. Pa. Oct. 1, 2020) ("No evidence has been produced regarding the Debtor's intentions when making such statements. Thus, in the absence of evidence demonstrating the materiality of statements and the Debtor's state of mind, there can be

no finding of perjury.”).<sup>18</sup> The circumstances here do not lead to the conclusion that the Debtor was attempting to mislead the Court.

The Dismissal Opinion recites the Debtor’s dire financial situation and makes clear that he has an urgent need for bankruptcy relief. 664 B.R. at 434. It is not clear why the Debtor here would jeopardize his situation by intentionally lying, particularly when the evidence demonstrated his commitment to obtain the relief that bankruptcy provides by faithfully making all his Plan payments. It makes it hard to believe that the Debtor withheld his gambling winning in November of 2023 with intent to mislead the Court. The Debtor had already admitted that he had gambled on two different occasions, in August 2023 at the outset of the 2023 Case and in January 2024. Whether the Debtor would have gambled another time would not have significantly changed the picture. The gambling in November by itself is not determinative of the Debtor’s intent to mislead the Court.

Further, given the Court’s rulings in the Dismissal Opinion, the materiality of his testimony on that point is questionable. Gambling is legal in the state of Ohio, at least in the licensed casinos where the Debtor is alleged to have been gambling. It may often be unwise to gamble, particularly for someone in financial difficulties, but it does not demonstrate bad faith. 664 B.R. at 447. As the Court stated in the Dismissal Opinion, the primary relevance of gambling in a chapter 13 case is the risk that it will deplete the Debtor’s income that is needed to make plan payments. 664 B.R. at 447 n.30. As set forth in *In re Ford*, 345 B.R. 713, 720 (Bankr. D. Colo. 2006), it is far more important to the Court *that* the Debtor is no longer gambling and is current on his payments than

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<sup>18</sup> Ultimately, as the Bankruptcy Appellate Panel in *Condon v. Smith (In re Condon)*, 358 B.R. 317, 329 (B.A.P. 6th Cir. 2007), stated in the context of a debtor’s incorrect statements on his schedules, the question is whether there was an attempt to mislead the Court.

precisely *when* he stopped gambling. As noted in the following section, there was no evidence or argument offered to show that the Debtor is currently gambling.

## 2. Alleged Evidence of Ongoing Gambling

The Stemen Creditors also point to various ATM transactions in 2023 and early 2024 where certain cash withdrawals were made from either the Debtor's or Load Lifters' accounts at Huntington National Bank using ATMs located either within or near the Hollywood Casino or the Eldorado Casino. The Stemen Creditors invite the Court to conclude from this evidence that the Debtor has not and will not stop gambling. The Court notes that the Stemen Creditors introduced this same kind of evidence at the Dismissal Hearing and asked the Court to infer that these withdrawals must mean that the Debtor was spending that money on gambling. The Court declined to draw that inference. *Anthony*, 664 B.R. at 447. It declines to do so here. The Court also finds it significant that almost all the evidence regarding gambling introduced at the Confirmation Hearing relates to the end of 2023 and the first few months of 2024. The same is true of the gambling records admitted as Ex. SC-33 and SC-34.<sup>19</sup>

Exhibits SC-33 and SC-34 are records that purport to relate to the Debtor's gambling activity from 2018 to 2023 (Ex. SC-33) and 2024 (Ex. SC-34). It is not clear precisely who produced or maintained them. Exhibit SC-33 includes a cover letter indicating that it was produced by Caesars Entertainment on February 5, 2024. Exhibit SC-34 includes email signatures indicating that it was produced by Chris Carlson, who is identified as the "Finance Director" of Eldorado Scioto Downs on February 18, 2025. He also signed the certification offered to establish the

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<sup>19</sup> In addition, although those exhibits were admitted over the Debtor's hearsay objection given that the Stemen Creditors had obtained a certification establishing their authenticity under Evidence Rule 902(11) and the business records exception under Evidence Rule 803(6), they are somewhat opaque in terms of what they mean. The headings on these exhibits are not entirely clear and their meaning is not readily apparent. The fact that an exhibit is admitted into evidence does not automatically give it probative value. The proponent must use the exhibit in a way that gives it evidentiary weight. *See, e.g., Chop Foo, LLC v. Fara (In re Fara)*, 663 B.R. 696, 710 n.5 (Bankr. N.D. Ill. 2024).

foundation for the business records exception under FRE 803(6) and self-authentication under FRE 902(11) as the “Records Custodian” of “Scioto Downs, Inc.” The certification does not specify the documents to which it relates, and it is entirely conclusory in terms of establishing the requirements of Evidence Rules 803(6) and 902(11). It also does not explain the relationship between Caesars Entertainment, Eldorado Scioto Downs, and Scioto Downs, Inc.

Moreover, the unit of measure for the records in Exhibits SC-33 and SC-34 does not state whether it is dollars or cents or something else, and many of the headings (“i\_dmid,” “f\_coinin\_slot,” and “f\_act\_all”) lack clarity as to what they mean. Both exhibits further contain commentary on the records produced, apparently in an effort to explain them to the Stemen Creditors. The Debtor objected to the admission of these exhibits as hearsay in the absence of an employee of Scioto Downs who could interpret them. He did not specifically raise any issues with the certification itself, and the Court found that the certification sufficed to establish the business records exception.

As the Court noted above, the mere admission of an exhibit does not give it any particular evidentiary weight or value – that depends upon how it is used by its proponent. *Chop Foo*, 663 B.R. at 710 n.5. Further, even where evidence has been admitted, the Court retains discretion to discount or even disregard it if upon reflection it is entitled to little or no weight. *Lee v. Galloway*, 2023 U.S. Dist. LEXIS 31887, at \*41-42 (N.D. Ill. Feb. 27, 2023), *aff’d*, 106 F.4th 668 (7th Cir. 2024); *AmeriCash Loans, LLC v. Marquardt (In re Marquardt)*, 561 B.R. 715, 724 n.3 (Bankr. C.D. Ill. 2016).

Given the importance placed upon the gambling evidence by the Stemen Creditors, it would have been helpful to have an employee of the casino testify at the Confirmation Hearing. The most that can be said about Exhibits SC-33 and SC-34 is that they suggest that either the

Debtor or someone using the Debtor's Player's Card gambled on a number of occasions after the 2023 Case was filed in late 2023 and early 2024, stopping on March 10, 2024. But these exhibits do not definitively resolve whether the Debtor was gambling, and if he was, whether he was playing with his own money or using promotional credits offered to him by the casino.

As the Court indicated in the Dismissal Opinion, gambling can be an issue when it results in a debtor being unable to make plan payments because the debtor has instead diverted those funds to gambling. *Id.* at 447 n.30. Here, however, the Debtor is current on his Plan payments, and there is no evidence of gambling at all after August 19, 2024. The evidence of gambling after March 10, 2024, is limited to a few ATM withdrawals in, at, or in the vicinity of a casino. Ultimately, the most significant fact related to the Debtor's gambling is that it has not prevented the Debtor from making his Plan payments.

If a plan is ultimately confirmed in this case, the Debtor should refrain from any further gambling, and he will be under the obligation to bring any future gambling winnings to the attention of the Trustee. Section 8.1 of the form plan in this Court requires the Debtor to provide the Trustee with a copy of his federal tax return by April 30 of each year. Further, Section 6 of this Court's standard confirmation order requires a debtor to advise the trustee of any "receipt of money or property regarding . . . lottery winning . . . or any other funds to which the Debtor(s) may be entitled or becomes entitled to receive." The Trustee is also entitled to request an annual statement of the Debtor's income and its sources. 11 U.S.C. § 521(f)(4). The Court will take a dim view indeed of any future nondisclosures of gambling winnings. Also, in the event that any future gambling activity were to cause the Debtor to fall behind on his Plan payments, the Court would not be inclined to accept that as a basis for permitting a plan modification.

### 3. Debtor's Use of \$12,000.00 From the Bulldozer Sale in September 2022

The Stemen Creditors also raised an issue about the sale of the Bulldozer owned by Load Lifters and the use of the proceeds of that sale. The Bulldozer was sold on September 19, 2022, for \$17,000 and those funds were immediately deposited into Load Lifters' bank account. On September 21, 2022, the day before he filed the 2022 Case, the Debtor withdrew \$12,000 from Load Lifters' bank account. At the Confirmation Hearing, the Debtor testified that he used \$11,000.00 of that money to buy a used motor for his crane from a farmer in Indiana, and the rest of the money to pay the lawyer who represented him in the 2022 Case. Although the Bulldozer was owned by Load Lifters and not the Debtor individually, the Debtor nonetheless reported the sale on Item 18 of the SOFA filed in both the 2022 Case and the 2023 Case.<sup>20</sup> Ex. SC-2 at 30; Ex. SC-7 at 29.

The Stemen Creditors asserted, in their closing argument, that the Debtor has not been consistent in his sworn testimony about how he spent the \$12,000.00 of the proceeds that he withdrew on September 21, 2022. They suggested that the Debtor's explanation of the use of the \$12,000 toward the crane repair at the Confirmation Hearing was in some manner inconsistent with prior testimony given by the Debtor. The Stemen Creditors did not however offer any evidence regarding any of the details about the Debtor's prior testimony, such as what the prior testimony was, or the proceeding in which it was given.<sup>21</sup> "The unsworn, self-serving statements

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<sup>20</sup> Item 18 requires a debtor to disclose all sales or other transfers of assets outside the ordinary course of business that occurred in the two years before the petition was filed.

<sup>21</sup> Although the transcripts of the Debtor's Rule 2004 Examination and excerpts of the Debtor's testimony from the Dismissal Hearing were filed on the docket prior to the Confirmation Hearing, none of those transcripts were admitted into evidence at the Confirmation Hearing either as an exhibit or by having portions read into the record. A handful of pages of the April 23, 2024, transcript were used for purposes of impeachment but that is not the same as admitting the transcript for use as substantive evidence. *Lang v. Lang (In re Lang)*, 293 B.R. 501, 511-12 (B.A.P. 10th Cir. 2003) (noting that use of a transcript for impeachment purposes does not cause it to be part of the record as substantive proof, and indicating that to be used as substantive proof, a transcript must either be offered as an exhibit or read into the record). It is error for a trial court to consider deposition transcripts that were filed on the docket but not admitted into evidence at trial. *Sec'y of Labor v. DeSisto*, 929 F.2d 789, 796 (1st Cir. 1991).

of counsel are not evidence.” *Tapco Prod. Co. v. Van Mark Prod. Corp.*, 446 F.2d 420, 429 (6th Cir. 1971); *In re Harrison*, 177 B.R. 564, 568 (Bankr. S.D. Ohio 1994).

In addition, the Stemen Creditors did not demonstrate the relevance of these events. The transaction related to the sale of the Bulldozer predated the 2022 Case and certainly the 2023 Case. While the Court has ruled that evidence from the 2022 Case was relevant for admissibility purposes (*see Anthony*, 664 B.R. at 434), it also ruled that, upon consideration, issues related to the 2022 Case had minimal probative value. *Id.* The 2022 Case was dismissed, and 11 U.S.C. § 349 makes clear that dismissal makes it as though the case had never been filed. *In re Eli Farms*, 312 B.R. 606, 622 (E.D. Mich. 2004) (quoting *France v. Lewis & Coulter, Inc. (In re Lewis & Coulter, Inc.)*, 159 B.R. 188, 189 (Bankr. W.D. Pa. 1993)). As the Court has previously noted, it is not unusual for a chapter 13 case to be dismissed and for debtor to try again with new counsel and a new understanding of the chapter 13 process. *Anthony*, 664 B.R. at 434 (citing *In re White*, 273 B.R. 279, 283 (Bankr. M.D. Fla. 2001)).

The Court reiterates that good faith under § 1325(a)(7) is measured by a totality of the circumstances test, and no one factor is dispositive. *Caldwell*, 851 F.2d at 860. Where the Debtor has proposed to pay over \$140,000 to his creditors over the life of the Plan, and where the evidence demonstrates without dispute that the Debtor is devoting all of his disposable income to the Plan and has already made 20 monthly payments of \$2,400, the totality of the circumstances indicates that the Debtor has proposed the Plan as a “sincerely-intended repayment of prepetition debt consistent with the debtor’s available resources.” *Okoreeh-Baah*, 836 F.2d at 1033.

For all these reasons, the Court overrules the Objections on the basis that the Plan was not filed in good faith.

**E. Feasibility - § 1325(a)(6)**

As a condition of confirmation, the Court must find that the Debtor will be able to make payments under the Plan. 11 U.S.C. § 1325(a)(6). The Court must determine whether the Plan has a reasonable chance of success, but a guarantee of success is not required. *In re Bassett*, 413 B.R. 778, 788 (Bankr. D. Mont. 2009). The Stemen Creditors attempted to raise doubts about the sufficiency of the Debtor's income and his ability to earn sufficient income based on events that would jeopardize the Debtor's ability to earn income. However, the Stemen Creditors did not introduce any evidence regarding the Debtor's current income or expenses. They did not introduce the Debtor's most-recently-filed Schedules I and J into evidence or raise any questions about his income or specific business or personal expenses.

Ultimately, given the length of time this case has been pending, the best evidence of feasibility comes from the fact that the Debtor has made all his payments under the Plan since the Petition was filed. Exhibit B. *In re Govan*, 139 B.R. 1017, 1021 (Bankr. N.D. Ala. 1992) ("The debtor, however, has made all payments to the trustee and to the holder of the first mortgage since this petition was filed. As such, the debtor has demonstrated that she is willing and able to make the effort to achieve full compliance with her proposed plan.").

Accordingly, the Court finds that § 1325(a)(6) has been satisfied.

**F. Trustee's Objection**

As noted above, the Trustee was given leave to refile the Trustee's Objection within seven days after the Confirmation Hearing if she believed that there were grounds to do so based upon the evidence at the Confirmation Hearing. She timely renewed her objection on the bases that the case and the Plan had not been filed in good faith. The Trustee did not however provide any specific reasoning for her objection regarding the lack of good faith in filing the case or the Plan.

The Trustee's Objection based on lack of good faith under § 1325(a)(3) and (a)(7) is overruled for the reasons laid out above.<sup>22</sup>

The Trustee's Objection also asserted that the disposable income test of § 1325(b) was not satisfied. Section 1325(b) requires a debtor who is not paying unsecured claims in full to devote all projected disposable income to be earned during the applicable commitment period to the plan. She asserted that the Debtor's withdrawal of \$12,000.00 in September 2022 from the bank account of Load Lifters must be included in the Debtor's disposable income but did not expand on this argument. Section 1325(b)(1)(B) makes clear that the disposable income that must be paid into the plan is the debtor's "projected disposable income" that is received in the "applicable commitment period beginning on the date that the first payment is due under the plan." *See In re Garza*, 575 B.R. 736, 750 (Bankr. S.D. Tex. 2017) (noting that "'projected disposable income' is a post-petition concept."). No party has articulated any basis upon which "projected disposable income" would include money received by the Debtor over ten months before the 2023 Case was filed.<sup>23</sup> Accordingly, the Trustee's Objection based on account of the \$12,000.00 received from Load Lifters in 2022 is overruled.

The Trustee's Objection also includes the Debtor's failure to disclose and include his gambling winnings in his disposable income. Trustee's Obj. 2, ECF No. 258. The Court sustains the Trustee's Objection that the Plan does not account for the Debtor's gambling winnings. The

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<sup>22</sup> The Trustee initially withdrew her objection at the Confirmation Hearing but requested leave to renew it if, upon reflection, she concluded that the evidence introduced at the Confirmation Hearing so warranted. Accordingly, the Court will evaluate the Trustee's Objection based upon the record made at the Confirmation Hearing.

<sup>23</sup> This is particularly true since nobody came forward with any evidence to show that the \$12,000.00 was not used as the Debtor testified that it was. Withdrawals from Load Lifters' account by the Debtor for the Debtor's own use would be viewed as distributions and therefore income. But when the Debtor withdrew \$12,000.00 from Load Lifters and immediately spent almost all of it to rehabilitate a Load Lifters' asset, that should not be viewed as a distribution to the Debtor.

\$1,525.50 jackpot from November 2023 was earned within the time frame set forth in § 1325(b)(1)(B) and it is not accounted for in the Plan. Therefore, the Plan cannot be confirmed.

Furthermore, as noted at the outset of this decision, on March 3, 2025, the Debtor filed the Sixth Amended Plan. This modification increases the proposed dividend to .57% but the basis for this change is not explained. The monthly payment of \$2,359.37 and the length of 60 months remain unchanged. Since this amendment does not appear to cure the failure to include the \$1,525.50 gambling winnings the Court must sustain the Trustee's Objection on this issue.<sup>24</sup>

#### **IV. Conclusion**

For the foregoing reasons, the Court overrules the Stemen Creditors' Objection to confirmation, and it overrules in part the Trustee's Objection to confirmation. The Court sustains in part the Trustee's Objection to the extent that the Debtor did not include the gambling winnings of \$1,525.50, which constitute disposable income and must be contributed to the plan.<sup>25</sup> On that limited issue, the Court sustains the Trustee's objection and therefore denies confirmation of the Plan and the Sixth Amended Plan. The Court grants the Debtor leave to file an amended plan and any amended schedules that may be required, within fourteen (14) days of the entry of this Opinion and Order.

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<sup>24</sup> Because the Form Plan used in the Southern District of Ohio provides that the filing of an amended plan supersedes any previously filed plan, the Court considered whether the filing of the Sixth Amended Plan would require a new Confirmation Hearing. However, given that the modification made in the amended plan was favorable to creditors, the Court determined that the best way to move this case forward is to resolve the issues that were presented at the Confirmation Hearing. The Court is denying confirmation here with leave to file an amended plan, but it intends for this Opinion and Order to resolve all the issues raised at the Confirmation Hearing, such that the hearing on confirmation of any amended plan will be limited to the amendments proposed. More specifically, if the Debtor files an amended plan to account for the gambling earnings in the amount of \$1,525.50 and no other modifications are proposed, this Court may decline to consider any further objections to confirmation based on good faith on the basis that the modification is providing more favorable treatment for creditors.

<sup>25</sup> For the sake of clarity, all issues related to good faith under § 1325(a)(3) and § 1325(a)(7) are fully and finally resolved herein.

Wherefore, for the foregoing reasons, IT IS ORDERED as follows:

1. The Objections are overruled except as expressly stated herein;
2. Confirmation of the Plan is denied as stated herein; and
3. The Debtor is given leave to file an amended chapter 13 plan and such amended schedules as he deems necessary to comply with the requirements of this Opinion and Order, within **14 days after the entry of this Opinion and Order.**

**IT IS SO ORDERED.**

Copies to: Default List  
James E. Nobile (via ECF)  
Laura Atack (via ECF)