IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

IN RE:	)	
	)	
VELETA A. WILLIAMS,	)	Case No. 18-02916
	)	
Debtor.	)	

ORDER DENYING CONFIRMATION, CANCELLING CONFIRMATION HEARING, SETTING DEADLINES FOR AMENDED DISCLOSURE STATEMENT AND PLAN, AND SCHEDULING STATUS CONFERENCE

This case came before the court on September 17, 2019 for a hearing on the amended chapter 11 plan (doc. 138) filed by the debtor Veleta A. Williams. For the reasons discussed below, the court denies confirmation and orders the debtor to file an amended disclosure statement and plan by November 1, 2019.

At the September 17 confirmation hearing, the court raised the issue that no impaired class had voted to accept the plan, a requirement of confirmation under 11 U.S.C. § 1129(a)(10). Generally, a class of claims will be found to have accepted a plan if creditors who hold "at least two-thirds in amount and more than one-half in number of the allowed claims of such class" have voted affirmatively for the plan. *See* 11 U.S.C. § 1126(c). Here, the debtor did not receive any voting ballots at all.

The court is aware that its predecessor confirmed chapter 11 plans where no ballots were received, although without writing an opinion. However, having reviewed the law on this issue, the court adopts the majority view that not voting (*i.e.*, not returning a ballot) is not deemed acceptance. *See In re Vita Corp.*, 358 B.R. 749, 750 (Bankr. C.D. Ill. 2007) (collecting cases); *see also In re Sabbun*, 556 B.R. 383, 388 (Bankr. C.D. Ill. 2016) ("Only actual votes count; the failure to return a ballot is not deemed to be acceptance."); *In re Townco Realty, Inc.*, 81 B.R. 707, 708 (Bankr. S.D. Fla. 1987) ("The debtor assumes . . . that the failure to vote constitutes

acceptance of the plan. That is not the case."). "The plain meaning of [§ 1126(c)] requires each creditor to affirmatively accept the plan in order to be counted toward acceptance." *See In re Vita Corp.*, 358 B.R. at 750; *see also In re Higgins Slack Co.*, 178 B.R. 853, 856 (Bankr. N.D. Ala. 1995) (§ 1126(c) "requires a plan to be actively accepted"). "If Congress had intended otherwise, instead of basing a class's acceptance on whether 'such plan had been accepted by creditors' of a certain number and amount, it would have used the phrase 'if such plan has not been rejected by creditors.'" *In re Vita Corp.*, 358 B.R. at 751.

The court thus denies confirmation of the debtor's amended chapter 11 plan (doc. 138) because the requirement of § 1129(a)(10) has not been met.[1] The debtor shall file an amended disclosure statement and plan by October 4, 2019. The court will then set the disclosure statement for a hearing and, if approved, a new balloting deadline and confirmation date. This case is set for a status conference on October 8, 2019 at 8:30 a.m., 201 St. Louis Street, Mobile, AL 36602. The continued confirmation hearing scheduled for October 8, 2019 is cancelled.

Dated: September 19, 2019

Henry A. Callaway

HENRY A. CALLAWAY
CHIEF U.S. BANKRUPTCY JUDGE

[1] An after-the-fact ballot by a creditor would not resolve the issue. *See, e.g., In re Townco Realty*, 81 B.R. at 709.