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FILED

FEB 29 2016

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIAUNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re:) Case No. 15-27642-B-7
ANGELA DENISE FERREIRA,)
Debtor(s).)
-----)

MEMORANDUM DECISION ON MOTION OF THE UNITED STATES
TRUSTEE TO DISMISS CASE PURSUANT TO 11 U.S.C. §§ 707(b)(1)
AND 707(b)(3)(B)

Introduction

Presently before the court is a motion by the United States trustee to dismiss this chapter 7 case pursuant to 11 U.S.C. §§ 707(b)(1)¹ and 707(b)(3)(B).² Debtor Angela Denise Ferreira has

¹Section 707(b)(1) states, in relevant part:
After notice and a hearing, the court, on its own motion or on a motion by the United States trustee, trustee (or bankruptcy administrator, if any), or any party in interest, may dismiss a case filed by an individual debtor under this chapter whose debts are primarily consumer debts, or, with the debtor's consent, convert such a case to a case under chapter 11 or 13 of this title, if it finds that the granting of relief would be an abuse of the provisions of this chapter.

²Section 707(b)(3)(B) states, in relevant part:
(3) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter in a case in which the presumption in paragraph (2)(A)(i) does not arise or is rebutted, the court shall consider-

[. . .]
(B) the totality of the circumstances (including whether the debtor seeks to reject a personal services

1 opposed the motion. The United States trustee replied to the
2 debtor's opposition.

3 The court has reviewed the motion, opposition, reply, and
4 all related declarations and exhibits. Pursuant to Federal Rule
5 of Evidence 201, the court takes judicial notice of the docket in
6 the above-captioned chapter 7 case and the docket in the debtor's
7 prior chapter 13 case filed in this court as case no 15-24131 on
8 May 21, 2015, and dismissed on September 27, 2015. The court
9 also treats the debtor's letter dated January 4, 2016, Exhibit 3
10 to the United States trustee's motion, as an admission by the
11 debtor under Federal Rule of Evidence 801(d)(2).

12 A hearing on the motion was held on February 23, 2016.
13 Appearances were noted on the record. The court heard and
14 considered the statements and arguments of counsel made during
15 the hearing. This memorandum decision constitutes the court's
16 findings of fact and conclusions of law pursuant to Federal Rule
17 of Civil Procedure 52(a) made applicable by Federal Rules of
18 Bankruptcy Procedure 7052 and 9014. For the reasons explained
19 below, the United States trustee's motion will be GRANTED.

21

22 **Jurisdiction and Venue**

23 Federal subject-matter jurisdiction is founded on 28 U.S.C.
24 § 1334. This matter is a core proceeding that a bankruptcy judge

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26 contract and the financial need for such rejection as
27 sought by the debtor) of the debtor's financial
situation demonstrates abuse.

1 may hear and determine. 28 U.S.C. §§ 157(b)(2)(A) and (0). To
2 the extent it may ever be determined to be a matter that a
3 bankruptcy judge may not hear and determine without consent, the
4 parties nevertheless consent to such determination by a
5 bankruptcy judge. 28 U.S.C. § 157(c)(2). Venue is proper under
6 28 U.S.C. § 1409.

7

8 **Background**

9 The debtor filed a voluntary petition for relief under
10 chapter 7 of the Bankruptcy Code on September 30, 2015. The
11 debtor also filed the required Schedules and Statement of
12 Financial Affairs with her petition. The debtor's petition
13 states that her debts are primarily business debts.

14 The debtor's Schedules list total debt of \$165,127:
15 Schedule D lists a \$38,496 loan secured by the debtor's 2013
16 Acura MDX; Schedule E lists two tax claims totaling \$32,500; and
17 Schedule F lists \$94,129 in general unsecured claims of which
18 \$53,123 are student loans the debtor incurred to attend nursing
19 school, leaving a remaining non-student loan balance of \$41,006.

21 There is no dispute that the debtor's Acura loan (\$38,496)
22 and the non-student loan general unsecured claims (\$41,006) are
23 consumer debts. Undisputed consumer debts thus total \$79,502
24 which translates to 48.14% of total debt.

25 The present dispute concerns the proper classification of
26 the debtor's student loan debt of \$53,123. The United States
27 trustee asserts the student loan debt is - in whole or at least
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1 20% attributed to child care and travel expense - consumer debt.
2 The debtor maintains her student loan debt is non-consumer or
3 business debt. If the United States trustee is correct, the
4 student loan debt plus the other undisputed consumer debt will
5 exceed 50% of the total debt which means the debts in this case
6 are "primarily consumer debts." Zolg v. Kelly (In re Kelly), 841
7 F.2d 908, 913 (9th Cir. 1988) ("Thus, when 'the most part'--i.e.,
8 more than half--of the dollar amount owed is consumer debt, the
9 statutory threshold [of § 707(b)] is passed."). If the debtor is
10 correct, the United States trustee will have failed to satisfy
11 its burden of demonstrating the debts in this case are "primarily
12 consumer debts" because consumer debt will remain below the 50%
13 threshold, in which case the motion to dismiss must be denied.
14

15 **Statement of Facts**³

16 The debtor incurred the \$53,123 in student loans listed in
17 her Schedules to pay for nursing school. According to the
18 debtor, she incurred the student loans to "get an education" in
19 the nursing profession and avail herself of additional employment
20 and business opportunities. The debtor borrowed the maximum
21 amount of \$10,000 per year and those funds were paid directly to
22 the debtor and not an educational institution.

23

24 ³The debtor did not dispute the relevant facts recited by
25 the United States trustee in her opposition. See LBR 9014-
26 1(f)(1)(B) ("Failure to file the separate statement [of disputed
27 material factual issues] shall be construed as consent to
resolution of the motion and all disputed material factual issues
28 pursuant to Fed. R. Civ. P. 43(c)."). And the evidentiary record
closed when the reply was filed. See LBR 9014-1(f)(1)(C).

1 The debtor was unemployed while she attended nursing school.
2 Debtor's counsel confirmed this on the record during the hearing
3 held on February 23, 2016. Because she was unemployed, the
4 debtor states she received food stamps and shared a bedroom with
5 her grandmother while she attended nursing school.

6 The debtor is unable to document how she spent the student
7 loan funds. She estimates that she used \$3,000 per semester (or
8 \$6,000 per year) for tuition and \$1,000 per semester (or \$2,000
9 per year) for books and supplies. Since the debtor was
10 unemployed while she was enrolled in nursing school, and
11 consistent with statements in the debtor's letter of January 4,
12 2016, the court can infer that the remainder of the student loan
13 funds - \$2,000 per year - were used for travel and child care
14 expenses. These calculations create a ratio whereby 80% of the
15 student loans - or \$42,498.40 - were used for direct education
16 expenses and 20% - or \$10,624.60 - were used for travel and child
17 care expenses.

18 The debtor is now employed as a nurse with the University of
19 California, Davis. According to the debtor's pay advices, the
20 debtor's gross monthly income is \$12,335.74 which is a little
21 more than \$148,000 annually. The debtor's monthly "take home"
22 pay is \$6,251.83.

23 The debtor drives a 2013 Acura MDX for which she pays \$942
24 per month, plus an additional \$485 per month for insurance and
25 operating expenses. The debtor makes voluntary contributions of
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1 \$969.32 per month to a retirement plan.⁴ She pays \$450 monthly
2 towards student loans. The debtor also spends \$375 per month on
3 telephone, internet, and cable.⁵ And she spends \$280 per month on
4 entertainment and recreation.⁶ The debtor also claims a \$100 per
5 month employment education expense and a \$150 per month pet food
6 and care expense in this case that were not claimed in the
7 chapter 13 Schedule J filed four months earlier.

8 The United States trustee has calculated, and the debtor did
9 not dispute, that, at a minimum, by eliminating or reducing the
10 Acura payment and voluntary retirement contributions, and by
11

12 ⁴The debtor filed a chapter 13 petition on May 21, 2015,
13 case no. 15-24131, and with her petition she filed a proposed
14 chapter 13 plan. Citing Parks v. Drummond (In re Parks), 475
15 B.R. 703 (9th Cir. BAP 2012), on June 30, 2015, the chapter 13
trustee objected to confirmation of the debtor's plan on the
basis that "[t]he debtors' [sic] voluntary post-petition
retirement contributions [of \$801 per month] are disposable
income under 11 U.S.C. § 547(b)(7) and therefore such income must
be applied to make plan payments under 11 U.S.C. § 1325(b)(1)." Stating in civil minutes filed on July 21, 2015, that it intended
to follow Parks the court sustained the chapter 13 trustee's
objection and denied confirmation of the debtor's plan in a civil
minute order entered on July 24, 2015. Two months later, on
September 25, 2015, the debtor filed an ex-parte application to
dismiss her chapter 13 case which the court granted in an order
filed on September 27, 2015. Three days after the debtor's
chapter 13 case was dismissed, the debtor filed this chapter 7
case on September 30, 2015. She increased voluntary contributions
to her retirement plan from \$801 claimed in her prior chapter 13
case to \$969.32 now claimed in this case.

25 ⁵This is a \$45 per month increase from the \$330 per month
the debtor claimed in the chapter 13 Schedule J she filed four
26 months earlier.

27 ⁶This is a \$98 per month increase from the \$182 per month
the debtor claimed in the chapter 13 Schedule J she filed four
28 months earlier.

1 paying unsecured student loan debt pro-rata with all other
2 unsecured claims, the debtor would have net monthly income of
3 \$769.55. Elimination of or reductions to the internet, phone,
4 and cable expense and the monthly discretionary spending for
5 entertainment and recreation would also increase the debtor's net
6 monthly income.

7

8 **Discussion**

9 There are two prerequisites to dismissal under § 707(b)(1):
10 (i) the debtor has primarily consumer debt; and (ii) the
11 bankruptcy court finds that granting the debtor's petition would
12 be an abuse of chapter 7. Price v. U.S. Trustee (In re Price),
13 353 F.3d 1135, 1138 (9th Cir. 2004) (citation omitted). The
14 Bankruptcy Code defines consumer debt as "debt incurred by an
15 individual primarily for a personal, family, or household
16 purpose." 11 U.S.C. § 101(8). The Ninth Circuit "look[s] to the
17 purpose of the debt in determining whether it falls within the
18 statutory definition." Kelly, 841 F.2d at 913 (citation
19 omitted); see also Price, 353 F.3d at 1139; Stine v. Flynn (In re
20 Stine), 254 B.R. 244, 249 (9th Cir. BAP 2000) ("It is the purpose
21 for which the debt was incurred that determines whether it is a
22 consumer debt.") (citation omitted). "Debt incurred for business
23 ventures or other profit-seeking activities is plainly not
24 consumer debt for purposes of section 707(b)." Kelly, 841 F.2d
25 at 913.

26
27 The moving party bears the burden of proof to support a
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1 § 707(b)(1) motion by a preponderance of the evidence. Aspen
2 Skiing Company v. Cherrett (In re Cherrett), 523 B.R. 660, 668
3 (9th Cir. BAP 2014) (citation omitted). The debtor, however,
4 bears the burden of demonstrating a profit motive in order to
5 establish that a debt is nonconsumer or a business debt. In re
6 Palmer, 542 B.R. 289, 297 (Bankr. D. Colo. 2015); see also In re
7 Liegey, 2009 WL 3817902 at *4 (Bankr. M.D. Pa. 2009).

8 Primarily Consumer Debts

9 The United States trustee appears to initially argue that
10 student loans are or should be per se consumer debt because
11 education is a benefit inherently personal, that is, it is
12 instilled in a person's mind and can never be separated from the
13 person. See In re Stewart, 201 B.R. 996, 1004 (Bankr. N.D. Okla.
14 1996) ("Stewart I"); see also In re Millikan, 2007 WL 6260855 at
15 *5 (Bankr. S.D. Ind. 2007). The United States trustee cites no
16 case in which a court has held that student loans are per se
17 consumer debt and conceded during the hearing none were found.⁷
18 In that regard, the court agrees with In re Rucker, 454 B.R. 554
19 (Bankr. M.D. Ga. 2011), to the extent that court declined to
20 adopt "a per se rule to characterize student loan debts as

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23 ⁷The "Stewart" line of opinions came close. In Stewart I,
24 the bankruptcy court announced that "student loans in general
25 should be treated as 'consumer debt,' at least absent unusual
26 facts or factors[.]" Stewart I, 201 B.R. at 1005. The Tenth
27 Circuit Bankruptcy Appellate Panel affirmed, but declined to
28 adopt a per se rule. Stewart v. United States Trustee (In re
Stewart), 215 B.R. 456, 465 (10th Cir. BAP 1997) ("Stewart II").
The Tenth Circuit Court of Appeals affirmed and was also
skeptical of per se rule. Stewart v. United States Trustee (In
re Stewart), 175 F.3d 796, 806 (10th Cir. 1999) ("Stewart III").

1 consumer debt or non-consumer debt under § 707(b)." Therefore,
2 the court declines to adopt a per se rule that holds all student
3 loans are always consumer debt.

4 The court also questions whether it is appropriate to
5 apportion a debt into consumer and non-consumer components and
6 then count the consumer component under § 707(b) (1). The United
7 States trustee has not cited a published opinion or unpublished
8 decision in the Ninth Circuit in which an individual debt was
9 apportioned and counted in that manner. On the contrary, at
10 least one court in the Ninth Circuit has held this approach is
11 improper. See In Hopkins v. Marble (In re Kempkers), 2012 WL
12 4953076 at *2 & n.5 (Bankr. D. Idaho 2012).

13 In Kempkers, the court examined the meaning of "consumer
14 debt" under § 101(8) in the context of § 547(c) (9). Recognizing
15 that it was instructed by the Ninth Circuit to determine a debt's
16 primary purpose, the court stated:

17 [T]he language of § 101(8) is clear that a [sic]
18 individual debt is either entirely a consumer debt or
19 it is not. That provision requires that a debt be
20 categorized as a 'consumer debt' if the debt was
21 incurred 'primarily for a personal, family, or
22 household purpose.' (emphasis added). Put another way,
23 dividing a single debt into both consumer debt and
non-consumer debt is inappropriate; the total amount of
a debt will be counted as consumer debt, even if a
portion of it was incurred by the debtor for a business
purpose.

24 Id. at *2 (emphasis in original).⁸

25

26 ⁸The court also noted that its conclusion was consistent
27 with a leading treatise discussing the apportionment issue. See
Id. at n.5 (citing 2 COLLIER ON BANKRUPTCY ¶ 101.08 (Alan N.
28 Resnick & Henry J. Sommer eds., 16th ed.) ("If a debt is incurred
partly for business purposes and partly for personal, family[,]

1 The court in Kempkers did, however, recognize that the Fifth
2 Circuit has taken a different approach to classifying debt. Id.
3 at n.5. In In the Matter of Booth, 858 F.2d 1051 (5th Cir.
4 1988), the Fifth Circuit counted a portion of a loan secured by a
5 mortgage as consumer debt but attributed the balance of the same
6 loan to non-consumer debt because part of the loan had been used
7 by the debtor in a business venture. Id. at 1055. Apparently,
8 the Tenth Circuit does the same thing. See Stewart III, 175 F.3d
9 at 806-807. And so has at least one lower court. See In re
10 McDowell, 2013 WL 587312 at *7 and n.5 (Bankr. S.D. Tex. 2013).

11 In this case, the court need not decide whether the debtor's
12 student loan debt may or should be apportioned into consumer and
13 non-consumer or business components. The court need not make
14 that determination because the debtor has failed to satisfy her
15 burden of demonstrating that she incurred any of the student loan
16 debt with the necessary profit motive. Put another way, the
17 debtor has failed to carry her burden of proof on the question of
18 whether her student loan debt is non-consumer or business debt
19 and, thereby, excluded from the definition of consumer debt under
20 § 101(8) for purposes of § 707(b)(1).

22 The profit motive element in the consumer debt analysis is
23 interpreted narrowly. In Cherrett, supra, the BAP looked to the

25 or household purposes, the term 'primarily' in the definition
26 suggests that whether the debt is a 'consumer debt' should depend
27 upon which purpose predominates ... a debt should be fully
28 classified as a consumer debt or business debt according to its
primary purpose."). Cherrett appears to support this conclusion
as well in that it cited the 15th edition of Collier for a nearly
identical proposition. Cherrett, 523 B.R. at 670.

1 primary purpose of the debtor's home loan. Upon finding the home
2 loan was related to the debtor's employment, the BAP concluded
3 that the home loan was not a consumer debt for purposes of §
4 707(b)(1). The BAP noted that the debtor hoped to realize a
5 profit from the house and that the home loan was an integral part
6 of his employment compensation package. In reaching its
7 conclusion, the BAP stated: "[C]ourts generally ascribe a
8 business purpose, rather than a personal, family or household
9 purpose to debts which are incurred 'with an eye toward profit'
10 and which are 'motivated for *ongoing* business requirements.' Id.
11 at 669 (emphasis added, internal quotations and citations
12 omitted).

13 Although Cherrett's "ongoing" business requirement arose in
14 the context of a home loan, the court in Palmer, supra, adopted
15 that narrow interpretation of the profit motive and applied it to
16 a student loan. The court stated:

17 [I]n order to show a student loan was incurred with a
18 profit motive, the debtor must demonstrate a tangible
19 benefit to an existing business, or show some
20 requirement for advancement or greater compensation in
21 a current job or organization. The goal must be more
22 than a hope or an aspiration that the education funded,
23 in whole or in part, by student loans will necessarily
lead to a better life through more income or profit.
More than hindsight representations are needed to meet
this burden.

24 Palmer, 542 B.R. at 297 (emphasis added).

25 The court in Palmer cited four rationales for its decision,
26 and to support its adoption of Cherrett's narrow interpretation
27 of the profit motive. Quoted at length because of their
28 significance, those are as follows:

1 In determining a standard to use when dealing with an
2 intangible asset such as a student loan, this Court
3 finds that the following concepts are important:

4 1) The Tenth Circuit's reference to profit motive
5 should be interpreted narrowly, in the context of
6 whether student loans are consumer or non-consumer for
7 the purposes of § 707(b). This is in keeping with the
8 intent of the changes made to the Code in 2005. The
9 so-called 'means test' ushered in by the Bankruptcy
10 Abuse Prevention and Consumer Protection Act of 2005
11 ('BAPCPA') is based on the fundamental notion that
12 'those who have the means to repay their creditors in
13 whole or in part should do so.' In re Millikan, 2007
14 WL 6260855 at *6. The purpose of the means test is to
15 'weed out chapter 7 debtors who are capable of funding
16 a chapter 13 case.' In re Fredman, 471 B.R. 540, 542
17 (Bankr. S.D. Ill. 2012). The means test and the
18 provisions of § 707(b) apply only to an individual
19 chapter 7 debtor 'whose debts are primarily consumer
20 debts.' In re Peterson, 524 B.R. 808, 811 (Bankr. S.D.
21 Ind. 2015). The term 'consumer' should be interpreted
22 in the context of the Act in which it appears.

23 2) In Stewart II, the BAP noted there may be cases 'in
24 which the debtor can demonstrate that the student loan
25 was incurred purely or primarily as a business
26 investment, albeit an investment in herself or himself,
27 much like a loan incurred for a new business.' 215
28 B.R. at 465 (emphasis added). 'May' is a word of
29 limitation and means not applicable to all situations.
30 Trying to determine, on a case-by-case basis, which set
31 of facts equates to a business investment, rather than
32 a personal investment, will be problematic without a
33 narrow, objective standard to apply.

34 3) If the profit motive is not interpreted narrowly, it
35 can be applied to virtually all student loans. It
36 becomes an exception that swallows the rule. This is
37 aptly pointed out in the Millikan case, where the court
38 expressed concern with allowing a debtor, in hindsight,
39 to recast the motive for incurring the debt. In many
40 cases, education is initially undertaken for
41 self-improvement purposes; the fact the education also
42 may lead to increased earning potential is often a
43 fortunate side benefit. This is why courts have
44 struggled with applying the profit motive test to
45 student loans: people go to school for many different
46 reasons, and evaluating a given student loan debt
47 according to the student's motivation can lead to
48 disparate or unfair results. A student loan incurred
49 by an altruistic law student seeking to work for a

1 non-profit should not, in equity, be viewed or treated
2 differently than a loan incurred by a career-conscious
3 law student seeking to work for a large, private law
4 firm.

5 4) A narrow standard, tied to an existing business, or
6 to some requirement for advancement in a current job or
7 organization, is necessary to avoid a student's
8 aspirational goal, or a wished-for 'hope and dream'
9 being the focus, as opposed to the advancement of a
tangible opportunity. See, e.g., Norwest Bank
Worthington v. Ahlers, 485 U.S. 197, 204 (1988)
(analyzing 'vague hopes or possibilities' in the
context of plan confirmation, and holding the 'promise
of future services is intangible, inalienable, and, in
all likelihood, unenforceable,' having 'no place in the
asset column of the balance sheet.').

10 Palmer, 542 B.R. at 296-297 (internal footnotes omitted, emphasis
11 in original).

12 The court finds Palmer and its rationales for a narrow
13 interpretation of the profit motive tied to an existing business
14 purposes or an advancement in a current job or organization
15 persuasive. Palmer is rooted in, and it builds upon, Cherrett.
16 In that respect, Palmer is consistent with authority from within
17 the Ninth Circuit. A narrow standard that looks to an "existing"
18 business or "current" employment also places debtors on equal
19 footing. And, in this case, it eliminates the concern expressed
20 by the debtor that, as a single parent, she is treated
21 differently than an unmarried debtor with no dependents.

22 Turning to this case, the court is not persuaded that the
23 debtor has met her burden of demonstrating that she incurred her
24 student loans for an existing business or for current job
25 advancement. The debtor was unemployed when she attended nursing
26 school and she enrolled in the nursing program to "get" a nursing
27

1 degree. Thus, by the debtor's own admission, there was no
2 ongoing business related to nursing and it was not necessary for
3 her to attend nursing school to advance in an existing job.

4 If anything, the debtor's evidence negates that she incurred
5 her student loans for a profit motive and supports a conclusion
6 that she pursued a nursing degree for the personal purpose of
7 benefitting herself and her lifestyle. Whereas before the debtor
8 obtained her nursing degree she required public assistance and
9 shared a single bedroom, as a direct result of her student loans
10 the debtor now makes in excess of \$148,000 per year. The debtor
11 drives a luxury vehicle for which she is able to pay almost one-
12 thousand five-hundred dollars per month (including payment,
13 insurance, and operating expenses). She is able to make
14 voluntary contributions just short of one thousand dollars per
15 month to her retirement plan. She spends almost four hundred
16 dollars a month on telephone, internet, and cable. And she can
17 afford nearly three hundred dollars a month for discretionary
18 entertainment and recreational spending.
19

20 After reviewing the entire record in this case, the debtor
21 has not carried her burden of demonstrating that her student
22 loans were incurred for a profit motive. Therefore, the student
23 loan debt that the debtor incurred to pursue her nursing degree
24 is personal in nature and a consumer debt under § 101(8) for
25 purposes of §§ 707(b)(1) and 707(b)(3)(B).

26 Abuse

27 The United States trustee presented substantial evidence of
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1 abuse in that the United State trustee has sufficiently
2 demonstrated that by modifying and/or eliminating certain
3 expenses the debtor would have approximately \$800 per month with
4 which to repay creditors. And that's a conservative estimate.
5 As noted above, the debtor did not dispute the United States
6 trustee's calculations or the facts or evidence upon which those
7 calculations are based in her opposition. Therefore, as to this
8 part of the §§ 707(b)(1) and 707(b)(3)(B) analysis, the court
9 concludes that the United States trustee has carried its burden
10 of showing abuse under the totality of the circumstances. Kelly,
11 841 F.2d at 915 ("But a finding that a debtor is able to pay his
12 debts, standing alone, supports a conclusion of substantial
13 abuse.").
14

15 **Conclusion**

16 The debtor has failed to carry her burden of proving that
17 she incurred her student loans with a profit motive. That
18 permits the court to treat the entirety of the debtor's student
19 loan debt as consumer debt. And when the amount of student loan
20 debt of \$53,123 is added to the \$79,502 in other undisputed
21 consumer debt, the debtor's total consumer debt is \$132,625 which
22 is over 80% of the total debt of \$165,127. That, of course, is
23 well over the 50% threshold required under § 707(b)(1) to make
24 the debts in this case "primarily consumer debts."

25 The court also finds that the United States trustee has
26 carried its burden of demonstrating abuse under §§ 707(b)(1) and
27

1 707(b)(3)(B), and that granting relief in this case would be an
2 abuse of chapter 7. The debtor did not dispute that with minor
3 adjustments to her expenses and spending, she has the ability to
4 repay her creditors.

5 Therefore, the United States trustee's motion to dismiss
6 this chapter 7 case under §§ 707(b)(1) and 707(b)(3)(B) will be
7 GRANTED and within fourteen days of the date of the entry of the
8 order entered on this memorandum decision the debtor shall
9 convert her case to one under chapter 13 of the Bankruptcy Code,
10 failing which this chapter 7 case shall be dismissed.

11 A separate order will issue.

12 Dated: February 29, 2016.
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15 UNITED STATES BANKRUPTCY JUDGE
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1 **INSTRUCTIONS TO CLERK OF COURT**
2 **SERVICE LIST**

3 The Clerk of Court is instructed to send the attached
4 document, via the BNC, to the following parties:

5 Mikalah R. Liviakis
6 2377 Gold Meadow Way, #100
7 Gold River CA 95670

8 Jason M. Blumberg
9 501 I St #7-500
10 Sacramento CA 95814