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3 UNITED STATES BANKRUPTCY COURT
4 EASTERN DISTRICT OF CALIFORNIA
5 SACRAMENTO DIVISION
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8 In re:)
9) Case No. 06-22686-B-7
10 STEVEN BURKETT and)
SANDRA BURKETT,) Docket Control No. UST-2
11 Debtor(s).) Date: December 12, 2006
12) Time: 9:30 a.m.

13 On or after the calendar set forth above, the court issued
14 the following ruling. The official record of the ruling is
appended to the minutes of the hearing.

15 Because the ruling constitutes a "reasoned explanation" of
16 the court's decision under the E-Government Act of 2002 (the
"Act"), a copy of the ruling is hereby posted on the court's
17 Internet site, www.caeb.uscourts.gov, in a text-searchable
format, as required by the Act. However, this posting does not
18 constitute the official record, which is always the ruling
appended to the minutes of the hearing.

19 **DISPOSITION WITHOUT ORAL ARGUMENT**

20 This matter continued from November 21, 2006 by stipulation
21 of the parties. Debtors were required by order to file
22 opposition, if any, by November 28, 2006. They filed nothing.
23 The failure of any party in interest to file timely written
24 opposition as required by this local rule may be considered
25 consent to the granting of the motion. See Ghazali v. Moran, 46
26 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1). Therefore, this
27 matter is resolved without oral argument.

28 The motion is granted and the case is dismissed pursuant to

1 11 U.S.C. § 707(b)(1).

2 The debtors filed this voluntary chapter 7 petition on July
3 21, 2006. The petition indicates that this is a "consumer/non-
4 business" case. The majority of the debtors' \$86,614.06 in
5 unsecured debt is from student loans (\$56,001.06). The remaining
6 \$30,613 in unsecured debt is credit card purchases. In addition,
7 debtors' schedule \$10,265 in priority unsecured debt owed for
8 state and federal income taxes. Their secured debts consist of
9 two mortgages on their real property in Pilot Rock Oregon, two
10 vehicle loans, and a debt owed to Dell Computer secured by the
11 consumer electronics purchased. On October 23, 2006, the United
12 States trustee ("UST") moved to dismiss the case for substantial
13 abuse pursuant to 11 U.S.C. § 707(b).

14 For the court to dismiss a case pursuant to § 11 U.S.C. §
15 707(b), it must determine 1) that the debtors owe primarily
16 consumer debt, and 2) that granting the debtors a discharge would
17 be an abuse of chapter 7. In re Gaskins, 85 B.R. 846, 847
18 (Bankr. C.D. Cal. 1988) (citing Zolg v. Kelly (In re Kelly), 841
19 F.2d 908 (9th Cir. 1988)).

20 Consumer debt is defined by 11 U.S.C. § 101(8) as "debt
21 incurred by an individual primarily for a personal, family, or
22 household purpose." In re Kelly, 841 F.2d. at 912. The debts as
23 scheduled by debtors are exclusively consumer debts within the
24 meaning of § 707(b). The court must then determine whether
25 permitting debtors to remain in chapter 7 and receive a chapter 7
26 discharge "would be an abuse of the provisions of this chapter."

27 The United States Trustee argues, and the court finds, that
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1 a presumption of abuse under 11 U.S.C. § 707(b)(2) arises in this
2 case. Debtors filed an amended Statement of Current Monthly
3 Income and Means Test Calculation on August 29, 2006. That form
4 indicates that their household consists of two people and that
5 they have current monthly income of \$7,004.34. It further
6 indicates that their monthly disposable income is \$243.10
7 resulting in disposable income over 60 months of \$14,586.00.
8 That amount exceeds the \$10,000 limit in Section
9 707(b)(2)(A)(i)(II). Debtors have not opposed the motion, and
10 they have therefore failed to rebut that presumption.

11 Therefore, based on the presumption of abuse the motion is
12 granted and the case is dismissed as an abuse of Chapter 7. The
13 court declines to reach the balance of the arguments raised by
14 the UST.