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2 **NOT FOR PUBLICATION**
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6 UNITED STATES BANKRUPTCY COURT
7 EASTERN DISTRICT OF CALIFORNIA

8 In re Case No. 10-63263-A-7F
9 ROBERT L. CANNON and DC No. UST-1
10 JILL L. CANNON,
11 Debtor.
12 _____/

13 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**
14 **RE UNITED STATES TRUSTEE'S MOTION TO DISMISS CASE**
15 **PURSUANT TO 11 U.S.C. § 707(b)**

16 A hearing was held on April 20, 2011, regarding the motion
17 of the United States Trustee to dismiss the chapter 7 case of
18 Robert and Jill Cannon. Following the hearing, the court took
19 the matter under submission. This memorandum contains findings
20 of fact and conclusions of law required by Federal Rule of
21 Bankruptcy Procedure 7052 and Federal Rule of Civil Procedure 52.
22 This is a core proceeding as defined in 28 U.S.C. §157(b) (2) (A).

23 Robert and Jill Cannon filed their chapter 7 case on
24 November 16, 2010. Their schedules show that they own no real
25 property and that their personal property is largely if not
26 entirely exempt. The only secured claim on the original
27 schedules was secured by a 2004 Camry. The debtors intend to
28 reaffirm that debt. Their unsecured claims are scheduled as
being \$153,979.18. Both Mr. And Mrs. Cannon are employed. Their
schedules show three dependents. On the chapter 7 Statement of

1 Current Monthly Income and Means-Test Calculation (the "Means
2 Test" or "Form B-22") they show that they are above median
3 income.

4 The United States Trustee filed a Statement of Presumed
5 Abuse, which was followed with a motion to dismiss. The motion
6 to dismiss states that the debtors' annualized current monthly
7 income exceeds the applicable median family income and the
8 presumption of abuse arises. According to the United States
9 Trustee, the debtors have not provided sufficient evidence to
10 establish that there are circumstances which would justify
11 additional expenses or adjustments in the current monthly income.
12 According to the United States Trustee, under the totality of the
13 circumstances, the debtors have the ability to pay a substantial
14 dividend to their unsecured creditors. For these reasons, the
15 United States Trustee asserts that the presumption of abuse
16 arises under Bankruptcy Code § 707(b)(2) and that, in the
17 alternative, abuse is demonstrated under the totality of the
18 circumstances and the case should be dismissed under § 707(b)(3).

19 The United States Trustee's motion was supported by the
20 declaration of Lisa M. Grootendorst, a bankruptcy analyst at the
21 office of the United States Trustee. That declaration states
22 that on February 1, 2011, the United States Trustee wrote to the
23 debtors' attorney requesting documentation to verify income and
24 expenses. On February 14, 2011, Mr. Samples, the debtors'
25 attorney, responded that he was unable to provide a response at
26 that time. The United States Trustee asserted that based on its
27 review of the debtors' Form B-22, certain expenses were not
28 supported by documentation. These expenses included healthcare,

1 telecommunication services, and future payments on unsecured
2 claims. After performing a calculation of supported allowable
3 expenses, the United States Trustee concluded that the debtors
4 appeared to have monthly disposable income of at least \$1,355 per
5 month. This gives them the ability to pay more than the \$11,725
6 threshold that establishes the presumption of abuse under §
7 707(b) (2) .

8 On April 4, 2011, the debtors filed a response stating that
9 documents in support of the claimed expenses had been mailed to
10 the United States Trustee on March 25, 2011. In reply, the
11 United States Trustee stated that he had received some but not
12 all of the information previously requested. After reviewing the
13 information provided by the debtors, the United States Trustee
14 stated that the following expenses still had not been supported
15 by any documentation.

- 16 • Line 31, out of pocket healthcare, \$275
- 17 • Line 32, telecommunications services, \$308
- 18 • Line 40, charitable contributions, \$95

19 Additionally, the United States Trustee determined that the
20 debtors had understated their wages. Further, at Line 34, the
21 debtors did not claim a deduction for insurance. However, the
22 United States Trustee concluded that the debtors did have average
23 monthly expenses for health, life, and disability insurance of
24 \$469. Additionally, the United States Trustee added to the
25 debtors' expenses at Line 49 an amount of \$166 for chapter 13
administrative fees.

26 The biggest question was that shown at Line 42(b) for future
27 payments on secured claims. At Line 42(b), the debtors claimed
28 \$1,850 per month as a payment to Mark Geary for lease/rental of

1 their residence. However, they do not show that they own any
2 real property. Also, on the Form B-22 filed originally and as
3 amended January 26th, the debtors claimed a rental expense of
4 \$1,117 on Line 20B. Thus, there is a doubling of expenses.

5 On April 21st, the day after the hearing, the debtors filed
6 a Second Amended Form B-22. On that form, they eliminated the
7 claim for any housing expense on Line 20B. As of April 21, 2011,
8 the debtors were only claiming the \$1,850 on Line 42(b).

9 However, the debtors have still failed to provide any
10 support for the expenses claimed at Line 31, 32, and 40.
11 Utilizing the calculations of the debtors' expenses made by the
12 debtor on Form B-22 filed April 21, 2011, the debtors have
13 monthly expenses of \$8,772 at Line 47. Utilizing the expenses
14 calculated by the United States Trustee, the debtors have monthly
15 expenses of \$7,361 at Line 47.

16 Even giving the debtors the housing expense they claim of
17 \$1,850 instead of the housing expense provided by the formula of
18 \$1,117, the debtors still have disposable monthly income at Line
19 47 with which unsecured creditors could be paid in a chapter 7
20 case.

21 This case is made somewhat more complex by two additional
22 facts. At the hearing, the debtors requested an evidentiary
23 hearing. However, the attorney for the United States Trustee
24 stated that no evidentiary hearing was required because of the
25 doubling of the housing expense. On that basis, the court deemed
26 the matter submitted. The second complicating fact is that one
27 day after the hearing, on April 21st, the debtors filed a Second
28 Amended Form B-22. This Second Amended Form B-22 eliminated the

1 doubling of the housing expense. The debtors never sought
2 approval of the court or agreement of the United States Trustee
3 for the court to consider the Second Amended Form B-22 in
4 connection with this motion. Nor have the debtors reiterated any
5 request for an evidentiary hearing. However, the Second Amended
6 Form B-22 filed April 21, 2011, does take out the doubling of the
7 housing expense that the United States Trustee considered a
8 dispositive legal issue.

9 The debtors did provide additional evidence after the
10 hearing. However, they still have failed to provide support for
11 the expenses claimed at Line 31, Line 32, and Line 40.

12 Based on the evidence before the court, the United States
13 Trustee has met his burden of proof that the debtors do have
14 disposable monthly income to make payments in a chapter 13 case.
15 For that reason, the presumption of abuse arises under Bankruptcy
16 Code § 707(b)(2), and the United States Trustee's motion to
17 dismiss will be granted. However, the debtors will have ten (10)
18 days from the date of entry of the order granting the motion to
19 convert to chapter 13, should they wish to do so. The United
20 States Trustee shall prepare an appropriate form of order
21 consistent herewith.

22
23 DATED: May 24, 2011

24 /S/

25 WHITNEY RIMEL, Judge
26 United States Bankruptcy Court
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