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7 UNITED STATES BANKRUPTCY COURT
8 EASTERN DISTRICT OF CALIFORNIA
9

10 In re

Case No. 06-10388-A-7
DC No. UST-1

11 PAUL D. MEINERT

12 Debtor.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW RE
U.S. TRUSTEE'S MOTION FOR
DISMISSAL PURSUANT TO
11 U.S.C. § 109(h)

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15 A hearing was held June 21, 2006, on the motion of the
16 United States Trustee to dismiss the chapter 7 case of Paul D.
17 Meinert. Following the hearing, the court took the matter under
18 submission. This memorandum contains findings of fact and
19 conclusions of law required by Federal Rule of Bankruptcy
20 Procedure 7052 and Federal Rule of Civil Procedure 52. This is a
21 core proceeding as defined in 28 U.S.C. §157(b)(2)(A) and (O).

22 Paul D. Meinert lives in Ridgecrest, California. Ridgecrest
23 is more than 100 miles from Bakersfield, California. Mr.
24 Meinert's attorney's office is located in Bakersfield, as are the
25 meeting room for the United States Trustee and the bankruptcy
26 courtroom. Mr. Meinert works for his brother as a salesperson.
27 He decided to file chapter 7 because his wages had been
28 garnished, and his brother was required to withhold funds from

1 his wage payments. He went to Bakersfield on April 3, 2006, and
2 met with his bankruptcy lawyer. Also on April 3, 2006, Mr.
3 Meinert contacted Consumer Credit Counseling of Kern and Tulare
4 Counties ("CCC") and requested credit counseling. CCC, on April
5 3, gave Mr. Meinert blank financial forms to complete and
6 instructed him to fill them out and return them to CCC with his
7 payment of \$45. On April 4, 2006, the bankruptcy petition was
8 filed. CCC received the completed forms along with his money
9 order for \$45 on April 6, 2006. Also on April 6, CCC contacted
10 Mr. Meinert by telephone and gave him a telephonic appointment
11 for credit counseling on April 10. The credit counseling
12 appointment took place by telephone on April 10. Upon completion
13 of the counseling on April 10, CCC sent a certificate of
14 counseling to Mr. Meinert's attorney, who filed it with the
15 bankruptcy court.

16 The Credit Counseling Requirement.

17 Bankruptcy Code § 109(h) was added by the Bankruptcy Abuse
18 Prevention and Consumer Protection Act of 2005 ("BAPCPA"). It
19 provides as follows:

20 "(h) (1) Subject to paragraphs (2) and (3), and
21 notwithstanding any other provision of this section, an
22 individual may not be a debtor under this title unless such
23 individual has, during the 180-day period preceding the date
24 of filing of the petition by such individual, received from
25 an approved nonprofit budget and credit counseling agency .
26 . . . an individual or group briefing (including a briefing
27 conducted by telephone or on the Internet) that outlined the
28 opportunities for available credit counseling and assisted
such individual in performing a related budget analysis.

. . .

(3)(A) Subject to subparagraph (B), the requirements of
paragraph (1) shall not apply with respect to a debtor who
submits to the court a certification that -

1 (i) describes exigent circumstances that merit a
2 waiver of the requirements of paragraph (1);

3 (ii) states that the debtor requested credit
4 counseling services from an approved nonprofit budget and
5 credit counseling agency, but was unable to obtain the
6 services referred to in paragraph (1) during the 5-day
7 period beginning on the date on which the debtor made that
8 request; and

9 (iii) is satisfactory to the court.

10 (B)With respect to a debtor, an exemption under
11 subparagraph (A) shall cease to apply to that debtor on the
12 date on which the debtor meets the requirements of paragraph
13 (1), but in no case may the exemption apply to that debtor
14 after the date that is 30 days after the debtor files a
15 petition, except that the court, for cause, may order an
16 additional 15 days."

17 Numerous bankruptcy court decisions have discussed § 109(h).
18 By adding § 109(h), Congress intended that individuals filing
19 bankruptcy should first obtain a briefing from a nonprofit budget
20 and credit counseling agency that outlines available credit
21 counseling and assists the individual to analyze his or her
22 budget.

23 Meinert did not receive his credit counseling briefing prior
24 to filing his bankruptcy case. Therefore, he is not eligible to
25 be a debtor unless the exception of § 109(h)(3) applies.

26 Are there exigent circumstances that merit a waiver? Mr.
27 Meinert checked the box on his petition requesting a waiver of
28 the requirement due to exigent circumstances. However, he failed
to attached a "certification" describing those circumstances.
His declaration in response to the United States Trustee's motion
to dismiss states that he needed to file bankruptcy because his
wages were being garnished. This is an exigent circumstance.
The declaration, despite not being filed with the petition as the

1 Interim Rules require, is "satisfactory to the court."¹ Interim
2 Rule 1007(b)(3) and (c) requires an individual debtor to file the
3 Certificate of Credit Counseling or a request for determination
4 of an exemption with the petition in a voluntary case. Here, the
5 certification was filed not with the petition, but as a response
6 to the United States Trustee's Motion to Dismiss.

7 Mr. Meinert requested credit counseling on April 3rd.
8 However, the credit counseling agency on April 3rd gave him forms
9 to fill out. Mr. Meinert then went back to Ridgecrest, filled
10 out the forms, and mailed them to the credit counseling agency.
11 CCC received the completed forms and his check by April 6th. On
12 April 6th, CCC telephoned him, and an appointment was scheduled
13 for April 10th, a Monday.

14 How should time be counted? Section 109(h)(3)(A)(ii)
15 requires the debtor to have requested credit counseling but to
16 have been unable to obtain credit counseling "during the 5-day
17 period beginning on the date on which the debtor made that
18 request . . ." Counting the date of making the request as the
19 first day (April 3rd), the fifth day is April 7th, a Friday. On
20 the other hand, if the court counts time as required by Federal
21 Rule of Bankruptcy Procedure 9006(a), the result is different.
22 Under that rule, "the day of the act, event, or default from
23 which the designated period of time begins to run shall not be

24
25 ¹Interim Bankruptcy Rules have been promulgated as
26 amendments to the Federal Rules of Bankruptcy Procedure. The
27 United States Bankruptcy Court for the Eastern District of
28 California has, by general order, adopted the Interim Bankruptcy
Rules as recommended by the Committee on Rules of Practice and
Procedure of the Judicial Conference of the United States. See,
General Order 05-04.

1 included. The last day of the period so computed shall be
2 included, unless it is a Saturday, a Sunday, or a legal holiday
3 . . .” If the first day (April 3rd) is not included, then the
4 fifth day is April 8th, which is a Saturday, and the applicable
5 five day period would not conclude until April 10th.

6 The statute is, at least in this respect, straightforward.
7 It requires that the five day period be calculated “beginning on
8 the date on which the debtor made” the request for credit
9 counseling. Thus, the fifth day was April 7th. This was a
10 Friday. Mr. Meinert was unable to obtain credit counseling by
11 April 7th. He was not able to obtain it until April 10th.

12 Mr. Meinert did his best to satisfy the requirements of §
13 109(h). Katy Hudson, who is President of CCC, acknowledges that
14 Mr. Meinert requested credit counseling on April 3rd. Ms.
15 Hudson’s declaration and Mr. Meinert’s declaration differ in that
16 Mr. Meinert says that he paid CCC on April 3rd, while Ms. Hudson
17 states that he did not pay until April 6th. However, the court
18 is not persuaded that the difference between Mr. Meinert’s
19 testimony and Ms. Hudson’s testimony is relevant. This is
20 because they both agree that he requested credit counseling on
21 April 3rd. The statute does not say anything about when the
22 prospective debtor pays the credit counseling agency or when the
23 prospective debtor fills out the forms for the credit counseling
24 agency. The statute refers only to the date of the request. Mr.
25 Meinert obtained credit counseling as soon as he could.

26 Mr. Meinert has satisfied the requirements of §
27 109(h)(3)(A)(ii).

28 Therefore, the motion of the United States Trustee will be

1 denied. Counsel for the debtor shall submit an appropriate form
2 of order.

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4 DATED: July 18, 2006.

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6 /S/_____
7 WHITNEY RIMEL, Judge
8 United States Bankruptcy Court
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