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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

In re: ) Case No. 08-90753-D-7  
)  
JESSE ADRIAN WAGNER, )  
)  
Debtor. ) Date: July 9, 2008  
\_\_\_\_\_) Time: 10:30 a.m.  
Dept: D

This memorandum decision is not approved for publication and may not be cited except when relevant under the doctrine of law of the case or the rules of claim preclusion or issue preclusion.

**MEMORANDUM DECISION ON ORDER TO SHOW CAUSE**

On June 11, 2008, this court issued an order to show cause why this case should not be dismissed because of the failure of the debtor, Jesse Adrian Wagner, to appear at the meeting of creditors, held pursuant to 11 U.S.C. § 341, on June 5, 2008. The order to show cause came on for hearing on July 9, 2008, on the 10:30 a.m. calendar. Michael McGranahan, the chapter 7 trustee in this case, appeared; the debtor did not appear.

The trustee advised the court at the hearing that the debtor had failed to attend the continued meeting of creditors, held July 3, 2008, and that the trustee had again continued the meeting, this time to July 31, 2008, at 12:00 p.m.

The court has read and considered the various documents submitted by the debtor attesting to his present incarceration and consequent inability to attend the meeting of creditors in person. These include the debtor's letters to the trustee, copies of which were filed with the court on May 9, 2008 and June

1 10, 2008, his opposition to the order to show cause, with  
2 attachments, filed June 26, 2008, and his application for order  
3 re telephone appearance, with attachments, filed July 1, 2008.  
4 These documents reveal that the debtor has made efforts to appear  
5 at the meeting of creditors by telephone, but has thus far not  
6 been successful.<sup>1</sup>

7 The debtor will need to take the steps necessary to appear  
8 by telephone at the meeting on July 31, 2008. The debtor noted  
9 in a declaration attached to a motion filed April 28, 2008 that  
10 he is unable to make telephone calls for more than 15 minutes and  
11 that the calls must be collect calls. The court will not require  
12 the trustee to accept a collect call for the debtor's § 341  
13 appearance or to limit the examination of the debtor to 15  
14 minutes. Thus, it may well be that the debtor's telephone call  
15 will need to last longer than 15 minutes. These are matters the  
16 debtor will need to address with prison officials.

17 The court notes the debtor's request, in his application  
18 filed July 1, for an order compelling the California Department  
19 of Corrections/Sierra Conservation Center "to make a telephone  
20 available to the debtor for purposes of the § 341 meeting." The  
21 court finds no basis for jurisdiction over the Department of  
22 Corrections that would allow the court to make such an order.  
23 Instead, the debtor may provide the appropriate prison officials  
24 with copies of this decision and the accompanying order, so as to  
25 facilitate his appearance.

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26  
27 1. By memorandum issued May 12, 2008, the United States  
28 Trustee approved the debtor's request to appear by telephone at  
the meeting of creditors in this case. Exhibit 1 to the debtor's  
opposition to order to show cause, filed June 26, 2008.

1       The trustee should reasonably cooperate with the debtor in  
2 his efforts to coordinate his telephone appearance. The debtor  
3 has indicated that the trustee gave the debtor's correctional  
4 counselor the following telephone number as the number to call  
5 for the § 341 appearance: (209) 575-3146.<sup>2</sup> If this is not the  
6 correct number for the July 31 appearance, the court would expect  
7 the trustee to make sure the debtor is aware of the correct  
8 number well in advance.

9       Finally, the court expects the debtor will be in a better  
10 position to place an outgoing call than to receive an incoming  
11 call.<sup>3</sup> If, on the other hand, prison officials prefer the  
12 trustee to place the call, the debtor should promptly provide the  
13 trustee with the correct telephone number to call at the time of  
14 the meeting and should take all steps necessary to ensure that  
15 the debtor will be able to receive the call.<sup>4</sup>

16       The court will enter an appropriate order.

17 Dated: July 10, 2008

\_\_\_\_\_/s/\_\_\_\_\_  
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19 ROBERT S. BARDWIL  
20 United States Bankruptcy Judge  
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23       2. Declaration of Jesse Wagner, ¶ 7, filed July 1, 2008,  
with Application for Order re Telephone Appearance.

24       3. The debtor has indicated that for safety and security  
25 reasons, "incoming calls are not an option." Declaration of  
26 Jesse Wagner, ¶ 9, filed June 26, 2008 with debtor's opposition  
to order to show cause.

27       4. The court notes that the U.S. Trustee's memorandum  
28 approving the debtor's request to appear by telephone  
contemplates that the trustee might place the call to a number to  
be provided by the debtor.