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**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re:

James Keith Olen and Ngozi Evelyn
Bolin,

Debtors.

Case No.: 2:13-bk-38721-TD

CHAPTER 7

**MEMORANDUM DECISION GRANTING
UNITED STATES TRUSTEE'S MOTION TO
DISMISS DEBTORS' BANKRUPTCY CASE
PURSUANT TO 11 U.S.C. § 707(b)(3)**

Date: June 5, 2014
Time: 10:00 AM
Courtroom: 1345

On December 4, 2013, Debtors filed a voluntary chapter 7 petition.

On March 10, 2014, the United States Trustee (UST) filed a Motion to Dismiss pursuant to 11 U.S.C. §§ 707(b) and (c) (Motion) along with a related Request for Judicial Notice (UST RJN). On March 24, 2014, Debtors filed an Opposition and related Request for Judicial Notice (Debtors' RJN). On May 22, 2014, the UST filed a Reply. On May 27, 2014, Debtors filed a Surreply.

On June 5, 2014, the court held a hearing on the Motion. The court partially granted the UST's RJN and Debtors' RJN and took the matter under advisement. The

1 court now grants the UST's Motion.

2
3 Debtors' Prepetition Conduct

4 Much of the discussion concerned Debtors' prepetition conduct and financial
5 affairs. The court has reviewed the evidence submitted by the parties and has
6 constructed the following timeline from the pleadings, documents, and transcripts.

7 July 25, 2013: The Los Angeles Superior Court entered a Judgment against
8 Debtors in *Whitehawk Ranch at Hubbard Homeowner Association v. Ngozi Bolin and*
9 *James Olen*, PC049801. Debtors' RJN, Ex. G. The Judgment included an award of
10 substantial attorneys' fees against Debtors. *Id.* at 2:10–11.

11 It appears that Debtors first contemplated filing a bankruptcy petition on July 25,
12 2013:

13 AGBOKE: When did you first consider filing for bankruptcy?

14 BOLIN: When the judgment was, and when the judgment was
15 against us and (?) the fees.

16 AGBOKE: What was the month and the year?

17 BOLIN: That would have been, that would have been July 2013.

18 UST RJN, Ex. 7, 44:23–27.

19 September 10, 2013: Olen spent \$417.78 for an airline ticket to Florida to visit
20 Olen's parents. UST RJN, Ex. 8 at 5:1–3. This was one of three trips Olen took to
21 Florida in 2013. UST RJN, Ex. 8 at 7:14–15. Olen took the trip to visit his parents
22 because his parents were not well enough to travel to California. *Id.*

23 September 13, 2013: Olen spent \$249.95 for a return airline ticket from Florida.
24 UST RJN, Ex. 8 at 5:18–28.

25 September 19, 2013: Debtors spent \$4,689.60 for roundtrip airline tickets to
26 Nigeria for the Debtors and their two children. UST RJN, Ex. 8 at 16:26–28—17:1–3.
27 The purpose of the trip was to visit Bolin's elderly father and Bolin's brother. *Id.* at
28 17:20–28.

1 October 4, 2013: Debtors spent \$487.60 for airline tickets to Massachusetts for
2 the Debtors and their two children. UST RJN, Ex. 8 at 7:18–28. The Debtors travelled
3 to Massachusetts to attend the graduation of Bolin’s niece and to New York to attend
4 the Bar Mitzvah of Bolin’s god son. *Id.*

5 October 10, 2013: Debtors spent \$932.52 for two nights lodging at Hyatt Hotel in
6 Massachusetts. UST RJN, Ex. 8 at 9:2–11.

7 October 10, 2013: Debtors spent \$136.96 in Dubai. UST RJN, Ex. 8 at 13:28–
8 14:1. Although the transcript is unclear, it appears that this charge was related to food
9 purchases. UST RJN, Ex. 8 at 15:28.

10 October 11, 2013: Debtors spent another \$278.77 in Dubai. UST RJN, Ex. 8 at
11 15:24–28. Debtors described this expense as lodging at the Dubai International Airport
12 during a 16-hour layover en route to Nigeria. *Id.* at 14:2–8 & 15:24–28. Debtors
13 explained that Emirates, the airline on which Debtors were traveling, would reimburse
14 Debtors for the lodging expense; however, Debtors decided not to seek such
15 reimbursement. *Id.* at 14:9–11 (“BOLIN: I didn’t – We didn’t, we didn’t realize that until
16 our return trip back and we don’t, we didn’t really know who to make claims with.”).
17 Debtors brought, and presumptively spent, \$2,000 in cash during their mid-October trip
18 to Nigeria. UST RJN, Ex. 8 at 15:5–12. The cash was used for local air tickets and
19 other “[n]ecessaries for us and the children.” *Id.*

20 October 22, 2013: Debtors were charged \$1,211.25 by Topanga Pet Resort for
21 boarding and training fees. UST RJN, Ex. 8 at 10:15–17. Bolin explained that “[t]hat’s
22 where we board our two dogs when we travel and ah, for that period, I think it was about
23 ten days for when we went to Nigeria. So they were boarding there for both boarding
24 and training.” *Id.*

25 December 2013: Debtors allege that they made accelerated payments on their
26 2008 Land Rover. UST RJN, Ex. 7 at 57:10–28–58:1–8. Although Debtors’ initial
27 Schedule D indicated an outstanding loan balance of \$16,000, Debtors allege that they
28 paid the balance in full in December 2013. *Id.*

1 Debtors' Schedules

2 On March 24, 2014, Debtors filed an Amended Schedule F. In Amended
3 Schedule F, Debtors schedule unsecured debts totaling \$1,575,000. Each of the five
4 scheduled unsecured debts related to "attorneys fees, sanctions, costs, [and] interest."
5 It is not clear whether all of the unsecured claims relate to the *Whitehawk Ranch*
6 litigation.

7 On March 12, 2014, Debtors filed an Amended Schedule, describing Olen's
8 employment as "Advertising – Creative Director" at Dreamentia, Inc, and, describing
9 Bolen's employment as "Lawyer" at both Dreamentia, Inc., and the Bolin Firm (which
10 does no work for clients other than these Debtors). Each spouse allegedly receives
11 \$3,000 in monthly gross compensation.

12 Debtors incur payroll deductions from their gross income. Olen incurs monthly
13 payroll deductions of \$357.43 for payroll taxes and social security and \$526.50 for
14 insurance. Bolin incurs monthly payroll deductions of \$394.55 for payroll taxes and
15 social security and \$269.00 for insurance.

16 After considering deductions, Debtors' stated combined monthly after-tax income
17 totaled \$4,473.52.

18 On March 13, 2014, Debtors filed an Amended Schedule J describing their
19 monthly living expenses to include:

20 \$5,200 per month for rent;

21 \$530 per month for home maintenance, including repairs and upkeep;

22 \$1,720 per month for laundry and dry cleaning;

23 \$550 per month for clothing;

24 \$145 per month for life insurance;

25 \$2,295.87 per month for health insurance not deducted from wages; and,

26 \$1,640 per month for preschool expenses for Debtors' two children.

27 In total, Debtors' Amended Schedule J reflects alleged monthly living expenses of
28 \$14,396.87. Debtors' allege their monthly net income is a negative \$9,923.35.

1 At the hearing on June 5, 2014, Bolin explained,

2 Under medical expenses, we do have medical insurance, an HMO,
3 through [*sic*] and that we [pay] roughly \$2,400 a month for. However Dr.
4 Kilburn (phonetic), who is the foremost expert in the effects of toxicity to
5 the brain and the body and neurological functions does not accept HMO.
So we have to pay him out of pocket and we have those receipts, the
cancelled checks of the visits to him.

6 Hr'g Tr. at 28:9–16. The additional payments to “Dr. Kilburn” are not reflected in
7 Debtor’s Schedules.

8
9
10 Dreamentia, Inc.

11 The Debtors are the 100 percent shareholders and principals of Dreamentia, Inc.
12 Second Amended Schedule B at 2, filed February 7, 2014.

13 The court did not receive a copy of the 2012 Dreamentia, Inc., tax return;
14 however, Debtors and the UST discussed the contents of the return during the initial §
15 341(a) meeting. Debtors agreed that the 2012 Dreamentia return “indicates salaries
16 and wages of \$147,966 and compensation of officers of \$30,452.” UST RJN, Ex. 7,
17 52:18–19.

18
19 AGBOKE: Which employees [received the salaries and wages]?

20 BOLIN: There are (?). Chelsea. Was Chelsea there?

21 OLEN: Yes, Chelsea was there. Chelsea Gray.

22 BOLIN: And, um –

23 OLEN: Sara Hall, the copywriter.

24 BOLIN: Sara Hall. And for a couple months’ of time we didn’t have
25 anyone at all.

26 ***

27 AGBOKE: So, the compensation of officers – did that go to either of
28 you?

BOLIN: Yes, it would have to.

1 UST RJN, Ex. 7, 52:26–28–53:1-5, 22–23.

2 Debtors do not detail the salaries, wages, or benefits paid to, or for, Ms. Gray
3 and Ms. Hall. Debtors claim their payroll was managed by Bank of America; however,
4 Debtors have not provided, in their schedules or otherwise, any payroll documents from
5 Bank of America. See UST RJN, Ex. 7, 53:14–15.

6 On June 6, 2013, Debtors filed a copy of the 2013 Dreamentia, Inc., federal tax
7 return. The return states that Dreamentia’s 2013 gross profit was \$213,675.

8 The return also itemizes Dreamentia’s 2013 expenditures as \$328,185, including
9 \$127,084 for salaries and wages and \$22,120 for compensation of officers. The return
10 also itemizes a \$28,123 expense simply as “employee benefits.” An attached statement
11 itemizes another \$83,340 in expenses, including \$8,014 for meals and entertainment,
12 \$13,981 for “[a]utomobile and truck expense,” \$1,425 for “gifts,” \$4,851 for insurance,
13 and \$2,264 for “travel.” These 2013 Dreamentia expenses total \$260,667, with the
14 remainder of expenses attributed to rent, taxes, maintenance, and advertising, bringing
15 total 2013 expenditures to \$328,185..

16 Debtors have not revealed whether Dreamentia had any employees other than
17 the Debtors during 2013. At the same time, Debtors claim that Dreamentia operated at
18 a loss, while the majority of Dreamentia’s expenses relate to either direct compensation
19 or indirect “employee benefits.” This leads to an inference that, perhaps, these
20 expenses were incurred solely for the Debtors’ personal uses, comfort and enjoyment.

21
22 Standards for Dismissal under 11 U.S.C. § 707

23 Pursuant to 11 U.S.C. §707(b)(1), “[a]fter notice and a hearing, the court, on its
24 own motion or on a motion by the United States trustee . . . may dismiss a case filed by
25 an individual debtor under this chapter whose debts are primarily consumer debts . . . if
26 it finds that the granting of relief would be an abuse of the provisions of this chapter.”

27 “In considering under paragraph (1) whether the granting of relief would be an
28 abuse of the provisions of this chapter, the court shall presume abuse exists where the

1 debtor's current monthly income [exceeds the formula set forth in 11 U.S.C. §
2 707(b)(2)(A)(i)–(iv)].”
3 11 U.S.C. § 707(b)(2)(A)(i).

4 “In considering under paragraph (1) whether the granting of relief would be an
5 abuse of the provisions of this chapter in a case in which the presumption in paragraph
6 (2)(A)(i) does not arise or is rebutted, the court shall consider (A) whether the debtor
7 filed the petition in bad faith; or (B) the totality of the circumstances . . . of the debtor's
8 financial situation demonstrates abuse.”

9 11 U.S.C. § 707(b)(3).

10
11 The Court Cannot Determine Whether the Presumption of Abuse Arises under
12 11 U.S.C. § 707(b)(2)(A)(i)

13 Section 707(b)(2)(A)(i) sets forth a complicated formula for the purposes of
14 assessing whether a presumption of abuse arises in a chapter 7 case. The formula
15 requires the court to determine whether a debtor's net monthly income exceeds the
16 lesser of several values. See 11 U.S.C. § 707(b)(2)(A)(i)(I)–(II). As an initial matter, the
17 court must be able to determine the Debtors' monthly net income to accurately assess
18 whether the presumption of abuse arises in this case.

19 The court is unable to determine Debtors' monthly net income from the Debtors'
20 answers. Debtors schedule their combined monthly gross income as \$6,000, or
21 \$72,000 annually; however, Debtors do not cite a source of such funds. The only
22 reference to a source of income is Debtors' testimony that they receive compensation
23 related to their status as officers of Dreamantia, but this only accounts for \$22,120 in
24 annual gross income. Debtors' testimony during the initial and continued § 341(a)
25 meetings, together with the schedules filed by Debtors, the 2013 Dreamantia tax return,
26 and Debtors' other evidence of monthly net income submitted in this case are
27 inconsistent, incomplete and indecipherable.

28 The UST requested that the Debtors provide the UST with copies of the Debtors'

1 2013 personal income tax returns and all monthly bank, credit union, and brokerage
2 statements for the periods including January 2013 through May 2013 and December
3 2013 through June 20, 2014. The purpose of the UST document request was to assist
4 the UST in determining Debtors' average monthly net income. The Debtors did not
5 furnish their personal tax returns to the UST.

6 On July 2, 2014, the UST filed an ex parte motion to set a hearing regarding
7 discovery disputes. In the ex parte motion, the UST states that Debtors refused to
8 cooperate with the UST's requests for documents. Debtors' failure to provide the
9 additional documents to the UST appears to be willful and unwarranted. It clearly
10 frustrates the court's ability to determine the Debtors' monthly net income for the
11 purposes of § 707(b)(2)(A)(i). The court also notes that Debtor's failure to produce the
12 requested documents is a violation of Debtors' duty to disclose. See 11 U.S.C. §
13 521(a)(3) ("The debtor shall . . . cooperate with the trustee as necessary to enable the
14 trustee to perform the trustee's duties under this title.").

15 Debtors also agreed to provide the court with evidence of the additional "\$2,400
16 a month" payments made to "Dr. Kilburn" that were omitted from Debtors' schedules.
17 See Hr'g. Tr. at 29:5–10 ("MS. BOLIN: We'll be glad to send to – actually, I have copies
18 right here of the last four payments made to Dr. Kilburn."). The court has not received
19 evidence of such payments.

20 As a result of Debtors' incomplete disclosures, the court cannot adequately
21 employ the formula of § 707(b)(2)(A)(i) to determine whether the presumption of abuse
22 arises here.

23
24 The Court Can Assess Whether Dismissal is Appropriate under 11 U.S.C. §
25 707(b)(3)

26 When the "presumption in paragraph (2)(A)(i) does not arise or is rebutted," the
27 court can determine whether the case should be dismissed due to bad faith or if
28 Debtors' financial situation demonstrates abuse under the totality of the circumstances.

1 11 U.S.C. § 707(b)(3). Here, as discussed above, Debtors' incomplete disclosures
2 have prevented the court from adequately determining whether the presumption of
3 abuse arises. Therefore, the court will assess whether dismissal is appropriate under
4 either prong of 11 U.S.C. § 707(b)(3), bad faith or abuse.

5
6 The Case Should Be Dismissed under 11 U.S.C. § 707(b)(3)(A) Due to
7 Bad Faith

8 "First the [c]ourt must evaluate whether, in light of all the relevant facts and
9 circumstances, it appears that the [Debtors'] intention in filing a bankruptcy petition is
10 inconsistent with the Chapter 7 goals of providing a 'fresh start' to debtors and
11 maximizing the return to creditors." *In re Mitchell*, 357 B.R. 142, 154-55 (Bankr.C.D.Cal.
12 2006). Courts engage in this evaluation by examining the totality of the circumstances,
13 including the following "*Price* factors" and "*Leavitt* factors":

- 14 (1) Whether the debtor has a likelihood of sufficient future income to fund a
15 Chapter 11, 12, or 13 plan which would pay a substantial portion of the
16 unsecured claims;
- 17 (2) Whether the petition was filed as a consequence of illness, disability,
18 unemployment, or some other calamity;
- 19 (3) Whether the schedules suggest that the debtor obtained cash advancements
20 and consumer goods on credit exceeding his or her ability to repay them;
- 21 (4) Whether the debtor's proposed family budget is excessive or extravagant;
- 22 (5) Whether the debtor's statement of income and expenses is misrepresentative
23 of the debtor's financial condition;
- 24 (6) Whether the debtor engaged in eve-of-bankruptcy purchases;
- 25 (7) Whether the debtor has a history of bankruptcy petition filings and case
26 dismissals;
- 27 (8) Whether the debtor intended to defeat state court litigation by filing the
28 petition; and

1 (9) Whether egregious behavior is present.

2 See *Id.* at 154 (citing *Price v. United States Trustee (In re Price)*, 353 F.3d 1135, 1139–
3 40 (9th Cir. 2004); *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1224 (9th Cir. 1999)).

4 No single factor is dispositive, and neither malice nor fraudulent intent is required to
5 establish bad faith. *In re Powers*, 135 B.R. 980, 991 (Bankr.C.D.Cal. 1991) (citing
6 *Meadow Brook Investor’s Group v. Thirtieth Place, Inc. (In re Thirtieth Place, Inc.)*, 30
7 B.R. 503 (9th Cir. BAP 1983)); *Leavitt*, 171 F.3d at 1224.

8 After consideration of the evidence in this case, the court concludes that this
9 bankruptcy case was filed in bad faith.

10 The Debtors fail to adequately document and explain their relevant financial
11 history and current condition. Debtors engaged in significant spending on what the
12 court finds to be non-essential goods and services, even after Debtors admitted they
13 first considered filing a bankruptcy petition. Debtors spent thousands of dollars on
14 travel, pet boarding, luxury sunglasses, and accelerated payments on one of their two
15 high-end vehicles. This conduct was inappropriate for the Debtors who report a
16 negative monthly income of \$9,923.35 in the period leading directly to filing their joint
17 chapter 7 petition.

18 Debtors have not adequately identified or detailed the sources of their income. In
19 Schedule I, Debtors allege that they earn a combined monthly gross income of \$6,000,
20 a \$72,000 annual gross income. Debtors identify the “compensation of officers”
21 expenditure in the 2012 Dreamentia tax return as their sole source of income. The
22 testimony regarding the 2012 Dreamentia return reflects a \$30,452 annual expense for
23 compensation of officers. The 2013 Dreamentia return reflects a \$22,120 annual
24 expense for officers’ compensation. This leaves unaccounted the source of nearly
25 \$50,000 in Debtors’ scheduled gross income. Further, Debtors do not detail or explain
26 how the two individuals employed during a portion of 2012 factor into Debtors’ 2013
27 accounting of Dreamentia’s salaries, wages, benefits, or other 2013 Dreamentia
28 expenditures; they do not explain whether anybody other than the Debtors continued to

1 work for Dreamentia or received benefits from Dreamentia during 2013.

2 Debtors' failure to account for the source of substantial amounts of scheduled
3 income, the disposition of hundreds of thousands of dollars in Dreamentia salary, wage,
4 benefits compensation, and other Dreamentia expenses, along with Debtors' significant
5 personal spending on non-essential goods and services, leads the court to conclude
6 that Debtors have seriously misstated their financial condition in their schedules, at their
7 § 341(a) meetings, and in their pleadings and courtroom testimony and argument.

8 Debtors' significant prepetition personal expenditures lead the court to conclude
9 that Debtors likely have sufficient disposable income to fund a plan under chapter 11.
10 Such a plan would allow Debtors to repay some portion of unsecured creditors' claims,
11 particularly assuming that Debtors limit their future personal expenditures to reasonable
12 levels consistent with their net income on an ongoing basis.

13 Even if Debtors did not seriously misrepresent their financial history and
14 condition, their monthly expenses are excessive or extravagant. Debtors spend \$5,200
15 monthly on rent (not including the additional \$1,311 Debtors spend monthly for
16 electricity, heating fuel, water, sewer, telephone, cable, and home maintenance). The
17 court takes judicial notice of the United States Trustee's Local Housing and Utilities
18 Standards for Los Angeles County, effective November 15, 2013 through March 31,
19 2014. For a family of four, the standards provide for rent expenses in the amount of
20 \$2,528 and utilities in the amount of \$605. Debtors' rent and utilities expenses are
21 excessive given their request for relief under chapter 7 in light of the above standards.

22 Debtors' alleged monthly expenses of \$1,640 for preschool tuition, \$1,720 for dry
23 cleaning, and \$550 for clothing are extravagant and inappropriate in this chapter 7 case.

24 Importantly, Debtors were not motivated to file their petition by serious, carefully
25 explained and documented expenses of serious illness or some other calamity.
26 Instead, Debtors sought chapter 7 relief directly as the result of and in response to the
27 entry of an attorneys' fee award against them in the *Whitehawk Ranch* litigation. When
28 asked the date that Debtors first considered filing for bankruptcy, Bolin explained,

1 “When the judgment was, and when the judgment was against us and (?) the fees.”
2 UST RJN, Ex. 7, 44:24–25. In fact, Debtors Amended Schedule F shows that all their
3 prepetition unsecured non-priority debt, almost \$1.6 million, is owed to attorneys.

4 During the June 5, 2014 hearing, Bolin asserted that Debtors did not consider
5 filing a petition until November 2014. When asked what motivated the decision to file a
6 petition, Bolin alleged, “The first time we ever contemplated filing was after the
7 November [first] fee award against us that was rendered.” Hr’g Tr. at 29:13–15. This
8 statement was flatly inconsistent with her prior testimony, under oath, at the initial §
9 341(a) meeting. As previously stated above, the UST’s evidence reveals that Bolin had
10 previously acknowledged that she first considered filing for bankruptcy in July 2013,
11 after the judgment against the Debtors’ for fees. See UST RJN, Ex. 7, 44:23–27.

12 The only scheduled unsecured debts relate, at least in significant part, to the
13 *Whitehawk Ranch* litigation and attorneys’ fee award. None of the prepetition
14 unsecured debts are related to healthcare. Despite vague, unexplained and
15 unsubstantiated references to Debtors’ ailments throughout the record, Debtors
16 consistently admit that they were motivated to file a chapter 7 petition as a result of the
17 attorneys’ fee award entered in state court, not illness or some other unavoidable
18 calamity.

19 This leads the court to conclude, on balance, after considering all the conflicting
20 evidence, including the Debtors’ understandable personal desires to visit aging parents
21 in Florida and Nigeria, that this bankruptcy case was filed to defeat state court litigation,
22 or at least, as a tactical maneuver to avoid specific debts for legal fees Debtors incurred
23 and, at least in part, owed to opposing counsel in state court litigation.

24 The court also concludes that Debtors engaged in significant eve-of-bankruptcy
25 purchases and unnecessary expenditures. Based on Debtors’ testimony, the court finds
26 that the Debtors first contemplated filing a bankruptcy petition on July 31, 2014.
27 Following that date, Debtors spent thousands of dollars on personal travel, pet
28 boarding, and accelerated payments on one of their two high-end personal cars. The

1 court concludes that significant personal expenditures were made on the “eve-of-
2 bankruptcy,” because they were made while the Debtors were aware of their need to
3 seek bankruptcy protection.

4 Debtors demonstrated additional egregious behavior sufficient to establish bad
5 faith. Debtors did not seek a refund of \$278.77 spent for lodging in Dubai in October
6 2013, even though Debtors admitted they were entitled to a refund. Debtors spend
7 \$2,295.87 per month in health insurance, but they apparently spent, and failed to
8 document, thousands more for unexplained and undocumented consultations with a
9 doctor whose charges were not reimbursable by Debtors’ health insurance plans.

10 Debtors allege their business suffers yearly losses; however, their 2013 tax
11 return indicates thousands of dollars spend on meals, entertainment, travel, and
12 vehicles. Furthermore, Debtors make no attempt to explain the discrepancies or
13 omissions between the significant salary and employee benefit expenditures of their
14 company and their scheduled incomes. Debtors refuse to turn over personal income
15 tax returns and payroll records to clarify these expenditures. Debtors demonstrate a
16 privileged attitude regarding their prepetition spending. At the same time they display
17 an unwillingness to provide sufficient information to fully explain their sources of income
18 or their expenditures. This behavior by Debtors falls sufficiently short of reasonable
19 expectations for chapter 7 debtor’s behavior to be considered egregious.

20 The court notes that Debtors have not had any prior bankruptcy history. This
21 factor weighs in favor of Debtors, but it does not outweigh the significant evidence
22 discussed here that leads the court to a bad faith finding.

23 In light of the foregoing, the court finds that Debtors engaged in significant bad
24 faith conduct that warrants dismissal pursuant to 11 U.S.C. § 707(b)(3)(A).

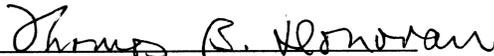
25
26 The Case Should Be Dismissed under 11 U.S.C. § 707(b)(3)(B) because
27 Debtors’ Financial Situation Demonstrates Abuse

28 The court also finds that this case should be dismissed pursuant to 11 U.S.C. §

1 707(b)(3)(B). Dismissal under 11 U.S.C. § 707(b)(3)(B) involves an assessment of the
2 same *Price* factors as dismissal under § 707(b)(3)(A). See *Ng v. Farmer (In re Ng)*, 477
3 B.R. 118, 126 (9th Cir. BAP 2012) (applying the *Price* factors to analyze dismissal under
4 § 707(b)(3)(B), especially the avoidance of personal service contract obligations, *i.e.*,
5 Debtors' attorneys' fees in the *Whitehawk Ranch* matter). For the foregoing reasons, the
6 totality of the circumstances discussed demonstrates abuse such that dismissal under
7 11 U.S.C. § 707(b)(3)(B) is appropriate, unless, as an alternative, and after full
8 disclosure satisfactory to the UST, the Debtors promptly elect to convert this case to an
9 appropriate reorganization case subject to the concerns expressed by the court in this
10 memorandum.

11 SO ORDERED.

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24 Date: August 22, 2014


Thomas B. Donovan
United States Bankruptcy Judge