



NOT FOR PUBLICATION
UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re:
SUSIE GUERRERO,
Debtor.

Case No. 2:19-bk-10311-RK
Chapter 7

**MEMORANDUM DECISION ON MOTION
OF UNITED STATES TRUSTEE TO
DISMISS CHAPTER 7 CASE WITH A
REFILING BAR PURSUANT TO 11
U.S.C. § 707(b)(3)(A), OR, IN THE
ALTERNATIVE, TO FURTHER EXTEND
TIME TO FILE COMPLAINT UNDER 11
U.S.C. § 727 [ECF 22]**

Vacated Hearing

Date: September 17, 2019
Time: 2:30 p.m.
Courtroom: 1675

Pending before this court is the motion of Peter C. Anderson, United States Trustee for the Central District of California (the United States Trustee), to Dismiss Chapter 7 Case with a Refiling Bar pursuant to 11 U.S.C. § 707(b)(3)(A), or, in the alternative, to Further Extend Time to File a Complaint Under 11 U.S.C. § 727, Electronic Case Filing (ECF) Number 22, filed on August 12, 2019 (Motion to Dismiss), which the court took under submission by order entered on September 11, 2019, ECF 29. The Motion to Dismiss was noticed for hearing on September 17, 2019, but the court determined that

1 oral argument was unnecessary, dispensed with it, vacated the hearing and took the
2 Motion to Dismiss under submission.

3 On January 11, 2019, Debtor commenced this bankruptcy case by filing her
4 voluntary petition for relief under Chapter 7 of the Bankruptcy Code, 11 U.S.C. ECF 1.
5 Debtor's meeting of creditors pursuant to 11 U.S.C. § 341(a) was formally concluded on
6 May 21, 2019. See ECF 10-12 and 21. Subsequently, on August 12, 2019, the United
7 States Trustee timely filed and served the Motion to Dismiss, ECF 22, for abuse pursuant
8 to 11 U.S.C. § 707(b)(3)(A), alleging that Debtor filed her petition in bad faith, citing inter
9 alia, *In re Mitchell*, 357 B.R. 142, 153-155 (Bankr. C.D. Cal. 2006).¹ In support of the
10 Motion to Dismiss, the United States Trustee submitted the declaration of his analyst,
11 Jack Arutyunyan, who analyzed Debtor's bankruptcy schedules and financial documents,
12 including credit card statements, showing that despite prevalent and persistent financial
13 difficulties, having a below median income, no real estate assets and minimal personal
14 property assets, Debtor incurred over \$100,602.09 in unsecured debt, including over
15 \$96,000 in credit card charges for luxury goods and discretionary spending over a four
16 month period on a single American Express credit card account, and spent over
17 \$30,000.00 to purchase a luxury vehicle, an Audi A7 Quattro, which is now apparently
18 missing, but not "stolen." Motion to Dismiss, ECF 22 at 38-49 (Declaration of Jack
19 Arutyunyan) and Exhibits 1-6 attached thereto. This unsecured debt was incurred or
20 permitted to be incurred in a roughly four month period between January 27 and May 22,
21 2018 in the year of Debtor before she filed her bankruptcy petition on January 11, 2019.

22 *Id.*

23 According to the United States Trustee in his moving papers,

24 In sum, the repetition, nature and type of the multiple and varied purchases
25 made during this abbreviated time window upon Debtor's AMEX credit card
26 account, comprises of charges amounting to almost \$100,000.00 for high-end
clothing/shoes, jewelry, household/general merchandise, and electronics, as well
as a solid month of shared Las Vegas getaways, travel/transportation,

27 ¹ By stipulation and order entered on April 9, 2019, the date for the United States Trustee to bring a motion
28 to dismiss pursuant to 11 U.S.C. § 707(b) was extended to August 13, 2019. ECF 16-18.

1 restaurants/dining, and entertainment, belie the Debtor's professed ignorance of
2 and lack of personal involvement with the rapid incurrence of this mountain of
3 unsecured debt. Instead, the evidence supports a sustained spending spree by the
4 newly-divorced Debtor and her live-in boyfriend, fueled by their shared usage of
Debtor's newly minted AMEX account in a single stretch of 116 days, and propped
up by artificially stretching Debtor's available credit with more than 2 dozen phoney
"NSF" payments.

ECF 22 at 22. Based on this evidence, the United States Trustee argues that under these
factual circumstances, a Chapter 7 bankruptcy discharge for Debtor would not be a just
result for creditors, and the case should be dismissed for bad faith and for abuse pursuant
to 11 U.S.C. § 707(b)(3)(A) with a two year bar on Debtor filing a new bankruptcy case.
Id. at 22-37.

Because the Motion to Dismiss was noticed for hearing on September 17, 2019,
any written opposition to the Motion to Dismiss was required by Local Bankruptcy Rule
9013-1(f) to be filed and served no later than 14 days before the hearing. Under Local
Bankruptcy Rule 9013-1(f)(1), ". . . each interested party opposing or responding to [a]
motion must file and serve the response . . . on the moving party and the United States
trustee not later than 14 days before the date designated for hearing." Pursuant to Local
Bankruptcy Rule 9013-1(c)(2), the United States Trustee advised Debtor in the notice of
motion accompanying the Motion to Dismiss, ECF 22, that if Debtor wished to oppose or
respond to the Motion to Dismiss, she must file a written response no less than 14 days
prior to September 17, 2019.

Further, "if a party does not timely file and serve documents, the court may deem
this to be consent to the granting or denial of the motion, as the case may be." Local
Bankruptcy Rule 9013-1(h). The failure of a party to timely file and serve a response that
raises its objection or challenge "will be deemed consent to the bankruptcy court's
authority to enter a final order on the underlying motion." Local Bankruptcy Rule 9013-
1(f)(3). No written opposition was timely filed and served by the due date of September 3,
2019, 14 days before the noticed hearing, and thus, the factual showing made by the
United States Trustee in support of the Motion to Dismiss is uncontroverted because no
timely written opposition supported by evidence was filed in response to this showing.

1 However, on September 6, 2019, Debtor filed and served a Motion to Convert Case
2 under 11 U.S.C. §§ 706(a) or 1112(a) (Motion to Convert), ECF 27. In the Motion to
3 Convert, Debtor requested that the bankruptcy case be converted to one under Chapter
4 13 of the Bankruptcy Code. *Id.* Debtor used the court's form motion to convert, Form F
5 1017-1.1.MOTION.DEBTOR.CONVERT, but did not provide a declaration or any other
6 evidence or any memorandum of points and authorities in support of her motion to
7 convert. *Id.* Relying on printed language in the form motion, Debtor alleges that the
8 motion to convert is filed in good faith and that she is eligible for relief under the chapter
9 for which conversion is requested, which would be Chapter 13. *Id.* Debtor did not notice
10 the Motion to Convert for hearing pursuant to Local Bankruptcy Rule 9013-1(d), but
11 requested a determination of the Motion to Convert by giving notice of an opportunity to
12 request a hearing pursuant to Local Bankruptcy Rule 9013-1(o). ECF 28.

13 On September 9, 2019, the United States Trustee filed and served a Reply and
14 Opposition to the Debtor's Motion for Voluntary Case Conversion in Apparent Response
15 to Pending Motion to Dismiss Chapter 7 Case with a Refiling Bar pursuant to 11 U.S.C.
16 § 707(b)(3)(A) (the Reply), ECF 28. The United States Trustee stated his opposition to
17 the Motion to Convert in this document but did not request a hearing pursuant to Local
18 Bankruptcy Rule 9013-1(o)(4), apparently assuming that the Motion to Convert would be
19 heard on September 17, 2019 with the Motion to Dismiss, which was an incorrect
20 assumption. *Id.* Pursuant to Local Bankruptcy Rule 9013-1(o)(4), Debtor was required to
21 notice the Motion to Convert for hearing within 14 days of the service of the response of
22 the United States Trustee on September 9, 2019, or by September 23, 2019, which she
23 did not do. Since Debtor failed to notice the Motion to Convert for hearing within 14 days
24 of service of the response, the court may deny the Motion to Convert without prejudice
25 pursuant to Local Bankruptcy Rule 9013-1(o)(4).

26 The court determines that the Motion to Dismiss filed by the United States is
27 unopposed since there is no written opposition filed by Debtor in response to that motion.
28

Debtor's Motion to Convert was not an opposition to the Motion to Dismiss pursuant to Local Bankruptcy Rule 9013-1(f)(1), not only because it is not captioned as such, but it was untimely, having not been filed and served at least 14 days before the hearing on the Motion to Dismiss. Moreover, the Motion to Convert is totally unresponsive to the Motion to Dismiss. Accordingly, the court will deem the Motion to Dismiss as unopposed, and Debtor's failure of a party to timely file and serve a response that raises an objection or challenge "will be deemed consent to the bankruptcy court's authority to enter a final order on the underlying motion" pursuant to Local Bankruptcy Rule 9013-1(f)(3). This result is appropriate because the factual showing made by the United States Trustee regarding bad faith conduct of Debtor in going on an expensive "eve of bankruptcy" credit card spending spree of over \$100,000, within one year of the petition date, is well-documented and is not rebutted by Debtor with any evidence. Based on the evidentiary showing of the United States Trustee, the court determines that the United States Trustee has met his burden of showing that Debtor's conduct constitutes abuse for purposes of 11 U.S.C. § 707(b)(3)(A). *In re Lamug*, 403 B.R. 47, 53 (Bankr. N.D. Cal. 2009) (citation omitted); *In re Mitchell*, 357 B.R. at 153-155. Therefore, the court will grant the Motion to Dismiss for abuse pursuant to 11 U.S.C. § 707(b)(3)(A).

As the United States Trustee argues, the court has authority to impose a bar on refiling of a bankruptcy case by a debtor whose case is dismissed for abuse of the bankruptcy system pursuant to 11 U.S.C. §§ 707(b)(3)(A), 349 and 105(a). ECF 22 at 35, citing, *In re Mitchell*, 357 B.R. at 157 and *In re Siegenberg*, No. LA 06-16263 TD Chapter 7, 2007 WL 6371956 (Bankr. C.D. Cal. 2007). Consistent with the goal of limiting abuse of the bankruptcy system that underlies 11 U.S.C. § 707(b)(3)(A), *In re Mitchell*, 357 B.R. at 157-158, the court agrees with the United States Trustee that dismissal of the case is insufficient in this case and that a refiling bar of two years is appropriate because otherwise, Debtor could file a new bankruptcy case to discharge her debts to her creditors where she racked up huge credit card charges of about \$100,000 for luxury and discretionary spending items, leaving the creditors to "hold the bag" (i.e., absorb the

1 losses from) for her wanton spending, without a fair opportunity to attempt to collect such
2 debts to recover on their losses.

3 Based on the foregoing, the court rules as follows:

4 1. The court grants the Motion to Dismiss for the reasons stated in the Motion.

5 2. The court grants the request in the Motion to Dismiss to bar the Debtor from
6 filing a new bankruptcy case pursuant to 11 U.S.C. §§ 707(b)(3)(A), 349 and
7 105(a).

8 3. As a result of the relief ordered herein, the alternative request of the United
9 States Trustee for relief that the court issue an order further extending the bar
10 date for filing a complaint for denial of discharge under 11 U.S.C. § 727 is
11 rendered moot, and the court therefore denies such request as moot.

12 4. As a result of the relief ordered herein, the Motion to Convert is rendered moot,
13 and the court therefore denies the Motion to Convert as moot.

14 5. Alternatively, the court denies the Motion to Convert because: (1) Debtor has
15 not shown that the Motion to Convert was filed in good faith as shown by the
16 evidence in support of the Motion to Dismiss which indicates that Debtor has
17 acted in bad faith in filing this case and in attempting to convert this case to
18 another chapter; (2) Debtor is ineligible for Chapter 13, which requires that she
19 has regular income to make plan payments under a Chapter 13 plan pursuant
20 to 11 U.S.C. § 109(e), which she does not have as her income and expense
21 schedules in her bankruptcy petition show that her net monthly income is
22 negative, ECF 1 at 27-30; *see also*, Federal Rule of Evidence 201 (the
23 bankruptcy court takes judicial notice of Debtor's pleadings filed with the court in
24 this case); and (3) Debtor failed to timely notice the Motion to Convert for
25 hearing after the United States Trustee filed his response to the Motion to
26 Convert as required by Local Bankruptcy Rule 9013-1(o)(4).

1 A separate final order granting the Motion to Dismiss, denying the Motion to
2 Convert and dismissing Debtor's bankruptcy case with a two-year refiling bar is being filed
3 and entered concurrently herewith.

4 IT IS SO ORDERED.

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Date: October 4, 2019



Robert Kwan
United States Bankruptcy Judge