



CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

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THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed May 4, 2020

Mark X. Mullin

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE:

LISA N.B. JACKSON,

DEBTOR.

§
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CASE No. 19-41723-MXM

CHAPTER 7

**ORDER CONDITIONALLY GRANTING THE
UNITED STATES TRUSTEE'S MOTION TO DISMISS
UNDER 11 U.S.C. § 707(b)(1) AND (b)(2)**

[Relates to ECF No. 20]

Before the Court is the *United States Trustee's Motion to Dismiss for Presumed Abuse and Totality of the Circumstances Under 11 U.S.C. § 707(b)(1) and (b)(2) and/or (b)(3)* (the "**Motion**")¹ filed by the United States Trustee (the "**Trustee**"). By his Motion, the Trustee seeks to dismiss this case pursuant to 11 U.S.C. § 707(b)(1), (2), and (3). The Trustee contends that a

¹ ECF No. 20.

“presumption of abuse” arises in this case pursuant to § 707(b)(2) because the Debtor utilized improper spousal adjustments to income in her Form 122A-2 Means Test calculation. Alternatively, the Trustee argues that the totality of the circumstances of the Debtor’s financial condition warrant a finding of abuse pursuant to § 707(b)(3). The Debtor maintains that the deductions taken on the Form 122A-2 Means Test are accurate, appropriate, and substantiated; accordingly, no presumption of abuse or actual abuse arises under § 707(b). Further, even if the presumption of abuse is established under § 707(b)(2)(A), the Debtor contends that she has successfully rebutted the presumption of abuse by demonstrating special circumstances under § 707(b)(2)(B). Finally, the Debtor argues that the Trustee cannot satisfy his burden to establish that the totality of circumstances of the Debtor’s financial situation establishes abuse under § 707(b)(3)(B).

The Court has reviewed and considered the Motion, the Response,² the testimony of Lisa N.B. Jackson (the “**Debtor**”), the exhibits admitted into evidence, and the arguments of counsel. The following constitutes the Court’s Findings of Fact and Conclusions of Law³ in support of this ruling as required by Federal Rule of Civil Procedure 52, made applicable in this contested matter by Federal Rules of Bankruptcy Procedure 9014 and 7052.

I. JURISDICTION AND VENUE

The Court has subject matter jurisdiction over this contested matter pursuant to 28 U.S.C. §§ 1334(b) and 157(a) and the standing order of reference in this district. This contested matter involves a core proceeding over which the Court has both statutory and constitutional authority to

² *Response to United States Trustee’s Motion to Dismiss*, ECF No. 24 (the “**Response**”).

³ Any findings of fact that should be more appropriately be characterized as a conclusion of law should be regarded as such, and *vice versa*.

enter final orders and judgments pursuant to 28 U.S.C. § 157(b)(2)(A), (B) and (O). Venue for this contested matter is proper pursuant to 28 U.S.C. § 1409(a).

II. FINDINGS OF FACT

A. Procedural History

On April 30, 2019 (the “**Petition Date**”), the Debtor filed her (i) *Voluntary Petition for Individuals Filing for Bankruptcy* (the “**Petition**”),⁴ (ii) *Official Form 122A-1 Chapter 7 Statement of Your Current Monthly Income* (the “**Form 122A-1**”),⁵ and (iii) *Official Form 122A-2 Chapter 7 Means Test Calculation* (the “**Form 122A-2 Means Test**”).⁶

On May 30, 2019, the Debtor filed her Schedules⁷ and Statement of Financial Affairs.⁸

On June 19, 2019, the first meeting of creditors pursuant to 11 U.S.C. § 341 was held and concluded. Thereafter, on June 27, 2019, the Trustee timely filed a *Statement of Presumed Abuse*⁹ pursuant to § 707(b), and on July 29, 2019, the Trustee timely filed the Motion.¹⁰ On August 19, 2019, the Debtor filed her Response.¹¹

The hearing date on the Motion was March 12, 2020 (the “**Hearing Date**”).

⁴ ECF No. 1; *see also* Trustee Ex. 1.

⁵ Petition at 18-20.

⁶ *Id.* at 21-31.

⁷ ECF No. 8; *see also* Trustee Ex. 5.

⁸ ECF No. 9; *see also* Trustee Ex. 6.

⁹ ECF No. 16; *see also* 11 U.S.C. § 704(b)(1)(A).

¹⁰ Motion; *see also* 11 U.S.C. § 704(b)(2).

¹¹ ECF No. 24.

B. The Debtor's Family Background, Monthly Income and Expenses, and Liabilities and Assets

As of the Hearing Date, the Debtor was married to her non-filing spouse (for convenience, "*Husband*"), and they were living in the same household and were not legally separated.¹² The Debtor and her Husband have five dependents: the Debtor's seventy-seven-year-old mother, three daughters ages twelve, eleven, and eight, and one six-year-old son.

The Debtor has been employed as a Senior Analyst at American Airlines for ten years. Her income is stable, and she grosses \$8,756 per month. Husband has been employed in sales for approximately two years at Perigee, a company of which he owns thirty-three percent. Husband's income has also been stable, and he too grosses approximately \$8,750 per month. Combined, as of the Petition Date, the total monthly income for the Debtor and Husband was \$17,506.¹³

As of the Petition Date, the Debtor's and Husband's combined total monthly income was \$17,506.66¹⁴ and the Debtor's monthly disposable income was negative <\$409.31>.¹⁵ Further, pursuant to the Debtor's schedules, her monthly family expenses exceeded monthly income by <\$592.66>.¹⁶

As of the Hearing Date, the Debtor asserted that her and her Husband's combined total monthly income had increased slightly to \$17,681.80,¹⁷ and the Debtor's monthly disposable

¹² Testimony of Debtor [11:19-20]. The Debtor testified, however, that their marriage was not stable, and that Husband had been consulting with a divorce attorney. *See* Testimony of Debtor [12:50-51].

¹³ Petition at 18; *see also* Trustee Ex. 1 at 18; Trustee Ex. 5 at 28.

¹⁴ Petition at 19, line 11; Trustee Ex. 1 at 32, line 11.

¹⁵ Petition at 28, line 39c.

¹⁶ ECF No. 8 at 34, line 23c; Trustee Ex 5 at 34.

¹⁷ Debtor Ex. A (*Official Form 122C-1*) at 2, line 12.

income improved slightly to a negative <\$245.91>.¹⁸ In addition, the Debtor further asserted that her family monthly income less expenses had improved to \$66.31.¹⁹

On the Petition Date, the Debtor's liabilities consisted primarily of (i) secured debt of approximately \$107,665 (secured by the Debtor's homestead),²⁰ (ii) priority debt owed to the Internal Revenue Service of approximately \$23,778;²¹ and (iii) unsecured debt of approximately \$239,986.²² The Debtor admits in her Petition that her liabilities are primarily consumer debts, both in quantity and amount.²³

Finally, the Debtor's assets consist primarily of (i) her homestead valued at approximately \$263,890,²⁴ (ii) three cars (1998 BMW, 2016 Honda Odyssey, and 2020 Honda Odyssey), (iii) household and related personal property valued at approximately \$15,200,²⁵ (iv) cash value in a whole life insurance policy of \$18,555,²⁶ and (v) the Debtor's and Husband's retirement 401k and IRA accounts of approximately \$437,308.²⁷

III. CONCLUSIONS OF LAW

The Trustee seeks to dismiss this case pursuant to 11 U.S.C. § 707(b)(1), which provides, in relevant part, that the court "*may* dismiss a case filed by an individual debtor under this chapter whose debts are primarily consumer debts . . . if it finds that the granting of relief would be an

¹⁸ *Id.* at 8, line 45.

¹⁹ Debtor Ex. B at 3.

²⁰ ECF No. 8 at 15; Trustee Ex. 5 at 15.

²¹ ECF No. 8 at 16; Trustee Ex. 5 at 16.

²² ECF No 8 at 35; Trustee Ex. 5 at 35.

²³ Petition; *see also* Trustee Ex. 1 at 6.

²⁴ ECF No. 8 at 1; Trustee Ex. 5 at 1.

²⁵ ECF No. 8 at 2-5; Trustee Ex. 5 at 2-5.

²⁶ ECF No. 8 at 6; Trustee Ex. 5 at 6.

²⁷ ECF No. 8 at 4; Trustee Ex. 5 at 4.

abuse of the provisions of this chapter.”²⁸ “Abuse” within the meaning of § 707(b)(1) can be established in two alternative ways. The first alternative is the presumption of abuse based on the means test calculations detailed in § 707(b)(2). If the presumption of abuse under § 707(b)(2) does not arise or is rebutted, then the court may consider whether abuse is established under § 707(b)(3) by determining “whether the debtor filed the petition in bad faith”²⁹ or whether “the totality of the circumstances . . . of the debtor’s financial situation demonstrates abuse.”³⁰

In other words, § 707(b) provides a two-step process to detect and deter abusive filers: the objective “means test” prescribed in § 707(b)(2), and the more subjective test of § 707(b)(3), which requires an analysis of the facts of the particular case. In this case, the Trustee argues that abuse is established under both §§ 707(b)(2)(A) and 707(b)(3)(B).³¹ The Debtor responds that even if the presumption of abuse is established under § 707(b)(2)(A), the Debtor has rebutted that presumption through special circumstances under § 707(b)(2)(B). In addition, the Debtor argues that the Trustee cannot satisfy his burden to establish abuse under the totality of circumstances of the Debtor’s financial situation under § 707(b)(3)(B).

A. § 707(b)(2)(A) and the Presumption of Abuse

Under § 707(b)(2)(A)(i), a presumption of abuse depends on the results of the “means test,” which is a mathematical formula by which a debtor’s disposable income is calculated. Generally, the section provides that the court shall presume that abuse exists if the debtor’s current monthly income, reduced by the expenses or payments determined under § 707(b)(2), is greater than the threshold amounts set forth in that section.

²⁸ 11 U.S.C. § 707(b)(1) (emphasis added).

²⁹ 11 U.S.C. § 707(b)(3)(A).

³⁰ 11 U.S.C. § 707(b)(3)(B).

³¹ See Motion. The Trustee does not argue or allege “bad faith” under § 707(b)(3)(A).

Under this test, the court is first instructed to compare the debtor's annualized current monthly income to the median family income of a similarly sized family in the debtor's state of residence. If the debtor's annualized current monthly income is equal to or below the annual median income, then the presumption of abuse does not arise.³² If, however, the debtor's annualized current monthly income exceeds the annual median income of a similarly sized family in the debtor's state of residence, then the debtor is directed to calculate the debtor's monthly disposable income under § 707(b)(2)(A) by deducting certain necessary expenses specified in the statute.³³

In this case, the Debtor's Form 122A-1 reflects that the Debtor's and Husband's annualized income of \$210,079³⁴ exceeds the median family income of \$110,960³⁵ that applies in the Debtor's case. Therefore, the Court is directed to the Debtor's Form 122A-2 Means Test to determine if a presumption of abuse exists in this case.³⁶ The Debtor contends that, based on the calculations in her Form 122A-2 Means Test, there is no presumption of abuse in this case.³⁷ The Trustee, on the other hand, disputes certain of the Debtor's spousal adjustments made in her Form 122A-2, and contends that the elimination of these improper spousal adjustments will result in a presumption of abuse in this case.

In her Form 122A-2 Means Test, the Debtor declares \$3,009.50 in total spousal adjustments to her Husband's income.³⁸ The Trustee disputes the legitimacy of at least \$1,938.47

³² 11 U.S.C. § 707(b)(7).

³³ *Id.*; see also 11 U.S.C. § 707(b)(2)(A)(ii).

³⁴ See Trustee Ex. 1 at 20, line 12b.

³⁵ *Id.* at 20, line 13.

³⁶ *Id.* at 20, line 14b.

³⁷ *Id.* at 29, line 40.

³⁸ *Id.* at 21, line 3.

of the spousal adjustments taken by the Debtor. The Trustee asserts that after making a corresponding correction to eliminate the improper spousal adjustments, the revised Debtor's Form 122A-2 Means Test will establish a presumption of abuse under § 707(b)(2).³⁹ The Court will address each of the disputed spousal adjustments taken by the Debtor in her Form 122A-2 Means Test.

*1. Spousal Adjustment for Husband's alleged IRS Payments*⁴⁰

On her Form 122A-2 Means Test, the Debtor claims a spousal adjustment of \$53.70 for her Husband's IRS obligations.⁴¹ The Trustee contends that this spousal adjustment is improper because the proposed adjustment actually constitutes a joint unsecured tax expense of both the Debtor and her Husband, as opposed to her Husband's sole tax obligation. In support of his objection, the Trustee points to the Debtor's *Schedule E*⁴² and the Debtor's tax returns⁴³ as evidence that the tax obligation associated with the proposed spousal adjustment constitutes a joint unsecured obligation of both the Debtor and her Husband.

The Debtor failed to rebut the Trustee's credible evidence or otherwise establish the validity of the claimed spousal adjustment on the Form 122A-2 Means Test. Therefore, the Court disallows the \$53.70 as a spousal adjustment on the Debtor's Form 122A-2 Means Test.

³⁹Motion ¶ 34.

⁴⁰*Id.* ¶¶ 29, 35.

⁴¹ See Trustee Ex. 1 at 21, line 3.

⁴² See Trustee Ex. 5 at 16.

⁴³ See Trustee Exs. 16, 17, and 36.

2. *Spousal Adjustment for Husband's Separate Credit Card Expenses*⁴⁴

On her Form 122A-2 Means Test, the Debtor claims a spousal adjustment of \$1,249.00 for her Husband's separate credit card expenses.⁴⁵ The Trustee contends that the Debtor's proposed spousal adjustment is improper because the credit card statements reflect that the Husband's credit card was used for household expenses including, but not limited to, utility bills, children's gymnastic and soccer fees, family trips, and other family household expenditures for the benefit of the entire family and not just for the benefit of Husband. Therefore, the Trustee contends that the Debtor's asserted spousal adjustment for credit card payments do not qualify as a proper spousal adjustment.

The clear evidence, including the Debtor's testimony and a review of the Husband's credit card statements, reflects that many of the charges to the Husband's credit card were irrefutably for the benefit of the household rather than for the Husband's sole personal or business expenses. Further, the Debtor failed to provide credible evidence to support what charges or percentage, if any, of the credit card charges were attributable solely to the Husband or his business expenses. Therefore, based on the Trustee's credible evidence, the Court finds that the Trustee has satisfied his burden of proof to demonstrate that the Debtor's spousal adjustment of \$1,249.00 taken on her Form 122A-2 Means Test was not proper and should be disallowed.

3. *Spousal Adjustment for Housekeeping Expense*⁴⁶

On her Form 122A-2 Means Test, the Debtor claims a spousal adjustment of \$390.00 for housekeeping expenses.⁴⁷ The Trustee contends that this expense benefits the entire household as

⁴⁴ Motion ¶¶ 29, 37.

⁴⁵ See Trustee Ex. 1 at 21, line 3.

⁴⁶ Motion ¶¶ 29, 36.

⁴⁷ See Trustee Ex. 1 at 31, line 3.

opposed to an expense that benefits only the Husband. Indeed, at the hearing, the Debtor admitted in her testimony that this \$390.00 expense was for a housekeeper that benefited the entire household and not just the Husband. Therefore, based on the Trustee's uncontroverted and credible evidence, the Court finds that the Trustee has satisfied his burden of proof to demonstrate that the Debtor's spousal adjustment of \$390.00 taken on her Form 122A-2 Means Test was not proper and should be disallowed.

4. *Spousal Adjustment for Student Loans*⁴⁸

On her Form 122A-2 Means Test, the Debtor claims a spousal adjustment of \$548.00 for the Husband's student-loan payments.⁴⁹ The Trustee contends that this spousal adjustment is overstated because the supporting documentation and evidence reveals that the maximum amount of the adjustment for the Husband's student loan payments should be \$302.23.⁵⁰ At the hearing, the Debtor testified that the monthly student-loan payments for both her and her Husband is approximately \$600.00⁵¹ and she specifically admitted in her Exhibit B that the Husband's monthly student-loan payments are \$302.23.⁵² Therefore, based on the Trustee's uncontroverted and credible evidence, the Court finds that the Trustee has satisfied his burden of proof to demonstrate that the Debtor's spousal adjustment of \$548.00 taken on her Form 122A-2 Means Test was overstated and should be reduced by \$245.77, to \$302.23.

⁴⁸ Motion ¶ 30.

⁴⁹ See Trustee Ex. 1 at 31, line 3.

⁵⁰ See Motion ¶ 30.

⁵¹ See Testimony of Debtor [11:27].

⁵² See Debtor Ex. B, line 17c.

5. *Summary of Spousal Adjustments*

Based on the above adjustments to the Debtor's Form 122A-2 Means Test, the Debtor's monthly disposable income in the original negative amount of <\$409.31>⁵³ is revised to reflect positive monthly disposable income of \$1,529.16, which substantially exceeds \$13,650⁵⁴ when multiplied by 60 (\$91,749.60). Therefore, a "presumption of abuse" arises in this case pursuant to § 707(b)(2).

B. § 707(b)(2)(B) – Special Circumstances

Because the Trustee has established that a presumption of abuse exists under § 707(b)(2), the Debtor may seek to rebut this presumption by demonstrating "special circumstances" under § 707(b)(2)(B). As previously noted, § 707(b)(2)(A) provides standards by which expenditures may be deducted to calculate a debtor's disposable income to determine whether the presumption of abuse arises. In the Chapter 13 context, the standards for expenditures in § 707(b)(2)(A) are used to calculate a debtor's disposable income available to fund a plan and to pay unsecured creditors.⁵⁵ An expenditure is a permissible deduction in determining Chapter 13 disposable income to the same extent it is permissible in determining whether a presumption of abuse arises in Chapter 7.

Section 707(b)(2)(B) allows a debtor to rebut the presumption of abuse in Chapter 7 (or to take additional deductions when calculating disposable income in Chapter 13) by demonstrating that the debtor has special circumstances that "justify additional expenses or adjustments of current monthly income for which there is no reasonable alternative."⁵⁶ To establish such "special

⁵³ *Id.* at 28, line 39c.

⁵⁴ *See* 11 U.S.C. § 707(b)(2)(A)(i)(II).

⁵⁵ *See* 11 U.S.C. § 1325(b).

⁵⁶ *See* 11 U.S.C. § 707(b)(2)(B)(i).

circumstances,” the debtor is required to “itemize” and to provide “documentation” and a “detailed explanation” to justify the need for and reasonableness of the additional expenses.⁵⁷

Although courts generally agree that “special circumstances” should be decided on a case-by-case basis, courts are divided over what constitutes a special circumstance.⁵⁸ This Court has previously held that “[§] 707(b)(2)(B) leaves discretion with the court to account for differences between individual debtors” and that “the determination whether a particular circumstance is special should be made on a case-by-case basis.”⁵⁹ Further, “[T]he focus must be on whether the debtor is, of necessity, in a different situation than the typical debtor addressed by the IRS guidelines.”⁶⁰

The Debtor testified and offered into evidence as Exhibit A, both *Official Form 122C-1* and *Official Form 122C-2*,⁶¹ as support for certain expenses that she contends constitute valid special circumstance deductions under § 707(b)(2)(B). During the hearing, the Trustee raised specific objections to certain of the alleged special circumstance deductions included in the Debtor’s Exhibit A. The Court, therefore, will determine for each of the deductions if the Debtor has established (i) that each expense is necessary and reasonable and (ii) that there is no reasonable alternative to the expense. The Court considers each of the disputed expense deductions in turn.

⁵⁷ See 11 U.S.C. § 707(b)(2)(B)(ii).

⁵⁸ *In re Everhart*, 607 B.R. 565, 576 (Bankr. N.D. Tex. 2019) (citing *In re Davis*, No. 10-47600, 2011 WL 5884015, *4 (Bankr. N.D. Tex. 2011)).

⁵⁹ *In re Everhart*, 607 B.R. at 577.

⁶⁰ *In re Davis*, 2011 WL 5884015, at *5.

⁶¹ Debtor Ex. A.

1. *Housekeeper - \$390.00*⁶²

The Debtor testified that she works full time and that, given size of their household, she has no ability to maintain a clean home and clean clothes for her family without the assistance of a housekeeper at \$390 per month.⁶³ The Debtor further claims that the expense is necessary and reasonable and that she has no other reasonable alternative. Although the Court sympathizes with the Debtor's difficult marital situation, neither she nor her Husband has a disability that prevents them from undertaking household chores. Further, other than claiming her children were too young, there was no other evidence to establish that the children were not able to assist with housekeeping chores. The Court finds and concludes that based upon the totality of the Debtor's circumstances, the Debtor's situation does not differ in any material way from a typical debtor addressed by the IRS guidelines. Therefore, the housekeeper expense of \$390.00 per month does not rise to the level of a special circumstance under § 707(b)(2)(B) and may not be deducted.

2. *Lawn Care - \$138.74*⁶⁴

Like the housekeeper expense, the Debtor testified that because she works full time, she has no ability to properly maintain the lawn without the assistance of a lawn-care service at \$138.74 per month.⁶⁵ For the same reasons the Court denied the housekeeper expense, the Court also denies the Lawn Care expense of \$138.74 per month as a special circumstance.⁶⁶ Therefore, the Lawn Care expense of \$138.74 per month does not rise to the level of a special circumstance under § 707(b)(2)(B) and may not be deducted.

⁶² *Id.* (Official Form 122C-2 at 7, line 43).

⁶³ Testimony of Debtor [11:26].

⁶⁴ Debtor Ex. A (Official Form 122C-2 at 7, line 43).

⁶⁵ Testimony of Debtor [12:12].

⁶⁶ See *In re Everhart*, 607 B.R. at 579.

3. *Pool Maintenance - \$117.99*⁶⁷

According to the Debtor, the \$117.99 pool-maintenance expense, like the housekeeper and lawn-care expense, relates to a special circumstance because she has no time or expertise to clean the pool herself. The Debtor testified that if the pool is not properly maintained, HOA covenants may be violated, the value of the property would decline, and the pool could become a safety and sanitation hazard.

Pool maintenance is not provided for in the IRS guidelines and arguably constitutes a luxury expense that relatively few debtors incur. But if the pool is not properly maintained, it could become a safety and sanitation hazard. Although the Debtor and the Trustee each make compelling arguments in support of their positions, given the Court's conclusions in regard to the Debtor's housekeeping and lawn-care special-circumstance deductions, the Court need not determine the reasonableness and necessity of the pool expenses at this time. If the Debtor's case is ultimately converted to Chapter 13, whether the pool-maintenance expense rises to the level of a special circumstance under § 707(b)(2)(B) is an issue that may be first considered and addressed by the Chapter 13 Trustee and creditors. If the pool-maintenance issue remains a disputed expense in the Chapter 13 case, then the Court can determine if the pool maintenance expense and any other disputed expense items rise to the level of special circumstances.

4. *Summary of Alleged Special-Circumstance Expenses*

Assuming the Housekeeping and Lawn Care expenses were the only items removed as special circumstances from the Debtor's proposed Form 122C-2,⁶⁸ the resulting Debtor's monthly disposable income under § 1325(b)(2) would be \$282.83, which exceeds \$13,650⁶⁹ when

⁶⁷ Debtor Ex. A (*Official Form 122C-2* at 7, line 43).

⁶⁸ Debtor Ex. A.

⁶⁹ See 11 U.S.C. § 707(b)(2)(A)(i)(II).

multiplied by 60 (\$16,969.80).⁷⁰ Therefore, the Debtor has failed to rebut the presumption of abuse under § 707(b)(2)(B). The Court further concludes that even if dismissal is not mandatory under § 707(b)(1),⁷¹ the dismissal of this case is appropriate unless, with the Debtor's consent, this case is converted to Chapter 13.

C. § 707(b)(3)(B) – Totality of Circumstances of the Debtor's Financial Situation

Because the Court has determined that granting relief in this case would be an abuse of the provisions of Chapter 7 under §§ 707(b)(1) and (b)(2), it is not necessary for the Court to determine if this case should be dismissed pursuant to § 707(b)(3)(B).

Based on these Findings of Fact and Conclusions of Law, the Court has determined that the Court will conditionally grant the Motion as follows; it is, therefore

ORDERED, ADJUDGED, and DECREED that the Motion is conditionally granted as set forth below; and it is further

ORDERED that the Debtor may convert this case to Chapter 13 or to Chapter 11 within fourteen days from the entry of this Order; and it is further

ORDERED that if the Debtor converts this case to Chapter 13 or to Chapter 11 within fourteen days from the entry of this Order, then the Motion will be deemed **DENIED** without further order of the Court; and it is further

ORDERED that if the Debtor fails to convert this case to Chapter 13 or to Chapter 11 within fourteen days from the entry of this Order, then the Motion shall be deemed **GRANTED**

⁷⁰ See 11 U.S.C. § 707(b)(2)(B)(iv).

⁷¹ 11 U.S.C. § 707(b)(1) provides that the court *may* dismiss the case if the court finds that granting of relief would be an abuse of the provisions of this chapter. Courts disagree on whether dismissal is mandatory or permissive if there is a presumption of abuse and the debtor fails to rebut the presumption of abuse. See *In re Maura*, 491 B.R. 493, 516-18 (Bankr. E.D. Mich. 2013) (analyzing cases on whether dismissal is permissive or mandatory under § 707(b)(1)). This Court does not need to decide this issue because, under either line of cases, the Court concludes that the Debtor's case should be dismissed, unless the Debtor voluntarily converts her case to Chapter 13 or Chapter 11.

and this case shall be ***DISMISSED*** without further order.

END OF ORDER