

AUG 23 2016

SUSAN M. SPRAUL, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No.	CC-15-1441-KuFD
)		
DESIREE H. DRURY,)	Bk. No.	2:15-bk-17125
)		
Debtor.)		
_____)		
)		
DESIREE H. DRURY,)		
)		
Appellant,)		
)		
v.)	MEMORANDUM*	
)		
UNITED STATES TRUSTEE,)		
)		
Appellee.)		
_____)		

Argued and Submitted on July 28, 2016
at Pasadena, California

Filed - August 23, 2016

Appeal from the United States Bankruptcy Court
for the Central District of California

Honorable Thomas B. Donovan, Bankruptcy Judge, Presiding

Appearances: Stephen R. Wade argued for appellant Desiree H. Drury; John Postulka argued for appellee United States Trustee.

Before: KURTZ, FARIS and DUNN, Bankruptcy Judges.

*This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8024-1.

1 financial circumstances pursuant to § 707(b)(3)(B). Accordingly,
2 the bankruptcy court's dismissal order is VACATED and this matter
3 is REMANDED for further proceedings.

4 **FACTS**

5 In May 2015, Drury commenced her bankruptcy case by filing a
6 voluntary chapter 7 petition. This was not Drury's first
7 bankruptcy case. In fact, she had filed six prior bankruptcy
8 cases in the past five years, all of which were dismissed for
9 failure to comply with various Bankruptcy Code provisions and
10 Rules. In addition, she also had filed a chapter 7 case in 2001,
11 in which she obtained a discharge order.

12 The U.S. Trustee filed his motion to dismiss her most recent
13 case in October 2015. The U.S. Trustee asserted that Drury had
14 over \$800 in monthly disposable income that she could use to
15 repay her creditors and that, based on this amount, granting
16 Drury relief under chapter 7 would be an abuse of the Bankruptcy
17 Code.

18 According to the U.S. Trustee, the information provided on
19 Drury's Official Form 22A reflected that Drury had over \$100,000
20 in annual income and current monthly income (as defined in
21 § 101(10A)) of \$8,580 per month. However, Drury's initial
22 Form 22A omitted some of her income. She only later disclosed
23 that, in addition to her annual salary, she also received child
24 support in the amount of \$175 per month.

25 This is only one of several errors and omissions in the
26 financial information Drury provided in her bankruptcy schedules
27 and in her other bankruptcy filings. She also claimed in her
28 initial Form 22A that she paid \$60 per month for telephone

1 services and \$40 per month in charitable contributions. Both of
2 these claimed expenses turned out to be inaccurate. Similarly,
3 Drury claimed \$550 per month, in aggregate, for child care
4 expenses and minor-child education expenses, but the only
5 evidence she ever offered for these claimed expenses was a letter
6 from a family friend stating that Drury paid her \$75 per week for
7 picking up two of Drury's children from school and for helping
8 them with their homework.

9 In addition, in her Schedule B, Drury claimed to own a 2008
10 Toyota Camry worth \$3,000. She also represented in her statement
11 of intention regarding secured debts that the Toyota was property
12 of her bankruptcy estate. She later admitted that she does not
13 own the car and that she never has owned it. Instead, she
14 informed the U.S. Trustee that her sister bought the car on
15 credit on Drury's behalf because Drury did not have the credit to
16 obtain an automobile loan in her own name. Nonetheless, Drury
17 maintained that she drives the car and pays \$540 every month to
18 cover the loan payment for the vehicle.

19 The most hotly-disputed issue between the parties concerned
20 the automobile expenses Drury claimed in her form 22A.
21 Notwithstanding her admission that she did not own the 2008
22 Toyota Camry, Drury continued to contend that she was entitled to
23 deduct from her income a vehicle "ownership" expense of \$517 and
24 a vehicle operating expense of \$400. The U.S. Trustee contested
25 these expense claims. According to the U.S. Trustee, Drury only
26 was entitled to claim a \$295 vehicle operating expense, and no
27 vehicle ownership expense, because she did not own the Toyota.

28 As the U.S. Trustee put it, the allowed \$295 vehicle

1 operating expense was a standard deduction permitted for debtors
2 operating vehicles in the Los Angeles metropolitan area, and no
3 vehicle expenses above that amount - ownership or operating
4 expenses - could be claimed in the absence of ownership.²

5 The U.S. Trustee assailed Drury for her inflated and
6 inaccurate expense claims and for her inaccurate and incomplete
7 information regarding her income. He also challenged Drury's
8 claim that she was entitled to deduct tax-related expenses of
9 roughly \$2,000. The U.S. Trustee instead insisted that she was
10 entitled to deduct from her income, at most, roughly \$1,500 for
11 tax expenses.³

12 Based on these contentions, the U.S. Trustee asserted that
13 Drury's bankruptcy case should be dismissed as a presumptively
14 abusive bankruptcy filing under § 707(b)(2) and, alternately,

16
17 ²The U.S. Trustee posited, without citing any authority,
18 that the age of the Toyota would have entitled Drury to a \$200
19 older vehicle operating expense if Drury had actually owned the
20 vehicle. We disagree. In Drummond v. Luedtke (In re Luedtke),
21 508 B.R. 408, 411 (9th Cir. BAP 2014), we held that this older
22 vehicle operating expense is not part of the Internal Revenue
23 Service's National Standards or its Local Standards, which
24 generally control which expenses above-median-income debtors may
claim for purposes of calculating their disposable income under
11 U.S.C. § 1325(b)(2). Given our decision in In re Luedtke,
there is no legal or logical reason why a chapter 7 debtor should
be able to claim an older vehicle operating expense for chapter 7
means test purposes. See In re Willingham, 520 B.R. 818, 823
(Bankr. E.D. Cal. 2014).

25 ³The U.S. Trustee stated in his responsive appeal brief that
26 the bankruptcy court did not render any findings regarding
27 Drury's tax-related expense claim and did not rely on the tax-
28 related expense issue to support its ruling. In light of our
analysis and resolution of this appeal, there is no need for us
to consider further Drury's tax-related expenses.

1 that her case should be dismissed as abusive under the totality
2 of Drury's financial circumstances pursuant to § 707(b)(3)(B).
3 Oddly, the U.S. Trustee's dismissal motion contained no argument
4 under § 707(b)(3)(A) specifically asserting that Drury filed her
5 bankruptcy in bad faith, even though the U.S. Trustee's moving
6 papers asked for relief under both § 707(b)(3)(A) and (B), as
7 well as under § 707(b)(2).

8 The bankruptcy court held a hearing on the U.S. Trustee's
9 motion to dismiss. At the hearing, Drury admitted that she is
10 not legally obligated to make the car loan payment every month.
11 She nonetheless insisted that her continued possession and use of
12 the Toyota depends upon her continued monthly payments on the
13 automobile loan. According to Drury, if she stopped making the
14 monthly loan payments, the lender would repossess the vehicle.
15 The U.S. Trustee never challenged Drury's factual assertion
16 regarding the consequences of her not making the loan payments.
17 Instead, the U.S. Trustee argued that, as a matter of law,
18 debtors cannot claim a loan or lease payment as a car ownership
19 expense under the IRS's local transportation expense standard
20 unless they are legally obligated to make that payment. The
21 U.S. Trustee contended that, without such a legal obligation, the
22 debtor can stop making the car payments at any time, and thus
23 counting the payment for means test purposes would not accurately
24 reflect what Drury can afford to pay her creditors.

25 At the conclusion of the hearing, the bankruptcy court
26 determined that the U.S. Trustee's position on the vehicle
27 ownership expense was correct. The court also found that "[t]he
28 Debtor clearly has violated her duty of truthful disclosure

1 notwithstanding her lengthy experiences with the bankruptcy
2 system and in spite of her right to amend her Schedules.”
3 Findings of Fact and Conclusions of Law (Dec. 14, 2015) at p. 2.

4 In addition, the court further found that Drury had a
5 “substantial ability” to repay her debts, especially in light of
6 the substantial amount of her income, “though her financial
7 habits have been to some extent careless.” Id.

8 While the bankruptcy court specified that the U.S. Trustee
9 had established grounds for dismissal under § 707(b) (1), (b) (2),
10 (b) (3) (A) and (b) (3) (B), the bankruptcy court made no explicit
11 findings regarding Drury’s bad faith. Nor did the bankruptcy
12 court comment on Drury’s bad faith at the dismissal motion
13 hearing.

14 On December 14, 2015, the bankruptcy court entered its order
15 dismissing Drury’s bankruptcy case, and Drury timely appealed.

16 **JURISDICTION**

17 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
18 §§ 1334 and 157(b) (2) (A) and (O). We have jurisdiction under
19 28 U.S.C. § 158.

20 **ISSUE**

21 Did the bankruptcy court abuse its discretion when it
22 dismissed Drury’s bankruptcy case under § 707(b) (1), (b) (2),
23 (b) (3) (A) and (b) (3) (B)?

24 **STANDARDS OF REVIEW**

25 We review dismissals under § 707(b) for an abuse of
26 discretion. Ng v. Farmer (In re Ng), 477 B.R. 118, 125 (9th Cir.
27 BAP 2012); Ceniceros v. Yaqub (In re Ceniceros), 2012 WL 2017969,
28 at *5 (Mem. Dec.) (9th Cir. BAP June 5, 2012).

1 The bankruptcy court abuses its discretion if it applies an
2 incorrect legal rule or its factual findings are illogical,
3 implausible or without support in the record. See United States
4 v. Hinkson, 585 F.3d 1247, 1262 (9th Cir. 2009) (en banc).

5 DISCUSSION

6 **1. The Means Test and Its Expense Allowance Standards - Generally**

7 As amended in 2005, the Bankruptcy Code authorizes
8 bankruptcy courts to dismiss as abusive certain chapter 7 cases
9 and presumes that abuse is present when the debtor fails what
10 commonly is known as the "means test." See § 707(b)(1) &
11 (b)(2)(A); see also Egebjerg v. Anderson (In re Egebjerg),
12 574 F.3d 1045, 1048 (9th Cir. 2009). The means test measures the
13 debtor's "current monthly income"⁴ and determines whether that
14 income (less certain allowed expenses and then multiplied by 60)
15 exceeds threshold amounts designated in the statute.

16 § 707(b)(2)(A). At the time of Drury's bankruptcy filing, the
17 relevant designated statutory threshold amount was \$12,475. Id.

18 There is no genuine dispute regarding the amount of Drury's
19 current monthly income. Instead, this appeal hinges on the
20 transportation expense amounts Drury attempted to deduct from her
21 current monthly income and whether the bankruptcy court correctly
22 disallowed most of Drury's claimed transportation expenses. But
23 before we look at any of the transportation expense claims, a bit
24 of background on the means test and its expense standards will

25
26 ⁴Generally speaking, the term "current monthly income" means
27 the debtor's average monthly income, regardless of source, and
28 includes amounts paid by others on a regular basis for the
debtor's household expenses. For the full definition of "current
monthly income" please see § 101(10A).

1 provide some helpful context.

2 Before the passage of the Bankruptcy Abuse Prevention and
3 Consumer protection Act of 2005, Pub. L. 109-8, 119 Stat. 23
4 (2005) ("BAPCPA"), the Bankruptcy Code instructed the bankruptcy
5 courts to employ a presumption that chapter 7 debtors were
6 entitled to chapter 7 relief. In re Egebjerg, 574 F.3d at 1048.
7 But the 2005 BAPCPA amendments replaced this presumption with an
8 emphasis on maximizing the recovery for the debtor's creditors.
9 Id. As In re Egebjerg explained, BAPCPA accomplished this sea
10 change in chapter 7 practice by introducing the means test to
11 determine if the debtor could repay at least some amount to his
12 or her creditors. Id.

13 The expense side of the means test equation,
14 § 707(b)(2)(A)(ii)(I), was novel. Prior to BAPCPA, there was no
15 need for chapter 7 debtors to prove routinely that they had no
16 ability to repay their creditors over time, so there was no
17 routine need to measure the debtor's allowable expenses for
18 purposes of calculating the debtor's disposable income (if any).
19 See In re Egebjerg, 574 F.3d at 1048. For purposes of
20 determining the debtor's allowable expenses, the means test
21 provides in part:

22 The debtor's monthly expenses shall be the debtor's
23 applicable monthly expense amounts specified under the
24 National Standards and Local Standards, and the
25 debtor's actual monthly expenses for the categories
26 specified as Other Necessary Expenses issued by the
27 Internal Revenue Service for the area in which the
28 debtor resides, as in effect on the date of the order
for relief

1 § 707(b)(2)(A)(ii)(I).⁵

2 While there is no pre-BAPCPA history of routinely measuring
3 chapter 7 debtors' allowable expenses, the measuring of
4 chapter 13 debtors' expenses, for the purpose of determining
5 whether they were paying all of their disposable income to their
6 creditors during the term of their chapter 13 plan, predates
7 BAPCPA. See Ransom v. FIA Card Servs., N.A., 562 U.S. 61, 65 &
8 78 (2011); In re Luedtke, 508 B.R. at 413. Before BAPCPA,
9 bankruptcy courts had broad discretion to determine which
10 expenses were reasonable and necessary for individual chapter 13
11 debtors to claim on a case-by-case basis. Ransom, 562 U.S. at
12 65.

13 Apparently unhappy with the "varying and often inconsistent
14 determinations" that resulted from the pre-BACPA case-by-case
15 approach, id. at 65, Congress specified in its BAPCPA amendments
16 that the means test's standardized and mathematical approach for
17 determining allowable expenses would be utilized to calculate the
18 disposable income of both chapter 7 debtors and chapter 13
19 debtors whose income exceeded certain benchmarks. Id. at 65, 78;
20 see also In re Luedtke, 508 B.R. at 413 ("BAPCPA replaced [the
21 bankruptcy courts'] discretion with the 'means test' - a
22 formulaic and mechanical method of assessing debtors' ability to
23 pay.").

24 Indeed, Congress referred to its adoption of its means test

25
26 ⁵In addition to the amounts provided for in the National
27 Standards, the Local Standards and in the Other Necessary
28 Expenses categories issued by the Internal Revenue Service,
debtors can claim payments on account of secured and priority
debt to the extent permitted by § 707(b)(2)(A)(iii) and (iv).

1 as "[t]he heart of [BAPCPA's] consumer bankruptcy reforms,"
2 because it would "help ensure that debtors who **can** pay creditors
3 **do** pay them" and thereby would help prevent those abuses of the
4 bankruptcy system that BAPCPA was intended to prevent. Ransom,
5 562 U.S. at 64 (emphasis in original) (citing H.R. Rep.
6 No. 109-31, pt. 1, p. 2 (2005)).

7 **2. Proper Application of the Means Test Expense Allowance** 8 **Standards to Transportation Expenses**

9 Having considered the background behind the means test and
10 its expense allowance standards, we next consider the correct
11 application of those standards to transportation expenses. The
12 National Standards and Local Standards referenced in
13 § 707(b)(2)(A)(ii)(I) (quoted above) are "tables that the IRS
14 prepares listing standardized expense amounts" that are used to
15 determine a taxpayer's ability to pay past-due tax liability.
16 Ransom, 562 U.S. at 61. But the National Standards and Local
17 Standards are not self-explanatory. Bankruptcy courts sometimes
18 must consult the IRS's Financial Analysis Handbook (IRM 5.15.1)
19 in order to correctly interpret and apply the National Standards
20 and Local Standards. In re Luedtke, 508 B.R. at 411, 415; see
21 also Ransom, 562 U.S. at 72-73 & n.7 (stating that the IRS's
22 Financial Analysis Handbook is persuasive - but not controlling -
23 authority for determining how bankruptcy courts should apply the
24 IRS's National Standards and Local Standards). So long as the
25 relevant portion of Financial Analysis Handbook is not
26 inconsistent with the Bankruptcy Code, bankruptcy courts may
27 refer to the Handbook as an aid in applying the National
28 Standards and Local Standards. Id. at 72.

1 The relevant version of the Local Standards tables for
2 transportation expenses merely state that a taxpayer may claim an
3 expense of \$517 in vehicle **ownership** costs and an expense of \$295
4 in vehicle **operating** costs. See IRS Local Transportation Expense
5 Standards - West Census Region - for Cases Filed Between April 1,
6 2015 and May 14, 2015, Inclusive, as reported in, U.S. Trustee's
7 website, [https://www.justice.gov/ust/means-testing/means-testing-](https://www.justice.gov/ust/means-testing/means-testing-cases-filed-between-april-1-2015-and-may-14-2015-inclusive)
8 [cases-filed-between-april-1-2015-and-may-14-2015-inclusive](https://www.justice.gov/ust/means-testing/means-testing-cases-filed-between-april-1-2015-and-may-14-2015-inclusive) (last
9 visited Aug. 16, 2016). The commentary accompanying these tables
10 states in part as follows:

11 **b. Transportation Expense Standards** for taxpayers with
12 a vehicle consist of two parts: nationwide figures for
13 monthly loan or lease payments referred to as ownership
14 costs, and additional amounts for monthly operating
15 costs broken down by Census Region and Metropolitan
16 Statistical Area (MSA). A conversion chart has been
17 provided with the standards that lists the states that
18 comprise each Census Region, as well as the counties
19 and cities included in each MSA. The ownership cost
20 portion of the transportation standard, although it
21 applies nationwide, is still considered part of the
22 Local Standards. The ownership costs provide maximum
23 allowances for the lease or purchase of up to two
24 automobiles if allowed as a necessary expense. A
25 single taxpayer is normally allowed one automobile.

19 The operating costs include maintenance, repairs,
20 insurance, fuel, registrations, licenses, inspections,
21 parking and tolls.

21 If a taxpayer has a car payment, the allowable
22 ownership cost added to the allowable operating cost
23 equals the allowable transportation expense. **If a
24 taxpayer has a car, but no car payment, only the
25 operating costs portion of the transportation standard
is used to figure the allowable transportation expense.**
In both of these cases, the taxpayer is allowed the
amount actually spent, or the standard, whichever is
less.

26 Census Bureau, IRS Data and Administrative Expenses Multipliers
27 for Cases Filed Between April 1, 2015 and May 14, 2015, Inclusive
28 as reported in, U.S. Trustee's website, <https://www.justice.gov/>

1 ust/means-testing/means-testing-cases-filed-between-april-1-2015-
2 and-may-14-2015-inclusive (last visited Aug. 16, 2016) (emphasis
3 added).

4 After reviewing substantially similar IRS materials, Ransom
5 held: (1) that the IRS's vehicle ownership expenses provided for
6 in its Local Standards only consist of lease payments or loan
7 payments; and (2) that a debtor who does not make payment on a
8 car lease or a car loan cannot claim vehicle ownership expenses.
9 Ransom, 562 U.S. at 71-72. In so holding, Ransom explained that
10 vehicle ownership expense amounts are not "applicable" within the
11 meaning of § 707(b)(2)(A)(ii)(I) (and hence not allowable as
12 claimed) unless the debtor incurred some vehicle ownership
13 expenses of the type enumerated in the IRS's Local Standards for
14 transportation expenses. Id. at 69-72.

15 **3. Proper Treatment of Drury's Claimed Transportation Expenses**

16 Here, Drury conceded that she does not own the Toyota she
17 originally listed on her Schedule B and that she is not indebted
18 under any car lease or car loan. According to the U.S. Trustee,
19 Drury cannot claim the loan payments she makes because she is not
20 legally obligated to make those payments. Without any legal
21 obligation, the U.S. Trustee reasons, Drury could stop making the
22 car payments at any time she wants, so the amount of her car
23 payments could be made available to pay back her creditors.

24 We disagree. Nothing in the Bankruptcy Code or in the IRS
25 Collection Financial Standards suggests that debtors only may
26 claim as local transportation expenses car loan or lease payments
27 they make for which they are personally liable. In fact, the
28 language of the statute points in the opposite direction:

1 "Notwithstanding any other provision of this clause, the monthly
2 expenses of the debtor shall not include any payments for debts."
3 Although the meaning of the "notwithstanding" provision is murky,
4 it cuts against the argument that a car "ownership" expense only
5 counts if the debtor is legally obligated to pay it, because in
6 that case the debtor's car payments are "payments for debt[]."
7 Further, when one considers the means test as a whole and its
8 underlying purpose - to assure that debtors pay what they can to
9 their creditors - it makes no sense to focus on the absence or
10 presence of a legally enforceable debt. Most necessities of life
11 - including most of those accounted for in the IRS Collection
12 Financial Standards - are not debts.⁶ And yet it still is
13 essential for debtors to pay these amounts in order to maintain a
14 certain minimal standard of living - as the IRS Collection
15 Financial Standards explicitly recognize. See Wedoff, supra at
16 253 & n.57; see also Ransom, 562 U.S. at 70 ("Congress intended
17 the means test to approximate the debtor's reasonable
18 expenditures on essential items.").

19 Even without a legally binding obligation to make the
20 payments for the car loan in her sister's name, if Drury is going
21 to continue to use the car, she needs to continue to make the
22 payments. Otherwise, the lender will repossess the vehicle, and
23 Drury will be forced to get around Los Angeles without an
24 automobile - an automobile that the IRS's Collection Financial
25

26 ⁶For a complete description of the types of expenses the
27 IRS Collection Financial Standards cover, please see Eugene R.
28 Wedoff, Means Testing in the New § 707(b), 79 Am. Bankr. L.J.
231, 253-65 (2005).

1 Standards (and the means test) permit her to use (and pay for)
2 even if this means that she will have less funds to pay her
3 creditors.

4 Nor does Drury's lack of title to the automobile persuade us
5 otherwise. We do not read the Local Standards' reference to car
6 "ownership" expenses as making ownership of the automobile
7 essential to claiming this transportation expense. In order to
8 claim this transportation expense, the key determinant is whether
9 the debtor makes a car lease payment or a car loan payment.
10 Ownership of the car is no more essential to the necessity of
11 this expense than a legally enforceable debt. Automobile lessees
12 do not "own" the cars they drive. The Local Standards' reference
13 to car "ownership" expenses can and should be considered a
14 misnomer. Indeed, the Executive Office for U.S. Trustees has
15 made this exact point in a published law journal article. See
16 Mark A. Redmiles, The Supreme Court Interprets the Means Test,
17 Am. Bankr. Inst. J., April 2011, at 18, 93 n.21.

18 Moreover, nothing in Ransom requires a different result.
19 Ransom answered a different question: whether a debtor who does
20 not make any car lease or car loan payments can claim under the
21 means test a car ownership expense. Ransom in essence held that
22 car ownership was not **sufficient** to entitle a debtor to claim
23 this expense. Ransom did not address whether car ownership was
24 **necessary** to entitle a debtor to claim this expense. For the
25 reasons set forth above, we hold that debtors who make monthly
26 car loan payments or car lease payments as a prerequisite to
27 their continued use of the vehicle may claim this expense under
28 the means test even if they do not own the vehicle.

1 **4. Correct Calculation of Drury's Disposable Income**

2 Aside from Drury's disallowed vehicle ownership expense of
3 \$517, Drury continues to claim an inflated \$400 for vehicle
4 operating expenses, which should not have exceeded \$295 under the
5 relevant version of the IRS's Local Standards for transportation
6 expenses. Likewise, Drury continues to claim an inflated \$550,
7 in aggregate, for childcare and minor-child education expenses.
8 Drury only substantiated \$300 per month for child-related
9 expenses, which she pays to a family friend for picking up two of
10 her kids from school and helping them with homework. When the
11 excess amounts from these expense categories is summed together
12 (\$105 + \$250), the total reflects that Drury continues to
13 overstate her allowable monthly expenses by \$355 and thereby
14 continues to understate her monthly disposable income by that
15 same amount.

16 Drury has calculated her monthly disposable income as a
17 negative amount - a negative \$364.79. When the above-referenced
18 \$355 is added back into her understated monthly disposable income
19 figure, the correct amount of Drury's monthly disposable income
20 is roughly a negative \$15. Because this amount, when multiplied
21 by 60, does not exceed § 707(b) (2) (A) (i) (II)'s threshold amount
22 of \$12,475, the presumption of abuse under § 707(b) (2) (A) (i) is
23 not triggered. Therefore, the bankruptcy court abused its
24 discretion when it dismissed Drury's bankruptcy case as
25 presumptively abusive.

26 **5. Dismissal of Drury's Bankruptcy Case under § 707(b) (3) (A) and**
27 **(B)**

28 Because we have concluded that the bankruptcy court's

1 dismissal of the bankruptcy case under § 707(b) (1) and (b) (2) was
2 an abuse of the bankruptcy court's discretion, we also need to
3 address the bankruptcy court's alternate grounds for dismissal
4 under § 707(b) (3) (A) and (B). See In re Egebjerg, 574 F.3d at
5 1048 ("the statute is framed to consider the presumptive abuse
6 question first, and resorts to the totality of circumstances
7 analysis [and the bad faith analysis] only if the debtor survives
8 the means test.").

9 Under § 707(b) (3) (A), a chapter 7 case may be dismissed as
10 abusive if the debtor filed his or her chapter 7 petition in bad
11 faith. The Bankruptcy Code does not define bad faith. In the
12 chapter 13 context, the Ninth Circuit has held that bankruptcy
13 courts in determining bad faith should consider all relevant
14 factors and, to aid bankruptcy courts in the bad faith
15 assessment, set forth the following non-exhaustive list of
16 factors to consider: (1) whether the debtor has stated inaccurate
17 facts in his or her bankruptcy filings, attempted to improperly
18 manipulate the Bankruptcy Code, or otherwise pursued bankruptcy
19 relief in an inequitable manner; (2) the debtor's prior
20 bankruptcy case filings and dismissals; (3) the motivation for
21 the debtor's bankruptcy case filing, including any intent to
22 impede state court litigation; and (4) any egregious conduct.
23 Leavitt v. Soto (In re Leavitt), 171 F.3d 1219, 1224 (9th Cir.
24 1999).

25 These same factors are equally pertinent to the bad faith
26 inquiry in the chapter 7 context. In re Mitchell, 357 B.R. 142,
27 154 (Bankr. C.D. Cal. 2006); see also Franco v. United States
28 Trustee (In re Franco), 2016 WL 3227154, at *5 (Mem. Dec.) (9th

1 Cir. BAP June 2, 2016) ("Although Leavitt involved a chapter 13
2 case, we see no reason why the standards for a finding of bad
3 faith in a chapter 7 case should be any different.").

4 Here, the only findings of the bankruptcy court arguably
5 applicable to its bad faith determination were as follows:

6 The Debtor clearly has violated her duty of truthful
7 disclosure notwithstanding her lengthy experiences with
8 the bankruptcy system and in spite of her right to
9 amend her Schedules.

10 Debtor nevertheless has a substantial ability to pay
11 her creditors, especially as her income is substantial,
12 though her financial habits have been to some extent
13 careless.

14 Findings of Fact and Conclusions of Law (Dec. 14, 2015) at
15 2:25-28. The bankruptcy court did not specifically find that
16 Drury acted in bad faith, nor is there any indication that the
17 bankruptcy court considered all of the Leavitt factors or all
18 relevant factors. While there are other facts in the record that
19 might support a finding of bad faith, we cannot say on this
20 record, and in light of the limited findings the bankruptcy court
21 made, that we have a clear and complete understanding of the
22 basis for the bankruptcy court's bad faith ruling.

23 In re Leavitt, 171 F.3d at 1223. More importantly, on this
24 record, we cannot ascertain whether the bankruptcy court applied
25 the correct legal standard. Consequently, vacating the
26 bankruptcy court's bad faith determination and remanding for
27 further findings is necessary.

28 Under § 707(b)(3)(B), a chapter 7 case may be dismissed as
abusive under the totality of the debtor's financial
circumstances. In assessing the totality of the debtor's
financial circumstances, we consider the same non-exhaustive list

1 of factors used by the Ninth Circuit for the determination of
2 substantial abuse under pre-BAPCPA law. In re Ng, 477 B.R. at
3 126 (citing Price v. United States Trustee (In re Price),
4 353 F.3d 1135, 1139-40 (9th Cir. 2004)). These factors include:

5 (1) Whether the debtor has a likelihood of sufficient
6 future income to fund a Chapter 11, 12, or 13 plan
7 which would pay a substantial portion of the unsecured
8 claims; [2] Whether the debtor's petition was filed as
9 a consequence of illness, disability, unemployment, or
10 some other calamity; (3) Whether the schedules suggest
11 the debtor obtained cash advancements and consumer
12 goods on credit exceeding his or her ability to repay
13 them; (4) Whether the debtor's proposed family budget
14 is excessive or extravagant; (5) Whether the debtor's
15 statement of income and expenses is misrepresentative
16 of the debtor's financial condition; and (6) Whether
17 the debtor has engaged in eve-of-bankruptcy purchases.

18 Id. "[A] 'debtor's ability to pay his debts will, standing
19 alone, justify a section 707(b) dismissal.'" Id. (quoting
20 In re Price, 353 F.3d at 1140).

21 Here, the bankruptcy court found that Drury had "a
22 substantial ability to pay her creditors." But the bankruptcy
23 court did not explain how it reached this conclusion for purposes
24 of § 707(b)(3)(B). It very well might have been based on the
25 bankruptcy court's erroneous disallowance of Drury's car loan
26 payments as an actual and necessary transportation expense. For
27 the same reasons we rejected this disallowance in the context of
28 determining whether there was presumption of abuse under
§ 707(b)(2), we also reject this disallowance for § 707(b)(3)(B)
purposes.⁷ Because the bankruptcy court's findings were

⁷To be clear, the legal standards governing expense allowance under the means test (§ 707(b)(2)) and under the totality of the debtor's financial circumstances (§ 707(b)(3)(B)) are different. Compare Ransom, 562 U.S. at 65-66, with In re Ng,
(continued...)

1 insufficient on the record presented to afford us with a clear
2 and complete understanding of the basis for the bankruptcy
3 court's totality of the circumstances ruling, we must vacate the
4 bankruptcy court's § 707(b)(3)(B) determination and remand for
5 further findings regarding the totality of the debtor's financial
6 circumstances.

7 **CONCLUSION**

8 For the reasons set forth above, we VACATE the bankruptcy
9 court's dismissal order, and we REMAND this matter for further
10 proceedings consistent with this decision.
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26 ⁷(...continued)

27 477 B.R. at 126. Nonetheless, the bankruptcy court here did not
28 sufficiently justify the disallowance of Drury's car ownership
expense under either standard.