

1 **II. Facts and Background**

2 On January 29, 2009, the Debtor filed this Chapter 7 case listing non-priority
3 unsecured debts totaling \$55,449.29. On January 30, 2009, the Debtor filed his original
4 means test counting himself and his Roommate in household size. In current monthly
5 income the Debtor claimed \$4,907 of his income and \$900 in monthly contributions from
6 his Roommate for household expenses.

7 The Debtor filed an amended Means Test on May 26, 2009 claiming \$5,957 of
8 current monthly income, again including his Roommate's \$900 monthly contribution, and
9 \$5,942.89 of deductions based upon a household size of two.¹ According to the Debtor's
10 calculation his 60-month disposable income is \$846.60 and the presumption of abuse
11 under 11 U.S.C. § 707(b)(2)² does not arise. The Debtor alleges that his Roommate
12 recently reduced the \$900 contribution to \$250 and on May 26, 2009 the Debtor amended
13 his Schedule I reflecting this decrease.

14 The Debtor alleges that he and his Roommate maintain separate finances, have no
15 access to each other's income, and own no common property. The Debtor also claims
16 that neither is responsible for the debts of the other. The UST alleges that at some point
17 the Roommate was listed on the Debtor's health insurance policy, but finds this to be the
18 only noteworthy financial connection between the two.

19 The UST filed a motion to dismiss arguing that the Debtor's current monthly
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21 ¹ The Debtor declined to include his Roommate's entire income in current monthly income as the UST
22 suggested. The Debtor did add \$289 to transportation expenses, remove an expense for home energy
23 costs, and adjust an overstated vehicle payment to the UST's figure of \$537. These adjustments resolved
24 the objections of the UST to expenses claimed, leaving only the issues of household size and
25 Roommate's contribution.

26 ² Section 707(b)(2) reads:

27 (A)(I) In considering under paragraph (1) whether the granting of relief would be an abuse of the
28 provisions of this chapter, the court shall presume abuse exists if the debtor's current monthly income
reduced by the amounts determined under clauses (ii), (iii), and (iv), and multiplied by 60 is not less than
the lesser of--

(I) 25 percent of the debtor's nonpriority unsecured claims in the case, or \$6,575,
whichever is greater; or
(II) \$10,950[.]

1 income is understated because it does not include the Roommate's entire income. The
2 UST further argues that if the Debtor does not include the Roommate's entire income in
3 current monthly income, the household size should be reduced to one and expenses
4 adjusted downward accordingly.

5 **III. Position of the Parties**

6 The Debtor relies on the "heads on beds" approach to household size and asserts
7 that because his Roommate lives in the same house with him he is entitled to a household
8 size of two. *See In re Ellringer*, 370 B.R. 905, 910-12 (Bankr. D. Minn. 2007). The
9 Debtor argues he does not need to include his Roommate's income in current monthly
10 income because he and his Roommate maintain separate finances. While the Debtor
11 includes the \$900 contribution from his Roommate in current monthly income, he claims
12 that this is not required according to the definition of "current monthly income" in §
13 101(10A).³ He argues that because the contributions are for the Roommate's share of the
14 household expenses and not "for the household expenses of the debtor," the \$900
15 technically does not need to be included in current monthly income. § 101(10A)(B).

16 ³ According to 11 U.S.C. § 101(10A), "current monthly income":

17 (A) means the average monthly income from all sources that the debtor receives (or in a joint case
18 the debtor and the debtor's spouse receive) without regard to whether such income is taxable income,
derived during the 6-month period ending on--

19 (i) the last day of the calendar month immediately preceding the date of the
commencement of the case if the debtor files the schedule of current income required by section
20 521(a)(1)(B)(ii); or

21 (ii) the date on which current income is determined by the court for purposes of this title
if the debtor does not file the schedule of current income required by section 521(a)(1)(B)(ii); and

22 (B) includes any amount paid by any entity other than the debtor (or in a joint case the debtor and
the debtor's spouse), on a regular basis for the household expenses of the debtor or the debtor's
23 dependents (and in a joint case the debtor's spouse if not otherwise a dependent), but excludes benefits
received under the Social Security Act, payments to victims of war crimes or crimes against humanity on
24 account of their status as victims of such crimes, and payments to victims of international terrorism (as
defined in section 2331 of title 18) or domestic terrorism (as defined in section 2331 of title 18) on
25 account of their status as victims of such terrorism. (B) includes any amount paid by any entity other than
the debtor (or in a joint case the debtor and the debtor's spouse), on a regular basis for the household
26 expenses of the debtor or the debtor's dependents (and in a joint case the debtor's spouse if not otherwise a
dependent), but excludes benefits received under the Social Security Act, payments to victims of war
27 crimes or crimes against humanity on account of their status as victims of such crimes, and payments to
victims of international terrorism (as defined in section 2331 of title 18) or domestic terrorism (as defined
28 in section 2331 of title 18) on account of their status as victims of such terrorism.

1 The UST's motion to dismiss asserts that current monthly income is understated
2 because the Debtor must include all of the second household member's income; otherwise
3 the Debtor is "having his cake and eating it too" by increasing expenses for a second
4 household member with no corresponding increase in income. To remedy this
5 asymmetry, the UST suggests that the Debtor claim a household size of one and reduce
6 his expenses accordingly or claim a household size of two and include the Roommate's
7 entire income. The UST relies on *In re Jewell*, 365 B.R. 796, 799-802 (Bankr. S.D. Ohio
8 2007) and *In re Law*, No. 07-40863, 2008 WL 1867971, at *2-8 (Bankr. D. Kan. Apr. 24,
9 2008), each of which focuses on the Debtor's support of household members and
10 dependency to determine household size. Consequently, the UST argues that because the
11 Debtor does not support the Roommate the Debtor may not include his roommate in
12 household size. According to the UST's calculations, under either scenario the
13 presumption of abuse under § 707(b)(2) arises and the case should be dismissed.

14 Further, the UST argues that even if the presumption in § 707(b)(2) does not arise
15 the Debtor's financial situation under § 707(b)(3)⁴ demonstrates abuse. The UST's
16 argument under § 707(b)(3) also depends on his contention that the Debtor's income is
17 substantially understated because he fails to include the Roommate's entire income on
18 Schedule I.

19 **IV. 11 U.S.C. § 707(b)(2)**

20 *A. Household Size*

21 The Code does not define the term "household" and there is no Ninth Circuit
22 authority with factual circumstances directly analogous to this case. In *Ellringer*, the

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24 ⁴ Section 707(b)(3) reads:

25 (3) In considering under paragraph (1) whether the granting of relief would be an abuse of the
26 provisions of this chapter in a case in which the presumption in subparagraph (A)(i) of
such paragraph does not arise or is rebutted, the court shall consider—

27 (A) whether the debtor filed the petition in bad faith; or
28 (B) the totality of the circumstances (including whether the debtor seeks to reject a
personal services contract and the financial need for such rejection as sought by the debtor) of the
debtor's financial situation demonstrates abuse.

1 court used the United States Census Bureau definition of “household” because on Form
2 B22A “household size” is used to calculate “median family income.” 370 B.R. at 910-11.
3 In turn, “median family income” is defined as the “the median family income both
4 calculated and reported by the Bureau of the Census.” *Id.* at 910 (citing § 101(39A)(A)).
5 The Census Bureau defines a “household” as “all of the people, related and unrelated who
6 occupy a housing unit.” *Id.* at 911 (citing U.S. Census Bureau, Current Population
7 Survey (2004), available at <http://www.census.gov/population/www/cps/cpsdef.html>).
8 Under the Census Bureau’s definition, the debtor in *Ellringer* was allowed claim a
9 household size of two for herself and her non-dependent roommate. *Id.*

10 On the other hand, *Jewell* relies on whether the debtor financially supports an
11 alleged household member. 365 B.R. at 800-01. The *Jewell* court found the “heads on
12 beds” approach too broad because “[s]uch a definition is inconsistent with the
13 methodology and purpose of Official Form [B]22A for calculating a debtors’ disposable
14 income in that it does not include the element of a debtor’s support of the person who
15 puts the head on the bed.” *Id.* at 800. The Debtors were entitled to claim a household
16 size of eight, including their financially dependent adult daughter and her three children.
17 *Id.* at 802.

18 Although the *Jewell* court has a valid concern about the inconsistency of the
19 “heads on beds” approach, Congress does not require courts to “take into account
20 ‘financial contribution of the household member, relationship to the debtor, [and]
21 dependency’” when determining household size. *In re Smith*, 396 B.R. 214, 218 (Bankr.
22 W.D. Mich. 2008) (citing *Jewell*, 365 B.R. at 800). Absent Congressional direction, it is
23 inappropriate to consider a household member’s dependency on the Debtor when
24 determining household size; accordingly, household should be understood in the ordinary
25 sense of the word.

26 The Court finds the “heads on beds” approach more logical to the roommate or
27 third-party living situation. Congress did not state that two unrelated roommates or a
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1 cohabitating couple should not be counted as part of the same household. In the absence
2 of Congressional guidance, it is unreasonable to conclude that two persons living in the
3 same home are not a part of the same household.

4 In this case, the Debtor and his Roommate live together in the same house and it
5 would be counterintuitive to conclude that the two are not a part of the same household.
6 The Debtor incurs expenses due to having two persons residing in his house and the
7 Roommate recognizes this fact by contributing \$900 to the household expenses each
8 month. Restricting the Debtor to a household size of one would be inequitable, as he
9 incurs additional household expenses due to maintaining a house of two individuals.
10 Therefore, the Debtor is entitled to a household size of two.

11 *B. Current Monthly Income*

12 Since the Debtor is entitled to count his Roommate in household size, the
13 remaining question is how much of his Roommate's income should be in his current
14 monthly income. The UST argues that if the Debtor is entitled to a household size of two
15 he must include all of the Roommate's income in his current monthly income. The
16 Debtor contends that he does not need to include all of his Roommate's income, but only
17 that which is used to pay for the household expenses of the Debtor pursuant to §
18 101(10A)(B). Further, the Debtor contends that the \$900 in Roommate contributions
19 only goes towards the Roommate's share of the household expenses and therefore does
20 not need to be included in current monthly income.

21 The Debtor has the better of this argument. Section 101(10A)(A) defines income
22 earned by the Debtor, stating that current monthly income is "from all sources that the
23 debtor receives." Section 101(10A)(B) specifically addresses income from third-parties,
24 referencing an "entity other than the debtor" who pays for household expenses of the
25 debtor. Thus, the Code explicitly limits a third-party's contribution to current monthly
26 income to that amount the third-party pays toward the household expenses of the debtor.
27 Including all of the Roommate's income would do violence to this statutory directive.

1 The question remains whether the Roommate's \$900 contribution falls under the
2 definition of § 101(10A)(B). The answer is yes. The household expenses of the Debtor,
3 such as rent, food, and utilities, include the Roommate's expenses. The Roommate's
4 \$900 contributions benefit the Debtor by decreasing the household expenses the Debtor
5 would otherwise have to pay. It would distort the meaning of the statute to construe this
6 payment as only for the Roommate's personal expenses. Therefore, under §
7 101(10A)(B), the Debtor must include the Roommate's \$900 contribution.

8 In summary, the Debtor is (1) entitled to claim a household size of two and (2)
9 required to include his Roommate's \$900 monthly contributions in current monthly
10 income on his Means Test. As noted above, using these parameters, no presumption of
11 abuse arises under the Means Test.


12 **V. 11 U.S.C. § 707(b)(3)**

13 The Debtor's financial situation under § 707(b)(3) does not demonstrate abuse.
14 The Court finds that the Debtor is not required to include all of the Roommate's income
15 in current monthly income and similarly the Debtor need not include all of the
16 Roommate's income in his Schedule I. Without the Roommate's income included in the
17 Debtor's Schedule I, the totality of the Debtor's financial situation under § 707(b)(3) does
18 not show abuse and the case should not be dismissed for this reason.

19 **VI. Conclusion**

20 It is ordered denying the UST's motion to dismiss in its entirety.
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22 **DATED:** July 23, 2009

23 
24 CHARLES G. CASE II
25 UNITED STATES BANKRUPTCY JUDGE
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1 Copy of the foregoing sent via facsimile and/or mailed to:

2 ASHETON B. CALL
3 ASHETON B. CALL, P.C.
4 2950 North Dobson Road, Suite #6
5 Chandler, Arizona 85224,
6 Attorney for Debtor

7 JASON WILLIS EPPERSON
8 2121 West San Juan Avenue
9 Phoenix, AZ 85015,
10 Debtor

11 CHRISTOPHER J. PATTOCK
12 Office of the U.S. Trustee
13 230 North First Avenue, #204
14 Phoenix, AZ 85003-1706,
15 U.S. Trustee

16 DAVID M. REAVES
17 PO Box 44320
18 Phoenix, AZ 85064-4320,
19 Chapter 7 Trustee

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21
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23
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25
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