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CLERK, U.S. BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY DEPUTY

**WRITTEN DECISION - FOR PUBLICATION**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

**In re**

**KARI LYNN BECKMAN,**  
  
**Debtor(s)**

**Case No. 14-07656-LA7**

**MEMORANDUM DECISION  
ON TRUSTEE'S MOTION  
FOR DETERMINATION  
RE: FUNDS ON HAND IN  
CONVERTED CASES**

**I.**

**INTRODUCTION**

David Skelton, the former Chapter 13 trustee (“Mr. Skelton”) in the chapter 13 bankruptcy case of Kari Lynn Beckman (“Debtor”), brings this Motion for Determination Re: Funds on Hand in Case Converted from Chapter 13 (“Motion”). Mr. Skelton seeks this determination due to the United States Supreme Court’s opinion in *Harris v. Viegelahn*, 135 S.Ct. 1829, 1835 (2015), holding that under the governing provisions of the Bankruptcy Code, a debtor who converts from a Chapter 13 to a Chapter 7 case is entitled to a return of any postpetition wages not yet distributed by the Chapter 13 trustee.

Mr. Skelton questions whether the *Harris* holding applies where (as here) the Debtor converted her case prior to plan confirmation. In such cases, his prior

1 practice was to disburse the accumulated plan payments to the adequate protection  
2 creditors and administrative expense creditors pursuant to the mandates in this  
3 Court's General Order 175-D and § 1326(a)(2). Mr. Skelton does not want to  
4 violate these mandates. Therefore, he seeks instructions as to whom he should pay.  
5 The Debtor has not responded to the Motion. For the reasons more fully set forth  
6 below, the Court directs Mr. Skelton to disburse all of the funds to the Debtor.

## 7 8 II.

### 9 10 FACTUAL BACKGROUND

11 The Debtor filed her Chapter 13 case on September 29, 2014. Her initial  
12 § 341(a) meeting and subsequent hearings on objections to plan confirmation were  
13 continued over a period of months to permit response to the various objections,  
14 and to enable her to bring a lien strip motion to avoid an allegedly unsecured  
15 junior lien. The Debtor elected not to proceed with her plan and, on July 1, 2015,  
16 she filed a notice of conversion of her case to one under Chapter 7. [ECF No. 64]  
17 There is no allegation that the Debtor made this decision in bad faith. On that  
18 same day, the Debtor's counsel filed an application for the guideline fee of  
19 \$3,600, which the Court granted subject to funds on hand. [ECF No. 72]

20 During the Chapter 13 case, the Debtor made plan payments to Mr. Skelton  
21 from her postpetition wages. The Debtor's secured creditor, Hyundai Motor  
22 Finance ("Hyundai"), filed a secured proof of claim and Mr. Skelton made the  
23 Debtor's pre-confirmation adequate protection payments to Hyundai in accordance  
24 with ¶ 5 of the proposed plan and General Order 175-D.2. Further, Mr. Skelton  
25 discloses that on July 10, 2015 – a date that is ten days after the Debtor's case was  
26 converted – he disbursed a "last" adequate protection payment to Hyundai in the  
27 amount of \$157.24. Mr. Skelton has funds on hand in the amount of \$4,000.21.

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1           Thereafter, a unanimous Supreme Court reversed and directed that the  
2 undistributed funds must be returned to the debtor. *Harris*, 135 S.Ct. at 1835,  
3 1838. The Supreme Court explained that:

4                   When a debtor exercises his statutory right to convert,  
5 the case is placed under Chapter 7's governance, and no  
6 Chapter 13 provision holds sway. § 103(i) ("Chapter 13  
7 ... applies only in a case under [that] chapter.") *Harris*  
8 having converted the case, the Chapter 13 plan was no  
longer "bind[ing]." § 1327(a). And, Viegelahn, by then  
the former Chapter 13 trustee, lacked authority to  
distribute "payment[s] in accordance with the plan."  
§ 1326(a)(2); see § 348(e).

9 *Id.* at 1838 (emphasis in original).

10           The Supreme Court emphasized that § 348(f) makes it clear that, absent bad  
11 faith, the undisbursed funds in the hands of the Chapter 13 trustee do not become  
12 part of the Chapter 7 estate in the converted case. *Id.* at 1837. It rejected the  
13 argument that a debtor would receive a "windfall" by reclaiming their wages from  
14 the former trustee, reasoning that the debtor could have kept these wages had the  
15 debtor filed under Chapter 7 in the first place. *Id.* at 1839.

16           Further, the Supreme Court rejected the argument that Chapter 13 trustees  
17 have a "duty" to distribute the accumulated funds *to creditors* as a facet of their  
18 obligations to "wind up" the affairs of the Chapter 13 estate following conversion.  
19 It explained that:

20                   The Federal Rules of Bankruptcy Procedure ... specify  
21 what a terminated Chapter 13 trustee must do  
22 postconversion: (1) she must turn over records and  
23 assets to the Chapter 7 trustee, Rule 1019(4); and (2) she  
24 must file a report with the United States bankruptcy  
trustee, Rule 1019(5)(B)(ii). Continuing to distribute  
funds to creditors pursuant to the defunct Chapter 13  
plan [or § 1326(c)] is not an authorized "wind-up" task.

25 *Id.* at 1939.

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1 Mr. Skelton has attempted to distinguish *Harris* because it involved a  
2 confirmed plan. However, he has not cited to any cases that limit *Harris* to a  
3 confirmed plan; nor did the Court's independent research locate any such cases.  
4 The pivotal analysis in *Harris* did not turn on the existence of a confirmed plan.  
5 *Harris* applies in cases converted to Chapter 7 irrespective of whether a Chapter  
6 13 plan was confirmed. *Sowell*, 2015 WL at \*2; *Beauregard*, 533 B.R.  
7 at 829. As explained in *Beauregard*:

8 [T]he Supreme Court held that none of the provisions of  
9 Chapter 13 apply in a case converted to Chapter 7. This  
10 holding is central to an understanding of the import of  
11 *Harris*. After conversion, a Chapter 13 trustee becomes  
12 the *formerly* serving Chapter 13 trustee in the case; her  
13 services qua Chapter 13 trustee are terminated, and her  
14 remaining responsibilities are not predicated on  
15 Chapter 13.

16 *Id.* at 829 (citing *Harris*, 135 S.Ct. at 1838)(emphasis in original).

17 It is Federal Rule Bankruptcy Procedure 1019 that specifies the terminated  
18 Chapter 13 trustee's wind up duties on conversion – not Chapter 13. *Beauregard*,  
19 at 830 (citing *Harris*, 135 S.Ct. at 1839). Therefore, in sum:

20 [T]he *Harris* decision means that if a Chapter 13 case is  
21 converted before plan confirmation, all funds held by the  
22 standing Chapter 13 trustee on conversion that are not  
23 property of the Chapter 7 estate must be returned to the  
24 debtor, without paying administrative expenses.

25 *Beauregard*, at 832.

26 The fact that no plan was confirmed in this case is irrelevant. Mr. Skelton's  
27 remaining duties are limited to winding up the estate as specified in Bankruptcy  
28 Rule 1019. As a terminated trustee, he has no authority to pay creditors or to take  
any other actions predicated on Chapter 13.

However, Mr. Skelton's primary question is: to whom should he pay the  
funds. The Supreme Court's answer is simple:

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1 Section 348(e), of course, does not require a terminated  
2 trustee to hold accumulated funds in perpetuity; she must  
3 (as we hold today) return the undistributed postpetition  
4 wages to the debtor. Returning the funds to a debtor ... is  
5 not a Chapter 13 service as is making "paymen[t] to  
6 creditors." § 1325(c).

7 *Harris*, 135 S.Ct. at 1838. In *Harris*, as here, the accumulated funds were the  
8 debtor's postpetition wages so they belonged to the debtor.

9 Mr. Skelton's prior practice of distributing the funds to adequate protection  
10 creditors (Hyundai), as mandated by General Order 175-D.7, is no longer  
11 appropriate. General Order 175-D.7 states that if a case is converted prior to plan  
12 confirmation, the trustee must disburse the accumulated amount that is still due  
13 pursuant to this General Order to adequate protection creditors. General Order  
14 175-D provides that is based upon § 1326(a)(1)(A)(B) and (C), and *Harris* clearly  
15 instructs that the Chapter 13 provisions "hold no sway" in a converted Chapter 7  
16 case. 135 S.Ct. at 1838 (citing to § 103(i)).

17 Similarly, Mr. Skelton cannot deduct from the funds the fees awarded to  
18 Debtor's counsel. Section 1326(a)(2) cannot be read in conjunction with *Harris*  
19 to allow him to pay administrative claims from the accumulated funds because  
20 *Harris* clearly states that the Chapter 13 provisions "hold no sway" in the  
21 converted Chapter 7 case. 135 S.Ct. at 1838; *see also Beauregard*, 533 B.R. at  
22 831-32; *Sowell*, 2015 WL at \*2-3; *In re Ulmer*, 2015 WL at \*1 (unanimously  
23 recognizing that, in a converted case after *Harris*, § 1326(a)(2) does not apply so  
24 counsel's fees cannot be deducted from the funds on hand).

## 25 V.

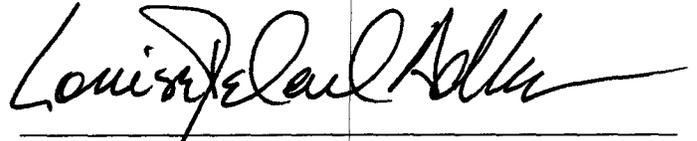
## 26 CONCLUSION

27 In conclusion, the Court orders Mr. Skelton to return to the Debtor all of  
28 the accumulated funds in his possession. These accumulated funds are from the  
Debtor's postpetition wages so he cannot use these funds to pay adequate  
protection creditors; nor can he deduct the unpaid attorney's fees (or his

1 administrative commission) from these funds. As well, the Court orders  
2 Mr. Skelton to refund to the Debtor the \$157.24 that he paid to Hyundai ten days  
3 after the Debtor converted her case to a Chapter 7, unless the Debtor otherwise  
4 agrees.<sup>1</sup>

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8 Dated:

8 Sept 2015



LOUISE DE CARL ADLER, JUDGE

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<sup>1</sup>The Court remains unclear as to whether the Debtor intends to retain her Hyundai vehicle. If she intends to retain it, she must make the payments so it is possible that the Debtor will agree that Mr. Skelton's payment to Hyundai does not need to be repaid to her.

1 CAD 168  
[Revised July 1985]

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA

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Case No. 14-07656-LA7

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Case Name: In Re: KARI LYNN BECKMAN

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CERTIFICATE OF SERVICE

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11

The undersigned, a regularly appointed and qualified clerk in the Office of the United States Bankruptcy Court for the Southern District of California, at San Diego, hereby certifies that a true copy of the attached document, to-wit:

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MEMORANDUM DECISION ON TRUSTEE'S MOTION  
FOR DETERMINATION RE: FUNDS ON HAND  
IN CONVERTED CASES

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was enclosed in a sealed and stamped envelope and mailed, following parties listed as follows:

17

SEE ATTACHED LIST

18

David L. Skelton, Trustee  
525 B Street, Suite 1430  
San Diego, CA 92101

Hyundai Motor Finance  
P.O. Box 20809  
Fountain Valley, CA 92728-0809

19

20

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21

22

Kari Lynn Beckman  
432 Primrose Way  
Oceanside, CA 92057

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The envelope(s) containing the above document was deposited in a regular United States mail box in the City of San Diego in said district on September 8, 2015.

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CAD 168

 Deputy Clerk  
Roma London