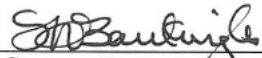




SO ORDERED.
SIGNED this 7th day of August, 2019

THIS ORDER HAS BEEN ENTERED ON THE DOCKET.
PLEASE SEE DOCKET FOR ENTRY DATE.


Suzanne H. Bauknicht
UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

In re

COREY ADAM GREEN
HEATHER MARIE GREEN

Case No. 3:19-bk-31697-SHB
Chapter 13

Debtors

MEMORANDUM AND ORDER

On August 7, 2019, the Court held a hearing on its Order entered July 3, 2019 [Doc. 13], directing Debtors to appear and show cause (1) why this Chapter 13 bankruptcy case should not be dismissed because they did not comply with 11 U.S.C. §§ 521(a)(1) and 1321; Rules 1007(b) and 3015(b) of the Federal Rules of Bankruptcy Procedure; E.D. Tenn. LBR 9036-1(b)(1); and the Notice of Additional Documents to Be Filed dated May 30, 2019, by filing the Certificate of Credit Counseling; Statement Regarding Payment Advices; Schedules A/B through J; Declaration About Schedules; Summary of Assets and Liabilities and Certain Statistical Information; Statement of Financial Affairs; Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period (Form 122C-1); Chapter 13 Plan; and/or Debtor Electronic Noticing Elections

(DeBN); and (2) why the Court should not impose a 180-day bar against Debtors filing a bankruptcy case under any chapter for their repeated and willful failure to abide by orders of this Court in their four prior cases filed since 2016. Debtors did not file a response or appear at the August 7, 2019 hearing.

I. FINDINGS OF FACT

The record reflects the following undisputed facts. Debtors have filed five Chapter 13 bankruptcy cases since March 2016. The histories of the cases are summarized as follows:

A. Case No. 3:16-bk-30612-SHB was filed on March 2, 2016, and dismissed on April 6, 2016, for failure to make a plan payment within thirty days as required by 11 U.S.C. § 1326(a)(1) and the Order entered on March 24, 2016, directing such payment;

B. Case No. 3:16-bk-31389-SHB was filed on May 3, 2016, and dismissed on May 25, 2017, for failure to make plan payments under the Order Confirming Chapter 13 Plan entered on September 26, 2016;

C. Case No. 3:18-bk-33289 was filed on October 24, 2018, and dismissed on January 30, 2019, on the objections to confirmation filed by the Chapter 13 Trustee and AF Title and failure to submit a confirmable plan;

D. Case No. 3:18-bk-30442-SHB was filed on February 18, 2019, and dismissed on April 12, 2019, for failure to file the Statement Regarding Payment Advices; Schedules A/B through J; Declaration About Schedules; Summary of Assets and Liabilities and Certain Statistical Information; Statement of Financial Affairs; Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period (Form 122C-1); and Chapter 13 Plan, notwithstanding two extensions of time to do so; and failure to appear for a meeting of creditors; and

E. Debtors, acting *pro se*, filed this bankruptcy case on May 29, 2019, and did not file the Certificate of Credit Counseling; Statement Regarding Payment Advices; Schedules A/B through J; Summary of Assets and Liabilities and Certain Statistical Information; Declaration About Schedules; Statement of Financial Affairs; Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period (Form 122C-1); Chapter 13 Plan; and/or Debtor Electronic Noticing Elections (DeBN).

Additionally, Debtors did not appear at the hearing held on July 3, 2019, on the Trustee's Motion to Dismiss filed by the Chapter 13 Trustee on June 4, 2019.

II. CONCLUSIONS OF LAW

Under § 1325(a)(3) and (7), debtors are required to file and proceed in their cases in good faith, and likewise, to propose their plans in good faith, with an almost identical standard as cases concerning good faith and dismissal under § 1307(c). *In re Hall*, 346 B.R. 420, 426 (Bankr. W.D. Ky. 2006). Whether a debtor has filed in bad faith requires examination of the totality of the circumstances and is based on past and present circumstances. *Laguna Assocs. Ltd. P'ship v. Aetna Cas. & Surety Co. (In re Laguna Assocs. Ltd. P'ship)*, 30 F.3d 734, 738 (6th Cir. 1994); *In re Glenn*, 288 B.R. 516, 519-20 (Bankr. E.D. Tenn. 2002).

In making the good faith determination, courts generally focus on the following factors:

(1) the debtor's income; (2) the debtor's living expenses[;] (3) the debtor's attorney fees; (4) the expected duration of the Chapter 13 plan; (5) the sincerity with which the debtor has petitioned for relief under Chapter 13; (6) the debtor's potential for future earning; (7) any special circumstances the debtor may be subject to, such as unusually high medical expenses; (8) the frequency with which the debtor has sought relief before in bankruptcy; (9) the circumstances under which the debt was incurred; (10) the amount of payment offered by debtor as indicative of the debtor's sincerity to repay the debt; (11) the burden which administration would place on the trustee; and (12) the statutorily-mandated policy that bankruptcy provisions be construed liberally in favor of the debtor.

Soc'y Nat'l Bank v. Barrett (In re Barrett), 964 F.2d 588, 592 (6th Cir. 1992). Other relevant factors include "the accuracy of the plan's statements of the debts, expenses and percentage repayment of unsecured debt[,], and whether any inaccuracies are an attempt to mislead the court[.]" *Hardin v. Caldwell (In re Caldwell)*, 851 F.2d 852, 859 (6th Cir. 1988) (citation omitted).

Courts also look to the following:

the nature of the debt, including the question of whether the debt would be nondischargeable in a Chapter 7 proceeding; the timing of the petition; how the debt arose; the debtor's motive in filing the petition; how the debtor's actions

affected creditors; the debtor's treatment of creditors both before and after the petition was filed; and whether the debtor has been forthcoming with the bankruptcy court and the creditors.

Alt v. United States (In re Alt), 305 F.3d 413, 419 (6th Cir. 2002) (citation omitted). Weighing these factors — “which ‘may circumstantially reflect the debtor’s motivation, and ultimately his ‘good faith,’” in seeking relief under chapter 13” — assists courts in determining whether “the debtor’s purpose in filing for chapter 13 relief is consistent with the underlying purpose and spirit of chapter 13 – i.e., financial ‘rehabilitation through repayment of debt’ – [and if] the filing is likely in good faith.” *Condon v. Brady (In re Condon)*, 358 B.R. 317, 326 (B.A.P. 6th Cir. 2007) (internal citations omitted).

Although courts must find that imposition of a sanction “be commensurate with the egregiousness of the conduct,” the purpose of adding § 109(g) was to address abuse of the system including “the filing of meritless petitions in rapid succession to improperly obtain the benefit of the Bankruptcy Code’s automatic stay provisions as a means of avoiding foreclosure under a mortgage or other security interest.” *In re Cline*, 474 B.R. 789 (Table), No. 11-8075, 2012 WL 1957935, at *7 (B.A.P. 6th Cir. June 1, 2012) (citations omitted). “While multiple filings are not, in and of themselves, improper or indicative of bad faith, a history of multiple filings and dismissals may be construed as bad faith.” *Cusano v. Klein (In re Cusano)*, 431 B.R. 726, 735 (B.A.P. 6th Cir. 2010) (citing *In re Glenn*, 288 B.R. at 520). Further, if there is sufficient cause, courts have the authority under §§ 105(a) and 349(a) to sanction abusive debtors with a prohibition against filing for more than the 180 days set forth in § 109(g)(1). *Id.* at 737; *see also In re Henderson*, No. 12-50376, 2012 WL 4498887, at *1–2 (Bankr. S.D. Ohio May 4, 2012) (stating that while “only egregious behavior that demonstrates bad faith and prejudices creditors will warrant a permanent bar from refiling,” a debtor who had filed four prior Chapter 13 cases that

had been dismissed and had received discharges in two Chapter 7 cases was a serial filer whose bankruptcy cases “had the effect of staying creditor’s [sic] attempts to collect what they [were] owed repeatedly for almost two decades,” resulting in her being permanently enjoined from filing another case or receiving a discharge of the debts scheduled in that case).

Debtors have a history of multiple filings and dismissals based on their failure to comply with the requirements of the Bankruptcy Code and orders of this Court. This is Debtors’ fifth case in just over three years, and in only one case did they propose and confirm a Chapter 13 Plan. In their last two cases, Debtors did not file the documents required to avoid automatic dismissal under § 521(i)(1), and in this case, Debtors did not file the certification that they took the credit counseling briefing required by § 109(h). Furthermore, Debtors did not appear and show cause as ordered by the Court in the July 3 Order, even though the order expressly referenced imposition of a 180-day bar on refiling. For the foregoing reasons, constituting the Court’s findings of fact and conclusions of law as required by Rule 52 of the Federal Rules of Civil Procedure, applicable to contested matters by virtue of Rule 9014 of the Federal Rules of Bankruptcy Procedure, the Court directs the following:

1. Because Debtors did not obtain the required credit counseling briefing within the 180 days preceding the May 29, 2019 petition date, as required by 11 U.S.C. § 109(h)(1), Debtors are not eligible to be debtors under title 11, and this Chapter 13 bankruptcy case is **DISMISSED**.

2. Because Debtors did not file the aforementioned delinquent documents within the time required by statute, under 11 U.S.C. § 521(i)(1), this case is **DISMISSED** effective July 14, 2019.

3. Because he has repeatedly and willfully failed to abide by orders of the Court or to appear before the Court as directed, Corey Adam Green is **BARRED** from filing another

bankruptcy petition under any chapter of Title 11 of the United States Code for a period of 180 days from the date of entry of this Order. *See* 11 U.S.C. § 109(g)(1).

4. Because she has repeatedly and willfully failed to abide by orders of the Court or to appear before the Court as directed, Heather Marie Green is BARRED from filing another bankruptcy petition under any chapter of Title 11 of the United States Code for a period of 180 days from the date of entry of this Order. *See* 11 U.S.C. § 109(g)(1).

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