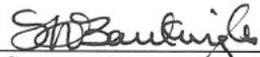




**SO ORDERED.**  
**SIGNED this 4th day of September, 2019**

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

  
Suzanne H. Bauknicht  
UNITED STATES BANKRUPTCY JUDGE

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

In re

HOLLY REA COOK

Case No. 3:19-bk-32400-SHB  
Chapter 13

Debtor

**MEMORANDUM AND ORDER**

On September 4, 2019, the Court held a hearing on (1) the Amended Motion by Chapter 13 Trustee to Dismiss Case with Prejudice (“Motion to Dismiss”) filed by Gwendolyn M, Kerney, Chapter 13 Trustee (“Trustee”) on July 30, 2019 [Doc. 8], asking the Court to dismiss this case with a two-year bar against Debtor re-filing a case; and (2) the Order entered August 15, 2019 (“August 15 Order”) [Doc. 16], directing Debtor to appear and show cause (a) why this case should not be dismissed because she 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 July 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 (b) why the Court should not impose a 180-day bar against Debtor filing a bankruptcy case under any chapter and a 365-day bar against the filing of a skeleton petition by Debtor for her repeated and willful failure to abide by orders of this Court in her four prior cases. Debtor did not file a response to either the Motion to Dismiss or the August 15 Order, nor did she appear at the September 4, 2019 hearing. At the hearing, the Trustee provided the Court with a satisfactory explanation why she seeks to bar Debtor's refiling for two years rather than the 180 days in the Court's August 15 Order, which is likewise supported by the record.

### **I. FINDINGS OF FACT**

The record reflects the following undisputed facts. Debtor has filed five Chapter 13 bankruptcy cases since March 2018. She has not paid a filing fee in any of the cases, all of which have also been skeleton petitions. The histories of the cases are summarized as follows:

A. Case No. 3:18-bk-31096-SHB was filed on April 11, 2018, and dismissed on May 23, 2018, for failure to file 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 Debtor Electronic Noticing Election (DeBN) and failure to appear at the show cause hearing held on May 23, 2018;

B. Case No. 2:18-bk-51659-MPP was filed on September 26, 2018, and dismissed on December 4, 2018, on motion by the Trustee for failure to file 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 Debtor Electronic Noticing Election (DeBN); failure to make plan payments as required by 11

U.S.C. § 1326; failure to appear at the meeting of creditors; and failure to provide the Trustee with tax returns as required by 11 U.S.C. § 521(e)(2)(A)(i);

C. Case No. 2:19-bk-51060-MPP was filed on May 17, 2019 (through an attorney-in-fact), and dismissed on July 30, 2019, on motion by the Trustee for failure to file 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 Debtor Electronic Noticing Election (DeBN); failure to make plan payments as required by 11 U.S.C. § 1326; failure to appear at a meeting of creditors; and failure to provide the Trustee with tax returns as required by 11 U.S.C. § 521(e)(2)(A)(i);

D. Case No. 2:19-bk-51242-MPP was filed on June 11, 2019 (through an attorney-in-fact), and dismissed on July 3, 2019, for failure to appear at the hearing held July 2, 2019, on the Court's order to show cause why the case should not be dismissed because Debtor already had a Chapter 13 case pending; and

E. Debtor, acting *pro se* (through an attorney-in-fact), filed this bankruptcy case on July 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, as previously stated, Debtor did not appear at the September 4, 2019 hearing on the Trustee's Amended Motion to Dismiss filed on July 30, 2019, and the Court's August 15 Order.

## 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 refileing,” 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).

Debtor has a history of multiple filings – all of which have been skeleton petitions without payment of the filing fee – and dismissals based on her failure to comply with the requirements of the Bankruptcy Code and orders of this Court. This is Debtor’s fifth case in less than sixteen

months, and she has not filed the documents required to avoid automatic dismissal under § 521(i)(1) in any of her cases; nor has Debtor ever filed a certification that she took the credit counseling briefing required by § 109(h). Furthermore, Debtor did not appear at the hearing on the Trustee's Motion to Dismiss, notwithstanding that it expressly seeks imposition of a two-year bar on refiling, and the Court's August 15 Order, even though it 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 Debtor did not obtain the required credit counseling briefing within the 180 days preceding the July 29, 2019 petition date, as required by 11 U.S.C. § 109(h)(1), Debtor is not eligible to be a debtor under title 11, the Amended Motion by Chapter 13 Trustee to Dismiss Case with Prejudice [Doc. 8] is GRANTED.

2. This Chapter 13 bankruptcy case is DISMISSED.

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

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