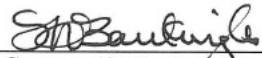




**SO ORDERED.**

**SIGNED this 29th day of September, 2022**

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

  
Suzanne H. Bauknight  
UNITED STATES BANKRUPTCY JUDGE

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

In re

DANIELLE SCHWEITZER LAWRENCE

Debtor

Case No. 3:22-bk-31253-SHB  
Chapter 13

**MEMORANDUM AND ORDER**

A hearing was held September 28, 2022, on the Court's Order entered August 24, 2022 ("the August 24 Order") [Doc. 5], directing Debtor to appear and show cause (1) why the Court should not impose a 365-day bar against Debtor filing a bankruptcy case under any chapter, as authorized by 11 U.S.C. § 349(a), incorporating therein 11 U.S.C. § 109(g), for her repeated and willful failure to abide by orders of this Court or otherwise comply with the provisions of the Bankruptcy Code, and (2) why Debtor should not be held in contempt and sanctioned for her repeated failure to comply with this Court's orders. Debtor did not file a response or appear at the September 28, 2022 hearing.<sup>1</sup>

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<sup>1</sup> The August 24 Order was mailed to Debtor via regular and certified mail, directed to the address provided by Debtor in the petition: 4423 Greenfern Way, Knoxville, Tennessee 37912. The return receipt was received by the Clerk's office on August 31, 2022, with an illegible signature. The Clerk's office did not receive a return of the regularly mailed order and Debtor has not otherwise rebutted the presumption is that it was received by Debtor. *See Bratton v.*

## I. FINDINGS OF FACT

The record reflects the following undisputed facts. Since 2019, Debtor, acting *pro se*, has filed six Chapter 13 cases in the United States Bankruptcy Court for the Eastern District of Tennessee.

1. In Case No. 3:19-bk-31026-SHB, filed April 2, 2019, Debtor failed to (i) obtain the pre-petition credit counseling briefing required by § 109(h); (ii) file the documents required by §§ 521(a)(1), 521(b)(1), and 1321, and Rules 1007(b) and 3015(b); (iii) pay the \$313.00 filing fee as directed in an Order entered April 3, 2019; and (iv) appear at the hearing held May 8, 2019, on the Court's show cause order entered April 17, 2019, and the Chapter 13 Trustee's Motion to Dismiss filed April 8, 2019, resulting in dismissal on May 10, 2019.
2. In Case No. 3:21-bk-31706-SHB, filed October 27, 2021, Debtor failed to (i) obtain the pre-petition credit counseling briefing required by § 109(h); (ii) file the documents required by §§ 521(a)(1), 521(b)(1), and 1321, and Rules 1007(b) and 3015(b); (iii) pay the \$313.00 filing fee as directed in an Order entered October 27, 2021; and (iv) appear at the hearing held December 1, 2021, on the Chapter 13 Trustee's Motion to Dismiss filed November 1, 2021, resulting in dismissal on December 10, 2021.
3. In Case No. 3:22-bk-30111-SHB, filed January 27, 2022, Debtor failed to (i) obtain the pre-petition credit counseling briefing required by § 109(h); (ii) file the documents required by §§ 521(a)(1), 521(b)(1), and 1321, and Rules 1007(b) and 3015(b); (iii) pay the \$313.00 filing fee as directed in an Order entered January 27, 2022; and (iv) appear at the hearing held March 9, 2022, on the Court's show cause order entered February 14, 2022, and the Chapter 13 Trustee's Motion to Dismiss filed February 9, 2022, resulting in dismissal on March 10, 2022.
4. In Case No. 3:22-bk-30478-SHB, filed March 30, 2022, Debtor failed to (i) obtain the pre-petition credit counseling briefing required by § 109(h); (ii) file the documents

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*Yoder Co. (In re Yoder Co.)*, 758 F.2d 1114, 1118 (6th Cir. 1985) (“The common law has long recognized a presumption that an item properly mailed was received by the addressee. The presumption arises upon proof that the item was properly addressed, had sufficient postage, and was deposited in the mail.” (citations omitted)).

- required by §§ 521(a)(1), 521(b)(1), and 1321, and Rules 1007(b) and 3015; (iii) pay the \$313.00 filing fee as directed in an Order entered April 1, 2022; and (iv) appear at the hearing held May 4, 2022, on the April 15 Order, and the Chapter 13 Trustee's Motion to Dismiss filed April 4, 2022, notwithstanding receipt by certified mail of the April 15 Order that includes the show-cause directive for dismissal with prejudice and a 180-day bar, resulting in dismissal with 180-day bar on May 4, 2022.
5. In Case No. 3:22-bk-31040-SHB, filed July 13, 2022, Debtor failed to (i) obtain the pre-petition credit counseling briefing required by § 109(h); (ii) file the documents required by §§ 521(a)(1), 521(b)(1), and 1321, and Rules 1007(b) and 3015; (iii) pay the \$313.00 filing fee; was summarily dismissed on July 19 because filed within the 180-day bar imposed in 22-30478.
  6. In the present case, Case No. 3:22-bk-31253-SHB, filed August 24, 2022, Debtor failed to (i) obtain the pre-petition credit counseling briefing required by § 109(h); (ii) file the documents required by §§ 521(a)(1), 521(b)(1), and 1321, and Rules 1007(b) and 3015; (iii) pay the \$313.00 filing fee by September 15, 2022, as directed in an Order entered August 31, 2022; and (iv) appear at the hearing held September 28, 2022, on the August 24 Order, notwithstanding receipt by certified mail of the August 24 Order that includes the show-cause directive for dismissal with prejudice and a 365-day bar.

## 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).

Debtor has a history of multiple filings and dismissals based on her failure to comply with the requirements of the Bankruptcy Code and orders of this Court. This is her sixth case filed since 2019, her fourth case filed in this year alone, and her second case filed in violation of a bar against filing imposed by this Court. In each case, Debtor has failed to file a certificate of credit counseling or the documents required to avoid automatic dismissal under § 521(i)(1), did

not pay the filing fee, and did not appear at the respective hearings. Debtor clearly is abusing the bankruptcy system. Further, even though the August 24 Order expressly referenced both imposition of a 365-day bar on refiling as well as a finding of contempt against Debtor, she did not appear at the hearing on September 28, 2022.

For the foregoing reasons, which constitute the Court's findings of fact and conclusions of law as required by Rule 52 of the Federal Rules of Civil Procedure, made 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 August 24, 2022 petition date, as required by 11 U.S.C. § 109(h)(1), Debtor is not eligible to be a debtor under title 11, and this Chapter 13 bankruptcy case is DISMISSED.

2. Because she has repeatedly and willfully failed to abide by orders of the Court or to appear before the Court as directed, Danielle Schweitzer Lawrence is BARRED from filing another bankruptcy petition under any chapter of Title 11 of the United States Code for a period of 365 days from the date of entry of this Order. *See* 11 U.S.C. § 109(g)(1).

3. Because she has repeatedly and willfully failed to abide by orders of the Court or to appear before the Court as directed, Danielle Schweitzer Lawrence is in civil contempt. She may purge her contempt only by full compliance with this Order.

4. Should Danielle Schweitzer Lawrence file another bankruptcy petition under any Chapter of Title 11 of the United States Code before the 365-day bar of paragraph 2 above expires, she is subject to a finding of further civil contempt that will result in sanctions against Ms. Lawrence, which may include but will not be limited to the issuance of a bench warrant for

her arrest by the United States Marshals Service to coerce her compliance with this Court's orders.

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