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Stay Imposed—The Failed Policy of Section 362(c)(4)

by

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In the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA)[1] Congress amended the Bankruptcy Code[2] to modify the operation of the automatic stay, which in the ordinary course becomes applicable to protect the debtor, the debtor's property and property of the estate as of the moment a petition is filed.[3] With respect to a bankruptcy case filed by someone who has filed a prior bankruptcy case within a relatively short time before the current filing, a so-called "serial filer,"[4] Congress enacted two new provisions. The first, §362(c)(3),[5] terminates the automatic stay, at least

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[1]Bankruptcy Abuse Protection and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (2005).

[2]11 U.S.C. §§ 101-1532 (2006) (the "Bankruptcy Code"). In this article, all statutory citations refer to the Bankruptcy Code unless otherwise indicated.

[3]11 U.S.C. § 362(a).

[4]A serial filer is "a debtor who abuses the bankruptcy process by filing successive petitions after earlier petitions are dismissed, repeatedly using the automatic stay to forestall creditors." Spencer Zane Baretz, *Combating the Chapter 13 Serial Filer: An Argument for Orders Containing Prospective Relief from the Automatic Stay Provision*, 25 HOFSTRA L. REV. 1315, 1316 (1997).

[5]Section 362(c)(3) states:

> "(c) Except as provided in subsections (d), (e), (f), and (h) of this section—
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> (3) if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)—
> (A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case;
> (B) on the motion of a party in interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed; and
> (C) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

to some extent,[6] on the 30th day after the filing of a chapter 7, 11 or 13 case by or against an individual debtor (other than a case filed under chapter 11 or 13 after a chapter 7 case was dismissed under § 707(b)) if that debtor had a single or joint case pending within the preceding one-year period that was dismissed.[7] The second, § 362(c)(4),[8] provides that the automatic stay never

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> (i) as to all creditors, if—
> (I) more than 1 previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was pending within the preceding 1-year period;
> (II) a previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to—
> (aa) file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be a substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney);
> (bb) provide adequate protection as ordered by the court; or
> (cc) perform the terms of a plan confirmed by the court; or
> (III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13 or any other reason to conclude that the later case will be concluded—
> (aa) if a case under chapter 7, with a discharge; or
> (bb) if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; and
> (ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, that action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to actions of such creditor; . . . .".

[6]Courts differ on whether the stay terminates completely, *see, e.g., In re* Reswick, 446 B.R. 362, 367-73 (9th Cir. B.A.P. 2011); *In re* Jackola, No. 11-01278, 2011 WL 2518930, at *6-7 (Bankr. D. Hawaii June 22, 2011), or terminates only with respect to the debtor and property of the debtor, *see, e.g., In re* Taylor, No. 07-31055, 2007 WL 1234932, at *5 (Bankr. E.D. Va. Apr. 26, 2007); *In re* Tubman, 364 B.R. 574, 584-86 (Bankr. D. Md. 2007); *In re* Williams, 346 B.R. 361, 370 (Bankr. E.D. Pa. 2006); *In re* Moon, 339 B.R. 668, 672-73 (Bankr. N.D. Ohio. 2006); *In re* Harris, 342 B.R. 274, 281 (Bankr. N.D. Ohio 2006); *In re* Johnson, 335 B.R. 805, 806 (Bankr. W.D. Tenn. 2006), or terminates only with respect to actions taken by creditors prior to the current filing, *see, e.g., In re* Bell, No. 06-11115, 2006 WL 1132907, at *2 (Bankr. D. Colo. Apr. 27, 2006); *In re* Paschal, 337 B.R 274, 280 (Bankr. E.D.N.C. 2006). *See generally* Peter E. Meltzer, *Won't You Stay a Little Longer? Rejecting the Majority Interpretation of Bankruptcy Code § 362(c)(3)(A)*, 86 AM. BANKR. L.J. 407 (2012); Kimberly Lehnert, *Termination of the Stay for Successive Filers: Interpreting § 362(c)(3)*, 29 EMORY BANKR. DEV. J. 243 (2012); Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 AM. BANKR. L.J. 201 (2008); Lisa A. Napoli, *The Not-So-Automatic Stay: Legislative Changes to the Automatic Stay in a Case Filed by or Against an Individual Debtor*, 79 AM. BANKR. L.J. 749 (2005).

[7]11 U.S.C. § 362(c)(3).

[8]Section 362(c)(4) provides:

> "(c) Except as provided in subsections (d), (e), (f), and (h) of this section—
> ***
> (4) (A) (i) if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b), the stay under subsection (a) shall not go into effect upon the filing of the later case; and

goes into effect in a new single or joint bankruptcy case of an individual debtor if that debtor had two or more single or joint cases pending within the previous one-year period that were dismissed.

Under § 362(c)(4), on motion of a party in interest brought within thirty days of the commencement of the latest case, after notice and a hearing,[9] the court may order the stay to take effect only if the party seeking such action "demonstrates that the filing of the later case is in good faith as to the creditors to be stayed."[10] The latest case is presumed not to have been filed in good faith as to any creditor that sought relief from the stay under § 362(d) in a previous case of the same debtor if the action for relief was still pending or was resolved by terminating, conditioning, or limiting the stay as to such creditor's actions.[11] The latest case is presumed not to have been filed in good faith as to all creditors if any of three circumstances is established.

(ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect;

(B) if, within 30 days after the filing of the later case, a party in interest requests the court may order the stay to take effect in the case as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed;

(C) a stay imposed under subparagraph (B) shall be effective on the date of the entry of the order allowing the stay to go into effect; and

(D) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

(i) as to all creditors if—

(I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;

(II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; or

(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, such action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to such action of such creditor."

[9]Unlike under the requirements of § 362(c)(3), the hearing on a motion under § 362(c)(4) does not have to be completed before the expiration of the 30-day period. *Compare* § 362(c)(3)(B) *with* § 362(c)(4)(B).

[10]11 U.S.C. § 362(c)(4)(B).

[11]11 U.S.C. § 362(c)(4)(D)(ii).

First, the presumption arises if the debtor had two or more previous bankruptcy cases pending within the one-year period before the current case was filed.[12] Second, the presumption arises if a previous bankruptcy case of the debtor was dismissed within the same one-year period for failure to file or amend the petition or other required documents without substantial excuse, failure to provide adequate protection, or failure to perform the terms of a confirmed plan.[13] Third, the presumption arises if "there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous [bankruptcy] case" or "any other reason to conclude that the later case will not be [successfully] concluded."[14] Because § 362(c)(4) applies only if a single or joint case is filed by or against an individual debtor who had two or more single or joint cases pending within the previous year that were dismissed,[15] the first basis for the presumption will always be present.[16] The movant may, however, rebut the presumption that the case was not filed in good faith "by clear and convincing evidence to the contrary."[17]

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[12]11 U.S.C. § 362(c)(4)(D)(i)(I).

[13]11 U.S.C. § 362(c)(4)(D)(i)(II).

[14]11 U.S.C. § 362(c)(4)(D)(i)(III). A chapter 7 case is successfully concluded by a discharge, and a chapter 11 or 13 case is successfully concluded by a "confirmed plan that will be fully performed." *Id.*

[15]11 U.S.C. § 362(c)(4)(A)(i).

[16]Some courts have applied § 362(c)(4) to debtors who have brought motions under § 362(c)(3) to extend the stay within 30 days after the filing of the latest bankruptcy case, but have failed to obtain a hearing on their motions before the expiration of that 30-day period as required by § 362(c)(3)(B). *See In re* Williams, No. 10-65839 (Bankr. E.D. Mich. Nov. 3, 2010); *In re* DiGiovanni, 415 B.R. 120 (Bankr. E.D. Pa. 2009); *In re* Gargani, No. 08-22973 (Bankr. W.D. Pa. May 4, 2008); *In re* McMillan, No. 08-00240 (Bankr. M.D. Fla. Mar. 3, 2008); *In re* Arnold, No. 07-80636 (Bankr. S.D. Tex. Jan. 2, 2008); *In re* Underbakke, No. 06-00501, 2006 WL 4108578 (Bankr. M.D. Fla. Sept. 8, 2006); *In re* Gray, No. 05-45793, 2006 BL 17919 (Bankr. E.D. Wis. Jan. 30, 2006); *In re* Toro-Arcila, 334 B.R. 224 (Bankr. S.D. Tex. 2005). *Cf. In re* Williams, No. 08-37433 (Bankr. S.D. Tex. Feb. 11, 2009) (denying a motion for reconsideration of an order denying relief under § 362(c)(3) "to the extent" that it might be deemed to be a request under § 362(c)(4)). Because those debtors had only one prior bankruptcy case pending in the one-year period prior to the current filing, the presumption that the current case was not filed in good faith would not arise under § 362(c)(4)(D)(i). Most courts find § 362(c)(4) inapplicable under these circumstances. *See, e.g.*, Capital One Auto Finance v. Cowley, 374 B.R. 601, 608-09 (W.D. Tex. 2006); *In re* Thornton, No. 07-70002, 2007 WL 7140155, at *1 n.1 (Bankr. N.D. Ga. 2007); *In re* Ajaka, 370 B.R. 426, 428 (Bankr. N.D. Ga. 2007); *In re* Norman, 346 B.R. 181, 184 (Bankr. N.D. W. Va. 2006); Whitaker v. Baxter (*In re* Whitaker), 341 B.R. 336, 344 (Bankr. S.D. Ga. 2006). The court in *Whitaker* nevertheless imposed the automatic stay using its equitable powers under 11 U.S.C. § 105.

[17]11 U.S.C. § 362(c)(4)(D). "Clear and convincing evidence is that weight of proof which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable the fact finder to come to a clear conviction, without hesitancy, of the truth of the precise facts of the case." *Shafer v. Army & Air Force Exch. Serv.*, 376 F.3d 386, 396 (5th Cir.2004), *quoted in In re* Collins, 335 B.R. 646, 652 n.4 (Bankr. S.D. Tex. 2005). It "is an intermediate standard that lies between a 'preponderance of the evidence' and 'beyond a reasonable doubt.'" SmithKline Beecham Corp. v. Apotex Corp., No. Civ.A.99-CV-4304, Civ.A.00-CV-4888, Civ.A.01-CV-0159, Civ.A.01-CV-2160, Civ.A.99-CV-2926, Civ.A.00-CV-5953, Civ.A.02-CV-1484, Civ.A.00-CV-1393, Civ.A.00-CV-6464, Civ.A.01-CV-2602, Civ.A.01-CV-1027,

The purpose of the amendments to § 362 was to "discourag[e] bad faith repeat filings."[18] They have been called "harsh"[19] and "draconian."[20] One might assume that in most cases a serial filer who falls under the terms of § 362(c)(4)—one who has filed at least three cases in a one-year period and had the prior two dismissed—would be unlikely to be able to rebut the presumption and establish that the most recent case was filed in good faith. But the facts do not bear out this assumption. As will be discussed below, in the vast majority of cases filed by a debtor who is subject to § 362(c)(4), if the debtor moves for imposition of the automatic stay, the court grants the motion.

Hundreds of § 362(c)(4) motions are made every year. For purposes of this paper, I have looked only at those cases in which such motions were filed between March 1, 2014 and March 30, 2014[21] and in which the court either granted or denied the motion.[22] My research identified one hundred fifty-

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Civ.A.01-CV-3364, Civ.A.02-CV-8493, Civ.A.01-CV-2981, Civ.A.03-CV-6117, 2005 WL 94167, at *7 n.21 (E.D. Pa. Mar. 31, 2005), *quoted in In re* Boran, No. 07-42460, 2007 WL 7143412, at *2 (Bankr. N.D. Ga. Oct. 30, 2007). *See also In re* Ferguson, 376 B.R. 109, 119 (Bankr. E.D. Pa. 2007).

[18]The amendments were implemented by Section 302 of Pub. L. No. 109-8, which was entitled "Discouraging bad faith repeat filings," in Title III under the heading "Discouraging Bankruptcy Abuse." *Id.*

[19]*In re* Jumpp, 344 B.R. 21, 27 (Bankr. D. Mass. 2006).

[20]*In re* Skoglund, No. 14-90050, 2014 WL 1089865, at *1 n.3 (Bankr. W.D. Mich. 19, 2014).

[21]I found these cases by using the Keyword function in searching the dockets available on Bloomberg Law, Bankruptcy Court Dockets, which includes all filings made on PACER (the Public Access to Court Electronic Records program). However, I discovered that the Keyword search function on the Bloomberg site operates only with respect to entries appearing on a docket as of the most recent date on which that docket was updated on the Bloomberg site. Bloomberg does not routinely update the dockets of chapter 7 or chapter 13 cases after the filing date (although it updates dockets of chapter 11 case monthly). Therefore, with respect to chapter 7 cases, my ability to find relevant cases for this study was limited; I found only those few chapter 7 cases in which a motion to impose the stay was filed early in the case and appeared on the docket posted on the Bloomberg Law site. With respect to chapter 13 cases (which make up the vast majority of cases in which such motions are made), my assistants and I manually updated the docket of every chapter 13 case filed in March 2014. Therefore, my search should have located every motion to impose the stay filed in a chapter 13 case during that month. I chose that month because it is the last month in the last fiscal quarter for which there were reported filing statistics issued by the Federal Judicial Center when I began my work, which enabled me to compare the total number of cases filed in a district with the number of cases in which such motions were filed.

[22]I have not included cases in which the debtor filed a motion seeking imposition of the stay, but subsequently withdrew the motion, *see, e.g., In re* Jones-Lewis, No. 14-22782 (Bankr. W.D. Tenn. Mar. 17, 2014). Nor have I included cases in which the debtor filed a motion but the court either dismissed the case without ruling on the motion, *see* cases cited in note 231 *infra*, or those cases for which (as of the time this paper was written) there was no order with respect to the motion (or other indication of the court's ruling) on the docket, *see In re* Woods, No. 14-23346 (Bankr. W.D. Tenn. Mar. 28, 2014) (motion filed Apr. 21, 2014); *In re* Jamerson, No. 14-23279 (Bankr. W.D. Tenn. Mar. 27, 2014) (motion filed Mar. 27, 2014); *In re* Winfrey, No. 14-23103 (Bankr. W.D. Tenn. Mar. 24, 2014) (motion filed Mar. 24, 2014); *In re* Baskin, No. 14-22390 (Bankr. W.D. Tenn. Mar. 6, 2014) (motion filed Mar. 6, 2014); *In re* Tuggle, No. 14-22303 (Bankr. W.D. Tenn. Mar. 4, 2014) (motion filed Mar. 4, 2014).

I have also excluded cases in which a debtor filed a § 362(c)(4) motion, but did not have two prior cases pending in the preceding year that were dismissed (even if the court purported to grant the motion under § 362(c)(4), *see, e.g., In re* Norton, No. 14-90620 (Bankr. S.D. Ind. Mar. 31, 2014); *In re* Smith, No.

two such cases.[23] In this article I will look at these cases, examining the

14-90585 (Bankr. S.D. Ind. Mar. 27, 2014); *In re* Wilson-Blackwell, No. 14-08755 (Bankr. N.D. Ill. Mar. 12 2014); *In re* Richards, No. 14-30320 (Bankr. N.D. Cal. Mar. 4, 2014). I have included cases in which the court stated that it was granting the motion under § 362(c)(3) or § 105 but there were two prior filings dismissed in the prior year and therefore the requirements of §362(c)(4) were satisfied.

[23]*See In re* Scullark, No. 14-23392 (Bankr. W.D. Tenn. Mar. 31, 2014); *In re* Edwards, No. 14-10171 (Bankr. E.D. Tex. Mar. 31, 2014); *In re* Farris, No. 14-56451 (Bankr. N.D. Ga. Mar. 31, 2014); *In re* Anderson, No. 14-23381 (Bankr. W.D. Tenn. Mar. 31, 2014) (*April Anderson*); *In re* Lawrence, No. 14-56443 (Bankr. N.D. Ga. Mar. 31, 2014); *In re* Phillips, No. 14-23398 (Bankr. W.D. Tenn. Mar. 31, 2014); *In re* Hammad, No. 14-23414 (Bankr. W.D. Tenn. Mar. 31, 2014); *In re* Williams, No. 14-23416 (Bankr. W.D. Tenn. Mar. 31, 2014) (*Derrick Williams*); *In re* Patterson, No. 14-56594 (Bankr. N.D. Ga. Mar. 31, 2014) (*Delana Patterson*); *In re* Egenolf, No. 14-12528 (Bankr. E.D. Pa. Mar. 31, 2014); *In re* Souder, No. 14-56389 (Bankr. N.D. Ga. Mar. 29, 2014); *In re* Natividad, No. 14-51333 (Bankr. N.D. Cal. Mar. 28, 2014); *In re* Morris, No. 14-11425 (Bankr. N.D. Ill. Mar. 28, 2014); *In re* Green, No. 14-41306 (Bankr. N.D. Tex. Mar. 28, 2014) (*Lydia Green*); *In re* Shaffer, No. 14-00325 (Bankr. N.D. W. Va. Mar. 28, 2014); *In re* Cox, No. 14-01757 (Bankr. E.D.N.C. Mar. 28, 2014); *In re* Dyson, No. 14-23296 (Bankr. W.D. Tenn. Mar. 27, 2014); *In re* Lester, No. 14-56193 (Bankr. N.D. Ga. Mar. 27, 2014); *In re* Moate, No. 14-10410 (Bankr. M.D. Ga. Mar. 27, 2014); *In re* Waters, No. 14-56151 (Bankr. N.D. Ga. Mar. 27, 2014); *In re* Griffin, No. 14-56214 (Bankr. N.D. Ga. Mar. 27, 2014); *In re* Wilson, No. 14-56203 (Bankr. N.D. Ga. Mar. 27, 2014) (*Charles Wilson*); *In re* Horne, No. 14-23266 (Bankr. W.D. Tenn. Mar. 27, 2014); *In re* Green, No. 14-23283 (Bankr. W.D. Tenn. Mar. 27, 2014) (*Samantha Green*); *In re* Robinson, No. 14-23280 (Bankr. W.D. Tenn. Mar. 27, 2014); *In re* Straw, No. 14-60662 (Bankr. N.D. Ohio Mar. 26, 2014); *In re* Poole, No. 14-21170 (Bankr. W.D. Pa. Mar. 26, 2014); *In re* Anderson, No. 14-23198 (Bankr. W.D. Tenn. Mar. 26, 2014) (*Toni Anderson*); *In re* Ziemer, No. 14-10589 (Bankr. C.D. Cal. Mar. 26, 2014); *In re* Wright, No. 14-50726 (Bankr. M.D. Ga. Mar. 26, 2014); *In re* Palmer, No. 14-10598 (Bankr. D.N.H. Mar. 26, 2014); *In re* Smoke, No. 14-51981 (Bankr. S.D. Ohio Mar. 26, 2014); *In re* Watson Cooper, No. 14-23188 (Bankr. W.D. Tenn. Mar. 26, 2014); *In re* Blanchard, No. 14-80966 (Bankr. N.D. Ill. Mar. 26, 2014); *In re* Pledger, No. 14-01150 (Bankr. N.D. Ala. Mar. 25, 2014); *In re* Brown, No. 14-01687 (Bankr. E.D.N.C. Mar. 25, 2014) (*David Brown*); *In re* Gray, No. 14-23169 (Bankr. W.D. Tenn. Mar 25, 2014); *In re* Bennett, No. 14-23159 (Bankr. W.D. Tenn. Mar. 25, 2014); *In re* Pugh, No. 14-56026 (Bankr. N.D. Ga. Mar. 25, 2014); *In re* Dixon, No. 14-01694 (Bankr. E.D.N.C. Mar. 25, 2014); *In re* Broome, No. 14-23090 (Bankr. W.D. Tenn. Mar. 24, 2014); *In re* Jones, No. 14-10552 (Bankr. N.D. Ill. Mar. 24, 2014) (*Anthony Jones*); *In re* Good, No. 14-30957 (Bankr. S.D. Ohio Mar. 24, 2014); *In re* Williams, No. 14-01130 (Bankr. N.D. Ala. Mar. 24, 2014) (*James Williams*); *In re* Patterson, No. 14-23111 (Bankr. W.D. Tenn. Mar. 24, 2014) (*Derrick Patterson*); *In re* Smith, No. 14-23121 (Bankr. W.D. Tenn. Mar. 24, 2014) (*Akitress Smith*); *In re* Baker, No. 14-23118 (Bankr. W.D. Tenn. Mar. 24, 2014); *In re* Woods, No. 14-23093 (Bankr. W.D. Tenn. Mar. 24, 2014); *In re* Demesma, No. 14-23120 (Bankr. W.D. Tenn. Mar. 24, 2014); *In re* Smith, No. 14-23125 (Bankr. W.D. Tenn. Mar. 24, 2014) (*Dwight Smith*); *In re* Seaborn, No. 14-55914 (Bankr. N.D. Ga. Mar. 24, 2014); *In re* Bynum, No. 14-10688 (Bankr. W.D. Tenn. Mar. 21, 2014); *In re* Brown, No. 14-10217 (Bankr. N.D. Ill. Mar. 21, 2014) (*Katina Brown*); *In re* Hartsfield, No. 14-11583 (Bankr. E.D. Ark. Mar. 21, 2014); *In re* Epstein, No. 14-10269 (Bankr. N.D. Ill. Mar. 21, 2014); *In re* Trout, No. 14-10338 (Bankr. W.D. Pa. Mar. 21, 2014); *In re* Hoskins, No. 14-02299 (Bankr. S.D. Ind. Mar. 21, 2014); *In re* Thomas, No. 14-55799 (Bankr. N.D. Ga. Mar. 21, 2014) (*Kelvin Thomas*); *In re* Freeman, No. 14-11189 (Bankr. E.D. Tenn. Mar. 20, 2014); *In re* Ewing, No. 14-13524 (Bankr. C.D. Cal. Mar. 20, 2014); *In re* Johnston, No. 14-51789 (Bankr. S.D. Ohio Mar. 20, 2014); *In re* Gibson, No. 14-22995 (Bankr. W.D. Tenn. Mar. 20, 2014); *In re* Davis, No. 14-23001 (Bankr. W.D. Tenn. Mar. 20, 2014) (*Dorothy Davis*); *In re* Pirtle, No. 14-22970 (Bankr. W.D. Tenn. Mar. 20, 2014); *In re* Payne, No. 14-70476 (Bankr. N.D. Ala. Mar. 20, 2014) (*Bruce Payne*); *In re* Salem, No. 14-09984 (Bankr. N.D. Ill. Mar. 20, 2014); *In re* Williams, No. 14-55571 (Bankr. N.D. Ga. Mar. 19, 2014) (*Willie Williams*); *In re* Washington, No. 14-09856 (Bankr. N.D. Ill. Mar. 19, 2014); *In re* Richmond, No. 14-22915 (Bankr. W.D. Tenn. Mar. 19, 2014); *In re* Foster, No. 14-12020 (Bankr. E.D. Pa. Mar. 19, 2014); *In re* Scales, No. 14-22910 (Bankr. W.D. Tenn. Mar. 19, 2014); *In re* James, No. 14-22938 (Bankr. W.D. Tenn. Mar. 19, 2014); *In re* Cartwright, No. 14-44541 (Bankr. E.D. Mich. Mar. 19, 2014); *In re* Thomas, No. 14-50669 (Bankr, M.D. Ga. Mar. 19, 2014) (*Willie*

chapters under which the cases were filed, where they were filed, the factual assertions made to support those motions, the varying standards used by the

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Thomas); *In re* Hulbert, No. 14-22881 (Bankr. W.D. Tenn. Mar. 18, 2014); *In re* Lane, No. 14-22930 (Bankr. W.D. Tenn. Mar. 19, 2014); *In re* Harris, No.14-41978 (Bankr. E.D. Mo. Mar. 18, 2014); *In re* Vickers, No. 14-09794 (Bankr. N.D. Ill. Mar. 18, 2014); *In re* Garden, No. 14-02057 (Bankr. S.D. Ind. Mar. 18, 2014); *In re* Beale, No. 14-11994 (Bankr. E.D. Pa. Mar. 18, 2014); *In re* Calvin, No. 14-22860 (Bankr. W.D. Tenn. Mar. 18, 2014); *In re* Kimbro, No. 14-22864 (Bankr. W.D. Tenn. Mar. 18, 2014); *In re* Bailey, No. 14-22883 (Bankr. W.D. Tenn. Mar. 18, 2014); *In re* Fivecoat, No. 14-41172 (Bankr. N.D. Cal. Mar. 18, 2014); *In re* Dorsett, No. 14-09732 (Bankr. N.D. Ill. Mar. 18, 2014); *In re* Carrick, No. 14-22844 (Bankr. W.D. Tenn. Mar, 18, 2014); *In re* Worrell, No. 14-09428 (Bankr. N.D. Ill. Mar. 17, 2014); *In re* Hardy, No. 14-22808 (Bankr. W.D. Tenn. Mar. 17, 2014); *In re* Brown, No. 14-22819 (Bankr. W.D. Tenn. Mar. 17, 2014) (*Anita Brown*); *In re* Swafford, No. 14-01207 (Bankr. M.D. Fla. Mar. 14, 2014); *In re* Leggett, No. 14-09199 (Bankr. N.D. Ill. Mar. 14, 2014); *In re* Winters, No. 14-09285 (Bankr. N.D. Ill. Mar. 14, 2014); *In re* Davis, No. 14-22767 (Bankr. W.D. Tenn. Mar. 14, 2014) (*Sandra Davis*); *In re* Jefferson, No. 14-22707 (Bankr. W.D. Tenn. Mar. 13, 2014); *In re* Shorter, No. 14-22696 (Bankr. W.D. Tenn. Mar. 13, 2014); *In re* Hill, No. 14-22686 (Bankr. W.D. Tenn. Mar. 13, 2014) (*Theresa Hill*); *In re* Marshall, No. 14-22711 (Bankr. W.D. Tenn. Mar. 13, 2014); *In re* Peterson, No. 14-30779 (Bankr. S.D. Ohio Mar. 13, 2014); *In re* Payne, No. 14-10620 (Bankr. W.D. Tenn. Mar. 13, 2014) (*Darsheka Payne*); *In re* McLaren, No. 14-01178 (Bankr. M.D. Fla. Mar. 13, 2014); *In re* Williams, No. 14-09104 (Bankr. N.D. Ill. Mar. 13, 2014) (*Senetta Williams*); *In re* Jones, No. 14-22632 (Bankr. W.D. Tenn. Mar. 12, 2014) (*Kimberly Jones*); *In re* Manning; No. 14-08886 (Bankr. N.D. Ill. Mar. 12, 2014); *In re* Hill, No. 14-22624 (Bankr. W.D. Tenn. Mar. 12, 2014) (*Shondreaka Hill*); *In re* Ivy, No. 14-22645 (Bankr. W.D. Tenn. Mar. 12, 2014); *In re* Greer, No. 14-10462 (Bankr. N.D. Ind. Mar. 12, 2014); *In re* Jackson, No. 14-22638 (Bankr. W.D. Tenn. Mar. 12, 2014); *In re* Thompson, No. 14-22442 (Bankr. E.D. Cal. Mar. 11, 2014); *In re* Croswell, No. 14-08499 (Bankr. N.D. Ill. Mar. 11, 2014); *In re* Saulsberry, No. 14-22565 (Bankr. W.D. Tenn. Mar. 11, 2014); *In re* Hensley, No. 14-40729 (Bankr. W.D. Mo. Mar. 11, 2014); *In re* Spears, No. 14-30358 (Bankr. S.D. Ill. Mar. 11, 2014); *In re* Dedeaux, No. 14-22600 (Bankr. W.D. Tenn. Mar. 11, 2014); *In re* Foreman, No. 14-13732 (Bankr. D. Md. Mar. 11, 2014); *In re* McNeill, No. 14-01389 (Bankr. E.D.N.C. Mar. 10, 2014); *In re* Hall, No.14-10280 (Bankr. W.D. Pa. Mar. 10, 2014); *In re* Powell; No. 14-08488 (Bankr. N.D. Ill. Mar. 10, 2014); *In re* Vargas, No. 14-15481 (Bankr. S.D. Fla. Mar. 10, 2014); *In re* Shannon, No. 14-41695 (Bankr. E.D. Mo. Mar. 10, 2014); *In re* Holly, No. 14-22337 (Bankr. E.D. Wis. Mar. 8, 2014); *In re* Johnson, No. 14-22489 (Bankr. W.D. Tenn. Mar. 7, 2014); *In re* Brunson, No. 14-22467 (Bankr. W.D. Tenn. Mar. 7, 2014); *In re* Branch, No. 14-22437 (Bankr. W.D. Tenn. Mar. 7, 2014); *In re* Penirian, No. 14-43699 (Bankr. E.D. Mich. Mar. 7, 2014); *In re* Davis, No. 14-22448 (Bankr. W.D. Tenn. Mar. 7, 2014) (*Candice Davis*); *In re* Dillon, No. 14-11270 (Bankr. E.D. Ark. Mar. 7, 2014); *In re* Hardge, No. 14-22471 (Bankr. W.D. Tenn. Mar. 7, 2014); *In re* Calloway, No. 14-31198 (Bankr. N.D. Tex. Mar. 6, 2014); *In re* Smith, No. 14-22373 (Bankr. W.D. Tenn. Mar. 6, 2014) (*Lessie Smith*); *In re* Tribble, No. 14-13409 (Bankr. D. Md. Mar. 6, 2014); *In re* Walker, No. 14-07901 (Bankr. N.D. Ill. Mar. 6, 2014); *In re* Adams, No. 14-22415 (Bankr. W.D. Tenn. Mar. 6, 2014) (*Tony Adams*); *In re* Ayers, No. 14-22380 (Bankr. W.D. Tenn. Mar. 6, 2014); *In re* Howard, No. 14-20032 (Bankr. E.D. Tex. Mar. 6, 2014); *In re* Cota, No. 14-12823 (Bankr. C.D. Cal. Mar. 6, 2014); *In re* Allen, No. 14-02484 (Bankr. M.D. Fla. Mar. 6, 2014); *In re* Perry, No. 14-43465 (Bankr. E.D. Mich. Mar. 5, 2014); *In re* Smith, No. 14-22315 (Bankr. W.D. Tenn. Mar. 5, 2014) (*Jessica Smith*); *In re* Golden, No. 14-54566 (Bankr. N.D. Ga. Mar. 5, 2014); *In re* Butler, No. 14-22330 (Bankr. W.D. Tenn. Mar. 5, 2014); *In re* Grandberry, No. 14-22357 (Bankr. W.D. Tenn. Mar. 5, 2014); *In re* Wilson, No. 14-01274 (Bankr. E.D.N.C. Mar. 5, 2014) (*Melvin Wilson*); *In re* Adams, No. 14-30665 (Bankr. E.D. Tenn. Mar. 5, 2014) (*Doris Adams*); *In re* Mensch, No. 14-22324 (Bankr. W.D. Tenn. Mar. 5, 2014); *In re* Newton, No. 14-10830 (Bankr. N.D. Miss. Mar. 4, 2014); *In re* Catron, No. 14-10880 (Bankr. D. Mass. Mar. 4, 2014); *In re* White, No. 14-07623 (Bankr. N.D. Ill. Mar. 4, 2014); *In re* Brewer, No. 14-54415 (Bankr. N.D. Ga. Mar. 3, 2014); *In re* Loewenstine, No. 14-51281 (Bankr. S.D. Ohio Mar. 3, 2014); *In re* Benjamin, No. 14-02338 (Bankr. M.D. Fla. Mar. 3, 2014); *In re* Chantres, No. 14-15043 (Bankr. S.D. Fla. Mar. 3, 2014); *In re* Williams, No. 14-00980 (Bankr. M.D. Fla. Mar. 2, 2014) (*Deborah Williams*).

courts in deciding whether a case was not filed in good faith pursuant to § 362(c)(4), and the decisions made on those motions. As described below, I discovered that § 362(c)(4) is applied almost exclusively in connection with repeated chapter 13 filings and therefore bankruptcy courts in those jurisdictions in which there are more chapter 13 filings than filings under other chapters see more § 362(c)(4) motions. The jurisdiction that entertains the largest number of § 362(c)(4) motions by far is the bankruptcy court for the Western District of Tennessee,[24] and such motions are rarely denied in that jurisdiction.[25]

The predominant factual basis for seeking imposition of the stay nationwide is a change in circumstances, either medical or job-related. The most common reason why courts grant the motion is the failure of creditors or the trustee to object, and in those rare cases in which the court denied the motion, the most common reason was that a creditor or the trustee filed an objection to the motion. Regardless of the ruling on the motion, in a large proportion of those cases in which a motion was made, the case was dismissed or converted before confirmation of a plan, usually due to the debtor's failure to make required payments. Even before the enactment of § 362(c)(3), the bankruptcy court had the power to dismiss a bankruptcy case for "cause,"[26] which was consistently interpreted to include a bad faith filing by a "serial filer."[27] Therefore, I suggest that § 362(c)(4) was an unnecessary amendment to the Bankruptcy Code because the bankruptcy court already had effective tools for dealing with the serial filer. I also posit that § 362(c)(4) has not accomplished its intended goal—discouraging the serial filer from filing another bankruptcy case. The data demonstrates that these amendments to § 362 have failed: they were neither necessary nor effective.

I. IN WHAT CASES AND COURTS DO DEBTORS FILE MOTIONS TO IMPOSE THE STAY?

Almost all cases in which § 362(c)(4) is triggered, and a debtor files a motion to impose the stay, are chapter 13 cases.[28] Even debtors who filed a

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[24]Fifty-nine of the one hundred fifty-two cases in the study were filed in the W.D. Tenn. The jurisdiction with the next highest number of § 362(c)(4) motions was the N.D. Ill. with eighteen cases. *See* note 34 *infra*.

[25]In fifty-eight of the fifty-nine cases from the W.D. Tenn., the court granted the motion to impose the stay.

[26]11 U.S.C. § 707(a), 11 U.S.C. § 1112(b), and 11 U.S.C. § 1307(c).

[27]*See, e.g.*, Casse v. Key Bank Nat'l Assn. (*In re* Casse), 198 F.3d 327 (2d Cir. 1999); Eisen v. Curry (*In re* Eisen), 14 F.3d 469 (9th Cir. 1994); *In re* Lee, 467 B.R. 906 (6th Cir. B.A.P. 2012); *In re* Grischkan, 320 B.R. 654 (Bankr. N.D. Ohio 2005); *In re* Norton, 319 B.R. 671 (Bankr. D. Utah 2005); *In re* Jones, 289 B.R. 436 (Bankr. M.D. Ala. 2003).

[28]The only cases in this study that are not chapter 13 cases are cited in notes 29-30 *infra*.

§ 362(c)(4) motion in a chapter 11 case[29] or chapter 7 case[30] almost always had filed at least one prior case under chapter 13.[31]

The fact that almost all serial filers have filed at least one prior case under chapter 13 is hardly surprising. The most recent statistics prepared by the Administrative Office of the United States Courts indicate that of the 289,125 chapter 13 cases closed during calendar year 2012, 182,226 (approximately 63%) were dismissed, and 18,892 of the debtors who filed those cases filed another chapter 13 case within six months of the dismissal.[32] The reasons for the high number of unsuccessful chapter 13 cases have been discussed by others,[33] and include overly-ambitious chapter 13 plans, unanticipated medical problems, job loss or diminution of earnings, divorce, and other events not foreseeable at the time the chapter 13 plan is confirmed, that result in the debtor being unable to make the required plan payments.

Given that § 362(c)(4) operates almost exclusively in cases filed by debtors under chapter 13, or after dismissal of one or more chapter 13 cases, it is also not surprising that courts with higher rates of chapter 13 filings entertain most of the motions to impose the stay. Of the twenty-one districts in

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[29]*See In re* Natividad, No. 14-51333 (Bankr. N.D. Cal. Mar. 28, 2014).

[30]*See In re* Davis, No. 14-22767 (Bankr. W.D. Tenn. Mar. 14, 2014) (*Sandra Davis*); *In re* Allen, No. 14-02484 (Bankr. M.D. Fla. Mar. 6, 2014); *In re* Loewenstine, No. 14-51281 (Bankr. S.D. Ohio Mar. 3, 2014).

[31]See *Natividad* (two prior chapter 13 cases); *Sandra Davis* (two prior chapter 13 cases); *Loewenstine* (two prior chapter 13 cases). *But see Allen* (two prior chapter 7 cases before current chapter 7 case). Although their cases were not filed during the period covered by this study, some debtors who brought § 362(c)(4) motions have filed serial chapter 11 cases, *see, e.g., In re* Davey, 11-11381 (Bankr. D.N.H. Apr. 8, 2011); *In re* Miller, No. 08-45096 (Bankr. N.D. Cal. Sept. 12, 2008). Some debtors were serial chapter 12 filers, *see, e.g., In re* Pandol, No. 10-19733 (Bankr. E.D. Cal. Aug. 24, 2010); *In re* Loomis, No. 10-02368 (Bankr. D. Idaho May 20, 2010). One debtor filed two chapter 12 cases, followed by a chapter 11, all pending in the one-year period, *see In re* Benefield, No. 10-11077 (Bankr. D.N.M. Mar. 5, 2010).

[32]*See* BAPCPA Table 6, "U.S. Bankruptcy Courts—Chapter 13 Individual Debtor Cases With Predominantly Nonbusiness Debts Closed by Dismissal or Plan Completion During the 12-Month Period Ending December 31, 2012," Administrative Office of the United States Courts, 2012 Report of Statistics Required by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Washington, D.C. 2013).

[33]*See, e.g.*, 1 Rept. of the Nat'l Bankr. Review Comm'n, BANKRUPTCY: THE NEXT TWENTY YEARS 234 (Oct. 20, 1997); David Gray Carlson, *Means Testing: The Failed Bankruptcy Revolution of 2005*, 15 ABI LAW REVIEW 223, 314 (2007); Scott F. Norberg & Andrew J. Velkey, *Debtor Discharge and Creditor Repayment in Chapter 13*, 39 CREIGHTON L. REV. 473, 509-531 (2006); Scott F. Norberg, *Consumer Bankruptcy's New Clothes: An Empirical Study of Discharge and Debt Collection in Chapter 13*, 7 AM. BANKR. INST. L. REV. 415, 439-451 (1999). Calling a chapter 13 plan that does not result in a discharge "unsuccessful" may be a misnomer. A debtor may obtain significant benefits from filing a chapter 13 case even when the case does not result in a discharge, such as the benefit of the stay, an opportunity to cure defaults on home mortgages and auto loans, and an opportunity to exercise financial discipline under the supervision of a trustee. *See generally* Katherine Porter, *The Pretend Solution: An Empirical Study of Bankruptcy Outcomes*, 90 TEX. L. REV. 103, 108-111 (2011); Teresa A. Sullivan, Elizabeth Warren & Jay Lawrence Westbrook, *Consumer Debtors Ten Years Later: A Financial Comparison of Consumer Bankrupts 1981-1991*, 68 AM. BANKR. L.J. 121, 143 (1994).

which two or more debtors have sought relief under § 362(c)(4) in the cases in this study,[34] fifteen had a much higher percentage of filings under chapter 13 in the first quarter of 2014 than the national average of 32%.[35] The bankruptcy court for the Western District of Tennessee, which had fifty-nine cases in the study, has one of the highest chapter 13 filing rates in the nation (percentage of total bankruptcy filings made under chapter 13).[36] It also has by far the highest rate of filing of § 362(c)(4) motions in its chapter 13 cases (percentage of chapter 13 cases in which § 362(c)(4) motions are filed); of the 949 chapter 13 cases filed in the district in March 2014 (according to PACER), fifty-seven of them are included in this study.[37] That means that at least 6% of all chapter 13 cases filed during that month were filed by serial filers.[38] By contrast, there were 1343 chapter 13 cases filed in the Northern District of Georgia during March 2014, and only thirteen debtors made a § 362(c)(4) motion that was decided. That is fewer than 1% of all chapter 13 cases in that district.

The one hundred fifty-two motions to impose the stay included in this study were filed in twenty states, and the bankruptcy courts in the state of Tennessee accounted for sixty-one of them. The cases included in this study were dispersed among states as follows:

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[34]N.D. Ala. (three cases); E.D. Ark. (two cases); C.D. Cal. (three cases); N.D. Cal. (two cases); M.D. Fla. (five cases); S.D. Fla. (two cases); N.D. Ga. (fourteen cases); M.D. Ga. (three cases); N.D. Ill. (eighteen cases); S.D. Ind. (two cases); D. Md. (two cases); E.D. Mich. (three cases); E.D. Mo. (two cases); E.D.N.C. (five cases); S.D. Ohio (five cases); E.D. Pa. (three cases); W.D. Pa. (three cases); E.D. Tenn. (two cases); W.D. Tenn. (59 cases); E.D. Tex. (two cases); N.D. Tex. (two cases).

[35]N.D. Ala. (46%); E.D. Ark. (54%); C.D. Cal (19%); N.D. Cal. (39%); M.D. Fla. (31%); S.D. Fla. (41%); N.D. Ga. (42%); M.D. Ga. (62%); N.D. Ill. (36%); S.D. Ind. (30%); D. Md. (26%); E.D. Mich. (18%); E.D. Mo. (38%); E.D.N.C. (68%); S.D. Ohio (29%); E.D. Pa. (41%); W.D. Pa. (44%); E.D. Tenn. (40%); W.D. Tenn. (71%); E.D. Tex. (52%); and N.D. Tex. (58%). The percentages are derived from Table F-2, U.S. Bankruptcy Courts—Business and Nonbusiness Cases Commenced, by Chapter of the Bankruptcy Code, During the Three-Month Period Ending March 31, 2014, available at http://www.uscourts.gov/Statistics/BankruptcyStatistics/2014-bankruptcy-filings.aspx.

[36]*Id.* Only the Western District of Louisiana, where chapter 13 filings comprise 77% of all filings in the first quarter, and the Middle District of Alabama, where chapter 13 filings comprise 76% of all filings in the first quarter, had a higher chapter 13 filing rate. *Id.*

[37]Two of the cases from the W.D. Tenn. included in this study were chapter 7 cases.

[38]The number is actually higher because some serial filers may not have chosen to file a motion under § 362(c)(4), some debtors filed § 362(c)(4) motions that were subsequently withdrawn, some cases were dismissed before the court ruled on a filed motion, and in some cases the court had not yet ruled on the motion when this study was conducted. None of those cases were included in this study.

State	Number of Cases in Study
Alabama	3
Arkansas	2
California	6
Florida	7
Georgia	17
Illinois	19
Indiana	3
Maryland	2
Massachusetts	1
Michigan	3
Mississippi	1
Missouri	3
New Hampshire	1
North Carolina	5
Ohio	6
Pennsylvania	6
Tennessee	61
Texas	4
West Virginia	1
Wisconsin	1
TOTAL	152

The three states in which debtors filed the largest number of such motions are also states in which chapter 13 filing rates exceeded the national average of 32% in the first quarter of 2014.[39]

II. WHY DO COURTS GRANT OR DENY MOTIONS TO IMPOSE THE STAY?

Perhaps the most surprising fact one discovers upon an examination of the motions to impose the stay is that they succeed far more often than they fail. Of the one hundred fifty-two cases in the study, the court granted the motion (in whole or in part) in one hundred forty-one of them.[40] The natural

[39]Illinois (34%); Georgia (50%); and Tennessee (52%). These figures are derived from Table F-2, *supra* note 35.

[40]The cases in which the court denied the motion are *In re* Green, No. 14-41306 (Bankr. N.D. Tex.

question that arises is why the courts do so. Recall that § 362(c)(4) applies only if the individual debtor in the current case had "2 or more single or joint cases . . . pending within the previous year but were dismissed."[41] A presumption arises that a case is "filed not in good faith"[42] with respect to all creditors in every case in which § 362(c)(4) applies because the individual debtor had "2 or more previous cases under this title in which the individual was a debtor [ ] pending within the 1-year period."[43] This presumption "may be rebutted by clear and convincing evidence to the contrary,"[44] meaning a showing that the present case was NOT "filed not in good faith" or, to remove the double negative, was filed in good faith as to all creditors.[45]

How does the court determine whether the presumption has been overcome? What leads the court to determine that the current case, at least the third bankruptcy case involving the same individual debtor pending in the preceding year, was filed in good faith? In most cases we cannot ascertain the court's rationale from the available records. Although the bankruptcy judges may state their reasons on the record at the hearings on the motions, the written orders granting the motions seldom provide any basis for the decision. We can, however, look at the legal standards employed by those courts which seek to determine good faith for purposes of § 362(c)(4) when the court has issued a written opinion setting out its rationale. We can also look at local forms these courts require petitioners to use when they move for imposition of the stay. Perhaps most important, we can look at the facts of these cases to try to ascertain which facts may have been determinative.

A. Legal Tests for Determining Whether the Bad Faith Presumption Under § 362(c)(4) is Rebutted

Very few bankruptcy judges deciding motions to impose the stay under § 362(c)(4) have written opinions explaining the legal standard upon which

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Mar. 28, 2014) (*Lydia Green*); *In re* Ziemer, No. 14-10589 (Bankr. C.D. Cal. Mar. 26, 2014); *In re* Brown, No. 14-10217 (Bankr. N.D. Ill. Mar. 21, 2014) (*Katina Brown*); *In re* Epstein, No. 14-10269 (Bankr. N.D. Ill. Mar. 21, 2014); *In re* Foster, No. 14-12020 (Bankr. E.D. Pa. Mar. 19, 2014); *In re* Garden, No. 14-02057 (Bankr. S.D. Ind. Mar. 18, 2014); *In re* Harris, No.14-41978 (Bankr. E.D. Mo. Mar. 18, 2014); *In re* Payne, No. 14-10620 (Bankr. W.D. Tenn. Mar. 13, 2014) (*Darsheka Payne*); *In re* Allen, No. 14-02484 (Bankr. M.D. Fla. Mar. 6, 2014); *In re* Cota, No. 14-12823 (Bankr. C.D. Cal. Mar. 6, 2014); and *In re* Benjamin, No. 14-02338 (Bankr. M.D. Fla. Mar. 3, 2014). Only one of these, *Darsheka Payne*, was filed in the Western District of Tennessee, where fifty-nine of the cases in this study were filed and fifty-eight motions to impose the stay were granted. Other bankruptcy courts are more likely to deny such motions. *See* C.D. Cal. (denied two of three motions); N.D. Ill. (denied two of eighteen motions).

[41] 11 U.S.C. § 362(c)(4)(A)(i).

[42] 11 U.S.C. § 362(c)(4)(D).

[43] 11 U.S.C. § 362(c)(4)(D)(i)(I).

[44] 11 U.S.C. § 362(c)(4)(D).

[45] This is consistent with the provisions of 11 U.S.C. §362(c)(4)(B), which allow the court to order the stay to take effect in cases subject to § 362(c)(4) "only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed."

they relied in concluding that the debtor had, or had not, rebutted the presumption that the current case was filed not in good faith. However, those who have issued written opinions have cited the more numerous decisions under § 362(c)(3) in which a similar presumption must be rebutted to extend the automatic stay beyond thirty days after the filing of the current case.[46] These cases generally fall into one of three categories in their approaches to good faith—looking at the totality of the circumstances, requiring objective futility and subjective good faith, or requiring a significant change in the debtor's circumstances since the last bankruptcy filing.

(1) Totality of the Circumstances. Almost all courts state that the determination of whether the present case has been filed in good faith must be determined on the basis of the "totality of the circumstances." In interpreting that phrase, courts employ varying approaches that overlap to a significant extent. One line of cases employs a multi-factor approach applying the same factors that would be used were a party in interest bringing a motion to dismiss the case for cause under § 1307(c)[47] or § 1112(b)(1)[48] or § 707(a),[49] or if the debtor were seeking to satisfy the good faith requirement for confirmation of a chapter 13 case under § 1325(a)(7).[50] But courts differ some-

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[46]Under 11 U.S.C. § 362(c)(3)(C)(i), a case is presumptively filed not in good faith as to all creditors if "(I) more than 1 previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was pending within the preceding 1-year period; (II) a previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to - (aa) file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be a substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney); (bb) provide adequate protection as ordered by the court; or (cc) perform the terms of a plan confirmed by the court; or (III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13 or any other reason to conclude that the later case will be concluded—(aa) if a case under chapter 7, with a discharge; or (bb) if a case under chapter 11 or 13, with a confirmed plan that will be fully performed".

[47]11 U.S.C. § 1307(c) (allowing the court to dismiss a chapter 13 case "for cause"). *See, e.g.*, Leavitt v. Soto (*In re* Leavitt), 171 F.3d 1219, 1224 (9th Cir. 1999); Gier v. Farmers State Bank (*In re* Gier) 986 F.2d 1326, 1329 (10th Cir. 1993); *In re* Love, 957 F.2d 1350, 1355 (7th Cir. 1992); Coler v. Draper, No. 12-2020, 2012 WL 5267426, at *3 (D. Md. Oct. 23, 2012); *In re* Prisco, No. 11-00474, 2012 WL 4364311, at *4 (N.D.N.Y. Sept. 24, 2012).

[48]11 U.S.C. § 1112(b)(1) (allowing the court to dismiss a chapter 11 case "for cause"). *See, e.g.*, Carolin Corp. v. Miller, 886 F.2d 693, 701 (4th Cir. 1989); Stingfree Technologies Co. v. Americ Investments Capital Co. (*In re* Stingfree Technologies Co.), 427 B.R. 347, 351 (E.D. Pa. 2010); *In re* Starmark Clinics, LP, 388 B.R. 729, 736 (Bankr. S.D. Tex. 2006).

[49]11 U.S.C. § 707(a) (allowing the court to dismiss a chapter 7 case "for cause"). *See, e.g.*, Piazza v. Nueterra Healthcare Physical Therapy, LLC (*In re* Piazza), 719 F.3d 1253, 1271 (11th Cir. 2013); Northern Telecom Corp. v. Siemens Information & Communications Network, Inc., No. 04-8053, 2005 WL 5705113, at *3 (N.D. Ill. Sept. 7, 2005); *In re* Hess, 347 B.R. 489, 498 (Bankr. D. Vt. 2006).

[50]11 U.S.C. § 1325(a)(7) (requiring that "the action of the debtor in filing the petition was in good faith"). *See, e.g.*, *In re* Rodriguez, 487 B.R. 275, 283 (Bankr. D.N.M. 2013); *In re* Platt, No. 12-6170, 2012 WL 5842899, at *1 (Bankr. S.D. Ind. Nov. 19, 2012); *In re* Pearson, No. 10-05166, 2010 WL 5169081, at *1 (Bankr. D.S.C. Oct. 18, 2010); *In re* Tomasini, 339 B.R. 773, 783 (Bankr. D. Utah 2006).

what on what factors should be considered in applying that approach.

For example, in an early chapter 13 case in the Tenth Circuit in which the bankruptcy court had denied a motion to extend the stay under § 362(c)(3),[51] the Tenth Circuit applied the seven factors used in analyzing a motion to dismiss a chapter 13 case.[52] The Ninth Circuit used four factors in determining whether to dismiss a chapter 13 case for bad faith,[53] and some courts have used the same factors under § 362(c)(3)[54] and § 362(c)(4),[55] while other courts in the same circuit have analyzed good faith under § 362(c)(3) using the eleven factors used to decide whether a chapter 13 plan has been proposed in good faith under § 1325(a)(3).[56] The Eleventh Circuit has adopted a slightly modified version of these eleven factors for the purpose of determining whether a chapter 13 plan is proposed in good faith,[57] and

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[51]*In re* Montoya, 333 B.R. 449 (Bankr. D. Utah 2005).

[52]Those factors, drawn from *Gier*, include "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." *Id.* at 457-58, quoting *Gier*, 986 F.2d at 1329. Other cases using the *Gier* factors include *In re* Galanis, (considering the first, sixth and seventh factors to be irrelevant to the analysis under § 362(c)(3)).

[53]The four factors are (1) whether the debtor misrepresented facts in the petition or the plan, unfairly manipulated the Code or otherwise filed the current chapter 13 plan or petition in an inequitable manner; (2) debtor's history of filings and dismissals; (3) whether debtor only intended to defeat state court litigation; and (4) whether egregious behavior is present. *See* Leavitt v. Soto (*In re* Leavitt), 171 F.3d 1219, 1224 (9th Cir. 1999).

[54]*See, e.g., In re* Castaneda, 342 B.R. 90, 96 (Bankr. S.D. Cal. 2006); *In re* Montoya, 342 B.R. 312, 317 (Bankr. S.D. Cal. 2006).

[55]*See, e.g., In re* Pandol, No. 10-19733, 2010 WL 9488147, at *2 (Bankr. E.D. Cal. Sept. 29, 2010).

[56]11 U.S.C. § 1325(a)(3) requires that a chapter 13 "plan has been proposed in good faith and not by any means forbidden by law" as a condition to confirmation. These factors include (1) the amount of the proposed payments and the amounts of the debtor's surplus; (2) the debtor's employment history, ability to earn, and likelihood of future increases in income; (3) the probable or expected duration of the plan; (4) the accuracy of the plan's statements of the debts, expenses and percentage of repayment of unsecured debt, and whether any inaccuracies are an attempt to mislead the court; (5) the extent of preferential treatment between classes of creditors; (6) the extent to which secured claims are modified; (7) the type of debt sought to be discharged, and whether any such debt is nondischargeable in Chapter 7; (8) the existence of special circumstances such as inordinate medical expenses; (9) the frequency with which the debtor has sought relief under the Bankruptcy Reform Act; (10) the motivation and sincerity of the debtor in seeking Chapter 13 relief; and (11) the burden which the plan's administration would place upon the trustee. *See In re* Warren, 89 B.R. 87, 93 (9th Cir. B.A.P. 1988). Cases applying these factors to § 362(c)(3) motions include *In re* Pizano, No. 06-52166, 2006 WL 3838723, at *3 (Bankr. N.D. Cal. Dec. 16, 2006); *In re* Resto-Perez, No. 06-52224, 2006 WL 3838242, at *3 (Bankr. N.D. Cal. Nov. 20, 2006); *In re* Morgan, No. 06-52183, 2006 WL 3838412, at *3 (Bankr. N.D. Cal. Nov. 16, 2006).

[57]The factors listed by the 11th Circuit are: (1) the amount of the debtor's income from all sources; (2) the living expenses of the debtor and his dependents; (3) the amount of attorney's fees; (4) the probable or expected duration of the debtor's Chapter 13 plan; (5) the motivations of the debtor and his sincerity in seeking relief under the provisions of Chapter 13; (6) the debtor's degree of effort; (7) the debtor's ability to earn and the likelihood of fluctuation in the debtor's earnings; (8) special circumstances such as inordinate medical expense; (9) the frequency with which the debtor has sought relief under the Bankruptcy

courts in that circuit have used these modified factors in deciding motions brought under § 362(c)(3)[58] and § 362(c)(4).[59] When considering motions under § 362(c)(3)[60] or § 362(c)(4),[61] some courts in the Fourth Circuit have used the multi-factor approach[62] developed for consideration of whether the plan was proposed in good faith under § 1325(a)(3).[63] In a case involving an individual chapter 11 filer seeking extension of the stay under § 362(c)(3), one court[64] applied the factors used in determining whether there is cause to dismiss a chapter 11 case.[65] Most courts, however, use the seven factors[66] (or some variation thereof[67]) articulated in *In re Galanas*[68] in connection

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Reform Act and its predecessors; (10) the circumstances under which the debtor has contracted the outstanding debts and demonstrated bona fides, or lack of same, in dealings with creditors; and (11) the burden which the plan's administration would place on the trustee. Kitchens v. Georgia Railroad Bank & Trust Co. (*In re* Kitchens), 702 F.2d 885, 888-89 (11th Cir. 1983).

[58]*See, e.g., In re* Pullen, No. 07-65415, 2008 WL 2184109, at *2 (Bankr. N.D. Ga. May 23, 2008).

[59]*See, e.g., In re* Robinson, No. 05-43319, 2005 WL 6762360, at *3 (Bankr. S.D. Ga. Dec. 29, 2005).

[60]*See, e.g., In re* Taylor, No. 07-31055, 2007 WL 1234932, at *2 (Bankr. E.D. Va. Apr. 26, 2007); *In re* Chaney, 362 B.R. 690, 694 (Bankr. E.D. Va. 2007); *In re* Thomas, 352 B.R 751, 756-57 (Bankr. D.S.C. 2006). *Cf. In re* Washington, 443 B.R. 389, 395 (D.S.C. 2011) (holding that debtors failed to rebut presumption under *Deans/Neufeld* factors or the *Galanis* factors).

[61]*See, e.g., In re* Hurt, 369 B.R. 274, 280 (Bankr. W.D. Va. 2007); *In re* Winters, No. 06-70447, 2006 WL 3392890, at *2-*3 (Bankr. W.D. Va. Nov. 22, 2006).

[62]*See* Deans v. O'Donnell (*In re* Deans), 692 F.2d 968, 972 (4th Cir. 1982). *See also* Neufeld v. Freeman, 794 F.2d 149, 152 (4th Cir. 1986) (adding to the *Deans* factors consideration of debtor's pre-filing conduct and possible non-dischargeability (under chapter 7) of the objecting creditors' claims).

[63]11 U.S.C. § 1325(a)(3). These factors include "the percentage of proposed repayment, . . . the debtor's financial situation, the period of time payment will be made, the debtor's employment history and prospects, the nature and amount of unsecured claims, the debtor's past bankruptcy filings, the debtor's honesty in representing facts, and any unusual or exceptional problems facing the particular debtor." *Deans*, 692 F.2d at 972.

[64]McKinnon v. Prime South Bank (*In re* McKinnon), 378 B.R. 405, 413 (Bankr. S.D. Ga. 2007).

[65]Those factors, as explicated in Phoenix Piccadilly, Ltd. v. Life Ins. Co. of Va. (*In re* Phoenix Piccadilly, Ltd.), 849 F.2d 1393, 1394 (11th Cir. 1988), include (1) whether the debtor has only one asset, usually real estate, to which the debtor does not hold legal title; (2) whether the debtor has few unsecured creditors whose claims are small in relation to the claims of secured creditors; (3) whether the debtor has few employees; (4) whether the property is the subject of a foreclosure action as a result of arrearages on the debt; (5) whether the debtor's financial problems involve essentially a dispute between the debtor and its creditors holding an interest in the real estate which can be resolved in a pending state court action; (6) whether the timing of the debtor's filing evidences an intent to delay or frustrate the legitimate efforts of the debtor's secured creditors to enforce their rights; and (7) whether there is a reasonable possibility of an effective reorganization of the debtor. *Id.*

[66]The seven factors include (1) the timing of the new petition; (2) how the debt(s) arose; (3) the debtor's motive in filing another petition; (4) how the debtor's actions affected creditors; (5) why the debtor's prior case(s) were dismissed; (6) the likelihood that the debtor will have a steady income throughout the bankruptcy case, and will be able to fund a plan; and (7) whether the trustee or creditors object to the motion. *See In re* Galanis, 334 B.R. 685, 692 (Bankr. D. Utah 2005).

[67]The court in *In re* Carr, 344, B.R. 776, 781 (Bankr. N.D.W. Va. 2006), proposed a slightly modified version of the *Galanis* factors. The *Carr* court considered (1) whether the debtor's present case has "a reasonable probability of success;" (2) "why the prior case was dismissed;" (3) "what has changed, if anything, in the time between the dismissal of the prior case and the commencement of the current case;" (4) whether creditors "have [ ] suffered any untoward prejudice due to the lapse of time between the dismis-

with a § 362(c)(3) motion, as more closely tailored to § 362(c) motions, either in addition to another list of factors[69] or (more often) as the exclusive test for determining if a case was filed not in good faith.[70]

(2) Objective Futility and Subjective Good Faith. For some courts, in deciding whether the presumption has been overcome "the most significant considerations in evaluating good faith are: (1) why the previous plan failed, and (2) what has changed so that the present plan is likely to succeed."[71] This is often characterized as the "objective futility" standard.[72] If the debtor cannot establish by clear and convincing evidence that the current case is likely to end successfully, these courts see no purpose in applying any other factors to find good faith.[73] If the court is convinced that the debtor can

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sal of the prior case and the filing of the current case;" (5) "how the debts arose and what the debtor's motivation is for filing bankruptcy;" and (6) "lack of any objection from the trustee or any creditor." *Id.* *See also In re* Barrows, No. 08-61404, 2008 WL 2705519, at *3 (Bankr. N.D.N.Y. July 9, 2008). The court in *In re* Sarafoglou, 345 B.R. 19, 24 (Bankr. D. Mass. 2006), in considering a § 362(c)(4) motion, reduced the factors to four: the debtor must "demonstrate that she filed the current case to obtain legitimate bankruptcy law protection and relief, that she is eligible for such protection and relief, that she has sufficient resources to render her pursuit thereof meaningful, and that she is pursuing such protection and relief honestly." *See also In re* DiGiovanni, 415 B.R. 120, 129 (Bankr. E.D. Pa. 2009).

[68]334 B.R. 685 (Bankr. D. Utah 2005).

[69]*See, e.g., In re* Pizano, No. 06-52166, 2006 WL 3838723, at *3 (Bankr. N.D. Cal. Dec. 16, 2006); *In re* Resto-Perez, No. 06-52224, 2006 WL 3838242, at *3 (Bankr. N.D. Cal. Nov. 20, 2006); *In re* Morgan, No. 06-52183, 2006 WL 3838412, at *3 (Bankr. N.D. Cal. Nov. 16, 2006); *Galanis*, 334 B.R. at 685 (considering the seven *Galanis* factors in addition to the eleven *Gier* factors from which they were derived).

[70]*See, e.g., In re* Hart, No. 12-21220, 2012 WL 6644703, at *3 (Bankr. D. Idaho Nov. 23, 2012); *In re* Thompson, No. 10-37075, 2010 WL 4928897, at *2 (Bankr. D. Colo. Nov. 24, 2010); *In re* Marcello, No. 08-60346, 2008 WL 821542, at *2-*3 (Bankr. N.D.N.Y. Mar. 27, 2008); *In re* Folger, No. 07-51447, 2007 WL 3046208, at *4-*6 (Bankr. M.D.N.C. Oct. 16, 2007); *In re* Baldassaro, 338 B.R. 178, 188 (Bankr. D.N.H. 2006); *In re* Ball, 336 B.R. 268, 274-76 (Bankr. M.D.N.C. 2006); *In re* Mullins, No. 06-10948 (Bankr. M.D.N.C. Sept. 1, 2006) (Memorandum Opinion on Motion Pursuant to 11 U.S.C. § 362(c)(4) to Have the Stay Take Effect); *In re* Hunt, No. 06-500835, 2006 WL 2431554, at *3-*4 (Bankr. M.D.N.C. Aug. 18, 2006); *In re* Havner, 336 B.R. 98, 103-05 (Bankr. M.D.N.C. 2006). *Cf. In re* Levens, No. 07-40052, 2007 WL 609844, at *4 (Bankr. W.D. Mo. Feb. 23, 2007) (adding to the seven factors a consideration of "whether the information contained in the Debtor's filings is accurate and whether the Debtor is complying the obligations imposed by the Code, the Federal Rules of Bankruptcy Procedure and this Court's local rules."); *In re* Winters, No. 06-70447, 2006 WL 3392890, at *4 n.8 (Bankr. W.D. Va. Nov. 22, 2006) (stating that, if the court had applied the seven factors, instead of the *Neufeld* factors, it would still have granted the § 362(c)(4) motion).

[71]*See In re* Hall, No. 12-61149, 2012 WL 5356019, at *1 (Bankr. E.D. Ky. Oct. 30, 2012); *In re Sharpe*, No. 07-82868, 2008 WL 544929, at *2 (Bankr. C.D. Ill. Feb. 27, 2008); *In re* Scarborough, No. 07-15269, 2007 WL 3165544, at *4 (Bankr. E.D. Pa. Oct. 25, 2007); *In re* Elliott-Cook, 357 B.R. 811, 815 (Bankr. N.D. Cal. 2006); *see also In re* Benefield, 438 B.R. 709, 724 (Bankr. D.N.M. 2010) (requiring a debtor to "explain why the debtor was unsuccessful previously and why the debtor should not be held responsible for that lack of success, and why the court should think the debtor will be successful in the current case").

[72]*See, e.g., Benefield*, 438 B.R. at 715; *In re* Jenkins, 435 B.R. 378, 382 (Bankr. N.D. Tex. 2010); *In re* Hurt, 369 B.R. 274, 279 (Bankr. W.D. Va. 2006); *In re* Mark, 336 B.R. 260, 267 (Bankr. D. Md. 2006).

[73]*See, e.g., Benefield*, 438 B.R. at 715 (stating that the debtor must pass the "objective futility" test before any other factors are considered); *Jenkins*, 435 B.R. at 383 (finding that "objective futility" is a threshold test); *Mark*, 336 B.R. at 267-68 (applying "objective futility" test to § 362(c)(3) motion); *In re* Charles, 334 B.R. 207, 218 (Bankr. S.D. Tex. 2005) (Charles I) (concluding that objective analysis is a

propose a successful chapter 13 plan, it may not demand any more to rebut the presumption.[74]

Even if the debtor can make such a showing, other courts may also require an analysis of the debtor's "subjective good faith,"[75] meaning whether the debtor is using (or abusing) the provisions of the Bankruptcy Code. In making that determination, these courts will often rely upon factors that bear on the debtor's state of mind in resorting to bankruptcy.[76]

The objective/subjective good faith analysis is not necessarily entirely divorced from the totality of the circumstances approach. As one judge has pointed out,[77] all the other factors considered by courts in applying the totality of the circumstances test (and this court identified fourteen separate factors[78]) can easily be subsumed by either the objective or subjective good faith analysis.[79]

(3) Change of Circumstances. A third line of cases focuses on the language of § 362(c)(4) itself. Section 362(c)(4)(D)(i) provides that a presumption that the present case was not filed in good faith is created under three

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"threshold" test). *Cf.* Carolin Corp. v. Miller, 886 F.2d 693 (4th Cir. 1989) (using this test in considering dismissal of chapter 11 case). *But see In re* Ferguson, 376 B.R. 109, 125-26 (Bankr. E.D. Pa. 2007) (analyzing subjective good faith before considering objective good faith in connection with § 362(c)(4) motion).

[74]*See* Eastern Savings Bk. v. Toor (*In re* Toor), 477 B.R. 299, 307-08 (D.Conn. 2012) (affirming holding of bankruptcy court in imposing stay under § 362(c)(4) based solely on the court's conclusion that debtor could propose a confirmable plan).

[75]*See, e.g., Jenkins*; *Mark*; *Charles I*; *Carolin*.

[76]Some of the factors considered in determining subjective good faith include the nature of the debtor's debts, the nature of the collateral (if any) securing such debts, the debtor's eve of bankruptcy purchases, the debtor's conduct in the present case, the reasons why the debtor wishes to have the stay imposed, and any other circumstances that bear on the decision to file for bankruptcy protection. *See Charles I*, 334 B.R. at 219; *In re* Charles, 335 B.R. 207, 219 (Bankr. S.D. Tex. 2005) (*Charles II*). *See also In re* Collins, 335 B.R. 646, 652-53 (Bankr. S.D. Tex. 2005) (considering the *Charles II* factors after considering two "threshold factors:" (1) the position taken by creditors against whom an extension of the stay is sought; and (2) the likelihood that the new case will result in a bankruptcy discharge).

[77]*See Ferguson*, 376 B.R. at 124.

[78]The factors identified by the court are (1) the timing of the filing of the petition; (2) whether the debtor truly intends to effectuate a financial rehabilitation; (3) whether the debtor made "eve of bankruptcy" purchases; (4) the accuracy of the information provided by the debtor; (5) the types of debts sought to be discharged and the circumstances in which they arose (*e.g.*, is the debtor attempting to protect necessities such as a primary residence or luxuries, such as boat or vacation home); (6) whether the plan is preferential as to certain creditors; (7) in general, the debtor's treatment of creditors both before and after the petition was filed; (8) whether the debtor seeks unfairly to manipulate provisions of the Code; (9) the debtor's conduct in the prior case(s) (*e.g.*, performance of the debtor's duties such as the filing of schedules and attendance at the meeting of creditors); (10) the frequency with which debtor has sought bankruptcy relief; (11) the reasons for the dismissal of the debtor's prior case(s); (12) the debtor's earning capacity and the likelihood that the debtor will have a steady income throughout the bankruptcy case; (13) the likelihood that the debtor will be able to properly fund a plan; and (14) whether the Trustee or creditors object to the debtor's motion. *Id.* at 122-23.

[79]The judge suggested that the factors listed as 1-10 in note 78 *supra* could be considered in deciding whether the debtor has subjective good faith in filing the current case, while factors 11-14 bear on objective good faith. *Id.* at 124 n.27.

circumstances. The first, that two or more of the debtor's previous bankruptcy cases were pending within the one-year period prior to the current filing,[80] will always be present when a debtor files a § 362(c)(4) motion because § 362(c)(4) is applicable only if "2 or more single or joint cases of the debtor were pending within the previous year but were dismissed."[81]

The second basis for creating a presumption of lack of good faith deals with the circumstances under which the prior cases were dismissed. The presumption arises if "a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court."[82] This is purely a factual analysis; either the provision accurately describes the circumstances under which one or more of the prior cases was dismissed, or it does not. Most prior cases will have been chapter 13 cases that were dismissed upon failure to provide required documents or to produce a confirmable plan or to make required payments, and therefore the presumption will arise under this provision as well. But if the prior cases were dismissed for other reasons (such as failure to satisfy the requirements for eligibility for a chapter 13 case, failure to satisfy the prefiling credit counseling requirement, or failure to pay filing fees or make payments prior to confirmation), this may persuade the court that the most recent case was filed in good faith.[83]

The third basis for a presumption differs from the other two bases in that it looks not at historical facts about the debtor's past bankruptcy filings but rather at the debtor's present and future situation. It states that a presumption arises if "there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case."[84] In addition, there must not be "any other reason to conclude that the later case will not be [successfully] concluded."[85]

Because the presumption will always arise under the first basis, and perhaps under both of the first two bases, some courts interpret the "change of

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[80]11 U.S.C. § 362(c)(4)(D)(i)(I).

[81]11 U.S.C. § 362(c)(4)(A)(i). But as described in note 16 *supra*, some courts have applied § 362(c)(4) in other circumstances.

[82]11 U.S.C. § 362(c)(4)(D)(i)(II).

[83]*See* part II(C) *infra*.

[84]11 U.S.C. § 362(c)(4)(D)(i)(III).

[85]*Id.* In this context, successful conclusion is defined by receipt of a discharge, in a chapter 7 case, and a fully-performed plan, in a chapter 11 or chapter 13 case. *Id.*

circumstances" language as a congressional mandate that a debtor show some change in circumstances in order to rebut the presumption that the current case was not filed in good faith. For these courts, if the debtor affirmatively demonstrates, by clear and convincing evidence, a substantial change in the debtor's financial or personal affairs since the dismissal of the prior cases, and the current case is therefore likely to succeed, the presumption is deemed rebutted (without consideration of any other factors).[86] Many cases addressing motions under § 362(c)(3)[87] and § 362(c)(4)[88] follow this approach and focus solely on whether there has been a change in circumstances since the previously-filed case in deciding whether the debtor has rebutted the presumption of bad faith.

B. Court Forms Dealing with Presumption of Bad Faith

Some bankruptcy courts provide official forms[89] to be completed by debtors seeking imposition of the automatic stay under § 362(c)(4) or provide

[86]*See, e.g., In re* Thornes, 386 B.R. 903, 909 (Bankr. S.D. Ga. 2007) (denying § 362(c)(4) motion because there was not a substantial change in circumstances); *In re* Whitaker, 341 B.R. 336, 345-46 (Bankr. S.D. Ga. 2006) (reimposing stay under § 105(a) when debtor rebutted presumption under § 362(c)(3) by showing substantial change in circumstances, but motion was filed too late to hold hearing within thirty days after the bankruptcy filing).

[87]*See, e.g., In re* Magni, No. 10-83270, 2010 WL 5069553, at *2 (Bankr. D. Neb. Dec. 7, 2010) (denying § 362(c)(3) motion when debtor's change in circumstances could not be determined because no schedules or plan had been filed); *In re* Bosco, No. 10-08000, 2010 WL 4668595, at *2 (Bankr. E.D.N.C. Nov. 9, 2010) (granting extension of stay when debtors "have demonstrated substantial changes in their financial and personal affairs"); *In re* Paul, No. 10-10222, 2010 WL 3811955, at *2 (Bankr. N.D. Tex. Sept. 17, 2010) (denying extension of stay under § 362(c)(3) when court "cannot conclude that there has been a substantial change from the prior case to the present case"); *In re* Forletta, 397 B.R. 242, 245 (Bankr. E.D.N.Y. 2008) (finding debtor demonstrated "a substantial change in her personal and financial affairs" and thereby rebutted the presumption under § 362(c)(3)); *In re* Graham, No. 08-07229, 2008 WL 4952242, at *2 (Bankr. E.D.N.C. Nov. 18, 2008) (granting extension of stay under § 362(c)(3) when "debtor has shown by clear and convincing evidence that there is a substantial change in his financial affairs since the dismissal of his previous case"); *In re* Penland, No. 06-11895, 2006 WL 2089893, at *2 (Bankr. July 21, 2006) (denying motion to extend stay where there was "no clear and convincing evidence that there had been a substantial change in the financial affairs of the debtor"); *In re* Campos, No. 06-80088, 2006 WL 4470841, at *2 (Bankr. Apr. 13, 2006) (granting motion to extend stay when "Debtors' circumstances have substantially changed since the dismissal of the previous case").

[88]*See* cases discussed in part II(C) *infra*.

[89]B-4001-1, Motion to (Extend or Impose) the Automatic Stay Pursuant to 11 U.S.C. § 362(c)(3)[or (4)] (Bankr. S.D. Ind. rev. 10/1/12) (hereinafter referred to as "B-4001-1"); F 4001-1.Impose.Stay.Motion Motion for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate (Bankr. C.D. Cal. 2012) (hereinafter referred to as "F 4001-1.Impose.Stay.Motion"); Form 721.3, Procedures re Motions to Extend/Impose 11 USC § 362 Automatic Stay Pursuant to § 362(c) or § 362(n) (Bankr. D. Ore. Rev. 7/18/13) (hereinafter Form 721.3); 2011-3 Standing Order Regarding Motion to Extend or Impose the Automatic Stay (Bankr. S.D. Miss. Sept. 20, 2011); Standing Order Regarding Motion to Extend or Impose the Automatic Stay (Bankr. N.D. Miss. Sept. 22, 2011). The Standing Orders for the bankruptcy courts for the Northern District of Mississippi and for the Southern District of Mississippi are identical and are hereafter referred to as "Standing Order." The Bankruptcy Court for the Northern District of West Virginia has a form for motions under § 362(c)(3), but not for motions under § 362(c)(4). All forms and standing orders are attached as appendices.

procedures to do so in their Local Rules.[90] The information the court requests by these forms, and requires by these procedures, necessarily indicates the standards the court applies in determining whether the debtor has overcome the presumption of bad faith.

(1) Southern District of Indiana. The form provided by the bankruptcy court for the Southern District of Indiana asks the debtor to make two representations. The first is that the debtor or debtors "did not have any prior case(s) dismissed in the past year for any of the following reasons:

- (failure to file or amend other required documents without substantial excuse),
- (failure to provide adequate protection as ordered by the Court), or
- (failure to perform the terms of a plan confirmed by the Court)."[91]

This paragraph is very similar to the language of § 362(c)(4)(D)(i)(II), which states that a presumption that the current bankruptcy case was filed in bad faith arises when the debtor's prior cases were dismissed under certain circumstances.[92] However, because the presumption of bad faith will always arise under § 362(c)(4)(D)(i)(I) (because the debtor will have had two or more previous cases pending in the one-year period before the current case was filed),[93] the representation in the form is not necessary to determine whether or not the presumption arises. Instead, it appears aimed at providing the debtor the opportunity to establish facts that would, if true,[94] rebut the

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[90]Some bankruptcy courts also have local rules with respect to § 362(c) motions. *See, e.g.*, L.B.R. 4001-1(h) (Bankr. D. Alaska amended effective Dec. 1, 2011); L.B.R. 4001-2 (Bankr. W.D. Mo. amended effective Dec. 1, 2009); L.B.R. 4001-5 (Bankr. M.D. Pa. amended effective Dec. 1, 2009). The rules generally provide less guidance about the standards used by the court in deciding such motions than do the forms, but M.D. Pa. L.B.R. 4001-5 does invite the movant to file "a verified affidavit setting forth the substantial changes in the financial or personal affairs of the debtor since the dismissal of the next most previous bankruptcy case," *id.*, ¶ c, which suggests that the court considers that the most relevant factor, if not the only factor, it considers in rebutting the presumption of bad faith.

[91]B-4001-1, ¶ 4. The form used by the Southern District of Indiana is attached to this article as Appendix 1.

[92]11 U.S.C. § 362(c)(4)(D)(i)(II) provides that the presumption arises if "a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after *the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse* (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), *failed to provide adequate protection as ordered by the court*, or *failed to perform the terms of a plan confirmed by the court*." (emphasis supplied.) The three italicized phrases are reflected in the bullet points of the form.

[93]*See* notes 15-16 *supra* and related text.

[94]In one case in which the debtors used the form, the debtors removed the third bullet point in their motion, presumably because a prior case was in fact dismissed for failure to perform the terms of the plan. *In re* Booker, No. 10-12146 (Bankr. S.D. Ind. Aug. 11, 2010) (Motion to Impose the Automatic Stay Pursuant to 11 U.S.C. § 362(c)(4) entered Aug. 19, 2010).

presumption.

The second representation included in the form is that "[t]here has been a substantial change in the financial or personal affairs of the debtor(s) since the dismissal of the last case, and the debtor(s) believe(s) that this case will:

- (If a Chapter 7) be concluded with a discharge; or
- (If a Chapter 11 or 13) result in a confirmed plan that will be fully performed."[95]

The form requires the debtor to describe the change in circumstances in an attached affidavit.[96] This representation is also based on one of the grounds for a presumption of bad faith under § 362(c)(4)(D)(i)(III).[97] Because the presumption will have already arisen under § 362(c)(4)(D)(i)(I), this representation must be intended to provide the court grounds for concluding that the presumption of bad faith has been rebutted. This suggests that the court adopts the approach to rebutting the presumption followed by those courts using the "change in circumstances" methodology, as discussed above.[98]

(2) Central District of California. In the bankruptcy court for the Central District of California, a party seeking imposition of the stay must file a motion which complies with that District's local rule.[99] The standard form motion (which is used for both § 362(c)(3) motions and § 362(c)(4) motions[100]) provides four different grounds for imposition the stay, any one or more of which a debtor may assert by checking a box. The first is that the case was filed in good faith, and one of three different circumstances exists dealing with specific property subject to a lien or lease:[101]

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[95]B-4001-1, ¶ 5.

[96]*Id.* In *Booker*, the debtors failed to attach an affidavit, prompting an objection from their secured creditor that they failed to establish a change of circumstances. *Booker*, Amended Objection to the Debtors' Motion to Impose the Automatic Stay, No. 10-12146 (Bankr. S.D. Ind. Sept. 1, 2010). The court nevertheless granted the motion without explanation. *Booker*, Order on Debtors' Motion to Impose Automatic Stay Under 11 U.S.C. § 362(c)(4)(B), No. 10-12146 (Bankr. S.D. Ind. Sept. 30, 2010).

[97]11 U.S.C. § 362(c)(4)(D)(i)(III) states that the presumption exists if "there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed."

[98]*See* part II(A)(3) *supra*.

[99]L.B.R. 4001-1(d) (Bankr. C.D. Cal. effective Jan. 2014).

[100]Sometimes a debtor completing the form gets confused and fills in boxes both in the section dealing with a motion to extend the stay under § 362(c)(3) and the appropriate section dealing with a motion to impose the stay under § 362(c)(4). *See, e.g.*, *In re* Ziemer, No. 14-10589 (Bankr. C.D. Cal. Mar. 26, 2014) (motion filed Mar. 26, 2014) (*Ziemer Motion*); *In re* Avanzado, No. 10-62201 (Bankr. C.D. Cal. Dec. 7, 2010) (motion filed Jan, 7, 2011) (*Avanzado Motion*).

[101]F 4001-1.Impose.Stay.Motion, ¶ 5(a). Another problem that may arise with the form is that counsel for the debtor may check the box saying the case was filed in good faith but fail to check any of the three boxes below indicating why. *See In re* Morgan, No. 06-10312 (Bankr. C.D. Cal. Mar. 10, 2006)

(1) the "Property is of consequential value or benefit to the estate because the fair market value of the Property is greater than all liens on the property . . . ;"[102]
(2) the "Property is of consequential value or benefit to the estate because the Property is necessary to a reorganization" for reasons specified by the movant;[103] or
(3) the "Secured Creditor/Lessor's interest can be adequately protected by" means proposed by the movant.[104]

These factors seem to be derived not from any part of § 362(c) but from the arguments that debtors frequently make in opposition to a motion for relief of the stay under § 362(d). They deal respectively with whether the debtor has equity in the property,[105] whether the property is necessary to an effective reorganization,[106] and whether there is cause for granting relief from the stay for cause, including the lack of adequate protection of an interest in the property.[107] Consideration of those factors in deciding whether to impose the stay in the first instance (as opposed to whether relief from the stay is warranted) is not justified under the language of § 362(c)(4) for two reasons. First, § 362(c)(4) requires only a showing that the filing of the current case was in good faith. Second, it shifts to the debtor the burden on the issue of the debtor's equity in the property at issue, a burden the statute expressly confers on the party seeking relief from the stay.[108]

The second ground for seeking imposition of the stay under the form used by the bankruptcy court for the Central District of California is a simple one: "[t]he present case was filed in good faith notwithstanding that the prior single or joint cases filed by or against the individual debtor pending within the year preceding the petition date were dismissed,"[109] either because the prior dismissal "was of a case not refiled under Chapter 7 after dismissal

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(motion filed Mar. 16, 2006) (*Morgan Motion*). The Central District of California form is attached to this article as Appendix 2.

[102]F 4001-1.Impose.Stay.Motion, ¶ 5(a)(1).

[103]*Id.* at ¶ 5(a)(2). The most typical way for a debtor to demonstrate satisfaction of this requirement is to affirm that the property is the debtor's principal residence. *See In re* Cota, No. 14-12823 (Bankr. C.D. Cal. Mar. 6, 2014) (motion filed Apr. 4, 2014) (*Cota Motion*); *Avanzado Motion*; *In re* Santillan-Santana, No. 08-16607 (Bankr. C.D. Cal. Sept. 3, 2008) (Motion for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate, filed Sept. 8, 2008) (*Santillan-Santana Motion*). The property may also be the debtor's car. *See* Ewing (motion filed Mar. 24, 2014) (*Ewing Motion*); *Cota Motion*.

[104]F 4001-1 Impose Stay Motion, ¶ 5(a)(3).

[105]*See* 11 U.S.C. § 362(d)(2)(A).

[106]*See* 11 U.S.C. § 362(d)(2)(B).

[107]*See* 11 U.S.C. § 362(d)(1).

[108]*See* 11 U.S.C. § 362(g)(1).

[109]F 4001-1 Impose Stay Motion, ¶ 5(b).

under 11 U.S.C. § 707(b),"[110] or because "[g]ood faith is shown" for reasons specified by the debtor.[111] This paragraph is completely open-ended, and provides no guidance as to what factors might be used to establish good faith. It seems to be intended to implement the provisions of § 362(c)(4)(B), that provide for a party in interest, in a case in which the automatic stay does not take effect upon filing of a case, to "demonstrate[ ] that the filing of the later case is in good faith as to the creditors to be stayed."[112] However, as discussed above,[113] in all cases subject to § 362(c)(4), a presumption of bad faith will arise under § 362(c)(4)(D)(i)(I). Because the form deals separately with grounds for rebutting the presumption, there is no need for the debtor to present this separate ground for imposing the stay.

The third ground for imposing the stay against all creditors is the one in which the bankruptcy court for the Central District of California provides real guidance about what factors are important to the court in deciding whether to impose the stay. The form allows the debtor to check a box stating that "[t]he presumption of a bad faith filing under 11 U.S.C. § 362(c)(4)(D)(i) is overcome in this case as to *all creditors* because"[114] of any of six possible reasons.[115] One assumes the bankruptcy courts in that District consider these six reasons to be the relevant considerations in determin-

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[110]This provision is rather confusing. Under the terms of § 362(c)(4), in determining whether the debtor had two or more single or joint cases pending in the previous year that were dismissed, thereby triggering the applicability of 11 U.S.C. § 362(c)(4), any case "refiled under a chapter other than chapter 7 after dismissal under section 707(b)" is not counted. Therefore, if this clause in the form were applicable, there would be no reason to file the motion to impose the stay because the dismissed case would have no relevance in analyzing the issue.

[111]In the *Cota Motion*, the *Ewing Motion*, the *Ziemer Motion*, the *Morgan Motion*, the *Avanzado Motion*, and the *Santillan-Santana Motion*, counsel for the debtor checked the box stating that the case was filed in good faith, but counsel in the *Avanzado Motion* failed to check either of the following boxes indicating why. Counsel in the *Cota Motion*, the *Ewing Motion*, the *Morgan Motion* and the *Santillan-Santana Motion*, and the debtor in the *Ziemer Motion*, all checked the box stating that "[g]ood faith is shown" and provided additional argument with respect to the alleged good faith.

[112]11 U.S.C. § 362(c)(4)(B).

[113]*See* notes 15-16 *supra* and related text.

[114]F 4001-1 Impose Stay Motion, ¶ 5(c). The form has a separate provision for those seeking to impose the stay only against a single secured creditor or lessor in F 4001-1M.IS, ¶ 5(c)(7). In it, the party seeking to impose the stay is invited to explain why "[t]he presumption of bad faith as to the Secured Creditor/Lessor under 11 U.S.C. § 362(c)(4)(D)(ii) is overcome in this case."

[115]Counsel in the *Santillan-Santana Motion* did not check this box at all, relying on the general assertion that the case was filed in good faith made by checking the second box and providing an additional explanation of the good faith. In fact, the grounds asserted by counsel on behalf of Santillan-Santana would properly have supported an assertion of changed circumstances. Counsel in the *Avanzado Motion* checked the box indicating that the presumption was overcome, but failed to check the box next to any of the following six reasons, providing instead a one-sentence explanation of why the presumption was overcome, and a declaration of counsel supporting that assertion. In the *Cota Motion*, the *Ewing Motion*, the *Morgan Motion*, and the *Ziemer Motion* counsel or the debtor checked both the box stating that the presumption is overcome, and one or more of the following six boxes.

ing whether the debtor's current case was filed in good faith. The first four focus on the circumstances surrounding the dismissal of the prior case(s).

- "Debtor had a substantial excuse in failing to file or amend the petition or other documents as required by the court or Title 11, resulting in the prior dismissal(s)," and setting forth what that excuse was;[116]
- "Debtor's failure to file or amend the petition or other documents as required by the court or Title 11 and resulting dismissal was as the result of the negligence of Debtor's attorney";[117]
- "Debtor's failure to provide adequate protection as ordered by the court in the prior case is excusable" for the reasons described;[118] and
- "Debtor's failure to perform the terms of a confirmed plan in the prior case is excusable" for the reasons described.[119]

As was true for the form used by the bankruptcy court in the Southern District of Indiana, these provisions are all based on the debtor's conduct in a prior case which serves as the second ground for a presumption of bad faith that triggers the applicability of § 362(c)(4), but unlike the form used by the Indiana court, the California form explicitly asks whether debtor's dismissal was due to attorney negligence.[120]

The fifth listed factor for rebutting the presumption of bad faith in the California form is that "[t]here has been a substantial change in the personal or financial affairs of the Debtor since the dismissal of the prior case(s)," which the debtor is invited to describe, "from which the Court may conclude that this case, if a case under Chapter 7, may be concluded with a discharge or, if under Chapter 11 or 13, with a confirmed plan that will be fully performed."[121] This language, as is true of the similar language in the form used by the bankruptcy court in the Southern District of Indiana, is based on the

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[116]F 4001-1.Impose.Stay.Motion, ¶ 5(c)(1). The *Cota Motion* and *Ziemer Motion* both relied on this basis.

[117]*Id.* ¶ 5(c)(2).

[118]*Id.* ¶ 5(c)(3). The *Ziemer Motion* relied on this ground.

[119]*Id.* ¶ 5(c)(4). The *Ewing Motion* and *Ziemer Motion* both had checks in this box.

[120]11 U.S.C. § 362(c)(4)(D)(i)(II) provides that the presumption arises if "a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse *unless the dismissal was caused by the negligence of the debtor's attorney*), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court." (emphasis supplied). The italicized phrase provides the basis for the language in the form not included in the form used by the bankruptcy court in the Southern District of Indiana.

[121]F 4001-1 Impose Stay Motion, ¶ 5(c)(5). This was one of the bases relied upon in the *Ewing*

third ground for a presumption of bad faith under § 362(c)(4)(D)(i)(III).[122]

The final listed factor invites the debtor seeking imposition of the stay against all creditors to provide additional reasons why the presumption of bad faith should be "overcome."[123] Although the inclusion of this final unstructured invitation to describe a basis for rebutting the presumption of abuse makes the court's methodology more opaque, the form as a whole indicates that, like the bankruptcy court in Southern District of Indiana, the Central District of California bankruptcy court suggests to debtors that they can rebut the presumption that the current filing is in bad faith by establishing that one or both of the two alternative grounds giving rise to the presumption under § 362(c)(4)(D)(i) in the first instance (other than having at least two cases pending within the prior one-year period) is not present.

(3) District of Oregon. The bankruptcy court for the District of Oregon has a one-page form setting forth various requirements for motions to impose the stay. First, it states when motions to impose the stay must be brought (within thirty days after the order for relief,[124] a requirement set forth in § 362(c)(4)(B)).[125] It also includes technical information about filing and serving the motion.[126]

Paragraph 2 of the form sets forth the required content of the § 362(c) motion. The motion is required to specify "(a) the case number, date of filing, date of dismissal, and reason for dismissal of each of the debtor's bankruptcy cases that were dismissed within the year prior to the fling of the current case; (b) specific information as to why the moving party contends the current case was filed in good faith; (c) specific identification of the applicable presumption(s) that the case is not filed in good faith under . . . § 362(c)(4)(D); and (d) the basis for moving party's contention that the presumptions should be rebutted."[127] The motion "must be supported by an affidavit or declaration,"[128] presumably from the debtor, and the "moving

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Motion, the *Morgan Motion*, and the *Ziemer Motion* for the assertion that the presumption of bad faith was overcome.

[122]*See* notes 95-96 *supra* and related text.

[123]F 4001-1 Impose Stay Motion, ¶ 5(c)(6). The *Morgan Motion* included additional grounds for rebutting the presumption, including the fact that debtor was facing an imminent foreclosure action on his home. The *Ziemer Motion* included language in this section stating that "NOT extending the stay will be fatal to me and my family of 6. I will be irreparably harmed by NOT being protect [sic] under this BK13. I would NEVER be able to replace this asset and have put in over 400,000 [sic] of my own money to property. This asset is unique and could never be replaced."

[124]Form 721.3, ¶ 1(b).

[125]11 U.S.C. § 362(c)(4)(B) allows a party in interest to request the court "within 30 days after the filing of the later case" to order the stay to take effect.

[126]Form 721.3, ¶ 4. The Oregon form is attached to this article as Appendix 3.

[127]*Id.*, ¶2.

[128]*Id.*

party must be present at the hearing" either in person or by telephone.[129]

Although the Oregon form is not as structured as the forms in the Southern District of Indiana or the Central District of California, the reference to the applicable "presumptions" and the invitation to show that "the presumptions should be rebutted"—given that there is only one presumption under § 362(c)(4)(D), i.e., that the case is "filed not in good faith"—suggests that the Oregon bankruptcy court would be inclined to find that the latest case was filed in good faith under § 362(c)(4) if the debtor can show that the facts giving rise to a presumption of bad faith under § 362(c)(4)(D)(II) or § 362(c)(4)(D)(III) are not present.

(4) Northern and Southern Districts of Mississippi. Under the Standing Order in effect in both of these districts, the courts state that they may grant motions to impose the stay without conducting a hearing if certain requirements are satisfied. These include the filing of a declaration in support of the motion, service of the motion and declaration on all parties against whom the debtor wishes to impose the stay within two days after the petition date, and the filing of a certificate of service.[130] The Standing Order states that the court may grant the motion without conducting a hearing if "a response or objection to the Motion is not timely filed."[131]

The form of Declaration in Support of Motion to Impose the Automatic Stay Pursuant to 11 U.S.C. § 362(c)(4) ("Declaration") is attached to the Standing Order, and requires the debtor to identify all previous bankruptcy cases by number, chapter, date of filing, and date of dismissal.[132] It then repeats the language of § 362(c)(4)(D)(i)(II) that the debtor(s) did not have "any prior case[s] dismissed in the past year for any of the following reasons:

- failure to file or amend the petition or other required documents without substantial excuse;
- failure to provide adequate protection as ordered by the Court; or
- failure to perform the terms of a plan confirmed by the Court."[133]

The Declaration addresses the third standard giving rise to a presumption that the current case was not filed in good faith in paragraph 7, and asks the debtor(s) to state that the debtor(s) "have had a substantial change in [my/

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[129]*Id.*, ¶ 5.

[130]Standing Order, ¶¶ 1 and 2. The Mississippi forms are attached to this article as Appendices 4 and 5.

[131]*Id.*, ¶ 6.

[132]Declaration, ¶ 4.

[133]Declaration, ¶ 6.

our] financial or personal affairs since the dismissal of the last case, and [I/we] believe that this case will:

- [If a Chapter 7] be concluded with a discharge; or
- [If a Chapter 11 or 13] result in a confirmed plan that will be fully performed."[134]

If there have been such changes, the debtor is instructed to describe them in the following paragraph.[135] This language is derived from § 362(c)(4)(D)(i)(III).

As was true for the forms used in the other districts discussed above, the declaration indicates that the absence of grounds for the creation of a presumption that the latest case was not filed in good faith under § 362(c)(4)(D) (other than there having been two prior cases pending in the preceding year) is sufficient to rebut the presumption.

(5) Western District of Tennessee. The bankruptcy court for the Western District of Tennessee does not provide a form to be used for motions to impose the stay under § 362(c)(4). However, the debtors in the vast majority of cases in which such motions are filed are represented by one of two bankruptcy lawyers in Memphis,[136] who use what has become a standardized form for the district (hereafter the "Tennessee Form").[137]

The Tennessee Form contains a certification by the debtor, meaning that the debtor need not file a separate affidavit in support of the motion. It consists of seven paragraphs. In the first, the debtor lists all prior cases filed by the debtor which were pending in the preceding year, the date each case was filed and dismissed, and the reason(s) for the dismissal.[138]

Paragraphs two, five and six of the Tennessee Form are based on the factors specified in § 362(c)(4)(D) that cause a presumption of abuse to arise. In the second paragraph, the debtor must state that "the Debtor(s)' financial or personal affairs have substantially changed since the dismissal of the prior cases and the Debtor(s) feel(s) they he/she/they can fund and fully perform his/her/their plan" and specify why the debtor's circumstances have changed "since the dismissal of the prior cases."[139] This paragraph is similar to the provisions of § 362(c)(4)(D)(i)(III) that create a presumption that the current case was not filed in good faith if there has not been a "substantial change in

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[134]Declaration, ¶ 7.

[135]Declaration, ¶ 8. *See In re* Newton, No. 14-10830 (Bankr. N.D. Miss. Mar. 4, 2014) (motion filed Mar. 11, 2014) (identified the substantial changes as "[m]y husband and I are now working").

[136]The lawyers are Allen C. Jones and Jimmy E. McElroy.

[137]*See, e.g., In re* Horne, No. 14-23266 (Bankr. W.D. Tenn. Mar. 27, 2014) (Verified Motion of Debtor(s) to Impose Automatic Stay Under Section 362(c)(3) [sic] as to All Creditors). A copy of the Tennessee Form is attached to this article as Appendix 6.

[138]Tennessee Form, ¶ 1.

[139]*Id.*, ¶ 2.

the financial or personal affairs of the debtor since the dismissal of the next most previous case."[140] However, it differs from statutory provision in that it allows the debtor to list any changes since all prior cases, not just since the most recently dismissed case.

The fifth paragraph of the Tennessee Form states that the debtor's "prior Chapter 13 cases were not dismissed because the Debtor(s) failed to provide adequate protection ordered by the Court or after the Debtor(s) failed to file or amend the petition or other documents as required by the Bankruptcy Code or the Court without substantial excuse."[141] This paragraph is derived from § 362(c)(4)(D)(i)(I), which creates a presumption of bad faith if a previous case was dismissed "after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse . . . failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court."[142] The form limits the representation to prior chapter 13 cases, although the statute does not do so. In addition, the Tennessee Form omits the final phrase of the statutory provision, which creates a presumption of bad faith if the debtor failed to perform the terms of a confirmed plan, perhaps because almost all debtors filing the § 362(c)(4) motion had a prior case dismissed either because their chapter 13 plans were not confirmed or they failed to perform the terms of their confirmed plans.

The sixth paragraph of the Tennessee Form is based on the language in § 362(c)(4)(D)(ii) that creates a presumption that the case was not filed in good faith as to any creditor "that commenced an action under [§ 362(d)] in a previous case . . . if, as of the date of dismissal of such case, such action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to such action of such creditor."[143] The form states that "Debtor(s)' prior Chapter 13 cases (choose one: were/were not) dismissed while an action under Section 362(d) of the Bankruptcy Code was pending or after such an action had been resolved with an order terminating, conditioning or limiting the stay."[144] As was true for paragraph 5 of the form, this

[140]11 U.S.C. § 362(c)(4)(D)(i)(III).

[141]Tennessee Form, ¶ 5.

[142]11 U.S.C. § 362(c)(4)(D)(i)(II).

[143]11 U.S.C. § 362(c)(4)(D)(ii).

[144]Tennessee Form, ¶ 6. In many of the filed motions, no selection was made as between "were" and "were not" in this paragraph. *See, e.g.*, *In re* Scullark, No. 14-23392 (Bankr. W.D. Tenn. Mar. 31, 2014); *In re* Anderson, No. 14-23381 (Bankr. W.D. Tenn. Mar. 31, 2014) (*April Anderson*); *In re* Dyson, No. 14-23296 (Bankr. W.D. Tenn. Mar. 27, 2014); *In re* Horne, No. 14-23266 (Bankr. W.D. Tenn. Mar. 27, 2014); *In re* Robinson, No. 14-23280 (Bankr. W.D. Tenn. Mar. 27, 2014); *In re* Green, No. 14-23283 (Bankr. W.D. Tenn. Mar. 27, 2014) (*Samantha Green*); *In re* Anderson, No. 14-23198 (Bankr. W.D. Tenn. Mar. 26, 2014) (*Toni Anderson*); *In re* Demesma, No. 14-23120 (Bankr. W.D. Tenn. Mar. 24, 2014); *In re* Smith, No. 14-23121 (Bankr. W.D. Tenn. Mar. 24, 2014) (*Akitress Smith*); *In re* Davis, No. 14-23001 (Bankr. W.D. Tenn. Mar. 20, 2014) (*Dorothy Davis*); *In re* Pirtle, No. 14-22970 (Bankr. W.D. Tenn. Mar.

representation is limited to prior chapter 13 cases, although the statute also creates a presumption if the prior dismissed case was under another chapter of the Code.

The third and fourth paragraphs of the Tennessee Form set forth the debtor's total projected monthly income, expenses and net income, and the proposed plan payment to creditors.[145] These provisions appear to be intended to show that the plan is feasible and is therefore proposed in good faith.

The Tennessee Form concludes with a representation that the "petition was filed in good faith as to the creditors to be stayed and the Debtor(s) believe(s) he/she/they can fully perform the terms of the proposed plan should it be confirmed by this Honorable Court."[146]

The provisions of the Tennessee Form demonstrate that the bankruptcy courts in the Western District of Tennessee, like those in the Southern District of Indiana and the Central District of California, grant or deny motions to impose the stay based on their assessment of whether the factors in § 362(c)(4)(D) creating a presumption that the current case was not filed in good faith (other than the provision creating a presumption if two or more prior cases were pending within the preceding year) are present.

C. Real Facts and Real Decisions on Motions to Impose the Stay

Whatever legal standards courts theoretically apply in determining whether good faith exists for purposes of a motion under § 362(c)(4), their decisions demonstrate that certain facts are especially likely to motivate them to grant such motions, and others generally persuade them to deny them. In this part I will explore some of the commonly recurring facts that debtors present in § 362(c)(4) motions, which are derived from the decisions of the bankruptcy courts (when the courts recite the facts in rendering a decision),

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20, 2014); *In re* James, No. 14-22938 (Bankr. W.D. Tenn. Mar. 19, 2014); *In re* Richmond, No. 14-22915 (Bankr. W.D. Tenn. Mar. 19, 2014); *In re* Lane, No. 14-22930 (Bankr. W.D. Tenn. Mar. 19, 2014); *In re* Calvin, No. 14-22860 (Bankr. W.D. Tenn. Mar. 18, 2014); *In re* Carrick, No. 14-22844 (Bankr. W.D. Tenn. Mar, 18, 2014); *In re* Kimbro, No. 14-22864 (Bankr. W.D. Tenn. Mar. 18, 2014); *In re* Brown, No. 14-22819 (Bankr. W.D. Tenn. Mar. 17, 2014) (*Anita Brown*); *In re* Jefferson, No. 14-22707 (Bankr. W.D. Tenn. Mar. 13, 2014); *In re* Marshall, No. 14-22711 (Bankr. W.D. Tenn. Mar. 13, 2014); *In re* Hill, No. 14-22624 (Bankr. W.D. Tenn. Mar. 12, 2014) (*Shondreaka Hill*); *In re* Jones, No. 14-22632 (Bankr. W.D. Tenn. Mar. 12, 2014) (*Kimberly Jones*); *In re* Brunson, No. 14-22467 (Bankr. W.D. Tenn. Mar. 7, 2014); *In re* Hardge, No. 14-22471 (Bankr. W.D. Tenn. Mar. 7, 2014); *In re* Davis, No. 14-22448 (Bankr. W.D. Tenn. Mar. 7, 2014) (*Candice Davis*); *In re* Johnson, No. 14-22489 (Bankr. W.D. Tenn. Mar. 7, 2014); *In re* Adams, No. 14-22415 (Bankr. W.D. Tenn. Mar. 6, 2014) (*Tony Adams*); *In re* Ayers, No. 14-22380 (Bankr. W.D. Tenn. Mar. 6, 2014); *In re* Smith, No. 14-22373 (Bankr. W.D. Tenn. Mar. 6, 2014) (*Lessie Smith*); *In re* Grandberry, No. 14-22357 (Bankr. W.D. Tenn. Mar. 5, 2014).

[145]Tennessee Form, ¶¶ 3 and 4.

[146]*Id.*, ¶ 7.

from the motions and affidavits filed by the debtors seeking imposition of the stay, and from any responses to the motions.[147]

1. Opposition to the Motion. Creditors rarely file objections to motions to impose the stay. In only seven cases in this study in which no objection was made was the motion denied.[148] The fact most likely to correlate with a court's decision to grant a motion to impose the stay is the absence of any objection.

In twenty-six of the cases, a creditor or the trustee filed a written objection to the motion or the court noted that the motion was opposed when ruling on it or both.[149] In four of those cases, the court denied the motion.[150] In twelve of those cases the judge granted the motion with respect to all creditors other than the objecting creditor.[151] Alternatively, in twelve cases the court ordered, or the debtor and the objecting creditor agreed, that the stay would be imposed on the objecting creditor, but only so long as the debtor satisfies certain conditions (such as staying current in his or her payments) and allowing the creditor to obtain relief from the stay or seek dismis-

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[147]All quotations come from the verified motions or affidavits filed by the debtors seeking imposition of the stay.

[148]The cases in which the motion was denied even though no creditor or trustee filed an objection and neither the docket nor the opinion indicates that any creditor appeared at the hearing on the motion to object were *In re* Green, No. 14-41306 (Bankr. N.D. Tex. Mar. 28, 2014) (*Lydia Green*); *In re* Brown, No. 14-10217 (Bankr. N.D. Ill. Mar. 21, 2014) (*Katina Brown*); *In re* Epstein, No. 14-10269 (Bankr. N.D. Ill. Mar. 21, 2014); *In re* Foster, No. 14-12020 (Bankr. E.D. Pa. Mar. 19, 2014); *In re* Allen, No. 14-02484 (Bankr. M.D. Fla. Mar. 6, 2014); *In re* Cota, No. 14-12823 (Bankr. C.D. Cal. Mar. 6, 2014); and *In re* Benjamin, No. 14-02338 (Bankr. M.D. Fla. Mar. 3, 2014).

[149]*See In re* Shaffer, No. 14-00325 (Bankr. N.D. W. Va. Mar. 28, 2014); *In re* Lester, No. 14-56193 (Bankr. N.D. Ga. Mar. 27, 2014); *In re* Robinson, No. 14-23280 (Bankr. W.D. Tenn. Mar. 27, 2014); *In re* Anderson, No. 14-23198 (Bankr. W.D. Tenn. Mar. 26, 2014) (*Toni Anderson*); *In re* Ziemer, No. 14-10589 (Bankr. C.D. Cal. Mar. 26, 2014); *In re* Watson Cooper, No. 14-23188 (Bankr. W.D. Tenn. Mar. 26, 2014); *In re* Bennett, No. 14-23159 (Bankr. W.D. Tenn. Mar. 25, 2014); *In re* Pugh, No. 14-56026 (Bankr. N.D. Ga. Mar. 25, 2014); *In re* Baker, No. 14-23118 (Bankr. W.D. Tenn. Mar. 24, 2014); *In re* Thomas, No. 14-55799 (Bankr. N.D. Ga. Mar. 21, 2014) (*Kelvin Thomas*); *In re* Gibson, No. 14-22995 (Bankr. W.D. Tenn. Mar. 20, 2014); *In re* Williams, No. 14-55571 (Bankr. N.D. Ga. Mar. 19, 2014) (*Willie Williams*); *In re* Cartwright, No. 14-44541 (Bankr. E.D. Mich. Mar. 19, 2014); *In re* Hulbert, No. 14-22881 (Bankr. W.D. Tenn. Mar. 18, 2014); *In re* Harris, No.14-41978 (Bankr. E.D. Mo. Mar. 18, 2014); *In re* Garden, No. 14-02057 (Bankr. S.D. Ind. Mar. 18, 2014); *In re* Bailey, No. 14-22883 (Bankr. W.D. Tenn. Mar. 18, 2014); *In re* Fivecoat, No. 14-41172 (Bankr. N.D. Cal. Mar. 18, 2014); *In re* Payne, No. 14-10620 (Bankr. W.D. Tenn. Mar. 13, 2014) (*Darsheka Payne*); *In re* Adams, No. 14-30665 (Bankr. E.D. Tenn. Mar. 5, 2014) (*Doris Adams*); *In re* Foreman, No. 14-13732 (Bankr. D. Md. Mar. 11, 2014); *In re* McNeill, No. 14-01389 (Bankr. E.D.N.C. Mar. 10, 2014); *In re* Holly, No. 14-22337 (Bankr. E.D. Wis. Mar. 8, 2014); *In re* Penirian, No. 14-43699 (Bankr. E.D. Mich. Mar. 7, 2014); *In re* Tribble, No. 14-13409 (Bankr. D. Md. Mar. 6, 2014); *In re* Brewer, No. 14-54415 (Bankr. N.D. Ga. Mar. 3, 2014); *cf. In re* Brunson, No. 14-22467 (Bankr. W.D. Tenn. Mar. 7, 2014); *In re* Dillon, No. 14-11270 (Bankr. E.D. Ark. Mar. 7, 2014) (objection was filed and then withdrawn).

[150]*See Ziemer; Harris; Garden; Darsheka Payne.*

[151]*See Shaffer; Robinson; Watson Cooper; Bennett; Baker; Willie Williams; Hulbert; Bailey; Fivecoat; McNeill; Tribble; Brewer; cf. In re* Hensley, No. 14-40729 (Bankr. W.D. Mo. Mar. 11, 2014) (court denied the motion as to creditor who had not filed objection).

sal if the debtor fails to satisfy the conditions.[152]

The willingness of courts to grant § 362(c)(4) motions merely because no objection is filed is troubling.[153] Although the court is authorized to grant a default judgment under Fed. R. Civ. Pro. 55,[154] a court should not enter a default judgment if the moving party is not entitled to the relief sought as a matter of law.[155] The language of § 362(c)(4) clearly states that the stay is to take effect in a case filed by an individual who has had two or more cases pending in the preceding year "only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed." This requires the movant to overcome the presumption that the latest case was not filed in good faith "by clear and convincing evidence to the contrary."[156] Debtors seeking imposition of the stay often file motions that fail to meet the standard set by this statute. Courts should be making an independent judgment of whether the statutory standard for imposition of the stay is met, even in the absence of an objection. To grant the motion without clear and convincing evidence that the case is filed in good faith undermines the objective of Congress in enacting § 362(c)(4)–to deny serial filers the benefits of the automatic stay unless they carry their burden of establishing circumstances that warrant relief.

2. Change in Financial Status. Most debtors seeking imposition of the stay had one or more prior chapter 13 cases dismissed because of a payment default. In thirty-seven of the cases in the study where there was a previous payment default, the debtor stated that the default was caused by loss of employment or a reduction in the hours he or she was able to work.[157] In

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[152]*See In re* Lester, No. 14-56193 (Bankr. N.D. Ga. Mar. 27, 2014); *Kelvin Thomas*; *Toni Anderson*; *Pugh*; *Gibson*; *Cartwright*; *McNeill*; *Penirian*; *Doris Adams*; *cf. In re* Hoskins, No. 14-02299 (Bankr. S.D. Ind. Mar. 21, 2014); *In re* Powell; No. 14-08488 (Bankr. N.D. Ill. Mar. 10, 2014) (no filed objection, but order conditioned on timely payments); *Bennett* (providing that creditor would not be subject to automatic stay in any new bankruptcy case).

[153]As discussed in part II(B)(4) *supra*, the bankruptcy courts in Mississippi have codified this approach in their Standing Order.

[154]Fed. R. Bankr. P. makes Fed. R. Civ. P. 55 applicable in adversary proceedings, and Fed. R. Bankr. P. 9014(c) makes Fed. R. Civ. P. 55 applicable in contested matters.

[155]*See, e.g., In re* Meyer, 373 B.R. 84, 85 (9th Cir. BAP 2007); Lagos v. Monster Painting, Inc., No. 11-00331, 2013 WL 5937661, at *2 (D. Nev. Nov. 5, 2013); *In re* Davis, No. 09-42865, 2011 WL 1302222, at *6 (Bankr. E.D. Tex. Mar. 31, 2011).

[156]11 U.S.C. § 362(c)(4)(B) & (D).

[157]*See In re* Scullark, No. 14-23392 (Bankr. W.D. Tenn. Mar. 31, 2014); *In re* Anderson, No. 14-23381 (Bankr. W.D. Tenn. Mar. 31, 2014) (*April Anderson*); *In re* Phillips, No. 14-23398 (Bankr. W.D. Tenn. Mar. 31, 2014); *In re* Williams, No. 14-23416 (Bankr. W.D. Tenn. Mar. 31, 2014) (*Derrick Williams*); *In re* Patterson, No. 14-56594 (Bankr. N.D. Ga. Mar. 31, 2014) (*Delana Patterson*); *In re* Cox, No. 14-01757 (Bankr. E.D.N.C. Mar. 28, 2014); *In re* Moate, No. 14-10410 (Bankr. M.D. Ga. Mar. 27, 2014); *In re* Robinson, No. 14-23280 (Bankr. W.D. Tenn. Mar. 27, 2014); *In re* Straw, No. 14-60662 (Bankr. N.D. Ohio Mar. 26, 2014); *In re* Anderson, No. 14-23198 (Bankr. W.D. Tenn. Mar. 26, 2014) (*Toni Anderson*); *In re* Patterson, No. 14-23111 (Bankr. W.D. Tenn. Mar. 24, 2014) (*Derrick Patterson*); *In re* Baker, No. 14-23118 (Bankr. W.D. Tenn. Mar. 24, 2014); *In re* Seaborn, No. 14-55914 (Bankr. N.D. Ga. Mar. 24, 2014);

twenty-two of those cases, the debtor argued in favor of the motion by stating that the debtor (or one of the parties who were helping to support the debtor) now has a new job,[158] or a change in the hours or income in connection with an old job, and the debtor is therefore able to perform the current plan.[159]

Some debtors support their assertion that there has been a change in circumstances by stating they are now receiving (although not necessarily for the first time) unemployment or other public benefits[160] or child support,[161]

In re Brown, No. 14-10217 (Bankr. N.D. Ill. Mar. 21, 2014) (*Katina Brown*); *In re* Johnston, No. 14-51789 (Bankr. S.D. Ohio Mar. 20, 2014); *In re* Pirtle, No. 14-22970 (Bankr. W.D. Tenn. Mar. 20, 2014); *In re* Harris, No.14-41978 (Bankr. E.D. Mo. Mar. 18, 2014); *In re* Vickers, No. 14-09794 (Bankr. N.D. Ill. Mar. 18, 2014); *In re* Calvin, No. 14-22860 (Bankr. W.D. Tenn. Mar. 18, 2014); *In re* Kimbro, No. 14-22864 (Bankr. W.D. Tenn. Mar. 18, 2014); *In re* Leggett, No. 14-09199 (Bankr. N.D. Ill. Mar. 14, 2014); *In re* Davis, No. 14-22767 (Bankr. W.D. Tenn. Mar. 14, 2014) (*Sandra Davis*); *In re* Jefferson, No. 14-22707 (Bankr. W.D. Tenn. Mar. 13, 2014); *In re* Hill, No. 14-22686 (Bankr. W.D. Tenn. Mar. 13, 2014) (*Theresa Hill*); *In re* Marshall, No. 14-22711 (Bankr. W.D. Tenn. Mar. 13, 2014); *In re* Manning; No. 14-08886 (Bankr. N.D. Ill. Mar. 12, 2014); *In re* Ivy, No. 14-22645 (Bankr. W.D. Tenn. Mar. 12, 2014); *In re* Croswell, No. 14-08499 (Bankr. N.D. Ill. Mar. 11, 2014); *I In re* Hall, No.14-10280 (Bankr. W.D. Pa. Mar. 10, 2014); *In re* Shannon, No. 14-41695 (Bankr. E.D. Mo. Mar. 10, 2014); *In re* Brunson, No. 14-22467 (Bankr. W.D. Tenn. Mar. 7, 2014); *In re* Smith, No. 14-22373 (Bankr. W.D. Tenn. Mar. 6, 2014) (*Lessie Smith*); *In re* Adams, No. 14-22415 (Bankr. W.D. Tenn. Mar. 6, 2014) (*Tony Adams*); *In re* Butler, No. 14-22330 (Bankr. W.D. Tenn. Mar. 5, 2014); *In re* Wilson, No. 14-01274 (Bankr. E.D.N.C. Mar. 5, 2014) (*Melvin Wilson*); *In re* Loewenstine, No. 14-51281 (Bankr. S.D. Ohio Mar. 3, 2014); *In re* Chantres, No. 14-15043 (Bankr. S.D. Fla. Mar. 3, 2014).

[158]*See Delana Patterson; In re* Egenolf, No. 14-12528 (Bankr. E.D. Pa. Mar. 31, 2014); *In re* Cox, No. 14-01757 (Bankr. E.D.N.C. Mar. 28, 2014); *Moate*; *In re* Straw, No. 14-60662 (Bankr. N.D. Ohio Mar. 26, 2014); *Toni Anderson*; *In re* Brown, No. 14-01687 (Bankr. E.D.N.C. Mar. 25, 2014) (*David Brown*); *In re* Jones, No. 14-10552 (Bankr. N.D. Ill. Mar. 24, 2014) (*Anthony Jones*); *Derrick Patterson*; *Seaborn*; *In re* Payne, No. 14-70476 (Bankr. N.D. Ala. Mar. 20, 2014) (*Bruce Payne*); *In re* Calvin, No. 14-22860 (Bankr. W.D. Tenn. Mar. 18, 2014); *In re* Kimbro, No. 14-22864 (Bankr. W.D. Tenn. Mar. 18, 2014); *In re* Ivy, No. 14-22645 (Bankr. W.D. Tenn. Mar. 12, 2014); *In re* Jackson, No. 14-22638 (Bankr. W.D. Tenn. Mar. 12, 2014); *Croswell*; *In re* McNeill, No. 14-01389 (Bankr. E.D.N.C. Mar. 10, 2014); *In re* Holly, No. 14-22337 (Bankr. E.D. Wis. Mar. 8, 2014); *In re* Mensch, No. 14-22324 (Bankr. W.D. Tenn. Mar. 5, 2014); *Butler*; *Brunson*; *Chantres; cf. Sandra Davis* (one or more prior cases dismissed because debtor lost job, but motion does not indicate that debtor has new job); *Shannon* (prior case dismissed because debtor lost job, and is now "activily [sic] looking for work"); *In re* Saulsberry, No. 14-22565 (Bankr. W.D. Tenn. Mar. 11, 2014) (debtor is "looking for new employment"); *In re* Smith, No. 14-22315 (Bankr. W.D. Tenn. Mar. 5, 2014) (*Jessica Smith*) ("seeking employment").

[159]*See In re* Lawrence, No. 14-56443 (Bankr. N.D. Ga. Mar. 31, 2014); *In re* Williams, No. 14-23416 (Bankr. W.D. Tenn. Mar. 31, 2014) (*Derrick Williams*); *In re* Morris, No. 14-11425 (Bankr. N.D. Ill. Mar. 28, 2014); *In re* Wilson, No. 14-56203 (Bankr. N.D. Ga. Mar. 27, 2014) (*Charles Wilson*); *In re* Green, No. 14-23283 (Bankr. W.D. Tenn. Mar. 27, 2014) (*Samantha Green*); *In re* Good, No. 14-30957 (Bankr. S.D. Ohio Mar. 24, 2014); *In re* Scales, No. 14-22910 (Bankr. W.D. Tenn. Mar. 19, 2014); *In re* Lane, No. 14-22930 (Bankr. W.D. Tenn. Mar. 19, 2014); *In re* Harris, No.14-41978 (Bankr. E.D. Mo. Mar. 18, 2014); *In re* Hill, No. 14-22686 (Bankr. W.D. Tenn. Mar. 13, 2014) (*Theresa Hill*); *In re* Manning; No. 14-08886 (Bankr. N.D. Ill. Mar. 12, 2014); *In re* Hill, No. 14-22624 (Bankr. W.D. Tenn. Mar. 12, 2014) (*Shondreaka Hill*); *In re* Ayers, No. 14-22380 (Bankr. W.D. Tenn. Mar. 6, 2014); *Hall*; *cf. In re* Edwards, No. 14-10171 (Bankr. E.D. Tex. Mar. 31, 2014) (stating that debtor has obtained "additional income").

[160]*See In re* Horne, No. 14-23266 (Bankr. W.D. Tenn. Mar. 27, 2014); *Samantha Green*; *In re* Hoskins, No. 14-02299 (Bankr. S.D. Ind. Mar. 21, 2014); *In re* Davis, No. 14-23001 (Bankr. W.D. Tenn. Mar. 20,

or are "gainfully employed" or "self-employed."[162] Some say that there has been a substantial change in their financial or personal affairs, but do not specify what that change is,[163] or do not indicate that there has been any change.[164] Although this changed circumstances argument bears on whether there is a presumption of lack of good faith under § 362(c)(4)(D)(i)(III), it seems to be used by the bankruptcy judges in considering whether the debtor has overcome the presumption (already created because there were two or more cases pending in the preceding year[165]) by clear and convincing evidence. In all but one of the cases where the debtor mentioned new employment, increased hours of employment, or receipt of public benefits, the bankruptcy judge granted the motion to impose the stay.[166]

In many instances the debtor stated that the debtor's prior difficulties were attributable to the fact the debtor (or someone related to the debtor) was suffering from medical conditions in the past which interfered with the debtor's ability to make plan payments, to file required papers, or to appear in court (often because the debtor was required to take time off from work or incurred unexpected costs). Of the debtors in the cases in the study, thirty-five mentioned past physical or mental medical conditions (including pregnancy or birth of a child,[167] or death of a loved one[168]) in the documents they

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2014) (*Dorothy Davis*); *Johnston*; *Bruce Payne*; *In re* Cartwright, No. 14-44541 (Bankr. E.D. Mich. Mar. 19, 2014); *In re* Carrick, No. 14-22844 (Bankr. W.D. Tenn. Mar, 18, 2014); *Jefferson*; *In re* Peterson, No. 14-30779 (Bankr. S.D. Ohio Mar. 13, 2014); *In re* Johnson, No. 14-22489 (Bankr. W.D. Tenn. Mar. 7, 2014); *In re* Branch, No. 14-22437 (Bankr. W.D. Tenn. Mar. 7, 2014); *In re* Davis, No. 14-22448 (Bankr. W.D. Tenn. Mar. 7, 2014) (*Candice Davis*); *In re* Hardge, No. 14-22471 (Bankr. W.D. Tenn. Mar. 7, 2014); *Tony Adams*; *Melvin Wilson; Mensch*; *cf. In re* Thomas, No. 14-50669 (Bankr, M.D. Ga. Mar. 19, 2014) (*Willie Thomas*) (social security benefits that had been reduced were now restored); *Robinson* (debtor stated that "there is a hearing pending the reinstatement of her sisters [sic] SSI.

[161]*See In re* Broome, No. 14-23090 (Bankr. W.D. Tenn. Mar. 24, 2014).

[162]*See Scullark; April Anderson*; *In re* Smith, No. 14-23121 (Bankr. W.D. Tenn. Mar. 24, 2014) (*Akitress Smith*); *Pirtle*; *Baker*; *In re* Richmond, No. 14-22915 (Bankr. W.D. Tenn. Mar. 19, 2014); *In re* Jones, No. 14-22632 (Bankr. W.D. Tenn. Mar. 12, 2014) (*Kimberly Jones*); *Ayers*; *Brunson.*

[163]*See In re* Poole, No. 14-21170 (Bankr. W.D. Pa. Mar. 26, 2014); *In re* Williams, No. 14-00980 (Bankr. M.D. Fla. Mar. 2, 2014) (*Deborah Williams*).

[164]*See In re* Farris, No. 14-56451 (Bankr. N.D. Ga. Mar. 31, 2014); *In re* Souder, No. 14-56389 (Bankr. N.D. Ga. Mar. 29, 2014); *In re* Griffin, No. 14-56214 (Bankr. N.D. Ga. Mar. 27, 2014); *In re* Smoke, No. 14-51981 (Bankr. S.D. Ohio Mar. 26, 2014); *In re* Williams, No. 14-01130 (Bankr. N.D. Ala. Mar. 24, 2014) (*James Williams*); *In re* Smith, No. 14-23125 (Bankr. W.D. Tenn. Mar. 24, 2014) (*Dwight Smith*); *In re* Brown, No. 14-10217 (Bankr. N.D. Ill. Mar. 21, 2014) (*Katina Brown*); *In re* Hartsfield, No. 14-11583 (Bankr. E.D. Ark. Mar. 21, 2014); *In re* Williams, No. 14-55571 (Bankr. N.D. Ga. Mar. 19, 2014) (*Willie Williams*); *In re* Bailey, No. 14-22883 (Bankr. W.D. Tenn. Mar. 18, 2014); *In re* McLaren, No. 14-01178 (Bankr. M.D. Fla. Mar. 13, 2014); *In re* Greer, No. 14-10462 (Bankr. N.D. Ind. Mar. 12, 2014); *In re* Spears, No. 14-30358 (Bankr. S.D. Ill. Mar. 11, 2014); *In re* Cota, No. 14-12823 (Bankr. C.D. Cal. Mar. 6, 2014); *In re* Golden, No. 14-54566 (Bankr. N.D. Ga. Mar. 5, 2014); *In re* Catron, No. 14-10880 (Bankr. D. Mass. Mar. 4, 2014); *In re* Brewer, No. 14-54415 (Bankr. N.D. Ga. Mar. 3, 2014).

[165]*See* 11 U.S.C. § 362(c)(4)(D)(i)(I).

[166]*See In re* Harris, No.14-41978 (Bankr. E.D. Mo. Mar. 18, 2014).

[167]*See In re* Pledger, No. 14-01150 (Bankr. N.D. Ala. Mar. 25, 2014); *In re* Hardge, No. 14-22471

filed with their motions.[169] Two debtors mentioned automobile accidents.[170] Notable changes in the debtor's medical condition swayed the court in all but two cases.[171]

Other changes in the debtor's finances described in the filings include surrender of a vehicle[172] or of real property,[173] a loan modification,[174] or some other reduction in expenses,[175] and financial assistance from a family member

(Bankr. W.D. Tenn. Mar. 7, 2014); *In re* Smith, No. 14-22315 (Bankr. W.D. Tenn. Mar. 5, 2014) (*Jessica Smith*).

[168]*See In re* Watson Cooper, No. 14-23188 (Bankr. W.D. Tenn. Mar. 26, 2014); *In re* Thomas, No. 14-55799 (Bankr. N.D. Ga. Mar. 21, 2014) (*Kelvin Thomas*); *In re* Carrick, No. 14-22844 (Bankr. W.D. Tenn. Mar, 18, 2014).

[169]*See Farris; In re* Anderson, No. 14-23381 (Bankr. W.D. Tenn. Mar. 31, 2014) (*April Anderson*); *In re* Dyson, No. 14-23296 (Bankr. W.D. Tenn. Mar. 27, 2014); *In re* Waters, No. 14-56151 (Bankr. N.D. Ga. Mar. 27, 2014); *In re* Horne, No. 14-23266 (Bankr. W.D. Tenn. Mar. 27, 2014); *In re* Green, No. 14-23283 (Bankr. W.D. Tenn. Mar. 27, 2014) (*Samantha Green*); *In re* Robinson, No. 14-23280 (Bankr. W.D. Tenn. Mar. 27, 2014); *In re* Ziemer, No. 14-10589 (Bankr. C.D. Cal. Mar. 26, 2014); *In re* Watson Cooper, No. 14-23188 (Bankr. W.D. Tenn. Mar. 26, 2014); *In re* Pledger, No. 14-01150 (Bankr. N.D. Ala. Mar. 25, 2014); *In re* Bennett, No. 14-23159 (Bankr. W.D. Tenn. Mar. 25, 2014); *In re* Demesma, No. 14-23120 (Bankr. W.D. Tenn. Mar. 24, 2014); *In re* Bynum, No. 14-10688 (Bankr. W.D. Tenn. Mar. 21, 2014); *Kelvin Thomas*; *In re* Freeman, No. 14-11189 (Bankr. E.D. Tenn. Mar. 20, 2014); *In re* Pirtle, No. 14-22970 (Bankr. W.D. Tenn. Mar. 20, 2014); *In re* Salem, No. 14-09984 (Bankr. N.D. Ill. Mar. 20, 2014); *In re* Scales, No. 14-22910 (Bankr. W.D. Tenn. Mar. 19, 2014); *In re* Cartwright, No. 14-44541 (Bankr. E.D. Mich. Mar. 19, 2014); *In re* Lane, No. 14-22930 (Bankr. W.D. Tenn. Mar. 19, 2014); *In re* Vickers, No. 14-09794 (Bankr. N.D. Ill. Mar. 18, 2014); *In re* Saulsberry, No. 14-22565 (Bankr. W.D. Tenn. Mar. 11, 2014); *In re* Hensley, No. 14-40729 (Bankr. W.D. Mo. Mar. 11, 2014); *Carrick*; *In re* McNeill, No. 14-01389 (Bankr. E.D.N.C. Mar. 10, 2014); *In re* Hall, No.14-10280 (Bankr. W.D. Pa. Mar. 10, 2014); *In re* Vargas, No. 14-15481 (Bankr. S.D. Fla. Mar. 10, 2014); *In re* Penirian, No. 14-43699 (Bankr. E.D. Mich. Mar. 7, 2014); *In re* Davis, No. 14-22448 (Bankr. W.D. Tenn. Mar. 7, 2014) (*Candice Davis*); *In re* Hardge, No. 14-22471 (Bankr. W.D. Tenn. Mar. 7, 2014); *In re* Tribble, No. 14-13409 (Bankr. D. Md. Mar. 6, 2014); *In re* Adams, No. 14-30665 (Bankr. E.D. Tenn. Mar. 5, 2014) (*Doris Adams*); *Jessica Smith; In re* Benjamin, No. 14-02338 (Bankr. M.D. Fla. Mar. 3, 2014); *In re* Chantres, No. 14-15043 (Bankr. S.D. Fla. Mar. 3, 2014).

[170]*See In re* James, No. 14-22938 (Bankr. W.D. Tenn. Mar. 19, 2014); *Freeman*.

[171]*See Ziemer; Benjamin*.

[172]*See In re* Hammad, No. 14-23414 (Bankr. W.D. Tenn. Mar. 31, 2014); *In re* Palmer, No. 14-10598 (Bankr. D.N.H. Mar. 26, 2014); *In re* Patterson, No. 14-23111 (Bankr. W.D. Tenn. Mar. 24, 2014) (*Derrick Patterson*); *James*; *In re* Grandberry, No. 14-22357 (Bankr. W.D. Tenn. Mar. 5, 2014); *In re* Wilson, No. 14-01274 (Bankr. E.D.N.C. Mar. 5, 2014) (*Melvin Wilson*).

[173]*See In re* Edwards, No. 14-10171 (Bankr. E.D. Tex. Mar. 31, 2014); *In re* Good, No. 14-30957 (Bankr. S.D. Ohio Mar. 24, 2014); *In re* Dedeaux, No. 14-22600 (Bankr. W.D. Tenn. Mar. 11, 2014); *In re* Holly, No. 14-22337 (Bankr. E.D. Wis. Mar. 8, 2014). *Cf. In re* Wright, No. 14-50726 (Bankr. M.D. Ga. Mar. 26, 2014) (proposed to surrender home if unable to obtain loan modification).

[174]*See In re* Dixon, No. 14-01694 (Bankr. E.D.N.C. Mar. 25, 2014); *In re* Payne, No. 14-10620 (Bankr. W.D. Tenn. Mar. 13, 2014) (*Darsheka Payne*); *In re* Dillon, No. 14-11270 (Bankr. E.D. Ark. Mar. 7, 2014); *In re* Smith, No. 14-22373 (Bankr. W.D. Tenn. Mar. 6, 2014) (*Lessie Smith*); *In re* Howard, No. 14-20032 (Bankr. E.D. Tex. Mar. 6, 2014); *cf. In re* Shannon, No. 14-41695 (Bankr. E.D. Mo. Mar. 10, 2014); *Wright* (seeking loan modification).

[175]*See In re* Brown, No. 14-01687 (Bankr. E.D.N.C. Mar. 25, 2014) (*David Brown*); *In re* Broome, No. 14-23090 (Bankr. W.D. Tenn. Mar. 24, 2014); *In re* Woods, No. 14-23093 (Bankr. W.D. Tenn. Mar. 24, 2014); *In re* Seaborn, No. 14-55914 (Bankr. N.D. Ga. Mar. 24, 2014); *In re* Ewing, No. 14-13524 (Bankr. C.D. Cal. Mar. 20, 2014); *In re* Washington, No. 14-09856 (Bankr. N.D. Ill. Mar. 19, 2014); *In re* Hardy,

or friend.[176] In only two cases in which the debtor described this type of change in the debtor's financial circumstances did the court deny the motion.[177]

3. Eligibility. In one case in the study,[178] one of the prior cases was dismissed not because of a payment default or a failure to fulfill the requirements of the Bankruptcy Code, but because the debtor was not eligible for filing under chapter 13 pursuant to § 109(e).[179] There the court granted the motion to impose the stay. Courts have consistently granted motions to impose the stay under these circumstances.[180]

In six other cases in the study in which debtors made § 362(c)(4) motions,[181] the debtor stated that the court dismissed one or more of the prior cases because the debtor failed to satisfy the mandatory prefiling credit counseling requirement of § 109(h).[182] In four of these cases, the debtor's motion to impose the stay was granted.[183]

No. 14-22808 (Bankr. W.D. Tenn. Mar. 17, 2014); *In re* Foreman, No. 14-13732 (Bankr. D. Md. Mar. 11, 2014); *In re* McNeill, No. 14-01389 (Bankr. E.D.N.C. Mar. 10, 2014); *In re* Branch, No. 14-22437 (Bankr. W.D. Tenn. Mar. 7, 2014).

[176]*See In re* Phillips, No. 14-23398 (Bankr. W.D. Tenn. Mar. 31, 2014); *In re* Green, No. 14-41306 (Bankr. N.D. Tex. Mar. 28, 2014) (*Lydia Green*); *In re* Demesma, No. 14-23120 (Bankr. W.D. Tenn. Mar. 24, 2014); *Dixon*; *Palmer*; *Hammad*; *In re* Beale, No. 14-11994 (Bankr. E.D. Pa. Mar. 18, 2014); *In re* Swafford, No. 14-01207 (Bankr. M.D. Fla. Mar. 14, 2014); *In re* Jefferson, No. 14-22707 (Bankr. W.D. Tenn. Mar. 13, 2014); *In re* Ivy, No. 14-22645 (Bankr. W.D. Tenn. Mar. 12, 2014).

[177]*See Lydia Green*; *Darsheka Payne*.

[178]*See In re* Natividad, No. 14-51333 (Bankr. N.D. Cal. Mar. 28, 2014).

[179]11 U.S.C. 109(e) limits chapter 13 to individuals "with regular income that owe[ ], on the date of the filing of the petition, noncontingent, liquidated unsecured debts of less than $360,474 and noncontingent, liquidated secured debts of less than $1,081,400, ..."

[180]*See, e.g., In re* Abrahim, No. 14-30161 (Bankr. S.D. Ill. Feb. 4, 2014); *In re* Fuina, No. 08-10206 (Bankr. D.N.J Jan. 6, 2008); *In re* Blake, No. 07-12445 (Bankr. D. Mass. Apr. 20, 2007); *cf. In re* Edmondson, No. 14-13616 (Bankr. C.D. Cal. Mar. 21, 2014) (granting stay on an interim basis, and then case was dismissed prior to final decision on motion).

[181]*See In re* Epstein, No. 14-10269 (Bankr. N.D. Ill. Mar. 21, 2014); *In re* Foster, No. 14-12020 (Bankr. E.D. Pa. Mar. 19, 2014); *In re* Foreman, No. 14-13732 (Bankr. D. Md. Mar. 11, 2014); *Beale*; *In re* Calloway, No. 14-31198 (Bankr. N.D. Tex. Mar. 6, 2014); *In re* Catron, No. 14-10880 (Bankr. D. Mass. Mar. 4, 2014). This is not an unusual problem for debtors filing § 362(c)(4) motions. *See, e.g., In re* Carpenter, No. 13-50305, 2013 WL 1194865 (Bankr. M.D.N.C. Mar. 22, 2013); *In re* Castillo, No. 12-15265 (Bankr. E.D. Cal. Jun 12, 2012); *In re* Cavalier, No. 10-11214 (Bankr. M.D. La. Aug. 6, 2010); *In re* Massenburg, No. 10-35442 (Bankr. E.D.Va. Aug. 5, 2010); *In re* Benefield, No. 10-11077 (Bankr. D.N.M. Mar. 5, 2010); *In re* DiGiovanni, 415 B.R. 120, 125 (Bankr. E.D. Pa. 2009); *In re* Beal, No. 08-10357 (Bankr. E.D. Pa. Jan. 15, 2008); *In re* Ferguson, 376 B.R. 109 (Bankr. E.D. Pa. 2007); *In re* Stronk, No. 07-00170 (Bankr. M.D. Fla. Jan. 9, 2007); *In re* Coons, No., 06-71580 (Bankr. Nov. 6, 2006); *In re* Schroeder, 356 B.R. 812 (Bankr. M.D. Fla. 2006); *In re* Ortiz, 355 B.R. 587 (Bankr. S.D. Tex. 2006).

[182]11 U.S.C. § 109(h)(1) states that generally "an individual may not be a debtor under this title unless such individual has, during the 180-day prior ending on the date of filing of the petition by such individual, received from an approved nonprofit budget and credit counseling agency . . . an individual or group briefing . . . that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis."

[183]*See In re* Beale, No. 14-11994 (Bankr. E.D. Pa. Mar. 18, 2014); *Catron*; *Calloway*; *Forman*. *But see*

Judicial sympathy for debtors who have been unable to navigate the eligibility requirements of the Bankruptcy Code is not surprising. Perhaps the courts conclude that when a debtor erroneously files a case under a chapter for which the debtor is not eligible, those cases should not "count" towards the determination of whether the debtor is a serial filer. More fundamentally, a debtor who files a case for which the debtor is not eligible and then dismisses it does not seem to be abusing the bankruptcy process, and it would be unjust to punish the debtor by denying him or her the benefit of the automatic stay when the debtor later files a new case under the proper chapter of the Bankruptcy Code.

4. Bad Lawyers and No Lawyers. Often the debtor (or the lawyer filing the motion on behalf of the debtor) describes some problem in the prior case (or cases) that arose because the debtor lacked adequate representation. In thirteen cases, the debtor filed one or more of the prior cases *pro se*, but obtained representation in connection with the current case.[184] In eight cases, the debtor was represented by a lawyer in the prior cases, but stated that the previous lawyer did something wrong[185] and a new lawyer has now been retained.[186] The court granted the motion in all but three cases in which the debtor made the "new lawyer" argument.[187] This suggests that courts view a new, competent lawyer (or the firing of the prior, incompetent

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Epstein; *Foster*. In one of the cases in which the court denied the motion, the debtor was a *pro se* filer, *see Foster*. Courts are unlikely to grant § 362(c)(4) motions filed by *pro se* filers. *See* part II(C)(4) *infra*.

[184]*See In re* Natividad, No. 14-51333 (Bankr. N.D. Cal. Mar. 28, 2014); *In re* Shaffer, No. 14-00325 (Bankr. N.D. W. Va. Mar. 28, 2014); *In re* Jones, No. 14-10552 (Bankr. N.D. Ill. Mar. 24, 2014) (*Anthony Jones*); *Epstein*; *In re* Salem, No. 14-09984 (Bankr. N.D. Ill. Mar. 20, 2014); *In re* Garden, No. 14-02057 (Bankr. S.D. Ind. Mar. 18, 2014); *In re* Dorsett, No. 14-09732 (Bankr. N.D. Ill. Mar. 18, 2014); *In re* Winters, No. 14-09285 (Bankr. N.D. Ill. Mar. 14, 2014); *In re* Manning; No. 14-08886 (Bankr. N.D. Ill. Mar. 12, 2014); *In re* Croswell, No. 14-08499 (Bankr. N.D. Ill. Mar. 11, 2014); *In re* Foreman, No. 14-13732 (Bankr. D. Md. Mar. 11, 2014); *In re* Tribble, No. 14-13409 (Bankr. D. Md. Mar. 6, 2014); *In re* White, No. 14-07623 (Bankr. N.D. Ill. Mar. 4, 2014).

[185]Under 11 U.S.C. § 362(c)(4)(D)(i)(II), a presumption that the current case was filed not in good faith is created when a previous case was dismissed within the prior year "after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse . . . ." If the dismissal was caused by "the negligence of the debtor's attorney," "substantial excuse" is established. *Id.* Because the presumption of lack of good faith has already been established under 11 U.S.C. § 362(c)(4)(D)(i)(I), the negligence of the previous attorney is intended to convince the court that there has been a change of circumstances making successful completion of the newly-filed case more likely.

[186]*See In re* Blanchard, No. 14-80966 (Bankr. N.D. Ill. Mar. 26, 2014); *In re* Gray, No. 14-23169 (Bankr. W.D. Tenn. Mar 25, 2014); *In re* Trout, No. 14-10338 (Bankr. W.D. Pa. Mar. 21, 2014); *In re* Worrell, No. 14-09428 (Bankr. N.D. Ill. Mar. 17, 2014); *In re* Spears, No. 14-30358 (Bankr. S.D. Ill. Mar. 11, 2014); *In re* Allen, No. 14-02484 (Bankr. M.D. Fla. Mar. 6, 2014); *In re* Perry, No. 14-43465 (Bankr. E.D. Mich. Mar. 5, 2014); *In re* Newton, No. 14-10830 (Bankr. N.D. Miss. Mar. 4, 2014); *cf. In re* Fivecoat, No. 14-41172 (Bankr. N.D. Cal. Mar. 18, 2014) (lawyer representing debtor in prior case acknowledge mistake leading to dismissal of prior case).

[187]The argument failed in *In re* Epstein, No. 14-10269 (Bankr. N.D. Ill. Mar. 21, 2014); *Garden*; and *Allen*.

one) as the sort of change in circumstances that may help the debtor rebut the presumption that the case was filed not in good faith.

By contrast, in three cases the debtor filed the current case (as well as one or more of the prior cases) *pro se*,[188] and the court denied the motion in all of them.[189]

5. Imminent Foreclosure or Seizure of a Vehicle. One of the principal reasons debtors file for bankruptcy is to save their homes or cars from a scheduled foreclosure sale.[190] This remains true when the debtor files for bankruptcy for the second or third time. Of the one hundred fifty-two cases in the study, thirty-five of the debtors indicated in connection with their motions that they were in critical need of the automatic stay to prevent sale of their home or other real property,[191] seizure or sale of their vehicle,[192] or both.[193]

This argument cuts both ways with judges considering whether to impose the stay. On the one hand, the loss of real property or a car will probably render the newly-filed case meaningless. On the other hand, use of repeated bankruptcies solely to stave off a lawful foreclosure reeks of abuse, and when the court sees no other reason for the current case, as in seven

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[188]*See In re* Ziemer, No. 14-10589 (Bankr. C.D. Cal. Mar. 26, 2014); *In re* Brown, No. 14-10217 (Bankr. N.D. Ill. Mar. 21, 2014) (*Katina Brown*); *In re* Foster, No. 14-12020 (Bankr. E.D. Pa. Mar. 19, 2014).

[189]This result is consistent with that of many prior *pro se* filers of § 362(c)(4) motions. *See, e.g., In re* Carpenter, No. 13-50305 (Bankr. M.D.N.C. Mar. 13, 2013); *In re* Cameron, No. 13-10115 (Bankr. D.R.I. Nov. 12, 2012); *In re* Henneghan, No. 11-00673 (Bankr. D.D.C. Sept. 8, 2011); *In re* Benefield, No. 10-11077 (Bankr. D.N.M. Mar. 5, 2010); *In re* Leonard, No. 09-32725 (Bankr. E.D. Tenn. May 15, 2009).

[190]*See, e.g.*, Porter, *supra* note 33, 90 TEX. L. REV. at 141; Susan L. DeJarnatt, *Once is Not Enough: Preserving Consumers' Rights to Bankruptcy Protection*, 74 IND. L. J. 455, 495 (1999).

[191]*See In re* Farris, No. 14-56451 (Bankr. N.D. Ga. Mar. 31, 2014); *In re* Egenolf, No. 14-12528 (Bankr. E.D. Pa. Mar. 31, 2014); *In re* Natividad, No. 14-51333 (Bankr. N.D. Cal. Mar. 28, 2014); *In re* Waters, No. 14-56151 (Bankr. N.D. Ga. Mar. 27, 2014); *In re* Wilson, No. 14-56203 (Bankr. N.D. Ga. Mar. 27, 2014) (*Charles Wilson*); *In re* Ziemer, No. 14-10589 (Bankr. C.D. Cal. Mar. 26, 2014); *Blanchard*; *In re* Palmer, No. 14-10598 (Bankr. D.N.H. Mar. 26, 2014); *In re* Brown, No. 14-01687 (Bankr. E.D.N.C. Mar. 25, 2014) (*David Brown*); *In re* Epstein, No. 14-10269 (Bankr. N.D. Ill. Mar. 21, 2014); *In re* Hoskins, No. 14-02299 (Bankr. S.D. Ind. Mar. 21, 2014); *Foster*; *In re* Garden, No. 14-02057 (Bankr. S.D. Ind. Mar. 18, 2014); *In re* Beale, No. 14-11994 (Bankr. E.D. Pa. Mar. 18, 2014); *Fivecoat*; *In re* Hensley, No. 14-40729 (Bankr. W.D. Mo. Mar. 11, 2014); *In re* Spears, No. 14-30358 (Bankr. S.D. Ill. Mar. 11, 2014); *In re* Foreman, No. 14-13732 (Bankr. D. Md. Mar. 11, 2014); *In re* Hall, No.14-10280 (Bankr. W.D. Pa. Mar. 10, 2014); *In re* Vargas, No. 14-15481 (Bankr. S.D. Fla. Mar. 10, 2014); *In re* Tribble, No. 14-13409 (Bankr. D. Md. Mar. 6, 2014); *Allen*; *Newton*.

[192]*See In re* Lawrence, No. 14-56443 (Bankr. N.D. Ga. Mar. 31, 2014); *In re* Pugh, No. 14-56026 (Bankr. N.D. Ga. Mar. 25, 2014); *In re* Thomas, No. 14-55799 (Bankr. N.D. Ga. Mar. 21, 2014) (*Kelvin Thomas*); *In re* Harris, No.14-41978 (Bankr. E.D. Mo. Mar. 18, 2014); *In re* McLaren, No. 14-01178 (Bankr. M.D. Fla. Mar. 13, 2014); *In re* Brewer, No. 14-54415 (Bankr. N.D. Ga. Mar. 3, 2014); *Ewing*.

[193]*See In re* Edwards, No. 14-10171 (Bankr. E.D. Tex. Mar. 31, 2014); *In re* Souder, No. 14-56389 (Bankr. N.D. Ga. Mar. 29, 2014); *In re* Williams, No. 14-55571 (Bankr. N.D. Ga. Mar. 19, 2014) (*Willie Williams*); *In re* Cota, No. 14-12823 (Bankr. C.D. Cal. Mar. 6, 2014); *In re* Chantres, No. 14-15043 (Bankr. S.D. Fla. Mar. 3, 2014).

cases in the study, the court is likely to deny the motion for stay.[194]

6. Failure to Pay, File Papers, or Appear. Most of the prior cases of a § 362(c)(4) filer are dismissed for failure to make required payments under a chapter 13 plan (either before or after confirmation), and although the reason is usually inadequate income to fund a plan, some debtors had problems they believed they had resolved since their last bankruptcy case filing.[195] In twenty-eight cases[196] the debtor stated that one or more of the prior cases

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[194]*See, e.g., Ziemer; Epstein; In re* Foster, No. 14-12020 (Bankr. E.D. Pa. Mar. 19, 2014); *In re* Harris, No.14-41978 (Bankr. E.D. Mo. Mar. 18, 2014); *Garden*; *Cota; In re* Allen, No. 14-02484 (Bankr. M.D. Fla. Mar. 6, 2014); *cf. In re* Fivecoat, No. 14-41172 (Bankr. N.D. Cal. Mar. 18, 2014); *In re* Hensley, No. 14-40729 (Bankr. W.D. Mo. Mar. 11, 2014); *In re* Hensley, No. 14-40729 (Bankr. W.D. Mo. Mar. 11, 2014) (denying stay as to creditor holding mortgage on real property).

[195]The explanations for failure to make payments include loss or change of job or temporary layoff or reduction in hours, *see* cases cited in note 157 *supra*; medical problems, *see* cases cited in note 169 *supra*; unexpected expenses relating to motor vehicles or a home, *see In re* Ewing, No. 14-13524 (Bankr. C.D. Cal. Mar. 20, 2014); *In re* Hulbert, No. 14-22881 (Bankr. W.D. Tenn. Mar. 18, 2014); *In re* Hardy, No. 14-22808 (Bankr. W.D. Tenn. Mar. 17, 2014); *In re* Leggett, No. 14-09199 (Bankr. N.D. Ill. Mar. 14, 2014); *In re* Jefferson, No. 14-22707 (Bankr. W.D. Tenn. Mar. 13, 2014); *In re* Ivy, No. 14-22645 (Bankr. W.D. Tenn. Mar. 12, 2014); *In re* Thompson, No. 14-22442 (Bankr. E.D. Cal. Mar. 11, 2014); *In re* Powell; No. 14-08488 (Bankr. N.D. Ill. Mar. 10, 2014); *In re* Johnson, No. 14-22489 (Bankr. W.D. Tenn. Mar. 7, 2014); loss of lease resulting in unexpected moving expenses, *see In re* Vickers, No. 14-09794 (Bankr. N.D. Ill. Mar. 18, 2014); *Leggett*; debtor "was unemployed and had fines and fees to pay to keep from having her driver's license revoked," *see In re* Branch, No. 14-22437 (Bankr. W.D. Tenn. Mar. 7, 2014); "payments were deducted from her payroll but the wrong amount was deducted" or "her employer sent the payments to the wrong trustee," *see In re* Brown, No. 14-22819 (Bankr. W.D. Tenn. Mar. 17, 2014) (*Anita Brown*); "he was having memory problems due to having a stroke and did not remember to make his payments," *see In re* Demesma, No. 14-23120 (Bankr. W.D. Tenn. Mar. 24, 2014); divorce or separation, *see In re* Green, No. 14-41306 (Bankr. N.D. Tex. Mar. 28, 2014) (*Lydia Green*); *In re* Pledger, No. 14-01150 (Bankr. N.D. Ala. Mar. 25, 2014); *In re* Howard, No. 14-20032 (Bankr. E.D. Tex. Mar. 6, 2014); *Pugh*; *In re* Loewenstine, No. 14-51281 (Bankr. S.D. Ohio Mar. 3, 2014); "Debtor's vehicle was stolen and she had no transportation," *see Pledger*; "Debtor, through no fault of her own, incurred a financial hardship," *see In re* Swafford, No. 14-01207 (Bankr. M.D. Fla. Mar. 14, 2014); "daughter's grants for college were denied and Debtor had to provide her with funds for books and other necessities," *see In re* Washington, No. 14-09856 (Bankr. N.D. Ill. Mar. 19, 2014); "Debtor's wife was supposed to be making the payments but failed to do so," *see In re* Shaffer, No. 14-00325 (Bankr. N.D. W. Va. Mar. 28, 2014); "unforeseen business expenses and the funds in the Debtor's bank account were not available to satisfy the full amount when the Debtor attempted to make an online payment," *see In re* Smoke, No. 14-51981 (Bankr. S.D. Ohio Mar. 26, 2014); "incurred a financial hardship," *see In re* Williams, No. 14-00980 (Bankr. M.D. Fla. Mar. 2, 2014) (*Deborah Williams*); "misunderstanding" with respect to employer deduction orders, *see In re* Griffin, No. 14-56214 (Bankr. N.D. Ga. Mar. 27, 2014); payment to trustee was lost in the mail, *see Brewer*; "payments (2) were destroyed in the mail truck fire" and "sent the payments to the wrong Trustee," *see In re* Bailey, No. 14-22883 (Bankr. W.D. Tenn. Mar. 18, 2014); debtor had to "help her grandson with legal expenses," *see Hardy*.

[196]*See In re* Anderson, No. 14-23381 (Bankr. W.D. Tenn. Mar. 31, 2014) (*April Anderson*); *Edwards*; *Natividad*; *In re* Morris, No. 14-11425 (Bankr. N.D. Ill. Mar. 28, 2014); *Shaffer*; *In re* Lester, No. 14-56193 (Bankr. N.D. Ga. Mar. 27, 2014); *Ziemer*; *In re* Blanchard, No. 14-80966 (Bankr. N.D. Ill. Mar. 26, 2014); *In re* Gray, No. 14-23169 (Bankr. W.D. Tenn. Mar 25, 2014); *In re* Brown, No. 14-10217 (Bankr. N.D. Ill. Mar. 21, 2014) (*Katina Brown*); *In re* Epstein, No. 14-10269 (Bankr. N.D. Ill. Mar. 21, 2014); *In re* Trout, No. 14-10338 (Bankr. W.D. Pa. Mar. 21, 2014); *In re* Salem, No. 14-09984 (Bankr. N.D. Ill. Mar. 20, 2014); *Hulbert*; *In re* Garden, No. 14-02057 (Bankr. S.D. Ind. Mar. 18, 2014); *In re* Dorsett, No. 14-09732 (Bankr. N.D. Ill. Mar. 18, 2014); *In re* Davis, No. 14-22767 (Bankr. W.D. Tenn. Mar. 14, 2014) (*Sandra*

was dismissed because the debtor failed to file a plan or other documents required to be filed at the beginning of a bankruptcy case.[197] In fourteen cases,[198] the debtor stated that he or she had failed to appear for the meeting of creditors under § 341(a) or the confirmation hearing in a prior case,[199] for reasons including debtor's failure to receive notice of the court date,[200] or inability to take time off from work.[201] In only six of the cases in which debtor failed to file all required documents or appear in a prior case did the court deny a motion to impose the stay.[202]

7. Untimely § 362(c)(3) Motion. As discussed previously,[203] some courts have entertained motions under § 362(c)(4) by debtors who had only one prior case pending in the preceding one-year period, but who failed to satisfy the timing requirements of § 362(c)(3).[204] However, most courts do

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Davis); *In re* Winters, No. 14-09285 (Bankr. N.D. Ill. Mar. 14, 2014); *In re* Croswell, No. 14-08499 (Bankr. N.D. Ill. Mar. 11, 2014); *Spears*; *In re* Foreman, No. 14-13732 (Bankr. D. Md. Mar. 11, 2014); *Vargas*; *Tribble*; *In re* Walker, No. 14-07901 (Bankr. N.D. Ill. Mar. 6, 2014); *Cota*; *Allen*; *In re* Perry, No. 14-43465 (Bankr. E.D. Mich. Mar. 5, 2014); *In re* Newton, No. 14-10830 (Bankr. N.D. Miss. Mar. 4, 2014).

[197]In a chapter 13 case, the chapter 13 plan must be filed with the petition or within 14 days thereafter (subject to extension for cause). Fed. R. Bankr. P. 3015(b). The chapter 13 debtor is also required pursuant to 11 U.S.C. § 1308(a) to file certain prepetition tax returns not later than the day before the first scheduled meeting of creditors under 11 U.S.C. § 341(a). All debtors are required to file the information required by 11 U.S.C. § 521(a)(1) and Fed. R. Bankr. P. 1007(a)(1) and (b). If an individual debtor in a voluntary case under chapter 7 or chapter 13 fails to file the information required by § 521(a)(1) within 45 days after the filing of the petition, the case is automatically dismissed on the next day (unless the court orders otherwise). 11 U.S.C. § 521(i)(1).

[198]*See In re* Davis, No. 14-23001 (Bankr. W.D. Tenn. Mar. 20, 2014) (*Dorothy Davis*); *Pledger*; *Gray*; *Demesma*; *Salem*; *In re* Richmond, No. 14-22915 (Bankr. W.D. Tenn. Mar. 19, 2014); *In re* Williams, No. 14-09104 (Bankr. N.D. Ill. Mar. 13, 2014) (*Senetta Williams*); *In re* Jones, No. 14-22632 (Bankr. W.D. Tenn. Mar. 12, 2014) (*Kimberly Jones*); *In re* Hill, No. 14-22624 (Bankr. W.D. Tenn. Mar. 12, 2014) (*Shondreaka Hill*); *In re* Jackson, No. 14-22638 (Bankr. W.D. Tenn. Mar. 12, 2014); *Hensley*; *Perry*; *Newton*; *In re* White, No. 14-07623 (Bankr. N.D. Ill. Mar. 4, 2014).

[199]The debtor is required to "appear and submit to examination under oath at the meeting of creditors under section 341(a)." 11 U.S.C. § 343.

[200]*See Richmond*; *Kimberly Jones*; *Shondreaka Hill*; *Newton*.

[201]*See Senetta Williams*; *In re* Hensley, No. 14-40729 (Bankr. W.D. Mo. Mar. 11, 2014); *White*.

[202]*See In re* Ziemer, No. 14-10589 (Bankr. C.D. Cal. Mar. 26, 2014); *In re* Brown, No. 14-10217 (Bankr. N.D. Ill. Mar. 21, 2014) (*Katina Brown*); *In re* Epstein, No. 14-10269 (Bankr. N.D. Ill. Mar. 21, 2014); *In re* Garden, No. 14-02057 (Bankr. S.D. Ind. Mar. 18, 2014); *In re* Cota, No. 14-12823 (Bankr. C.D. Cal. Mar. 6, 2014); *In re* Allen, No. 14-02484 (Bankr. M.D. Fla. Mar. 6, 2014). The change in circumstances identified in the motions with respect to the debtor's former failure to appear or debtor's former failure to make payments tend to be somewhat self-serving. *See, e.g.*, *In re* Edwards, No. 14-10171 (Bankr. E.D. Tex. Mar. 31, 2014) ("Debtor is [now] aware of processing time for wage directives and will monitor her paychecks closely . . . to ensure that all trustee payments are received in full by the due date each month"); *Richmond* (stating that debtor now knows "the importance of coming to court"); *In re* Woods, No. 14-23093 (Bankr. W.D. Tenn. Mar. 24, 2014); *In re* Demesma, No. 14-23120 (Bankr. W.D. Tenn. Mar. 24, 2014); *In re* Shorter, No. 14-22696 (Bankr. W.D. Tenn. Mar. 13, 2014) (debtor now knows that payments need to be made "in a timely manner" or "on time each and every month").

[203]*See* note 16 *supra*.

[204]Under § 362(c)(3), a debtor seeking to continue the operation of the automatic stay beyond 30 days

not allow § 362(c)(4) motions under those circumstances, so the debtors in the cases in which they have missed the thirty-day window for filing a § 362(c)(3) motion simply dismiss the case and then file another, seeking imposition of the stay under § 362(c)(4). In the two cases included in this study in which the debtor sought imposition of the stay under these circumstances, the motion was successful.[205]

8. True Serial Filers. Although § 362(c)(4) is triggered only when the debtor had at least two prior cases pending within the one-year period prior to the filing of the current case, in eighty-eight of the cases in the study an examination of the docket sheets and petitions indicates that the debtor had more than two prior bankruptcy cases, but not necessarily more than two cases pending in the prior year.[206] Indeed, in one case, the current case was

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after the filing date of the latest case is required to bring a motion and convince the court to order the continuation after notice and hearing completed during the 30-day period. 11 U.S.C. § 362(c)(3)(B).

[205]*See In re* Vargas, No. 14-15481 (Bankr. S.D. Fla. Mar. 10, 2014); *In re* Walker, No. 14-07901 (Bankr. N.D. Ill. Mar. 6, 2014).

[206]*See In re* Scullark, No. 14-23392 (Bankr. W.D. Tenn. Mar. 31, 2014) (five prior cases); *In re* Edwards, No. 14-10171 (Bankr. E.D. Tex. Mar. 31, 2014) (three prior cases); *In re* Farris, No. 14-56451 (Bankr. N.D. Ga. Mar. 31, 2014) (three prior cases); *In re* Anderson, No. 14-23381 (Bankr. W.D. Tenn. Mar. 31, 2014) (*April Anderson*) (seven prior cases); *In re* Lawrence, No. 14-56443 (Bankr. N.D. Ga. Mar. 31, 2014) (five prior cases); *In re* Phillips, No. 14-23398 (Bankr. W.D. Tenn. Mar. 31, 2014) (four prior cases); *In re* Williams, No. 14-23416 (Bankr. W.D. Tenn. Mar. 31, 2014) (*Derrick Williams*) (four prior cases); *In re* Natividad, No. 14-51333 (Bankr. N.D. Cal. Mar. 28, 2014) (one prior joint case, one prior individual case for each filer); *In re* Morris, No. 14-11425 (Bankr. N.D. Ill. Mar. 28, 2014) (four prior cases); *In re* Shaffer, No. 14-00325 (Bankr. N.D. W. Va. Mar. 28, 2014) (four prior cases); *In re* Dyson, No. 14-23296 (Bankr. W.D. Tenn. Mar. 27, 2014) (ten prior cases); *In re* Moate, No. 14-10410 (Bankr. M.D. Ga. Mar. 27, 2014) (three prior cases); *In re* Wilson, No. 14-56203 (Bankr. N.D. Ga. Mar. 27, 2014) (*Charles Wilson*) (three prior cases); *In re* Horne, No. 14-23266 (Bankr. W.D. Tenn. Mar. 27, 2014) (five prior cases); *In re* Green, No. 14-23283 (Bankr. W.D. Tenn. Mar. 27, 2014) (*Samantha Green*) (four prior cases); *In re* Robinson, No. 14-23280 (Bankr. W.D. Tenn. Mar. 27, 2014) (five prior cases); *In re* Straw, No. 14-60662 (Bankr. N.D. Ohio Mar. 26, 2014) (three prior cases); *In re* Poole, No. 14-21170 (Bankr. W.D. Pa. Mar. 26, 2014) (three prior cases); *In re* Anderson, No. 14-23198 (Bankr. W.D. Tenn. Mar. 26, 2014) (*Toni Anderson*) (five prior cases); *In re* Palmer, No. 14-10598 (Bankr. D.N.H. Mar. 26, 2014) (five prior cases); *In re* Blanchard, No. 14-80966 (Bankr. N.D. Ill. Mar. 26, 2014) (three prior cases); *In re* Pledger, No. 14-01150 (Bankr. N.D. Ala. Mar. 25, 2014) (six prior cases); *In re* Gray, No. 14-23169 (Bankr. W.D. Tenn. Mar 25, 2014) (nine prior cases); *In re* Pugh, No. 14-56026 (Bankr. N.D. Ga. Mar. 25, 2014) (five prior cases); *In re* Broome, No. 14-23090 (Bankr. W.D. Tenn. Mar. 24, 2014) (five prior cases); *In re* Jones, No. 14-10552 (Bankr. N.D. Ill. Mar. 24, 2014) (*Anthony Jones*) (nine prior cases); *In re* Good, No. 14-30957 (Bankr. S.D. Ohio Mar. 24, 2014) (five prior cases); *In re* Williams, No. 14-01130 (Bankr. N.D. Ala. Mar. 24, 2014) (*James Williams*) (seven prior cases); *In re* Smith, No. 14-23121 (Bankr. W.D. Tenn. Mar. 24, 2014) (*Akitress Smith*) (five prior cases); *In re* Woods, No. 14-23093 (Bankr. W.D. Tenn. Mar. 24, 2014) (seven prior cases); *In re* Demesma, No. 14-23120 (Bankr. W.D. Tenn. Mar. 24, 2014) (six prior cases); *In re* Smith, No. 14-23125 (Bankr. W.D. Tenn. Mar. 24, 2014) (*Dwight Smith*) (three prior cases); *In re* Brown, No. 14-10217 (Bankr. N.D. Ill. Mar. 21, 2014) (*Katina Brown*) (three prior cases); *In re* Epstein, No. 14-10269 (Bankr. N.D. Ill. Mar. 21, 2014) (three prior cases); *In re* Freeman, No. 14-11189 (Bankr. E.D. Tenn. Mar. 20, 2014) (five prior cases); *In re* Ewing, No. 14-13524 (Bankr. C.D. Cal. Mar. 20, 2014) (thirteen prior cases); *In re* Gibson, No. 14-22995 (Bankr. W.D. Tenn. Mar. 20, 2014) (three prior cases); *In re* Davis, No. 14-23001 (Bankr. W.D. Tenn. Mar. 20, 2014) (*Dorothy Davis*) (nine prior cases); *In re* Pirtle, No. 14-22970 (Bankr. W.D. Tenn. Mar. 20, 2014) (four prior cases); *In re* Williams, No. 14-

the debtor's thirteenth bankruptcy filing in ten years.[207] Another debtor had six prior cases pending in the preceding year.[208] One might assume that these true serial filers would be unlikely to receive a favorable ruling on a motion to impose the stay, but in fact only five of these motions (out of eighty-eight) were denied.[209]

Perhaps in some of those cases the court did know of the number of prior filings by the debtors. Although debtors are required to disclose "All Prior

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55571 (Bankr. N.D. Ga. Mar. 19, 2014) (*Willie Williams*) (four prior cases); *In re* Richmond, No. 14-22915 (Bankr. W.D. Tenn. Mar. 19, 2014) (eight prior cases); *In re* Scales, No. 14-22910 (Bankr. W.D. Tenn. Mar. 19, 2014) (four prior cases); *In re* James, No. 14-22938 (Bankr. W.D. Tenn. Mar. 19, 2014) (three prior cases); *In re* Cartwright, No. 14-44541 (Bankr. E.D. Mich. Mar. 19, 2014) (four prior cases); *In re* Lane, No. 14-22930 (Bankr. W.D. Tenn. Mar. 19, 2014) (seven prior cases); *In re* Foster, No. 14-12020 (Bankr. E.D. Pa. Mar. 19, 2014) (four prior cases); *In re* Harris, No.14-41978 (Bankr. E.D. Mo. Mar. 18, 2014) (eleven prior cases); *In re* Vickers, No. 14-09794 (Bankr. N.D. Ill. Mar. 18, 2014) (three prior cases); *In re* Garden, No. 14-02057 (Bankr. S.D. Ind. Mar. 18, 2014) (five prior cases); *In re* Beale, No. 14-11994 (Bankr. E.D. Pa. Mar. 18, 2014) (four prior cases); *In re* Calvin, No. 14-22860 (Bankr. W.D. Tenn. Mar. 18, 2014) (eight prior cases); *In re* Bailey, No. 14-22883 (Bankr. W.D. Tenn. Mar. 18, 2014) (five prior cases); *In re* Carrick, No. 14-22844 (Bankr. W.D. Tenn. Mar, 18, 2014) (three prior cases); *In re* Worrell, No. 14-09428 (Bankr. N.D. Ill. Mar. 17, 2014) (four prior cases); *In re* Hardy, No. 14-22808 (Bankr. W.D. Tenn. Mar. 17, 2014) (three prior cases); *In re* Brown, No. 14-22819 (Bankr. W.D. Tenn. Mar. 17, 2014) (*Anita Brown*) (five prior cases); *In re* Leggett, No. 14-09199 (Bankr. N.D. Ill. Mar. 14, 2014) (three prior cases); *In re* Davis, No. 14-22767 (Bankr. W.D. Tenn. Mar. 14, 2014) (*Sandra Davis*) (seven prior cases); *In re* Jefferson, No. 14-22707 (Bankr. W.D. Tenn. Mar. 13, 2014) (nine prior cases); *In re* Shorter, No. 14-22696 (Bankr. W.D. Tenn. Mar. 13, 2014) (four prior cases); *In re* Hill, No. 14-22686 (Bankr. W.D. Tenn. Mar. 13, 2014) (*Theresa Hill*) (three prior cases); *In re* McLaren, No. 14-01178 (Bankr. M.D. Fla. Mar. 13, 2014) (five prior cases); *In re* Williams, No. 14-09104 (Bankr. N.D. Ill. Mar. 13, 2014) (*Senetta Williams*) (three prior cases); *In re* Jones, No. 14-22632 (Bankr. W.D. Tenn. Mar. 12, 2014) (*Kimberly Jones*) (six prior cases); *In re* Jackson, No. 14-22638 (Bankr. W.D. Tenn. Mar. 12, 2014) (six prior cases); *In re* Ivy, No. 14-22645 (Bankr. W.D. Tenn. Mar. 12, 2014) (five prior cases); *In re* Hill, No. 14-22624 (Bankr. W.D. Tenn. Mar. 12, 2014) (*Shondreaka Hill*) (three prior cases); *In re* Saulsberry, No. 14-22565 (Bankr. W.D. Tenn. Mar. 11, 2014) (eleven prior cases); *In re* Spears, No. 14-30358 (Bankr. S.D. Ill. Mar. 11, 2014) (eight prior cases in three different districts); *In re* Foreman, No. 14-13732 (Bankr. D. Md. Mar. 11, 2014) (four prior cases); *In re* Powell; No. 14-08488 (Bankr. N.D. Ill. Mar. 10, 2014) (seven prior cases); *In re* Shannon, No. 14-41695 (Bankr. E.D. Mo. Mar. 10, 2014) (three prior cases); *In re* Holly, No. 14-22337 (Bankr. E.D. Wis. Mar. 8, 2014) (three prior cases); *In re* Johnson, No. 14-22489 (Bankr. W.D. Tenn. Mar. 7, 2014) (five prior cases); *In re* Brunson, No. 14-22467 (Bankr. W.D. Tenn. Mar. 7, 2014) (six prior cases); *In re* Dillon, No. 14-11270 (Bankr. E.D. Ark. Mar. 7, 2014) (five prior cases); *In re* Davis, No. 14-22448 (Bankr. W.D. Tenn. Mar. 7, 2014) (*Candice Davis*) (three prior cases); *In re* Calloway, No. 14-31198 (Bankr. N.D. Tex. Mar. 6, 2014) (four prior cases); *In re* Smith, No. 14-22373 (Bankr. W.D. Tenn. Mar. 6, 2014) (*Lessie Smith*) (nine prior cases); *In re* Tribble, No. 14-13409 (Bankr. D. Md. Mar. 6, 2014) (four prior cases); *In re* Ayers, No. 14-22380 (Bankr. W.D. Tenn. Mar. 6, 2014) (four prior cases); *In re* Smith, No. 14-22315 (Bankr. W.D. Tenn. Mar. 5, 2014) (*Jessica Smith*) (three prior cases); *In re* Butler, No. 14-22330 (Bankr. W.D. Tenn. Mar. 5, 2014) (five prior cases); *In re* Grandberry, No. 14-22357 (Bankr. W.D. Tenn. Mar. 5, 2014) (five prior cases); *In re* Mensch, No. 14-22324 (Bankr. W.D. Tenn. Mar. 5, 2014) (three prior cases); *In re* Newton, No. 14-10830 (Bankr. N.D. Miss. Mar. 4, 2014) (three prior cases); *In re* Brewer, No. 14-54415 (Bankr. N.D. Ga. Mar. 3, 2014) (three prior cases); *In re* Chantres, No. 14-15043 (Bankr. S.D. Fla. Mar. 3, 2014) (three prior cases).

[207]*See In re* Branch, No. 14-22437 (Bankr. W.D. Tenn. Mar. 7, 2014).

[208]*See Gray.*

[209]*See Katina Brown*; *Epstein*; *Foster*; *Harris*; *Garden.*

Bankruptcy Cases Filed Within Last 8 Years" in a voluntary petition in a bankruptcy case,[210] not all do so.[211] In some cases the clerk searches the dockets under the debtor's name and enters on the docket in the most recent case a notation disclosing the prior filings,[212] but there is no jurisdiction in which the clerk is required to do so and it does not appear that any clerk has a practice of doing so in every case. When a bankruptcy judge explicitly mentions the number of prior filings (more than two) in ruling on the motion, the judge is likely to deny the motion.[213] In most cases, however, the court was probably aware of the prior filings, and concluded that the number of prior filings was irrelevant in determining whether the debtor rebutted the presumption of lack of good faith in the current case. The Bankruptcy Code

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[210]Official Form 1, Voluntary Petition. The form includes space for two prior bankruptcy cases, listing the location where they were filed, the case number and the date filed. If the debtor has more than two prior cases, the debtor is instructed to "attach additional sheet". *Id.* In addition, some local rules require disclosure of all prior bankruptcy cases. *See, e.g.,* Bankruptcy Petition Cover Sheet, required by E.D. Mich. L.B.R. 1002-1(b); Statement of Related Cases, F 1015-2.1, required by C.D. Cal. L.B.R. 1015-2.

[211]*See, e.g., Edwards* (listed two of three); *Derrick Williams* (listed none of three); *In re* Thomas, No. 14-55799 (Bankr. N.D. Ga. Mar. 21, 2014) (*Kelvin Thomas*) (listed one of two); *Gibson* (listed none of three); *Cartwright* (listed two of four); *In re* Foster, No. 14-12020 (Bankr. E.D. Pa. Mar. 19, 2014) (listed two of four); *Beale* (listed one of two); *In re* Swafford, No. 14-01207 (Bankr. M.D. Fla. Mar. 14, 2014) (listed none of two); *In re* Manning; No. 14-08886 (Bankr. N.D. Ill. Mar. 12, 2014) (listed one of two); *In re* Greer, No. 14-10462 (Bankr. N.D. Ind. Mar. 12, 2014) (listed three of four); *In re* Vargas, No. 14-15481 (Bankr. S.D. Fla. Mar. 10, 2014) (listed none of two); *Foreman* (listed three of four); *Shannon* (listed none of three); *Calloway* (listed two of three); *In re* Benjamin, No. 14-02338 (Bankr. M.D. Fla. Mar. 3, 2014) (listed none of two); *Chantres* (listed two of three).

[212]*See, e.g., In re* Shaffer, No. 14-00325 (Bankr. N.D. W. Va. Mar. 28, 2014); *In re* Ziemer, No. 14-10589 (Bankr. C.D. Cal. Mar. 26, 2014); *In re* Pledger, No. 14-01150 (Bankr. N.D. Ala. Mar. 25, 2014); *In re* Williams, No. 14-01130 (Bankr. N.D. Ala. Mar. 24, 2014) (*James Williams*); *In re* Hartsfield, No. 14-11583 (Bankr. E.D. Ark. Mar. 21, 2014); *In re* Hoskins, No. 14-02299 (Bankr. S.D. Ind. Mar. 21, 2014); *In re* Ewing, No. 14-13524 (Bankr. C.D. Cal. Mar. 20, 2014); *In re* Fivecoat, No. 14-41172 (Bankr. N.D. Cal. Mar. 18, 2014); *In re* McLaren, No. 14-01178 (Bankr. M.D. Fla. Mar. 13, 2014); *Greer*; *In re* Foreman, No. 14-13732 (Bankr. D. Md. Mar. 11, 2014); *Vargas*; *In re* Dillon, No. 14-11270 (Bankr. E.D. Ark. Mar. 7, 2014); *In re* Tribble, No. 14-13409 (Bankr. D. Md. Mar. 6, 2014); *In re* Cota, No. 14-12823 (Bankr. C.D. Cal. Mar. 6, 2014); *In re* Catron, No. 14-10880 (Bankr. D. Mass. Mar. 4, 2014).

[213]*See In re* Epstein, No. 14-10269 (Bankr. N.D. Ill. Mar. 21, 2014); *cf. In re* Harris, No.14-41978 (Bankr. E.D. Mo. Mar. 18, 2014) (trustee mentioned number of prior cases in his objection; denial was by docket entry rather than order). This is also true for cases not included in this study, *see, e.g., In re* Castillo, No. 12-15265, 2012 WL 8441319 (Bankr. E.D. Cal. July 26, 2012); *In re* Davey, No. 11-11381 (Bankr. D.N.H. Apr. 8, 2011) (order filed June 30, 2011); *In re* Brown, No. 10-80454, 2010 WL 3491189 (Bankr. S.D. Tex. Sept. 2, 2010); *In re* Massenburg, No. 10-35442 (Bankr. E.D. Va. Aug. 5, 2010) (order filed Aug. 24, 2010); *In re* Nealen, 407 B.R. 194 (Bankr. W.D. Pa. 2009); *In re* Boran, No. 07-42460, 2007 WL 7143412 (Bankr. N.D.Ga. Oct. 30, 2007); *In re* Jones, No. 06-51316, 2006 WL 3371791 (Bankr. M.D.N.C. Nov. 16, 2006). *But see In re* Gatlin, No. 14-00242 (Bankr. E.D.N.C. Jan. 13, 2014) (granting motion of filer with two cases pending in prior year and three cases filed much earlier than the preceding year); *In re* Washington, No. 12-80056, 2012 WL 602182 (Bankr. S.D. Tex. Feb. 23, 2012) (granting motion of debtor who filed five prior cases); *In re* Tripp, No. 11-02319 (Bankr. E.D.N.C. Mar. 25, 2011) (Order Allowing Debtors' Motion pursuant to 11 U.S.C. § 362(c)(4)(B) for Reimposition of the Automatic Stay as to All Creditors filed Apr. 21, 2011) (granting motion of filer with "an additional five cases within the preceding ten year period").

does not limit how many times a debtor may file for relief.[214]

III. IS § 362(C)(4) EFFECTIVE OR NECESSARY?

All of my data leads inescapably to the conclusion that § 362(c)(4) is neither effective nor necessary to accomplish the goals articulated by those who supported its enactment.

This provision is not necessary because, even before the enactment of § 362(c)(4), the Bankruptcy Code contained provisions permitting bankruptcy courts to take action against a debtor who filed for bankruptcy under circumstances that showed a lack of good faith.[215] Most courts concluded that filing a bankruptcy petition in bad faith was "cause" for dismissal of the case under § 1307(b),[216] § 707(a),[217] or § 1112(b)(1).[218] The inclusion of § 362(c)(4) would make sense only if the standard for denying imposition of the automatic stay was different from that for dismissal of the case for cause. But, as discussed above,[219] most courts conclude that the same "totality of the circumstances" test for determining whether the case should be dismissed for cause is applicable to rebutting the presumption under § 362(c)(4).

Indeed, the courts that were presented with § 362(c)(4) motions in the

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[214]An individual is not eligible for bankruptcy relief if that individual was a debtor in a case pending at any time in the preceding 180 days if (1) that prior case was dismissed by the court for willful failure to abide by court orders or to appear before the court in proper prosecution of the case, or (2) the debtor voluntarily dismissed the prior case following the filing of a request for relief from the stay. 11 U.S.C. § 109(g). A debtor may not receive a discharge in a chapter 7 case if the debtor has been granted a discharge in a prior chapter 7 or chapter 11 case commenced within eight years before the current case was filed, 11 U.S.C. § 727(a)(8) or a discharge in a prior chapter 13 or chapter 12 case commenced within six years before the current case was filed except in limited circumstances. 11 U.S.C. § 727(a)(9). The debtor may not receive a discharge in a chapter 13 case if the debtor has received a discharge in a chapter 7, 11 or 12 case filed within four years prior to the filing of the present case, or in a chapter 13 case filed within two years prior to the fling of the present case. 11 U.S.C. § 1328(f). Confirmation of a chapter 11 plan does not discharge a debtor if the debtor would be denied a discharge under § 707(a) if the case were a chapter 7 case. 11 U.S.C. § 1141(3)(C).

[215]*See generally* DeJarnatt, note 190 *supra*, 74 IND. L.J. at 481 (arguing that existing provisions of the Code prior to the enactment of amendments to § 362(c) were sufficient to deal with abusive filers).

[216]*See, e.g., In re* Myers, 491 F.3d 120, 125 (3d Cir. 2007); Leavitt v. Soto (*In re* Leavitt, 171 F.3d 1219, 1224 (9th Cir. 1999); Molitor v. Eidson (*In re* Molitor), 76 F.3d 218, 220 (8th Cir. 1998); Sullivan v. Solimini (*In re* Sullivan), 326 B.R. 204, 211 (1st Cir. BAP 2005).

[217]*See, e.g.*, Piazza v. Neuterra Healthcare Physical Therapy, LLC (*In re* Piazza), 719 F.3d 1253, 1262 (11th Cir. 2013); Perlin v. Hitachi Capital America Corp. (*In re* Perlin), 497 F.3d 364, 374 (3d Cir. 2007); Industrial Ins. Servs. Inc. v. Zick (*In re* Zick), 931 F.2d 1124, 1126-27 (6th Cir. 1991); McDow v. Smith, 295 B.R. 69, 75 (E.D. Va. 2003); *but see* Neary v. Padilla (*In re* Padilla), 222 F.3d 1184, 1191 (9th Cir. 2000); Huckfeldt v. Huckfeldt (*In re* Huckfeldt), 39 F.3d 829, 832 (8th Cir. 1994) (holding bad faith is not cause for dismissal under § 707(a)).

[218]*See, e.g.*, Cedar Shores Resort, Inc. v. Mueller (*In re* Cedar Shore Resort, Inc.), 235 F.3d 375, 379 (8th Cir. 2000); Marsch v. Marsch (*In re* Marsch), 36 F.3d 825, 828 (9th Cir. 1994); Rollex Corp. v. Associated Materials, Inc. (*In re* Superior Siding & Window, Inc.), 14 F.3d 240, 242-43 (4th Cir. 1994); Squires Motel, LLC v. Gance, 426 B.R. 29, 34 (N.D.N.Y. 2010).

[219]*See* part II(A)(1) *supra*.

cases in this study have shown that they are perfectly willing to dismiss or convert these cases under the provisions that predated § 362(c)(4). Of the eleven cases in the study in which the court denied a motion to impose the automatic stay,[220] ten were cases that were not filed under chapter 7,[221] and seven of those cases (70%)[222] were either dismissed for cause,[223] or converted to chapter 7,[224] prior to confirmation of a plan. Of the one hundred forty-one chapter 13 or chapter 11 cases in which the court granted a motion to impose the stay, fifty-seven were dismissed,[225] and two were converted to chapter

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[220]*See In re* Green, No. 14-41306 (Bankr. N.D. Tex. Mar. 28, 2014) (*Lydia Green*); *In re* Ziemer, No. 14-10589 (Bankr. C.D. Cal. Mar. 26, 2014); *In re* Brown, No. 14-10217 (Bankr. N.D. Ill. Mar. 21, 2014) (*Katina Brown*); *In re* Epstein, No. 14-10269 (Bankr. N.D. Ill. Mar. 21, 2014); *In re* Foster, No. 14-12020 (Bankr. E.D. Pa. Mar. 19, 2014); *In re* Harris, No.14-41978 (Bankr. E.D. Mo. Mar. 18, 2014); *In re* Garden, No. 14-02057 (Bankr. S.D. Ind. Mar. 18, 2014); *In re* Payne, No. 14-10620 (Bankr. W.D. Tenn. Mar. 13, 2014) (*Darsheka Payne*); *In re* Cota, No. 14-12823 (Bankr. C.D. Cal. Mar. 6, 2014); *In re* Allen, No. 14-02484 (Bankr. M.D. Fla. Mar. 6, 2014); *In re* Benjamin, No. 14-02338 (Bankr. M.D. Fla. Mar. 3, 2014) .

[221]*Allen* was filed as a chapter 7 case, and debtor obtained a discharge.

[222]The three cases that were not subsequently dismissed or converted were *Harris*; *Darsheka Payne*; and *Cota*. Debtor obtained confirmation of a chapter 13 plan in those cases.

[223]*See Lydia Green; Ziemer; Katina Brown; Epstein; Foster; Benjamin.*

[224]*See Garden. Cf. Allen* (case was filed as a chapter 7 case). Debtor has not yet received a discharge in *Garden*.

[225]*See In re* Scullark, No. 14-23392 (Bankr. W.D. Tenn. Mar. 31, 2014); *In re* Farris, No. 14-56451 (Bankr. N.D. Ga. Mar. 31, 2014); *In re* Lawrence, No. 14-56443 (Bankr. N.D. Ga. Mar. 31, 2014); *In re* Phillips, No. 14-23398 (Bankr. W.D. Tenn. Mar. 31, 2014); *In re* Hammad, No. 14-23414 (Bankr. W.D. Tenn. Mar. 31, 2014); *In re* Patterson, No. 14-56594 (Bankr. N.D. Ga. Mar. 31, 2014) (*Delana Patterson*); *In re* Egenolf, No. 14-12528 (Bankr. E.D. Pa. Mar. 31, 2014); *In re* Cox, No. 14-01757 (Bankr. E.D.N.C. Mar. 28, 2014); *In re* Dyson, No. 14-23296 (Bankr. W.D. Tenn. Mar. 27, 2014); *In re* Moate, No. 14-10410 (Bankr. M.D. Ga. Mar. 27, 2014); *In re* Horne, No. 14-23266 (Bankr. W.D. Tenn. Mar. 27, 2014); *In re* Robinson, No. 14-23280 (Bankr. W.D. Tenn. Mar. 27, 2014); *In re* Anderson, No. 14-23198 (Bankr. W.D. Tenn. Mar. 26, 2014) (*Toni Anderson*); *In re* Palmer, No. 14-10598 (Bankr. D.N.H. Mar. 26, 2014); *In re* Watson Cooper, No. 14-23188 (Bankr. W.D. Tenn. Mar. 26, 2014); *In re* Broome, No. 14-23090 (Bankr. W.D. Tenn. Mar. 24, 2014); *In re* Good, No. 14-30957 (Bankr. S.D. Ohio Mar. 24, 2014); *In re* Smith, No. 14-23121 (Bankr. W.D. Tenn. Mar. 24, 2014) (*Akitress Smith*); *In re* Baker, No. 14-23118 (Bankr. W.D. Tenn. Mar. 24, 2014); *In re* Demesma, No. 14-23120 (Bankr. W.D. Tenn. Mar. 24, 2014); *In re* Seaborn, No. 14-55914 (Bankr. N.D. Ga. Mar. 24, 2014); *In re* Hartsfield, No. 14-11583 (Bankr. E.D. Ark. Mar. 21, 2014); *In re* Bailey, No. 14-22883 (Bankr. W.D. Tenn. Mar. 18, 2014); *In re* Gibson, No. 14-22995 (Bankr. W.D. Tenn. Mar. 20, 2014); *In re* Davis, No. 14-23001 (Bankr. W.D. Tenn. Mar. 20, 2014) (*Dorothy Davis*); *In re* Pirtle, No. 14-22970 (Bankr. W.D. Tenn. Mar. 20, 2014); *In re* Scales, No. 14-22910 (Bankr. W.D. Tenn. Mar. 19, 2014); *In re* Cartwright, No. 14-44541 (Bankr. E.D. Mich. Mar. 19, 2014); *In re* Thomas, No. 14-50669 (Bankr, M.D. Ga. Mar. 19, 2014) (*Willie Thomas*); *In re* Vickers, No. 14-09794 (Bankr. N.D. Ill. Mar. 18, 2014); *In re* Kimbro, No. 14-22864 (Bankr. W.D. Tenn. Mar. 18, 2014); *In re* Worrell, No. 14-09428 (Bankr. N.D. Ill. Mar. 17, 2014); *In re* Hardy, No. 14-22808 (Bankr. W.D. Tenn. Mar. 17, 2014); *In re* Davis, No. 14-22767 (Bankr. W.D. Tenn. Mar. 14, 2014) (*Sandra Davis*); *In re* Jefferson, No. 14-22707 (Bankr. W.D. Tenn. Mar. 13, 2014); *In re* Peterson, No. 14-30779 (Bankr. S.D. Ohio Mar. 13, 2014); *In re* Hill, No. 14-22624 (Bankr. W.D. Tenn. Mar. 12, 2014) (*Shondreaka Hill*); *In re* Greer, No. 14-10462 (Bankr. N.D. Ind. Mar. 12, 2014); *In re* Ivy, No. 14-22645 (Bankr. W.D. Tenn. Mar. 12, 2014); *In re* Jackson, No. 14-22638 (Bankr. W.D. Tenn. Mar. 12, 2014); *In re* Thompson, No. 14-22442 (Bankr. E.D. Cal. Mar. 11, 2014); *In re* Saulsberry, No. 14-22565 (Bankr. W.D. Tenn. Mar. 11, 2014); *In re* McNeill, No. 14-01389 (Bankr. E.D.N.C. Mar. 10, 2014); *In re* Hall, No.14-10280 (Bankr. W.D. Pa. Mar. 10, 2014); *In re* Powell; No. 14-08488 (Bankr. N.D. Ill. Mar. 10, 2014); *In re* Shannon, No. 14-41695

7,[226] prior to confirmation of a plan, representing 42% of those cases. Of the remaining eighty-four cases in which the court granted a motion to impose a stay, the court confirmed a plan in seventy-six cases (54% of the total pool). However, eight of those cases were subsequently dismissed.[227] (As of June 12, 2015, no decision on confirmation had yet been made in the five remaining cases.[228]) In six cases the court granted the motion to impose the stay while a motion to dismiss was pending.[229] In other cases, the case was dismissed so quickly that the court did not render a decision on the pending motion.[230] This data demonstrates that a large proportion of cases in which courts grant § 362(c)(4) motions, and an even higher proportion of those cases in which the courts deny such motions, are destined for dismissal or conversion, within a very short period of time, regardless of whether relief is granted under the new provision.

Section 362(c)(4) is also ineffective to discourage serial filings. As dis-

(Bankr. E.D. Mo. Mar. 10, 2014); *In re* Johnson, No. 14-22489 (Bankr. W.D. Tenn. Mar. 7, 2014); *In re* Brunson, No. 14-22467 (Bankr. W.D. Tenn. Mar. 7, 2014); *In re* Branch, No. 14-22437 (Bankr. W.D. Tenn. Mar. 7, 2014); *In re* Penirian, No. 14-43699 (Bankr. E.D. Mich. Mar. 7, 2014); *In re* Hardge, No. 14-22471 (Bankr. W.D. Tenn. Mar. 7, 2014); *In re* Tribble, No. 14-13409 (Bankr. D. Md. Mar. 6, 2014); *In re* Ayers, No. 14-22380 (Bankr. W.D. Tenn. Mar. 6, 2014); *In re* Grandberry, No. 14-22357 (Bankr. W.D. Tenn. Mar. 5, 2014); *In re* Newton, No. 14-10830 (Bankr. N.D. Miss. Mar. 4, 2014). *in re* Chantres, No. 14-15043 (Bankr. S.D. Fla. (Mar. 3, 2014).

[226]*See In re* Shaffer, No. 14-00325 (Bankr. N.D.W.Va. Mar. 28, 2014); *In re* Green, No. 14-23283 (Bankr. W.D. Tenn. Mar. 27, 2014) (*Samantha Green*). The debtors have not yet received a discharge. A motion to convert is pending in *In re* Natividad, No. 14-51333 (Bankr. N.D. Cal. Mar. 28, 2014).

[227]*In re* Anderson, No. 14-23381 (Bankr. W.D. Tenn. Mar. 31, 2014) (*April Anderson*); *In re* Patterson, No. 14-23111 (Bankr. W.D. Tenn. Mar. 24, 2014) (*Derrick Patterson*); *In re* Smith, No. 14-23125 (Bankr. W.D. Tenn. Mar. 24, 2014) (*Dwight Smith*); *In re* Bynum, No. 14-10688 (Bankr. W.D. Tenn. Mar. 21, 2014); *In re* Freeman, No. 14-11189 (Bankr. E.D. Tenn. Mar. 20, 2014); *In re* Swafford, No. 14-01207 (Bankr. M.D. Fla. Mar. 14, 2014); *In re* Jones, No. 14-22632 (Bankr. W.D. Tenn. Mar. 12, 2014) (*Kimberly Jones*); *In re* Williams, No. 14-00980 (Bankr. M.D. Fla. Mar. 2, 2014) (*Deborah Williams*).

[228]*See In re* Natividad, No. 14-51333 (Bankr. N.D. Cal. Mar. 28, 2014); *In re* Shaffer, No. 14-00325 (Bankr. N.D. W. Va. Mar. 28, 2014); *In re* Smoke, No. 14-51981 (Bankr. S.D. Ohio Mar. 26, 2014); *In re* Dixon, No. 14-01694 (Bankr. E.D.N.C. Mar. 25, 2014); *In re* Woods, No. 14-23093 (Bankr. W.D. Tenn. Mar. 24, 2014); *In re* Hoskins, No. 14-02299 (Bankr. S.D. Ind. Mar. 21, 2014); *In re* McLaren, No. 14-01178 (Bankr. M.D. Fla. Mar. 13, 2014); *In re* Hensley, No. 14-40729 (Bankr. W.D. Mo. Mar. 11, 2014); *In re* Catron, No. 14-10880 (Bankr. D. Mass. Mar. 4, 2014); *In re* Chantres, No. 14-15043 (Bankr. S.D. Fla. Mar. 3, 2014).

[229]*In re* Williams, No. 14-01130 (Bankr. N.D. Ala. Mar. 24, 2014) (*James Williams*); *Robinson; In re* Payne, No. 14-70476 (Bankr. N.D. Ala. Mar. 20, 2014) (*Bruce Payne*); *In re* Peterson, No. 14-30779 (Bankr. S.D. Ohio Mar. 13, 2014); *In re* Golden, No. 14-54566 (Bankr. N.D. Ga. Mar. 5, 2014); *Broome.* Three of those cases, *James Williams*, *Bruce Payne* and *Golden*, continued to confirmation of a plan. The other three were dismissed.

[230]*See, e.g., In re* McCann, No. 14-23226 (Bankr. W.D. Tenn. Mar. 26, 2014); *In re* Sykes, No. 14-23084 (Bankr. W.D. Tenn. Mar. 24, 2014); *In re* McKinney, No. 14-22957 (Bankr. W.D. Tenn. Mar. 19, 2014); *In re* Ballesteros, No. 14-15033 (Bankr. C.D. Cal. Mar. 17, 2014); *In re* Foster, No. 14-22716 (Bankr. W.D. Tenn. Mar. 14, 2014); *In re* Armstrong, No. 14-22620 (Bankr. W.D. Tenn. Mar. 12, 2014); *In re* Earles, No. 14-22659 (Bankr. W.D. Tenn. Mar. 12, 2014); *In re* Nelson, No. 14-54839 (Bankr. N.D. Ga. Mar. 7, 2014). *Cf. In re* Edmondson, No. 14-13616 (Bankr. C.D. Cal. Mar. 21, 2014) (court granted motion on an interim basis and then dismissed the case before a final decision on the motion).

cussed above,[231] the vast majority of debtors in the study who filed § 362(c)(4) motions had filed more than two prior bankruptcy cases, and often many more than two. At least twenty-two of the debtors whose cases were filed during the month of the study and were dismissed (35%) filed yet another case before the end of the year, seventeen of them in the Western District of Tennessee.[232] One debtor in the study filed two subsequent cases, one under chapter 13 and then one under chapter 7.[233] The debtors in the twenty new chapter 13 cases[234] have all filed yet another motion to impose the stay and the bankruptcy court has granted the motion in sixteen of them,[235] in one case three days after the case was dismissed.[236] Of those sixteen cases, ten have already been dismissed again.[237] Two of the new cases were dismissed so quickly that the court could not rule on the motion.[238] (In one case the debtor withdrew the motion[239] and in one the docket does not show an order with respect to the motion.[240])

And yet serial debtors continue to file motions to impose the stay, creditors consistently fail to object to the motions,[241] courts routinely grant these

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[231]*See* part II(C)(8) *supra*.

[232]*See In re* Vickers, No. 14-37141 (Bankr. N.D. Ill. Oct. 14, 2014) (Vickers II); *In re* Kimberly N. Jones, No. 14-30218 (Bankr. W.D. Tenn. Oct. 2, 2014) (Jones II); *In re* Derrick D. Patterson, No. 14-30018 (Bankr. W.D. Tenn. Sept. 26, 2014) (Patterson II); *In re* Good, No. 14-33314 (Bankr. S.D. Ohio Sept. 18, 2014) (Good II); *In re* Powell, No. 14-33657 (Bankr. N.D. Ill. Sept. 16, 2014) (Powell II); *In re* Jefferson, No. 14-29428 (Bankr. W.D. Tenn. Sept. 10, 2014) (Jefferson II); *In re* Saulsberry, No. 14-29102 (Bankr. W.D. Tenn. Sept. 3, 2014) (Saulsberry II); *In re* Toni Sherrie Anderson, No. 14-29137 (Bankr. W.D. Tenn. Sept. 3, 2014) (Toni Anderson II); *In re* Cox, No. 14-04873 (Bankr E.D.N.C. Aug. 25, 2014) (Cox II); *In re* Broome, No. 14-28491 (Bankr. W.D. Tenn. Aug. 18, 2014) Broome II); *In re* Ayers, No. 14-28017 (Bankr. W.D. Tenn. Aug. 5, 2014) (Ayers II); *In re* Gibson, No. 14-28031 (Bankr. W.D. Tenn. Aug. 5, 2014) (Gibson II); *In re* Hardy, No. 14-28011 (Bankr. W.D. Tenn. Aug. 5, 2014) (Hardy II); *In re* Ivy, No. 14-27945 (Bankr. W.D. Tenn. Aug. 4, 2014) (Ivy II); *In re* Scullark, No. 14-27754 (Bankr. W.D. Tenn. July 30, 2014) (Scullark II); *In re* Peterson, No. 14-32515 (Bankr. S.D. Ohio July 15, 2014) (Peterson II); *In re* Brunson, No. 14-26932 (Bankr. W.D. Tenn. July 8, 2014) (Brunson II); *In re* Hardge, No. 14-26919 (Bankr. W.D. Tenn. July 8, 2014) (Hardge II); *In re* Robinson, No. 14-26870 (Bankr. W.D. Tenn. July 7, 2014) (Robinson II); *In re* Dorothy M. Davis, No. 14-26297 (Bankr. W.D. Tenn. June 19, 2014) (Dorothy Davis II); *In re* Grandberry, No. 14-25605 (Bankr. W.D. Tenn. June 2, 2014) (Grandberry II); *In re* Branch, No. 14-25245 (Bankr. W.D. Tenn. May 20, 2014) (Branch II).

[233]*In re* Dorothy Marie Davis, No. 14-28542 (Bankr. W.D. Tenn. Aug. 19, 2014); *Dorothy Davis II*.

[234]Two of the new cases were filed under chapter 7 and the debtor did not file a motion under § 362(c)(4). *See Powell II; Cox II*. One of those has already been dismissed. *See Cox II*.

[235]*Vickers II; Good II; Jefferson II; Saulsberry II; Toni Anderson II; Broome II; Ayers II; Gibson II; Hardy II; Ivy II; Scullark II; Brunson II; Hardge II; Dorothy Davis II; Grandberry II; Branch II*.

[236]*Dorothy Davis II*.

[237]Jefferson II; Saulsberry II; Broome II; Gibson II; Hardy II; Ivy II; Hardge II; Dorothy Davis II; Grandberry II; Brach II. Three of those debtors have since filed yet another case. *See In re* Broome, No. 15-24472 (Bankr. W.D. Tenn. May 18, 2015); *In re* Branch, No. 14-31680 (Bankr. W.D. Tenn. Nov 14, 2014); *In re* Davis, No. 14-28542 (Bankr. W.D. Tenn. Aug 19, 2014).

[238]*Peterson II; Robinson II*.

[239]*Jones II*.

[240]*Patterson II*.

[241]There are several reasons why creditors may not object to the motions. The first is financial. They

motions because they are not opposed, and the cases typically proceed to yet another dismissal. Meanwhile there is lawyer time and debtor time and court time devoted to this meaningless judicial dance focused on imposition of the stay. Section 362(c)(4) has no benefit and significant costs. Its enactment was a mistake.

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may not wish to incur the expense of retaining counsel to make an objection. Second, the creditors may wish to give the debtor a chance to produce a confirmable plan that may pay them more in the long run than immediate relief from the stay. Third, the creditors may recognize that they are unlikely to be harmed by imposition of the stay because the case is likely to be dismissed within a relatively short time, and if that does not happen, the creditors can always file a motion for relief from the stay in the future.

APPENDIX 1

B-4001-1 (rev 10/1/12)

UNITED STATES BANKRUPTCY COURT
Southern District Of Indiana

In re:	)	
	)	
[Name of Debtor(s)],	)	Case No. (xx-xxxxx)
Debtor(s).	)	

MOTION TO (EXTEND OR IMPOSE) THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. §362(c)(3) [or (4)]

The debtor(s) respectfully request(s) that this Court (extend or impose) the automatic stay, pursuant to 11 U.S.C. §362(c)(3) [or (4)], and in support thereof state(s):

1. The debtor(s) filed this bankruptcy petition on (date).

2. The debtor(s) previously filed bankruptcy, (case number), under Chapter (#) on (date) and that case was dismissed on (date).

   (If more than one prior filing in the past year) Debtor(s) also previously filed another bankruptcy case, (case number), on (date), and that case was dismissed on (date).

3. The debtor(s) had no other pending bankruptcy cases in the preceding one-year period.

4. The debtor(s) did not have any prior case(s) dismissed in the past year for any of the following reasons:

   - (failure to file or amend other required documents without substantial excuse),
   - (failure to provide adequate protection as ordered by the Court), or
   - (failure to perform the terms of a plan confirmed by the Court).

5. There has been a substantial change in the financial or personal affairs of the debtor(s) since the dismissal of the last case, and the debtor(s) believe(s) that this case will:

   - (If a Chapter 7) be concluded with a discharge; or
   - (If a Chapter 11 or 13) result in a confirmed plan that will be fully performed.

(Those changes are described in the attached affidavit.)

6. (If applicable) At the time of the dismissal of the prior case, one or more creditors had filed a Motion for Relief from Stay and such motion(s) (was/were) pending or had been resolved by terminating, conditioning, or limiting the stay as to actions by such creditor(s):

[List creditor(s) and statuses of any motions for relief here.]

7. (If seeking to extend the stay) The automatic stay will terminate on (date) without further order of this Court.

8. [Discuss contact with creditor(s), if any, prior to filing the motion.]

WHEREFORE, the debtor(s) pray that this Court grant the Motion to (Extend or Impose) the Automatic Stay as to all creditors (or identify creditors specifically), after notice and opportunity to be heard, and for all other proper relief.

/s/ Counsel for Debtor(s)
Counsel for Debtor(s)
(required signature block)

CERTIFICATE OF SERVICE

(See "Certificate of Service - Generic" on the Court's website under "Forms/Local/Motions & Related Notices-Certificates of Service-Orders/Certificates of Service/Generic.")

[Note: Attach Affidavit in Support of Motion to (Extend or Impose) Automatic Stay.]

B-4001-1 (rev 10/1/12)

UNITED STATES BANKRUPTCY COURT
Southern District Of Indiana

In re:	)	
	)	
[Name of Debtor(s)],	)	Case No. (xx-xxxxx)
Debtor(s).	)	

AFFIDAVIT IN SUPPORT OF MOTION TO (EXTEND OR IMPOSE) THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. §362(c)(3) [or (4)]

The debtor(s), in support of the Motion to (Extend or Impose) the Automatic Stay, state as follows:

1. (I/We) filed this bankruptcy petition on (date).

2. (I/We) previously filed bankruptcy, (case number), under Chapter (#) on (date) and that case was dismissed on (date).

   (If more than one prior filing in the past year) (I/We) also previously filed another bankruptcy case, (case number), on (date), and that case was dismissed on (date).

3. (I/We) have had no other pending bankruptcy cases in the preceding one-year period.

4. (I/We) have not had any prior case(s) dismissed in the past year for any of the following reasons:

   - (failure to file or amend other required documents without substantial excuse),
   - (failure to provide adequate protection as ordered by the Court), or
   - (failure to perform the terms of a plan confirmed by the Court).

5. (I/We) have had a substantial change in (my/our) financial or personal affairs since the dismissal of the last case, and (I/we) believe that this case will:

   - (If a Chapter 7) be concluded with a discharge; or

- (If a Chapter 11 or 13) result in a confirmed plan that will be fully performed.

Those changes are as follows:

(Describe in detail.)

(I/We) affirm under the penalty of perjury that the foregoing is true and correct to the best of (my/our) information and belief.

_____
Signature of Debtor

_____
Signature of Joint Debtor

APPENDIX 2

Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address ☐ *Individual appearing without attorney* ☐ *Attorney for:*	FOR COURT USE ONLY
UNITED STATES BANKRUPTCY COURT **CENTRAL DISTRICT OF CALIFORNIA - **SELECT DIVISION****	
In re: Debtor(s).	CASE NO.: CHAPTER: SELECT CHAPTER **NOTICE OF MOTION AND MOTION IN INDIVIDUAL CASE FOR ORDER IMPOSING A STAY OR CONTINUING THE AUTOMATIC STAY AS THE COURT DEEMS APPROPRIATE** **(with supporting declarations)** DATE: TIME: COURTROOM:

Movant: _____

1. NOTICE IS HEREBY GIVEN to _____ (Secured Creditor/Lessor),trustee (if any), and affected creditors (Responding Parties), their attorneys (if any), and other interested parties that on the above date and time and in the stated courtroom, Movant in the above-captioned matter will move this court for an order imposing a stay or continuing the automatic stay as to certain creditors and actions described in the motion on the grounds set forth in the attached motion.

2. **Hearing Location**:

☐ 255 East Temple Street, Los Angeles, CA 90012
☐ 21041 Burbank Boulevard, Woodland Hills, CA 91367
☐ 3420 Twelfth Street, Riverside, CA 92501
☐ 411 West Fourth Street, Santa Ana, CA 92701
☐ 1415 State Street, Santa Barbara, CA 93101

3. ☐ a. This motion is being heard on REGULAR NOTICE pursuant to LBR 9013-1. If you wish to oppose this motion, you must file a written response to this motion with the court and serve a copy of it upon the Movant's

attorney (or upon Movant, if the motion was filed by an unrepresented individual) at the address set forth above no less than 14 days before the above hearing and appear at the hearing of this motion.

☐ b. This motion is being heard on SHORTENED NOTICE. If you wish to oppose this motion, you must appear at the hearing. Any written response or evidence must be filed and served: ☐ at the hearing ☐ at least _____ days before the hearing.

(1) ☐ An Application for Order Setting Hearing on Shortened Notice was not required (according to the calendaring procedures of the assigned judge).

(2) ☐ An Application for Order Setting Hearing on Shortened Notice was filed per LBR 9075-1(b) and was granted by the court and such motion and order has been or is being served upon appropriate creditor(s) and trustee, if any.

(3) ☐ An Application for Order Setting Hearing on Shortened Notice has been filed and remains pending. Once the court has ruled on that motion, you will be served with another notice or an order that will specify the date, time and place of the hearing on the attached motion and the deadline for filing and serving a written opposition to the motion.

4. You may contact the Clerk's Office or use the court's website (www.cacb.uscourts.gov) to obtain a copy of an approved court form for use in preparing your response (optional court form F 4001-1.RESPONSE), or you may prepare your response using the format required by LBR 9004-1 and the Court Manual.

5. If you fail to file a written response to the motion or fail to appear at the hearing, the court may treat such failure as a waiver of your right to oppose the Motion and may grant the requested relief.

Date: _____

_____
Printed name of law firm (if applicable)

_____
Printed name of individual Movant or attorney for Movant

_____
Signature of individual Movant or attorney for Movant

MOTION FOR ORDER IMPOSING A STAY OR CONTINUING THE AUTOMATIC STAY AS THE COURT DEEMS APPROPRIATE

Movant: _____

1. **The Property or Debt at Issue:**
   a. ☐ Movant moves for an order imposing a stay with respect to the following property (Property):
   ☐ Vehicle (*describe year, manufacturer, type, and model*):
   Vehicle Identification Number:
   Location of vehicle (*if known*):

   ☐ Equipment (*describe manufacturer, type, and characteristics*):
   Serial number(s):

   Location (*if known*):

   ☐ Other Personal Property (*describe type, identifying information, and location*):

   ☐ Real Property
   Street Address:
   Apt./Suite No.:
   City, State, Zip Code:
   Legal description or document recording number (include county of recording):

   ☐ See attached continuation page

   The following creditor(s) have a security interest or unexpired lease in this Property (give full name and address of creditor) _____
   _____
   to secure the sum of approximately $ _____ now owed. (Secured Creditor/Lessor). Additional creditors who are the subject of this motion, and their respective claims, addresses and collateral, are described on the continuation sheets attached. (*Attach additional sheets as necessary*)

   b. ☐ Movant moves for an order **imposing a stay** with respect to *any and all actions* against the Debtor and the estate taken concerning the debt/lease owed to the *Secured Creditors/Lessors* as described in this motion; and/or

   c. ☐ Movant moves for an order **imposing a stay** as to *all creditors*.

   d. ☐ Movant moves for an order **continuing the automatic stay** with respect to any and all actions against the Debtor and the estate taken concerning the debt/lease owed to the *Secured Creditor/Lessor*; and/or

   e. ☐ Movant moves for an order continuing the **automatic stay** as to *all creditors*.

2. **Case History:**
   a. ☐ A voluntary ☐ An involuntary petition concerning an individual[s] under chapter ☐ 7 ☐ 11 ☐ 12 ☐ 13 was filed concerning the present case on (*specify date*):

   b. ☐ An Order of Conversion to chapter ☐ 7 ☐ 11 ☐ 12 ☐ 13 was entered on (*specify date*):

   c. ☐ Plan was confirmed on (*specify date*):

d. Other bankruptcy cases filed by or against this Debtor have been pending within the past year preceding the petition date in this case. These cases and the reasons for dismissal are:

1. Case name:
Case number: Chapter:
Date filed: Date dismissed:
Relief from stay re this Property ☐ was ☐ was not granted
Reason for dismissal:

2. Case name:
Case number: Chapter:
Date filed: Date dismissed:
Relief from stay re this Property ☐ was ☐ was not granted
Reason for dismissal:

☐ See attached continuation page

e. ☐ As of the date of this motion the Debtor ☐ has ☐ has not filed a statement of intentions regarding this Property as required under 11 U.S.C. § 521(a)(2). If a statement of intentions has been filed, Debtor ☐ has ☐ has not performed as promised therein.

f. ☐ The first date set for the meeting of creditors under 11 U.S.C. § 341(a) is/was _____ and the court ☐ has ☐ has not fixed a later date for performance by Debtor of the obligations described at 11 U.S.C. § 521(a)(2). The extended date (*if applicable*) is _____.

g. ☐ In a previous case(s), as of the date of dismissal there was:
☐ an action by the Secured Creditor/Lessor under 11 U.S.C.§ 362(d) still pending or
☐ such action had been resolved by an order terminating, conditioning or limiting the stay as to such creditor.

3. The equity in the property is calculated as follows:

a) 1. Property description/value: _____ $ _____
2. Creditor/Lien amount: _____ $ _____
3. Creditor/Lien amount: _____ $ _____
4. Creditor/Lien amount: _____ $ _____
5. Creditor/Lien amount: _____ $ _____
6. Total Liens $ _____
7. Debtor's Homestead Exemption $ _____
8. Equity in the Property (subtract lines 6 and 7 from line 1 and enter here) $ _____

b) 1. Property description/value: _____ $ _____
2. Creditor/Lien amount: _____ $ _____
3. Creditor/Lien amount: _____ $ _____
4. Creditor/Lien amount: _____ $ _____
5. Creditor/Lien amount: _____ $ _____
6. Total Liens $ _____
7. Debtor's Homestead Exemption $ _____
8. Equity in the Property (subtract lines 6 and 7 from line 1 and enter here) $ _____

☐ See attached continuation page

4. **Grounds for Continuing The Stay:**

a. ☐ Pursuant to 11 U.S.C. § 362(c)(3) the stay should be continued on the following grounds:

1. ☐ The present case was filed in good faith notwithstanding that a prior single or joint case filed by or against the individual Debtor which was pending within the year preceding the petition date was dismissed, because:

A. ☐ The prior dismissal was of a case not refiled under chapter 7 after dismissal under 11 U.S.C. § 707(b);
B. ☐ Good faith is shown because

_____
_____
_____

☐ See attached continuation page

2. ☐ The Property is of consequential value or benefit to the estate because:

A. ☐ The fair market value of the Property is greater than all liens on the Property as shown above in paragraph 3 and as supported by declarations attached (*describe separately as to each property*);

B. ☐ The Property is necessary to a reorganization for the following reasons:

_____
_____
_____

☐ See attached continuation page

C. ☐ The Secured Creditor/Lessor's interest can be adequately protected by (describe Movant's proposal for adequate protection):

_____
_____
_____

☐ See attached continuation page

3. ☐ The presumption of a bad faith filing under 11 U.S.C. § 362(c)(3)(C)(i) is overcome in this case as to *all creditors* because:

A. ☐ The prior dismissal was pursuant to the creation of a debt repayment plan. 11 U.S.C.§ 362(i);
B. ☐ Debtor's failure to file or amend the petition or other documents as required by the court or Title 11 of the United States Code and resulting in dismissal was excusable because such failure was caused by the negligence of Debtor's attorney;
C. ☐ Debtor's failure to file or amend the petition or other documents as required by the court or Title 11 of the United States Code and resulting dismissal was excusable because:

_____
_____
_____

☐ See attached continuation page

D. ☐ Debtor's failure to provide adequate protection as ordered by the court in the prior case is excusable because:

_____

_____

_____

☐ See attached continuation page

E. ☐ Debtor's failure to perform the terms of a confirmed plan in the prior case is excusable because:

_____

_____

_____

☐ See attached continuation page

F. ☐ There has been a substantial change in the personal or financial affairs of the Debtor since the dismissal of the prior case(s) as follows:

_____

_____

_____

From this, the court may conclude that this case, if a case under chapter 7, will result in a discharge or, if under chapter 11 or 13, in a confirmed plan that will be fully performed.

☐ See attached continuation page

G. ☐ For the following additional reasons:

_____

_____

_____

☐ See attached continuation page

4. ☐ The presumption of a bad faith filing as to the Secured Creditor/Lessor under 11 U.S.C.§ 362(c)(3)(C)(ii) is overcome in this case because

_____

_____

_____

☐ See attached continuation page

5. **Grounds for Imposing a Stay:**

a. ☐ Pursuant to 11 U.S.C. § 362(c)(4) this case was filed in good faith and grounds exist for imposing a stay as follows:

1. ☐ The Property is of consequential value or benefit to the estate because the fair market value of the Property is greater than all liens on the property as shown above in paragraph 3 and as supported by declarations attached.

2. ☐ The Property is of consequential value or benefit to the estate because the Property is necessary to a reorganization for the following reasons:

_____

_____

_____

☐ See attached continuation page

3. ☐ The Secured Creditor/Lessor's interest can be adequately protected by (*describe Movant's proposal for adequate protection*):

_____

_____

_____

☐ See attached continuation page

b. ☐ The present case was filed in good faith notwithstanding that the prior single or joint cases filed by or against the individual Debtor pending within the year preceding the petition date were dismissed, because:

1. ☐ The prior dismissal was of a case not refiled under chapter 7 after dismissal under 11 U.S.C. § 707(b);

2. ☐ Good faith is shown because:

_____

_____

_____

☐ See attached continuation page

c. ☐ The presumption of a bad faith filing under 11 U.S.C.§ 362(c)(4)(D)(i) is overcome in this case as to *all creditors* because:

1. ☐ Debtor had a substantial excuse in failing to file or amend the petition or other documents as required by the court or Title 11 of the United States Code, resulting in the prior dismissal(s) as follows:

_____

_____

_____

☐ See attached continuation page

2. ☐ Debtor's failure to file or amend the petition or other documents as required by the court or Title 11 of the United States Code and resulting dismissal was as the result of the negligence of Debtor's attorney;

3. ☐ Debtor's failure to provide adequate protection as ordered by the court in the prior case is excusable because:

_____

_____

_____

☐ See attached continuation page

4. ☐ Debtor's failure to perform the terms of a confirmed plan in the prior case is excusable because:

_____

_____

_____

☐ See attached continuation page

5. ☐ There has been a substantial change in the personal or financial affairs of the Debtor since the dismissal of the prior case(s) as follows:

_____

_____

_____

(from which the court may conclude that this case, if a case under chapter 7, may be concluded with a discharge or, if under chapter 11 or 13, with a confirmed plan that will be fully performed).

☐ See attached continuation page

6. ☐ For the following additional reasons:

_____

_____

_____

_____

_____

☐ See attached continuation page

7. ☐ The presumption of bad faith as to the Secured Creditor/Lessor under 11 U.S.C. § 362(c)(4)(D)(ii) is overcome in this case because

_____

_____

_____

☐ See attached continuation page(s)

6. **Evidence in Support of Motion: (*Important Note: Declaration(s) in support of the Motion MUST be attached hereto.*)**

a. ☐ Movant submits the attached Declaration(s) on the court's approved forms (if applicable) to provide evidence in support of this Motion pursuant to LBRs.
b. ☐ Other Declaration(s) are also attached in support of this Motion.
c. ☐ Movant requests that the court consider as admissions the statements made by Debtor under penalty of perjury concerning Movant's claims and the Property set forth in Debtor's Schedules. Authenticated copies of the relevant portions of the Schedules are attached as Exhibit _____
d. ☐ Other evidence (*specify*):

7. ☐ **An optional Memorandum of Points and Authorities is attached to this Motion.**

WHEREFORE, Movant prays that this court issue an Order Imposing a Stay and granting the following (*specify forms of relief requested*):

1. ☐ That the Automatic Stay be continued in effect as to all creditors until further order of the court.

2. ☐ That the Automatic Stay be continued in effect as to the Secured Creditor/Lessor with respect to the Property until further order of the court.

3. ☐ That the Automatic Stay be continued in effect as to the Secured Creditor/Lessor with respect to actions to collect the debt owed to the Secured Creditor/Lessor until further order of the court.

4. ☐ That a Stay be imposed as to all creditors until further order of the court.

5. ☐ That a Stay be imposed as to the Secured Creditor/Lessor with respect to the Property until further order of the court.

6. ☐ That a Stay be imposed as to the Secured Creditor/Lessor with respect to actions to collect the debt owed to the Secured Creditor/Lessor until further order of the court.

7. ☐ For adequate protection of the Secured Creditor/Lessor by (*specify proposed adequate protection*)

_____

_____

_____

8. ☐ For other relief requested, see attached continuation page.

Date: _____

Respectfully submitted,

_____
Movant name

_____
Firm name of attorney for Movant (if applicable)

_____
Signature

_____
Printed name of individual Movant or Attorney for Movant

DECLARATION OF MOVANT

I, _____, am the _____ of Movant. I have read the foregoing motion consisting of _____ pages, and the attached materials incorporated therein by reference. If reference is made to balances owing, my testimony regarding same is based upon the business records of Movant kept in the ordinary course of business of Movant by persons whose responsibility it is to accurately and faithfully record information as to the Debtor's account on or near the date of events recorded. I am one of the custodians of such business records.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Date	*Printed name of declarant*	*Signature*

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

A true and correct copy of the foregoing document entitled: **NOTICE OF MOTION AND MOTION IN INDIVIDUAL CASE FOR ORDER IMPOSING A STAY OR CONTINUING THE AUTOMATIC STAY AS THE COURT DEEMS APPROPRIATE (with supporting declarations)** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**: Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) _____, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☐ Service information continued on attached page

2. **SERVED BY UNITED STATES MAIL**:
On (*date*) _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

3. **SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Date	*Printed Name*	*Signature*

APPENDIX 3

PROCEDURES RE MOTIONS TO EXTEND/IMPOSE 11 USC §362 AUTOMATIC STAY PURSUANT TO §362(c) or §362(n)

1. Timing re Motions to Extend/Impose Automatic Stay Pursuant to §362(c) or §362(n):

   a. Motion to Extend. A motion to extend the automatic stay pursuant to §362(c)(3) must be filed within seven (7) days after the order for relief.

   b. Motion to Impose. A motion to impose the stay pursuant to §362(c)(4) or §362(n)(2) must be filed within thirty (30) days after the order for relief.

2. Content of Motion Filed Pursuant to §362(c). The motion shall include the following information: (a) the case number, date of filing, date of dismissal, and reason for dismissal of each of the debtor's bankruptcy cases that were dismissed within the year prior to the filing of the current case; (b) specific information as to why the moving party contends the current case was filed in good faith, (c) specific identification of the applicable presumption(s) that the case is not filed in good faith under §362(c)(3)(C) or §362(c)(4)(D); and (d) the basis for moving party's contention that the presumptions should be rebutted. The motion must be supported by an affidavit or declaration.

3. Content of Motion Filed Pursuant to §362(n)(2). The motion shall include the following information: (a) the case number, date of filing, date and reason for dismissal (if applicable) of any prior bankruptcy cases described in §362(n)(1)(A) - (D); (b) specific information as to why the moving party contends that the filing of the petition resulted from circumstances beyond the control of the debtor not foreseeable at the time the prior case was filed; and (c) specific information as to why the moving party contends that it is more likely than not that the Court will confirm a feasible plan, but not a liquidating plan, within a reasonable period of time. The motion must be supported by an affidavit or declaration.

4. Filing of Motion and Notice of Hearing. The moving party must timely file with the Clerk of the Bankruptcy Court, and contemporaneously serve, both (a) a written Motion complying with the requirements of ¶2 or ¶3 above, and (b) a fully completed Notice of Hearing using Local Form (LBF) #721.5, including the date and time of the hearing obtained from, and following the instructions of, the Court's website (under the Hearings heading, see Motion re: Imposing/Extending Sec. 362 Stay).

   A. Unless electronically filed, file the Motion/Notice of Hearing in the Portland Office (1001 SW 5th Ave. #700, Portland, OR 97204) if the 5-digit portion of the Case No. begins with "3" or "4", or the Eugene Office (405 E 8th Ave. #2600, Eugene, OR 97401) if it begins with "6" or "7".

   B. If you mail your documents to the Court for filing, you must mail them at least three (3) days before any filing deadline, unless you use an overnight delivery service, so they will actually be received at the Court on time.

5. Required Attendance at Hearing. The moving party must be present at the hearing. The moving party may appear via telephone.

721.3 (7/18/13)

APPENDIX 4

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI

U.S. BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI
FILED
SEP 20 2011
DANNY L. MILLER, CLERK
BY _____ DEPUTY CLERK

STANDING ORDER REGARDING MOTION TO EXTEND OR IMPOSE THE AUTOMATIC STAY

IT IS HEREBY ORDERED that the court may grant a motion to extend or impose the automatic stay pursuant to § 362(c)(3)(B) or (c)(4)(B) ("the Motion") without conducting a hearing subject to the following procedures:

1. Pursuant to 28 U.S.C. § 1746, the debtor must file a *Declaration in Support of the Motion* ("the Declaration") (forms attached hereto) as an attachment to the Motion.

2. The debtor must serve a copy of the Motion and Declaration on all parties against whom the debtor seeks to continue or impose the stay within 2 days of the filing of the Motion and Declaration and file a certificate of service with the clerk.

3. A motion to extend the automatic stay pursuant to § 362(c)(3)(B) must be filed within 4 days after the date of the filing of the petition.

4. For a motion to extend the automatic stay pursuant to § 362(c)(3)(B), the court shall set a hearing in accordance with Miss. Bankr. L. R. 4001-1(e)(2).

5. For a motion to impose the automatic stay pursuant to § 362(c)(4)(B), the court shall not set a hearing with less than 14 days notice except under extraordinary circumstances.

6. If a response or objection to the Motion is not timely filed, and the debtor has filed an appropriate Declaration in support of the Motion, the court may grant the Motion without conducting a hearing.

7. Nothing contained in this Standing Order shall change the provisions of Miss. Bankr. L. R. 4001-1(e).

SO ORDERED. Effective: September 20, 2011.

EDWARD ELLINGTON
UNITED STATES BANKRUPTCY JUDGE

NEIL P. OLACK
UNITED STATES BANKRUPTY JUDGE

KATHARINE M. SAMSON
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI

In re: Case No.:

Chapter

DECLARATION IN SUPPORT OF MOTION TO EXTEND
THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(c)(3)

The debtor[*s*], in support of the Motion to Extend the Automatic Stay, state as follows:

1. [*I/We*] have personal knowledge of the facts listed in the foregoing situation.

2. [*I/We*] [*am/are*] over the age of 18, of sound mind, [*am/are*] capable of making this Declaration, and [*am/are*] fully competent to testify to the matters stated herein.

3. [*I/We*] filed this bankruptcy petition on [*date*].

4. [*I/We*] previously filed bankruptcy, [*case number*], under Chapter [#] on [*date*] and that case was dismissed on [*date*].

5. [*I/We*] have had no other pending bankruptcy cases in the preceding one-year period.

6. [*I/We*] have not had any prior case[*s*] dismissed in the past year for any of the following reasons:
   - failure to file or amend the petition or other required documents without substantial excuse;
   - failure to provide adequate protection as ordered by the Court; or
   - failure to perform the terms of a plan confirmed by the Court.

7. [*I/We*] have had a substantial change in [*my/our*] financial or personal affairs since the dismissal of the last case, and [*I/we*] believe that this case will:

   - [*If a Chapter 7*] be concluded with a discharge; or
   - [*If a Chapter 11 or 13*] result in a confirmed plan that will be fully performed.

8. Those changes are as follows:

[*Describe in detail*].

Check the appropriate box:

☐ If executed within the United States, its territories, possessions or commonwealths:

[*I/We*] declare under penalty of perjury that the foregoing is true and correct.

☐ If executed outside the United States:

[I/We] declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on: _____ _____
(date) Debtor's Signature

Executed on: _____ _____
(date) Joint Debtor's Signature *(if applicable)*

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI

In re: Case No.:

Chapter

DECLARATION IN SUPPORT OF MOTION TO IMPOSE
THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(c)(4)

The debtor[*s*], in support of the Motion to Impose the Automatic Stay, state as follows:

1. [*I/We*] have personal knowledge of the facts listed in the foregoing situation.

2. [*I/We*] [*am/are*] over the age of 18, of sound mind, [*am/are*] capable of making this Declaration, and [*am/are*] fully competent to testify to the matters stated herein.

3. [*I/We*] filed this bankruptcy petition on [*date*].

4. [*I/We*] previously filed the following bankruptcy cases:
   - [*case number*], under Chapter [#] on [*date*] dismissed on [*date*].
   - [*case number*], under Chapter [#] on [*date*] dismissed on [*date*].

5. [*I/We*] have had no other pending bankruptcy cases in the preceding one-year period.

6. [*I/We*] have not had any prior case[*s*] dismissed in the past year for any of the following reasons:
   - failure to file or amend the petition or other required documents without substantial excuse;
   - failure to provide adequate protection as ordered by the Court; or
   - failure to perform the terms of a plan confirmed by the Court.

7. [*I/We*] have had a substantial change in [*my/our*] financial or personal affairs since the dismissal of the last case, and [*I/we*] believe that this case will:

   - [*If a Chapter 7*] be concluded with a discharge; or
   - [*If a Chapter 11 or 13*] result in a confirmed plan that will be fully performed.

8. Those changes are as follows:

[*Describe in detail*].

Check the appropriate box:

☐ If executed within the United States, its territories, possessions or commonwealths:

[*I/We*] declare under penalty of perjury that the foregoing is true and correct.

☐ If executed outside the United States:

[I/We] declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on: _____ _____
(date) Debtor's Signature

Executed on: _____ _____
(date) Joint Debtor's Signature *(if applicable)*

APPENDIX 5

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI

STANDING ORDER REGARDING MOTION TO EXTEND OR IMPOSE THE AUTOMATIC STAY

IT IS HEREBY ORDERED that the court may grant a motion to extend or impose the automatic stay pursuant to § 362(c)(3)(B) or (c)(4)(B) ("the Motion") without conducting a hearing subject to the following procedures:

1. Pursuant to 28 U.S.C. §1746, the debtor must file a *Declaration in Support of the Motion* ("the Declaration") (forms attached hereto) as an attachment to the Motion.

2. The debtor must serve a copy of the Motion and Declaration on all parties against whom the debtor seeks to continue or impose the stay within 2 days of the filing of the Motion and Declaration and file a certificate of service with the clerk.

3. A motion to extend the automatic stay pursuant to § 362(c)(3)(B) must be filed within 4 days after the date of the filing of the petition.

4. For a motion to extend the automatic stay pursuant to § 362(c)(3)(B), the court shall set a hearing in accordance with Miss. Bankr. L. R. 4001-1(e)(2).

5. For a motion to impose the automatic stay pursuant to § 362(c)(4)(B), the court shall not set a hearing with less than 14 days notice except under extraordinary circumstances.

6. If a response or objection to the Motion is not timely filed, and the debtor has filed an appropriate Declaration in support of the Motion, the court may grant the Motion without conducting a hearing.

7. Nothing contained in this Standing Order shall change the provisions of Miss. Bankr. L. R. 4001-1(e).

SO ORDERED. Effective: September 22, 2011.

DAVID W. HOUSTON, III
UNITED STATES BANKRUPTCY JUDGE

NEIL P. OLACK
UNITED STATES BANKRUPTCY JUDGE

Entered 9-22-11 at 4:00 A.M./P.M.
United States Bankruptcy Court
Northern District of Mississippi
David J. Puddister, Clerk

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI

In re: Case No.:

Chapter

DECLARATION IN SUPPORT OF MOTION TO EXTEND
THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(c)(3)

The debtor[*s*], in support of the Motion to Extend the Automatic Stay, state as follows:

1. [*I/We*] have personal knowledge of the facts listed in the foregoing situation.

2. [*I/We*] [*am/are*] over the age of 18, of sound mind, [*am/are*] capable of making this Declaration, and [*am/are*] fully competent to testify to the matters stated herein.

3. [*I/We*] filed this bankruptcy petition on [*date*].

4. [*I/We*] previously filed bankruptcy, [*case number*], under Chapter [#] on [*date*] and that case was dismissed on [*date*].

5. [*I/We*] have had no other pending bankruptcy cases in the preceding one-year period.

6. [*I/We*] have not had any prior case[*s*] dismissed in the past year for any of the following reasons:
   - failure to file or amend the petition or other required documents without substantial excuse;
   - failure to provide adequate protection as ordered by the Court; or
   - failure to perform the terms of a plan confirmed by the Court.

7. [*I/We*] have had a substantial change in [*my/our*] financial or personal affairs since the dismissal of the last case, and [*I/we*] believe that this case will:

   - [*If a Chapter 7*] be concluded with a discharge; or
   - [*If a Chapter 11 or 13*] result in a confirmed plan that will be fully performed.

8. Those changes are as follows:

[*Describe in detail*].

Check the appropriate box:

☐ If executed within the United States, its territories, possessions or commonwealths:

[*I/We*] declare under penalty of perjury that the foregoing is true and correct.

☐ If executed outside the United States:

[*I/We*] declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on: _____ _____
(*date*) Debtor's Signature

Executed on: _____ _____
(*date*) Joint Debtor's Signature (*if applicable*)

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI

In re: Case No.:

Chapter

DECLARATION IN SUPPORT OF MOTION TO IMPOSE
THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(c)(4)

The debtor[*s*], in support of the Motion to Impose the Automatic Stay, state as follows:

1. [*I/We*] have personal knowledge of the facts listed in the foregoing situation.

2. [*I/We*] [*am/are*] over the age of 18, of sound mind, [*am/are*] capable of making this Declaration, and [*am/are*] fully competent to testify to the matters stated herein.

3. [*I/We*] filed this bankruptcy petition on [*date*].

4. [*I/We*] previously filed the following bankruptcy cases:
   - [*case number*], under Chapter [#] on [*date*] dismissed on [*date*].
   - [*case number*], under Chapter [#] on [*date*] dismissed on [*date*].

5. [*I/We*] have had no other pending bankruptcy cases in the preceding one-year period.

6. [*I/We*] have not had any prior case[*s*] dismissed in the past year for any of the following reasons:
   - failure to file or amend the petition or other required documents without substantial excuse;
   - failure to provide adequate protection as ordered by the Court; or
   - failure to perform the terms of a plan confirmed by the Court.

7. [*I/We*] have had a substantial change in [*my/our*] financial or personal affairs since the dismissal of the last case, and [*I/we*] believe that this case will:

   - [*If a Chapter 7*] be concluded with a discharge; or
   - [*If a Chapter 11 or 13*] result in a confirmed plan that will be fully performed.

8. Those changes are as follows:

[*Describe in detail*].

Check the appropriate box:

☐ If executed within the United States, its territories, possessions or commonwealths:

[*I/We*] declare under penalty of perjury that the foregoing is true and correct.

☐ If executed outside the United States:

[*I/We*] declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on: _____ _____
(*date*) Debtor's Signature

Executed on: _____ _____
(*date*) Joint Debtor's Signature (*if applicable*)

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI

In re: [Debtor] Case No.:

Chapter ____

NOTICE OF HEARING AND DEADLINES

_____, debtor, has filed a Motion to Extend or Impose the Automatic Stay (the "Motion") (Dkt. #___) with the Court in the above-styled case.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you might wish to consult one.)

The Court will hold a hearing on _____, at _____ __.m. at _____, Mississippi, to consider and act upon the Motion.

If you do not want the Court to grant the Motion, or if you want the Court to consider your views on the Motion, you or your attorney must file a written response explaining your position so that the Court receives it on or before _____. Attorneys and Registered Users of the Electronic Case Filing (ECF) system should file any response using ECF. Others should file any response at the United States Bankruptcy Court, 703 Highway 145 North, Aberdeen, Mississippi 39730. If you file a response, you or your attorney are required to attend the hearing.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the Motion. If no response is filed, and the debtor has filed a declaration in support of the motion, in accordance with the *Standing Order Regarding Motion to Extend or Impose the Automatic Stay*, the Court may grant the Motion without conducting a hearing.

Dated:

David J. Puddister, Clerk of Court
United States Bankruptcy Court
703 Highway 145 North
Aberdeen, MS 39730
662-369-2596

Parties Noticed:

ALL CREDITORS AND PARTIES LISTED ON THE COURT'S MAILING MATRIX

APPENDIX 6

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

IN RE:	*	
	*	Chapter 13 Case
EDIE HORNE	*	Case No. 14-23266 D
	*	
Debtor(s).	*	

VERIFIED MOTION OF DEBTOR(S) TO IMPOSE AUTOMATIC STAY UNDER SECTION 362(c)(3) AS TO ALL CREDITORS

Comes now the Chapter 13 Debtor, by and through counsel, and represent(s) to the Court as follows:

1. That the Debtor(s) has/have had two or more prior pending cases dismissed within the last year because cause number 12-33442 filed 12/13/2012 dismissed 04/12/2013. Debtor states that she was in the hospital and was unable to make her payments and therefore her case was dismissed. Cause number 13-29689 filed 09/10/2013 dismissed 11/15/2013. Debtor states that she was in the hospital on stroke level and was unable to make her payments and therefore her case was dismissed.

2. That the Debtor(s)' financial or personal affairs have substantially changed since the dismissal of the prior cases and the Debtor(s) feel(s) that he/she/they can fund and fully perform his/her/their plan because debtor is stable and out of the hospital. Debtor receives SSI and assistance monthly. Debtor feels her income is sufficient to make her payments.

3. That Paragraph 20 of Schedule J accompanying the Chapter 13 petition signed by the Debtor(s) provides:

Total projected monthly income	$ 1476.00
Total projected monthly expenses	$ 1361.00
Monthly net income	$ 115.00

4. That the proposed plan payment is $ 100.00 monthly via direct pay from debtor and paid to the Chapter 13 Trustee.

5. That the Debtor(s)' prior Chapter 13 cases were not dismissed because the Debtor(s) failed to provide adequate protection ordered by the Court or after the Debtor(s) failed to file or amend the petition or other documents as required by the Bankruptcy Code or the Court without substantial excuse.

6. That Debtor(s)' prior Chapter 13 cases (choose one: were/were not) dismissed while an action under Section 362(d) of the Bankruptcy Code was pending or after such an action had been resolved with an order terminating, conditioning or limiting the stay.

7. That this petition was filed in good faith as to the creditors to be stayed and the Debtor(s) believe(s) he/she/they can fully perform the terms of the proposed plan should it be confirmed by this Honorable Court.

WHEREFORE, PREMISES CONSIDERED, your Debtor(s) move(s) this Court under Section 362(c)(4) to impose the automatic stay under Section 362(a) as to all creditors for the duration of this Chapter 13 case or until such time as the stay is terminated, modified, or annulled under Section 362(d) of the Bankruptcy Code or further order of the Court.

Respectfully submitted,

By: /s/Allen C. Jones
Attorney for Debtor(s)
314 Poplar Avenue
Memphis, Tennessee 38103
Phone: (901) 522-9316

CERTIFICATION OF DEBTOR(S)

I/We, Debtor(s), declare under penalty of perjury that I/we have read the statements contained in the foregoing Motion and that they are true and correct to the best of my/our knowledge.

/s/ Edie Horne
Debtor
Date: 03/27/2014

Debtor
Date:

CERTIFICATE OF SERVICE

I certify that copies of this document were sent to the following by first class U.S. Mail on March 27, 2014.

/s/Allen C. Jones

Debtor(s)
Chapter 13 Trustee
All entities on matrix