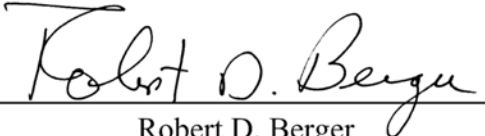


The relief described hereinbelow is **SO ORDERED**.

**SIGNED** this 2nd day of April, 2025.



  
Robert D. Berger  
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF KANSAS**

In re:

**TYLER AUGUST HADL and  
NADIA ANGELICA MARIA SABALU-HADL,**

Debtors.

Case No. 22-20719  
Chapter 7

**ORDER DENYING UNITED STATES TRUSTEE'S MOTION TO DISMISS  
OR CONVERT UNDER § 707(b)(3)**

Section 707(b)(1) of the Bankruptcy Code<sup>1</sup> provides that a court may dismiss a Chapter 7 case or (with the debtor's consent) convert it to Chapter 13 if the court

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<sup>1</sup> I.e., Title 11, United States Code. All statutory references in this order are to the Bankruptcy Code unless otherwise indicated.

finds that the granting of relief<sup>2</sup> would be an abuse of the provisions of Chapter 7. Under § 707(b)(2), known as the “means test,” a case is presumptively abusive if the debtor’s disposable income<sup>3</sup> equals or exceeds a threshold amount.<sup>4</sup> If the case is *not* presumptively abusive under § 707(b)(2), § 707(b)(3) instructs the court to consider whether (A) the debtor filed the petition in bad faith, or (B) the totality of the circumstances of the debtor’s financial situation demonstrates abuse, to determine whether abuse exists.

The present case is a voluntary Chapter 7 bankruptcy filed by debtors Tyler Hadl and Nadia Sabalu-Hadl. Having previously determined that the Hadls’ case is not presumptively abusive under § 707(b)(2), the United States Trustee (“UST”) now moves to dismiss or convert for abuse under § 707(b)(3).<sup>5</sup> For the reasons that follow, the UST’s motion will be denied.

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<sup>2</sup> “Relief,” in this sense, refers to a Chapter 7 discharge. *See U.S. Trustee v. Cortez (In re Cortez)*, 457 F.3d 448, 454-55 (5th Cir. 2006).

<sup>3</sup> The Court uses “disposable income” (which is not a defined term in Chapter 7) here as shorthand for the phrase “current monthly income reduced by the amounts determined under clauses (ii), (iii), and (iv) [of § 707(b)(2)(A)], and multiplied by 60” in § 707(b)(2)(A)(i). *Cf.* 11 U.S.C. § 1325(b)(2) (defining “disposable income” for purposes of Chapter 13).

<sup>4</sup> The threshold amount in effect on July 31, 2022, when the Hadls filed their Chapter 7 petition, was “the lesser of—(I) 25 percent of the debtor’s nonpriority unsecured claims in the case, or \$9,075, whichever is greater; or (II) \$15,150.” 11 U.S.C. § 707(b)(2)(A)(i); *cf.* 11 U.S.C. § 104(a) (providing that dollar amounts in § 707(b) were adjusted on April 1, 1998, and every three years thereafter).

<sup>5</sup> ECF 23. A motion to dismiss or convert is a core proceeding under 28 U.S.C. § 157(b)(2)(A). Venue in the District of Kansas is appropriate under 28 U.S.C. § 1409. This order constitutes the Court’s findings of fact and conclusions of law under Fed. Rs. Bankr. P. 7052 and 9014(c).

## **I. FINDINGS OF FACT**

An evidentiary hearing on the UST's motion took place on April 12, 2024.

Debtor Tyler Hadl was the sole witness.

Tyler is 28 years old. He and his wife, Nadia Sabalu-Hadl, were married in June 2019. As of April 12, 2024, the Hadls had three children—a five-year-old son, a three-year-old son, and a two-year-old son—and were expecting a fourth son in May 2024. Their oldest son was diagnosed with autism around the beginning of 2023.

The Hadls filed their voluntary Chapter 7 petition on July 31, 2022, shortly after the birth of their third child. Tyler testified that they did so because “we felt that we were always behind on everything” and “the debt we had just felt like it was too much to overcome at that time.”

The Hadls' debts are primarily consumer debts. Their bankruptcy schedules list total secured debt of \$328,417 and total nonpriority unsecured debt of \$127,618 (including \$40,668 in student loans).

Nadia currently works 15 to 20 hours per week as a teller for Frontier Community Credit Union. Her monthly gross income is \$1,289.17 per month.

Tyler graduated from the University of Kansas in 2018 and has worked from home as a full-time “solution architect” for Hitachi Solutions since May 2022. His monthly gross income from Hitachi is \$12,016.68 per month before bonuses. (Prior to April 2023, it was \$11,666.68 per month.) Tyler also has worked sporadically for

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The Hadls appear by attorney Errin Stowell. The UST appears by attorney Richard Kear.

DoorDash, but does not remember how much he made.<sup>6</sup> He anticipates working another 40 years.

In addition to his base salary from Hitachi, Tyler is eligible for bonuses. He was awarded a \$700 bonus in October 2022; \$1,000 in November 2022; \$3,500 in January 2023; \$3,428 in April 2023; \$721 in July 2023; and \$2,367 in January 2024.<sup>7</sup> He received approximately 66% of those amounts after taxes.<sup>8</sup> Tyler testified that Hitachi now awards bonuses yearly rather than quarterly. Because Tyler's bonuses are not guaranteed, the Hadls did not include them as income on their Schedule I.

Tyler earned additional income between December 2022 and June 2023 as an independent contractor for dKomplex IT. His income from dKomplex totaled \$20,565. The Hadls owe income taxes on those earnings: around \$2,100 for the 2022 tax year and another \$7,900 for 2023.

During the years between his graduation from KU in 2018 and his employment at Hitachi in 2022, Tyler worked at RSM and Sunrise Technologies. He contributed to retirement accounts at those companies, but withdrew and spent the money when he left. The Hadls' bank records show payouts of \$1,500 and \$1,329

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<sup>6</sup> The Hadls' "Chapter 7 Statement of Your Current Monthly Income" (Official Form 122A-1) reports monthly DoorDash income of \$25.55. *See* ECF 1 at 55. Their bank records reflect total deposits of \$107.94 from DoorDash between August and October 2023. *See* Trial Ex. 19 at UST 173 (listing transactions).

<sup>7</sup> *See* Trial Exs. 9, 26.

<sup>8</sup> *See id.*

from RSM in February 2022; a \$2,372.07 payout from Sunrise in April 2022; and a \$1,196.53 payout from Sunrise in May 2022.

Tyler made retirement contributions of \$175 each from his first three biweekly paychecks at Hitachi. He stopped contributing to the retirement account in June 2022. Nevertheless, when the Hadls filed their Chapter 7 petition on July 31, 2022, they deducted voluntary retirement contributions of \$350 from Tyler's income on their Schedule I.

Tyler resumed making retirement contributions in November 2022. However, he subsequently withdrew money from the account and took out a loan against the remainder. He did not remember how that money was spent. The Hadls' third amended (current) Schedule I deducts retirement contributions of \$360.50 per month from Tyler's income.

The Hadls purchased their home in Lansing, Kansas, in September 2021, nine months before they filed for bankruptcy. The home, built in 1995, has three bedrooms and two full baths. The Hadls' house payment was \$1,699 per month on the petition date and has since increased to \$1,941 per month due to increased property taxes. Before buying their home, the Hadls paid \$1450 per month in rent. They stopped renting because their landlord decided to sell the property.

The Hadls also purchased two vehicles during the year before they filed for bankruptcy. They bought a 2017 Ford Explorer with a monthly payment of \$641.01 in July 2021, followed by a 2020 Ford Expedition with a monthly payment of

\$976.79 in March 2022.<sup>9</sup> These vehicles replaced a 2016 Mazda CX-9 with a monthly payment of around \$600 and a 2014 Ford Fusion with a monthly payment of around \$300.<sup>10</sup> The Hadls bought the Explorer because it had lower mileage and better fuel efficiency than the Mazda. They bought the Expedition because they needed a vehicle that could fit three car seats.

The UST submitted the Hadls' bank statements from August, September, and October 2023 as Exhibit 19 at trial. Exhibit 19 contains a list, created by the UST, that sorts the Hadls' purchases into categories: Child Care, Consumer Discretionary, Donations, Food, Health Care, Insurance, Secured Debt, Transportation, and Utilities and City. Between August and October 2023, the Hadls spent a total of \$31,708.43; the UST categorized \$9,239.97 of that amount as "Consumer Discretionary."

The Hadls stopped using credit cards after filing for bankruptcy but have since made a number of buy-now-pay-later purchases with Afterpay. They have also obtained paycheck advances through a variety of apps. Between August and October 2023, the Hadls obtained an average of \$1,743.24 per month in cash

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<sup>9</sup> Although neither party mentioned the purchase price of the vehicles at the hearing, the Hadls' Schedule D stated that they owed \$36,589 for the Explorer and \$64,726 for the Expedition on the petition date. *See* ECF 1 at 16-17.

<sup>10</sup> In his testimony, Tyler referred to a "Mazda" and a "Ford Fusion." The model years (and, for the Mazda, the model) are listed in the Hadls' statement of financial affairs. *See* ECF 1 at 48.

advances and spent an average of \$449.53 per month on buy-now-pay-later purchases.<sup>11</sup>

Tyler gambled “sparingly” pre-petition, visiting casinos once or twice a year. In April 2022, he withdrew \$306.99 from an ATM at the Hollywood Casino.<sup>12</sup> Post-petition, between December 2022 and May 2023, Tyler engaged in online sports betting, transferring a total of \$1,684.20 to FanDuel and Draft Kings in increments ranging from \$10 to \$100.<sup>13</sup> He also made post-petition withdrawals of \$86.99 and \$46.99 from the Hollywood Casino ATM in February and July 2023 respectively.<sup>14</sup> Tyler does not remember the net outcome of his gambling, but believes that his losses did not “substantially” exceed his wins. The Hadls did not report any gambling losses on their original SOFA (filed July 31, 2022) or their amended SOFA (filed July 19, 2023).<sup>15</sup> Tyler has not gambled since July 2023.

The Hadls’ original schedules, filed on July 31, 2022, calculated their monthly net income as \$8.60. Their first amended schedules, filed on April 6, 2023; calculated their monthly net income as −\$585.91. Tyler received a raise the following week that increased his biweekly gross earnings by \$175.<sup>16</sup>

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<sup>11</sup> See Trial Ex. 19.

<sup>12</sup> See Trial Ex. 20.

<sup>13</sup> See *id.*

<sup>14</sup> See *id.*

<sup>15</sup> See ECF 1 at 47 ¶ 15; ECF 56 at 5 ¶ 15.

<sup>16</sup> See Trial Ex. 9 at UST 113-14 (reflecting gross earnings of \$5,833.34 on February 15, 2023 and gross earnings of \$6,008.34 on April 14, 2023).

The Hadls amended their schedules for a second time on July 19, 2023, and for a third time on March 27, 2024, two weeks before the evidentiary hearing on the UST's motion. The second and third amended schedules calculated the Hadls' monthly net income as, respectively,  $-\$1,718.87$ , and  $-\$2,134.34$ .

The Hadls originally scheduled a monthly mortgage payment of  $\$1,699$ . Their third amended schedules increased the mortgage payment to  $\$1,941$ . Tyler testified that the increase was due to property taxes. The Hadls made a  $\$1,941.41$  mortgage payment in September 2023.<sup>17</sup>

The Hadls originally scheduled monthly expenses of  $\$700$  for food and housekeeping supplies and  $\$150$  for clothing, laundry, and dry cleaning. Their first amended schedules increased those expenses to  $\$1,200$  and  $\$250$  respectively. Their third amended schedules increased the expense for food and housekeeping supplies to  $\$1,600$  and kept the expense for clothing, laundry, and dry cleaning at  $\$250$ . IRS national standards in effect on the date of the evidentiary hearing permitted a six-person family to deduct  $\$1,867$  for food and clothing expenses.<sup>18</sup> In Exhibit 19, the UST categorized  $\$5,636.33$  of the Hadls' expenditures as "Food"—an average of  $\$1,878.78$  per month between August and October 2023.<sup>19</sup>

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<sup>17</sup> See Trial Ex. 19 at UST 173 & accompanying bank statements.

<sup>18</sup> See *IRS National Standards for Allowable Living Expenses (Cases Filed Between April 1, 2024, and May 14, 2024, Inclusive)*, [https://www.justice.gov/ust/eo/bapcpa/20240401/bci\\_data/national\\_expense\\_standards.htm](https://www.justice.gov/ust/eo/bapcpa/20240401/bci_data/national_expense_standards.htm).

<sup>19</sup> See Trial Ex. 19 at UST 159 (summarizing debit transactions between August and October 2023).



The Hadls' childcare arrangements have changed several times since this case was filed. When the Hadls filed their petition in July 2022, all three children were in daycare; the Hadls' original schedules listed monthly childcare expenses of \$2,413. (That amount double-counted \$666.66 in dependent-care contributions that had already been deducted on Schedule I.) In April 2023, only one of the three children was in daycare; the first amended schedules decreased the Hadls' monthly childcare expenses to \$792.<sup>20</sup> In July 2023, the Hadls were paying \$14 per hour for an in-home nanny; the second amended schedules increased their monthly childcare expenses to \$1,680.<sup>21</sup> The nanny arrangement ended shortly thereafter. After six weeks of no childcare, the Hadls returned their two younger children to daycare.<sup>22</sup> Their third amended schedules, filed in March 2024, increased their monthly childcare expenses to \$2,581.66: \$1,581.66 for daycare for the two younger children and \$1,000 for infant daycare for the new baby.<sup>23</sup> The Hadls' five-year-old son is

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<sup>20</sup> See ECF 33 at 2, 4. The \$792 figure above reflects \$375.34 listed as childcare expenses plus \$416.66 in contributions to a dependent care account.

<sup>21</sup> See ECF 55 at 2, 4. The \$1,680 figure above reflects \$1,263.34 listed as childcare expenses, plus \$416.66 in contributions to a dependent care account, and was calculated on an assumption that the nanny would work 30 hours per week for 48 weeks of the year.

<sup>22</sup> The Hadls' bank statements show that they paid nothing for childcare in August 2023, \$910 in the last two weeks of September 2023, and \$1,460 in October 2023. See Trial Ex. 19 at UST 162 & accompanying bank statements.

<sup>23</sup> See ECF 75 at 2, 4, 5. The \$1,581.66 figure above reflects \$1,165 listed as childcare expenses plus \$416.66 in contributions to a dependent care account. The Hadls' daycare provider charges \$175 per week for their three-year-old and \$190 per week for their two-year-old, which averages out to  $(\$175 + \$190) * 52 / 12$ , or \$1,581.66, per month. The provider requires payment of the full rates every week regardless of the children's actual attendance.

currently receiving behavioral therapy for his autism and is not in daycare. They did not know whether he would start kindergarten in autumn 2024.

The Hadls' original schedules listed monthly expenses of \$1,440.80 for health insurance.<sup>24</sup> Their first amended schedules decreased their health insurance expenses to \$888. Their third amended schedules increased their health insurance expenses to \$1,048. The increase occurred because the Hadls changed their "Silver" medical insurance plan to a "Gold" plan with a lower deductible in 2024. Tyler's paystub dated January 31, 2024, shows year-to-date deductions of \$942 for medical insurance under the Gold plan, \$58 for dental insurance, and \$12 for vision insurance—a total of \$1,012.<sup>25</sup> The Hadls' out-of-pocket maximums for in-network services under their 2023 plan were \$4,000 for an individual and \$8,000 for the family.<sup>26</sup> (There was no evidence of their out-of-pocket maximums under the 2024 plan.)

The Hadls' original schedules listed monthly medical and dental expenses of \$600. Their first amended schedules increased the total amount to \$2,816.75: \$200 for general expenses; \$80 for couples' therapy; \$292 for Bloom Pediatrics, which provides routine pediatric care on a concierge basis; \$324.75 for Nadia's mental

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<sup>24</sup> See ECF 1 at 37. The Hadls' original Schedule I appears to have mistakenly combined deductions of \$756 for health insurance, \$666.66 for dependent care, and \$18.14 for "VOLLEG3" into the "Insurance" line item. *Cf.* ECF 4 (containing paystubs from June and July 2022 reflecting those deductions).

<sup>25</sup> See Trial Ex. 26.

<sup>26</sup> See Trial Ex. 16 at UST 147.

health therapy; \$100 for Nadia’s “Cottonwood therapy”;<sup>27</sup> \$100 for an “Ascentist plan”; \$120 for Tyler’s mental-health therapy; and a \$1,600 expense for their now-five-year-old son’s autism therapy. Tyler testified that the \$1,600 figure was based on an estimate the Hadls received from an “ABA provider.”<sup>28</sup>

The Hadls’ second amended schedules decreased their monthly medical and dental expenses to \$2,412: \$200 for general expenses; \$1,600 for the autism therapy; \$292 for Bloom Pediatrics;<sup>29</sup> and a \$320 expense for their now-two-year-old son’s walking therapy. The \$325 expense for Nadia’s mental-health therapy appears to have been left out by mistake; the Hadls’ bank records show payments to her therapist in August, September, and October 2023,<sup>30</sup> after the second amended schedules were filed. The Hadls’ actual walking-therapy expenses had never exceeded \$120 per month, and the therapy ended in July 2023, one week after the Hadls amended their schedules to include it.<sup>31</sup> The Hadls had received “a month or

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<sup>27</sup> The Court takes judicial notice under Fed. R. Evid. 201 that the Cottonwood Springs facility in Olathe, Kansas, provides mental health services.

<sup>28</sup> “ABA” presumably refers to applied behavioral analysis, which is used to treat autism.

<sup>29</sup> The Hadls’ bank statements show that they paid Bloom Pediatrics \$260 in August 2023. *See* Trial Ex. 19 at UST 171. However, because Bloom’s fee decreases as the children get older, a \$260 payment in August does not directly contradict the Hadls’ assertions that they were paying \$292 in April and July 2023, when the first and second amended schedules were filed.

<sup>30</sup> *See* Trial Ex. 19 at UST 171 (listing \$150 payment every two weeks).

<sup>31</sup> The \$320 figure assumed that the Hadls’ son would attend walking therapy twice per week, at a cost of \$40 per visit. Between April and July 2023, he attended three times each month at a cost of either \$40 or \$29.84 each time; the Hadls’ actual walking-therapy expenses ranged from \$89.52 to \$120 per month.

two” of explanations of benefits (EOBs) regarding the autism therapy from their insurer when they filed the second amended schedules.

The Hadls’ third amended schedules decreased their monthly medical and dental expenses to \$1,183.33: \$200 for general expenses; \$208.33 for autism therapy; \$325 for Nadia’s mental-health therapy; and \$450 for Bloom Pediatrics.<sup>32</sup> The autism therapy is in-network for health insurance purposes; Nadia’s therapy and Bloom Pediatrics are out-of-network. Tyler also testified that the Bloom Pediatrics expense would increase to \$450 because of the new baby. The Hadls take their children to Bloom Pediatrics because they want to give them “the best care.”

The Hadls’ second and third amended Schedules I and J list the following income, deductions, and expenses:

	<b>Second amended schedules (7/19/23)</b>	<b>Third amended schedules (3/27/24)</b>
<b>Monthly gross income</b>	<b>\$13,305.85</b>	<b>\$13,305.85</b>
Tax, Medicare, and Social Security deductions	\$1,956.22	\$1,956.22
Voluntary retirement contributions	\$360.50	\$360.50
Insurance	\$888.00	\$1,048.00
Dependent care	\$416.66	\$416.66
<b>Monthly take-home pay</b>	<b>\$9,684.47</b>	<b>\$9,524.47</b>
Rental or home ownership expenses	\$1,699.20	\$1,941.00
Home maintenance, repair, and upkeep expenses	\$50.00	\$50.00

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<sup>32</sup> Tyler testified that the cost of Bloom Pediatrics would increase to \$450 with the arrival of the new baby.

Utilities	\$733.00	\$733.00
Food and housekeeping supplies	\$1,200.00	\$1,600.00
Childcare	\$1,263.34	\$1,165.00
Clothing, laundry, and dry cleaning	\$250.00	\$250.00
Personal care products and services	\$75.00	\$75.00
Medical and dental expenses	\$200.00	\$200.00
Transportation	\$600.00	\$600.00
Entertainment, clubs, recreation, newspapers, magazines, and books	\$100.00	\$100.00
Charitable contributions and religious donations	\$51.72	\$51.72
Life insurance	\$56.96	\$56.96
Vehicle insurance	\$259.65	\$317.00
Personal property taxes	\$85.00	\$85.00
Tax preparation fees	\$10.00	\$10.00
Taxes on 1099 work going forward	\$200.00	
Taxes owed for 2022	\$166.67	\$100.00
Taxes on 1099 income from 2023		\$150.00
Car payment for Vehicle 1	\$641.01	\$641.01
Car payment for Vehicle 2	\$976.79	\$976.79
Student loans	\$332.00	\$332.00
Nebraska Furniture Mart	\$97.00	\$97.00
Pet food and care	\$100.00	\$100.00
Gym membership	\$44.00	\$44.00
Autism therapy for son	\$1,600.00	\$208.33
Walking therapy for son	\$320.00	

Wife's mental health therapy		\$325.00
Bloom Pediatrics	\$292.00	\$450.00
Infant daycare (beginning May 2024)		\$1000.00
<b>Total monthly expenses</b>	<b>\$11,403.34</b>	<b>\$11,658.81</b>
<b>Monthly net income</b>	<b>-\$1,718.87</b>	<b>-\$2,134.34</b>

## II. CONCLUSIONS OF LAW

Under § 707(b)(1) of the Bankruptcy Code, a Chapter 7 case may be dismissed or (with the debtor's consent) converted to Chapter 13 if the court finds that granting relief to the debtor would be an abuse of the provisions of Chapter 7.<sup>33</sup> This case is not presumptively abusive under § 707(b)(2)'s "means test."<sup>34</sup> Therefore, § 707(b)(3) instructs the Court to consider whether (A) the Hadls filed their Chapter 7 petition in bad faith, or (B) the totality of the circumstances of the Hadls' financial situation demonstrates abuse, to determine whether abuse exists. The movant (here, the UST) bears the burden of proving that the case is abusive. *In re Doherty*, 374 B.R. 288, 291 (Bankr. D. Kan. 2007). Here, the UST argues that abuse exists under both § 707(b)(3)(A) and (B).

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<sup>33</sup> The intent of this provision is "to 'uphold [] creditors' interests in obtaining repayment where such repayment would not be a burden.'" *Zolg v. Kelly (In re Kelly)*, 841 F.2d 908, 914 (9th Cir. 1988) (quoting S. Rep. 65, at 53 (1985)).

<sup>34</sup> On October 3, 2022, the UST filed a statement indicating that the Hadls' Chapter 7 case was not presumptively abusive under § 707(b)(2). The UST's statement lacks an ECF number but does appear on the Court's docket.

**A. Totality of the circumstances: ability to pay**

A debtor's "ability to pay" his debts in Chapter 13 is the "primary factor" for the court to consider under the totality-of-the-circumstances test. *See Stewart v. U.S. Trustee (In re Stewart)*, 175 F.3d 796, 809 (10th Cir. 1999).<sup>35</sup> However, the court must also consider other relevant factors, including (but not limited to) (1) unique hardships such as sudden illness, calamity, disability, or unemployment; (2) cash advances or consumer purchases in far excess of ability to repay; (3) excessive or unreasonable family budget; (4) accurate reflection of true financial condition in schedules and statements of income and expenses; (5) stable source of future income; (6) eligibility for Chapter 13; (7) existence of state remedies or private relief through negotiation; and (8) the debtor's good faith. *See id.* (citing *Green v. Staples (In re Green)*, 934 F.2d 568, 572-73 (4th Cir. 1991), *In re Krohn*, 886 F.2d 123, 126-27 (6th Cir. 1989), and *First USA v. Lamanna (In re Lamanna)*, 153 F.3d 1, 4-5 (1st Cir. 1998)). This totality-of-the-circumstances analysis is done on a case-by-case basis. *Id.*

"[C]ourts generally agree that under the totality of the circumstances, an ability to pay means something more than simply having monthly disposable

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<sup>35</sup> Although *In re Stewart* was decided pre-BAPCPA, "courts generally agree that because Congress added the phrase 'totality of the circumstances' to BAPCPA, the pre-BAPCPA cases employing the *Stewart* [factors] are applicable to the analysis of 'abuse' under § 707(b)(3)." *In re Smith*, 585 B.R. 168, 175 (Bankr. W.D. Okla. 2018) (citations omitted). However, it has been questioned whether ability to pay should be a factor, primary or otherwise, under the post-BAPCPA totality-of-the-circumstances test. *See In re Senk*, Case No. 22-20910, 2023 WL 11264311, at \*1 n.10 (Bankr. D. Kan. Nov. 7, 2023).

income. It instead suggests the ability to generate a return to creditors that is meaningful or significant.” *U.S. Trustee v. Kubatka (In re Kubatka)*, 605 B.R. 339, 356 (Bankr. W.D. Pa. 2019) (citations omitted). Furthermore, a debtor’s ability to pay “is generally considered within the context of a hypothetical chapter 13 case.” *Id.* at 357. Thus, the first issue before the Court is whether the UST has proved that the Hadls would have the ability to pay a meaningful, or significant, return to their unsecured creditors in Chapter 13.

As an initial matter, the UST argues that the Court should give “no weight” to the Hadls’ third amended schedules “since the debtors produced nothing to support or verify any of the changes and there hasn’t been time for any discovery on them.”<sup>36</sup> But while there was no time for *additional* discovery, many of the Hadls’ changes are supported (at least in part) by documents submitted by the UST to the Court as trial exhibits. The Court will therefore give weight to the third amended schedules to the extent supported by those exhibits.

The third amended schedules added or increased expenses in seven categories. First, the Hadls’ health insurance deduction increased from \$888 to \$1,048. This increase is partially supported by Tyler’s January 31, 2024 paystub, which shows total health insurance deductions of \$1,012 in January 2024.<sup>37</sup> Second, the Hadls’ mortgage payment increased from \$1,699.20 to \$1,941.00. This increase

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<sup>36</sup> Trial Tr. 9:24-10:2.

<sup>37</sup> See Trial Ex. 26 (listing year-to-date health-insurance deductions of \$942 for medical insurance, \$58 for dental insurance, and \$12 for vision insurance—a total of \$1,012—as of January 31, 2024).



is supported by the their bank statements, which show that they made a \$1,941 mortgage payment in September 2023.<sup>38</sup> Third, the Hadls' food and housekeeping supplies expense increased to \$1,600. This increase is supported by their bank statements, which show that between August and October 2023, they spent an average of \$1,878.78 per month on transactions categorized as "Food" by the UST.<sup>39</sup> Fourth, the Hadls' vehicle insurance expense increased from \$259.65 to \$317.00. This increase is partially supported by their bank statements, which show vehicle insurance payments of \$289.77 in August, September, and October 2023. Fifth, the Bloom Pediatrics expense increased from \$292 to \$450. Because the record contains no evidence of the new \$450 amount, the Court gives no weight to this increase. Sixth, the Hadls added a \$325 expense for Nadia's mental-health therapy, which was included on the Hadls' first amended schedules at \$324.75 but omitted from the second amended schedules. The re-inclusion of this expense is supported by the Hadls' bank statements, which show bi-weekly payments of \$150 to the therapist in August, September, and October 2023.<sup>40</sup> Finally, the Hadls added a new infant-

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<sup>38</sup> See Trial Ex. 19 at UST 173 (showing \$1,941 mortgage payment on September 5, 2023); *id.* at UST 192 (same).

<sup>39</sup> See Trial Ex. 19 at UST 159 (summarizing the Hadls' expenditures between August and October 2023). The Hadls' total deduction of \$1,850 on the third amended schedules for food, housekeeping supplies, and clothing expenses is less than the IRS national standard for food and clothing for a six-person family. See *supra* page 8 & note 18.

<sup>40</sup> See Trial Ex. 19 at UST 171 (showing payments of \$150 every two weeks between August and October 2023). This supports Tyler's testimony that the mental-health therapy was omitted from the second amended schedules (which were filed in July 2023) by mistake.

daycare expense of \$1,000. This new expense was supported by Nadia's visibly-pregnant appearance at the evidentiary hearing, and the \$1,000 monthly rate for infant care is consistent with the provider's undisputed weekly rates of \$190 and \$175 for the Hadls' three- and two-year-old children.

Adjusting the Hadls' expenses for health insurance, vehicle insurance, and Bloom Pediatrics, on their third amended schedules, the Hadls' monthly net income is  $-\$2,134.34 + (\$1,048 - \$1,012) + (\$317 - \$289.77) + (\$450 - \$292)$ , or  $-\$1,913.11$ . This  $-\$1,913.11$  amount is the starting point for the UST's argument that the Hadls would have the "ability to pay" their debts in Chapter 13.

Next, the UST argues that in calculating their monthly net income, the Hadls impermissibly deducted the following expenses:

1. Taxes owed from 2022, \$100;
2. Taxes on 1099 income from 2023, \$150;
3. Childcare expenses for the two middle children exceeding \$1460, a difference of \$121;
4. Medical expenses exceeding \$666.67, a difference of \$358.66;<sup>41</sup>
5. Student loan payments, \$332; and

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<sup>41</sup> The Hadls' medical expenses are \$200 for general medical and dental expenses, \$208.33 for autism therapy, \$325 for Nadia's mental-health therapy, and \$292 for Bloom Pediatrics—a total of \$1,025.33. The difference between \$1,025.33 and \$666.67 is \$358.66. The \$666.67 amount represents one-twelfth of the Hadls' \$8,000 family out-of-pocket maximum for in-network expenses.

6. Voluntary retirement contributions, \$360.50.<sup>42</sup>

But these six amounts total only \$1,422.16. Even if the UST were correct on all six points (which the Court assumes without deciding), adding \$1,422.16 to the starting point of  $-\$1,913.11$  yields a monthly net income of  $-\$490.95$ —still nearly five hundred dollars in the red.

Next, the UST argues that Tyler's bonuses and DoorDash income should be added to the Hadls' monthly net income. Pointing out that Tyler was awarded a total of \$11,716 in bonuses from Hitachi during the fifteen months prior to the evidentiary hearing,<sup>43</sup> the UST reasons that the fifteen-month average of that amount—\$781.07—should be added. However, the UST's calculation is flawed in two ways.

One, the UST's argument disregards taxes. Tyler's *net* bonus income, after taxes, was approximately 66% of \$11,716, or \$7732.56<sup>44</sup>—an average of \$515.50 over fifteen months. Adding \$515.50 in bonuses to the  $-\$490.95$  calculated above yields a monthly net income of \$24.55. Although that calculation would put the

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<sup>42</sup> See Trial Tr. 3-7, ECF 83. N.b.: The UST's closing argument at trial cited figures from the second amended schedules; the text above replaces the amounts for taxes and child care with the corresponding ones from the third amended schedules.

<sup>43</sup> Tyler was awarded bonuses of \$700 in October 2022; \$1,000 in November 2022; \$3,500 in February 2023; \$3,428 in April 2023; \$721 in July 2023; nothing in October 2023; and \$2,367 in January 2024. See Trial Exs. 9, 26.

<sup>44</sup> Paystubs for some of Tyler's bonuses were entered into evidence at trial. See Trial Ex. 9. Those paystubs showed that Tyler received 65-66% of each bonus after taxes. See, e.g., *id.* at UST 112 (showing net pay of \$653.50 from \$1,000 bonus).

Hadls slightly in the black, \$24.55 per month for 60 months<sup>45</sup> would total only \$1,473, or just over one percent of the Hadls' \$127,618 in nonpriority unsecured debt—far short of any meaningful or significant return to unsecured creditors in a hypothetical Chapter 13 case. *Cf. In re Kubatka*, 605 B.R. at 356 (observing that some courts consider § 707(b)(2)(A)(i)(I)'s 25% repayment threshold to be “a helpful tool for determining abuse,” but that “the amount of unsecured debt and the potential dividend are inversely proportional,” such that “a strictly mathematical formula is likely inappropriate”).

Two, the UST provides no justification for using a fifteen-month lookback period to calculate Tyler's average bonus income. Why not six months? *Cf.* 11 U.S.C. § 101(10A)(A) (defining “current monthly income” in terms of six-month average); 11 U.S.C. § 707(b)(2)(A)(i) (referring to “current monthly income”); 11 U.S.C. § 1325(b)(2) (same). During the six months prior to the hearing, Tyler was awarded one bonus of \$2,367, from which he received \$1,566 after taxes—an average of \$261 per month. Or why not twelve months? *Cf. supra* page 4 (finding that Hitachi now awards bonuses on a yearly basis). During the twelve months prior to the hearing, Tyler was awarded \$6,516 in bonuses, from which he received \$4,300.56 after taxes—an average of \$358.38 per month. Neither the six-month average nor the twelve-month average is enough to bring a monthly net income of –\$490.95 out of the red.

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<sup>45</sup> The “applicable commitment period” for the Hadls' hypothetical Chapter 13 plan would be five years unless the plan paid all allowed unsecured claims in full over a shorter period. *See* 11 U.S.C. § 1325(b)(4).

Adding Tyler's DoorDash income barely moves the needle. The only evidence of such income is (a) the Hadls' statement of current monthly income, which discloses \$25.55 in average monthly income from DoorDash between January and June 2022;<sup>46</sup> and (b) the Hadls' bank statements, which show a total of \$107.94 in deposits from DoorDash in August and September 2023, and none in October 2023. Tyler's average monthly income from DoorDash in the six months prior to the April 2024 hearing was therefore zero; his twelve-month average was  $\$107.04 / 12$ , or \$9.00; his fifteen-month average was  $\$107.94 / 15$ , or \$7.20; and his 27-month average—i.e., going back to January 2022—was \$9.68.<sup>47</sup> Adding even the highest average, \$9.68, to the \$24.55 calculated above yields a monthly net income of \$34.23, or \$2,053.80 over 60 months—still less than two percent of the Hadls' nonpriority unsecured debt and far short of any meaningful or significant return to unsecured creditors in a hypothetical Chapter 13 case. What Tyler's DoorDash income *does* illustrate is his desperate attempts to maximize household income.

Finally, the UST points out that the Hadls' bank statements from August through October 2023 “include[] more than \$3,000 per month average in discretionary purchases not including food.”<sup>48</sup> Assuming this observation refers to the transactions labeled by the UST as “Consumer Discretionary” in Exhibit 19,

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<sup>46</sup> See ECF 1 at 55.

<sup>47</sup>  $(\$25.55 \times 6 + \$107.94) / 27 = \$9.68$ .

<sup>48</sup> Trial Tr. 12:18-19, ECF 83; see Trial Ex. 19 at UST 159 (reflecting \$9,239.97 total transactions labeled by UST as “Consumer Discretionary” between August and October 2023).

there are three reasons why the UST's argument—though persuasive on its surface—does not establish that the Hadls have enough disposable income to generate a meaningful return to their unsecured creditors in Chapter 13.

One, the UST's "Consumer Discretionary" label appears to include allowable expenses. For example (and without limitation), the Hadls' bank statements include \$119.48 spent at Dillard's, \$48.58 at Chewy, \$45.11 at Home Depot, and \$25.00 at Great Clips.<sup>49</sup> The UST labeled all of those purchases as Consumer Discretionary—even though expenses for clothing, pet food, home repair, and haircuts can all be deducted on Schedule J.

Two, the UST's "Consumer Discretionary" label also appears to include purchases made with *non*-disposable income. For example, mortgage payments are not disposable income; they are deducted under § 707(b)(2)(A)(iii) and on Schedule J. The Hadls' budget includes a monthly mortgage payment of \$1,941.41. However, their bank statements do not show a mortgage payment in October 2023. But if the Hadls spent that \$1,941.41 on discretionary purchases,<sup>50</sup> that does not mean the Hadls had \$1,941.41 of disposable income that month—it just means that they missed a mortgage payment. (The same holds true for the Hadls' \$980.79 car payment, which they appear to have missed in September 2023.)

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<sup>49</sup> See Trial Ex. 19 at UST 163-64.

<sup>50</sup> Their October 2023 expenditures include (without limitation) \$245.44 at Hair By Miss Meg; \$242.00 at Fat Cats Dog Boarding; \$109.00 at Pure Barre; \$97.10 at Inspired Play Café; \$72.00 at Luxe Nail Spa; and \$99.52 on subscription boxes from Hello Lovely and Scentbird.

Three, § 707(b)(3) “does not permit a court to devise its own means test to determine ability to pay whenever the results of the congressionally devised means test in section 707(b)(2) are not satisfactory to the Court.” *Collier on Bankruptcy* ¶ 707.04 (Richard Levin & Henry J. Sommer eds., 16th ed.). But that is precisely what the UST’s “Consumer Discretionary” label does: it substitutes the UST’s judgment for the means test. The implication of the UST’s argument is that “Consumer Discretionary” purchases represent disposable income that could go to the Hadls’ unsecured creditors. But as stated above, the “Consumer Discretionary” label includes both allowable expenses and purchases made with non-disposable income—meaning that the label does not, without more, say anything about the Hadls’ disposable income or their ability to pay their unsecured creditors in Chapter 13.

The UST’s arguments thus establish, at most, that the Hadls could pay \$34.23 per month, or \$2,053.80 over 60 months, to their unsecured creditors in Chapter 13. That does not constitute an “ability to pay” for purposes of § 707(b)(3)(B). The “primary factor” of the totality-of-the-circumstances test thus weighs in favor of the Hadls.

**B. Totality of the circumstances: other factors**

Some other factors of the totality-of-the-circumstances test weigh in favor of the UST. The Hadls have stable sources of future income and are eligible for Chapter 13. Moreover, the Hadls’ schedules contain inaccuracies: their original Schedules I and J double-counted the Hadls’ dependent care contributions and

included non-existent retirement contributions; their first amended Schedule I did not anticipate the raise that Tyler received the following week; and their second amended Schedule J overstated the costs of autism therapy and walking therapy.

Other factors weigh in the Hadls' favor. While they have not suffered any sudden calamity, they now have *four* small children ages five and under and are under obvious mental-health strain.<sup>51</sup> Their family has also incurred more-than-routine medical expenses, including autism therapy for one child, walking therapy for another, and mental-health therapy for both parents, both individually and as a couple. There is no evidence that the Hadls took out any cash advances prior to filing for bankruptcy. And the budget set out in their third amended Schedule J does not (aside from the deductions that the Court assumes without deciding are impermissible) appear unreasonable or excessive for a family of six.

Other factors are neutral. The Hadls' vehicle purchases were perhaps unwise, but not necessarily—given Tyler's relatively high income—far beyond their ability to repay. There is also no evidence that the Hadls could obtain state remedies or private relief through negotiation.

The final factor of the totality-of-the circumstances test under § 707(b)(3)(B) is whether the Hadls filed their Chapter 7 petition in good faith. Whether they filed in *bad* faith is a stand-alone inquiry under § 707(b)(3)(A).

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<sup>51</sup> In the Court's experience, mental-health strain drives the filing of most consumer bankruptcies; people are worn out emotionally from financial stress. *See In re Engen*, 561 B.R. 523, 550 (Bankr. D. Kan. 2016) ("It is this Court's experience that many consumer bankruptcies are filed by desperate individuals, who are financially, emotionally and physically exhausted.").



**C. Good faith/bad faith**

The UST argues that “the Hadls’ filings and conduct demonstrate a lack of good faith” because the Hadls (according to the UST) (a) “have gambled throughout much of the bankruptcy,” (b) “claimed retirement contributions at the filing of the case when they had stopped making such contributions,” (c) “made a number of misrepresentations about medical expenses,” (d) “made multiple ‘errors’ in their amendments that were always to their advantage,” (e) “have consistently incurred more debt post-petition through payday advances and buying items through Affirm and Afterpay,” and (f) “amended schedule I income in April 2023 but omitted [Tyler’s] recent raise, not disclosing that until the July 2023 amendment.”<sup>52</sup>

As an initial matter, the UST’s argument frames the issue too broadly. The question under § 707(b)(3) is not whether the Hadls have acted in good/bad faith throughout the case<sup>53</sup>—it is whether they filed their *petition* in good/bad faith. *See* 11 U.S.C. § 707(b)(2)(A) (directing court to consider “whether the debtor filed the petition in bad faith”); *cf. In re Stewart*, 175 F.3d at 810 (“[U]nder the totality of the circumstances, we question [the debtor’s] good faith in filing his petition . . .”).

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<sup>52</sup> UST’s Tr. Brief 25-26, ECF 65.

<sup>53</sup> The circuit courts are split on whether a debtor’s bad faith in the more general sense can constitute “cause” for dismissal under § 707(a). *Compare Krueger v. Torres (In re Krueger)*, 812 F.3d 365, 370 (5th Cir. 2016) (holding that debtor’s bad faith can be “cause” for dismissal under § 707(a)), *and Piazza v. Nueterra Healthcare Physical Therapy, LLC (In re Piazza)*, 719 F.3d 1253, 1271 (11th Cir. 2013) (same), *with Neary v. Padilla (In re Padilla)*, 222 F.3d 1184, 1193 (9th Cir. 2000) (holding that debtor’s bad faith *per se* is not “cause” for dismissal under § 707(a)), *and Huckfeldt v. Huckfeldt (In re Huckfeldt)*, 39 F.3d 829, 832 (8th Cir. 1994) (holding that relevant inquiry under § 707(a) is “cause,” not “bad faith”).

That question examines a debtor's motives for filing—and whether such motives are “worthy of bankruptcy protection.” See *Huckfeldt v. Huckfeldt (In re Huckfeldt)*, 39 F.3d 829, 832 (8th Cir. 1994) (observing that debtor's “non-economic motives” for filing petition—“to frustrate [a] divorce court decree and to push his ex-wife into bankruptcy”—“ha[ve] long been considered unworthy of bankruptcy protection” (citing *In re Brown*, 21 F. Supp. 935, 939 (S.D. Iowa 1938)); *In re Krueger*, 812 F.3d 365, 375 (5th Cir. 2016) (observing that debtor's “non-economic motives” for filing petition—“because of a criminal contempt proceeding against him, because his state court litigation had taken a turn for the worse, and to provide him the cover to retake control of [company in which he was a shareholder]”— were “unworthy of bankruptcy protection”); cf. *In re Stewart*, 175 F.3d at 810 (“question[ing]” good faith of physician/debtor who claimed to have chosen low-paying fellowship to serve “needy children and mothers” but sought to discharge financial obligations to his own ex-wife and children). That said, the UST's argument can be divided into three categories: (1) gambling; (2) post-petition use of payday advances and buy-now-pay-later services, and other post-petition spending; and (3) inaccuracies on Schedules I and J (both original and as amended).

Category (1), gambling, does not suggest that the Hadls filed their petition in bad faith. Pre-petition, in April 2022, Tyler made one \$300 withdrawal from a casino ATM. Post-petition, between December 2022 and May 2023, he transferred around \$1,700 in small increments to FanDuel and Draft Kings; he also withdrew \$80 from the casino ATM in February 2023, and another \$60 in July 2023.

However, the record contains no evidence—other than Tyler’s testimony that he did not believe his losses substantially exceeded his gains—of how much of that money was lost. (Nor does the record contain any evidence of how much of the cash withdrawn from ATMs was actually gambled.) And even if all of the money was lost, the UST does not explain how *post*-petition gambling (which represents \$1,800 of the \$2,100 at issue) is relevant to whether the Hadls filed the petition *itself* in good/bad faith. Even if a debtor’s pre-petition gambling may suggest bad faith in extreme cases, *see, e.g., In re Smith*, 585 B.R. 168, 177 (Bankr. W.D. Okla. 2018) (opining that debtors, whose gambling losses in six months before bankruptcy averaged \$6,868.15 per month, had “crosse[d] over a line of appropriateness”), this is not an extreme case.

Category (2), post-petition use of payday advances and buy-now-pay-later services, does not suggest bad faith either. The wisdom of some of the Hadls’ post-petition financial decisions may be questionable. But again, the issue is whether they filed their *petition* in good/bad faith—and the UST does not explain how their choice to incur post-petition debt relates to that inquiry.<sup>54</sup>

As to category (3), inaccuracies in Schedules I and J, the Hadls’ original Schedule J double-counted \$666.66 in childcare expenses that had already been subtracted on Schedule I as dependent-care contributions; the Schedule I also listed

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<sup>54</sup> That said, a debtor’s *pre*-petition lack of financial responsibility would not necessarily suggest bad faith, either. *See, e.g., In re Ruel*, 418 B.R. 389, 393 (Bankr. D.N.M. 2009) (finding that debtors who had “simply been living beyond their means for years” had “acted in good faith”).

\$350 in retirement contributions that Tyler had stopped making the month before. Their first amended Schedule I failed to anticipate the raise that Tyler received the following week. Their second amended Schedule J overstated the cost of autism therapy by listing the full \$1,600 cost rather than the Hadls' out-of-pocket cost after insurance. The second amended Schedule J also overstated the cost of walking therapy as \$320 when the Hadls had never paid more than \$120. The UST argues that such inaccuracies "only served to make the Hadls' financial situation look worse than it actually is to conceal that a discharge in this case would be an abuse of the bankruptcy system."<sup>55</sup>

The Court finds that three of those inaccurate statements—the double-counting of dependent-care contributions, the overstatement of the autism-therapy expense, and the failure to anticipate Tyler's raise—were made in good faith. However, based on the current record, the Court is unable to find that the remaining two inaccurate statements—namely, the deduction of non-existent retirement contributions and the overstatement of the walking-therapy expense—were made in good faith. The Hadls knew that Tyler was no longer contributing to his retirement account. They knew that they were not paying \$320 for walking therapy. The Court can discern no good-faith reason in the record for them to say otherwise.

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<sup>55</sup> ECF 65 at 27.

That said, the question is whether the Hadls filed their Chapter 7 petition in good faith—and the Court finds that they did.<sup>56</sup> There is no evidence that the Hadls filed their petition with any non-economic motives—they do not seek to frustrate proceedings in another court, target any particular creditor, or achieve any non-bankruptcy-related goal. There is no evidence that they engaged in any improper behavior before filing for bankruptcy. Tyler worked second and third jobs in an attempt to pay their debts and expenses, and the family obviously struggles with mental health. This is not an abusive filing. The Hadls’ sole motive appears to be economic: to obtain a discharge of their debts in Chapter 7. That motive is worthy of bankruptcy protection. The final “good faith” factor of § 707(b)(3)(B)’s totality-of-the-circumstances test thus weighs against the UST’s motion, as does § 707(b)(3)(A)’s separate “bad faith” inquiry.

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<sup>56</sup> This is not to say that the Court condones misrepresentation in any way; debtors have a duty of complete and honest disclosure. However, the UST has other tools to deal with misrepresentation. *See, e.g.*, 11 U.S.C. §§ 707(a), 727(a)(4).

### **III. CONCLUSION**

The Court finds that (A) the Hadls did not file their Chapter 7 petition in bad faith and (B) the totality of the circumstances of the Hadls' financial situation does not demonstrate abuse. For those reasons, the Court finds that the granting of relief in this case would not be an abuse of the provisions of Chapter 7. The UST's motion to dismiss or convert this case for abuse under 11 U.S.C. § 707(b)(1) and (3) is therefore denied.

IT IS SO ORDERED.

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