UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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Bankruptcy No.:	17bk11666
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Appearance of Counsel:	Michael Spangler Aaron Weinberg Punit Marwaha **Attorneys for Debtor Monique A. Jimmar** Gordon E. Gouveia Shaw Fishman Glantz & Towbin **Attorney for The Semrad Law Firm, LLC** Charles Glanzer **Attorney for Chapter 13 Trustee,** **Marilyn O. Marshall**

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE:	)	Chapter 13
	)	Bankruptcy No: 17bk11666
Monique A. Jimmar,	)	
	)	
Debtor.	)	Judge LaShonda A. Hunt
	)	

ORDER DENYING APPLICATION FOR COMPENSATION AND PLAN CONFIRMATION

This matter is before the court for ruling on objections by standing Chapter 13 trustee, Marilyn Marshall ("Trustee"), to the application for compensation filed by the Semrad Law Firm ("Semrad Law"), counsel for debtor Monique Jimmar ("Debtor"), and to Debtor's proposed plan.[1] Requests for compensation and confirmation of the plan are generally considered at the same time, even though they are somewhat separate and distinct matters. Fees can still be granted if a case is dismissed for failure to confirm a plan. However, this case presents an unusual scenario in which the Trustee maintains that Semrad Law failed to make required disclosures about agreements to accelerated payment of their flat-fee compensation, and, therefore, she asks the court to deny plan confirmation and disallow fees. The parties have fully briefed the issues and engaged in extensive oral argument on the topics at hand. The court has considered the written submissions, hearing transcript, and the well-reasoned and persuasive decisions of colleagues who have also considered identical objections by the Trustee.[2] As explained below, the Trustee's objections are sustained in

[1] Semrad Law has retained its own counsel with respect to the fee objection, but still represents Debtor for all other purposes, including plan confirmation.

[2] *See In re Gilliam*, No. 17bk18368, 2018 WL 1582481 (Bankr. N.D. Ill. March 28, 2018) (J. Barnes); *In re Carr, et al.*, Nos. 17-29195, 17-25013, 2018 WL 1750540 (Bankr. N.D. Ill. April 10, 2018) (J. Thorne).

part. This court will not approve applications for compensation or confirm plans where Semrad Law (or any other counsel, for that matter) disregard the Bankruptcy Code ("Code"), Bankruptcy Rules ("Rules"), or local rules of this Court.

BACKGROUND

The Trustee has challenged the practice of "fee-jumping" by Semrad Law.[3] Basically, counsel included provisions in Chapter 13 plans that are designed to accelerate payment of their fees vis-a-vis a secured creditor with higher priority, usually an auto lender. Judge Barnes outlines this tactic in *Gilliam*. 2018 WL 1582481, at *2-3. Seeking to prioritize attorney's fees is not *per se* self-dealing, though. *Carr*, 2018 WL 1750540, at *2-4. Section 1326(b)(1) of the Code allows for payment of priority administrative expenses "before or at the time of payment to each creditor." 11 U.S.C. § 1326(b)(1). In other words, the Code expressly supports the laudable goal of ensuring that Chapter 13 counsel who frontload the necessary resources to provide debtors with capable representation in these complex cases, are afforded priority payment status. But here is the rub. The Model Plan sets forth the order of priority for distributions in Section F, and secured claims held by auto lenders (Section E.3 claimants) are entitled to payment at a higher level than attorneys (Section E.4 claimants).[4] However, those provisions represent the default position, which gives

[3] The Trustee has orally objected on similar grounds to plans and fee applications filed by other law firms. Those matters have all been continued until this case is resolved. The analysis is essentially the same, at least as it relates to the requirements for approval of fee applications in this district. The denial of plan confirmation is specific to Debtor and Semrad Law.

[4] When Debtor filed her case in April 2017, the local Chapter 13 Model Plan was the required plan. Cases filed on or after December 1, 2017, must now use Official Form 113 (Chapter 13 National Plan). The National Plan does not expressly delineate an order of distribution of payments; however, according to the Committee Note, Part 6, that determination is "[left] to local rules, orders, custom, and practice." Consequently, this court issued an order, reaffirming that payment to creditors, unless otherwise provided, is as follows: "(1) current mortgage payments under 1322(b)(5); (2) monthly payments on non-mortgage secured claims; (3) costs of administration; (4) mortgage arrears under 1322(b)(5); (5) priority unsecured claims other than costs of administration; and (6) other unsecured claims." General Order 17-02 "Priority of Chapter 13 Plan Payments," dated Nov. 14, 2017 (Bankr. N.D. Ill.).

debtors flexibility to negotiate their own deal with particular creditors for treatment of certain claims, and add the terms to Section G of the Model Plan (or Part 8.1 of the National Plan).

Apparently Semrad Law decided at some point, to take a more aggressive approach to protecting its interests as a priority creditor equally at risk of not receiving full payment in a case. Consequently, their filed plans began to routinely propose paying counsel much sooner, as in just after the Chapter 13 trustee, another priority administrative expense under § 1326(b)(2). Initially, Semrad Law sought to accomplish this bump-up by adding language in Section G of the Model Plan, directing payment on the level of a secured mortgage holder (Section E.2 claimant), meaning *before* auto lenders.[5] If the secured creditor actually objected to this clearly unfavorable treatment, Semrad Law immediately capitulated and amended the plan to remove the priority modification, while also agreeing to pay the creditor's costs of collection pursuant to Bankruptcy Rule 2016, usually about $500 in attorneys' fees. Those costs were then added to the auto lender's proof of claim, thereby increasing the amount owed by debtors.

Semrad Law eventually shifted their strategy, from asking outright for Section E.2 payment priority, to proposing less obvious step-ups that achieved the same result.[6] With those plans, the Trustee would pay a minimal set amount to secured auto lenders until a specified date—well after confirmation—once attorney's fees were paid in full. The secured creditor's payments would then increase to a monthly amount sufficient to pay the allowed claim over the life of the plan, in

[5] Other counsel have sought payment at the Section E.3 level, meaning *concurrent* with auto lenders. That, too, is allowed by § 1326(b), but nonetheless requires proper disclosure of any agreements with debtors regarding compensation, as explained further in the discussion section.

[6] Notwithstanding the Trustee's repeated objections to this practice, Semrad Law has continued to use "fee-jumping" language in the National Plan, which seeks the equivalent of an E.2 priority modification in the Model Plan. *See, e.g.,* 17bk38003 (Dkt. #16, Plan dated 2/7/18) (*Compare* Part 2.1: plan payment of $310/month for 36 months; *with* Part 8.1:1. Debtor's counsel shall be paid in the amount of all available funds on hand at confirmation after payment of adequate protection and then a monthly set payment of $240.00 to be paid prior to payment of non-mortgage secured claims. 2. [Creditor] shall receive preconfirmation adequate protection payments in the amount of $50.00 per month.).

accordance with § 1325(a)(5)(B). As with the priority modification, if secured creditors objected, Semrad Law backed down and usually increased the set payment significantly to resolve the dispute. In essence, Semrad Law was simply hedging its bets and hoping to benefit where duly notified secured creditors failed to assert their rights under the Code.

But somewhere along the line, exactly when is not entirely clear, Semrad Law made another deliberate decision, that is, to *require* debtors to agree to accelerated payments of the flat "no-look" fee or else Semrad Law would not agree to represent them. (Semrad Law's Response to Trustee's Objection to Application for Compensation, Dkt. #81, at ¶¶ 3 & 17; Dkt. #81, Exh. 1; Transcript of Proceedings on March 13, 2018, Dkt. #82 ("Hearing Tr."), 74:12-25, 75:1-10). This new policy would certainly explain the onslaught of proposed plans that prioritized payments to counsel over other creditors. Imposing conditions on representation is not expressly prohibited by applicable bankruptcy laws or canons of ethics. An open marketplace gives clients the freedom to decide whether or not to accept an attorney's proposed terms of engagement. Semrad Law confirmed this arrangement by having debtors' initial written disclaimers that purportedly affirmed their agreement to deviate from the default plan provision setting payment at the Section E.4 priority level.

However, Semrad Law did not attach written evidence of these "agreements" to a single application for compensation in a Chapter 13 case, that was filed with the court.[7] It was only after the Trustee began objecting to plans paying counsel first as lacking any benefit to debtors or the estate, that Semrad Law pointed to the "disclaimers" from clients as evidence of consent and argued that disclosure of their intent through the plan was sufficient. The Trustee now asserts that

[7] "Semrad is one of the largest filers of consumer chapter 7 and chapter 13 bankruptcy cases in this judicial district." (Dkt. #81, at ¶ 1). All told, hundreds, perhaps thousands of debtors, may have been negatively impacted by this undisclosed practice.

Semrad Law's failure to properly disclose the change in its compensation structure violates Local Rule 2016-1, and therefore, all of their fees should be disallowed. In addition, the Trustee contends that plans filed by Semrad Law are not proposed in good faith, and asks that confirmation also be denied.

DISCUSSION[8]

I. Application for Compensation

Gilliam fully addresses the procedures and rules governing Chapter 13 compensation in this district, so there is no need to repeat the details here. *See Gilliam*, 2018 WL 1582481, at *3-5. Suffice it to say, the Code, the Rules, and Local Rules and General Order of this court clearly and consistently emphasize the seriousness of fee disclosure obligations. *See* 11 U.S.C. § 329; Fed. R. Bankr. P. 2016; Local Rule 2016-1 (Bankr. N.D. Ill.); Second Amended General Order 11-02, dated Sept. 21, 2011 (Bankr. N.D. Ill.). The rationale for such rules is explained by Judge Barnes in *Gilliam*:

> These requirements exist to allow the court to police generally the underlying conflict between the debtor and her counsel as a creditor in the debtor's bankruptcy. *See* H.R. Rep. No. 595, 95th Cong., 2d Sess., at § 329, *reprinted in* 1978 U.S.C.C.A.N. 5963, 6285 (1978) ("Payments to a debtor's attorney provide serious potential for evasion of creditor protection provisions of the bankruptcy laws, and serious potential for overreaching by the debtor's attorney, and should be subject to careful scrutiny."). Further, the requirements exist to empower the court to ensure that all creditors, including counsel, receive equitable distributions.

2018 WL 1582481, at *5.

In fact, the significance of mandatory fee disclosure obligations is heightened in cases like this, involving vulnerable debtors who are being charged a presumptively-reasonable attorney's fee of $4,000, while paying little (or no) money upfront for services. In *Carr,* Judge Thorne

[8] This court has jurisdiction pursuant to 28 U.S.C § 1334(b) and 28 U.S.C. § 151. Matters relating to administration of the estate and confirmation of a plan are core proceedings under 28 U.S.C. §§ 157(b)(2)(A), (L).

explores at length the fiduciary duty of counsel entering into this district's Court Approved Retention Agreement ("CARA") with debtors, to not only explain how fees are paid but to also ensure that their clients fully understand the practical implications of a decision to pay counsel first, particularly if the case is dismissed. *Carr*, 2018 WL 1750540, at *5-10. This court can find no indication that Semrad Law fulfilled those obligations here because, simply put, they have never bothered to comply with Local Rule 2016-1, requiring "[e]very agreement between a debtor and an attorney for the debtor that pertains, directly or indirectly, to the compensation paid or given, or to be paid or given, to or for the benefit of the attorney" to be "in the form of a written document signed by the debtor and the attorney" and "attached to the statement that must be filed under Fed. R. Bankr. P. 2016(b) in all bankruptcy cases."

Semrad Law points to the disclaimers initialed by Debtor as evidence that accelerated payment of their fees was discussed and approved. For example, paragraph 1 of the disclaimers states that "I understand that if I owe attorneys fees, those fees will be paid through the Chapter 13 plan and, to the extent allowed by the Bankruptcy Court, The Semrad Law Firm will likely be paid before any of my creditors are paid," while paragraph 5 provides that "I understand that the Semrad Law Firm will be paid first before all creditors unless otherwise agreed or ordered by the court." (Semrad Law Resp. to Obj. to Comp., Dkt. #81, Exh. 1). It is not clear what either of those paragraphs, standing alone or read together, are supposed to convey to an unsophisticated client. The confusing language seemingly suggests that the determination of how counsel will be paid is left to the discretion of the *court*, which is very misleading since the request is, in fact, *being initiated by Semrad Law*, and admittedly does not benefit Debtor or her estate. In short, these contradictory and vague statements hardly evince proof of the full disclosure required when counsel decides to offer clients the "Hobson's choice" of either agreeing to a proposition offering

them no benefit, or walking away from the table and finding new counsel with which to restart the process, just when they are at risk of losing the secured collateral sought to be protected by a bankruptcy filing.

Indeed, one of the many important obligations under the CARA is to "personally explain to the debtor. . .how and when the attorney's fees and the trustee's fees are determined and paid." CARA, ¶ (A)(2), Dkt. #15**)**. To fulfill that obligation, counsel must have walked Debtor through the plan and explained the implications of the default distribution scheme in Section F—prioritizing payments to secured creditors—and their proposed change in Section G—paying themselves first. Otherwise, how could Debtor have given the necessary informed consent to altering priority treatment to her detriment? And if Debtor did knowingly agree to *any terms* pertaining to compensation (which would be the only basis upon which Semrad Law could have added this modification to the plan), Local Rule 2016-1 requires a *written and signed agreement*. Plain and simple. Semrad Law filed an application for compensation and certified their compliance with the requirements of Local Rule 5082-2, which includes making all required disclosures in accordance with Local Rule 2016-1. (Dkt. #15). Clearly, that was false.

Semrad Law insists that they spend hours with all debtors going over every detail of the Chapter 13 process and the specifics of their particular cases. (Hearing Tr. 61:16-25; 62:1-8). None of that matters, though, when the salient discussion about a significant change to payment of compensation is not properly memorialized, let alone signed by counsel and Debtor. Local Rule 2016-1 is crystal clear and there is no excuse for any law firm in this district to enact a policy requiring priority payment of its fees without properly notifying the court and the trustee of that fact. *Accord Carr*, 2018 WL 1750540, at *13 ("[t]he attorneys and debtors did enter into an agreement in connection with the representation of the debtors in these Chapter 13 cases . . .

[concerning] the manner in which the attorneys' compensation would be paid under the plan, specifically that it would or might be paid ahead of the debtor's creditors"); *Gilliam*, 2018 WL 1582481, at *10 ("there is no question that an agreement between a debtor and her attorney, whereunder the debtor consents to the attorney modifying the Model Plan to compensate itself at a higher priority than otherwise contained therein, would be an agreement pertaining to the attorney's compensation.").

Ultimately, considering the potential ramifications to debtors who wind up paying minimal amounts on secured debts while their attorneys collect a full fee, the failure by Semrad Law to disclose these agreements cannot be ignored. There is simply no way of knowing how many debtors have been harmed by a policy driven by the very counsel that they trusted and relied upon to represent their best interests. Semrad Law chose not to subject its fee arrangements to the oversight of the court as the applicable Code provisions and Rules mandate. The seriousness of this violation cannot be taken lightly; disallowance of *any* fee, the remedy sought by the Trustee, would certainly be justified. Nevertheless, after much consideration, the court concludes that denial of Semrad Law's fee application without prejudice is appropriate. Semrad Law did not hide the ball entirely; all parties in interest were placed on notice of the modifications to the default distribution provisions in Section G of the plan and afforded ample opportunity to object. Still, the debtors who hired Semrad Law to represent them were disadvantaged by the firm's decision to self-deal without providing an adequate written explanation of the consequences to their clients, all of which is contrary to the spirit and intent of the CARA, as well as their professional responsibilities.

Accordingly, the court sustains, in part, the Trustee's objection to *all* applications for compensation that fail to comply with Local Rule 2016.1. In every pending case where Semrad

Law (or any other law firm) has proposed any type of priority payment scheme for attorney's fees that conflicts with the default provisions of the Model Plan or National Plan, proper disclosures of agreements with debtors pertaining to that change in compensation must be made before counsel's application for compensation will be approved by the court.

II. Plan Confirmation

The Trustee objects to confirmation of Debtor's plan on grounds related to the accelerated payment of attorney's fees. Specifically, Debtor has now proposed multiple plans with varying treatment of auto lender claims, priority modification and step language, which is undoubtedly designed to pay her attorneys first. The Trustee contends that these plans violate the equal payment provision of § 1325(a)(5)(B), and are filed in bad faith given the absence of benefit to Debtor or her estate, and the motive of favoring one creditor (counsel) over another (auto lender). Debtor maintains that her plan is confirmable because no secured creditor has objected to its treatment.

Debtor filed her initial plan on April 13, 2017, proposing to pay the Trustee $580 per month for 36 months, and "cramdown" secured debts on two motor vehicles identified in her bankruptcy petition and Schedule D. Sections E.3.1 and G listed the following treatment of the auto claims:

Collateral	Claim Amount	Interest Rate	Monthly Payment	Pre-confirmation Adequate Protection & Section G Modification
2007 Ford Fusion	$2,446	6.25%	$71	$15 – E.2 priority for attorney's fees
2015 Ford Fusion	$17,025	6.25%	$474	$50 – E.2 priority for attorney's fees

The priority modification for counsel's fees meant that auto lenders would continue to be paid the pre-confirmation adequate protection monthly amounts of $15 and $50 post-confirmation, before eventually increasing to an equal monthly payment of $71 and $474. Debtor subsequently filed amended plans on July 27, 2017 and November 3, 2017, that did not change the auto lender's

treatment. She proposed her last plan on November 8, 2017, with the following changes to Sections E.3.1 and G:

Collateral	Claim Amount	Interest Rate	Monthly Payment	Section G Step Provision
2007 Ford Fusion	$2,446	6.25%	$15	$75 as of June 2018
2015 Ford Fusion	$17,025	6.25%	$50	$477 as of June 2018

In short, under Debtor's plan, as of June 2018—14 months after filing for bankruptcy protection and obtaining a stay of all collection activity on her defaulted secured debts—Debtor's attorneys would receive their full flat fee of $4,000 plus expenses, while auto lenders would receive $195 on a $2,500 claim and $650 on a $17,000 claim.[9]

However, neither auto lender has objected to confirmation, and that, according to Debtor, indicates these secured creditors have accepted their treatment, § 1325(a)(5)(A) is satisfied, and the plan is confirmable. In contrast, the Trustee urges the court to find that the failure to propose equal payments beginning post-confirmation runs afoul of § 1325(a)(5)(B) and automatically deems the plan non-confirmable. In *Carr*, Judge Thorne ruled that in the absence of an objection from a secured creditor, the plain language of § 1325(a)(5)(A) applies and the "cramdown" requirements in § 1325(a)(5)(B) are not implicated. 2018 WL 1750540, at *4. There are valid arguments on both sides as to what constitutes "acceptance" of a plan in the Chapter 13 context where, unlike Chapter 11s, creditors do not vote. In addition, the Supreme Court in *Espinosa* rejected the argument of a secured creditor seeking relief from a plan of which it had notice and failed to object, but appeared to carve out an exception for certain Code provisions that "should prevent confirmation of the plan even if the creditor fails to object, or to appear in the proceeding

[9] The contractual obligation on the newer vehicle is higher than Debtor's scheduled amount but the Code allows her to "cramdown" in bankruptcy and pay only the value of the auto plus interest as opposed to the full amount due. *See* POC 3-1 (2015 Ford Fusion - total amount claimed of $24,761,13.34% interest, and current default of $856).

at all." *United Student Aid Funds v. Espinosa*, 130 S.Ct. 1367, 1380 (2010). Whether § 1325(a)(5) constitutes such a provision is debatable. *Compare In re Kirk,* 464 B.R. 300 (Bankr. N.D. Ala. 2012) (court, *sua sponte*, denied confirmation) *with In re Bea*, 533 B.R. 283 (B.A.P. 9th Cir. 2015) (trustee objection overruled). In the end, the court need not resolve that dispute today, since there is another, more obvious reason, to deny confirmation of the plan—lack of good faith in violation of § 1325(a)(3).

The plan proposed by Debtor in this case, and arguably by Semrad Law in their other cases, reflects a "fundamental [un]fairness in dealing with her creditors." *In re Smith*, 286 F.3d 461, 466 (7th Cir. 2002). The problematic pattern is evident when auto lender terms in this case and others are examined. In an effort to ensure that their fees are paid first and at an accelerated rate, Semrad Law is proposing plans with artificially low set payments to secured creditors, regardless of the circumstances. Debtor's case certainly reflects that trend. She seeks to repay debts on two vehicles worth about $2,500 and $17,000, yet the "adequate protection" payments are *$15 and $50* to be paid each month for *14 months*. First, that equates to about one (1) month of the contractually required car payment being paid by the time she is almost halfway through a 36-month plan. If her case were dismissed at that point, she would be in a much worse position as the full amount (as supposed to the more favorable "crammed down" value of the vehicles), plus compounded interest would be due at once, forcing Debtor to either surrender the vehicles or file another Chapter 13 bankruptcy petition.[10]

[10] It is not a stretch to suggest that Debtor's case could end with dismissal, rather than discharge. This is Debtor's second bankruptcy case; the first filing was dismissed after her work hours were reduced from full-time to part-time and she defaulted on plan payments. *See* Debtor's Aff. In Support of Mot. To Extend the Automatic Stay, Dkt. #8, Exh. A; 13bk11092, Dkt. #48 (order dismissing case). Debtor actually purchased the 2015 vehicle during that case (*see* 13bk11092, Dkt. #31 (order granting motion to incur credit)) but eventually incurred a default in payments that led to the need for a new case filing. Debtor's Response to Trustee's Objection to Confirmation, Dkt. # 74. But because her last case was dismissed within a year of this filing, she had to obtain court approval to extend the automatic stay. Dkt. #8. Moreover, at oral argument, Debtor's counsel indicated that she had lost her job and fallen behind on plan payments but was now re-employed. (Hearing Tr. 3:1-16, 22-24). Debtor filed amended

Second, adequate protection is generally calculated in this district "by looking at the N.A.D.A. Guide to compare the value of the collateral at the time of filing the petition with the value of the collateral in the month immediately after filing." *In re Williams*, No. 17bk33186, 2018 WL 1747692, at *3 (Bankr. N.D. Ill. April 10, 2018), *quoting In re Marks*, 394 B.R. 198, 202 (Bankr. N.D. Ill. 2008). When questioned at oral argument about how Debtor could be acting in good faith by offering a $35 difference in monthly payments for an older car worth almost 10 times less than her newer car, counsel (Semrad Law) explained that different methods of calculating depreciation are used—interest-only, 1% of value, or difference in N.A.D.A. value—based on the particular case and experience with the creditor. (Hearing Tr. 51:10-25; 52:1-15; 56:9-25).[11]

But in reviewing plans and corresponding proofs of claim in a number of cases filed by Semrad Law (primarily "cramdowns"), this court has noticed that the "magic number" for a set payment seems to average $50-$60, regardless of the amount of the secured claim:

Schedules I and J on March 30, 2018, to support plan confirmation, that show a slight increase in take-home pay but she is also relying significantly on a pro-rated tax refund and voluntary contribution from family members. Dkt. #83. In sum, her financial situation remains precarious.

[11] The Code makes a clear distinction between pre-confirmation adequate protection payments that may be required under § 1326(a)(1)(B) to compensate secured creditors for the depreciation of their collateral until a plan is confirmed, and distributions of equal monthly payments to pay in full an allowed secured claim under § 1325(a)(5)(B). The plans filed by Semrad Law conflate the two and usually offer to continue adequate protection payments as monthly payments post-confirmation, before stepping up to an equal monthly amount later in the plan term. This court recently sustained the objection of a secured creditor to those unequal step-up payments. *Williams*, 2018 WL 1747692, at *4. *But see Marks*, 394 B.R. at 204-05 (holding that debtors can begin equal payments after confirmation, once priority claims of attorney's fees are paid in full). Debtor contends that the Trustee lacks standing to object to unequal payments, but concedes that she can challenge the sufficiency of proposed adequate protection. Hearing Tr. 67-69.

Case	Payment/ Term	Claim Amount	Initial Plan (monthly amount)	Amended Plan (adequate protection and step-up)
17bk25025 Filed: 8/2017	$325 36 months	$7,125	$305 E.2 priority	$50 $309 as of 5/2019
17bk25070 Filed: 8/2017	$325 36 months	$8,475	$305 E.2 priority	$50 $309 as of 6/2019
17bk27264 Filed: 9/2017	$500 36 months	$6,300	$194 E.2 priority	$75 $476 as of 7/2019
17bk27765 Filed: 9/2017	$500 36 months	$16,553	$517 E.2 priority	$50 $504 as of 12/2018
17bk27809 Filed: 9/2017	$575 36 months	$19,507	$540 E.2 priority	$115 $547 as of 12/2018
17bk28425 Filed: 9/2017	$620 36 months	$24,158	$460 E.2 priority	$108 $590 as of 1/2019
17bk29379 Filed: 9/2017	$510 36 months	$9,960	$362 E.2 priority	$75 $486 as of 1/2019
17bk30417 Filed: 10/2017	$375 36 months	$10,207	$334 E.2 priority	$60 $357 as of 6/2019
17bk30552 Filed: 10/2017	$400 36 months	$4,717	$27 E.2 priority	$27 $285 as of 2/2019
17bk33031 Filed: 11/2017	$400 36 months	$10,125	$338 E.2 priority	$60 $381 as of 7/2019
17bk33254 Filed: 11/2017	$510 36 months	$16,655	$464 E.2 priority	$50 $486 as of 3/2019
17bk33695 Filed: 11/2017	$275 36 months	$3,850	$258 E.2 priority	$25 $258 w/E.2 priority
17bk34445 Filed: 11/2017	$350 36 months	$6,950	$329 E.2 priority	$50 $333 as of 8/2019
17bk35115 Filed: 11/2017	$390 36 months	$10,450	$366 E.2 priority	$57 $371 as of 7/2019
17bk35379 Filed: 11/2017	$390 36 months	$11,557	$350 E.2 priority	$65 $372 as of 7/2019

The common denominator in these cases appears to be a debtor trying to "save a vehicle," who has limited disposable monthly income to put towards plan payments, such that there is not enough to treat both the auto lender and counsel as equal priority claimants. Debtor's initial plan proposed monthly payments of $580 to the trustee and $555 to secured creditors, which would leave very little to cover priority administrative expenses of the trustee and counsel, and possibly raise concerns about feasibility. The other cases listed above present similar issues—initial plan

payments to auto lenders would take up the majority of the monthly plan payment. The bottom line in these cases is that the numbers work only if one priority creditor is favored over another. That is not necessarily an indication of bad faith. The problem for Debtor, and specifically, Semrad Law, counsel filing all these plans, circles back to the lack of transparency on fee-jumping. By entering into agreements with debtors to prioritize counsel as a creditor *and* failing to adequately disclose that fact to the court *and* repeatedly proposing plans with artificially low set payments that extend through almost half of the plan term, for the sole purpose of ensuring that counsel is paid in full first, Semrad Law has easily called into question whether any of these plans are being offered in good faith. *See Smith*, 286 F.3d at 466 (asking if the debtor is "really trying to pay the creditors to the reasonable limit of his ability or is he trying to thwart them").

To be clear, the court is not holding that every plan filed by any counsel containing a low set payment to secured creditors and accelerated fees for counsel automatically fails to comply with § 1325(a)(3). That finding requires a case-by-case analysis of the particular facts. *See Smith*, 286 F.3d at 466 ("whether a plan or petition is filed in good faith is a question of fact based on the totality of the circumstances surrounding the proposed plan"). But, in this case, Debtor's plan with inexplicable treatment of two very different vehicles, coupled with the arguably questionable actions of her counsel, Semrad Law, supports a finding of a fundamentally unfair filing, and warrants denial of confirmation.

What must also be emphasized is that the court is not attempting to protect secured creditors with notice of the plan contents who, for reasons known only to them, decide not to object to these provisions. *See Matter of Pence*, 905 F.2d 1107, 1109 (7th Cir. 1990) (creditors "must follow the administration of the bankruptcy estate to determine what aspects of the proceeding they may want to challenge."). After all, Debtor's case has been pending for a year now, with no indication that

either auto lender is unwilling to accept the original priority modification or subsequent step-up. If the plan were confirmed, these creditors would be bound by those terms. *See Espinosa*, 130 S.Ct. at 1371.

Rather, the focus is on upholding the sanctity of a bankruptcy process that promotes a fresh start for debtors *and* fairness to creditors." *In re Forte*, 341 B.R. 859, 869 (Bankr. N.D. Ill. 2005). Chapter 13 is premised upon a sincere and honest effort to repay *all* creditors. *In re Schweighart*, No. 14-91045, 2015 WL 7753408, at *2 (Bankr. C.D. Ill. Dec. 1, 2015). As such, the court must examine as part of its good faith analysis "whether the debtor's plan constitutes an attempt to 'unfairly manipulate'" the Code. *In re Delp*, No. 08-31466, 2009 WL 322227, at *3 (Bankr. S.D. Ill. Feb. 9, 2009). And this case presents enough red flags about the motive for proposing a plan that so blatantly favors counsel at the expense of other creditors *and* is to the detriment of Debtor, that the court concludes the plan fails to satisfy § 1325(a)(3) of the Code.

CONCLUSION

Confirmation of the November 18, 2017 plan is denied. Debtor must file an amended plan within 14 days of this order. Furthermore, the fee application is denied without prejudice.

Dated: April 23, 2018

ENTER:

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Hon. LaShonda A. Hunt
United States Bankruptcy Judge