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8 UNITED STATES BANKRUPTCY COURT
9 EASTER DISTRICT OF CALIFORNIA
FRESNO DIVISION

10 In re) Case No. 10-19733-B-12
11 James Alan Pandol,)
12 Debtor.)
13 _____)

14 **MEMORANDUM DECISION REGARDING MOTION**
15 **TO DISMISS CHAPTER 12 PROCEEDING**

16 This disposition is not appropriate for publication. Although it may cited for
17 whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no
precedential value. See 9th Cir. BAP Rule 8013-1.

18 Riley C. Walter, Esq., of Walter & Wilhelm Law Group, appeared on behalf of
Pandol Brothers, Inc., Ranch 50, LLC, Winifred Pandol, individually and as Trustee
of the Jack and Winifred Pandol Family Trust (the "Creditors").

19 Phillip W. Gillet, Jr., Esq., appeared on behalf of the debtor, James Alan Pandol (the
20 "Debtor").

21 Before the court is a motion to dismiss this chapter 12 bankruptcy case on the
22 grounds that (1) the Debtor is not eligible for relief under chapter 12 and (2) the
23 petition was filed in bad faith (the "Motion"). The Motion also asks the court to
24 impose a 180-day bar against filing another bankruptcy petition. For the reasons set
25 forth below, the Motion will be granted.

26 This memorandum decision contains the court's findings of fact and
27 conclusions of law required by Federal Rule of Civil Procedure 52(a), made
28 applicable to this contested matter by Federal Rule of Bankruptcy Procedure 7052.

1 The bankruptcy court has jurisdiction over this matter under 28 U.S.C. § 1334, 11
2 U.S.C. § 1208¹ and General Orders 182 and 330 of the U.S. District Court for the
3 Eastern District of California. This is a core proceeding as defined in 28 U.S.C.
4 §§ 157(b)(2)(K).

5 **Background**

6 This is the third chapter 12 petition filed by this Debtor in close succession.
7 The moving parties here, Pandol Brothers, Inc., Ranch 50, LLC, and Winifred
8 Pandol (hereafter “Creditors”) have filed motions to dismiss all three petitions. The
9 first petition (case number 09-62162-B-12) was dismissed by this court on June 15,
10 2010, after a noticed hearing at which the court determined the Debtor was not a
11 “family farmer” within the meaning of § 101(18)(A).² The Debtor did not appeal
12 that decision. Instead, one day after the first case was dismissed, the Debtor filed
13 another chapter 12 petition (case number 10-16738-A-12).³ The Creditors’ second
14 motion to dismiss came before Judge Whitney Rimel on August 2, 2010. The
15 Debtor was unable to show a change of circumstances and Judge Rimel dismissed
16 the second case, giving effect to this court’s ruling in the first case that the Debtor
17 was not eligible for relief under chapter 12.

18 The Debtor filed this third petition under chapter 12 three weeks later, on
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20 ¹Unless otherwise indicated, all chapter, section and rule references are to the
21 Bankruptcy Code, 11 U.S.C. §§ 101-1330, and to the Federal Rules of Bankruptcy
22 Procedure, Rules 1001-9036, as enacted and promulgated *after* October 17, 2005, the
23 effective date of The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005,
Pub. L. 109-8, Apr. 20, 2005, 119 Stat. 23.

24 ²All of the Debtor’s farming activity is conducted by Quinto Farms, LLC, a
25 corporation which the Debtor owns, but from which he reported drawing little, if any,
income.

26 ³At the hearing on the motion to dismiss the first case, the court gave the Debtor an
27 opportunity to convert the case to chapter 11. The Debtor’s counsel requested 12 days to
28 make that decision. The Debtor did not use that time to convert to chapter 11. Instead, he
used the time to prepare another bankruptcy petition.

1 August 24, 2010. At a noticed hearing on September 9, 2010, the court denied the
2 Debtor's motion to impose the automatic stay under § 362(c)(4)(B) on the grounds
3 that the Debtor had failed to establish his "good faith." The court also gave a ruling
4 pursuant to § 362(c)(4)(A)(ii) confirming that no automatic stay is in effect. That
5 order was entered on September 10, 2010. The court set a briefing schedule and
6 took under submission this Motion and a separately docketed motion by the
7 Creditors for the imposition of sanctions.

8 **Eligibility**

9 The Creditors contend that the Debtor is still not eligible for chapter 12 relief.
10 The Debtor has the burden of proof to show that he is a "family farmer." This issue
11 has already been adjudicated in both of the prior cases. The Debtor did not appeal
12 either of those rulings and he has failed to show any change of circumstances since
13 the last (second) case was dismissed. Accordingly, dismissal is again appropriate
14 based on the lack of eligibility.

15 **Bad Faith**

16 The Creditors contend that the Debtor is a "serial filer" and that he has filed
17 three petitions in an effort (1) to inhibit the prosecution of pending trademark
18 litigation against the Debtor and (2) to prevent other creditors from enforcing their
19 foreclosure remedies against his real property. Section 1208(c) authorizes the
20 bankruptcy court to dismiss a case for cause. Although not specifically listed as one
21 of the enumerated circumstances, bad faith may constitute "cause" for dismissal.
22 *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1224 (9th Cir. 1999) (bad faith held to
23 be cause for dismissal under chapter 13's parallel statute, § 1307(c)). In determining
24 whether a debtor filed his or her petition in bad faith, a court must apply a totality of
25 the circumstances test, taking into account the following factors:

26 (1) whether the debtor "misrepresented facts in his [petition or] plan, unfairly
27 manipulated the Bankruptcy Code, or otherwise [filed] his Chapter 13
[petition or] plan in an inequitable manner."

28 (2) "the debtor's history of filings and dismissals,"

1 (3) whether “the debtor only intended to defeat state court litigation,” and
2 (4) whether egregious behavior is present.

3 *Id.* at 1224 (citations omitted). Fraudulent intent by the debtor is not required for a
4 finding of bad faith. *Id.*

5 When the Debtor filed this petition, after two prior dismissals, there arose a
6 presumption that the case was not filed in good faith for purposes of determining
7 whether to impose the automatic stay. § 362(d)(4)(D). If a debtor seeks to impose
8 the automatic stay under § 362(d)(4)(B), that presumption must be rebutted by clear
9 and convincing evidence. § 362(d)(4)(D). As noted above, the Debtor was unable to
10 rebut the presumption necessary to impose the automatic stay, but that does not
11 make the presumption go away. Although the burden of proof may be different
12 under § 1208(c), for the purposes of dismissal the court may still look to the “bad
13 faith” presumption under § 362(d)(4)(D) which shifts to the Debtor the burden of
14 proving his “good faith.”

15 Here, the Debtor contends that he intended to file a chapter 12 petition for his
16 corporation, Quinto Farms, LLC (“Quinto”) and move to consolidate or jointly
17 administer his case with the Quinto case. But the Debtor did not file a petition for
18 Quinto until September 8, 2010 (case number 10-60375-A-12), one day before the
19 hearing on this Motion. The Quinto case was not designated as a “related case” and
20 was not assigned to this court; there has been no determination of Quinto’s “family
21 farmer” status. However, the Debtor cites no authority for the proposition that a
22 non-family-farmer can make himself eligible for chapter 12 relief by consolidating
23 or jointly administering his case with a family-farmer case. Looking at the “totality
24 of the circumstances,” and particularly the 2nd, 3rd and 4th elements noted above from
25 *Leavitt*, this court is persuaded that there was no meritorious basis for the Debtor to
26 file the 2nd and 3rd chapter 12 petitions, especially after this court gave him an
27 extended period of time to convert the first case to chapter 11 and remain under the
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1 protection of the Bankruptcy Code.⁴

2 **Bar Against Refiling**

3 The Creditors also request an order barring the Debtor from refiling another
4 petition for a period of 180 days. These serial filings have interfered with the
5 creditor Pandol Bros. Inc.’s ability to prosecute its trademark litigation against the
6 Debtor and have substantially increased the Creditors’ cost of trying to do so. The
7 bankruptcy court has the authority to bar a “bad faith” debtor from refiling another
8 petition as part of the court’s inherent power to prevent abusive behavior and to
9 manage the practice of law in the cases that come before it. Moreover, the
10 Bankruptcy Code itself authorizes the court to dismiss an individual or “family
11 farmer” case with a 180-day bar against refiling if “the case is dismissed by the
12 court for willful failure of the debtor to *abide by orders of the court.*” § 109(g)
13 (emphasis added).

14 The term “abide” is defined to mean “to obey: to act in accordance with or in
15 conformity to.” *Blacks Law Dictionary* 4 (9th ed. 2009). Here, it is clear that the
16 Debtor’s intentional refiling of the second and third chapter 12 bankruptcy petitions,
17 shortly after two courts ruled that the Debtor was not eligible for chapter 12 relief,
18 constitutes a willful failure to abide by, or act in conformity with, the orders
19 dismissing the first and second chapter 12 petitions. Accordingly, dismissal of this
20 case with a 180-day bar against refiling appears to be not only warranted, but
21 appropriate.

22 **Conclusion**

23 Based on the foregoing, the court finds and concludes that the Debtor is not
24 eligible for relief under chapter 12 and that this third chapter 12 petition was filed in
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26 ⁴In response to this Motion, the Debtors explains why he decided not to convert the
27 first case to chapter 11. In summary, the Debtor did not want to shoulder the responsibility
28 and the accountability, and the added expenses associated with being a debtor-in-possession
in chapter 11.

1 bad faith. Cause exists for dismissal under § 1208(c). The court also finds and
2 concludes that a 180-day bar against refiling is warranted under § 109(g). The court
3 will reserve jurisdiction to decide the Creditors' motion for sanctions currently
4 under submission.

5 Dated: September 29, 2010

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7 /s/ W. Richard Lee
8 W. Richard Lee
9 United States Bankruptcy Judge
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