

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Fredrick E. Clement
Bankruptcy Judge

2500 Tulare Street
Department A, Courtroom 11
Fresno, California

THURSDAY

JULY 16, 2015

10:00 A.M. CHAPTER 7 ADVERSARY PROCEEDINGS

PRE-HEARING DISPOSITIONS

GENERAL DESIGNATIONS

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matters. Matters designated "Tentative Ruling" or "No Tentative Ruling" will be called.

MATTERS RESOLVED BEFORE HEARING

If the court has issued a final ruling on a matter and the parties directly affected by a matter have resolved the matter by stipulation or withdrawal of the motion before the hearing, then the moving party shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter to be dropped from calendar notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860.

ERRORS IN FINAL RULINGS

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 52(b), 59(e) or 60, as incorporated by Federal Rules of Bankruptcy Procedure, 7052, 9023 and 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

1. 10-61725-A-7 PAMELA ENNIS
12-1160
STRAIN V. ENNIS ET AL
THOMAS ARMSTRONG/Atty. for pl.
DISMISSED
CLOSED

CONTINUED STATUS CONFERENCE RE:
AMENDED COMPLAINT
10-16-12 [7]

Final Ruling

The adversary proceeding dismissed, the status conference is concluded.

2. 13-18043-A-7 TARSEM PABLA
14-1075
MANFREDO V. PABLA ET AL
TRUDI MANFREDO/Atty. for pl.
RESPONSIVE PLEADING

CONTINUED PRE-TRIAL CONFERENCE
RE: COMPLAINT
7-28-14 [1]

Final Ruling

This matter is continued to August 11, 2015, at 10:00 a.m.

3. 14-15952-A-7 AUSTREBERTO MAGANA
15-1059
HAWKINS V. MAGANA
ROBERT HAWKINS/Atty. for pl.

STATUS CONFERENCE RE: COMPLAINT
5-12-15 [1]

Final Ruling

This matter is continued to September 9, 2015, at 10:00 a.m.

4. 14-14453-A-7 SAMUEL LOPEZ
14-1141
CALLISON V. LOPEZ
DANIEL BARADAT/Atty. for pl.
RESPONSIVE PLEADING

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
11-21-14 [1]

No tentative ruling

5. 14-15856-A-7 SOHIL ESCHEIK
15-1029
NEXTGEAR CAPITAL, INC. V.
ESCHEIK
MATTHEW QUALL/Atty. for pl.

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
3-16-15 [1]

Final Ruling

This matter is continued to September 9, 2015, at 10:00 a.m.
Plaintiff has not properly served both the defendant debtor and his attorney Peter Fear. Fed. R. Bankr. P. 7004(g). Not later than 30 days prior to the continued status conference, the plaintiff shall:

(1) obtain a reissued summons; (2) serve the reissued summons, complaint, a copy of Form EDC 3-100, Notice to Pro Se Debtor(s) and Form EDC 3-101, answer, in accordance with Local Bankruptcy Rule 7004-1 on the defendant debtor and his counsel of record; and (3) file a certificate of service. The parties shall not enlarge time for filing a response to the complaint without an order of this court. Failure to properly serve the adversary proceeding within the time specified herein will likely result in a dismissal of the complaint. Fed. R. Civ. P. 4(m), incorporated by Fed. R. Bankr. P. 7004(a).

6. 15-10157-A-7 LAWRENCE PARKER MOTION FOR ENTRY OF DEFAULT
15-1011 UST-1 JUDGMENT
U.S. TRUSTEE V. PARKER 6-15-15 [18]
GREGORY POWELL/Atty. for mv.

Final Ruling

Motion: Entry of Default Judgment

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by moving party

The clerk has entered default against the defendant in this proceeding. The default was entered because the defendant failed to appear, answer or otherwise defend against the action brought by the plaintiff. Fed. R. Civ. P. 55(b) (2), incorporated by Fed R. Bankr. P. 7055. The plaintiff has moved for default judgment.

Under Federal Rule of Civil Procedure 8(b)(6), the allegations of the complaint are admitted except for allegations relating to the amount of damages. Fed. R. Civ. P. 8(b)(6), incorporated by Fed. R. Bankr. P. 7008(a). Having accepted the well-pleaded facts in the complaint as true, and for the reasons stated in the motion and supporting papers, the court finds that default judgment should be entered against the defendant. Fed. R. Civ. P. 55(b)(2), incorporated by Fed. R. Bankr. P. 7055.

The court has the authority to preclude serial, abusive bankruptcy filings. A number of remedies exist to redress such abuses: (1) dismissal with prejudice that bars the subsequent discharge of existing, dischargeable debt in the case to be dismissed, 11 U.S.C. § 349(a); (2) dismissal with prejudice that bars future petitions from being filed or an injunction against future filings, 11 U.S.C. §§ 105(a), 349(a); see also *Kistler v. Johnson*, No. 07-2257, 2008 WL 483605 (Bankr. E.D. Cal. Feb. 15, 2008) (McManus, J.) (unpublished decision). These provisions and remedies complement each other and are cumulative. See *In re Casse*, 198 F.3d. 327, 337-41 (2d Cir. 1999).

In cases where cause is found under § 349(a), a filing bar may exceed the 180-day limit described in § 109(g). See, e.g., *id.* at 341; *In re Tomlin*, 105 F.3d 933 (4th Cir. 1997). But see *In re Frieouf*, 938 F.2d 1099, 1103-04 (10th Cir. 1991). In *Leavitt*, the Ninth Circuit B.A.P. noted that § 349 was intended to authorize courts to control abusive filings, notwithstanding the limits of § 109(g). See *In re Leavitt*, 209 B.R. 935, 942 (B.A.P. 9th Cir. 1997).

Section 349(a) invokes a "cause" standard. In *Leavitt*, the panel held that "egregious" conduct must be present to find "cause" under § 349, but "a finding of bad faith constitutes such egregiousness." *Id.* at 939 (upholding the bankruptcy court's decision that debtors' inequitable proposal of Chapter 13 plan merely to avoid an adverse state court judgment was an unfair manipulation of the Code). In this circuit, a finding of bad faith is sufficient "cause" for barring future filings pursuant to § 349(a). *Id.* at 939. The overall test used to determine bad faith is to consider the totality of the circumstances. See, e.g., *In re Leavitt*, 209 B.R. at 939; *In re Eisen*, 14 F.3d 469, 470 (9th Cir. 1994). In determining whether bad faith exists, "[a] bankruptcy court must inquire whether the debtor has misrepresented facts in his plan, unfairly manipulated the Bankruptcy Code, or otherwise proposed [a plan] in an inequitable manner." *In re Goeb*, 675 F.2d 1386, 1390 (9th Cir. 1982).

The court concludes that a filing bar may be ordered pursuant to § 349 if the appropriate objective factors are found. The court may find cause to bar a debtor from re-filing if the debtor: (1) acted inequitably in filing a case or proposing a plan, (2) misrepresented the facts, (3) unfairly manipulated the Code, or (4) proposed a plan in an inequitable manner. These factors are disjunctive.

Based on the undisputed facts, the court finds cause to impose a filing bar exceeding the 180-day limit in § 109(g). The facts show debtor has unfairly manipulated the Code without genuine intent to prosecute the debtor's cases to discharge.

The debtor will be enjoined from filing another bankruptcy petition in the Eastern District of California without leave of court for a two-year period commencing on the entry of the order dismissing the debtor's bankruptcy case. During such time, leave of court will not be granted to file a petition unless the following conditions have been met: (1) the request for leave of court to file a petition is accompanied by a cashier's check made payable to the Clerk of Court for the full amount of the filing fee and documents that include the completed schedules and statements prepared and ready to be filed, (2) reasonable assurances are provided that debtor will appear at the § 341 meeting, and (3) the debtor shows a material change in circumstances that warrant the filing of a subsequent petition.

Lastly, the judgment shall reflect that the claim for dismissal will be denied as moot. The dismissal claim is moot as the case has already been dismissed.

7. 14-13458-A-7 PEDRO ESPINOZA AND MARIA STATUS CONFERENCE RE: COMPLAINT
15-1068 BLANCO 5-20-15 [[1](#)]
HAWKINS V. ESPINOZA ET AL
ROBERT HAWKINS/Atty. for pl.
RESPONSIVE PLEADING

Final Ruling

This matter is continued to September 9, 2015, at 10:00 a.m. In the event the case has not been dismissed, not later than 14 days prior to the continued hearing the parties shall file a joint status report.

8. 08-10861-A-7 JAMES/DAISY CORBETT
MARK ZIMMERMAN/Atty. for dbt.
RESPONSIVE PLEADING
Final Ruling
This matter is continued to September 30, 2015, at 10:00 a.m.
- CONTINUED PRE-TRIAL CONFERENCE
RE: TRUSTEE FINAL ACCOUNT AND
DISTRIBUTION REPORT
10-23-12 [[92](#)]
9. 08-10861-A-7 JAMES/DAISY CORBETT
JES-3
JAMES SALVEN/MV
MARK ZIMMERMAN/Atty. for dbt.
RESPONSIVE PLEADING
Final Ruling
This matter is continued to September 30, 2015, at 10:00 a.m.
- CONTINUED PRE-TRIAL CONFERENCE
RE: OBJECTION TO DEBTOR'S CLAIM
OF EXEMPTIONS
12-20-12 [[104](#)]
10. 08-10861-A-7 JAMES/DAISY CORBETT
14-1089
CALIFORNIA CORRECTIONAL PEACE
OFFICERS ASSOCIATION V.
ED HAYS/Atty. for pl.
ORDER ECF NO. 56, CONTINUING
TO 9/30/15
Final Ruling
This matter is continued to September 30, 2015, at 10:00 a.m.
- PRETRIAL CONFERENCE RE:
COMPLAINT
8-25-14 [[1](#)]
11. 08-10861-A-7 JAMES/DAISY CORBETT
14-1089
MAS-3
CALIFORNIA CORRECTIONAL PEACE
OFFICERS ASSOCIATION V.
ED HAYS/Atty. for mv.
ORDER ECF NO. 56, CONTINUING
TO 9/30/15
Final Ruling
This matter is continued to September 30, 2015, at 10:00 a.m.
- MOTION FOR SUMMARY JUDGMENT
AND/OR MOTION FOR SUMMARY
ADJUDICATION
6-18-15 [[49](#)]

12. 10-61970-A-7 BRIAN ENNIS
12-1161
SALVEN V. ENNIS
THOMAS ARMSTRONG/Atty. for pl.
DISMISSED
CLOSED

CONTINUED STATUS CONFERENCE RE:
AMENDED COMPLAINT
10-16-12 [7]

Final Ruling

The adversary proceeding dismissed, the status conference is concluded.

13. 13-16682-A-7 RICHARD/BARBARA GRENINGER
14-1111
SALVEN V. STRAIN
ROBERT HAWKINS/Atty. for pl.

CONTINUED STATUS CONFERENCE RE:
AMENDED COMPLAINT
3-20-15 [39]

No tentative ruling

14. 15-10983-A-7 TAMRA WOLFE
15-1063
WOLFE V. DEUTSCHE NATIONAL
TRUST COMPANY ET AL
TAMRA WOLFE/Atty. for pl.

STATUS CONFERENCE RE: COMPLAINT
5-19-15 [1]

No tentative ruling