

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

October 7, 2014 at 1:30 p.m.

1. [14-25658](#)-E-13 DIANE HALSTEAD

ORDER TO SHOW CAUSE
8-27-14 [[22](#)]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Service: The Order to Show Cause was served by the Clerk of the Court on Diane Halstead ("Debtor"), Trustee, and other parties in interest on August 30, 2014. The court computes that 38 day's notice has been provided.

The court's decision is to sustain the Order to Show Cause and issue a pre-filing review requirement for any further cases filed in the next eight years.

The court issued an Order to Show Cause on August 27, 2014 based on Debtor's repeated filing of bankruptcy cases in the improper judicial districts, failure to file Schedules and Statements of Financial Affairs, and failure to attend any First Meeting of Creditors. Dckt. 22.

BACKGROUND

A. Instant Bankruptcy Case No. 14-25658

The Debtor filed the instant Chapter 13 bankruptcy case, no. 14-25658, on May 22, 2014, in the Northern District of California, Oakland Division. The case was transferred to the Eastern District of California, Sacramento Division on May 27, 2014.

On August 22, 2014, the Debtor filed a Motion to Dismiss. Dckt. 20. In the motion the Debtor merely state:

This is a Voluntary Request to the court to Dismiss Case Number 14-25658 as Resolutions are In Progress on the Private Side Thank You

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On September 18, 2014, the court entered an order dismissing the case for unreasonable delay that is prejudicial to creditors. Dckt. 27.

B. Prior Bankruptcy Cases

The court has identified prior bankruptcy cases having been filed by the Debtor and dismissed for the Debtor's failure to comply with the basic obligations arising under the Bankruptcy Code:

1. Chapter 13 Case No. 14-21876, filed by Diane Halstead on February 26, 2014, in the Eastern District of California/Sacramento Division, which was dismissed by the court on March 17, 2014, for failure to file the following documents,

Chapter 13 Plan,
Means Test - Form 22C,
Schedule A - Real Property,
Schedule B - Personal Property,
Schedule C - Exempt Property,
Schedule D - Secured Claims,
Schedule E - Unsecured Priority Claims,
Schedule F - General Unsecured Claims,
Schedule G - Executory Contracts,
Schedule H - Co-Debtor(s),
Schedule I - Current Income,
Schedule J - Current Expenses,
Statement of Financial Affairs,
Statistical Summary, and
Summary of Schedules.

2. Chapter 13 Case No. 13-43128, filed by Diane Halstead on May 30, 2013, in the Northern District of California/Oakland Division, which was dismissed by the court on June 18, 2013, for the failure to file the following documents,

Schedule A - Real Property,
Schedule B - Personal Property,
Schedule C - Exempt Property,
Schedule D - Secured Claims,
Schedule E - Unsecured Priority Claims,
Schedule F - General Unsecured Claims,
Schedule G - Executory Contracts,
Schedule H - Co-Debtor(s),
Schedule I - Current Income,
Schedule J - Current Expenses,
Declaration Concerning Debtor's Schedules,
Statement of Current Monthly Income and Calculation of
Commitment Period and Disposable Income
Statement of Financial Affairs,
Statistical Summary, and
Summary of Schedules.

3. Chapter 13 Case No. 12-39059, filed by Diane Halstead on September 28, 2012, in the Northern District of California/Oakland Division, the case being transferred to the Eastern District of California/Sacramento Division which was dismissed by the court on November 14, 2012, for the failure to file the following documents,

Chapter 13 Plan,
Schedule A - Real Property,
Schedule B - Personal Property,
Schedule C - Exempt Property,
Schedule D - Secured Claims,
Schedule E - Unsecured Priority Claims,
Schedule F - General Unsecured Claims,
Schedule G - Executory Contracts,
Schedule H - Co-Debtor(s),
Schedule I - Current Income,
Schedule J - Current Expenses,
Declaration Concerning Debtor's Schedules,
Statement of Current Monthly Income and Calculation of
Commitment Period and Disposable Income
Statement of Financial Affairs,
Statistical Summary, and
Summary of Schedules.

C. Order to Show Cause

The court issued an Order to Show Cause on August 27, 2014 based on Debtor's repeated filing of bankruptcy cases in the improper judicial districts, failure to file Schedules and Statements of Financial Affairs, and failure to attend any First Meeting of Creditors. Dckt. 22.

The Debtor filed a Memorandum/Letter (which the Debtor has titled "Pleading" on September 29, 2014. Dckt. 30. The majority of the letter outlines Debtor's grievances with Wells Fargo Bank and does not pertain to the instant Order to Show Cause. However, in connection with the Order to Show Cause, the Debtor does state:

I filed bankruptcy many times at the advice of a company I was working with which turned out to be a sham. And because I did not understand where, how, or when to file bankruptcy or have the funds to get additional legal help, I do the best I could under the circumstances. I ask the courts forgiveness and not hold this against me or any resources I have in pleading, reinstatement, filings or redemption against the alliance of the aforementioned entities.

DISCUSSION

The bankruptcy courts are established by an act of Congress. 28 U.S.C. § 151. The All Writs Act, 28 U.S.C. § 1651(a), and 11 U.S.C. § 105 provide the bankruptcy courts with the inherent power to enter pre-filing orders against vexatious litigants. *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047 (9th Cir. 2007); *Gooding v Reid, Murdock & Co.*, 177 F. 684, (7th Cir. 1910);

Weissman v. Quail Lodge Inc., 179 F.3d 1194, 1197 (9th Cir. 1999); *In re Bialac* 15 B.R. 901, (B.A.P. 9th Cir. 1981), *aff'd*, 694 F.2d 625 (9th Cir. 1982). A court must be able to regulate and provide for the proper filing and prosecuting of proceedings before it. Section 105(a) expressly grants the court the power to issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. Further, the court is authorized to *sua sponte* take any action or make any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process. This power exists and it does not matter whether it is being exercised pursuant to 11 U.S.C. § 105 or the inherent power of the court. *In re Volpert*, 110 F.3d 494, 500 (7th Cir. 2007).

The Court of Appeals for the Ninth Circuit restated the grounds and methodology for pre-filing review requirements as an appropriate method for the federal courts in effectively managing serial filers or vexatious litigants. *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047 (9th Cir. 2007), *en banc* hearing denied, 521 F.3d 1215 (9th Cir. 2008); *see also In re Fillbach*, 223 F.3d 1089 (9th Cir. 2000). While maintaining the free and open access to the courts, it is also necessary to have that access be properly utilized and not abused. The abusive filing of bankruptcy petitions, motions, and adversary proceedings for purposes other than as allowed by law diminishes the quality of and respect for the judicial system and laws of this country.

As addressed by the Ninth Circuit in *Molski*, the ordering of a pre-filing review requirement is not to be entered with undue haste because such orders can tread on a litigant's due process right of access to the courts. As discussed in *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 429 (1982), the right to seek redress from the court is a protected right civil litigants. The issuing of a pre-filing order is to be made only after a cautious review of the pertinent circumstances.

However, the Ninth Circuit clearly draws the line that a person's right to present claims and assert rights before the federal courts is a not a license to abuse the judicial process and treat the courts merely as a tool to abuse others.

Nevertheless, "[f]lagrant abuse of the judicial process cannot be tolerated because it enables one person to preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants." *De Long [v. Henneessey]*, 912 F.2d [1144,] 1148 [(9th Cir. 1990)]; *see O'Loughlin v. Doe*, 920 F.2d 614, 618 (9th Cir. 1990).

Molski, 500 F.3d at 1057. In the Ninth Circuit the trial courts apply a four-factor analysis in determining if and what type of pre-filing or other order should properly be issued based on the conduct of the party at issue.

1. First, the litigant must be given notice and a chance to be heard before the order is entered.
2. Second, the district court must compile "an adequate record for review."
3. Third, the district court must make substantive findings about

the frivolous or harassing nature of the plaintiff's litigation.

4. Finally, the vexatious litigant order "must be narrowly tailored" to closely fit the specific vice encountered.

Molski, 500 F.3d at 1057-1058.

The Debtor's repetitive filing of bankruptcy cases without the basic documents and otherwise failing to meet her basic duties as a debtor under the Bankruptcy Code demonstrates abusive conduct and misuse of the bankruptcy laws. Though the bankruptcy court is open to all and a person's financial, personal, or other missteps are not a bar to seeking the extraordinary relief available, debtors must seek the relief and prosecute the cases in good faith. In this case the Debtor has chosen to repeatedly file a series of Chapter 13 cases in which he has failed to file necessary documents or pay the filing fees imposed by federal law. The Debtor has demonstrated, through the repeated Chapter 13 cases which have not been prosecuted, that this and the prior Chapter 13 cases do not have merit as a reorganization.

Debtor's subsequent letter filed on September 29, 2014 which described grievances Debtor has with Wells Fargo Bank does not properly explain or justify why Debtor has repeatedly filed bankruptcy cases. The three-page diatribe that the Debtor presents to the court to explain the repeated filings and seeking relief that the court is unable to discern on the face of the letter does not address the concerns the court presented in the Order to Show Cause nor does it overcome the presumption that accompanies a four-time repeat filer.

The court is cognizant of the significant impact the filing of a bankruptcy case has on not only the Debtor, but creditors and other persons. Even if, due to the repeated filings and the provisions that Congress has placed in a subparagraph of a subsection of the Bankruptcy Code, the automatic stay does not go into effect, the mere presentation of a petition and the significant sanctions imposed on someone violating the stay can work to prevent creditors from legitimately enforcing their rights.

No Schedules have been filed, nor has a Statement of Financial Affairs has been filed. This bankruptcy case was originally, improperly, filed in the Northern District of California. If this were the first time that Debtor filed a case in the incorrect district or the Debtor lived adjacent to the boarder between the Eastern and Northern Districts of California, such improper filing might not raise too many eyebrows.

However, this is not the case. First, the Debtor lives in Auburn, California, in the cental part of the Eastern District of California. One cannot be confused as to the federal judicial district. So far, the Debtor has filed one bankruptcy case in the Eastern District of California (14-21876) and three cases in the Northern District of California, two of which were transferred to the Eastern District of California: ND 12-47982/ED 12-39059, ND 13-43181 (dismissed, not transferred), and ND 14-42240/ED 14-25658 (current case). Since 2012 the Debtor has, and continues to, improperly filing bankruptcy cases in the Northern District of California.

Debtor files the cases, but does nothing to prosecute the cases in good faith. She does not file the basic documents (Schedules and Statement of Financial Affairs) which are required of a debtor obtaining the extraordinary benefits under the Bankruptcy Code just by filing the case. From reviewing the Dockets, the Debtor has failed to attend even one First Meeting of Creditors.

The Debtor's repeated filing of bankruptcy cases in the improper judicial districts, failure to file Schedules and Statements of Financial Affairs, and failure to attend any First Meeting of Creditors demonstrates either a general incompetence for basic legal matters or a willful, intentional abuse of the federal judicial process. Neither is a valid reason for the conduct or allowing it to continue -- to the detriment of the Debtor and the federal court. If the Debtor is generally incompetent, then she is squandering her rights under the Bankruptcy Code and applicable non-bankruptcy law. If the Debtor is doing it intentionally to abuse the federal judicial process, then she is wasting limited and precious judicial resources which otherwise could be used for debtors and creditors seeking relief under the bankruptcy laws in good faith.

**ADDRESSING REPETITIVE, NON-PRODUCTIVE FILINGS AND
PROTECTING DEBTOR'S RIGHT TO PROSECUTE A
BANKRUPTCY CASE IN GOOD FAITH**

The court has weighed the options, ranging from just dismissing the current case, as it has done for the prior cases, to imposing an outright bar on the Debtor filing a bankruptcy case. Clearly, some limits need to be placed on the Debtor to prevent the abuse and attempted abuse of the bankruptcy court, bankruptcy laws, state court judgments, and third-parties. The court will not ban the Debtor from ever filing bankruptcy, but will impose the much more moderate requirement that he first obtain the pre-filing authorization from the chief judge in the bankruptcy district before commencing another bankruptcy case during the eight-year period following the dismissal of this case. The court selects a eight-year period after considering the eight-year period which Congress has determined to be appropriate for obtaining discharges in Chapter 7 cases and the four-year period in Chapter 13 cases.

A pre-filing review requirement is of little impact to a debtor seeking legitimate relief from the bankruptcy court. In this case, it will require the debtor (whether he or she is represented by counsel or continuing to act in *pro se*) to have the initial bankruptcy pleadings completed and on their face appear consistent with the requirements of the Bankruptcy Code and Chapter under which the Debtor seeks to file bankruptcy. It imposes no significant cost or delay, in that the petition, schedules, and other basic pleadings need to be prepared at the time of filing. The ability to file rests solely with the Debtor, requiring him to do and comply with only what the Bankruptcy Code requires.

It also has the effect of this Debtor being prepared to successfully prosecute a Chapter 13 case, rather than continue to flounder and squander his rights under the Bankruptcy Code. By her conduct, the Debtor has lost the ability to receive the automatic stay as a matter of right. To the extent that she has or had the ability to cure any defaults and restructure any debts allowed in the Chapter 13 case, those appear to have squandered as well. To the extent that the Debtor is attempting to modify a claim secured by a lien only on her home, such modification is barred by the Bankruptcy Code without

the consent of the creditor. 11 U.S.C. § 1322(b)(2).

The court finds from the totality of the circumstances that Debtor's conduct in this case and prior cases before this court represents a bad-faith abuse of the bankruptcy code and its protections. Therefore the court orders the dismissal of this case and imposes the following sanctions pursuant to 11 U.S.C. §§ 105, 349, and the inherent power of the Federal Court:

1. Issuance of an injunction or bar on the filing of further bankruptcy cases by the Debtor, Diane Halstead, for a period of eight years unless the prior authorization is obtained from the Chief Bankruptcy Judge in the District in which she desires to file a bankruptcy case.
2. Requiring that the Debtor, Diane Halstead, pay all filing fees at the time a new case is commenced, and prohibiting her from obtaining a fee waiver or authorization to pay filing fees in installments.
3. Authorizing and ordering the Office of the Clerk to not file any bankruptcy petition filed by the Debtor, Diane Halstead, which is not approved for filing by the Chief Judge for the Bankruptcy District in which Diane Halstead attempts to file a bankruptcy case.

The court ordered that any opposition be provided in writing. No opposition was filed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is sustained.

IT IS FURTHER ORDERED that Diane Halstead is barred from filing any further bankruptcy cases for a period of four (4) years unless the prior authorization is obtained from the Chief Bankruptcy Judge in the District in which he desires to file a bankruptcy case.

IT IS FURTHER ORDERED that the Clerk of the Bankruptcy Court, and deputy clerks operating under the direction and control of the Clerk of the Court, are authorized to reject any petition attempted to be filed by Raj Singh, the Debtor in this case, during the eight (8) year period of the injunction issued in this order, if there is not the prior authorization from the Chief Bankruptcy Judge for the District.

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IT IS FURTHER ORDERED that the Debtor shall pay all filing fees at the time a new case is commenced, and Debtor is prohibited from obtaining a fee waiver or authorization to pay filing fees in installments.