

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement
Fresno Federal Courthouse
2500 Tulare Street, 5th Floor
Courtroom 11, Department A
Fresno, California

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY

DATE: NOVEMBER 14, 2018

CALENDAR: 10:00 A.M. CHAPTER 7 ADVERSARY PROCEEDINGS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

1. [18-13507](#)-A-7 **IN RE: GILBERT/ELIZABETH GARZA**
[18-1057](#)

STATUS CONFERENCE RE: COMPLAINT
9-6-2018 [[1](#)]

U.S. TRUSTEE V. GARZA ET AL
ROBIN TUBESING/ATTY. FOR PL.

Final Ruling

The court having granted the U.S. Trustee's motion for entry of default, item No. 2 below, the status conference is concluded.

2. [18-13507](#)-A-7 **IN RE: GILBERT/ELIZABETH GARZA**
[18-1057](#) [UST-1](#)

MOTION FOR ENTRY OF DEFAULT JUDGMENT
10-16-2018 [[16](#)]

U.S. TRUSTEE V. GARZA ET AL
ROBIN TUBESING/ATTY. FOR MV.

Final Ruling

Motion: Entry of Default Judgment

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

Disposition: Granted in part, denied in part as moot

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, viz. 21 different filings in the last 14 years, 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 or reorganization.

The motion for default judgment on the claim seeking dismissal with prejudice is denied as moot given that the dismissal of the current case has already occurred. However, the court will enter default judgment on the claim seeking an injunction.

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.

3. [18-11240](#)-A-7 **IN RE: DIANA XAVIER**
[18-1062](#)

STATUS CONFERENCE RE: COMPLAINT
9-19-2018 [[1](#)]

MANFREDO V. RIVER-X
SHARLENE ROBERTS-CAUDLE/ATTY. FOR PL.
DISMISSED 10/22/18

Final Ruling

The adversary proceeding dismissed, the status conference is concluded.

4. [18-12952](#)-A-7 **IN RE: KATHERINE FAIRCHILD**
[18-1059](#)

STATUS CONFERENCE RE: COMPLAINT
9-8-2018 [[1](#)]

FAIRCHILD V. KINGS CREDIT
SERVICES
TIMOTHY SPRINGER/ATTY. FOR PL.
DISMISSED 10/15/18

Final Ruling

The adversary proceeding dismissed, the status conference is concluded.

5. [17-13776](#)-A-7 **IN RE: JESSICA GREER**
[18-1017](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
4-23-2018 [[1](#)]

SALVEN V. CALIFORNIA
DEPARTMENT OF FOOD &
SHARLENE ROBERTS-CAUDLE/ATTY. FOR PL.

No Ruling

6. [17-12781](#)-A-7 **IN RE: DALIP NIJJAR**
[17-1066](#) [FW-3](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,
P.C. FOR GABRIEL J. WADDELL, PLAINTIFFS ATTORNEY(S)
10-12-2018 [[214](#)]

SALVEN V. NIJJAR ET AL

No Ruling