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3 UNITED STATES BANKRUPTCY COURT
4 EASTERN DISTRICT OF CALIFORNIA
5 SACRAMENTO DIVISION
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8 In re)
9) Case No. 07-29760-A-7
10 JEFFREY A. CATLIN,)
11) Docket Control No. UST-2
12) Date: November 26, 2007
Debtor.) Time: 9:00 a.m.
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)

13 On November 26, 2007 at 9:00 a.m., the court considered the
14 motion of the United States Trustee to confirm the absence of the
15 automatic stay. The court's ruling on the objection is appended
16 to the minutes of the hearing. Because that ruling constitutes a
17 "reasoned explanation" of the court's decision, it is also posted
on the court's Internet site, www.caeb.uscourts.gov, in a text-
searchable format as required by the E-Government Act of 2002.
The official record, however, remains the ruling appended to the
minutes of the hearing.

18 **FINAL RULING**

19 The motion will be granted.

20 The U.S. Trustee seeks dismissal of this case pursuant to 11
21 U.S.C. § 1112(b) as well as a determination that the automatic
22 stay did go into effect.

23 The factual basis for this relief is that the debtor and his
24 wife, Revelyn Catlin, have filed 23 bankruptcies since 1992.
25 Just in 2007, including the instant case, the debtor and his wife
26 have filed eight bankruptcies. All cases are littered with
27 defaults, including non-payment of filing fees, failures to file
28 documents, or non-performance under chapter 13 plans.

1 11 U.S.C. § 362(c)(4)(A)(i) provides that "if a single or
2 joint case is filed by or against a debtor who is an individual
3 under this title, and if 2 or more single or joint cases of the
4 debtor were pending within the previous year but were dismissed,
5 other than a case refiled under section 707(b), the stay under
6 section (a) shall not go into effect upon the filing of the later
7 case; and (ii) on request of a party in interest, the court shall
8 promptly enter an order confirming that no stay is in effect."

9 On June 7, 2007, the debtor filed a chapter 7 case (case no.
10 07-24269-C). The court dismissed that case on October 5, 2007.

11 On July 12, 2007, the debtor filed another chapter 7 case
12 (case no. 07-25361-B). The court dismissed this case on
13 September 10, 2007.

14 On October 10, 2007, the debtor filed a chapter 13 case
15 (case no. 07-28433-B). This case is still pending.

16 The debtor filed the instant bankruptcy case on November 15,
17 2007.

18 The court has reviewed the dockets of the above first,
19 second, and third prior cases and has confirmed that those cases
20 were pending within the previous year and that the court
21 dismissed two of the previous cases. Accordingly, the court will
22 confirm that the automatic stay did not go into effect upon the
23 filing of the instant case on November 15, 2007.

24 Further, 11 U.S.C. § 1112(b)(1) provides that, for cause, on
25 request of a party in interest and after notice and a hearing,
26 the court may convert a chapter 11 case to chapter 7, or dismiss
27 it, whichever is in the best interest of the creditors and the
28 estate. The filing of a case in bad faith can be cause for

1 dismissal under 11 U.S.C. § 1112(b)(1). See e.g., Fields Station
2 LLC v. Capitol Food Corp. of Fields Corner (In re Capitol Food
3 Corp. Of Fields Corner), 490 F.3d 21, 24 (1st Cir. 2007).

4 In deciding whether bad faith exists, courts should consider
5 the totality of the circumstances. Eisen v. Curry (In re Eisen),
6 14 F.3d 469, 470 (9th Cir. 1994). This includes factors such as
7 misrepresented facts in the bankruptcy petition, unfair
8 manipulation of the Bankruptcy Code, preemption of the chapter 7
9 trustee's administration of the case, or otherwise inequitable
10 circumstances surrounding the petition filing and egregious
11 behavior. Leavitt v. Soto (In re Leavitt), 171 F.3d 1219, 1224
12 (9th Cir. 1999).

13 A finding of bad faith, however, does not require fraudulent
14 intent, malice, ill will or an affirmative attempt to violate the
15 law. In re Leavitt, 171 F.3d at 1224 (quoting In re Powers, 135
16 B.R. 980, 994 (Bankr. C.D. Cal. 1991); see also Cabral v. Shabman
17 (In re Cabral), 285 B.R. 563, 572 (B.A.P. 1st Cir. 2002).

18 Given the debtor's and his wife's history of filing
19 bankruptcy cases, the court concludes that they are serial
20 filers. The court takes judicial notice of the Declaration of
21 Judith Hoetz, including its Exhibit A, which outlines the
22 debtor's and his wife's history of filing bankruptcies. See Fed.
23 R. Evid. 201(c).

24 Furthermore, a review of the case docket in this case shows
25 that the debtor filed the case without filing a balance sheet, a
26 cash flow statement, a certificate of credit counseling, the
27 statement of current monthly income and means test calculation
28 (Form 22), Schedules A through J, the statement of financial

1 affairs, the summary of schedules, the statistical summary, and
2 the statement of operations, as required by Interim Rule
3 1007(b)(1), (3) & (c) and 11 U.S.C. § 521(a), (b). The debtor
4 filed just the cover petition documents, with an Exhibit D,
5 indicating that, although he completed credit counseling, he does
6 not have the certificate for it. The debtor also failed to pay
7 the filing fee, seeking instead to pay it in installments.

8 A review of the debtor's and his wife's prior bankruptcies
9 reveals that the defaults and omissions in this case are similar
10 to the defaults and omissions in their prior cases. For
11 instance, the debtor has not paid any filing fees in any of his
12 three prior bankruptcy cases filed within the last 12 months.
13 The court takes judicial notice of the dockets in cases 07-24269-
14 C-7, 07-25361-B-7, and 07-28433-B-13.

15 Based on the foregoing, the court concludes that this case
16 was filed in bad faith, without the purpose of completing it and
17 reorganizing the debtor's financial affairs. It is fair to
18 conclude, based on the history of this debtor and his spouse,
19 they file petitions then fail to do something that insures the
20 dismissal of the petition. This is done to acquire the automatic
21 stay. When the case is dismissed, one of them files a new
22 petition. By this scheme, the automatic stay is acquired but
23 neither the debtor or his spouse loses anything to their
24 creditors. This is cause under 11 U.S.C. § 1112(b)(1). And,
25 given that the U.S. Trustee has filed adversary proceedings for
26 the imposition of an injunction against the debtor and his wife,
27 in case nos. 07-24269-C-7 and 07-25360-C-7 respectively, to
28 prevent them from filing further bankruptcies, the court

1 concludes that dismissal in this case is in the best interest of
2 the creditors and the estate. Accordingly, the motion will be
3 granted and the case will be dismissed.