

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Chief Bankruptcy Judge

Sacramento, California

**March 1, 2018, at 11:00 a.m.**

1. [17-25091](#)-E-13 JULIET DACPANO  
[17-2166](#) UST-1 Pro Se  
U.S. TRUSTEE V. DACPANO

**MOTION FOR SUMMARY JUDGMENT**  
**O.S.T.**  
**1-22-18 [13]**

**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.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant-Debtor (*pro se*) and Chapter 13 Trustee on January 24, 2018. By the court's calculation, 36 days' notice was provided. The court set the hearing for 11:00 a.m. on March 1, 2018. Dckt. 22.

The Motion for Summary Judgment was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----.

**The Motion for Summary Judgment is granted.**

The Office of the United States Trustee ("Plaintiff") initiated this adversary proceeding against Juliet Dacpano ("Defendant-Debtor") by filing a complaint on August 28, 2017 ("Complaint"). Plaintiff seeks summary judgment for injunctive relief in the form of a three-year filing ban against Defendant-Debtor in the instant Adversary Proceeding No. 17-02166.

**March 1, 2018, at 11:00 a.m.**

## SUMMARY OF COMPLAINT

Plaintiff filed a complaint for injunctive relief against Defendant-Debtor. The Complaint alleges that Defendant-Debtor has filed nine noncompliant bankruptcy cases, beginning in 2010, which constitute abuse of the Bankruptcy Code. Eight of the cases have been filed by Defendant-Debtor and one by her husband, Amado Dacpano. In all of Defendant-Debtor's cases, the Social Security number ending in "-7140" was used, and in her husband's case, the Social Security number ending in "-0077" was used. In all cases, Defendant-Debtor and her husband have been *pro se*. Beginning with her third bankruptcy filing, Defendant-Debtor failed to list all of the bankruptcies she had filed in the preceding eight years, contrary to the petition instructions.

The nine cases filed by Defendant-Debtor or her husband include:

- A. Case No. 10-27358
    - 1. Juliet Dacpano
    - 2. Filed: March 24, 2010
    - 3. Chapter 13
    - 4. Dismissal Date: April 12, 2010
    - 5. Reason for Dismissal: Failure to file documents
  - B. Case No. 10-54677
    - 1. Juliet Dacpano
    - 2. Filed: May 4, 2010
    - 3. Chapter 13
    - 4. Dismissal Date: December 21, 2011
    - 5. Reason for Dismissal: Inability to confirm a plan
- The Complaint makes note that in this case, relief from the automatic stay was granted to JPMorgan Chase Bank to allow for foreclosure proceedings against Defendant-Debtor's residence, commonly known as 2644 Scottsdale Drive, San Jose, California ("Scottsdale Residence"). Dckt. 1 at 3:19–20.
- C. Case No. 12-51767
    - 1. Juliet Dacpano
    - 2. Filed: March 6, 2012
    - 3. Chapter 13
    - 4. Dismissal Date: March 21, 2012
    - 5. Reason for Dismissal: Failure to file documents
  - D. Case No. 12-52338
    - 1. Juliet Dacpano
    - 2. Filed: March 27, 2012
    - 3. Chapter 13
    - 4. Dismissal Date: June 12, 2013
    - 5. Reason for Dismissal: Failure to make plan payments

The Complaint notes that in this case, relief from the automatic stay was granted to JPMorgan Chase Bank to allow for an unlawful detainer action after the foreclosure of Defendant-Debtor's Scottsdale Residence. Dckt. 1 at 3:22–26.

- E. Case No. 12-55313
  - 1. Amado Dacpano
  - 2. Filed: July 18, 2012
  - 3. Chapter 7
  - 4. Discharge Date: November 1, 2012
  - 5. Date Closed: November 1, 2012
  
- F. Case No. 16-20597
  - 1. Juliet Dacpano
  - 2. Filed: February 3, 2016
  - 3. Chapter 7
  - 4. Discharge Date: June 29, 2016
  - 5. Date Closed: July 22, 2016
  
- G. Case No. 16-25760
  - 1. Juliet Dacpano
  - 2. Filed: August 30, 2016
  - 3. Chapter 13
  - 4. Dismissal Date: December 22, 2016
  - 5. Reason for Dismissal: Failure to make plan payments
  
- H. Case No. 17-23475
  - 1. Juliet Dacpano
  - 2. Filed: May 23, 2017
  - 3. Chapter 13
  - 4. Dismissal Date: June 21, 2017
  - 5. Reason for Dismissal: Failure to file documents
  
- I. Case No. 17-25091
  - 1. Juliet Dacpano
  - 2. Filed: August 1, 2017
  - 3. Chapter 13
  - 4. Case still pending

Plaintiff requests that the court enjoin Defendant-Debtor from filing another bankruptcy case for a period of three years, unless Defendant-Debtor obtains authorization from the chief bankruptcy judge for the district in which Defendant-Debtor seeks to file a bankruptcy petition.

## SUMMARY JUDGMENT STANDARD

In an adversary proceeding, summary judgment is proper when “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” FED. R. CIV. P. 56(a) (incorporated by FED. R. BANKR. P. 7056). The key inquiry in a motion for summary judgment is whether a genuine issue of material fact remains for trial. FED. R. CIV. P. 56(c) (incorporated by FED. R. BANKR. P. 7056); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248–50 (1986); 11 JAMES WM. MOORE ET AL., MOORE’S FEDERAL PRACTICE § 56.11[1][b] (3d ed. 2000).

“[A dispute] is ‘genuine’ only if there is a sufficient evidentiary basis on which a reasonable fact finder could find for the nonmoving party, and a dispute [over a fact] is ‘material’ only if it could affect the outcome of the suit under the governing law.” *Barboza v. New Form, Inc. (In re Barboza)*, 545 F.3d 702, 707 (9th Cir. 2008) (citing *Anderson*, 477 U.S. at 248).

The party moving for summary judgment bears the burden of showing the absence of a genuine dispute of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). To support the assertion that a fact cannot be genuinely disputed, the moving party must “cit[e] to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations . . . , admissions, interrogatory answers, or other materials.” FED. R. CIV. P. 56(c)(1)(A) (incorporated by FED. R. BANKR. P. 7056).

In response to a properly submitted motion for summary judgment, the burden shifts to the nonmoving party to set forth specific facts showing that there is a genuine dispute for trial. *Barboza*, 545 F.3d at 707 (citing *Henderson v. City of Simi Valley*, 305 F.3d 1052, 1055–56 (9th Cir. 2002)). The nonmoving party cannot rely on allegations or denials in the pleadings but must produce specific evidence, through affidavits or admissible discovery materials, to show that a dispute exists. *Id.* (citing *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991)). The nonmoving party “must do more than simply show that there is some metaphysical doubt as to the material facts.” *Matsushita Electric Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

In ruling on a summary judgment motion, the court must view all of the evidence in the light most favorable to the nonmoving party. *Barboza*, 545 F.3d at 707 (citing *Cnty. of Tuolumne v. Sonora Cmty. Hosp.*, 236 F.3d 1148, 1154 (9th Cir. 2001)). The court “generally cannot grant summary judgment based on its assessment of the credibility of the evidence presented.” *Agosto v. INS*, 436 U.S. 748, 756 (1978). “[A]t the summary judgment stage[,] the judge’s function is not himself to weigh the evidence and determine the truth of the matter[,] but to determine whether there is a genuine issue for trial.” *Anderson*, 477 U.S. at 249.

## DISCUSSION

### **First Cause of Action: Imposition of Three-Year Filing Injunction Pursuant to 11 U.S.C. §§ 349 & 105**

Plaintiff’s First Claim for Relief alleges that Defendant-Debtor, by the serial filing of noncompliant bankruptcy cases, is abusing the bankruptcy system under Title 11. Defendant-Debtor has

filed eight bankruptcy petitions, and her husband has filed one with the courts since 2010. Defendant-Debtor has failed to present any evidence or reason to the court to believe these filings will stop if any future case is dismissed.

In Defendant-Debtor's Answer, Defendant-Debtor states that the main purpose of filing the current bankruptcy case, 17-25091, is to prevent the foreclosure on her primary residence. Dckt. 7 at 1:22–25. Through the course of the Answer, Defendant-Debtor uses emotional language to convince the court that her home should not be foreclosed on. When Defendant-Debtor does briefly address the Plaintiff's serial filing allegation, Defendant-Debtor admits that the common reason for filing multiple bankruptcy cases was to protect her "only residence" and to be able to enter into the loan modification process. *Id.* at 3:1–5.

That is consistent with the "notable facts regarding the cases filed by the Defendant-Debtor and her husband" in the Complaint. Dckt. 1 at 3:16–4:8. Those "notable facts" show that in multiple prior bankruptcy cases, creditors had been granted relief from the automatic stay for foreclosure-related proceedings.

Defendant-Debtor cannot dispute the record of the cases previously filed by Defendant-Debtor or her husband, most of which were dismissed for failure to comply with various Code provisions. Given the prior case records, and Defendant-Debtor's own Answer, made under penalty of perjury, it appears that Defendant-Debtor has engaged in a pattern of filing multiple bankruptcy petitions as a means to stave off creditor foreclosure on her home. While filing for bankruptcy to prevent foreclosure is not improper, her successive filings have been abusive.

As alleged in the Complaint, monetary sanctions would be insufficient to make Defendant-Debtor stop presenting abusive filings; only injunctive relief at this point will affect Defendant-Debtor's actions.

The court finds that the Complaint is sufficient, and the request for relief requested therein is meritorious. It has not been shown to the court that there is or may be any dispute concerning material facts. Defendant-Debtor has not contested any facts in this Adversary Proceeding. Although the Federal Rules of Civil Procedure favor decisions on the merits through the crucible of litigation, Defendant-Debtor has been given several opportunities to respond, and there is no indication that Defendant-Debtor has a meritorious defense or disputes Plaintiff's right to judgment in this Adversary Proceeding. The court finds it necessary and proper for the entry of a summary judgment against Defendant-Debtor.

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 Motion for Summary Judgment filed by the Office of the United States Trustee ("Plaintiff"), 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 Motion for Summary Judgment is granted for Plaintiff, and against Juliet Dacpano ("Defendant-Debtor"), as set forth in the ruling

on this Motion as stated in the court's Civil Minutes from the March 1, 2018 hearing on the Motion.

**IT IS FURTHER ORDERED** that the court shall enter judgment determining that Defendant-Debtor, is enjoined from filing another bankruptcy case in any district for a period of three years beginning March 1, 2018, without first seeking and receiving the authorization of the chief bankruptcy judge of the district in which she wishes to file a bankruptcy petition.

**IT IS FURTHER ORDERED** that the Clerk of the Bankruptcy Court, and deputy clerks operating at the discretion and control of the Clerk of the Court in any District, are authorized to reject any petition attempted to be filed by Defendant-Debtor during the three-year period if there is not prior authorization from the chief bankruptcy judge of the corresponding district.

Counsel for Plaintiff shall prepare and lodge with the court a proposed judgment consistent with this Order, which judgment includes the express authorization to reject a presented filing by Defendant-Debtor for which there is not a prior authorization from the chief bankruptcy judge in that District.