

**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: TUESDAY
DATE: MAY 17, 2016
CALENDAR: 10:00 A.M. CHAPTER 7 ADVERSARY PROCEEDINGS

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.

ORAL ARGUMENT

For matters that are called, the court may determine in its discretion whether the resolution of such matter requires oral argument. See *Morrow v. Topping*, 437 F.2d 1155, 1156-57 (9th Cir. 1971); accord LBR 9014-1(h). When the court has published a tentative ruling for a matter that is called, the court shall not accept oral argument from any attorney appearing on such matter who is unfamiliar with such tentative ruling or its grounds.

COURT'S 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 60(a), as incorporated by Federal Rules of Bankruptcy Procedure 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. [15-14218](#)-A-7 SARA AKBARPOUR CONTINUED STATUS CONFERENCE RE:
[16-1014](#) COMPLAINT
CHASE INC. V. AKBARPOUR 2-1-16 [[1](#)]
NICHOLAS ANIOTZBEHERE/Atty. for pl.

Final Ruling

The status conference is continued to May 25, 2016, at 10:00 a.m. to coincide with the hearing on the plaintiff's motion to dismiss.

2. [16-10224](#)-A-7 JUANITO ALFORQUE CONTINUED STATUS CONFERENCE RE:
[16-1020](#) COMPLAINT
U.S. TRUSTEE V. ALFORQUE, JR. 2-12-16 [[1](#)]
TERRI DIDION/Atty. for pl.

Final Ruling

The status conference is continued to June 14, 2016, at 10:30 a.m. to allow time for judgment to be entered. If the judgment has been entered prior to the time of the continued hearing, no appearance will be required.

3. [16-10224](#)-A-7 JUANITO ALFORQUE MOTION FOR ENTRY OF DEFAULT
[16-1020](#) UST-1 JUDGMENT
U.S. TRUSTEE V. ALFORQUE, JR. 4-8-16 [[9](#)]
TERRI DIDION/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, 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.

4. [15-12630](#)-A-7 THEODORE/NAOMI FOSTER PRE-TRIAL CONFERENCE RE:
[15-1117](#) COMPLAINT
FIRST NATIONAL BANK OF OMAHA 10-1-15 [[1](#)]
V. FOSTER
DONALD DUNNING/Atty. for pl.
RESPONSIVE PLEADING

Final Ruling

This matter is continued to May 17, 2016, at 1:30 p.m. for a pretrial conference before the Honorable Richard Lee. Judge Lee will also be the trial judge.

5. [15-14834](#)-A-7 JEFFREY KEMMER STATUS CONFERENCE RE: COMPLAINT
[16-1031](#) 3-15-16 [[1](#)]
STERLING PACIFIC LENDING, INC.
V. KEMMER
PETER FEAR/Atty. for pl.
RESPONSIVE PLEADING

No tentative ruling.

6. [15-14147](#)-A-7 MELINDA PILLSBURY-FOSTER NOTICE OF STATUS CONFERENCE RE:
[16-1032](#) NOTICE OF REMOVAL
JOHNSON V. PILLSBURY-FOSTER 3-16-16 [[1](#)]
MELINDA PILLSBURY-FOSTER/Atty. for pl.
CLOSED

Final Ruling

The case closed, the status conference is concluded.

7. [14-14453](#)-A-7 SAMUEL LOPEZ CONTINUED STATUS CONFERENCE RE:
[14-1141](#) COMPLAINT
CALLISON V. LOPEZ 11-21-14 [[1](#)]
DANIEL BARADAT/Atty. for pl.
RESPONSIVE PLEADING

Final Ruling

This matter is continued to June 14, 2016, at 10:00 a.m. Not later than June 7, 2016, the parties shall file a joint status report.

8. [14-10258](#)-A-7 HEATHER BRANDT
[14-1136](#) FW-3
MANFREDO V. BRANDT

MOTION FOR ENFORCEMENT OF
JUDGMENT AND/OR MOTION FOR
COMPENSATION BY THE LAW OFFICE
OF FEAR WADDELL, P.C. FOR
GABRIEL J. WADDELL, PLAINTIFFS
ATTORNEY(S)
4-6-16 [[53](#)]

GABRIEL WADDELL/Atty. for mv.
CLOSED

Tentative Ruling

Motion: For Enforcement of Judgment and For Fees and Costs

Notice: LBR 9014-1(f)(1) / Continued date of hearing; written
opposition filed

Disposition: Granted in part, denied in part

Order: Prepared by the movant

This court entered a judgment against Defendant William L. Brandt that ordered him to turn over to the bankruptcy estate real property located at 16246 Auberry Road, Clovis, CA. It has been over 7 months since the judgment was entered but Defendant has not complied with it by turning over the real property or working with counsel for the trustee to effectuate a real property transfer compliant with the judgment.

Pursuant to Federal Rule of Civil Procedure 70(b), the court will enter a judgment divesting the Defendant's interest in the real property and vesting such interest in the trustee. Because the court has granted relief under Rule 70(a), the court need not grant the alternative relief sought of appointing another person, the trustee, to perform the act of transferring the real property under Civil Rule 70(a). Further, expenses and costs for bringing this motion are not awarded given that relief under Rule 70(b) is granted. See Fed. R. Civ. P. 70(b).

9. [15-10966](#)-A-7 RODNEY HARON
[15-1122](#)
HAWKINS V. NEVADA PROPERTY 1
LLC
RESPONSIVE PLEADING

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
10-18-15 [[1](#)]

No tentative ruling.

10. [15-11283](#)-A-7 GLORIA ESTILLORE
[15-1076](#)
ESTILLORE V. U.S. BANK
NATIONAL ASSOCIATION ET AL
GLORIA ESTILLORE/Atty. for pl.

CONTINUED STATUS CONFERENCE RE:
NOTICE OF REMOVAL
6-8-15 [[1](#)]

[This matter will be called simultaneously with item # 11 below.]

11. [15-11283](#)-A-7 GLORIA ESTILLORE
[15-1155](#)
WELL FARGO BANK, N.A. ET AL V.
ESTILLORE ET AL
THOMAS TRAPANI/Atty. for pl.

STATUS CONFERENCE RE: AMENDED
COMPLAINT
3-30-16 [[17](#)]

No tentative ruling.

12. [15-11283](#)-A-7 GLORIA ESTILLORE
[15-1155](#) JRL-1
WELL FARGO BANK, N.A. ET AL V.
ESTILLORE ET AL
JERRY LOWE/Atty. for mv.
ORDER, ECF NO. 24

MOTION TO DISMISS ADVERSARY
PROCEEDING/NOTICE OF REMOVAL
4-25-16 [[20](#)]

Final Ruling

The motion was denied by order, filed May 2, 2016, ECF # 24.