

**UNITED STATES BANKRUPTCY COURT**  
Eastern District of California

Honorable Fredrick E. Clement  
Bankruptcy Judge

2500 Tulare Street  
Department A, Courtroom 11  
Fresno, California

**THURSDAY**

**JULY 16, 2015**

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

**PRE-HEARING DISPOSITIONS**

**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.

**MATTERS RESOLVED BEFORE HEARING**

If the court has issued a final ruling on a matter and the parties directly affected by a matter have resolved the matter by stipulation or withdrawal of the motion before the hearing, then the moving party 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 to be dropped from calendar 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.

**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 52(b), 59(e) or 60, as incorporated by Federal Rules of Bankruptcy Procedure, 7052, 9023 and 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. [10-61725](#)-A-7 PAMELA ENNIS CONTINUED STATUS CONFERENCE RE:  
[12-1160](#) AMENDED COMPLAINT  
STRAIN V. ENNIS ET AL 10-16-12 [[7](#)]  
THOMAS ARMSTRONG/Atty. for pl.  
DISMISSED  
CLOSED

**Final Ruling**

The adversary proceeding dismissed, the status conference is concluded.

2. [13-18043](#)-A-7 TARSEM PABLA CONTINUED PRE-TRIAL CONFERENCE  
[14-1075](#) RE: COMPLAINT  
MANFREDO V. PABLA ET AL 7-28-14 [[1](#)]  
TRUDI MANFREDO/Atty. for pl.  
RESPONSIVE PLEADING

**Final Ruling**

This matter is continued to August 11, 2015, at 10:00 a.m.

3. [14-15952](#)-A-7 AUSTREBERTO MAGANA STATUS CONFERENCE RE: COMPLAINT  
[15-1059](#) 5-12-15 [[1](#)]  
HAWKINS V. MAGANA  
ROBERT HAWKINS/Atty. for pl.

**Final Ruling**

This matter is continued to September 9, 2015, at 10:00 a.m.

4. [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

**No tentative ruling**

5. [14-15856](#)-A-7 SOHIL ESCHEIK CONTINUED STATUS CONFERENCE RE:  
[15-1029](#) COMPLAINT  
NEXTGEAR CAPITAL, INC. V. 3-16-15 [[1](#)]  
ESCHEIK  
MATTHEW QUALL/Atty. for pl.

**Final Ruling**

This matter is continued to September 9, 2015, at 10:00 a.m.  
Plaintiff has not properly served both the defendant debtor and his attorney Peter Fear. Fed. R. Bankr. P. 7004(g). Not later than 30 days prior to the continued status conference, the plaintiff shall:

(1) obtain a reissued summons; (2) serve the reissued summons, complaint, a copy of Form EDC 3-100, Notice to Pro Se Debtor(s) and Form EDC 3-101, answer, in accordance with Local Bankruptcy Rule 7004-1 on the defendant debtor and his counsel of record; and (3) file a certificate of service. The parties shall not enlarge time for filing a response to the complaint without an order of this court. Failure to properly serve the adversary proceeding within the time specified herein will likely result in a dismissal of the complaint. Fed. R. Civ. P. 4(m), *incorporated by* Fed. R. Bankr. P. 7004(a).

6.     15-10157-A-7     LAWRENCE PARKER                     MOTION FOR ENTRY OF DEFAULT  
          15-1011         UST-1                             JUDGMENT  
          U.S. TRUSTEE V. PARKER                     6-15-15 [[18](#)]  
          GREGORY POWELL/Atty. for mv.

### **Final Ruling**

**Motion:** Entry of Default Judgment

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

**Disposition:** Granted

**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).

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.

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.

7. [14-13458](#)-A-7 PEDRO ESPINOZA AND MARIA STATUS CONFERENCE RE: COMPLAINT  
[15-1068](#) BLANCO 5-20-15 [[1](#)]  
HAWKINS V. ESPINOZA ET AL  
ROBERT HAWKINS/Atty. for pl.  
RESPONSIVE PLEADING

This matter is continued to September 9, 2015, at 10:00 a.m. In the event the case has not been dismissed, not later than 14 days prior to the continued hearing the parties shall file a joint status report.

8. [08-10861](#)-A-7 JAMES/DAISY CORBETT CONTINUED PRE-TRIAL CONFERENCE  
RE: TRUSTEE FINAL ACCOUNT AND  
DISTRIBUTION REPORT  
10-23-12 [[92](#)]

MARK ZIMMERMAN/Atty. for dbt.  
RESPONSIVE PLEADING

**Final Ruling**

This matter is continued to September 30, 2015, at 10:00 a.m.

9. [08-10861](#)-A-7 JAMES/DAISY CORBETT CONTINUED PRE-TRIAL CONFERENCE  
JES-3 RE: OBJECTION TO DEBTOR'S CLAIM  
JAMES SALVEN/MV OF EXEMPTIONS  
12-20-12 [[104](#)]

MARK ZIMMERMAN/Atty. for dbt.  
RESPONSIVE PLEADING

**Final Ruling**

This matter is continued to September 30, 2015, at 10:00 a.m.

10. [08-10861](#)-A-7 JAMES/DAISY CORBETT PRETRIAL CONFERENCE RE:  
[14-1089](#) COMPLAINT  
CALIFORNIA CORRECTIONAL PEACE 8-25-14 [[1](#)]  
OFFICERS ASSOCIATION V.  
ED HAYS/Atty. for pl.  
ORDER ECF NO. 56, CONTINUING  
TO 9/30/15

**Final Ruling**

This matter is continued to September 30, 2015, at 10:00 a.m.

11. [08-10861](#)-A-7 JAMES/DAISY CORBETT MOTION FOR SUMMARY JUDGMENT  
[14-1089](#) MAS-3 AND/OR MOTION FOR SUMMARY  
CALIFORNIA CORRECTIONAL PEACE ADJUDICATION  
OFFICERS ASSOCIATION V. 6-18-15 [[49](#)]  
ED HAYS/Atty. for mv.  
ORDER ECF NO. 56, CONTINUING  
TO 9/30/15

**Final Ruling**

This matter is continued to September 30, 2015, at 10:00 a.m.

12. [10-61970](#)-A-7 BRIAN ENNIS CONTINUED STATUS CONFERENCE RE:  
[12-1161](#) AMENDED COMPLAINT  
SALVEN V. ENNIS 10-16-12 [[7](#)]  
THOMAS ARMSTRONG/Atty. for pl.  
DISMISSED  
CLOSED

**Final Ruling**

The adversary proceeding dismissed, the status conference is concluded.

13. [13-16682](#)-A-7 RICHARD/BARBARA GRENINGER CONTINUED STATUS CONFERENCE RE:  
[14-1111](#) AMENDED COMPLAINT  
SALVEN V. STRAIN 3-20-15 [[39](#)]  
ROBERT HAWKINS/Atty. for pl.

**No tentative ruling**

14. [15-10983](#)-A-7 TAMRA WOLFE STATUS CONFERENCE RE: COMPLAINT  
[15-1063](#) 5-19-15 [[1](#)]  
WOLFE V. DEUTSCHE NATIONAL  
TRUST COMPANY ET AL  
TAMRA WOLFE/Atty. for pl.

**No tentative ruling**