

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

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

**PRE-HEARING DISPOSITIONS**

**DAY: TUESDAY**  
**DATE: OCTOBER 27, 2015**  
**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.

**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. [15-13133](#)-A-7 JOSE CERVANTES  
[15-1105](#) UST-1  
U.S. TRUSTEE V. CERVANTES  
ROBIN TUBESING/Atty. for mv.

MOTION FOR ENTRY OF DEFAULT  
JUDGMENT  
9-29-15 [[10](#)]

### **Final Ruling**

**Motion:** Entry of Default Judgment Enjoining Future Serial Filings for Five Years without Leave of Court

**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 requested that the court enter default judgment on the claim for injunctive relief against the defendant. The claim for dismissal with prejudice of the debtor's present underlying bankruptcy case is moot because the case has already been dismissed.

Having accepted the well-pleaded facts in the complaint as true, and for the reasons stated in the motion and supporting papers, the court will grant the motion and enter default judgment for the plaintiff on the claims brought against defendant in this adversary proceeding.

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.

The facts show debtor has unfairly manipulated the Code without genuine intent to prosecute the debtor's cases to discharge or reorganization. The debtor has filed either individually or jointly 7 abusive bankruptcy cases in the past 3 years. Together, the debtor and his spouse, Norma Leticia Zavala, have filed 13 abusive bankruptcy cases. These cases have all been dismissed for failure to timely file documents. All these cases, both the ones filed by the debtor and the ones filed by the debtor's spouse, have been abusive—only skeletal petitions were filed. Further, in most of the cases (all except one), there was a failure to disclose a material fact, which was the fact of prior bankruptcy cases within an 8-year period preceding the petition in which the nondisclosure occurred.

Based on the undisputed facts, the court finds cause to impose a filing bar exceeding the 180-day limit in § 109(g).

The debtor will be enjoined from filing another bankruptcy petition in the Eastern District of California without leave of court for a five-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.

2. [11-17165](#)-A-7 OAKHURST LODGE, INC., A CONTINUED STATUS CONFERENCE RE:  
[15-1017](#) CALIFORNIA CORPORATION COMPLAINT  
OAKHURST LODGE, INC. V. 2-11-15 [[1](#)]  
FIRST-CITIZENS BANK & TRUST  
DONNA STANDARD/Atty. for pl.

### **Final Ruling**

The matter is continued to December 8, 2015, at 10:00 a.m. Until the court resolves, the Order to Show Cause Re Revocation of Order to Re-Open Case, filed September 28, 2015, ECF #77, a status conference is premature.

3. [11-17165](#)-A-7 OAKHURST LODGE, INC., A  
[15-1017](#) CALIFORNIA CORPORATION FCB-1  
OAKHURST LODGE, INC. V.  
FIRST-CITIZENS BANK & TRUST  
AARON MALO/Atty. for mv.  
RESPONSIVE PLEADING
- CONTINUED MOTION TO DISMISS  
FIRST-CITIZENS BANK & TRUST  
COMPANY  
8-6-15 [[24](#)]

**Final Ruling**

The matter is continued to December 8, 2015, at 10:00 a.m. Until the court resolves, the Order to Show Cause Re Revocation of Order to Re-Open Case, filed September 28, 2015, ECF #77, any ruling on the motion to dismiss would be is premature.

4. [15-10972](#)-A-7 RUDY/JOAN PAREDES  
[15-1079](#)  
QUIROZ V. PAREDES  
MICHAEL BERGER/Atty. for pl.
- CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
6-15-15 [[1](#)]

**Final Ruling**

Judgment entered, the status conference is concluded.

5. [14-14479](#)-A-7 FABIO GALVEZ  
[14-1153](#)  
GALVEZ ET AL V. THE UNITED  
STATES OF AMERICA, THE  
RESPONSIVE PLEADING
- CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
12-19-14 [[1](#)]

**No tentative ruling.**

6. [15-12189](#)-A-7 JEFFREY/PEGGY WOOD  
[15-1110](#)  
WOOD V. US DEPARTMENT OF  
EDUCATION ET AL  
JERRY LOWE/Atty. for pl.
- STATUS CONFERENCE RE: COMPLAINT  
8-28-15 [[1](#)]

**No tentative ruling.**

7. [15-11593](#)-A-7 BRIAN LUONG  
[15-1095](#)  
AMERICAN EXPRESS BANK, FSB V.  
LUONG  
KEN WHITTALL-SCHERFEE/Atty. for pl.
- CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
7-23-15 [[1](#)]

**No tentative ruling.**

8. [15-13133](#)-A-7 JOSE CERVANTES  
[15-1105](#)  
U.S. TRUSTEE V. CERVANTES  
ROBIN TUBESING/Atty. for pl.

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
8-21-15 [[1](#)]

### **Final Ruling**

The status conference is continued to November 10, 2015, at 10:00 a.m. to allow judgment to be entered.