

**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: WEDNESDAY**  
**DATE: DECEMBER 9, 2015**  
**CALENDAR: 10:00 A.M. CHAPTERS 13 AND 12 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. [15-13222](#)-A-13 TOMASA AVILA  
[15-1107](#)  
U.S. TRUSTEE V. AVILA  
TERRI DIDION/Atty. for pl.

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
8-27-15 [[1](#)]

**Final Ruling**

The status conference is continued to January 14, 2016, at 10:00 a.m. to allow judgment to be entered.

2. [15-13222](#)-A-13 TOMASA AVILA  
[15-1107](#) UST-1  
U.S. TRUSTEE V. AVILA  
TERRI DIDION/Atty. for mv.

MOTION FOR ENTRY OF DEFAULT  
JUDGMENT  
10-27-15 [[14](#)]

**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 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.

3. [10-10728](#)-A-13 TODD/KARA ENOS  
[15-1096](#)  
ENOS ET AL V. OCWEN LOAN  
SERVICING, LLC ET AL  
GABRIEL WADDELL/Atty. for pl.

CONTINUED STATUS CONFERENCE RE:  
AMENDED COMPLAINT  
9-11-15 [[7](#)]

**Final Ruling**

This matter is continued to January 14, 2016, at 10:00 a.m. If neither a judgment, nor a dismissal, is in the file, not later than January 7, 2016, parties shall file a joint status report.

4. [15-12763](#)-A-13 FRANK MOOSIOS  
[15-1111](#)  
MOOSIOS V. MOOSIOS, II  
TRUDI MANFREDO/Atty. for pl.

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
9-10-15 [[1](#)]

**No tentative ruling.**

5. [15-12763](#)-A-13 FRANK MOOSIOS  
TGM-1  
FRANK MOOSIOS/MV  
  
TRUDI MANFREDO/Atty. for dbt.  
RESPONSIVE PLEADING

CONTINUED OBJECTION TO CLAIM OF  
LOUIS R. MOOSIOS II, CLAIM  
NUMBER 1  
9-11-15 [[35](#)]

**No tentative ruling.**

6. [13-10971](#)-A-13 JEREMY WINANS  
[13-1054](#)  
DAVIS V. WINANS  
THOMAS ARMSTRONG/Atty. for pl.

CONTINUED STATUS CONFERENCE RE:  
AMENDED COMPLAINT  
11-21-14 [[95](#)]

**Final Ruling**

The status conference is continued to January 28, 2016, at 10:00 a.m.