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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re ] Case No. 07-51596-ASW  
David Maurice Craighead, ] Chapter 13  
Debtor. ]

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MEMORANDUM DECISION  
DISMISSING CASE WITH REFILING BAR

Before the Court are the motions of the United States Trustee ("UST") and the Chapter 13 Trustee ("Trustee") to dismiss the bankruptcy case of Debtor David Maurice Craighead ("Debtor") with a five-year refiling bar (collectively, "Motions"). The Motions were filed on June 11, 2007. The UST is represented by Shannon L. Mounger-Lum, Esq. Trustee is represented by E. Alexandra DeLateur, Esq. Debtor is appearing in propria persona. A hearing on the Motions was held on July 9, 2007. Instead of responding on the merits, Debtor faxed to this Court a document entitled *Objection to Illegal Motion by the US Trustee and Request for Dismissal*

1 ("Objection") on July 8, 2007, the day before the hearing.<sup>1</sup> The  
2 Objection was faxed to the UST and the Trustee on July 8, 2007 and  
3 served by mail on the same day on the Internal Revenue Service.  
4 The Objection was filed with the Court on July 11, 2007. Debtor  
5 did not appear at the hearing. At the request of the Court at the  
6 July 9, 2007 hearing, the UST and Trustee filed supplemental briefs  
7 in support of the Motions on July 19, 2007.

8 This Memorandum Decision constitutes the Court's findings of  
9 fact and conclusions of law, pursuant to Rule 7052 of the Federal  
10 Rules of Bankruptcy Procedure. After consideration of the Motions,  
11 the Objection and the supplemental briefs, and based on the  
12 evidence before the Court, the Court dismisses Debtor's bankruptcy  
13 case with a three-year refiling bar.

14  
15 I.

16 FACTS

17 Debtor filed a voluntary Chapter 13 petition on May 29, 2007.  
18 This case was a skeleton filing -- Debtor did not file any  
19 schedules, a Statement of Financial Affairs, a Means Test form, or  
20 a Chapter 13 plan. Debtor also filed a request to pay the filing  
21 fee in installments. The Court issued an order to show cause re

22  
23 <sup>1</sup> While Debtor's Objection requested immediate dismissal of his bankruptcy case, dismissal  
24 was not granted at the time. Bankruptcy Code § 1307(b) permits dismissal of a bankruptcy case at  
25 any time on the request of a debtor if a case has not been previously converted. Per Bankruptcy  
26 Rule 1017, such a request "shall be on motion filed and served as required by Rule 9013." Fed. R.  
Bankr. P. 1017(f)(2). This Court did not construe Debtor's Objection as such a motion, and  
Debtor's bankruptcy request has not yet been dismissed.

27 Even if this Court had construed Debtor's Objection as a proper motion to dismiss his  
28 bankruptcy case under Bankruptcy Rule 1017(f)(2), this Court could have dismissed Debtor's  
bankruptcy case in July and retained jurisdiction to determine the request of the UST and the Trustee  
for a five-year re-filing bar. In re Lawson, 156 B.R. 43, 45-46 (9th Cir. BAP 1993).

1 dismissal on May 30, 2007, for Debtor's failure to file a  
2 Chapter 13 plan, schedules, a Statement of Financial Affairs, and a  
3 Means Test form. As noted above, the Motions were filed on  
4 June 11, 2007.

5 On June 13, 2007, Debtor filed a Chapter 13 plan and also  
6 requested a 45-day extension to file additional documents. On  
7 June 27, 2007, this Court granted Debtor's request for an  
8 additional 45 days from July 13, 2007, to file the additional  
9 documents. Debtor failed to appear at his Section 341 meeting of  
10 creditors on July 2, 2007. The Section 341 meeting of creditors  
11 was continued to July 16, 2007.

12 Previously, on March 26, 2007, Debtor had filed another  
13 skeletal chapter 13 case -- In re David Maurice Craighead, 07-  
14 50856-ASW. Debtor also requested to pay the filing fee in  
15 installments in that case. Debtor's prior case was dismissed  
16 pursuant to the Court's Order to Show Cause on May 17, 2007,  
17 following Debtor's failure to file schedules, a Statement of  
18 Financial Affairs, and a Means Test Form. Debtor filed the current  
19 case twelve days after the dismissal of his prior case.

20 The UST and Trustee argue that Debtor's actions are part of a  
21 concerted effort by his family to prevent a foreclosure of real  
22 properties located at 7871 Prestwick Circle, San Jose, California  
23 ("Prestwick Property"), and 7119 Via Portada, San Jose, California  
24 ("Via Portada Property"). The UST and Trustee contend that this  
25 bankruptcy petition is a continuation of the numerous transfers of  
26 real property and incomplete bankruptcy filings that have been  
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1 generated by the Craighead family and Robert Helwig<sup>2</sup> since 1998.  
2 Debtor, Debtor's father Carlton Craighead, Debtor's mother Patricia  
3 Craighead, Debtor's brother Peter Craighead, and Robert Helwig have  
4 collectively filed at least twenty-two bankruptcy cases since  
5 1998.<sup>3</sup>

6 Of the twenty-two bankruptcy cases, six have been filed by  
7 Debtor. Of the six cases filed by Debtor, five were dismissed  
8 prior to confirmation and the sixth is the current case. A chart  
9 of the various bankruptcy filings -- including whether the filings  
10 were skeletal and whether the respective debtors requested that the  
11 filing fees be paid in installments -- and the disposition of each,  
12 is set forth in the chart below. The six cases filed by Debtor are  
13 denoted by gray shading:

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26 <sup>2</sup> The Court has no information as to how, if at all, Robert Helwig is related to the Craighead  
27 family.

28 <sup>3</sup> The Court takes judicial notice of all the filings pursuant to Fed. R. Evid. 201, made  
applicable to bankruptcy proceedings pursuant to Fed. R. Bankr. P. 9017.

UNITED STATES BANKRUPTCY COURT  
For The Northern District Of California

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	Ch	Case no.	Petition Date	Debtor	Type	Disposition
1	13	98-59147 ASW	11/12/98	Carlton Craighead	Skeletal	Dism 12/15/98 -- no docs
2	13	98-60170 JRG	12/22/98	Carlton Craighead	Skel/install	Dism 7/29/99 -- pre-conf
3	13	99-54519 JRG	07/02/99	Robert Helwig	Skel/install	Dism 12/9/99 -- pre-conf
4	7	99-54640 MM	07/08/99	Carlton Craighead	Skeletal	Discharge order 11/12/99
5	13	99-57750 JRG	12/06/99	Robert Helwig	Skel/install	Dism 6/12/00 -- pre-conf
6	13	01-51763 JRG	04/09/01	Robert Helwig	Skel/install	Dism 8/10/01 -- pre-conf
7	13/7	01-54572 JRG	09/19/01	Carlton Craighead	Skeletal	Discharge order 12/13/05
8	13	02-55558 ASW	10/01/02	Peter Craighead	Skel/install	Dism 11/6/02 -- no docs
9	13	02-55569 ASW	10/02/02	David Craighead	Skel/install	Dism 11/13/02 -- no docs
10	13	02-56751 ASW	11/26/02	Peter Craighead	Skel/install	Dism 1/24/03 -- no docs
11	13	03-50057 ASW	01/06/03	David Craighead	Skel/install	Dism 2/10/03 -- no docs
12	13	03-50971 ASW	02/14/03	Peter Craighead	Skel/install	Dism 4/10/03 -- no docs
13	13	03-52383 ASW	04/11/03	David Craighead	Skel/install	Dism 5/22/03 -- no docs
14	13	03-53805 JRG	06/11/03	David Craighead	Install	Dism 7/25/03 -- pre-conf
15	13	03-54164 JRG	06/28/03	Peter Craighead	Skel/install	Dism 9/28/04 w/ 60 mo bar
16	13	03-55846 JRG	09/10/03	Peter Craighead	Skel/install	Dism 10/10/03 -- no docs
17	13	06-51924 RLE	09/27/06	Peter Craighead	Skel/install	Dism 9/29/06 -- no docs
18	13	06-52226 RLE	11/01/06	Patricia Craighead	Skel/install	Dism 11/20/06 -- no docs
19	13	06-52419 RLE	11/28/06	Patricia Craighead	Skel/install	Dism 6/17/07 w/ 24 mo bar
20	13	07-50856 RLE	03/26/07	David Craighead	Skel/install	Dism 5/17/07 -- no docs
21	13	07-51108 ASW	04/18/07	Patricia Craighead	Skel/install	Dism 6/9/07 -- no docs
22	13	07-51596 ASW	5/29/07	David Craighead	Skel/install	Pending

The UST asks the Court to take judicial notice of the *Objection to Motion to Dismiss and 2-year Bar to Re-filing* ("Objection to Two-Year Bar") filed on March 23, 2007, by Patricia Craighead, appearing in propria persona in In re Patricia Craighead, 06-52419-ASW. Debtor did not oppose the UST's request. The Court takes judicial notice pursuant to Fed. R. Evid. 201, made applicable to

1 bankruptcy proceedings pursuant to Fed. R. Bankr. P. 9017. Fed. R.  
2 Evid. 201 allows the Court to take judicial notice of its own  
3 records and proceedings. This judicial notice encompasses notice  
4 of the cases filed in the Court, the dockets of those cases, and  
5 the documents filed therein. The Objection to Two-Year Bar  
6 directly addresses the serial filings by members of the Craighead  
7 family and Robert Helwig and was filed in response to a similar  
8 motion to dismiss with a filing bar filed by the UST approximately  
9 two months before David Craighead filed the instant case. Based on  
10 the similarity of the issues, the closeness in time, and the fact  
11 that Debtor has failed to respond on the merits of the Motions, the  
12 Court takes judicial notice of the Objection to Two-Year Bar. The  
13 Objection to Two-Year Bar provides the background of transfers and  
14 bankruptcy filings.

15 In her Objection to Two-Year Bar, Patricia Craighead stated  
16 that: "All the filings in question were done to protect two real  
17 properties from foreclosure: 7119 Via Portada, San Jose, CA, the  
18 personal residence of Debtor [Patricia Craighead] and Debtor's  
19 spouse [Carlton Craighead], and 7871 Prestwick Cir, San Jose, CA,  
20 an 1891 historic mansion that the Debtor's spouse has been trying  
21 to renovate and preserve since April, 1995." Objection to Two-Year  
22 Bar at 1:25-2:2. The Objection to Two-Year Bar also stated that  
23 the "[d]ebtor strongly believes her *civil rights to use the federal*  
24 *bankruptcy laws to save her personal residence* are being abridged  
25 and violated by the U.S. Trustee's motion to dismiss and bar to re-  
26 filing." (Emphasis added). Objection to Two-Year Bar at 2:3-5.  
27 The Objection to Two-Year Bar also explains that: (1) the nine  
28 bankruptcies filed from July 2, 1999 to February 14, 2003 (Numbers

1 3 -12 in the table above) were filed to protect the Prestwick  
2 Property; (2) Debtor [David Craighead] purchased the Via Portada  
3 Property for his parents in approximately the year 2000; and  
4 (3) the bankruptcies filed from April 11, 2003 to November 28, 2006  
5 (Numbers 13-19 in the table above) were filed to save the Via  
6 Portada Property.

7 Since 1997, the Prestwick Property has been transferred between  
8 and among Robert Helwig, Evonne Helwig, Carlton Craighead, Peter  
9 Craighead, Theodore Gallis, and Debtor. Carlton Craighead and  
10 Peter Craighead currently hold title to the Prestwick Property as  
11 tenants in common. Since 2001, the Via Portada Property has been  
12 transferred between and among Peter Craighead, Patricia Craighead,  
13 Carlton Craighead, Robert Helwig, and Debtor. Robert Helwig  
14 currently holds title to the Via Portada Property.

15 The UST provided the Court with a declaration of Shannon L.  
16 Mounger-Lum and a transcript of a deposition of Carlton Craighead,  
17 taken during one of his personal bankruptcy cases on April 8, 2002  
18 in In re Carlton Craighead, 01-54572-ASW. The Court takes judicial  
19 notice of the deposition transcript pursuant to Fed. R. Evid. 201,  
20 made applicable to bankruptcy proceedings pursuant to Fed. R.  
21 Bankr. P. 9017. The deposition was taken under oath and discussed  
22 how and why Debtor briefly held title to the Prestwick Property  
23 from June 30, 2000 to September 19, 2001.

24 In his deposition, Carlton Craighead testified that he and  
25 various parties transferred property to each other for no  
26 consideration and for the express purpose of filing bankruptcy so  
27 as to prevent foreclosure on properties whose mortgages were  
28 delinquent. Specifically, Carlton Craighead testified as follows:

1 Q: So when you were Grant Deeded the 977 and 979 Prevost,  
2 did you pay money or any other kind of consideration for  
that property?

3 A: No, I didn't. I didn't pay any consideration. Like I  
4 said, it was a move to save this thing from going into  
foreclosure. . . . I took it because I knew I was going to  
5 file bankruptcy so that was going to at least hold that up  
until we could sort out what we were going to do.

6 Deposition of Carlton Bertram Craighead dated April 8, 2002 at  
7 22:5-18. At another point in the deposition, Carlton Craighead  
8 testified that Debtor came to own the Prestwick Property because  
9 the purchasers of the Prestwick Property -- Robert and Evonne  
10 Helwig -- fell behind in the payments and filed for Chapter 13.  
11 Carlton Craighead testified that Evonne quitclaimed the Prestwick  
12 Property to Robert -- and Robert Helwig subsequently transferred  
13 the Prestwick Property to Debtor by grant deed. The deed granting  
14 the property to Debtor was recorded on June 30, 2000. Debtor  
15 received a second loan on the Prestwick Property since Robert  
16 Helwig could not qualify for a loan after filing his chapter 13  
17 bankruptcy petition. According to Carlton Craighead, Debtor never  
18 paid any money for the acquisition of the Prestwick Property. When  
19 the Prestwick Property went into default in August of 2001, Debtor  
20 executed a grant deed to transfer the property to Carlton Craighead  
21 without any consideration so Carlton Craighead could then file for  
22 bankruptcy. The grand deed to Carlton Craighead was recorded on  
23 September 19, 2001. Id. at 36:16 - 37:21; 40:10 - 41:23.

24 Debtor, Robert Helwig, Carlton Craighead, Peter Craighead, and  
25 Patricia Craighead have all listed the Prestwick Property as their  
26 residence on all seventeen of their bankruptcy petitions from  
27 April 9, 2001 to the current petition on May 29, 2007 (Numbers 6 -  
28 22 in the chart above). Even though Debtor listed the Prestwick

1 Property as his residence, an internal investigation by the UST  
2 (uncontested by Debtor) indicates that Debtor's likely current  
3 address is in Rancho Cucamonga, California -- not San Jose.  
4 Declaration of Brian M. Martinson filed in support of the Motion by  
5 the UST, ¶ 5.

6 There is already a 60-month refiling bar against Debtor's  
7 brother Peter Craighead imposed on September 28, 2004 in In re  
8 Peter Craighead, 03-54164-JRG. There is also a 24-month refiling  
9 bar against Debtor's mother Patricia Craighead, imposed on June 17,  
10 2007 in In re Patricia Craighead, 06-52419-ASW.

11  
12 II.

13 ANALYSIS

14 In the Ninth Circuit, bad faith constitutes cause for dismissal  
15 of a Chapter 13 case under § 1307(c) and constitutes cause for  
16 dismissal with prejudice under § 349(a). In re Leavitt, 171 F.3d  
17 1219, 1224 (9th Cir. 1999). Section 349(a) of the Bankruptcy Code  
18 states:

19 Unless the court, for cause, orders otherwise, the  
20 dismissal of a case under this title does not bar the  
21 discharge, in a later case under this title, of debts that  
22 were dischargeable in the case dismissed; nor does the  
23 dismissal of a case under this title prejudice the debtor  
with regard to the filing of a subsequent petition under  
this title, except as provided in section 109(g) of this  
title.

24 The phrase "[u]nless the court, for cause, orders otherwise" in  
25 Section 349(a) authorizes the bankruptcy court to dismiss the case  
26 with prejudice. Leavitt, 171 F.3d at 1223. See also In re Tomlin,  
27 105 F.3d 933, 937 (4th Cir. 1997). "Cause" for dismissal under  
28 § 349 is not specifically defined in the Bankruptcy Code. For

1 Chapter 13 cases, Bankruptcy Code sections 1307(c)(1) through (10)  
2 provide that the bankruptcy court may convert or dismiss, depending  
3 on the best interests of the creditors and the estate. Leavitt,  
4 171 F.3d at 1224. Bad faith can constitute cause for dismissal  
5 under § 1307(c). Id. Bad faith is determined by the totality of  
6 the circumstances including the repeated filing of bankruptcy  
7 petitions without the balance of the schedules and plan. In re  
8 Stobber, 193 B.R. 5 (Bankr. D. Ariz. 1996); In re Warren, 89 B.R.  
9 87 (9th Cir. BAP 1998).

10 Leavitt is the leading Ninth Circuit case on dismissal with  
11 prejudice. Leavitt sets forth certain factors to be considered in  
12 dismissing a case with prejudice:

13 Bad faith, as cause for the dismissal of a Chapter 13  
14 petition with prejudice, involves the application of the  
15 "totality of the circumstances" test. The bankruptcy court  
16 should consider the following factors: (1) whether the  
17 debtor "misrepresented facts in his [petition or] plan,  
18 unfairly manipulated the Bankruptcy Code, or otherwise  
19 [filed] his Chapter 13 [petition or] plan in an inequitable  
20 manner,"; (2) "the debtor's history of filings and  
21 dismissals,"; (3) whether "the debtor only intended to  
22 defeat state court litigation,"; and (4) whether egregious  
23 behavior is present. (Citations omitted).

19 Id. at 1224.

20 Courts generally hold that when a debtor repeatedly files  
21 bankruptcy petitions and then repeatedly fails to file schedules or  
22 to comply with other requirements, this pattern of behavior is  
23 evidence of bad faith and an attempt to abuse the system.

24 Walker v. Stanley, 231 B.R. 343 (N.D. Cal. 1999). The Court can  
25 determine that a debtor filed a case in bad faith based on a  
26 pattern of conduct, and may impute bad faith from the timing and  
27 circumstances of the filings. Walker, 231 B.R. at 349; In re  
28 Eisen, 14 F.3d 469, 470 (9th Cir. 1994); In re Huerta, 137 B.R.

1 356, 367 (Bankr. C.D. Cal. 1992). Once the issue of bad faith is  
2 raised, it is the debtor's burden to prove his good faith. In re  
3 Leavitt, 209 B.R. 935, 940 (9th Cir. BAP 1997), aff'd, 171 F.3d  
4 1219 (9th Cir. 1999) (citing In re Powers, 135 B.R. 980, 997  
5 (Bankr. C.D. Cal. 1991)) ("Leavitt II").

6 Debtor's position is that all the bankruptcy filings were all  
7 legal and there was never a finding of bad faith.<sup>4</sup> Debtor also  
8 seems to object to imputing the bankruptcy filings of other family  
9 members to Debtor. The UST and Trustee contend that Debtor and  
10 other family members have filed multiple bankruptcy cases in bad  
11 faith in an effort to hinder or delay creditors.

12 The Court finds that there is sufficient evidence to consider  
13 the multiple bankruptcy filings by Debtor and Debtor's family and  
14 Robert Helwig<sup>5</sup> in determining the totality of the circumstances  
15 regarding Debtor's bad faith. Various courts in similar  
16 circumstances have considered the filings and acts of family  
17 members and other real property titleholders when determining bad  
18 faith of a debtor. See In re Kinney, 51 B.R. 840, 845 (Bankr. C.D.  
19 Cal. 1985) (finding that the actions of each family member in  
20 filing multiple bankruptcies could be imputed to the rest of the  
21 family for purposes of determining abuse of the bankruptcy system);  
22 see also In re Feldman, 309 B.R. 422, 427 (Bankr. E.D.N.Y. 2004)  
23 (imputing the non-filing spouse's prior abusive filings to the  
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25 <sup>4</sup> The Objection filed by Debtor the day before the hearing states in relevant part that: "All  
26 the filings were 100% legal. All the real property transfers were 100% legal. Not one law was  
27 broken, and in all cases, there was never a finding of bad faith." (Emphasis in original). Objection  
at 2:14-16.

28 <sup>5</sup> The Court would find bad faith on Debtor's part whether or not Robert Helwig is a family  
member or had even filed for bankruptcy.

1 debtor in determining that the debtor's first case was filed in bad  
2 faith); In re Wong, 30 B.R. 87, 89 (Bankr. C.D. Cal. 1983)  
3 (considering husband and wife's separate filings to determine abuse  
4 of the bankruptcy system).

5 Robert Helwig, Carlton Craighead, Peter Craighead, Patricia  
6 Craighead, and Debtor have filed seventeen bankruptcy petitions  
7 since 2001 using the Prestwick Property address as their residence.  
8 The evidence before this Court is that the Prestwick Property is a  
9 renovation project to restore a historic house, and that none of  
10 the above-named individuals who filed for bankruptcy actually  
11 resided in the property.

12 This bankruptcy petition appears to have been filed to prevent  
13 a foreclosure of the Prestwick Property and/or Via Portada  
14 Property. Although Debtor does not hold title to either of the  
15 properties and the evidence submitted by the UST shows that Debtor  
16 does not live at either of the real properties, Debtor listed the  
17 Prestwick Property as his residence in the instant case, as Debtor,  
18 Robert Helwig, Carlton Craighead, Peter Craighead, and Patricia  
19 Craighead had each done in the previous sixteen bankruptcy  
20 petitions.

21 Furthermore, Carlton Craighead testified under oath that he and  
22 various parties transferred property to each other for no  
23 consideration for the express purpose of filing bankruptcy and  
24 preventing foreclosures on properties. Carlton Craighead also  
25 testified that a deed to the Prestwick Property was granted to  
26 Debtor from Robert Helwig on June 30, 2000, and transferred again  
27 to Carlton Craighead on September 19, 2001 for the purposes of  
28 filing bankruptcy. According to the testimony, this transfer

1 occurred only to have Carlton Craighead file for bankruptcy because  
2 Debtor refused to file for bankruptcy. Carlton Craighead filed a  
3 skeletal petition on September 19, 2001, in In re Carlton  
4 Craighead, 01-54572-JRG.

5 Patricia Craighead also stated in her Objection to Two-Year Bar  
6 that all the bankruptcy filings in question were done to protect  
7 the Via Portada and Prestwick Properties from foreclosure. The  
8 Objection to Two-Year Bar implies that Patricia Craighead is under  
9 the misconception that there is an inherent civil right to use the  
10 bankruptcy laws to file multiple bankruptcy cases in order to save  
11 one's personal residence.<sup>6</sup> That is simply not the law.

12 This is the twenty-second bankruptcy case filed by this family  
13 and Robert Helwig since 1998. None of the twenty Chapter 13 cases  
14 has resulted in a confirmed plan, and all but one of the filings<sup>7</sup>  
15 were skeletal filings. The various debtors applied to pay the  
16 filing fee in installments in nineteen of the twenty-two cases.  
17 Only Carlton Craighead's chapter 7 cases were completed by the  
18 issuance of a discharge. The family members and Robert Helwig have  
19 managed to impose an automatic stay on creditors by filing multiple  
20 and serial bankruptcy petitions for over eight years. The UST and  
21 Trustee have had to expend significant resources monitoring and  
22 litigating the dismissal of those cases.

23 Even without considering the multiple bankruptcy filings of  
24 Debtor's other family members, there is sufficient cause to find  
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26 <sup>6</sup> "Debtor strongly believes her *civil rights to use the federal bankruptcy laws to save her*  
27 *personal residence* are being abridged and violated by the U.S. Trustee's motion to dismiss and bar  
28 to re-filing." (Emphasis added). Objection to Two-Year Bar at 2:3-5.

<sup>7</sup> In re David Craighead, 03-53805-JRG.

1 bad faith based solely on the actions of Debtor alone. Under the  
2 totality of circumstances test under Leavitt, this Court should  
3 consider certain factors such as whether Debtor misrepresented  
4 facts in his petition, whether Debtor is unfairly manipulating the  
5 Bankruptcy Code, whether Debtor filed this bankruptcy petition in  
6 an inequitable manner, Debtor's history of filings and dismissals,  
7 whether this bankruptcy case was intended only to defeat state  
8 court litigation, and whether there has been any egregious  
9 behavior. Here this is Debtor's sixth bankruptcy case in the past  
10 five years. All but one of the six cases were skeletal filings.  
11 Debtor has also applied to pay all of his filing fees in  
12 installments. Of these six cases, five were dismissed prior to  
13 confirmation and the sixth is the current case pending; not one has  
14 been confirmed. This is also the second case filed by Debtor  
15 within the past few months. Each bankruptcy petition listed  
16 Debtor's residence as the Prestwick Property. However, evidence  
17 shows that Debtor has not held any interest in this real property  
18 since November 22, 2002. The uncontested internal investigation by  
19 the UST indicates that Debtor's likely current address is Rancho  
20 Cucamonga, California. See Declaration of Brian M. Martinson filed  
21 in support of the Motion by the UST, ¶ 5.

22 Once the issue of bad faith is raised, Debtor has the burden to  
23 prove his good faith. Leavitt II, 209 B.R. at 940. Debtor has  
24 failed to meet his burden. Debtor's conduct shows a pattern of  
25 filing a case and failing to take the necessary steps to move the  
26 case forward. Debtor has failed to file schedules under penalty of  
27 perjury in this case and in all prior cases. Debtor has never  
28 appeared for a section 341(a) first meeting of creditors, so he has

1 never been examined under oath. In short, Debtor has never come  
2 close to confirming a plan in any of his six bankruptcy cases.

3 Furthermore, in response to the Motions, Debtor asked the Court  
4 to dismiss this case in his Objection, filed the day before the  
5 hearing. Debtor failed to respond on the merits. Debtor failed to  
6 appear at the hearing as well. Debtor was given the opportunity to  
7 prove his good faith multiple times and Debtor has failed to rebut  
8 the bad faith allegation. Based on the facts before the Court,  
9 cause exists under the Ninth Circuit authority of Leavitt to  
10 dismiss this bankruptcy case and impose a refiling bar against  
11 Debtor. Dismissal is in the best interests of Debtor's creditors  
12 and Debtor's estate. Indeed, Debtor himself requests that the case  
13 be dismissed. A refiling bar is in the interests of Debtor's  
14 creditors, especially those creditors with a security interest in  
15 the properties Debtor has repeatedly attempted to block from  
16 foreclosure.

17 The Motions request a five-year refiling bar asserting that a  
18 five-year bar is needed to deter Debtor from engaging in further  
19 abusive filings. Bankruptcy Code section 349 gives the bankruptcy  
20 court authority to dismiss a bankruptcy case with a bar preventing  
21 a debtor from re-filing in cases of abuse. The Court agrees with  
22 the UST and Trustee that a bar to re-filing is appropriate in this  
23 case. However, the issue of the length of the bar is a matter for  
24 the Court's discretion. See Leavitt, 171 F.3d at 1226.

25 The Court has decided that a three-year refiling bar is  
26 appropriate in this case. While Debtor may have been under the  
27 misguided impression that he could use the Bankruptcy Code in the  
28 way that he did to block foreclosures on real properties in which

1 Debtor and/or family members had an interest, this Memorandum  
2 Decision disabuses Debtor of any possible misunderstanding. This  
3 Decision holds that Debtor's conduct constitutes bad faith and an  
4 abuse of the Bankruptcy Code. Three years should also be  
5 sufficient for any creditors of the Debtor to take whatever actions  
6 they deem appropriate pursuant to state law.

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III.

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CONCLUSION

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Dated:

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ARTHUR S. WEISSBRODT  
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT  
For The Northern District Of California

1 Court Service List

2 David Craighead  
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