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3 UNITED STATES BANKRUPTCY COURT  
4 EASTERN DISTRICT OF CALIFORNIA  
5 SACRAMENTO DIVISION  
6  
7

8 In re: )  
9 KAREN CHRISTIANSEN, ) Case No. 05-20050-B-7  
10 Debtor(s). )  
11 )  
12 GORDON HUMPHREY and )  
13 JOHN RIEKE, ) Adv. No. 05-2187-B  
14 Plaintiff(s) )  
15 vs. )  
16 KAREN CHRISTIANSEN, ) Docket Control No. WKB-3  
17 Defendant(s). ) Date: December 12, 2006  
18 ) Time: 9:30 a.m.

19 On or after the calendar set forth above, the court issued  
20 the following ruling. The official record of the ruling is  
21 appended to the minutes of the hearing.

22 Because the ruling constitutes a "reasoned explanation" of  
23 the court's decision under the E-Government Act of 2002 (the  
24 "Act"), a copy of the ruling is hereby posted on the court's  
Internet site, [www.caeb.uscourts.gov](http://www.caeb.uscourts.gov), in a text-searchable  
format, as required by the Act. However, this posting does not  
constitute the official record, which is always the ruling  
appended to the minutes of the hearing.

25 **DISPOSITION AFTER ORAL ARGUMENT**

26 This matter came on for initial hearing on October 24, 2006.  
27 The court requested further briefing. The parties provided their  
28 briefing timely. The matter came on for final hearing on

1 December 12, 2006, at 9:30 a.m. Appearances are noted on the  
2 record. The following constitutes the court's findings of fact  
3 and conclusions of law, pursuant to Federal Rule of Bankruptcy  
4 Procedure 7052.

5 The motion is denied.

6 Defendant and debtor Karen Christiansen ("Defendant") moves  
7 to set aside the clerk's default and default judgment ( the  
8 "Judgment") entered against her in this adversary proceeding and  
9 to reinstate her answer. As an initial matter, the court notes  
10 that this motion is not mooted by its decision to deny a similar  
11 motion in Adversary proceeding 05-2152. That adversary  
12 proceeding resulted in a judgment denying debtor's discharge in  
13 total. While the issue of dischargeability of the debt owed to  
14 these plaintiffs is no longer at issue, given the continued  
15 vitality of the judgment in AP 05-2152, the Judgment also  
16 included an award of damages. Thus, a case or controversy  
17 remains on which this court must rule. The court also notes that  
18 counsel for movant admitted at the October 24, 2006 hearing that  
19 the fee agreement between Defendant and her counsel in the  
20 Bankruptcy Case excluded adversary proceedings from the scope of  
21 representation. The court therefore deems the allegations of  
22 abandonment by prior counsel to be abandoned by Defendant.

23 Defendant moves pursuant to Federal Rule of Bankruptcy  
24 Procedure 9024 incorporating Federal Rule of Civil Procedure  
25 60(b)(1) which provides in relevant part:

26 On motion and upon such terms as are just, the court  
27 may relieve a party or a party's legal  
28 representative from a final judgment, order or

1 proceeding for the following reasons: (1) mistake,  
2 inadvertence, surprise, or excusable neglect;...  
3 The motion shall be made within a reasonable time,  
4 and for reasons (1), (2), and (3) not more than one  
5 year after the judgment, order or proceeding was  
6 entered or taken...."

7 (West 2005). A condition precedent for relief under any of  
8 the sub-parts of Rule 60(b) is that the motion be made within a  
9 reasonable time. This motion was not made within a reasonable  
10 time. Contrary to the position taken by Defendant in the motion,  
11 the fact that this motion was filed within one year after entry  
12 of the judgment against her does not insulate her from inquiry  
13 into reasonableness of the time. The 1 year limit is a  
14 requirement that is separate and in addition to the requirement  
15 that the time be reasonable. 12 MOORE'S FEDERAL PRACTICE,  
16 §60.65[2][b] (15<sup>th</sup> ed. Rev. 2006); Meadows v. Dominican Republic,  
17 817 F.2d 517, 520-21 (9<sup>th</sup> Cir. 1987); Kagen v. Caterpillar  
18 Tractor Co., 795 F.2d 601, 610-11 (7<sup>th</sup> Cir. 1986); White v.  
19 American Airlines, Inc., 915 F.2d 1414, 1425 (10<sup>th</sup> Cir. 1990).  
20 Defendant received the default pleadings and judgment at or  
21 around the time of her mother's death in September 2005. Most of  
22 the Bankruptcy Abuse Prevention and Consumer Protection Act of  
23 2005 ("BAPCPA") went into effect October 17, 2005. Assuming that  
24 qualified attorneys were catching up on work deferred during the  
25 mass filings surrounding October 17, 2005, the debtor has  
26 accounted for sufficient time to excuse delay through the end of  
27 2005. This motion was filed almost six months after that.  
28 Defendant alleges that she consulted with other lawyers before  
current counsel but provides no evidence of how many other

1 lawyers she consulted or how long each took before declining to  
2 represent Defendant. Defendant has failed to show that the  
3 timing of this motion was reasonable.

4 Even had the court found the motion to be filed within a  
5 reasonable time, it still would be denied. Franchise Holding II,  
6 LLC v. Huntington Rests. Group, Inc., 375 F.3d 922, 925-27 (9<sup>th</sup>  
7 Cir. 2004) states the Ninth Circuit rule on motions to set aside  
8 defaults and default judgments:

9 Rule 55(c) provides that a court may set aside a  
10 default for "good cause shown."

11 \* \* \*

12 The "good cause" standard that governs vacating an  
13 entry of default under Rule 55(c) is the same standard  
14 that governs vacating a default judgment under Rule  
15 60(b). See TCI Group Life Ins. Plan v. Knoebber, 244  
16 F.3d 691, 696 (9<sup>th</sup> Cir. 2001). The good cause analysis  
17 considers three factors:

18 (1) whether [moving party] engaged in culpable conduct  
19 that led to the default; (2) whether [moving party] had  
20 a meritorious defense; or (3) whether reopening the  
21 default judgment would prejudice [the plaintiff]. See  
22 id. As these factors are disjunctive, the district  
23 court was free to deny the motion "if any of the three  
24 factors was true." American Ass'n of Naturopathic  
25 Physicians v. Hayhurst, 227 F.3d 1104, 1108 (9<sup>th</sup> Cir.  
26 2000).

27 [Moving party] bore the burden of showing that any of  
28 the these factors favored setting aside the default.

29 In this instance, the court finds that plaintiff would be  
30 significantly prejudiced were this motion granted. The court  
31 acknowledges that all parties against whom a motion of this kind  
32 is brought will suffer some prejudice if the motion is granted.  
33 The facts of this case go beyond the typical. After entry of the  
34 Judgment, the plaintiffs dismissed their separate cross-complaint

1 against Defendant in the El Dorado County Superior Court. They  
2 did so because the cross-complaint involved many of the same  
3 claims at issue in this adversary proceeding. Were this motion  
4 granted, the plaintiffs would have to re-file the El Dorado  
5 County action to resurrect the status quo ante, and plaintiffs  
6 contend without dispute that doing so would raise statute of  
7 limitations issues. Plaintiffs also contend without dispute that  
8 evidence relevant to the El Dorado County action and this  
9 adversary proceeding was abandoned in the months since the  
10 Judgment became final. Plaintiffs could only attempt to  
11 reconstruct such evidence. Defendant has failed to show that  
12 plaintiffs would not be prejudiced if this motion is granted.

13 Because the court finds prejudice, it declines to reach the  
14 other two possible reasons for denial enumerated in Franchise  
15 Holding.