

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

Honorable Christopher D. Jaime
1200 I Street, Suite 200
Modesto, California

PRE-HEARING DISPOSITIONS COVER SHEET

DAY: TUESDAY

DATE: September 14, 2021

CALENDAR: 1:00 P.M. CHAPTER 13

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters and no appearance is necessary. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within seven (7) days of the final hearing on the matter.

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Modesto, California

September 14, 2021 at 1:00 p.m.

1. [18-90644](#)-B-13 CARRIE FLORES MOTION TO VACATE DISMISSAL OF
[JBA](#)-7 Joseph Angelo CASE
8-24-21 [[142](#)]
DEBTOR DISMISSED: 06/17/2021

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to grant the motion to vacate dismissal of case.

Debtor moves to vacate the order dismissing this Chapter 13 case. The Chapter 13 case was dismissed on June 17, 2021, for failure to make plan payments. Debtor states that her counsel inadvertently believed the court's June 17, 2021 order related back to the denial of the Debtor's April 15, 2021, motion to modify since counsel was working with the Debtor on finalizing an amended motion to modify, which was filed on June 17, 2021 - the same day the case was dismissed - and set for hearing on August 10, 2021. Separately, Debtor had been making plan payments but was paying the anticipated modified amount to the Chapter 13 Trustee and this resulted in the delinquency.

Debtor's counsel did not become aware that the case had been dismissed until the motion to modify plan was removed from the August 10, 2021, calendar due to the case having already been dismissed. The Debtor has filed amended schedules to reflect her updated income and expenses, and has filed a new motion to modify to resolve the Trustee's prior concerns.

Discussion

Federal Rule of Civil Procedure 60(b)(1), applicable by Federal Rule of Bankruptcy Procedure 9024, permits the court to relieve a party from a final judgment or order for "mistake, inadvertence, surprise, or excusable neglect[.]" Fed. R. Civ. P. 60(b)(1); Fed. R. Bankr. P. 9024. Relief for excusable neglect is governed by the *Pioneer-Briones* factors, i.e., (1) the danger of prejudice to any non-moving party if the dismissal is vacated; (2) the length of delay and the potential impact of that delay on judicial proceeding; (3) the reason for the delay, including whether the delay was within the reasonable control of the movant; and (4) whether the debtor's conduct was in good faith. *Pioneer Inv. Servs. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993); *Briones v. Riviera Hotel & Casino*, 116 F.3d 379, 381 (9th Cir. 1997).

Danger of prejudice to creditors is minimal. Debtor filed the motion to vacate dismissal upon learning that her case had been dismissed from the removal of the motion to modify plan from the August 10, 2021, calendar. Vacating dismissal will not delay these proceedings since the Debtor has filed amended schedules and a new modified plan. There is no indication of any bad faith by the Debtor.

Therefore, the Debtor's motion to vacate the order dismissing this Chapter 13 case will

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be granted, the dismissal order at dkt. 135 vacated, and this case ordered reinstated. Further, by vacating the dismissal order which caused the automatic stay of 11 U.S.C. § 362(a) to terminate, upon entry of the order vacating the dismissal order the automatic stay of § 362(a) is revived for all purposes and as to all parties in interest. *State Bank of Southern Utah v. Gledhill (In re Gledhill)*, 76 F.3d 1070, 1079-1080 and n.8 (10th Cir. 1996); *Ramirez v. Whelen (In re Ramirez)*, 188 B.R. 413, 416 (9th Cir. BAP 1995) ("Occasionally, it might suffice to revive the stay by way of motion for reconsideration under Federal Rules of Civil Procedure 59(e) or 60(b), which are applicable in bankruptcy by virtue of Federal Rules of Bankruptcy Procedure 9021 and 9023 [sic].") (Klein, J., concurring)

The motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.