



ORDER NOT FOR PUBLICATION
UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re:

ADRIAN J. HERNANDEZ,

Debtor.

Case No. 2:12-bk-47099-RK

Chapter 7

**ORDER GRANTING MOTION OF
CREDITORS JAIME FARIAS AND
MYRNA FARIAS TO REOPEN
BANKRUPTCY CASE**

Date: October 13, 2015
Time: 2:30 p.m.
Place: Courtroom 1675
Roybal Federal Building
255 East Temple Street
Los Angeles, CA 90012

Pending before the court is the Motion of Creditors Jaime Farias and Myrna Farias ("Creditors") to Reopen Bankruptcy Case for Permission to File Adversary Complaint Against Debtor Adrian J. Hernandez ("Motion"). ECF 46. The Motion is set for hearing on October 13, 2015 at 2:30 p.m. Adrian J. Hernandez ("Debtor") filed an Opposition to the Motion, ECF 52, and Creditors filed a Reply to the Opposition, ECF 55.

The court, having reviewed the Motion, Debtor's Opposition to the Motion and Creditors' Reply to the Opposition, the declarations and exhibits attached therein, and the

1 record, vacates the October 13, 2015 hearing on the Motion, and determines that
2 pursuant to Local Bankruptcy Rule 5010-1, a hearing on the Motion is not required, nor
3 necessary, takes the Motion under submission, vacates the hearing on October 13, 2015
4 as improvidently noticed by Creditors, and rules as follows.

- 5 1. The court determines that the Motion should be granted for “other cause”
6 under 11 U.S.C. § 350(b) for the reasons stated in the moving papers, that is,
7 for the limited purpose of allowing Creditors to file an adversary complaint
8 against Debtor to determine whether Creditors’ claims are non-dischargeable
9 under 11 U.S.C. §§ 523(a)(2), (a)(4) and (a)(6) as they may be entitled to such
10 relief available under the Bankruptcy Code. However, the court makes no
11 determination of the merits of any such claims at this time since that would not
12 be appropriate on a motion to reopen a bankruptcy case.
 - 13 2. The Debtor’s Opposition to the Motion goes to the merits of a complaint which
14 has yet to be filed in the case once it is reopened, and therefore, should be
15 overruled at this time, but without prejudice. “Reopening a case, by itself,
16 determines nothing with respect to the merits of the case.” 4 March, Ahart and
17 Shapiro, *California Practice Guide: Bankruptcy*, ¶ 23:151 at 23-20 (2014), *citing*
18 *inter alia*, *In re Menk*, 241 B.R. 896, 913 (9th Cir. BAP 1999) (“[T]he reopening
19 of a closed bankruptcy case is a ministerial act that functions primarily to
20 enable the file to be maintained by the clerk as an active matter and that, by
21 itself, lacks independent legal significance and determines nothing with respect
22 to the merits of the case.”).
 - 23 3. The Motion is granted and the bankruptcy case is ordered reopened for the
24 purpose described herein.
 - 25 4. Creditors are granted 30 days from the date of entry of this order to file their
26 complaint to determine non-dischargeability of their claims.
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1 5. The hearing on the Motion set for October 13, 2015 at 2:30 p.m. is vacated and
2 taken off calendar. No appearances are required.

3 6. Although the court grants the Motion, the court observes that Creditors acted
4 contrary to Local Bankruptcy Rule 5010-1 by calendaring a hearing date for the
5 Motion without prior court authorization, which expressly provides that "[a]
6 motion to reopen may be ruled upon without a hearing pursuant to LBR 9013-
7 1(q)" and "[t]he movant must not calendar a hearing date nor will a hearing be
8 held on the motion, unless otherwise ordered by the court. The court strongly
9 urges counsel for Creditors, Michael Jay Berger, to read and re-read the Local
10 Bankruptcy Rules until he is thoroughly familiar with them. This is not the first
11 time Mr. Berger has been admonished by the court in this bankruptcy case for
12 failure to comply with the Local Bankruptcy Rules. At the September 18, 2015
13 evidentiary hearing on the Debtor's Motion for Sanctions for Violation of the
14 Discharge Injunction, the last hearing in this bankruptcy case, the court ordered
15 Mr. Berger to read Local Bankruptcy Rule 9071-1 and file a declaration stating
16 that he had done so. Mr. Berger is now ordered to read Local Bankruptcy Rule
17 5010-1 and file a declaration with the court stating that he has done so within
18 30 days of entry of this order. Further transgressions of the court's rules may
19 result in the imposition of sanctions.

20 IT IS SO ORDERED.

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23 Date: October 8, 2015

24 Robert Kwan
25 United States Bankruptcy Judge
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