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NOT FOR PUBLICATION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

In re:
NELLY A. ELIAS,

Debtor.

Case No. 2:16-bk-17802-RK
Chapter 7

**ORDER VACATING ORDER FOR
DISCHARGE ENTERED IN THIS CASE
AND SETTING HEARING ON DEBTOR'S
MOTION TO DISMISS BANKRUPTCY
CASE**

On October 24, 2016, the court entered an order granting a discharge in the above-captioned Chapter 7 bankruptcy case pursuant to 11 U.S.C. § 727, Electronic Case Filing No. (ECF) 32. However, the motion of the Debtor to dismiss the bankruptcy case, ECF 26, filed on October 17, 2016, was pending, and by order entered on October 19, 2016, ECF 29, the court had set Debtor's motion to dismiss the bankruptcy case for hearing on November 29, 2016 at 2:30 p.m. and ordered her to serve all creditors pursuant to Federal Rule of Bankruptcy Procedure 2002(a)(4) and Local Bankruptcy Rules 1017-1(e) and 9013-1 since she who is self-represented had not noticed the motion for hearing or served the creditors with the motion. The court now on its own motion vacates the order for

1 discharge because the entry of discharge was a mistake in light of the pending motion of
2 the Debtor to dismiss the bankruptcy case, ECF 26, filed on October 17, 2016, as
3 explained as follows. See Federal Rules of Bankruptcy Procedure (Bankruptcy Rule or
4 FRBP) 4004(c)(1)(D) and 9024; Federal Rule of Civil Procedure 60(b)(1).

5 Generally, “Bankruptcy courts have no authority to revoke a chapter 7 discharge
6 outside the statutory framework of §727.” 4 March, Ahart and Shapiro, *California Practice*
7 *Guide: Bankruptcy*, ¶ 22:1741 at 22-211 (2015), *citing*, *In re Markovich*, 207 B.R. 909, 913
8 (9th Cir. BAP 1997). However, “[a]s courts of equity, however, bankruptcy courts ‘have the
9 power to reconsider, modify or vacate their previous orders so long as no intervening rights
10 have become vested in reliance on the orders. This power has been formalized in
11 Bankruptcy Rule 9024, which makes FRCP 60 applicable to bankruptcy cases.’” *Id.* at ¶
12 22:1742 at 22-211 (2015), *citing inter alia*, *In re Cisneros*, 994 F.2d 1462, 1466 (9th Cir.
13 BAP 1997). In *In re Cisneros*, the Ninth Circuit held that under Federal Rule of Civil
14 Procedure 60(b), made applicable to bankruptcy cases by Federal Rule of Bankruptcy
15 Procedure 9024, a bankruptcy court may vacate a discharge order entered in a Chapter 13
16 proceeding because of a mistake of fact when no intervening rights have become vested in
17 reliance on the order. 994 F.2d at 1466-1467, *citing*, *In re Lenox*, 902 F.2d 737, 739-740
18 (9th Cir. 1990).

19 In this case, the court mistakenly entered the discharge order since Debtor’s motion
20 to dismiss the case, which is subject to 11 U.S.C. § 707(a), was pending, and this was
21 contrary to Federal Rule of Bankruptcy Procedure 4004(c)(1)(D), which provides: “In a
22 chapter 7 case . . . the court shall forthwith grant the discharge unless . . . a motion to
23 dismiss the case under [11 U.S.C.] §707 is pending.” Based upon this mistake and no
24 intervening rights having been vested in reliance on the discharge order in light of the short
25 period of time between the date of the discharge order on October 24, 2016 and the date
26 of this order on November 21, 2016 (that is, less than 30 days), pursuant to Federal Rule
27 of Civil Procedure 60(b)(1), made applicable to this case by Federal Rule of Bankruptcy
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1 Procedure 9024, the court on its own motion vacates the order for discharge and revokes
2 the discharge.¹ Accordingly, it is ordered as follows:

- 3 1. The order for discharge, ECF 32, entered in this case on October 24, 2016, is
4 vacated and Debtor's discharge in this Chapter 7 bankruptcy case is hereby
5 revoked without prejudice.
- 6 2. No entry of discharge is to be made while Debtor's motion to dismiss the case is
7 pending.

8 **IT IS SO ORDERED.**

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23 Date: November 21, 2016



24 Robert Kwan
25 United States Bankruptcy Judge

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27 _____
28 ¹ The court notes that If Debtor's motion to dismiss the case is not granted, a discharge may be properly re-entered in the case later pursuant to Federal Rule of Bankruptcy Procedure 4004(c)(1).