

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA**

In re:

Sherrie Nicole Lockhart-Johnson,

Case No.: 2:20-bk-10969-BB

Chapter: 7

Adversary No.: 2:20-ap-01073-BB

Debtor(s),

**ORDER DENYING MOTION FOR NEW
TRIAL OR FOR RECONSIDERATION**

Sharlene Willard

Plaintiff(s),

(No hearing required)

Vs.

Sherrie Nicole Lockhart-Johnson

Defendant(s).

On June 12, 2024, plaintiff Sharlene Willard (“Plaintiff”) filed a Notice of Motion and Motion to Vacate Judgment or Order (the “Motion”) and a memorandum of points and authorities (the “Memorandum”) and declaration of Plaintiff in support thereof (the “Declaration”) [collectively, Docket No. 223]. In the Motion, Plaintiff seeks the entry of an order (a) vacating this Court’s May 23, 2024 “Judgment Fully Resolving Adversary Proceeding” (the

1 “Judgment”) [Docket No. 220] and (b) setting a new trial date in the above adversary
2 proceeding (the “Action”) pursuant to “FRBP 9024, FRCP 55(c), FRCP 59 and FRCP 60(b).”

3 The Court, having reviewed and considered the Motion, the Memorandum and the
4 Declaration, and having reviewed and considered its records and files in this Action, hereby
5 finds as follows:

- 6 1. The Federal Rules of Civil Procedure are only applicable in adversary proceedings
7 in bankruptcy to the extent that they are incorporated by reference into the Federal
8 Rules of Bankruptcy Procedure.
- 9 2. Fed. R. Civ. Proc. 55(c) is incorporated by reference into the Federal Rules of
10 Bankruptcy Procedure by Fed. R. Bankr. Proc. 7055 and provides that, “The court
11 may set aside the entry of default for good cause, and it may set aside a final default
12 judgment under Rule 60(b).”
- 13 3. Fed. R. Civ. Proc. 55(c), made applicable by Fed. R. Bankr. Proc. 7055(c), has no
14 application here, as the Plaintiff’s default was not entered and the Judgment is not a
15 “default judgment” within the meaning of Rule 55(c).
- 16 4. Fed. R. Civ. Proc. 59 (New Trial; Altering or Amending a Judgment) is incorporated
17 into the Federal Rules of Bankruptcy Procedure with certain modifications by Fed. R.
18 Bankr. Proc. 9023. Under that rule, “A motion for a new trial or to alter or amend a
19 judgment shall be filed, and a court may on its own order a new trial, **no later than**
20 **14 days after entry of judgment.**” (Emphasis added.) The Judgment was entered
21 on May 23, 2024. The Motion was filed **twenty** days later on June 12, 2024 and is
22 therefore untimely under Fed. R. Bankr. Proc. 9023.
- 23 5. Fed. R. Civ. Proc. 60(b) is incorporated by reference into the Federal Rules of
24 Bankruptcy Procedure with certain modifications by Fed. R. Bankr. Proc. 9024.
25 Under that rule, on motion and just terms, the court may relieve a party from a final
26 judgment for the following reasons:
 - 27 i. Mistake, inadvertence, surprise, or excusable neglect;
 - 28 ii. Newly discovered evidence that, with reasonable diligence, could not
have been discovered in time to move for a new trial under Rule 59(b);

- 1 iii. Fraud (whether previously called intrinsic or extrinsic),
2 misrepresentation, or misconduct by an opposing party;
3 iv. The judgment is void;
4 v. The judgment has been satisfied, released or discharged; it is based
5 on an earlier judgment that has been reversed or vacated; or applying
6 it prospectively is no longer equitable; or
7 vi. Any other reason that justifies relief.
- 8 6. Plaintiff does not claim in the Motion that the Judgment was entered by mistake,
9 inadvertence or surprise and does not assert that any of the other bases set forth in
10 subparts 2 through 6 of Rule 60(b) apply here. The only theory that Plaintiff asserts
11 in the Motion as a basis for reconsideration of, or relief from, the Judgment is
12 “excusable neglect.”
- 13 7. In support of the Motion and her contention that the Judgment should be set aside
14 for “excusable neglect,” the Plaintiff cites Pioneer Investment Servs. Co. v.
15 Brunswith Assoc. Ltd. Partnership, 507 U.S. 380 (1993), which discussed the
16 showing that a creditor should be required to make in order to be permitted to file a
17 late proof of claim, and United States v. Mesle, 615 F.3d 1085 (9th Cir. 2010) and
18 Falk v. Allen, 739 F.2d 461 (9th Cir. 1984), both of which cases discuss when a court
19 should set aside a default and default judgment attributable to a defendant’s failure
20 to file a timely response to a complaint. None of these cases, and none of the other
21 cases cited in the Motion, involves a Plaintiff who was given adequate notice of the
22 time and date of trial and failed to show up in a timely manner to present her case.
- 23 8. Nevertheless, even under the standard that Plaintiff asserts is applicable on the facts
24 of this case, Plaintiff has failed to make the showing necessary to persuade the
25 Court that the Judgment should be vacated and a new trial date set.
- 26 9. In Pioneer, the Supreme Court identified the following factors as relevant to the
27 determination of whether a party’s failure to comply with a deadline is excusable:
28 “the danger of prejudice to the debtor, the length of the delay and its potential impact
 on judicial proceedings, the reason for the delay, including whether it was within the

1 reasonable control of the movant, and whether the movant acted in good faith.”

2 Pioneer, 507 U.S. at 395.

3 10. Although Plaintiff cites these factors, she fails utterly to demonstrate how the facts of
4 this case satisfy this standard. She does not acknowledge the existence of any
5 prejudice or inconvenience to opposing parties or the Court from her failure to show
6 up at trial, and, more importantly, she does not provide any meaningful explanation
7 as to why she failed to appear in a timely manner.

8 11. The entirety of the explanation that Plaintiff provides in her declaration as to why
9 she failed to appear at trial is the following: “I made every reasonable effort to arrive
10 at the hearing on time but couldn’t due to the sickness and physical debilitation I was
11 experiencing following the onset of a sudden, unpredictable, recurring medical issue
12 that I could neither control nor alleviate.” Declaration, p. 13, at par. 5.

13 12. The Plaintiff has never advised the Court at any time during the 4-year pendency of
14 the Action that she has any medical condition or issues that might prevent her from
15 appearing at trial in a timely manner, and she has never failed to appear at any of
16 the prior hearings in this matter due to a medical condition or issue. The Debtor
17 does not disclose what efforts she made to arrive on time and does not disclose
18 what it was that prevented her from doing so. Nor does she explain why or when the
19 sickness or condition or issue (whatever it was) that suddenly appeared miraculously
20 dissipated such that she was able to get into the car and head to court later that
21 morning.¹ And no corroborating records or information of any kind are attached to
22 the Declaration.²

23 13. Also missing from the Declaration is any discussion of why neither of two witnesses
24 that were to assist her in presenting her case in chief – Tamika Johnson and Marcus
25 Curry – appeared at trial on the morning of May 23, 2024 either.

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¹ Notably, the Plaintiff does not say in the Declaration that she ever even attempted to come to court. In the Memorandum, however, she asserts that she called the Court from the vicinity of the federal building at 10:36 a.m. on May 23, 2024.

² If Plaintiff felt uncomfortable about providing personal health information in a publicly-filed document, she could have applied to the Court for leave to provide a declaration containing such information under seal. She did not do so.

- 1 14. The only other information provided in the Motion concerning Plaintiff's reason for
2 failing to appear are the following vague unsupported references made in the
3 Memorandum:
- 4 a. Plaintiff's failure to appear for trial was "due to unpredictable, disabling
5 medical issues beyond Plaintiff's control." Memorandum, p. 5 at lines 6-7;
6 b. "Moving party further contends that the judgment and order were taken
7 against her due to her excusable neglect due to unpredictable medical issues
8 that were beyond Plaintiff's ability to alleviate." Memorandum, p. 6 at lines
9 22-24.
10 c. Plaintiff's failure to appear on time for trial "was due to excusable neglect in
11 that Plaintiff was overcome with an unpredictable, recurring medical issue that
12 was beyond Plaintiff's control or ability to alleviate – not bad faith conduct!"
13 Memorandum, p. 7 at lines 16-18.
- 14 15. According to the Supreme Court in Pioneer, the determination of what conduct
15 constitutes excusable neglect "is at bottom an equitable one, taking account of all
16 relevant circumstances surrounding the party's omission." Pioneer, 507 U.S. at 395.
17 The problem here is, among other things, that the Plaintiff has failed utterly to set
18 forth the specific facts and circumstances surrounding her failure to appear that the
19 Court would need in order to make the required determination. In essence, the
20 Plaintiff's position is, trust me, I did the best I could in light of what I was dealing
21 with. I won't tell you what was going on with me or how it affected me or why it
22 prevented me (for just a little while, apparently) from getting into a car (or using
23 some other mode of transportation) and coming to court. This is insufficient to
24 establish that Plaintiff's failure to appear was the result of excusable neglect or that
25 she is acting in good faith in claiming that it was.
- 26 16. The Court outlined in detail in its "Findings of Fact and Conclusions of Law in
27 Support of Judgment in Favor of Defendants" the lack of evidence in the record to
28 support the claims that Plaintiff has alleged. Nothing contained in the Motion
persuades the Court that there is any reason for it to vacate these findings and

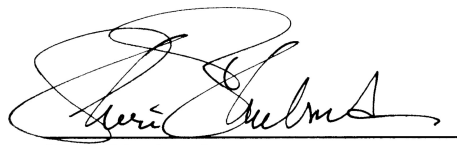
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conclusions or the Judgment that it entered based upon these findings and conclusions. The time for Plaintiff to present her case in chief to the Court in the Action was May 23, 2024 at 10:00 a.m. Plaintiff failed to appear for trial and has not demonstrated that such failure was due to excusable neglect.

In light of the foregoing, the Motion is **DENIED**.

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Date: June 14, 2024



Sheri Bluebond
United States Bankruptcy Judge