UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA—LOS ANGELES DIVISION

In re:	Deborah Elizabeth Gouch-Onassis, Debtor.	Case No.: 2:22-bk-14613-ER Chapter: 7	**MEMORANDUM OF DECISION DENYING THIRD MOTION TO REOPEN WITHOUT PREJUDICE** **[RELATES TO DOC. NOS. 41–42]** [No hearing required pursuant to Federal Rule of Civil Procedure 78(b) and Local Bankruptcy Rule 9013-1(j)(3)]

Before the Court is the Debtor's third motion to reopen her bankruptcy case (the "Third Motion to Reopen")[1] and corresponding application to waive the reopening filing fee (the "Application").[2] Pursuant to Civil Rule 78(b) and LBR 9013-1(j)(3),[3] the Court finds this matter suitable for disposition without oral argument. For the reasons set forth below, the Motion to Reopen and the Application are **DENIED WITHOUT PREJUDICE**.

I. Background

The Debtor filed a *pro se* voluntary Chapter 7 petition on August 24, 2022, and received a discharge on December 5, 2022.[4] The Debtor's case was closed on December 23, 2022.[5]

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[1] Doc. No. 42.
[2] Doc. No. 41.
[3] Unless otherwise indicated, all "Civil Rule" references are to the Federal Rules of Civil Procedure, Rules 1–86; all "Bankruptcy Rule" references are to the Federal Rules of Bankruptcy Procedure, Rules 1001–9037; all "Evidence Rule" references are to the Federal Rules of Evidence, Rules 101–1103; all "LBR" references are to the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California, Rules 1001-1–9075-1; and all statutory references are to the Bankruptcy Code, 11 U.S.C. §§101–1532.
[4] Doc. No. 24.

The Debtor has been designated as a vexatious litigant pursuant to Cal. Civ. Proc. Code § 391.7.[6] On January 12, 2023, the Court issued an order denying the Debtor's first motion to reopen the case (the "First Motion to Reopen").[7] The First Motion to Reopen sought reopening to enable the Debtor to schedule omitted creditors. In an order denying the First Motion to Reopen, the Court explained that because "dischargeability is unaffected by scheduling in a no asset, no bar date case, 'reopening the case to schedule the debt is for all practical purposes a useless gesture.'" *In re Beezley*, 994 F.2d 1433, 1434 (9th Cir. 1993).[8]

The Debtor subsequently filed a second motion to reopen (the "Second Motion to Reopen"),[9] which the Court denied by way of a *Memorandum of Decision* (the "Memorandum")[10] and corresponding order issued on May 5, 2023.[11] In the Second Motion to Reopen, the Debtor sought the opportunity to appear before the Court "on student loans that [were] discharged."[12] She stated that "Department of Education and ED Financial refuses to discharge the debt as documents directed them to," and that the "Department of Education and ED Financial want in writing that the student loans of $64,801.22 [are] included in the Chapter 7 bankruptcy …."[13] The Debtor further asserted that these creditors "will not discharge the debt until they receive an order from the court,"[14] and requested that the Court "order the discharge [of] this debt immediately."[15]

In the Memorandum, the Court explained that it lacked the ability to grant the relief sought by the Debtor:

> Here, the [Second] Motion to Reopen is predicated upon the false premise that the Debtor's student loan debt falls within the scope of the discharge that was issued on December 5, 2022. Unless and until the Debtor obtains a favorable judgment in an adversary proceeding under § 523(a)(8), her student loan debt remains non-dischargeable. **The relief that the Debtor requests—issuance of an order discharging the Debtor's student loan debt immediately—is not within the power of the Court to grant.** Denial of the Motion to Reopen is appropriate because there can be no dispute that the Debtor is not entitled to the immediate discharge of her student loan debt.

Memorandum at p. 3 (emphasis in original).

The Court also explained its reasons for declining to adopt an expansive construction of the Second Motion to Reopen, and provided the Debtor instructions on how to proceed should she

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[5] Doc. No. 29.
[6] *See* Vexatious Litigant List, available at https://www.courts.ca.gov/documents/vexlit.pdf.
[7] Doc. No. 31.
[8] Doc. No. 32 (order denying First Motion to Reopen).
[9] Doc. Nos. 35–36.
[10] Doc. No. 37.
[11] Doc. No. 38.
[12] Second Motion to Reopen at 1.
[13] *Id.* at 1–2.
[14] *Id.* at 2.
[15] *Id.* at 4.

wish to continue to pursue a discharge of her student loan debt:

> The Court is cognizant of its obligation to construe *pro se* pleadings liberally. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). The [Second]Motion to Reopen could conceivably be construed as an application to reopen the case to enable the Debtor to file a § 523(a)(8) complaint to discharge her student loan debt—although such relief is not requested anywhere in the Motion. The Court declines to construe the [Second] Motion to Reopen that broadly. The Debtor has not alleged any facts indicating that she might be eligible to discharge her student loans. However, because it might be possible for the Debtor to allege such facts, denial of the [Second] Motion to Reopen will be without prejudice.
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> **If the Debtor elects to file a renewed Motion to Reopen, it must be accompanied by a proposed complaint that plausibly alleges that the Debtor is eligible to discharge her student loan debt pursuant to the criteria set forth in the caselaw applying § 523(a)(8).** The proposed complaint must also contain a proof of service demonstrating that were the case to be reopened, the Debtor would have the ability to properly serve the complaint upon the appropriate entities….
>
> The Court generally would not require that a request to reopen be accompanied by a proposed complaint. However, where, as here, the Debtor has been designated as a vexatious litigant, it is appropriate for the Court to exercise a greater gatekeeping function when reviewing requests to reopen than would otherwise be appropriate.

Id. at p. 3 (emphasis in original).

Finally, the Court warned the Debtor of the risks of proceeding without counsel:

> The Court strongly advises the Debtor to retain counsel should she decide to continue to attempt to obtain a discharge of her student loans. Proceeding *pro se* has significant risks, and the Court finds it appropriate to make some of those risks known to the Debtor:
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> - Generally speaking, non-attorney litigants are less likely to be victorious than those assisted by counsel.
> - The opposing party may have a lawyer, and that lawyer's duty is to achieve victory for his or her client. He or she will take every step legally permissible to that end.
> - The Court is a neutral adjudicator of the law. The role of the judge is to resolve disputes arising between the parties in accordance with the law. As such, the judge cannot assist you, cannot answer your legal questions, and cannot take sides in the dispute. Nor can any members of the judge's staff.
> - You will be proceeding alone in a complex area where experience and professional training are greatly desired. Litigating a § 523(a)(8) action requires a great deal of time, preparation, knowledge, and skill. You will be held to the same standards as a lawyer as far as complying with the court procedures and the rules and regulations of the court system.

Id. at p. 4.

The Third Motion to Reopen requests that the case be reopened "for adversary hearing to discharge the dischargeability debt due to financial hardship …."[16] The Third Motion to Reopen is *not* accompanied by any of the materials that the Court ordered the Debtor to provide should she wish to continue to pursue a discharge of her student loan debt. Specifically, the Third Motion to Reopen does *not* contain a proposed complaint plausibly alleging the Debtor's eligibility for a student loan discharge, and it does *not* contain a proof of service demonstrating that the Debtor would have the ability to properly serve the proposed complaint upon the appropriate entities were the case to be reopened. In fact, aside from the conclusory assertion quoted above that the Debtor suffers from "financial hardship," the Third Motion to Reopen is devoid of any allegations whatsoever regarding the Debtor's eligibility for § 523(a)(8) relief.

II. Findings and Conclusions

Section 350(b) provides: "A case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause." Reopening a closed bankruptcy case "is a ministerial act that functions primarily to enable the file to be managed by the clerk as an active matter and that, by itself, lacks independent legal significance and determines nothing with respect to the merits of the case." *Menk v. LaPaglia (In re Menk)*, 241 B.R. 896, 913 (B.A.P. 9th Cir. 1999). It is generally inappropriate to consider the merits of an underlying claim when ruling on a motion to reopen. *See Menk*, 241 B.R. at 916–17 ("In short, the motion to reopen legitimately presents only a narrow range of issues: whether further administration appears to be warranted; whether a trustee should be appointed; and whether the circumstances of reopening necessitate payment of another filing fee. Extraneous issues should be excluded.").

However, this general rule is subject to an important exception. "[W]hen the undisputed facts in the record unequivocally establish that reopening the case would be a 'pointless exercise,' the bankruptcy court may deny the motion to reopen on that basis." *Kvassay v. Kvassay (In re Kvassay)*, No. 2:11-BK-11698-DS, 2016 WL 5845674, at *3 (B.A.P. 9th Cir. Oct. 6, 2016). For example, in *Cortez v. American Wheel (In re Cortez)*, 191 B.R. 174, 179 (B.A.P. 9th Cir. 1995), the court found that it was appropriate to deny a motion to reopen where there was no legal basis for granting the relief sought by the debtors. In *Cortez*, the debtors sought to reopen their Chapter 7 case to avoid a creditor's lien and to enjoin the creditor's foreclosure action. *Id.* at 176. Examining the facts of the case, the *Cortez* court found that the debtors would not be able to avoid the creditor's lien or to enjoin the foreclosure action. *Id.* at 177–79. Given the debtors' inability to obtain the relief they were seeking, the court upheld denial of the motion to reopen. *Id.* at 179.

As explained above, the Debtor disregarded the Court's clear instructions by failing to submit a proposed dischargeability complaint with the Third Motion to Reopen. The Debtor's noncompliance with the Court's prior order warrants denial of the Third Motion to Reopen. Denial will be without prejudice, because a denial with prejudice could prevent the Debtor from obtaining a determination as to whether her student loans are dischargeable.[17]

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[16] Third Motion to Reopen at p. 2.

[17] Some courts have held that the reopening of the main bankruptcy case is *not* a jurisdictional prerequisite to the adjudication of a dischargeability action. *See, e.g.*, *Menk v. Lapaglia (In re Menk)*, 241 B.R. 896, 910–11 (B.A.P. 9th Cir. 1999). In the Court's view, requiring reopening prior to entertaining a dischargeability action is more consistent with the plain language of

As explained in the Public Notice issued on August 9, 2023 (attached as **Exhibit A** and available on the Court's website at https://www.cacb.uscourts.gov/sites/cacb/files/documents/news/PN%2023-015.pdf), this bankruptcy case will be reassigned to another judge, effective September 15, 2023. As the Debtor has unsuccessfully sought reopening three times, the Court anticipates that it is likely that the Debtor will file a Fourth Motion to Reopen. The Debtor is advised that if she does file a Fourth Motion to Reopen, such motion will be decided by another judge, and a decision will not be rendered until *after* the case has been reassigned on September 15, 2023. This short delay in no way prejudices the Debtor because adjudication of a student loan dischargeability action typically takes at least nine months (and often longer).

The instructions that the Court issued in connection with the denial of the Second Motion to Reopen continue to apply. That is, if the Debtor files a Fourth Motion to Reopen, such motion shall be accompanied by (a) a proposed complaint that plausibly alleges that the Debtor is eligible to discharge her student loan debt pursuant to the criteria set forth in the caselaw applying § 523(a)(8) and (b) a proof of service demonstrating that were the case to be reopened, the Debtor would have the ability to properly serve the proposed complaint upon the appropriate entities. These documents shall be attached as exhibits to any Fourth Motion to Reopen that the Debtor files.

III. Conclusion

Based upon the foregoing, the Third Motion to Reopen is **DENIED WITHOUT PREJUDICE**. The Court will enter an order consistent with this Memorandum of Decision.

Bankruptcy Rule 4007. Said rule expressly contemplates that the bankruptcy case in chief will be reopened before a dischargeability action is filed. *See* Bankruptcy Rule 4007(b) ("A case may be reopened without payment of an additional filing fee for the purpose of filing a complaint to obtain a determination under this rule."). *But cf. Predovich v. Staffer (In re Staffer)*, 262 B.R. 80, 83 (B.A.P. 9th Cir. 2001) (Brand, J., dissenting), *aff'd,* 306 F.3d 967 (9th Cir. 2002) (concluding that "there is no warrant in Bankruptcy or Judicial Codes (titles 11 and 28 of the U.S. Code, respectively), the pertinent rules, or otherwise, for requiring the administrative case to be reopened for the filing of [a dischargeability] adversary proceeding.").

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Date: September 5, 2023

Ernest M. Robles
United States Bankruptcy Judge

Exhibit A—Public Notice

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
OFFICE OF THE CLERK

KATHLEEN J. CAMPBELL
Executive Officer
Clerk of Court

PUBLIC NOTICE

RE: REASSIGNMENT OF JUDGE ROBLES' CASELOAD EFFECTIVE SEPTEMBER 15, 2023

Effective September 15, 2023, Judge Ernest M. Robles' pending bankruptcy cases and related pending adversary proceedings will be reassigned to Los Angeles Division judges, as specified in the following table:

Cases Ending in Digit	Reassigned to Judge	Judge's Initials
0	Judge Neil W. Bason	NB
1, 2	Judge Sheri Bluebond	BB
3	Judge Julia W. Brand	WB
4	Judge Sandra R. Klein	SK
5, 6	Judge Barry Russell	BR
7	Judge Deborah J. Saltzman	DS
8, 9	Judge Vincent P. Zurzolo	VZ

Following the reassignments, the judge's initials at the end of the bankruptcy case and adversary proceeding numbers shall be changed to those to whom the matter was reassigned.

KATHLEEN J. CAMPBELL
CLERK OF COURT

23-015 (08/09/23)