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UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
NORTHERN DIVISION

In re:  
MARIA TERESA CHAVEZ,  
  
Debtor.

Case No. 9:16-bk-10709-DS  
Chapter 13

**MEMORANDUM DECISION AND ORDER  
REGARDING ENTRY OF CHAPTER 13  
DISCHARGE**

Hearing:  
Date: June 18, 2020  
Time: 11:30 a.m.  
Place: Courtroom 201  
1415 State Street  
Santa Barbara, California 93101

A hearing was held on June 18, 2020 at 11:30 a.m. (the “OSC Hearing”) on the court’s “Order to Show Cause re: Entry of Second Discharge in this Case” (the “OSC,” Docket No. 76). The OSC was issued in response to a “Certification of Compliance Under Section 1328(a) and Notice of Application for Entry of Discharge” (the “Application for Discharge,” Docket No. 70) filed by debtor Maria Teresa Chavez (the “Debtor”).

I. BACKGROUND

The Debtor originally filed this case under chapter 7 on April 14, 2016 and received a chapter 7 discharge on July 25, 2016 (the “Chapter 7 Discharge”). On July 27, 2016,

1 chapter 7 trustee Jerry Namba (the “Trustee”) filed a notice of assets. On August 3, 2016,  
2 the Debtor filed a motion to convert this case to chapter 13 (the “Motion to Convert,”  
3 Docket No. 20). In the Motion to Convert, the Debtor requested that the Chapter 7  
4 Discharge be vacated. The court issued an order (Docket No. 25) setting the Motion to  
5 Convert for hearing and asking the Debtor to brief the issue of whether the Chapter 7  
6 Discharge could be vacated at the Debtor’s request in light of the decision of the Ninth  
7 Circuit Bankruptcy Appellate Panel in *Markovich v. Samson (In re Markovich)*, 207 B.R.  
8 909, 911 (B.A.P. 9<sup>th</sup> Cir. 1997) (holding that a debtor does not have standing under §  
9 727(d) to bring a motion to vacate their own chapter 7 discharge).

10 In her brief (Docket No. 28), the Debtor asserted that her case was distinct from  
11 *Markovich* because the purpose of § 727(d) is to protect against “dishonest” debtors, like  
12 the debtor in *Markovich*, not to harm an “honest” debtor like her. Based on her assertion  
13 that she had not engaged in any bad behavior, the Debtor argued that the Chapter 7  
14 Discharge could be vacated under § 727(d) notwithstanding the holding of *Markovich*. The  
15 Debtor also referred to the decision in *In re Jones*, 111 B.R. 674, 675 (Bankr. E.D. Tenn.  
16 1990), which applied Rule 60(b) of the Federal Rules of Civil Procedure (“Rule 60”) to  
17 vacate a discharge at the debtor’s request. The equitable considerations of the *Jones*  
18 court had been considered but rejected by the bankruptcy court in *Markovich*, and the BAP  
19 affirmed that the court could not invoke equitable considerations to override provisions of  
20 the Code. *Markovich*, 207 B.R. at 913. The Debtor did not invoke any particular basis for  
21 relief under Rule 60(b), but merely referred to the rule applied by the *Jones* court as  
22 allowing such relief when no creditor objects and where relative prejudice strongly favors a  
23 debtor. The Debtor also referred in passing to *In re Starling*, 359 B.R. 901, 917 (Bankr.  
24 N.D. Ill. 2007), as another decision where a court had granted relief from a discharge order  
25 based on Rule 60(b).

26 At the October 27, 2016 hearing on the Motion to Convert, the Debtor argued that  
27 the Chapter 7 Discharge should be vacated under § 727(d) despite the holding of  
28 *Markovich*, because the Debtor had not acted in bad faith. Debtor’s counsel also argued

1 that Rule 60(b) should be used to vacate the Chapter 7 Discharge. The court observed at  
2 the hearing that, under *Markovich*, the Debtor lacked standing under § 727(d) to seek  
3 revocation of her own discharge. In stating that it would deny the Debtor’s request to  
4 vacate the Chapter 7 Discharge but approve the request for conversion, the court noted  
5 that it did “not think that makes a difference.” Debtor’s counsel responded by saying “I  
6 agree.”

7 After the hearing on the Motion to Convert, the court entered an order granting the  
8 Debtor’s request for conversion but denying her request to vacate the Chapter 7  
9 Discharge. (Docket No. 31).

10 Following conversion of this case to chapter 13, the court confirmed a chapter 13  
11 plan on March 8, 2017. On January 1, 2020, the Debtor filed the Application for Discharge  
12 stating that she had completed all payments under her chapter 13 plan and requesting a  
13 chapter 13 discharge.

14 Because the Debtor had already received a discharge in this case and was  
15 unsuccessful in requesting that the discharge be vacated, the court issued the OSC,  
16 asking the Debtor to provide authority for the court to enter a second discharge in this  
17 case. On June 4, 2020, the Debtor filed her response to the OSC (the “Response,” Docket  
18 No. 82), again arguing that the court should set aside the Chapter 7 Discharge under Rule  
19 60, specifically Rule 60(b)(5) and (b)(6), and enter a chapter 13 discharge. The Debtor  
20 appeared through her counsel at the OSC Hearing.

21 II. DISCUSSION

22 In deciding whether the Debtor’s Chapter 7 Discharge should be vacated, the court  
23 must decide whether: (1) keeping the Debtor’s Chapter 7 Discharge in place, after she has  
24 completed her chapter 13 plan, is “no longer equitable” under Rule 60(b)(5); or (2) there  
25 are extraordinary circumstances justifying relief from the Chapter 7 Discharge under Rule  
26 60(b)(6).

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1 Rule 60(b), applicable here pursuant to Federal Rule of Bankruptcy Procedure  
2 9024, “provides for reconsideration only upon a showing of (1) mistake, surprise, or  
3 excusable neglect; (2) newly discovered evidence; (3) fraud; (4) a void judgment; (5) a  
4 satisfied or discharged judgment; or (6) ‘extraordinary circumstances’ which would justify  
5 relief.” *School Dist. No. 1J, Multnomah Cnty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th  
6 Cir.1993); *Perez v. State Farm Mut. Auto. Ins. Co.*, 291 F.R.D. 425, 429-30 (N.D. Cal.  
7 2013); *Donell v. Keppers*, 835 F. Supp .2d 871, 874 (S.D. Cal. 2011).

8 a. *Relief is not Appropriate under Rule 60(b)(5)*

9 Rule 60(b)(5) itself includes multiple bases for relief. The final prong of Rule  
10 60(b)(5), the one invoked here by the Debtor, states that relief from a judgment may be  
11 granted when “applying it prospectively is no longer equitable.” Fed. R. Civ. P. 60(b)(5).

12 The Debtor relies on *Starling* for the principle that a discharge that is no longer  
13 equitable should have no further viability, and thus may be vacated under Rule 60(b)(5).  
14 *Starling*, 359 B.R. at 917. The Debtor argues that because she did not act in bad faith, did  
15 not abuse the process, and completed her chapter 13 plan, it would no longer be equitable  
16 for the court to keep the Chapter 7 Discharge in place and deny her a chapter 13  
17 discharge.

18 The Debtor’s reliance on *Starling* is unpersuasive. In *Starling*, the bankruptcy court  
19 for the Northern District of Illinois had already ruled that the debtors had standing to vacate  
20 a discharge under § 727(d) before it allowed the debtors to vacate their chapter 7  
21 discharge under Rule 60(b)(2) in connection with conversion of their case to chapter 13.  
22 The *Starling* court found grounds for relief under Rule 60(b)(2), a provision not invoked by  
23 the Debtor here, because it considered the trustee deciding to sell the debtors’ house after  
24 they had received their chapter 7 discharge “newly discovered evidence.” *Starling*, 359  
25 B.R. at 905, 911, 916. Only after ruling in favor of the debtors under § 727(d) and Rule  
26 60(b)(2) did the *Starling* court mention Rule 60(b)(5).

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1           Thus, before reaching Rule 60(b)(5), the *Starling* court had already ruled in the  
2 debtors' favor on two bases that the Debtor here cannot rely on. First, the § 727(b) holding  
3 of *Starling* is in direct conflict with the holding of the Ninth Circuit Bankruptcy Appellate  
4 Panel in *Markovich* that debtors lack standing to seek relief under § 727(d). *Markovich*,  
5 207 B.R. at 911-12. Second, the Debtor, unlike the *Starling* debtors, is barred from  
6 seeking Rule 60(b)(2) relief as the one-year time limit has passed. Fed. R. Civ. P.  
7 60(c)(1).

8           The *Starling* court provided little discussion of its Rule 60(b)(5) reasoning, following  
9 its discussion regarding the other grounds on which it found cause to vacate the discharge  
10 with the comment that the debtors had been "caught" in "unusual circumstances." *Starling*,  
11 359 B.R. at 917. Even if "unusual circumstances" were an independent basis for relief  
12 under Rule 60(b)(5), this court couldn't reach the same conclusion about the  
13 circumstances here. A trustee deciding to sell a debtor's home after they receive a  
14 chapter 7 discharge is not unusual in the Central District of California.

15           Another judge of this court has rejected the use of Rule 60(b)(5)'s "no longer  
16 equitable" prong to vacate a bankruptcy discharge. *In re Estrada*, 568 B.R. 533, 540-41  
17 (Bankr. C.D. Cal. 2017) (Houle, J.). In *Estrada*, the court rejected the debtor's use of  
18 *Starling* and Rule 60(b)(5) because Rule 60(b)(5) only applies to judgments with  
19 prospective applications, and a discharge is not a prospective judgment. *Id.* at 541 (citing  
20 *Maraziti v. Thorpe*, 52 F.3d 252, 254 (9th Cir. 1995)). This court agrees with the reasoning  
21 in *Estrada* as it correctly applies the holdings of *Maraziti v. Thorpe*. Rule 60(b)(5) is  
22 inapplicable here.

23           But even if this court were to reject the reasoning of *Estrada* and instead follow the  
24 reasoning of *Starling*, the Debtor would still not prevail here because the Debtor has not  
25 shown why leaving the Chapter 7 Discharge in place would be inequitable. To the  
26 contrary, the Debtor argues that since she has not accrued any new debts since the  
27 Chapter 7 Discharge, it should not matter to the court if she is discharged under chapter 7  
28 or chapter 13. (Response at 3:19-22). In addition, at the hearing, the court repeatedly

1 asked the Debtor's counsel to articulate how the Debtor would be negatively impacted if  
2 the Chapter 7 Discharge were left in place and no chapter 13 discharge were entered.  
3 Counsel was unable to do so. The Debtor has not articulated the inequity she would suffer  
4 from a difference between the Chapter 7 Discharge and a possible chapter 13 discharge.  
5 Therefore, she has not established that the Chapter 7 Discharge is "no longer equitable"  
6 and should be vacated pursuant to Rule 60(b)(5).

7           b.       *Relief is not Appropriate Under Rule 60(b)(6)*

8           Rule 60(b)(6) states that the court may grant a party relief from a final judgment,  
9 order, or proceeding for "any other reason that justifies relief." Fed. R. Civ. P. 60(b)(6).  
10 Rule 60(b)(6) provides "an equitable remedy to prevent manifest injustice," but is to be  
11 used "only where extraordinary circumstances prevented a party from taking timely action  
12 to prevent or correct an erroneous judgment." *U.S. v. Alpine Land & Reservoir Co.*, 984  
13 F.2d 1047, 1049 (9th Cir. 1993); *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349  
14 B.R. 204, 212 (B.A.P. 9th Cir. 2006).


15           The Debtor argues that under *Estrada*, the Chapter 7 Discharge should be vacated  
16 based on "extraordinary circumstances." *Estrada*, 568 B.R. at 541-42. Specifically, the  
17 Debtor asserts that the Trustee's decision to sell the Debtor's house after the Chapter 7  
18 Discharge, along with the Debtor's completion of her chapter 13 plan, are extraordinary  
19 circumstances justifying relief. (Response at 4-5). The court does not find that the facts of  
20 this case satisfy the high standard for relief under Rule 60(b)(6). The Debtor is not being  
21 subjected to "manifest injustice;" she has already received a discharge under chapter 7.  
22 The Debtor's counsel was unable to respond to the court's inquiries at the hearing to  
23 describe what would be different for the Debtor if she received a discharge under chapter  
24 13 instead chapter 7. If the Debtor cannot articulate any difference, the Debtor has not  
25 demonstrated that leaving the Chapter 7 Discharge in place would be a "manifest  
26 injustice."

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1 For the forgoing reasons, the court will not vacate the chapter 7 discharge or enter  
2 a chapter 13 discharge in this case and will direct that this case be closed. The court will  
3 enter a separate order consistent with this memorandum.

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24 Date: August 14, 2020

  
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Deborah J. Saltzman  
United States Bankruptcy Judge