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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

In re Estrella A. Kincaid,  
James M. Kincaid

Debtor-Appellants

No. 2:13-cv-01032 TLN

**ORDER**

This matter came before the Court on debtors’ motion to vacate the amended judgment. (ECF No. 11.) For the reasons set forth below, the motion is GRANTED.

Debtor-appellants Estrella A. Kincaid and James M. Kincaid (“debtors”) filed for protection under Chapter 7 of the Bankruptcy Code in 2005. In January 2013, the U.S. Trustee issued the final account and distribution report and certified that the debtors’ estate had been fully administered. Debtors, proceeding pro se, filed their notice of bankruptcy appeal on May 24, 2013. (ECF No. 1.) On May 29, 2013, this Court instructed debtors to file their designation of record, statement of issues, and any notice re: ordering transcripts within 14 days of filing their appeal. (ECF No. 2.) After the time for filing had passed, on June 26, 2013, the bankruptcy court issued a notice of incomplete or delayed record to this Court noting that the designation of record, statement of issues, and transcript information had not been received, and the filing fee had not yet been paid. (ECF No. 3.) Debtors filed a motion to extend time on July 9, 2013, in bankruptcy court but due to a clerical error, the motion was not filed in this Court until August 1, 2013. (ECF

1 No. 5.) On July 25, 2013, debtors filed a statement of issues and designation of records. (ECF  
2 No. 4.)

3 On September 4, 2013, this Court ordered debtors to file supporting documentation for  
4 their request for an extension of time within 21 days of the order. Debtors failed to do so. On  
5 March 14, 2014, this Court dismissed the appeal for failure to prosecute and failure to comply  
6 with court orders, and on April 16, 2014, this Court issued an amended order and judgment.

7 On May 14, 2014, debtors filed a motion to vacate the amended judgment. (ECF No. 11.)  
8 Debtors also filed two notices of errata.<sup>1</sup> (ECF Nos. 13, 14.) The Court held a hearing on  
9 debtors' motion to vacate on June 19, 2014. At hearing debtors represented to the Court that Mr.  
10 Kincaid has several medical ailments but that medical documentation is difficult for them to  
11 obtain.

12 For the reasons stated in this Order and on the record at hearing, this Court grants debtors'  
13 motion to vacate and will permit them to prosecute their appeal. In doing so, however, the Court  
14 emphasizes to the debtors the following:

15 (1) Pro se litigants are not entitled to ignore court orders, the Federal Rules of Civil  
16 Procedure, the Federal Rules of Bankruptcy Procedures, Local Rules, or their requirements. *See*  
17 *American Ass'n of Naturopathic Physicians v. Hayhurst*, 227 F.3d 1104, 1108 (9th Cir. 2000).

18 (2) The Court does not agree with and does not adopt debtors' recitation of the events in  
19 its numerous filings. As stated above, despite a clerical error, debtors' statement of issues and  
20 designation of record were still untimely.

21 (3) The Court notes that the bankruptcy court has previously found that the debtors in this  
22 case have shown bad faith and consistent pattern of dilatory behavior.

23 In light of the above, the Court will provide the debtors with a final opportunity to perfect  
24 their appeal but cautions the debtors that future non-compliance with this Court's orders or the  
25 applicable rules shall not be permitted. Therefore, it is **HEREBY ORDERED**:

26 1. Debtors' designation of record and statement of issues are deemed timely filed.

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28 <sup>1</sup> The Court notes that errata are generally inadvertent errors. Debtors' errata include several  
pages of legal argument which do not constitute errata.

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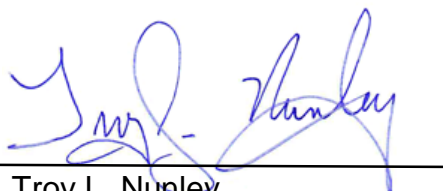
2. Debtors have 21 days to perfect any other deficiencies in their appeal.

3. After the record is complete, the clerk of the bankruptcy court shall send a Certificate of Record to the clerk of the district court. Upon receipt of the Certificate of Record, this Court shall issue a briefing schedule.

4. Any failure by debtors to comply with further Court orders shall result in the appeal being dismissed as appropriate.

**IT IS SO ORDERED.**

Dated: June 25, 2014



Troy L. Nunley  
United States District Judge