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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

In re  
Jeffrey Brian Johnson,  
Appellant.

No. 2:15-cv-00990-JAM

**ORDER AFFIRMING BANKRUPTCY  
COURT'S JUDGMENT**

This appeal arose from Jeffrey Brian Johnson's Chapter 7 bankruptcy. After the Chapter 7 Trustee filed a Report of No Distribution, the bankruptcy court discharged Johnson's debt ("Discharge Order"). Surprised by the Discharge Order, Johnson moved to set it aside. After the bankruptcy court denied his motion, Johnson filed an appeal with this Court.<sup>1</sup> ECF No. 1. Although his appeal is unopposed <sup>2</sup> the Court is required to and has considered this appeal on its merits.

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<sup>1</sup> This appeal was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g).  
<sup>2</sup> The Chapter 7 Trustee is no longer a party to this case. Min. Order, ECF No. 17. And the United States Trustee filed a Statement of Non-Participation. ECF No. 22.

1 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

2 Johnson filed for bankruptcy on November 18, 2013. App.,  
3 ECF No. 19-1, at 3-4. Three days later, Johnson received a  
4 Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors &  
5 Deadlines ("Deadline Notice"). Certificate of Mailing, located  
6 at Case No. 2:13-bk-34696, ECF No. 18. That document contained  
7 important dates, including the filing deadline to object to a  
8 debtor's discharge: February 10, 2014 ("Filing Deadline").  
9 Deadline Notice, located at Case No. 2:13-bk-34696, ECF No. 8.  
10 About one month later, the Chapter 7 Trustee filed a Report of No  
11 Distribution, concluding that Johnson had "no funds available  
12 from the estate for distribution to creditors." App. at 7.

13 Because Johnson's estate had been fully administered, the  
14 only remaining issue before the bankruptcy court was whether it  
15 should discharge Johnson's debt. Meanwhile, Johnson moved to  
16 convert his bankruptcy from Chapter 7 to Chapter 13. App. at 13-  
17 15. The bankruptcy court denied Johnson's motion without  
18 prejudice on procedural grounds. See id. at 23-24. Then, on  
19 March 4, 2014, the bankruptcy court discharged Johnson's debt.  
20 Id. at 25-26. The next day, the bankruptcy court clerk entered  
21 Johnson's second motion to convert from Chapter 7 to Chapter 13.  
22 See id. at 27-28, 175.

23 Eight days later, Johnson moved to set aside the Discharge  
24 Order ("Motion to Set Aside Discharge"). App. at 44-45. The  
25 bankruptcy court denied Johnson's motion and dismissed Johnson's  
26 second conversion motion. See id. at 73-77. Johnson appealed to  
27 the United States District Court for the Eastern District of  
28 California. The district court vacated the bankruptcy court's

1 order denying Johnson's motion and remanded the case so the  
2 bankruptcy court could determine (1) whether the bankruptcy court  
3 committed a clerical error under Fed. R. Civ. P. 60(a) when it  
4 discharged Johnson's debt, and (2) whether Johnson's medical  
5 treatment between February and March of 2014 constituted  
6 excusable neglect under Fed. R. Civ. P. 60(b)(1). See Johnson v.  
7 Edmonds, No. 2:14-cv-00889, 2015 WL 430697, at \*3 (E.D. Cal. Feb.  
8 2, 2015).

9 On remand, the bankruptcy court addressed these questions  
10 and again denied Johnson's Motion to Set Aside Discharge. See  
11 App. at 109-116. Johnson now appeals.

## 12 13 II. OPINION

### 14 A. Jurisdiction

15 District courts have appellate jurisdiction over a  
16 bankruptcy court's final judgments, orders, and decrees. See 28  
17 U.S.C. § 158(a)(1). Bankruptcy court decisions denying motions  
18 to set aside a prior judgment are "final." See, e.g., Johnson,  
19 2015 WL 430697 at \*1; In re Federico, No. 2:08-cv-2182, 2009 WL  
20 2905855, at \*1 (E.D. Cal. Sept. 8, 2009). Because Johnson's  
21 appeal pertains to a final judgment, this Court has  
22 jurisdiction.

### 23 B. Standard of Review

24 When reviewing a bankruptcy court's decision, a district  
25 court functions as an appellate court and applies the standard  
26 of review generally applied in federal appellate courts. See In  
27 re Crystal Props., Ltd., L.P., 268 F.3d 743, 755 (9th Cir. 2001)  
28 (internal citations omitted). Appellate courts apply a "de novo

1 review of legal conclusions and clear error review of factual  
2 findings" when reviewing discharge orders. See In re Bammer,  
3 131 F.3d 788, 792 (9th Cir. 1997).

4 C. Legal Standard

5 1. Federal Rule of Civil Procedure 60(a)

6 A "court may correct a clerical mistake or a mistake  
7 arising from oversight or omission whenever one is found in a  
8 judgment, order, or other part of the record." Fed. R. Civ. P.  
9 60(a). In other words, Rule 60(a) "empowers a [c]ourt to  
10 correct its own clerical mistakes." In re Burke, 95 B.R. 716,  
11 718 n.1 (B.A.P. 9th Cir. 1989). Bankruptcy Rule 9024 makes Rule  
12 60(a) applicable to bankruptcy cases. See Fed. R. Bankr. P.  
13 9024; In re Burke, 95 B.R. at 718.

14 2. Federal Rule of Civil Procedure 60(b)(1)

15 A "court may relieve a party or its legal representative  
16 from a final judgment, order, or proceeding for . . . mistake,  
17 inadvertence, surprise, or excusable neglect." Fed. R. Civ. P.  
18 60(b)(1). The United States Supreme Court established a four-  
19 factor test to assess whether missing a filing deadline  
20 constitutes excusable neglect. See Pioneer Inv. Servs. Co. v.  
21 Brunswick Assocs. Ltd., 507 U.S. 380 (1993). "[A]t bottom," the  
22 assessment is "an equitable one, taking account of all relevant  
23 circumstances surrounding the party's omission. These include  
24 . . .the danger of prejudice to the debtor, the length of the  
25 delay and its potential impact on judicial proceedings, the  
26 reason for the delay, including whether it was within the  
27 reasonable control of the movant, and whether the movant acted  
28 in good faith." Id. at 395 (internal citation omitted). The

1 Supreme Court emphasized that "inadvertence, ignorance of the  
2 rules, or mistakes construing the rules do not usually  
3 constitute 'excusable' neglect." See id. at 392.

4 Although Pioneer discussed excusable neglect under  
5 Bankruptcy Rule 9006(b), the Ninth Circuit has held that the  
6 Pioneer standard applies to Rule 60(b)(1). See Briones v.  
7 Riviera Hotel & Casino, 116 F.3d 379, 381 (9th Cir. 1997). In  
8 short, Pioneer sets an equitable framework from which courts  
9 should examine all circumstances involved rather than holding  
10 that any single circumstance compels a particular result despite  
11 other factors. See Briones, 116 F.3d at 382 n.2.

12 D. Analysis

13 Johnson makes two arguments to support his appeal. First,  
14 Johnson says that the bankruptcy court made a clerical mistake  
15 under Rule 60(a) when it discharged his debt. See Appellant  
16 Br., ECF No. 19, at 15. Second, Johnson argues that his late  
17 filing constituted excusable neglect under Rule 60(b)(1). See  
18 id. at 17. Johnson asks this Court to (1) vacate the bankruptcy  
19 court's decision to deny his Motion to Set Aside Discharge and  
20 (2) to vacate the Discharge Order. See id. at 23.

21 1. Rule 60(a)

22 Johnson argues that the bankruptcy court made a clerical  
23 mistake when it entered his second conversion motion the day  
24 after the court discharged his debt. Appellant Br. at 15. He  
25 maintains that had the bankruptcy court entered his second  
26 conversion motion a day earlier, the court would not have  
27 discharged his debt. See id.

28 The bankruptcy court did not make a clerical mistake when

1 it discharged Johnson's debt. Bankruptcy Rule 4004(c)(1)  
2 prescribes the conditions for triggering a Chapter 7 discharge:  
3 "In a chapter 7 case, on expiration of the times fixed for  
4 objecting to discharge and for filing a motion to dismiss the  
5 case under Rule 1017(e), the court shall forthwith grant the  
6 discharge." Fed. R. Bankr. P. 4004(c)(1) (emphasis added).

7 But, like with most general rules, there are several  
8 exceptions. A bankruptcy court "shall not grant" a Chapter 7  
9 discharge when, for instance, the debtor is not an individual;  
10 when someone files a complaint or motion under § 727(a)(8) or  
11 (a)(9); when the debtor files a waiver under § 727(a)(10); when  
12 a motion to dismiss the case under § 707 is pending; when a  
13 motion to extend the time to object to a discharge or to dismiss  
14 the case is pending; when the debtor has not filed a statement  
15 showing that he completed a personal financial management  
16 course; or when a motion to delay or postpone discharge under  
17 § 727(a)(12) is pending. See Fed. R. Bankr. P. 4004(c)(1)(A)-  
18 (F), (H)-(I).<sup>3</sup>

19 Here, all requisite conditions for entering a discharge  
20 were satisfied, and no exception applies. Johnson is an  
21 individual. He did not file a complaint or motion objecting to  
22 a discharge. He did not file a waiver. There were no pending  
23 motions to dismiss or to extend time to object to or delay  
24 discharge. And Johnson filed a certificate showing he completed  
25 a personal financial management course. See Financial  
26 Management Course Certificate, located at Case No. 2:13-bk-

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27 <sup>3</sup> This rule contains several more exceptions inapplicable here.  
28 See generally Fed. R. Bankr. P. 4004(c)(1)(A)-(L).

1 34696, ECF No. 60.

2 This case differs from Burke, where the Ninth Circuit  
3 B.A.P. found a clerical mistake under Rule 60(a). Id. at 718.  
4 In Burke, the bankruptcy court clerk initially scheduled the  
5 wrong date for the creditors' meeting, but then issued another  
6 order rescheduling the meeting for the proper date, explaining  
7 that the first order was incorrect "[d]ue to inadvertence and  
8 clerical error." Id. at 716-17. No such scheduling error  
9 occurred here. Johnson could have objected to a discharge, but  
10 he did not. Instead, he moved to convert his case from Chapter  
11 7 to Chapter 13. See App. at 13-15. A pending motion to  
12 convert is not an enumerated exception under Bankruptcy Rule  
13 4004(c)(1). See generally Fed. R. Bankr. P. 4004(c)(1)(A)-(L).  
14 So, once the Filing Deadline expired, the bankruptcy court  
15 properly discharged Johnson's debt because no enumerated  
16 exception applied.

17 Johnson also maintains that the bankruptcy court "confuses  
18 the law to the facts" because it cited irrelevant bankruptcy  
19 rules like Rule 4004(c)(1). See Appellant Br. at 16. But it is  
20 Johnson who is confused. Bankruptcy Rule 4004(c)(1), and any  
21 other statute or rule it cites, provides the relevant context  
22 upon which to analyze whether entering the discharge was a  
23 clerical mistake under Rule 60(a). In other words, the  
24 bankruptcy court included these rules in its Order to explain  
25 how a Chapter 7 discharge occurs, and then applied that  
26 procedural framework to Johnson's case to show why entering the  
27 discharge was not a clerical mistake under Rule 60(a).

28 In sum, the bankruptcy court did not make a clerical

1 mistake when it discharged Johnson's debt but did what the law  
2 requires.

3           2.    Rule 60(b)(1)

4           Johnson offers Rule 60(b)(1) as another basis to vacate the  
5 bankruptcy court's decision to deny his Motion to Set Aside  
6 Discharge. Specifically, Johnson argues that an unexpected  
7 medical injury on February 18, 2014 made him "not cognitive" of  
8 the relevant bankruptcy rules detailing the procedure to convert  
9 from Chapter 7 to Chapter 13. See Appellant Br. at 17-23.

10           For the reasons discussed below, Johnson's medical issues  
11 do not constitute excusable neglect.

12                   a.    Prejudice

13           Prejudice requires greater harm than simply that relief  
14 would delay a case's resolution. Lemoge v. United States, 587  
15 F.3d 1188, 1196 (9th Cir. 2009) (internal citation omitted).  
16 Yet Johnson maintains that he cannot obtain the relief he wants  
17 (a Chapter 13 conversion) until this Court vacates his Chapter 7  
18 discharge. See Appellant Br. at 17.

19           The Discharge Order has not prejudiced Johnson because he  
20 can still move to convert to Chapter 13. The Bankruptcy Code  
21 allows a Chapter 7 debtor to "convert a case under this chapter  
22 to a case under chapter . . . 13 of this title at any time." 11  
23 U.S.C. § 706(a) (emphasis added). But a debtor does not have an  
24 absolute right to convert to Chapter 13. See Marrama v.  
25 Citizens Bank of Massachusetts, 549 U.S. 365, 372-73 (2007)  
26 (holding that a debtor's bad faith could stop him from  
27 qualifying as a debtor under Chapter 13); In re Rosson, 545 F.3d  
28 764, 767-68 (9th Cir. 2008) (same). Nevertheless, as long as

1 Johnson follows procedural rules and establishes his eligibility  
2 for a Chapter 13 conversion, his Chapter 7 discharge will not  
3 preclude him from obtaining a Chapter 13 conversion which is the  
4 relief he apparently wants. See 11 U.S.C. § 706(a).

5 Johnson's creditors, however, would suffer prejudice if  
6 this Court vacated the Discharge Order. Discharging a debt  
7 effectively ends the case. As the bankruptcy court correctly  
8 noted, "[t]he creditors have relied on [Johnson's] discharge to  
9 finalize their accounts with [him] and make appropriate credit  
10 reporting of [him]." App. at 113. Vacating the Discharge Order  
11 "would require notifying the creditors that the discharge of  
12 [Johnson's] debts has been reversed, necessitating their  
13 reopening of [Johnson's] accounts, revisiting collection  
14 activities and reversing their credit reporting of [Johnson]."  
15 Id.

16 In short, Johnson has not shown that he would suffer  
17 prejudice if this Court affirmed the bankruptcy court's  
18 decision. A discharge does not necessarily preclude conversion.  
19 See 11 U.S.C. § 706(a). And, as evidenced by the hearing  
20 transcript, the bankruptcy court may grant Johnson's conversion  
21 motion, provided Johnson satisfies the requisite conditions.  
22 See App. at 146 ("I will convert it, if I get that motion and  
23 it's properly noticed to your creditors and you establish your  
24 eligibility for Chapter 13.").

25 b. Length of Delay and Resulting Effect

26 Rule 60(c)(1) requires that a Rule 60(b) motion be made  
27 "within a reasonable time" and "no more than a year after the  
28 entry of the judgment or order or the date of the preceding

1 year." Fed. R. Civ. P. 60(c)(1). See also Lemoges, 587 F.3d at  
2 1196. "What constitutes reasonable time depends upon the facts  
3 of each case, taking into consideration the interest in  
4 finality, the reason for delay, the practical ability of the  
5 litigant to learn earlier of the grounds relied upon, and  
6 prejudice to the other parties." Lemoges, 587 F.3d at 1196-97  
7 (citing Ashford v. Steuart, 657 F.2d 1053, 1055 (9th Cir. 1981)  
8 (per curiam) (internal quotation marks omitted)).

9 Johnson never filed a motion to object to, delay, or waive  
10 discharge. The first time he opposed discharge came 8 days  
11 after the court entered it. See App. at 44-45. Although this  
12 falls within the "one year" limit, the Lemoges's factors show  
13 that Johnson did not object within a "reasonable time." First,  
14 the same reliance argument outlined above supports two factors  
15 that favor affirming the discharge: (1) prejudice to other  
16 parties (here, Johnson's creditors) and (2) the interest in  
17 finality. Second, the last two factors favor affirmance because  
18 Johnson had the practical ability to know about the Filing  
19 Deadline, and his medical issues do not justify missing that  
20 deadline.

21 c. Reason for Delay

22 Johnson cites his medical problems for missing the Filing  
23 Deadline, arguing that his medical issues made him "not  
24 cognitive" of the relevant legal rules. See Appellant Br. at  
25 19. Johnson parallels his situation to the attorney's in  
26 Lemoges. In that case, the Ninth Circuit concluded that the  
27 attorney's medical problems explained why he did not respond to  
28 the court's order to show cause and why he did not file the

1 motion to set aside the dismissal until 7 months later. See id.  
2 at 1197. The Ninth Circuit found a causal link between the  
3 attorney's medical issues and his late filing.

4 No such causal link exists here. Johnson had known about  
5 the February 10, 2014 deadline since November 21, 2013. See  
6 Certificate of Mailing, located at Case No. 2:13-bk-34696, ECF  
7 No. 18. And Johnson's medical problems began 8 days after the  
8 Filing Deadline. See Deadline Notice, located at Case No. 2:13-  
9 bk-34696, ECF No. 8 (February 10, 2014 deadline to file  
10 objection to discharge) (emphasis added); Appellant Br. at 17  
11 ("[U]nexpected injury occurred on February 18, 2014, demanding  
12 medical attention."). See also App. at 63 (admitted to hospital  
13 on February 20, 2014). So, unlike the attorney in Lemoges,  
14 Johnson has not shown that his medical treatment made him miss a  
15 deadline about which he had known for months. Making the Filing  
16 Deadline was within Johnson's "reasonable control." Pioneer,  
17 507 U.S. at 395. But, rather than following the procedural  
18 rules to waive or delay or object to a discharge, Johnson twice  
19 moved to convert—an action that does not affect whether a court  
20 discharges a debt. See Fed. R. Bankr. P. 4004(c)(1)(A)-(L).  
21 Johnson cannot cite his medical issues for his confusion (and  
22 subsequent delay in objecting to discharge) because there exists  
23 no causal link between those issues and his late filing.

24 d. Good Faith

25 "[A] late filing will ordinarily not be excused by  
26 negligence. . . . [and] pro se litigants are not excused from  
27 following court rules." Briones, 116 F.3d at 382.

28 Again, Johnson knew about the Filing Deadline. See

1 Certificate of Mailing, located at Case No. 2:13-bk-34696, ECF  
2 No. 18. Yet he did not file any documents that affect discharge;  
3 instead, he filed motions that have no bearing on the issue. See  
4 App. at 13-15, 27-28 (first and second conversion motions).  
5 Johnson does not dispute these facts. He relies only on his  
6 medical problems to justify his late filing. See Appellant Br.  
7 at 17-23. But, as explained above, no causal link exists between  
8 Johnson's medical problems and his late filing. See supra Part  
9 II(D)(2)(c).

10 Once again, this case differs from Lemoges. In Lemoges, no  
11 evidence suggested that the attorney had acted with anything less  
12 than good faith, given the causal link between his medical  
13 problems and his late filing. Id. at 1197. Johnson cannot now,  
14 after the fact, cite his medical issues to justify his late  
15 filing. He may have been confused about some procedural rules,  
16 but, under these facts, he cannot argue, in good faith, that it  
17 was because of his medical condition.

18 After applying the Pioneer factors, the Court concludes that  
19 Johnson has not shown excusable neglect under Rule 60(b)(1). He  
20 knew about the Filing Deadline, but focused instead on converting  
21 his case. He took steps to accomplish that goal, and he allowed  
22 the deadline to expire.

### 23 24 III. ORDER

25 The Court acknowledges Johnson's genuine desire to convert  
26 his case from Chapter 7 to Chapter 13. But that desire has  
27 blinded Johnson from the real issue. A Chapter 7 discharge does  
28 not prevent him from obtaining what he wants—a Chapter 13

1 conversion. Rather than questioning the bankruptcy judge's  
2 expertise, rather than blaming the court clerk for making an  
3 alleged clerical mistake, rather than invoking excusable neglect,  
4 Johnson should simply do what the law requires. The bankruptcy  
5 judge made that explicitly clear at the hearing:

6           You seem to believe you're not going to get a  
7 Chapter 13 discharge if you got a Chapter 7  
8 discharge. As long as it's the same case,  
9 you will get a discharge. . . . So you need  
10 to notice the motion to convert to Chapter  
11 13. All right. And as long as you do that  
12 and you establish that your debts are less  
13 than the limits in 109(e) and that you have  
14 regular income, such that you meet the  
15 definition of a Chapter 13 debtor, also in  
16 Section 109, I will grant the motion. And if  
17 I grant the motion and you confirm a plan and  
18 you complete the payments under the plan, you  
19 will get a Chapter 13 discharge.

20 App. at 149, 153.

21           For the reasons set forth above, the Court AFFIRMS the  
22 bankruptcy court's judgment to deny Johnson's Motion to Set Aside  
23 Discharge.

24           IT IS SO ORDERED.

25 Dated: January 3, 2017

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JOHN A. MENDEZ,  
UNITED STATES DISTRICT JUDGE