

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 7, 2025

Hearing Room 301

10:30 AM

1: -

Chapter

#0.00 All hearings on this calendar will be conducted in Courtroom 301 at 21041 Burbank Boulevard, Woodland Hills, California, 91367. All parties in interest, members of the public and the press may attend the hearings on this calendar in person.

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Docket 0

Tentative Ruling:

- NONE LISTED -

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1:18-12156 Integrated Dynamic Solutions, Inc.

Chapter 7

#0.01 Trustee's Final Report and Applications for Compensation

Nancy J. Zamora, Chapter 7 Trustee

BG Law, LLP, Attorneys for Trustee

Grobstein Teeple, LLP, Accountants for Trustee

fr. 4/30/25

Docket 358

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Integrated Dynamic Solutions, Inc.

Pro Se

Trustee(s):

Nancy J. Zamora

Represented By
David Seror
Ryan Coy
Ashley M Teesdale

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1:25-10391 Frank Javanshir

Chapter 7

#1.00 United States Trustees Motion to Dismiss Case Pursuant to
11 U.S.C. §§109(h), 521(b), and 707(a)

Docket 12

Tentative Ruling:

For the reasons set forth below, the Court will grant the U.S. trustee's motion to dismiss the case.

I. BACKGROUND

A. *The Bankruptcy Case*

On March 12, 2025, Frank Javanshir ("Debtor") filed a chapter 7 petition, initiating this bankruptcy case. Question 15 of the petition states, in relevant part:

Tell the court whether you have received a briefing about credit counseling.

The law requires that you receive a briefing about credit counseling before you file for bankruptcy. You must truthfully check one of the following choices. If you cannot do so, you are not eligible to file.

If you file anyway, the court can dismiss your case, you will lose whatever filing fee you paid, and your creditors can begin collection activities again.

Petition, ¶ 15, at p. 5 [doc. 1]. In response to question 15, Debtor checked the following choice:

I received a briefing from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, and I received a certificate of completion.

Id. That same day, Debtor filed a certificate of credit counseling dated July 28, 2023

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(the "July 2023 Certificate") [doc. 3].

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On March 14, 2025, the Bankruptcy Noticing Center, via first class mail, served Debtor with a *Case Commencement Deficiency Notice* (the "Deficiency Notice") [docs. 6 and 9]. As set forth in the Deficiency Notice and the docket entry text regarding the July 2023 Certificate, the July 2023 Certificate was deficient because it was dated more than 180 days prior to the petition date. On March 24, 2025, Debtor filed a certificate of credit counseling dated March 15, 2025 (the "March 2025 Certificate") [doc. 10].

B. The Motion and the Opposition and Reply Thereto

On April 9, 2025, the U.S. trustee filed a *Motion to Dismiss Case Pursuant to 11 U.S.C. §§ 109(h), 521(b), and 707(a)* (the "Motion") [doc. 12]. In the Motion, the U.S. trustee requests that the Court dismiss the Case because Debtor is ineligible to be a debtor; he did not obtain a credit counseling certificate as required by 11 U.S.C. §§ 109(h) and 521(b). Based on Debtor's ineligibility, the U.S. trustee contends that dismissal of the Case under 11 U.S.C. § 707(a) is warranted.

On April 17, 2025, Debtor filed an opposition to the Motion (the "Opposition") with a declaration of Debtor [doc. 15]. In his declaration, Debtor states that he is representing himself in this case and "erroneously filed the wrong counseling certificate," but that he "filed a new certificate within the time allotted by the clerk." *Declaration of Frank Javanshir*, ¶¶ 3-4 [doc. 15]. Debtor requests that the Court deny the Motion to "avoid [Debtor] paying the filing fee again" and because Debtor has judgments against him. *Id.*, ¶ 4. On April 30, 2025, the United States Trustee filed a reply to the Opposition [doc. 17].

II. LEGAL STANDARDS

11 U.S.C. § 521(b)(1) provides that "a debtor who is an individual shall file with the court ... a certificate from the approved nonprofit budget and credit counseling agency that provided the debtor services under section 109(h) describing the services provided to the debtor."

11 U.S.C. § 109(h) provides, in relevant part:

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Chapter 7

- (1) [A]n individual may not be a debtor under this title unless such individual has, during the 180-day period ending on the date of filing of the petition by such individual, received from an approved nonprofit budget and credit counseling agency described in section 111(a) an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis.

* * *

- (3)
- (A) Subject to subparagraph (B), the requirements of paragraph (1) shall not apply with respect to a debtor who submits to the court a certification that—
- (i) describes exigent circumstances that merit a waiver of the requirements of paragraph (1);
 - (ii) states that the debtor requested credit counseling services from an approved nonprofit budget and credit counseling agency, but was unable to obtain the services referred to in paragraph (1) during the 7-day period beginning on the date on which the debtor made that request; and
 - (iii) is satisfactory to the court.
- (B) With respect to a debtor, an exemption under subparagraph (A) shall cease to apply to that debtor on the date on which the debtor meets the requirements of paragraph (1), but in no case may the exemption apply to that debtor after the date that is 30 days after the debtor files a petition, except that the court, for cause, may order an additional 15 days.

"The purpose of these provisions is to require debtors at least to explore the utility of credit counseling as an option before throwing in the towel and seeking a discharge of

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Chapter 7

their debts in bankruptcy." *In re Mendez*, 367 B.R. 109, 114 (B.A.P. 9th Cir. 2007).

11 U.S.C. § 707(a) provides that "[t]he court may dismiss a case under this chapter only after notice and a hearing and only for cause...." "A lack of statutory eligibility to 'be a debtor,' if it goes to a default on the part of the debtor that is incapable of cure under the very terms of the Code, is the very most fundamental 'cause' for dismissal." *In re LaPorta*, 332 B.R. 879, 883–84 (Bankr. D. Minn. 2005) (dismissing chapter 7 debtor's case for cause where debtor did not comply with the pre-bankruptcy credit counseling requirement in § 109(h) and did not file a certification requesting waiver of such requirement that complied with § 109(h)(3)).

In addressing the pre-bankruptcy credit counseling requirement in § 109(h), the Bankruptcy Appellate Panel of the Ninth Circuit (the "BAP") has held that "the command ... is clear, and, unless one of the stated exceptions applies, an individual 'may not be a debtor' unless she has received credit counseling prior to filing her bankruptcy petition." *In re Gibson*, 2011 WL 7145612, at *4 (B.A.P. 9th Cir. Dec. 1, 2011).

In *Gibson*, a debtor filed a chapter 13 petition without having obtained credit counseling during the 180 days prior to filing her petition. *Id.* at *1, 4. Although she completed counseling a few days later, she did not request nor secure the bankruptcy court's approval to do so post-petition as a result of any exigent circumstances, nor did she seek an exemption from the counseling requirement under one of the other § 109(h) exceptions. *Id.* at *4. Because the debtor had not complied with § 109(h), the bankruptcy court dismissed her case. *Id.* at *2. On appeal, the BAP held that the bankruptcy court's dismissal was appropriate because debtor was not eligible to be chapter 13 debtor under § 109(h). *Id.* at *4. *See also In re Mingueta*, 338 B.R. 833 (Bankr. C.D. Cal. 2006) (dismissing debtor's case where debtor's request for waiver of the pre-bankruptcy credit counseling requirement did not establish either exigent circumstances or evidence that debtor was unable to comply due to incapacity, disability or active duty in military combat zone).

III. ANALYSIS

Pursuant to § 109(h), Debtor was required to obtain pre-bankruptcy credit counseling within the 180-day period beginning September 13, 2024 and ending on the petition date, i.e., March 12, 2025. Debtor obtained credit counseling on July 28, 2023 and

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March 15, 2025. In his declaration filed in support of the Opposition, Debtor did not establish either exigent circumstances or evidence that Debtor was unable to comply due to incapacity, disability or active duty in a military combat zone. Accordingly, Debtor is ineligible to be a chapter 7 debtor, and there is cause for the Court to dismiss the case under § 707(a).

The decisions cited by Debtor in the Opposition are unconvincing. In *Mendez*, the debtor filed a chapter 7 petition without having obtained credit counseling during the 180 days prior to filing her petition. 367 B.R. at 114. After filing her chapter 7 petition, when the debtor found out that a consequence of her filing might be the sale of her home, she wanted out. The debtor filed a motion to dismiss her case, in which she attempted to use her noncompliance with the pre-bankruptcy credit counseling requirement to preclude the sale of her home. *Id.*

The bankruptcy court denied the debtor's motion, determining that the debtor waived any issues concerning her ineligibility to be a chapter 7 debtor under § 109(h) as a basis for dismissing her case. *Id.* at 117. On appeal, the BAP affirmed, holding that the debtor waived strict compliance with the requirements of § 109(h) as a basis for her motion to dismiss the case. *Id.* at 118.

The facts and procedural background in Debtor's case are distinguishable from those in *Mendez*. Here, Debtor does not seek dismissal of the case, so the issue of waiver by Debtor is not implicated.

In the Opposition, Debtor also cites *In re Nichols*, 362 B.R. 88 (Bankr. S.D.N.Y. 2007), for the proposition that bankruptcy courts may excuse compliance with the pre-bankruptcy credit counseling requirement. Given the existence of contrary authority with precedential value to this Court, the Court will not excuse Debtor's compliance with § 109(h). See *Gibson*, 2011 WL 7145612; *Mingueta*, 338 B.R. 833.

IV. CONCLUSION

The Court will grant the Motion.

The U.S. trustee must submit the order within seven (7) days.

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Party Information

Debtor(s):

Frank Javanshir

Pro Se

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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1:23-10613 Marion Elisabeth Greenblatt

Chapter 7

#2.00 Chapter 7 Trustee's Motion to Extend Deadline to File Complaint to Deny Discharge Pursuant to Rule 4004(b)(2) of the Federal Rules of Bankruptcy Procedure

Docket 71

Tentative Ruling:

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

Debtor(s):

Marion Elisabeth Greenblatt

Represented By
David Joel Follin

Trustee(s):

David Keith Gottlieb (TR)

Represented By
D Edward Hays
Bradford Barnhardt

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1:24-11323 Irwin Naturals and Irwin Naturals Inc

Chapter 11

#3.00 Debtors' Application to Employ RSM US LLP as Ordinary Course Professional Under 11 U.S.C. § 363

Docket 523

Tentative Ruling:

Grant.

Movants must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movants is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movants will be so notified.

Party Information

Debtor(s):

Irwin Naturals

Represented By

Joseph Axelrod

Susan K Seflin

Jessica Wellington

Ashley M Teesdale

Jonathan Seligmann Shenson

Jessica L Bagdanov

David M Poitras

Joint Debtor(s):

Irwin Naturals Inc

Represented By

Susan K Seflin

Jessica Wellington

David M Poitras

DAI US HOLDCO INC

Represented By

Susan K Seflin

Jessica Wellington

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Irwin Naturals and Irwin Naturals Inc

Chapter 11

David M Poitras

5310 Holdings, LLC

Represented By
Susan K Seflin
Jessica Wellington
David M Poitras

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1:24-11748 Lytton Vineyard & Winery, L.P.

Chapter 11

**#4.00 Disclosure Statement Hearing Describing Debtor's Chapter 11
Plan of Liquidation, Dated March 14, 2025**

Docket 140

Tentative Ruling:

On October 18, 2024, Lytton Vineyard & Winery, L.P. ("Debtor") filed a chapter 11 petition. Debtor is a limited partnership consisting of 11 limited partners, including ZhiHong Zhang, Tong Jin, Yunning Zhao, Mei Yang, Chunting Wang and one general partner. *See* Declaration of Richard Laski, ¶ 4 [doc. 14]. Prepetition, Debtor operated a restaurant and winery in the Temecula Valley sitting on approximately 21 acres of land. *Id.*, ¶ 5.

In December 2024, Debtor filed a motion seeking approval of Debtor's pre-petition agreement with Wilshire Partners of CA, LLC ("Wilshire Partners") and the appointment of Richard J. Laski as Debtor's interim CEO (the "Wilshire Partners Motion") [doc. 83]. In the Motion, Debtor proposed that, in exchange for his services as Debtor's interm CEO, Mr. Laski would receive \$850 per hour.

As set forth in the Wilshire Partners Motion, on before the 15th day of each month, Wilshire Partners would file and serve a summary report of compensation earned and expenses incurred for the proceeding calendar month (the "Fee Statement"). If no objection to a Fee Statement was filed within ten days of service, Debtor would be authorized to pay Wilshire Partners for the prior month, if Debtor had sufficient unencumbered funds and/or the amounts requested were otherwise provided for in Debtor's cash collateral budget. In January 2025, the Court entered an order granting the Wilshire Partners Motion [doc. 117].

In November 2024, Debtor filed a motion to sell Debtor's real property located at 34567 Rancho California Rd., Temecula, California, along with substantially all of Debtor's personal property, free and clear of liens, claims, interests and encumbrances (the "Motion to Sell") [doc. 69]. On January 2, 2025, the Court entered an order granting the Motion to Sell [doc. 118].

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On or about January 23, 2025, the sale of substantially all of Debtor's property closed. Declaration of Richard Laski, ¶ 3 [doc. 145]. As of March 31, 2025, Debtor had approximately \$4.3 million in cash on hand. March 2025 Monthly Operating Report [doc. 176].

On March 14, 2025, Debtor filed the *Debtor's Chapter 11 Plan of Liquidation, Dated March 14, 2025* (the "Plan") [doc. 139] and *Disclosure Statement Describing Debtor's Chapter 11 Plan of Liquidation, Dated March 14, 2025* (the "Disclosure Statement") [doc. 140]. The Plan classifies claims and interests in various classes according to their right to priority and other relative rights; Class 3 in the Plan includes all allowed general unsecured claims.

The Plan provides that, on the Plan's effective date, a liquidating trust (the "Liquidating Trust"), will be created pursuant to a liquidating trust agreement (the "Liquidating Trust Agreement"), in substantially the same form as attached to the Plan as Exh. 1. Mr. Laski will execute the Liquidating Trust Agreement on behalf of Debtor and as the liquidating trustee (the "Liquidating Trustee").

According to the Plan, the Liquidating Trust will administer the assets that have been distributed, transferred to, and vested in the Liquidating Trust for the benefit of the holders of allowed claims. With respect to claim objections, the Liquidating Trust Agreement states that the deadline for the Liquidating Trustee to file objections to claims will be ninety days after the Plan's effective date. The terms of the compensation of the Liquidating Trustee are not set forth in the Liquidating Trust Agreement or in the Plan.

In the Disclosure Statement, Debtor does not discuss the aggregate amount of Class 3 general unsecured claims, nor has Debtor included with the Disclosure Statement a chart identifying: (1) the claims included in Class 3; (2) the amount of each claim (as scheduled or as asserted in a proof of claim); and (3) whether such claim is disputed. Although Debtor has stated it will amend the Disclosure Statement to include such a chart, to date, it has not. *See Stipulation Between Debtor and United States Trustee Re: Debtor's Chapter 11 Plan of Liquidation, Dated March 14, 2025* [doc. 181]. In the Disclosure Statement, Debtor has not provided any description of amounts anticipated to be paid to allowed claims in Class 3, e.g., as a percentage of the aggregate allowed claims, nor explained why Debtor cannot provide such information.

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Chapter 11

In the liquidation analysis, attached as Exh. 1 to the Disclosure Statement, Debtor includes estimated administrative expenses for a chapter 7 trustee and professionals for the chapter 7 trustee. However, Debtor does not discuss the estimated fees of the Liquidating Trustee and any professionals which the Liquidating Trustee may use in connection with administering the Liquidated Trust.

To approve the Disclosure Statement, this Court must find that it contains "adequate information," such that a hypothetical investor could make an informed judgment about the plan. Courts look at multiple factors in evaluating the adequacy of a disclosure statement—as detailed below. 7 *Collier on Bankruptcy*, ¶ 1125.02[2] (16th ed. 2011) citing *In re Scioto Valley Mortgage Co.*, 88 B.R. 168 (Bankr. S.D. Ohio 1988); *In re A.C. Williams Co.*, 25 B.R. 173 (Bankr. N.D. Ohio 1982); *In re Ferretti*, 128 B.R. 16, 19 (Bankr. D.N.H. 1991); *In re U.S. Brass Corp.*, 194 B.R. 420, 424 (Bankr. E.D. Tex. 1996).

The relevant factors for evaluating the adequacy of a disclosure statement may include:...(8) the estimated return to creditors under a Chapter 7 liquidation;...(12) the estimated administrative expenses, including attorneys' and accountants' fees;...(14) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 plan; (15) information relevant to the risks posed to creditors under the plan....*In re Metrocraft Pub. Services, Inc.*, 39 B.R. 567, 568 (Bkrcty.N.D.Ga.1984). Disclosure of all factors is not necessary in every case. *Id.*

U.S. Brass Corp., 194 B.R. at 424–25.

Given the lack of sufficient information in the Disclosure Statement about the claims in Class 3, the projected amount and timing of the payments to be made to Class 3 and the specific compensation arrangements for the Liquidating Trustee, and the failure of the liquidation analysis to take into account the fees anticipated to be paid to the Liquidating Trustee and any professionals engaged by the Liquidating Trustee, the Disclosure Statement does not contain adequate information.

Debtor must amend the Disclosure Statement to remedy the deficiencies set forth above. When can Debtor file such an amended disclosure statement?

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Chapter 11

Party Information

Debtor(s):

Lytton Vineyard & Winery, L.P.

Represented By
M Douglas Flahaut
Dylan J Yamamoto

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1:24-11748 Lytton Vineyard & Winery, L.P.

Chapter 11

#5.00 Status conference re chapter 11 case

fr. 12/11/24; 2/19/25; 4/2/25

Docket 1

Tentative Ruling:

The Court may set a deadline of July 31, 2025 for the debtor to file objections to claims.

Party Information

Debtor(s):

Lytton Vineyard & Winery, L.P.

Represented By
M Douglas Flahaut

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1:25-10068 Consuelo Maria Saldana

Chapter 7

#6.00 Ex Parte Application to Appoint Iva Dominguez as Next Friend
For The Debtor To Appear At the Meeting Of Creditor

fr. 4/30/25

Docket 17

Tentative Ruling:

For the reasons set forth below, the Court will appoint Iva Dominguez as the debtor's guardian ad litem for the limited purpose of prosecuting and administering the bankruptcy case on behalf of the debtor.

I. BACKGROUND

On January 15, 2025, attorney Kevin Tang filed a chapter 7 petition and other documents for Consuelo Maria Saldana ("Debtor"), initiating this bankruptcy case. On February 19, 2025, the chapter 7 trustee held the initial section 341(a) meeting of creditors and continued the meeting to April 30, 2025. See docs. 5 and 9.

A. *Iva Dominguez and Debtor's Medical Circumstances*

Debtor is a 95-year-old woman residing at 6438 Hazeltine Ave #8, Van Nuys, CA 91401 (the "Condo Unit"). *Supplemental Declaration of Iva Dominguez*, Ex. 1 [doc. 26]; *Petition*, ¶ 5 [doc. 1]. Iva Dominguez is Debtor's daughter. *Declaration of Iva Dominguez*, ¶ 1 [doc. 17]. Ms. Dominguez has been described as Debtor's agent for health care purposes. See *Letter from Sorour Raghoshay, M.D. to Iva Dominguez, dated September 6, 2018* (the "Kaiser Letter"), attached to *Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362*, at p. 56 of 81 [doc. 10]. Ms. Dominguez states that she has paid property taxes and property insurance for the Condo Unit. *Declaration of Iva Dominguez*, ¶ 7 [doc. 17]. Ms. Dominguez attests that she does not have a criminal record, does not have any current or potential interest in Debtor's financial affairs and is not charging any fee for her assistance to Debtor. *Id.*, ¶¶ 5, 6, 9.

The Kaiser Letter states that, in September 2018, Sorour Raghoshay, M.D., a geriatrician at the Kaiser Permanente Panorama City Geriatric Clinic, examined

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Debtor and determined that Debtor "no longer has the mental capacity to independently manage her personal, health and financial affairs due to her cognitive deficits from dementia and that [Debtor]'s incapacity is permanent." *See Kaiser Letter*, at p. 56 [doc. 10]. Since 2020, Cynthia Pike, M.D., and the neurology practice at Optum in Van Nuys, California, have treated Debtor for dementia. *Supplemental Declaration of Iva Dominguez*, Ex. 1 [doc. 26].

B. Debtor's Financial Circumstances

Debtor's assets consist of a 2010 Hyundai Elantra with a scheduled value of \$1,000.00, various personal and household items and \$128.00 in a checking account at Chase Bank. *Schedule A/B*, ¶¶ 3.1, 6-12, 17 [doc. 1]. Debtor claims an exemption in each of these assets. *Schedule C* [doc. 1]. Debtor's sole sources of income are benefits from the Social Security Administration and supplemental nutrition assistance benefits from the California Department of Social Services. *See Schedule I*, ¶¶ 8.e, 8.h, at p. 25 [doc. 1]; *Statement of Financial Affairs*, ¶ 8, at p. 30 [doc. 1].

Debtor's schedule A/B discloses a possessory interest in the Condo Unit with a scheduled value of \$0. *Schedule A/B*, ¶ 1.1 [doc. 1]. Regarding the Condo Unit, Debtor's schedule A/B states:

Debtor was the original person the title. Debtor is not on the title but is living in the [Condo Unit]. Debtor transferred her 50% interest in the [Condo Unit] to her daughter, Iva Dominguez and her son in law, Miguel Dominguez. William Campano [sic] has a 50% ownership interest in the [Condo Unit]. William Campano [sic] has a lawsuit for partition and sale of the [Condo Unit] and is seeking to evict debtor from the [Condo Unit].

Id. William Campana is the sole creditor identified in Debtor's schedules. *See Schedules D and E/F* [doc. 1]. In 2020, Mr. Campana filed a complaint against Debtor, Ms. Dominguez, and Miguel Dominguez in the Superior Court of California, County of Los Angeles for, among other causes of action, partition of the Condo Unit by sale (the "Condo Unit Action"). *Supplemental Declaration of Steve Lopez* filed in support of *Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362*, ¶ 6 and Ex. A thereto [doc. 10]. [FN 1]

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CONT...

Consuelo Maria Saldana

Chapter 7

C. *The Uniform Statutory Form Power of Attorney*

On February 28, 2025, Debtor executed a notarized *Uniform Statutory Form Power of Attorney*, in which Debtor appoints Ms. Dominguez as her agent (attorney-in-fact). *Declaration of Iva Dominguez*, Ex. 1 [doc. 17].

D. *The Application*

On March 26, 2025, Mr. Tang filed an *Ex Parte Application to Appoint Iva Dominguez as Next Friend for the Debtor to Appear at the Meeting of Creditors* (the "Application") [doc. 17] on behalf of Debtor, together with a declaration of Ms. Dominguez. The Application states that Debtor has dementia and has trouble with her short-term memory. The Application further states that Ms. Dominguez, who is handling Debtor's financial affairs, is Debtor's duly appointed representative. For this reason, the Application requests that the Court enter an order appointing Ms. Dominguez as Debtor's next friend and appointing Ms. Dominguez to appear in Debtor's place at the continued meeting of creditors pursuant to Fed. R. Bankr. P. 1004.1.

The deadline to respond to the Application was April 21, 2025. *Order Setting Hearing on Application* [doc. 20]. As of April 28, 2025, no party in interest filed a response.

On April 30, 2025, the Court held a hearing on the Application. Debtor, Ms. Dominguez and Mr. Tang appeared at the hearing. Mr. Tang stated that he met with both Debtor and Ms. Dominguez regarding the filing of the petition and other case initiation documents. Ms. Dominguez stated that she helped Debtor sign the documents by holding Debtor's hand. Ms. Dominguez stated that she currently resides with Debtor at the Condo Unit and has for many years. She also stated that she has been Debtor's primary caregiver since 2017, when Debtor was first diagnosed with dementia.

II. LEGAL STANDARDS

Fed. R. Bankr. P. 1004.1 provides:

- (a) **Represented Infant or Incompetent Person.** If an infant or an incompetent person has a representative—such as a general

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guardian, committee, conservator, or similar fiduciary—the representative may file a voluntary petition on behalf of the infant or incompetent person.

(b) **Unrepresented Infant or Incompetent Person.** If an infant or an incompetent person does not have a representative:

- (1) a next friend [FN 2] or guardian ad litem may file the petition; and
- (2) the court must appoint a guardian ad litem or issue any other order needed to protect the interests of the infant debtor or incompetent debtor.

Neither the Bankruptcy Code nor the Federal Rules of Bankruptcy Procedure define the term "incompetency." Bankruptcy courts routinely look to the incompetency laws of the state of the debtor's domicile for guidance. *See In re Alexander*, 2024 WL 4995909, at *2 (Bankr. M.D. Ala. Dec. 5, 2024) (collecting cases); *In re Maes*, 616 B.R. 784, 797 (Bankr. D. Colo. 2020) (collecting cases). Under California law, a party is incompetent "if he or she lacks the capacity to understand the nature or consequences of the proceeding, or is unable to assist counsel in the preparation of the case." *Golden Gate Way, LLC v. Stewart*, 2012 WL 4482053, at *2 (N.D. Cal. Sep. 28, 2012) (citing Cal. Civ. Proc. Code § 372).

Cal. Civ. Proc. Code § 372(a) provides, in relevant part:

- (1) When ... a person who lacks legal capacity to make decisions..., that person shall appear either by a guardian or conservator of the estate or by a guardian ad litem appointed by the court....

* * *

- (4) Where reference is made in this chapter to "a person who lacks legal capacity to make decisions," the reference shall be deemed to include all of the following:

(A) A person who lacks capacity to understand the nature or

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consequences of the action or proceeding.

(B) A person who lacks capacity to assist the person's attorney in the preparation of the case.

(C) A person for whom a conservator may be appointed pursuant to Section 1801 of the Probate Code.

Cal. Prob. Code § 1801 provides that a conservator may be appointed for a person "who is substantially unable to manage his or her own financial resources or resist fraud or undue influence." *See* Cal. Prob. Code § 1801(b)–(c).

In *Maes*, a daughter filed a chapter 13 petition on behalf of her elderly mother who suffered from severe dementia and memory loss. 616 B.R. at 788. The chapter 13 trustee requested dismissal of the mother's case, arguing that the daughter relied on an ineffective power of attorney to file the mother's petition. *Id.* at 790, 794. In denying the chapter 13 trustee's request, the bankruptcy court in *Maes* first analyzed whether the mother was incompetent as of the petition date. *Id.* at 797-98. Finding that the mother was incompetent, the bankruptcy court next considered whether the daughter was authorized to file the petition as the mother's "representative" under the power of attorney pursuant to Fed. R. Bankr. P. 1004.1(a). *Id.* at 798-99. The court found that the power of attorney was ineffective such that the daughter was not a representative as that term is used in subsection (a). However, the court found that the daughter properly filed the petition in her capacity as her mother's "next friend" under Fed. R. Bankr. P. 1004.1(b)(1). *See id.* at 799-800. The bankruptcy court in *Maes* explained the decision tree implicated by the mother's circumstances as follows:

If [the Court determines that the debtor was incompetent as of the petition date], then the Court must determine if the [d]ebtor had a formal "representative" at the time of the [p]etition such as a "general guardian, committee, conservator, or similar fiduciary" and whether that person filed the [p]etition. If the [d]ebtor had no formal "representative," then the Court must decide whether the [p]etition was filed by a "next friend or guardian ad litem." If ... only a "next friend" started the bankruptcy proceedings, then the Court must appoint a guardian ad litem or take other action to protect the incompetent debtor; the Court cannot just let the "next friend" continue along in

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prosecuting the bankruptcy case.

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Id. at 796-97 (internal citations omitted). The court noted concern that "having a next friend administer a bankruptcy proceeding would be unclear and problematic [because n]ext friends have no specific duties or obligations." *Id.* at 801. Having determined that the daughter properly filed the petition in her capacity as her mother's "next friend," the bankruptcy court appointed the daughter as her mother's "guardian ad litem" for purposes of the chapter 13 case pursuant to Fed. R. Bankr. P. 1004.1(b)(2). *See id.* at 800-02; *see also In re Alexander*, 2024 WL 4995909, at *2 (Bankr. M.D. Ala. Dec. 5, 2024).

III. ANALYSIS

Like the daughter in *Maes*, Ms. Dominguez filed the petition on behalf of her mother, Debtor. Like the debtor in *Maes*, as of the petition date, Debtor was incompetent under California law as a result of the cognitive deficits caused by her dementia. Debtor's medical circumstances prevent her from: (a) understanding the nature or consequences of the bankruptcy case, (b) assisting counsel in the preparation of the case and (c) managing her own financial resources.

As an incompetent debtor, Debtor did not have a representative as of the petition date, such as a general guardian, committee, conservator, or similar fiduciary. Like the power of attorney in *Maes*, here, the *Uniform Statutory Form Power of Attorney* dated February 28, 2025 is ineffective to empower Ms. Dominguez to act as Debtor's "representative" as that term is used in Fed. R. Bankr. P. 1004.1(a).

Under California law, a statutory form power of attorney empowers the agent to act for the principal with respect to bankruptcy proceedings. *See* Cal. Prob. Code § 4459(f); *see also In re Nakano*, 2019 WL 2896199 (Bankr. C.D. Cal. June 26, 2019). However, the *Uniform Statutory Form Power of Attorney* dated February 28, 2025 is void because Debtor lacked the capacity to execute it as a result of her dementia (i.e., she was not of sound mind and capable of understanding the nature and consequences of the document). *See* Cal. Prob. Code § 4120 ("A natural person having the capacity to contract may execute a power of attorney."); *see also* Cal. Prob. Code §§ 810-812 (setting forth mental capacity standard for certain legal acts and decisions); Cal. Civ. Code § 39 (providing that contracts are subject to rescission if a party was of "unsound

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mind").

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However, Ms. Dominguez properly filed Debtor's petition in her capacity as Debtor's "next friend" under Fed. R. Bankr. P. 1004.1(b)(1). As Debtor's daughter, Ms. Dominguez has a "significant relationship" with Debtor. The Kaiser Letter describes Ms. Dominguez as Debtor's agent for healthcare purposes. Ms. Dominguez states that she has managed Debtor's financial affairs since Debtor's cognitive decline from dementia and that Ms. Dominguez has done so without compensation or expectation of payment.

Because Debtor's case was initiated by Ms. Dominguez in her capacity as Debtor's "next friend," the Court must appoint a guardian ad litem to protect Debtor's interests pursuant to Fed. R. Bankr. P. 1004.1(b)(2). As noted above, Ms. Dominguez has a significant relationship with Debtor and is willing and able to act in Debtor's best interests in this bankruptcy case. As a result, the Court finds it appropriate to appoint Ms. Dominguez as Debtor's guardian ad litem pursuant to Fed. R. Bankr. P. 1004.1(b)(2) for the limited purpose of prosecuting and administering the bankruptcy case on behalf of Debtor.

IV. CONCLUSION

The Court will appoint Ms. Dominguez as Debtor's guardian ad litem pursuant to Fed. R. Bankr. P. 1004.1. In her limited guardian ad litem role, Ms. Dominguez:

- (1) may, on behalf of Debtor, retain and instruct legal counsel for Debtor;
- (2) may file, prosecute, or defend any pleading, motion, objection, or response;
- (3) may seek conversion or dismissal of Debtor's bankruptcy case;
- (4) may request the entry of discharge;
- (5) may take any other action on behalf of Debtor in this bankruptcy case; and
- (6) shall not be entitled to compensation for her role as guardian ad litem for the Debtor, unless otherwise permitted by order of the Court.

In the performance of her role as guardian ad litem, Ms. Dominguez must act as a

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fiduciary for Debtor. Such fiduciary duties include, but are not limited to: the duty to act in accordance with Debtor's reasonable expectations (to the extent actually known); the duty to act in Debtor's best interests; the duty to act in good faith; the duty to act loyally for Debtor's benefit; and the duty to act with the care, competence, and diligence ordinarily exercised by agents in similar circumstances.

Debtor has the right to request termination of Ms. Dominguez's limited guardian ad litem role if Debtor establishes that she is no longer incompetent and is able to prosecute and administer her bankruptcy case, provided however, that Ms. Dominguez's limited guardian ad litem role will terminate only upon an order of the Court, including an order dismissing this case.

The Court will prepare the order.

FOOTNOTES

FN 1: In December 2022, the state court entered an interlocutory judgment in the Condo Unit Action (the "Interlocutory Judgment"). *Interlocutory Judgment for Partition by Court Under CCP § 872.720* attached as Ex. B to *Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362*, at pp. 55-59 [1:24-bk-11219-VK, doc. 13]. In the Interlocutory Judgment, the state court ordered partition of the Condo Unit by sale after determining that Mr. Campana owns a 50% interest in the Condo Unit, Ms. Dominguez owns a 25% interest and Mr. Dominguez owns a 25% interest.

On July 24, 2024, Ms. Dominguez filed a chapter 7 petition, initiating bankruptcy case no. 1:24-bk-11219-VK. In her schedule A/B, Ms. Dominguez disclosed an ownership interest in the Condo Unit and indicated that Mr. Campana is her stepbrother. *See Schedule A/B*, ¶ 1.1 [1:24-bk-11219-VK, doc. 1]. In Ms. Dominguez's bankruptcy case, Mr. Campana filed a motion for relief from the automatic stay as to the Condo Unit Action [1:24-bk-11219-VK, doc. 13]. The Court granted Mr. Campana's motion to enforce his interlocutory judgment and proceed to partition of the Condo Unit by sale [1:24-bk-11219-VK, doc. 20].

FN 2: The term "next friend" includes someone having an interest in the welfare of an incompetent person that has a cause of action. *In re Maes*, 616 B.R. 784,

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799 (Bankr. D. Colo. 2020) (citing *In re Zawisza*, 73 B.R. 929, 936 (Bankr. E.D. Penn. 1987)). In a different, but analogous, context, the United States Supreme Court established qualifications for a "next friend":

First, a "next friend" must provide an adequate explanation—such as inaccessibility, mental incompetence, or other disability—why the real party in interest cannot appear on his own behalf to prosecute the action. Second, the "next friend" must be truly dedicated to the best interests of the person on whose behalf he seeks to litigate, and it has been further suggested that a "next friend" must have some significant relationship with the real party in interest. The burden is on the "next friend" clearly to establish the propriety of his status....

Id. at 800 (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 163-64, 110 S. Ct. 1717, 109 L. Ed. 2d 135 (1990) (internal citations omitted)).

Party Information

Debtor(s):

Consuelo Maria Saldana

Represented By
Kevin Tang

Trustee(s):

Amy L Goldman (TR)

Pro Se