

Case No. 23-15860

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

JORDEN MARIE SALDANA,

Debtor-Appellant,

v.

MARTHA G. BRONITSKY, Chapter 13 Trustee,
Trustee-Appellee,

On Appeal from the United States District Court
for the Northern District of California
No. 5:22-cv-06223-BLF
Hon. Beth Labson Freeman

***AMICUS CURIAE* NATIONAL ASSOCIATION OF CONSUMER
BANKRUPTCY ATTORNEYS' AND THE NATIONAL CONSUMER
BANKRUPTCY RIGHTS CENTER MOTION FOR
EXTENSION OF TIME**

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September 18, 2023

Movant, the National Association of Bankruptcy Attorneys (NACBA) and the National Consumer Bankruptcy Rights Center (NCBRC), hereby seek leave to file a brief as *amicus curiae* in support of the Debtor-Appellant pursuant to Federal Rule of Appellate Procedure 26(b) and the Ninth Circuit Rule 31-2.2(b) outside the seven (7) day time limit prescribed by FRAP 29(a)(6). Movant requests an extension of time until September 28, 2023, within which to file their brief. Movant has requested the consent of all parties in this matter. The Debtor-Appellant has consented and the Trustee-Appellee has not responded. Movant also respectfully requests that both Appellant and Appellee be granted an opportunity to respond to this brief. Movant also respectfully requests that both Appellant and Appellee be granted an opportunity to respond to this brief.

NACBA and the NCBRC are non-profit organizations dedicated to protecting the integrity of the bankruptcy system and preserving the rights of consumer bankruptcy debtors. To those ends both organizations aid consumer debtors and their counsel in cases likely to impact important issues of consumer bankruptcy law. Among other things, NACBA and the NCBRC submit *amicus curiae* briefs when, in their view, resolution of a particular case may affect consumer debtors throughout the country. Court decisions have larger legal effects and are not limited solely to the parties directly involved in the case. NACBA and the NCBRC also strives to influence the national conversation on bankruptcy laws

and debtors' rights by increasing public awareness of and media attention to the important issues involved in bankruptcy proceedings.

NCBRC has filed *amicus curiae* briefs in numerous cases seeking to protect the rights of consumer bankruptcy debtors. *See, e.g., Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin*, 143 S. Ct. 1689 (2023); *Evans v. McCallister (In re Evans)*, 69 F.4th 1101 (9th Cir. 2023); *Numa Corp. v. Diven*, 2022 U.S. App. LEXIS 32224, 2022 WL 17102361 (9th Cir. 2022).

The result in the case at bar will affect the administration of many consumer cases in this Circuit. If the Bankruptcy Appellate Panel ("BAP") decision is not affirmed, it will create an unenumerated exception to the rule that a Debtor has an absolute right to dismiss a chapter 13 bankruptcy. Unless the BAP decision is affirmed, many individuals who have chosen to repay their debts through a chapter 13 bankruptcy may be dissuaded from filing bankruptcy and instead opt to file a chapter 7 bankruptcy. This is contrary to the intent of Congress and the incentives built into a chapter 13 bankruptcy.

It is within the sound discretion of this Court to allow participation of *Amicus Curiae*. *See Northern Securities Co. v. U.S.*, 191 U.S. 555 (1903); *LaRue v. Dewolff, Boberg & Assocs.*, 458 F.3d 359, 360 (4th Cir. 2006). Discussing the appropriate exercise of discretion with respect to use of *amicus curiae*, Judge

Posner said, “[a]n amicus brief should normally be allowed when . . . the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.” *Ryan v. Commodity Futures Trading Commission*, 125 F.3d 1062, 1063 (7th Cir. 1997). Thus, NCBRC believes it has a role as a national advocate for consumer debtors. It brings a unique perspective to this case that will be helpful to the court in deciding this matter.

NACBA and the NCBRC recognizes that it is filing a request to allow a brief less than 7 days prior to the due date on September 18, 2023. NCBRC understands the rules concerning the timing of the submission of amicus briefs. NACBA and the NCBRC did not file their brief timely because of the need for further review by members of NACBA and the NCBRC who have final review of the amicus brief. Despite the need for additional time, NACBA and the NCBRC believe that the issue raised in this case is very important and therefore requests an extension to file their brief for the benefit of the court.

WHEREFORE, the movant respectfully requests that this motion be granted, that NACBA and the NCBRC be granted until September 28, 2023 to file their amicus brief, and that both Appellant and Appellee be granted additional time to file a response to this brief, and for such other relief the court deems just and proper.

Dated: September 18, 2023

Respectfully submitted.

s/ Christina L. Henry

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